

PROTECT AND SUPPORT VULNERABLE TEENAGERS 2019

Sexting: get your facts straight

Sharing images online is a natural part of most children and young people's lives, but sexting has legal consequences. **Dai Durbridge** explains how the law applies, and how you can get the message across.

When sending images across social media is normal activity in most pupil's lives, there is no point in schools trying to discourage it. What is important, however, is knowing what is acceptable, not just in terms of behaviour and safety, but legally as well.

While sexting is generally seen as a secondary school issue, a qualitative study by the NSPCC into 'Children, young people and "sexting"' (2012) recommended that research and policy initiatives are developed for primary school aged children and support transition into secondary school.

Considering that a quarter of the teachers who responded to a recent NASUWT study said they were aware of 11-year olds sexting, it is clearly still an issue for primary schools to be aware of. There are various social media channels that pupils may use so it's wise for schools to be aware of the most popular:

- Snapchat
- Instagram
- WhatsApp
- Viber

Watch Alan Mackenzie's [helpful screencast](#) on setting privacy settings on various social media channels to increase your knowledge of how to use them safely.



What the law says

While talking about sexting and the issues surrounding it can be covered in PSHE and SRE lessons, an understanding of the legal aspects must be clearly presented to pupils so they fully comprehend the consequences of online behaviour.

Creating or sharing indecent images of a child is illegal, even if it is a child doing it. A young person will be breaking the law if they take an explicit photo of themselves or a friend, share an explicit photo or video of a child (even if it is shared with other children) or possess such an image or video of a child, even if that child consents.

This area of law is subject to a review and in early 2016 the National Police Chiefs Council confirmed that they are developing new guidelines to support schools in managing sexting. Whilst convictions are rare where children share with other children consensually, the police can now decide to record the action as a crime but also decide that taking action is not in the public interest.

Based on current law, it is unlikely that a crime recorded in this way would appear on a future DBS check when the child is an adult. However, given the continuing changes in this area of law, the position may well be different in 10 or 15-years' time.

A child is someone under the age of 18 – this was changed from 16 in the Sexual Offences Act 2003. According to the Protection of Children Act 1978, it is an offence:

- **to take, permit to be taken, or to make** any indecent photographs or pseudo-photographs of a child
- **to distribute or show** such indecent photographs or pseudo-photographs
- **to have in their possession** such indecent photographs or pseudo-photographs with a view to their being distributed or shown by themselves or others.

If a pupil sends an indecent image or video of themselves and posts it on social media and they are under 18, it could count as distributing an indecent image of a child and could result



in police action. It makes no difference if the image or video is of themselves or someone else the same age.

It is illegal for anyone under 16 to have sex, therefore sending an image or video of a sexual act is likely to be viewed as more serious than sending an indecent image or video.

If a pupil aged 17 sent an image or video of themselves performing a sexual act, they would still be guilty of distributing an indecent image or video of a child, but not breaking the law about consensual sex. However, a 15-year-old would be committing both offences. If a pupil sends an indecent image or video to someone who finds the image upsetting and didn't want to see it, that could be a crime under the Malicious Communications Act 1988.

Outside of criminal law, there are also civil law remedies available to individuals of whom images or video have been shared. This could include breaching copyright and privacy. You can also be prosecuted if you are found to have shared a sexual image for 'revenge porn' purposes.

Getting the message across

For primary school pupils, one technique of helping them understand the implications of their behaviour online is to take a squeezable tube of paint and explain to the pupils that the paint represents everything they say online.

Then tell them to squeeze it out and see how difficult it is to get it back into the tube. This is a clear and practical way of explaining that what we say online cannot be taken back.

For secondary school pupils, exploring case studies is a good tactic. Use the example of someone aged 15 who takes an indecent photo of themselves and sends it to someone else who opens it on their phone. Discussion points could include:

- What makes the image indecent?
- Who is breaking the law?
- Why are they breaking the law?



- Would it be different if either one of the people was 17?

Sexting is an issue that isn't going away, so needs to be talked about in schools. Many pupils are unlikely to come forward and tell a teacher about behaviour they're uncomfortable with because they're worried that they will be judged.

While any illegal behaviour should of course be discouraged, there needs to be a whole school agreement on how incidents can be dealt with without making it a taboo subject.

Staff training

This is a really difficult issue for staff to have to deal with. If you believe that pupils have been sexting illegally then the situation needs to be dealt with as seriously as you would investigate cases of bullying. First try and establish facts.

- Who sent what to who?
- How old are they?
- What were the images of?

You do not want to be in a position where you feel you have to look at the images yourself. Avoid that at all costs.

Staff need to feel confident talking to pupils and talking to parents about incidents of sexting, and be clear on the law. It's very unusual for the police to prosecute in cases of sexting in schools, but it can happen and everyone must be aware of that.

Dai Durbridge is a partner in the education team at Browne Jacobson. He provides advice and training to teachers and other education professionals on relevant legal and practical issues. He has a particular focus on safeguarding issues, having written numerous articles on information sharing, handling allegations against staff, vetting and barring scheme and the GDPR. Dai provides advice to schools and colleges on policy drafting, implementing procedures for the safeguarding of children and regarding admissions and exclusions.