

**“All in all it is just a judgement call”: Issues surrounding sexual consent in young people’s heterosexual encounters**

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**Abstract**

In the UK, there has been growing concern about young people’s understanding of sexual consent, with the views of young people themselves often lost in academic and educational policy debates. However, the focus on high rates of sexual violence has meant a lack of attention on the everyday negotiation of consensual heterosexual activity, leading to assumptions being made regarding young people’s lack of understanding of sexual consent. This paper emerges from a wider study of over 500 young people which sought to uncover their understanding of the issues. Drawing on data from workshops and the open text responses to an on-line survey the findings presented in this paper show that the majority of heterosexual young people understood the complexity of sexual consent as an embodied process, which can be difficult to define, talk about or practice uniformly. This complex understanding, in which sexual consent is a continuum rather than a dichotomy, has implications for sexual education initiatives. We argue that it is only by providing a closer understanding of how - within consensual sexual activities - young people understand and enact sexual consent through a range of embodied communication strategies that education surrounding sexual assault will become meaningful.

## **“All in all it is just a judgement call”: Issues surrounding sexual consent in young people’s heterosexual encounters**

In the UK in recent years, there has been a growing focus on sexual consent between young people, largely emerging from concerns regarding unconsensual sexual encounters. Indeed there is a very real problem of high rates of sexual assault and, more broadly, a problem of ‘lad culture’ which has been highlighted as occurring within universities (Phipps and Young 2015, Universities UK 2016) and within schools (Women and Equalities Committee 2016). There is no doubt that levels of sexual violence are a significant issue. However, the emphasis on preventing violence can produce a dichotomy between rape and non-rape (Gavey 2005) which does little to help us to understand how consent is experienced and understood within gendered consensual sexual relationships. Whilst taking steps to reduce sexual violence is important, there is a lack of attention into understanding consensual sexual activities, which, we argue, is as important as understanding the context of sexual violence. Our research sought to address this in a study with over 500 young people. This paper focuses on the participants who identified themselves as heterosexual. Drawing on data from workshops and open text responses to an on-line survey the findings presented in this paper will show that the majority of heterosexual young people understand the complexity of sexual consent as an embodied process. We argue that a lack of attention to the everyday negotiation of consensual heterosexual activity as difficult to define, talk about or practice uniformly is a barrier to the wider project of reducing sexual violence. A more useful starting point might be to engage with the existing frameworks of understanding employed by young people. It is only by providing a closer understanding of how - within consensual sexual activities - young people understand and enact sexual consent through a range of embodied communication strategies that education surrounding sexual assault will become meaningful.

### **Understanding Sexual Consent**

In the UK, Section 74 of the Sexual Offences Act (2003) outlines the legal definition of consent as resting on whether or not a complainant has the capacity to make a choice about sexual activity and whether this choice is made freely or if it is constrained in any way. The legal test is a reasonable belief in consent, that most people (such as a jury), would come to the same conclusion as the person accused of the offence.

Meanwhile, there is a growing body of research that explores the concept of heterosexual sexual consent, both in the UK and internationally, which we draw upon here to frame our research in this field. As Beres (2007) identified in her literature review, whilst the issue of consent is central to understanding the difference between coercive and non-coercive sexual activity, there is very little attention given to consent itself, and there is no agreed definition. She identifies three different ways that the term sexual consent is understood. The first is that there is no clear definition, instead normative assumptions are presumed. This ‘common-sense’ understanding does not seem to be adequate given the potential implications of sexual consent in terms of both individual wellbeing and the law. The second definition in the literature focuses on consent as a verbal or non-verbal contract. This more easily resonates with the legal position, yet clearly raises questions about what words or forms of non-verbal

signals count and the extent to which social and cultural practices allow refusal. The above are focused on an exchange between two parties in distinguishing between consent and coercion. The final definition focuses on the way an individual understands the sexual event; consent is seen as a psychological process. This definition does not necessarily help during sexual activities unless refusal to consent is given and acted on. However, it does reflect the progressive and reflective nature of sexual activities and relationships, allowing young people to come to understand themselves as having been abused, even if they could not necessarily articulate this at the point of sexual activity.

We note the lack of agreed definition and will unpack four main issues that shape the context of sexual consent. The first section presented here focuses on the concept of consent itself, and illustrates how its roots in a liberal western tradition point to its problematic nature. The second section looks at the social context of heterosexual relationships focusing on gendered sexual scripts. The third builds on this by further examining the social context of consent. The final section will examine the literature on verbal and non-verbal indicators of consent, and discuss where the responsibility is deemed to lie for gaining consent.

### *The concept of consent*

As Drakopoulou (2007) has argued, the concept of consent itself emerges from a particular philosophical tradition which assumes an autonomous rational-actor. In this tradition, consent can be construed as a contract or property that is detached from the individual. Consent can be given or withheld, but appears to be separate to the individual who is allowing or refusing an action. This understanding of consent has a clear fit with the history of rape law, whereby rape emerged as a crime of property. Women were considered to be the property of their fathers and initial rape laws focused on the theft of virginity, which rendered the women as less valuable to their fathers (Brownmiller 1975). Women are now legal-subjects in their own right, yet the law remains a problematic area for women. Whilst the 'man' in law is now deemed to include women, this has not necessarily led to gender-neutrality. As Boshoff (2007) amongst others has shown, the actor-subject in law remains based on the original male personification, and this can be challenging for women.

Within this socio-legal framework, there is a lack of recognition of power relationships in framing the position of the actors. Patemen (1980) explored this in depth and argues that consent can only exist as a concept if refusal is possible. She argues that in a society in which women are not necessarily positioned as 'free and equal', we cannot necessarily assume that consent is ever possible. She further argues that whilst assent and habitual acquiescence are possibilities (alongside dissent and submission), consent is not. Whilst gendered power relationships are still significant issues that need consideration, this position is problematic. It does not adequately separate women's position as subordinate within the legal/political realm and the negotiation within individual relationships.

As Boshoff has argued:

The politico-legal subject, the bearer of individual rights, exercising free choice based on the rational promotion of his (or her) interests is a superficial illusion that does not correspond to the way either men or women experience their being-in-the world (2007:52).

This highlights an important area of consideration for this article. The social-legal construction of sexual consent forms an important part of social understandings that non-consensual acts are illegal. This sets up a strict legal divide of the consent/coercion on which so many sexual assault trials rest. Yet as Kelly pointed out in 1988, and with colleagues has recently further argued (Coy et al 2013), sexual activity exists on a continuum from choice through to coercion and force. Consequently, there is a need to understand how and when acts are positioned along this continuum, and part of this is the social positioning of people within broader sexual scripts.

Understandings of sexual consent are underpinned by the gendered social context, and part of this is normative ideas about sexual scripts. In earlier work in this area Gagnon and Simon (1973) define sexual scripts as a narrative setting out participant behaviours and setting of sexual encounters. They propose the following three levels that contribute to scripts: the cultural level, which includes gendered messages about appropriate behaviour for men and women; the interpersonal level which concentrates on how cultural messages are played out within sexual encounters; and the intrapsychic level which focuses on the individual's sexuality, sexual desires and preferred sexual behaviours shaped and constrained by the cultural and interpersonal levels. This understanding of sexual encounters as narratively formed has identified the importance of gender within sexual scripts. Traditionally men are positioned as actors who are active and initiate sexual encounters, and women are deemed to be passive and, in certain sexual encounters, may need to show resistance in order to avoid negative labels (Muehlenhard and Rodgers 1998). In their study on contemporary advice on casual sex, Farvid and Braun (2014) found that whilst there was a presumption that sexual equality had been achieved, there were still underlying gendered norms behind the advice. Men were seen as active performers whose goal was to encourage women to have more sex. In contrast, women were still responsible for men's sexual pleasure and for ensuring that practiced safer sex. Whilst they were more entitled to be active than in previous normative positions, their agency was limited through their gendered positioning.

Thus, sexual scripts have an important impact on the negotiation of sexual consent. The positioning of men as active and women as pleasing them normatively assumes that men seek and women grant consent to sexual activity (Jozkowski and Peterson 2012; Lowe 2005; O'Byrne et al 2006). In addition, the positioning of sexual activity as an act of 'love' within a romantic framework can make sexual refusal by women difficult (Hird and Jackson 2001). Fantasia's (2011) study has shown how non-consensual sex can be normalised and that although the young women she interviewed had not given consent to sexual activity, they had gone along with their male partners desires as it was behaviour 'expected' of them. However, despite the lack of consent, none of the young women positioned themselves as having been raped or sexually assaulted. This acceptance of 'unwanted' sexual activity can be seen as linked to the social context of sexual consent. The culture of blame for sexual assault can mean that young women are reluctant to see themselves as victims as this positions them as potentially responsible for what has occurred.

#### *Social context of sexual consent*

There is a wealth of evidence that sexual activity is not always fully consensual. Young women may feel pressurised into sex (Barter 2009; Brown et al 2011). Yet at the same time, sexual

pressure and non-consensual sex are not necessarily understood as sexual violence. Muehlenhard and Peterson (2005) suggest that this is because there is an area of ambivalence between agreement and disagreement to sexual activity and exploring how this might be experienced in practice would add to our knowledge of young people's choices and actions. Hyde et al (2008) build on this issue of ambivalence, and argue that there is an expectation of what is and is not appropriate sexual activity, with peer expectations producing social coercion to consent even if at an individual level young people are unsure. This is in addition to any interpersonal pressure within the sexual encounter itself.

Moreover, the sexual agency of young people, particularly those under the age of consent (currently 16 years old in the UK), is a contentious issue. A strong cultural investment in childhood innocence means that children who are active sexually are seen as either victims or deviants (Goode 2011). Clearly, sexual agency develops as children grow into adulthood and thus seeing children as asexual is problematic (Egan and Hawkes 2009). Yet understanding children as having sexual agency can also leave them unprotected in the context of abusive situations (Goode 2011). These cultural debates shape the context in which young people engage sexually with others and thus shape both their understandings of the issues and their capacity to give or refuse consent.

#### *Negotiating sexual consent*

Anderson (2005) describes two models contained within rape law for understanding sexual consent: the 'yes model' and the 'no model'. In the 'yes model', a positive response is needed, otherwise consent is deemed not to have been given; whereas in the 'no model', consent is deemed to have taken place unless a refusal is demonstrated. Both of these positions can be seen as problematic. For example, the 'yes model' does not really account for unequal power relationships, so cannot fully account for varying levels of pressure or coercion. Meanwhile, the 'no model' cannot distinguish between non-responsiveness that may signal consent or when fear renders a victim quiet and motionless. The Crown Prosecution Service (CPS) in England recently changed their guidance on rape cases towards a 'yes' model by issuing advice for those accused to be explicitly asked how they knew that consent had been given (CPS 2015). However, within both of these legal models, the responsibility for the signal often lies with the woman (Anderson 2005) and research by Burkett and Hamilton (2012) indicates that women believe that it is their responsibility to indicate consent. Anderson (2005) argues that the law should cease to rely on consent as a single absolute and focus instead on the process of negotiation which took place, and that this should include verbal communication until such time as body language can be read accurately. The latest CPS guidance does not state that verbal communication is essential, and mentions 'signs' of consent which suggests non-verbal forms of communication is still an important assessment in deciding cases.

Much of the research on sexual communication over consent indicates that the norm is for indirect communication. Studies have revealed that sexual refusal is usually given through implicit verbal utterances (remarking on tiredness) or body language (being bodily unresponsive or looking at your watch) which is understood by both men and women (Kitzinger and Frith 1999; O'Byrne et al 2006; Winslett and Gross 2008). Beres' (2010) found that young adults described these tacit signals in three ways. The first was 'just knowing' and this was related to the particular behaviours (dancing, touching), nature of the relationship

(casual/partner) and particular space (moving to a more intimate location). The second was that an assessment of 'willingness' and signals of discomfort were looked for. This could include lack of responsiveness, being tense or pulling away. The third signal was 'active participation' in the sexual activity which could include pulling partner closer and verbal indicators of pleasure. She also found that both young men and young women described the same forms of indicators, and thus argues that sexual miscommunication is not necessarily a widespread issue. This finding is similar to Hickman and Muehlenhard (1999) who further argue that direct statements refusing sex are rare (also see Fantasia 2011).

Beres (2014) identified three common understandings around sexual consent presented by her participants, with the first being that consent is a minimum requirement for sexual activity to take place. However, there was a difference between sexual consent and sexual willingness and whilst this suggests that a level of coercion and/or minimising of sexual violence was taking place, this was not always the case. It could be that sexual consent had been given for all the sexual acts, but that the acts themselves were not experienced in the way that had been imagined. The second understanding is that sexual consent is an event, with a clear signal. For example, the removal of clothing could indicate that sex had been agreed. Whilst this could be interpreted as a lack of understanding of consent as an on-going process, it was apparent that participants understood this, and that for them the on-going process was not incompatible with consent as an event. The final understanding is that within relationships, consent was not required. Beres (2014) argues again that the meaning of this is more complex, this is not an argument for the impossibility of rape within marriage. Instead, this understanding drew on the conceptualisation that partners in meaningful relationships understand when sexual activity is welcome or not welcome, and thus explicit consent beyond good partnership communication was unnecessary.

This latter element is similar to Humphrey's (2007) findings about the difference between casual and on-going relationships, and the importance of relationship history as a component. His participants indicated a higher standard for ascertaining whether sexual consent was present in new sexual relationships when compared to existing sexual partners. He found that once a sexual relationship has been established, young people were more likely to presume that consent would still be given after as few as two to three sexual encounters. This finding is consistent with Burkett and Hamilton (2012) who argue that the gendered position of women within heteronormativity can mean that agreeing to sexual activity is central to maintaining a relationship. Against this backdrop of debate and discussion in the literature, our study needed to unpack ideas about what actions (verbal, non-verbal) constitute an indicator or refusal of consent and to consider if these vary by type of relationship and place of sexual activity. Given the lack of an agreed definition, we sought not to impose one but to allow our participants to define sexual consent for themselves.

## **Methodology**

The data discussed in this paper arises from research carried out in a West Midlands, UK city between 2013-2014. Young people between the ages of 16-24 were recruited, allowing for a range of experiences - from expectations of sexual activity, on-going sexual activity and relationships, to sexual abuse or exploitation. The aims of the research were to identify how

young people understood sexual consent within consensual sexual activities and to explore if their understanding of sexual decision-making varied in different contexts. We wanted to undertake research that aimed to capture the diverse ways in which young people understand and enact sexual consent.

The project adopted an iterative approach facilitating preliminary exploratory workshops with young people, the findings of which influenced the design of a subsequent online questionnaire. Participants were recruited to the workshops through a local university and college and in total eighteen young people took part (10 female, 6 male, 2 transgender, aged between 16-21, all but one self-identified as White British). Whilst we achieved a level of diversity in terms of sexual orientation, recruitment to the workshops lacked ethnic diversity, which we aimed to address in the survey that followed. The workshop method allowed for debate and discussion of issues and an element of peer to peer education in terms of sharing knowledge. Each workshop was audio-recorded and transcribed verbatim. It was not always possible to match voices to people, due to the quality of the recordings, so full demographic details of each workshop participant cannot be attributed. Ethical approval for the study was granted by Anonymous University. Workshop participants provided written consent, were encouraged to ask questions about any aspects of the research and informed that their digitally recorded responses would be anonymised and kept confidential. Throughout the project, information was given about local services aimed at supporting young people and those experiencing unwanted sexual incidents.

The workshops were designed to engage participants in a qualitative discussion about the issue of sexual consent, utilising a creative medium. A film scenario was shown at the start of each workshop and participants were asked to comment on what they had seen in the film. The film *'Where is your line?' (The Havens Centre 2010)* shows a group of young women going to a club, where they meet a group of young men; they all appear to be having fun, drinking and dancing. One young woman and one young man begin to show interest in each other, he buys her drinks during the evening, both are seen becoming intoxicated, with the young woman showing clear signs of being drunk. Later the film shows them in a bedroom and the film ends with the young people having sex. Participants were asked to comment about issues of sexual consent that might arise during different points in the film. Talk began by focusing on what had been observed on screen and moved from individual responses to interaction, discussion and debate between the young people, with varying viewpoints being expressed.

The workshop findings directly influenced the design of an online questionnaire; to give an example, in the workshop there was discussion of whether sexual consent was a term that young people would generally use, this led to a specific survey question. The questionnaire was developed in order to access the views of a wider number of young people. Questions were asked about understanding of sexual consent, in abstract and practical terms. The questions were a combination of closed and open, giving respondents the option to explain their reasons for certain answers. For example, a closed question was 'Can sexual consent be given by': (options to choose from) a direct question; body language; other verbal communication; a combination of the above. The open text box stated 'Can you explain your answer further?' The response rate to the open questions ranged from 21% - 64%. The total number of open text responses was 1,911, varying from a few words to full and detailed

answers, most being sentences. The survey was hosted on a range of local platforms accessed by young people - including local universities, a youth offending service and youth groups to encourage diversity in responses, to try to explore how understanding of sexual consent is mediated by class, ethnicity, gender, 'race', age, and sexuality.

There were 547 responses to the survey, respondents were aged 18-24. Table 1 gives details of the sex, sexuality and declared ethnicity of the survey respondents. Of the survey respondents over 90% were students in Higher Education, the reason for this is unknown to us, we speculate that students may be more familiar with completing online surveys than other young people and that an on-line survey requires access to technology for a period of time to be able to participate.

#### INSERT TABLE 1

In designing the fieldwork, the research team found it was extremely difficult to find ways of talking about sexual consent, in a way that young people would understand and relate to, without making comparisons to sexual violence. Although academic development of sex-positive understanding is growing this language was not in everyday use amongst young people in the research locality. Whilst this was a challenge for the workshops, it was even more apparent when designing the questionnaire. We simply did not have a useful vocabulary that we could draw on. As a research team we discussed how, despite the fact that we all had experienced consensual sexual relationships and thus had successfully negotiated sexual consent, there was only a narrow discourse which either returned to legal definitions and or comparisons in opposition to sexual assault. We are not alone in such struggles for an adequate language (Thomas et al 2017). This lack of language illustrated many of the issues that arose in the literature, that sexual consent, both positive and negative, is an embodied often non-verbal practice, and it is often only in its absence, or in abstract legal terms, we are able to put this affective state into words.

Returning to explain further the research design, although two different data collection tools were used we resist describing this as a mixed methods study as we agree with Symonds and Gorard (2010) that the construct of 'mixed methods' can be problematic in the assumption that survey data is limited to numbers. The extremely detailed answers in the open text boxes allowed us to code the responses and analyse the data in a similar way to the workshop data. Themes were generated from the analysis of the data, following the stages set out by Braun and Clarke (2006). Hence, the data was analysed using a system of open coding involving close reading, coding, and sorting data into analytical categories. Coding of the qualitative workshop data was undertaken individually by two of the team and the quantitative data by one other, themes were then compared. As the themes generated were similar, the data lent itself to integrating the presentation of the responses. This paper, drawing mainly on the qualitative analysis from workshops and the open text survey answers, concentrates on understandings surrounding the negotiation of consent within heterosexual relationships and encounters focusing on the complexity of consent and verbal and non-verbal indicators of consent.

#### **Sexual consent and gendered scripts**

As young people's understanding of sexual consent is often questioned, we began by asking young people about their perceptions of the term. In the survey, 89% of respondents reported

that they had heard the term 'sexual consent' and believed that they had an understanding of what it meant. There was a difference in those having an understanding between male (85%) and female respondents (95%); this was of interest and could reflect a gendered responsibility for sexual activity. The survey also provided respondents with an opportunity to define what was meant by sexual consent. A clear majority associated this with notions of a positive agreement between partners, a shared willingness for sexual activity or asking, giving or receiving permission for sexual activity. Examples include:

Sexual consent means giving permission to engage in sexual activities (Female, Black African, 18-19)

Willingness to take part in sexual activities (Male, White British, 22-23)

A small number of survey respondents defined sexual consent as the opposite of sexual assault, or explicitly compared it to rape:

Not rape (Female, White other, 24-25)

Permission to have sex as opposed to rape (Male, Indian, 18-19)

Yet whether defined positively or negatively, it was clear the majority of respondents had a reasonable understanding of the concept in abstract terms. Of the 11% that stated that they did not know what the term meant, 17 respondents attempted to give a definition. Many of these answers indicated that they did have some knowledge, with 10 giving very similar understandings to the respondents who indicated that they knew and understood the term. Of the remaining answers, two indicated possible understanding and the remaining five answers did not suggest they had any understanding. Examples include:

*Solid Understanding* A conscious decision if a person wants any physical contact with other person (Female, White other, 22-23,)

*Possible Understanding* I'd have taken it literally as in consent to having sex with someone (Male, White British, 22-23)

*No understanding* Knowledge about sex (Male, Black African, 20-21).

The survey responses were very similar to those gathered in the earlier workshops. Consequently, there was little evidence in the data that in a theoretical sense the idea of sexual consent was widely misunderstood. The majority of young people had heard and understood what the term meant. However, only 33% reported that sexual consent was a term that they would use within sexual activities. Thus although the data indicated understanding of the concept of sexual consent, this did not mean that the participants found the term sexual consent useful when engaged in gendered sexual encounters.

Gender was an important factor in terms of the expectations of the behaviour of both young men and young women. Whilst gendered sexual scripts of active men and passive women were present, this was not universal. Young women could be seen as sexual protagonists and young men were anxious about being seen as 'rapists' following what they thought were consensual sexual activities, the picture presented was of complex sexual scripts.

The idea of powerful male biological urges is introduced in the following quotations, with women seeing themselves as/and being seen as responsible for containing male desire:

'[...] they're guys, come on? You start kissing a guy, all the hormones in his body, you've raised everything up to a level that 'ok, fine, I want to have sex' and when it gets to that level it's very, very hard for the guy to actually say 'no, I won't do this to this girl' (Female, Workshop 1)

I would say men have a different understanding because the onus in society is on women to always give the consent, based on the assumption (Male, Asian and White, 18-19)

These extracts draw attention to the ways that young women are conscious of a need to police their behaviour. For this reason, some young women were clear that there was a need to avoid situations where young men might be expecting sex. However, young women were not the only ones who enacted vigilance to keep themselves safe. Young men also felt the need to be wary and avoid the risk of being in a non-consensual situation where possible:

It happened, she was like 'yeah', then 'no', then 'yeah, and I was like 'sod this, I'm gone', just because like I could be accused the next morning, also I was really tired. So, if in doubt, I think it's best just to leave it and go home. It won't be the last time you have sex with someone, it's just not worth that' (Male, Workshop 3)

When you know a person is attracted to you when they are sober and then gets drunk and flirts with you obviously, but you are not quite sure if she is ready to go the whole way or it's the booze talking. All in all it is just a judgement call (Male, White British, 22-23)

The data presented raises a number of issues to be considered in relation to young people's understanding and enactment of consent. Gendered sexual scripts encourage young men to pursue sex, be dominant, and for young women to expect this, yet our research shows that young women and young men do reflect and show nuanced understanding of signals. Both talk of responsibility and of the need to remain vigilant. Young men and young women consciously thought about avoiding what they perceived to be 'risky' situations that may not be consensual. The dominant discourse of risk avoidance becomes internalised by both young women and young men as they demonstrate the need to be seen as sexually responsible. Notably, even when asked in the workshops there was little talk of the pleasures associated with sex and relationships and much talk of the associated 'risks'.

### **Verbal and non-verbal indications**

In some of the discussions about the film scenario shown at the beginning of the workshops the complexity of interpreting sexual consent was clearly evident. The following extract from Workshop 2 draws attention to some of the difficulties experienced in the application of theoretical ideas about consent, when presented with a scenario that could be close to young people's lived reality. In the scenario the two young people have been drinking together and kissing in the club, after some time of dancing and spending time together they are seen in a

bedroom, kissing. He lays on top of her, she feels sick and is sick, she faintly murmurs that she wants to go back downstairs, he carries on kissing her. Someone opens the door, the young man tells them to shut the door, she is struggling and appears distressed whilst he has taken off his shirt and is lying on her, facing her, kissing her, and undoing his trousers. The young people in Workshop 2 discussed the scene:

I don't think he intentionally went into that room thinking 'I'm going to rape her', I think it's a thing of he believed it was consensual sex and obviously she said 'no' but he ignored her so in his mind it's not, but in law it is (Male 1)

It's more of unwanted sex than rape because she did give off the signs, 'let's go and have sex' but it wasn't really rape (Female 1)

Oh no, I'd say it's rape (Male 1)

There is no such thing as unwanted sex, it is rape (Female 2)

(...) I just don't think that the male can be 100% blamed in the situation (Male 3)

That's why it's kind of unwanted because she did lead him on, going 'yeah, ok, let's do it' and then it was just ... (Female 1)

The participants weighed up the factors as to whether or not this scenario was depicting a rape – this included the verbal communication, body language, behaviour and context. Interesting here is the introduction of the term 'unwanted sex' and the debate as to whether or not this is a legitimate label, implying that the young woman should be compliant as she had let things progress to this point. This is measured alongside the possibility of 'taking away' consent after it had been perceived to be given. Sexual consent was understood as a complex issue where a number of different factors and situational variables could play a part. An example of this is the extent to which the giving and receiving of consent could change, depending on the relationship between the two people involved.

Many of the survey respondents also mentioned the notion of ideally needing explicit verbal consent - reflected in many sexual education campaigns. For some, verbal consent was seen as the most important element:

Asking verbally to have sex is a more effective way of getting consent. Body language can also determine whether or not a person wants to have sex, however it can be read wrong (Female, Black African, 20-21)

A direct question is the most sure approach, but other verbal communication is probably the most common. Body language in many ways can indicate consent, but it is difficult, and in some cases wrong to assume (Male, White British, 20-21)

Whilst it is idealised that verbal consent often avoids misunderstandings, this might not always be the case. Several respondents mentioned that people could feel pressurised into replying yes to a direct question about sexual consent when they actually did not necessarily want to proceed. Whilst many respondents recognised that other potential ways of conveying

consent, such as body language, could be misunderstood they did not think that verbalising consent could necessarily be wholly relied upon either:

Just because someone does not say 'no' does not mean that they are completely willing. You may not feel you have forced them, but they may feel an obligation to feel it has to happen (Female, Black Caribbean, 18-19)

A person may say that they want to have sex when their body says differently (Male, Black British, 18-19)

There are definitely shades of grey and it's why I find it very difficult to talk about (Female, workshop 2)

Hence for many of the respondents, neither verbal communication nor body language was a fail safe way of ensuring that sexual consent had been given and received, and the messages would be different depending on the people undertaking the sexual activity. Whilst they were familiar with the concept of '*Yes means yes, and no means no*' which is embedded in many sexual education programmes, they recognised that in practice, negotiating sexual consent was much more complicated:

Assuming that a person wants to have sex just because this person talks to you is wrong, but clearly stating 'I want to have sex' is not always necessary (Female, White other, 22-23)

Sexual Consent has got to be a mutual agreement, not a question directly. A feeling not an answer (Male, White British, 20-21)

In the heat of the moment you're not going to talk like that, you're not going to sit down and say 'these are the rules' (Male, workshop 2)

Whilst many of the respondents clearly understood that sexual consent could not be presumed with anyone, they also recognised that prior sexual contact may make a difference in relation to verbal or non-verbal cues:

If there was history, then the two might have different ways of giving consent to each other compared to giving them to someone completely new (Male, Asian other 20-21,)

It can be given and received in a more subtle way if a couple are in a relationship and understand each other well (Female, White British, 22-23)

For some, being in a relationship implied continuous consent unless it was indicated otherwise. This could be a positive element indicating enhanced communication, but it could also be experienced negatively as having sexual obligations:

Partners should be comfortable with each other and know how each other are feeling –whether or not they want to have sex (Female, White British, 18-19)

If someone is in a relationship, you can't necessarily tell whether they actually want to do it or are just going with the flow (Female, Black African, 18-19)

When you fancy some morning sex so you let your hands roam a bit (...) They haven't stopped you but you are not sure if it's because they want sex too or if it's because they have gone back to sleep (Male, White British, 22-23)

Responses indicate that young people had understanding of the changing nature of sexual consent depending on the type of sexual encounter that was taking place. They understood that whilst sexual consent was always needed, how to apply this concept in practice was more difficult. It was also clear that gender roles were important in the way that sexual consent was understood. The complexity of sexual consent negotiations that the young people described within this project indicate there was little widespread evidence of misunderstanding, but instead a recognition that it was an embodied, contextualised process which required intimate understanding of and respect for their partner's feelings.

### **Discussion and reflections**

Returning to the point made at the start of this paper, in everyday contexts talking about sexual consent (positively) inevitably involves being drawn into speaking about non-consensual sex (negatively), in an oppositional, binary way. To these young people the language of a healthy, positive, consensual relationship comes less easily than the language of risk, responsibility, protection. For these young people, and us as researchers, how we negotiate consensual sex is 'very difficult to talk about'. Challenging the conceptualisation of sex as 'risky' rather than pleasurable involves changing the wider discourse around young people's sexuality to a sex-positive discourse. This has been a matter of international academic debate (Carmody and Carrington 2000; Powell 2008; Carmody and Ovenden 2013) but has not reached young people in this research locality.

This research contributes to a developing body of research (for example Beres 2010) which challenges assumptions about the lack of theoretical or legal understanding of young people in relation to sexual consent. The young people in our study were acutely aware that gaining sexual consent was important, but also that neither verbal communication nor body language could be wholly relied on, as we were told, it is 'a feeling not an answer'. Saying 'yes' was not necessarily enough and so indirect communication was needed to establish whether sexual advances were welcome. They also understand that mechanisms for gaining consent would be different between casual encounters and longer-term relationships. Their understanding positioned sexual consent as a complex embodied process which needed to be intimately negotiated in different sexual encounters. Gaining sexual consent is a 'subtle' process which requires a 'judgement call'.

It is important to draw debates about sexual consent amongst young people back to the structural context of gender, power, the social construction of heteronormativity and expectations/perceptions of young people. Everyday understandings of sexual consent reported by young people - using the method of a workshop involving a visual medium, the responses to which then informed the development of a survey - play out in a more complex way than is often presented in law or often imagined in policy (Carmody and Carrington 2000).

In line with other research in this area (for example, Powell 2008; Beres 2014, Coy et al 2013) our research indicates that sexual consent is a process, rather than a one off event in the sexual encounters that young people have. This process is further made complex by societal messages about the appropriate behaviour of men and women that prescribe heterosexual gender roles. Similarly, conceptualisations of sexual consent vary and are always culturally and historically embedded and mediated by class, 'race', gender, sexuality and age. Further analysis of our data is needed to unpick the more nuanced differences related to, for example, gender and sexual orientation, or the applicability of the westernised notion of the concept of consent to all sexual relationships.

It is important to emphasise that young people engaged in this research were predominantly students in Higher or Further Education. One limitation of the research may be that young people engaged in HE or FE are at the upper end of the category of 'young people', drawn from a particular demographic and above the age of sexual consent. In addition, whilst their experiences and views may be similar to the wider group of young people of their age there are also likely to be some differences. Young people not engaged in education may not have the same access to spaces and forums to discuss and debate such issues. Further research on this topic is needed with young people of statutory school age, those above and below the legal age of sexual consent.

Researchers and activists in this field draw attention to the negative views held by adults and the media about young people's sexuality and intimate relationships (Ellis and Thiara 2014). In particular, double standards exist regarding gender and sexuality (Maxwell and Aggleton 2010), young women are often portrayed as victims of male desire or criticised for being too sexualised. Only by appreciating how young people understand and enact sexual consent, through a range of embodied communication strategies, will education surrounding sexual assault have meaning for young people. Just as sexual violence needs to be understood as on a continuum so too does sexual activity/consent need to be understood as part of a continuum (Coy et al 2013). The narrow focus of the legal definition of sexual consent in some current educational programmes or campaigns ignores the importance of the social, cultural and political context of sexual encounters, including gendered power relationships. Drawing on data from this research study we have shown that it is crucial to pay attention to the complex negotiation of consensual sexual activity in the lives of young people in order to move towards everyday as well as academic understandings of sexual activity as agreed, meaningful and pleasurable. Sexual consent needs to be further understood from the perspective of young people rather than assuming that young people do not understand and need educational programmes to teach them the law relating to sexual consent.

## **References**

- Anderson, M., 2005. Negotiating Sex. *Southern California Law Review*, 78, 1401-1438.
- Barter, C., 2009. In the Name of Love: Partner Abuse and Violence in Teenage Relationships. *British Journal of Social Work*, 39 (2), 211-233.
- Beres, M., 2007. 'Spontaneous' Sexual Consent: An Analysis of the Sexual Consent Literature. *Feminism & Psychology*, 17 (1), 93-108.

- Beres, M., 2010. Sexual miscommunication? Untangling Assumptions about Sexual Communication between Casual Partners. *Culture, Health & Sexuality*, 12 (1), 1-14.
- Beres, M., 2014. Rethinking the Concept of Consent for Anti-sexual Violence Activism and Education. *Feminism & Psychology*, 24 (3), 373-389.
- Braun, V., and Clarke, V., 2006. Using Thematic Analysis in Psychology. *Qualitative Research in Psychology*, 3 (2), 77-101.
- Boshoff, A., 2007. Women as the subject of (family) law. In: R. Hunter and S. Cowan S, eds. *Choice and Consent: Feminist engagements with law and subjectivity*. Abingdon: Routledge-Cavendish, 41-57.
- Brown, G., Brady, G., Letherby, G., 2011. Young mothers experiences of power, control and violence within intimate familial relationships. *Child Care in Practice*, 17 (4), 359-374.
- Brownmiller, S., 1975. *Against Our Will*. London: Bantam Books.
- Burkett, M., and Hamilton K., 2012. Postfeminist Sexual Agency: Young Women's Negotiations of Sexual Consent. *Sexualities*, 15 (7), 815-833.
- Carmody, M., and Carrington, K., 2000. Preventing sexual violence? *The Australian and New Zealand Journal of Criminology*, 33, (3), 341-361.
- Carmody, M., and Ovenden, G., 2013. Putting ethical sex into practice: sexual negotiation, gender and citizenship in the lives of young women and men. *Journal of Youth Studies*, 16 (6), 792-807.
- Coy, M., Kelly, L., Elvines, F., Garner, M., and Kanyeredzi, A., 2013. "Sex without consent, I suppose that is rape": How young people in England understand sexual consent. London: Office of the Children's Commissioner.
- Crown Prosecution Service 2015. *What is consent?* Available from: <http://www.cps.gov.uk/publications/equality/vaw/index.html> (Accessed 27/01/17).
- Drakopoulou, M., 2007. Feminism and Consent: A Genealogical Inquiry. In: R. Hunter and S. Cowan S, eds. *Choice and Consent: Feminist engagements with law and subjectivity*. Abingdon: Routledge-Cavendish, 9-38.
- Egan, R., and Hawkes, G., 2009. The Problem with Protection: Or, why we need to move towards Recognition and the Sexual Agency of Children. *Journal of Media and Cultural Studies*, 23 (3), 389-400.
- Ellis, J. and Thiara, R., 2014. Introduction. In: J. Ellis, and R. Thiara, R. eds. *Preventing violence against women and girls: educational work with children and young people*. Bristol: Policy Press, 1-21.
- Fantasia, H., 2011. Really not even a Decision any more: Late Adolescent Narratives of Implied Sexual Consent. *Journal of Forensic Nursing*, 7 (3), 120-129.
- Farvid, P., and Braun, V., 2014. The "Sassy Woman" and the "Performing Man": Heterosexual casual sex advice and the (re)constitution of gendered subjectivities. *Feminist Media Studies*, 14 (1) 118-134.
- Gavey, N., 2005. *Just sex? The cultural scaffolding of rape*. New York: Routledge.
- Gagnon, J., and Simon, W., 1973. *Sexual conduct*. Chicago: Aldine.
- Goode, S., 2011. *Paedophiles in society: reflecting on sexuality, abuse and hope*. Basingstoke: Palgrave.
- Hickman, S., and Muehlenhard, C., 1999. 'By the Semi-mystical Appearance of a Condom': How Young Women and Men Communicate Sexual Consent in Heterosexual Situations. *Journal of Sex Research*, 36 (3), 258-272.

- Hird, M., and Jackson, S., 2001. Where 'Angels' and 'Wusses' Fear to Tread: Sexual Coercion in Adolescent Dating Relationships. *Journal of Sociology*, 37 (1), 27-43.
- Humphreys, T., 2007. Perceptions of Sexual Consent: The Impact of Relationship History and Gender. *Journal of Sex Research*, 44 (4), 307-315.
- Hyde, A., Drennan, J., Howlett, E., and Brady, D., 2008. Heterosexual Experiences of Secondary School Pupils in Ireland: Sexual Coercion in Context. *Culture, Health & Sexuality*, 10 (5) 479-493.
- Jozkowski, K., and Peterson, Z., 2012. College Students and Sexual Consent: Unique Insights. *Journal of Sex Research*, 50 (6), 517-523.
- Kelly, L., 1988. *Surviving Sexual Violence*. Oxford: Polity Press.
- Kitzinger C and Firth H 1999) Just Say No? The Use of Conversation Analysis in Developing a Feminist Perspective on Sexual Refusal. *Discourse and Society*, 10(3), 293-316.
- Lowe, P., 2005. Contraception and heterosex: an intimate relationship. *Sexualities*, 8 (1), 75-92.
- Maxwell, C., and Aggleton, P., 2010. Agency in action – young women and their sexual relationships in a private school. *Gender and Education*, 22 (3), 327-343.
- Muehlenhard, C., and Peterson, Z., 2005. Wanting and Not Wanting Sex: The Missing Discourse of Ambivalence. *Feminism & Psychology*, 15 (1), 15-20.
- Muehlenhard, C., and Rodgers, C., 1998. Token Resistance to Sex: New Perspective on an Old Stereotype. *Psychology of Women Quarterly*, 22 (3), 443-463.
- O'Byrne, R., Rapley, M., and Hansen, S., 2006. You Couldn't Say "No", Could You?: Young Men's Understandings of Sexual Refusal. *Feminism & Psychology*, 16 (2), 133-154.
- Pateman, C., 1980. Women and Consent. *Political Theory*, 8(2), 149-168.
- Phipps, A., and Young, I., 2015. 'Lad culture' in higher education: agency in the sexualisation debates. *Sexualities*, 18 (4), 459-479.
- Powell, A., 2008. Amor fati? Gender Habitus and Young People's Negotiation of (Hetero)Sexual Consent. *Journal of Sociology*. 44 (2), 167–184.
- Symonds, J., and Gorard, S., 2010. Death of mixed methods? Or the rebirth of research as a Craft. *Evaluation & Research in Education*, 23 (2), 121-136.
- The Havens Centre, 2010. Where is your line?  
<https://www.youtube.com/watch?v=j3TT0TfQHkM> (Accessed 01/02/15).
- Thomas, E., Stelzl, M., and LaFrance, M., 2017. Faking to finish: women's accounts of feigning sexual pleasure to end unwanted sex. *Sexualities*, 20 (3), 281-301.
- Universities UK, 2016. *Changing the culture: report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students*. London: Universities UK.
- Winslett, A., and Gross, A., 2008. Sexual Boundaries: An Examination of the Importance of Talking before Touching. *Violence against Women*, 14 (5), 542-562.
- Women and Equalities Committee, 2016. *Sexual harassment and sexual violence in schools*. Third report of session 2016-2017. London: House of Commons.

Table 1

Sexuality, Gender, Ethnicity of survey participants

Sexuality	Male	Female	Non-Binary	White British /White Other	Indian/Pakistani/Bangladeshi/Other Asian	Black African/Black Caribbean/Other Black	Dual Heritage	Chinese	Other
Heterosexual	227	250	2	322	68	56	21	8	4
Bisexual	12	25	0	24	1	5	4	3	0
Gay	10	1	0	10	0	0	1	0	0
Trans	2	0	1	2	0	0	1	0	0
Lesbian	0	5	0	5	0	0	0	0	0
Not stated	5	4	3	5	1	3	0	1	2
	47%	52%	1%	67%	13%	12%	5%	2%	1%