

# | Consenting to sex



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Contains information about:

- Hate Crime
- Sexual Violence
- Domestic Abuse

# Consenting to sex

This information sheet answers some questions about what the law says on consenting to sex. Specifically, it deals with questions about situations when you might feel unsure about whether you've agreed to sex or when you feel something is wrong but you're not sure about it. If this information sheet doesn't answer your specific question, do give Galop a call in confidence to talk about your own situation. Contact Galop on 020 7704 2040

## What does consent mean?

In law, consent means giving your agreement or 'saying yes' to something, in this case sex. The law says that consent is something active. It means freely choosing to say 'yes'.

If you don't agree, then you don't give your consent. If you are threatened, frightened, drugged, coerced or asleep then you can't give your consent freely.

In law, we all have a responsibility to make sure our sexual partners are agreeing to have sex. Sometimes we're not sure if the other person is saying 'yes' or we misunderstand each other, misread the signs or feel awkward about dealing with consent in the heat of the moment. It is important that all of us make sure our sexual partners are consenting to sex and that all of us are giving our consent freely.

So, what do all of us need to know to make sure the sex we have is equal, safe and positive for all of us? This information sheet will give you some information and answer some of the questions people often ask us at Galop but do give us a call in confidence if you want more information or support (Tel: 020 7704 2040).

## What is sexual assault?

Sexual assault means being made to take part in any sexual activity or being touched in a sexual way without your agreement. Remember, the law

says your agreement must be given freely for it to count.

It's not always easy to know if you've experienced sexual assault or violence. Most people are not attacked by strangers on a street at night, although this does happen. Most people are attacked by someone they know, someone they trust and someone they're hoping to have a good time with. Sometimes it's your partner or someone you fancy who you've met online or at a club or through your friends.

Sometimes things start out OK but just go beyond what you're comfortable with. The other person doesn't listen to you and doesn't stop, even if you to want them to. You can feel instinctively that something is wrong but too intimidated, powerless, alone or unsure to know how to get yourself to a safe place. Sometimes you feel confused and are not sure if you've been assaulted. Maybe drink and drugs were involved or you're unsure what saying 'yes' or 'no' means, or what your rights are.

Remember, consent means your freely given agreement to a sexual act or activity. You do not have to be touched for a sexual offence to be committed and you do not have to shout 'stop'. If you are tricked, persuaded, forced or frightened into any activity which is sexual or for the sexual pleasure of the person forcing you to do it, without your consent, this is called sexual assault in law. This makes it a crime.

It can be devastating to be the victim of sexual assault and violence. It can happen to anyone,

whatever your gender, sexual orientation, age, ethnicity or lifestyle. If it has happened to you, you can contact Galop in confidence to get support and think through your options.

## Some questions about what consent means

*I felt really scared so I just went along with it. I can't have been sexually assaulted because I didn't say no.*

You don't have to say no in words. Many people who are threatened, frightened, tricked or stopped from escaping feel so scared that they choose not to say anything and not to 'fight back'. This is a way people survive sexual attack. The law says that your consent has to be given freely.

*I'm OK with some things (like oral sex) but I don't want to do other things (like penetrative sex). Is that OK?*

Lots of people like oral sex or other non-penetrative sexual activity but don't want penetrative sex (or the other way round) or not with that person at that time. If the other person forces you to go further than you want to go, then it's sexual assault.

*Can I change my mind about having sex? What if we've already started making out or we've got our clothes off?*

The law says everyone has the right to withdraw their consent at any time. This means you can stop at any time, whatever you're doing. It might be awkward or frustrating for you or the other person but that's not the point.... you have the legal right to say stop and no one should force you to continue or do something you're not comfortable with.

*It's OK for me to keep going as long as the other person doesn't say no, isn't it?*

The law says each of us is responsible for making sure our sexual partners are giving their free consent to what we want to do. The law says you must have a 'reasonable belief' that the other person wants to do what you want to do. A reasonable belief is something active. You must go on their body language as well as their words. If in doubt, ask!

## Some questions about meeting partners

*If I go out on the scene, or go on a date with someone, I'm basically agreeing to sex, aren't I?*

No. Not unless you want to! Everyone has the right to give or withhold their consent to any sexual act at any time. Dressing up, dancing, flirting, getting drunk, making out... nothing gives anyone the right to force you to have sex in any way you don't want to.

*If I'm in a club, sauna, public toilet or cruising ground - or I meet someone through Gaydar, Grindr or another website - that means I'm agreeing to have sex, right?*

No. You may meet someone through a website or App designed for people to meet up, with the assumption that you'll have sex. Or you are in a place where sex happens. But the law says you can agree or not agree to any sexual act, whatever the circumstances. Whatever you're both expecting, you have to negotiate and agree on what sexual activity to do together. And you have the right to change your mind at any point, even if you've talked about it or agreed beforehand.

*What if I go home with someone - am I consenting to sex?*

If someone invites you back to their home or hotel room – or they come to yours - it doesn't mean that you are automatically agreeing to sex. You have the right to say no at any time. Similarly, if someone

you've met agrees to come back with you, don't assume they are consenting to sex.

*As a sex worker, does it mean I'm agreeing to have sex with someone, e.g. when I meet a client or get in their car?*

No. Sex workers have the same rights over their bodies and the same right to give or withhold consent as anyone else. Sex workers can be sexually assaulted and raped in the same way as anyone else. Any activity that you are coerced or forced into without your consent is sexual assault.

*Can someone agree to have sex if they're drunk or have taken drugs?*

It depends how drunk or under the influence of drugs they are. If they can still make a free choice, then they can consent. Legally, it's about whether your ability to make a free choice is so impaired by drink or drugs that you really are not able to decide.

Your ability to make a free choice can be limited for various reasons: drink and drugs, medication, mental health issues, learning difficulties or being asleep. If you're so out of it that you can't stand or talk properly, don't know what you're agreeing to, or can't remember what you've done, then you probably don't have the ability to make a decision about sex at that time.

If you're with someone in this state, think very carefully about whether you have sex with them. You could be committing an assault if it later turns out they lacked the ability to give their consent. If in doubt, don't do it.

## Questions about consent and relationships

*It doesn't count as rape if it's your partner and you've had sex before, does it?*

You can be raped by your partner. Rape and sexual assault can occur within relationships. If you didn't freely agree, then it's illegal, whoever does it to you. If this situation rings bells for you, then maybe you are experiencing domestic abuse. Call Galop to contact the London LGBT Domestic Abuse Partnership for help and advice.

### The Legal Age of Consent

The law says that everyone must be aged 16 before they can have sex. The age of consent is the same for everyone, regardless of gender, sexual orientation or who you're having sex with.

If you are an adult with a 'duty of care' for a young person under 18 (for example a teacher, youth worker or social worker), it is illegal to have sex with anyone who comes under your care, even if they are 16 or 17.

If you are over 18 and meet someone in a club for over-18s, don't assume they are over 16 and can give their consent. You can't tell a young person's age by just looking at them, so ask and, if in doubt, don't! You are responsible for your behaviour and would be committing an offence if you have sex with someone aged under 16, even if you met them in a bar or club for over-18s.

Sexual activity is illegal under any circumstances for under-13 year olds. Those aged 13 and under cannot give consent. Doing anything sexual with someone under 13 is automatically an offence, whatever the young person says.

*I'm 16 and my boyfriend/girlfriend is 15. It's OK if we have sex, isn't it?*

The law recognises that young people aged 13 to 16 might be physically able to have sex but are not allowed to. This is because the law judges that young people cannot make informed decisions about sex, both physically and emotionally, even if they are physically able to have sex. The age of consent also exists to protect young people from being sexually exploited or abused by older people.

If one sexual partner is over 16 and the other under 16, then sex is illegal. The same is true if both partners are aged over 13 and under 16.

However, consensual sex involving young people under 16 does happen and, if this is you, it might be a good idea to talk through your situation with a Galop caseworker or an LGBT youth worker.

## Getting Help

If you feel something wrong or bad has happened to you, or you've experienced sexual violence or

assault or you're not sure but worried, then talk to Galop. Galop provides a free, confidential and independent service to all lesbian, gay, bisexual and trans people across London who have experienced sexual assault, abuse or violence, however or whenever it happened.

Galop has a specialist Sexual Abuse Caseworker who offers in-depth and on-going advocacy, listening and support in an informed, non-judgemental way as people come to terms with what they've experienced and deal with whatever issues it raises for them and their lives. Galop's service is based on the values of inclusion and empowerment and aims to be personal, accessible and actively trans inclusive. Galop caseworkers can also help you report to the police if you want to (anonymously or not) and find the right counselling, housing, health or other support that you need.

**Always dial 999 if it is an emergency and you think you are in immediate danger.**