



Plymouth Safeguarding Children Board Guidance Document

Consent

Guidance for staff with regards to consent in situations where children are deprived of medical treatment.

Children and Young people have rights that should be respected

1. Introduction

This guidance will give practitioners information for health situations when there are concerns about consent and information sharing including, when children are deprived of medical treatment by virtue of beliefs and personal agenda of parents.

Doctors can provide medical treatment to a child or young person with their consent if they are competent to give it, or with the consent of a parent or the court. (BMA 2010)

Doctors can provide emergency treatment without consent to save the life of, or prevent serious deterioration in the health of, a child or young person.

2. Definitions

Consent

Consent to treatment is the principle that a person must give their permission before they receive any type of medical treatment.

[Further info available on Your NHS Choices](#)

Children and Young People

Children and Young People are a diverse group with many different needs from birth until their 18th birthday. Children, usually means younger children who lack the maturity and understanding to make decisions. Older and more experienced children are referred to as young people. At 16 it is legally presumed that young people have the ability to make decisions about their own care.

Gillick Competency

Gillick competency and Fraser guidelines refer to a legal case which looked specifically at whether doctors should be able to give contraceptive advice or treatment to under 16 year olds without parental consent. More recently they have been more widely used to help assess whether a child has the maturity to make their own decisions and to understand the implications of those decisions.

In 1982 Mrs Victoria Gillick took her local health authority (West Norfolk and Wisbech Area Health Authority) and the Department of Health and Social Security to court in an attempt to stop doctors from giving contraceptive advice or treatment to under 16 year olds without parental consent.

The case went to the High Court where Mr Justice Woolf dismissed Mrs Gillick's claims. The Court of Appeal reversed this decision, but in 1985 it went to the House of Lords and the Law Lords (Lord Scarman, Lord Fraser and Lord Bridge) ruled in favour of the original judgment delivered by Mr Justice Woolf:

"...whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent."

Fraser Guidelines

The Fraser guidelines refer to the guidelines set out by Lord Fraser in his judgment of the Gillick case in the House of Lords (1985), which apply specifically to contraceptive advice:

"...a doctor could proceed to give advice and treatment provided he is satisfied in the following criteria:

- 1) that the girl (although under the age of 16 years of age) will understand his advice;*
- 2) that he cannot persuade her to inform her parents or to allow him to inform the parents that she is seeking contraceptive advice;*
- 3) that she is very likely to continue having sexual intercourse with or without contraceptive treatment;*
- 4) that unless she receives contraceptive advice or treatment her physical or mental health or both are likely to suffer;*
- 5) that her best interests require him to give her contraceptive advice, treatment or both without the parental consent."*

Mental Capacity

Having mental capacity means that a person is able to make their own decisions. The Mental Capacity Act says that a person is unable to make a particular decision if they cannot do one or more of the following four things.

- Understand information given to them.
- Retain that information long enough to be able to make the decision.
- Weigh up the information available to make the decision.
- Communicate their decision - this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

We all have problems making decisions from time to time, but the Mental Capacity Act is about more than that. It is specifically designed to cover situations where someone is unable to make a decision because the way their mind or brain works is affected, for instance, by illness or disability, or the effects of drugs or alcohol.

A lack of mental capacity could be due to:

- a stroke or brain injury;
- a mental health problem;
- dementia;
- a learning disability;
- confusion, drowsiness or unconsciousness because of an illness or the treatment for it; substance misuse.

Facts

At 16 years old a young person can be presumed to have the capacity to consent.

The capacity to consent depends on young people's ability to understand and weigh up options rather than age.

Parents cannot override the competent consent of a young person to treatment if a doctor considers it is in their best interest.

A confidential sexual health service is essential for the welfare of children and young people; concern about confidentiality is one of the biggest deterrents to young people asking for sexual health advice (Department of Health 2004).

You can disclose information if a child or young person is involved in abusive or harmful sexual activity.

A child who is 'Fraser competent' (that is under 16 years old but yet having sufficient maturity and understanding of the nature and implications of the treatment) can give consent for treatment or refuse treatment. However, a refusal can be overridden by a court.

It is a medical responsibility to assess whether a child is Fraser competent. If a child who gives consent to treatment against their parent's wishes is put at risk or the treatment is complex involving high risk or serious consequences legal advice should be sought as to whether there should be an application to the Court.

Once children have reached the age of 16 years old they are presumed in law to be competent. However 16 year olds differ from adults in that they cannot refuse treatment if it has been agreed by someone with parental responsibility or by the Court.

The capacity to consent can be identified by consideration of the young person's level of emotional intelligence and emotional maturity, such as being in touch with and reasonably in control of their own emotional responses, and intellectual cognition, such as ability to understand and accurately interpret abstract thoughts and concepts, and recognise potential consequences of the actions of self and others.

Parents cannot override the competent consent of a young person to treatment if a Doctor considers it is in their best interest.

4. Think

Child Sexual Exploitation ([SWCPP](#))

Protect children and young people by referring to Advice and Assessment if you are worried they are at risk.

You should always share information about sexual activity involving children under 13 years of age.

Is the young person able to understand the nature, purpose and possible consequences of investigations or treatments as well as the consequences of not having treatment.

Respect for the young person's view is important in making decisions about their care.

Children's and Young People's views should be taken seriously and not dismissed. Disabled children and young people can feel particularly disadvantaged in this respect.

Information should be provided that is easy to understand and appropriate to their age.

Early identification of risks can help children and young people get the care and support they need to be healthy and safe.

5. Remember

In some circumstances, children may be in danger of being deprived of necessary medical treatment by virtue of the beliefs or personal agenda of the parents.

6. Response

Where it is deemed clinically necessary, for specific medical interventions that are declined by those with parental responsibility, it may be necessary to initiate legal proceedings, in order to carry out treatment and protect the child.

It is to be anticipated that this would only be undertaken after a period of discussion and consultation with the parents and the child or young person, if the child or young person is of sufficient age and understanding. The parents would be fully informed of the need for a specific treatment to be administered to their child and that clinically there is every reason to suppose that it would be to the significant detriment of the child if these treatments were withheld.

Under these circumstances, it is recommended that the Consultant concerned applies for a Specific Issue Order under Section 8, The Children Act to the High Court. This is a straightforward procedure that would allow a direction to be made by the court to the giving any necessary treatment.

All aspects of the child's care, other than their medical treatment, would remain under these circumstances the responsibility of their parents.

7. You must

Consider the parents and child's rights to respect for their private and family life and to their right to freedom of thought, conscience and religion.

Under these circumstances, it is required that the Consultant in charge of the case liaises with the following personnel:

- The Consultant Paediatrician on call, when the admitting Consultant is from an alternative Directorate. It would be deemed good practice for a Consultant Paediatrician to seek a second opinion from a suitably qualified colleague.
- The Advice and Assessment Service or Out of Hours Team (Children's Services)
- The NHS Trust's Legal Advisers
- The duty Hospital Manager
- The supervising Consultant, in conjunction with the Social Care, must ensure the parents are fully supported throughout the process.

8. Confidentiality

Doctors have the same duty of confidentiality to children and young people as they have to adults. However parents often want and need information about their children's care so that they can make decisions or provide care and support

Whenever possible, the child's parent or carer should be informed before sharing confidential information. However, if this would incur delay, or if to do so would put the child or the professional at risk, then practitioners can be reassured that confidential information may be lawfully shared if it can be justified in the public interest (Information Sharing: Guidance for Practitioners and Managers HM Government 2008) "The public interest" includes the belief that a child may be suffering, or be at risk of suffering significant harm (Working Together to Safeguard Children 2013).

9. Resources

[The Zone Plymouth](#)

[South West Child Protection Procedures](#)

[Barnardo's](#)

[GUM Clinic Plymouth](#)

10. References

British Medical Association (2010) Assessment of the mental capacity a practical guide for doctors and Lawyers

Children Act (1989)

General Medical Council (2007) 0-18 years: guidance for all doctors

Gillick (1986) v West Norfolk and Wisbech SHA (1986) AC 112

Information Sharing: Guidance for Practitioners and Managers (2008) HM Government

Office of the Public Guardian (OPG603 2009) Making decisions: A guide for people who work in health and social care

Wheeler R (2006) Gillick or Fraser? A plea for consistency over competence in children: Gillick and Fraser are not interchangeable. *BMJ* 332(7545)807

Working Together to Safeguard Children (2013) HM Government London

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