It is the policy of the West Wales Shared Lives service to recognise the importance of friendships and relationships. The SL service is committed to ensuring that people in adult placements have the same opportunity as any other member of the community to develop a range of valued friendships and relationships including intimate relationships.

One of the most important roles of a SL Carer is to support the people placed with them to make friends, develop and keep relationships and maintain family links.

This policy covers the SL Carer’s responsibility in this area as well as the SL service’s responsibility to ensure that SL Carers have the skills and knowledge to carry out their role sensitively, effectively and safely. The SL service is also responsible for ensuring that SL Carers understand the complex legislative framework within which they are working and their role in protecting Service Users from exploitation and abuse.

<table>
<thead>
<tr>
<th>1</th>
<th><strong>Underlying Principles</strong></th>
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<td></td>
<td>One of the key aims of any Shared Lives placement is to support the person in the placement to live as ordinary a life as possible. People in Shared Lives placements should be encouraged and given the opportunity to form friendships and relationships with a range of other people. These friendships and relationships will develop through their day-to-day contact with people in different settings.</td>
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<tr>
<td>1.1</td>
<td>The vulnerability of some Service Users places a responsibility on SL Carers to try and ensure that these relationships are safe and free from possible exploitation. In order to achieve this, SL Carers will be expected to be alert to any potential risks involved for the service user when seeing particular friends/family members and take steps to support the Service User to minimise these risks. This will often be done with close advice and guidance from the Case Manager of the Service User who, wherever possible, should identify any risks in the Service Users’ Needs Assessment/Care Plan. Agreed decisions regarding the management of these risks in the Shared Lives Placement should be recorded in the Placement Agreement/Contract.</td>
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<td></td>
<td>This should not be done in a way that breaches the Service Users right to privacy and respect and should, where possible, involve the Service User in considering the degree of risk their friendships and relationships could pose.</td>
</tr>
</tbody>
</table>
SL Carers and Case Managers must ensure service users have the information and guidance they need to make choices about their relationships.

However, even with this information some Service Users may choose to have contact with friends and family about whom carers may feel uncomfortable.

2 **Legislative Context**

People have the right to form a friendship with whomever they please. There are very few legal powers to prevent a friendship between a service user and another person.

The picture becomes more complicated if the friendship develops into a sexual relationship.

It is an offence under Section 7 of The Sexual Offences Act 2003 for a man to have sexual intercourse with a woman who is deemed to lack the capacity to consent to sexual intercourse. It has to be shown however that the man does not know and has no reasons to suspect that the person lacks capacity to consent.

Either a man or a woman can commit Indecent Assault. For an act to be ‘indecent assault’ there has to be actual or apprehended physical contact in ‘circumstances of indecency’ to which one of the parties does not consent. Any sexual contact between someone deemed to lack capacity to give consent and another person can, depending upon the circumstances, amount to indecent assault.

Homosexual acts are only legal if they occur in private and between consenting males who are over the age of 18. A man will be guilty of an offence if he engages in homosexual acts with someone who is deemed to lack capacity to give consent. It is also an offence if two or more people in addition to the parties concerned are present or if the act takes place in a public place.

Section 27 of the Sexual Offences Act 2003 makes it an offence for the owner or manager of any premises to induce or allow a woman deemed to lack capacity to consent to be on the premises for the purposes of having unlawful sexual intercourse with a man.

Section 9 of the Sexual Offences Act 2003 prohibits a person to procure a woman deemed to lack capacity to consent for the purposes of unlawful sexual intercourse.

The Sexual Offences Bill is currently going through Parliament. It will replace the Sexual Offences Act 2003. There are three sections...
specifically about ‘people with a mental disorder or learning disability’ dealing with:

- Offences against persons with a mental disorder or learning disability
- Inducements etc to persons with a mental disorder or learning disability
- Care workers for persons with mental disorder or learning disability

There is a great deal of concern among some people with learning disabilities about the impact of this bill upon their right to have sexual relationships. Whether an offence is committed hinges upon whether the person with learning disabilities ‘lacks the capacity to choose’.

SL Carers will need to consider the impact of the section dealing with care workers. SL Carers that provide personal care are covered by the definition of care worker. An SL Carer may be deemed to have committed an offence if he ‘intentionally causes’ or ‘intentionally incites’ a person who ‘lacks capacity to choose’ to engage in a sexual activity.

The Lord Chancellor’s Department (as was) has issued guidance on ‘mental incapacity’ called ‘Making Decisions’. This forms the basis of the bill (currently called ‘The Mental Incapacity Bill’) before parliament.

The Law Commission has proposed three definitions to ascertain whether a person lacks capacity, which Government has agreed will be incorporated in legislation.

- A person is without capacity if, at the time that a decision needs to be taken, he or she is "unable by reason of mental disability to make a decision on the matter in question; or unable to communicate a decision on that matter because he or she is unconscious or for any other reason".

- Mental disability is "any disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning".

- A person is to be regarded as unable to make a decision by reason of mental disability if the disability is such that, at the time when the decision needs to be made, the person is "unable to understand or retain the information relevant to the decision or unable to make a decision based on that information".

The Law Commission recommended however that a person should not be regarded as incapable of communicating their decisions unless
"all practicable steps to enable him or her to do so have been taken without success". Government has accepted this principle.

The Law Commission recommended that a decision should not be regarded as invalid merely because it would not be made by a "person with ordinary prudence". This supports the right of the individual to make his own decisions, and clarifies that he should not be regarded as incapable of doing so merely because the decisions he reaches appear to others to be unwise or irrational. The Government accepts this recommendation.

### 3 Procedure

**3.1** The Shared Lives service will ensure, through training and explanation that the SL Carer, understands their role in supporting the people placed with them to have friendships and relationships and the complex legislative framework within which they are working.

**3.2** The Shared Lives service will ensure that the individual Care Plan, Adult Plan and Placement Agreements gives guidance to the SL Carer on the support that they are expected to give to the person placed with them to enable them to maintain family links and have a range of friendships and relationships.

**3.3** The Shared Lives service will ensure that the SL Carer understands the steps that they should take if they have concerns about a relationship that the person placed with them has developed.

These are:

- **3.3.1** The SL Carer should talk to the person placed with them and explain their concerns. This is a difficult balancing act as the SL Carer has a duty to protect the person placed with them from exploitation or abuse but must also bear in mind the right of the individual to have friendships and relationships of their choice. The SL Carer should be careful not to put undue or unfair pressure on the person to end that relationship. The Human Rights Act 1998 protects the right to privacy and respect for family life, home and correspondence and to freedom of association with others.

- **3.3.2** If the SL Carer continues to have concerns, he/she should explain that to the service user. The SL Carer should discuss continuing concerns with the SL Officer in order to understand their basis and agree a strategy.

- **3.3.3** If necessary the SL Officer and carer should consult the Case Manager/Care Coordinator/Social Worker who may decide the matter should be properly considered at a formal review involving the Service User and his/her representative. The meeting will consider the concerns and agree a way forward. This may involve a risk assessment and the agreement of a formal risk management strategy. The Care Plan, Adult Plan and Placement Agreement Contract should if necessary be
amended so that the SL Carer has clear instructions about their role and what they should be doing to support and safeguard the service user.

3.3.4 If at any time a SL Carer is concerned that a Service User is involved in an abusive friendship or relationship they should immediately inform the SL Officer. The Shared Lives service will then follow the procedure for adult protection and prevention from abuse.