



## Young People and Consent Guidance Notes

### Young People and Consent - Gillick - competency

#### Overview - reference

##### **Gillick Competency**

The means by which to assess legal capacity in children/young people under the age of 16 years, established in the case *Gillick v West Norfolk and Wisbech Area Health Authority* (1985). Such children/young people are deemed to be capable of giving their own consent to advice or treatment without parental knowledge or agreement, providing they have sufficient understanding to appreciate the nature, purpose, likely effects and risks, chances of success and the availability of other options.

The principle of Gillick competence applies to all treatment for those under the age of 16, not just contraceptive services.

##### **Fraser guidelines**

Specifically relates only to contraception and sexual health. They are named after one of the Lords responsible for the *Gillick* judgement but who went on to address the specific issue of giving contraceptive advice and treatment to those under 16 without parental consent.

# Age and Capacity

**The law distinguishes between young people aged 16 to 17 years and children under 16 in respect of the capacity to consent.**

**Young people aged 16 to 17** - young people aged 16 and over in England are presumed in law to have the same capacity as an adult to consent or refuse advice, interventions, treatment and to the release of information. They do not therefore require parental consent unless there is a reason to believe that they lack capacity.

**Children aged 13 to 15** - Capacity to consent needs to be assessed in each case on a continual basis. Children aged 13 to 15 can only consent if they are assessed as having the maturity and intelligence to fully understand the nature of the advice, intervention and treatment, the options, the risk involved and the benefits. A child who has such an understanding is considered to be Gillick competent.

**Children 12 and under** - there is no lower age limit for Gillick competence or Fraser guidelines to be applied. It would rarely be appropriate or safe for a child to consent to advice/intervention/treatment without parental consent. When it comes to sexual health those under 13 are not legally able to consent to any sexual activity. Therefore any information that a person under 13 is sexually active would need to be acted on.

Children under the age of 16 who are not Gillick competent cannot give or withhold consent. A person with parental responsibility will need to consent on their behalf unless it is an emergency or a safeguarding concern.

## Gillick Competency Assessment

It is important to recognise when a child/young person is able to make a valid choice and give consent on his/her own behalf and is therefore competent to make a personal decision. For a child/young person under the age of 16 to be competent, s/he should have:

- The ability to understand that there is a choice and that choices have consequences
- The ability to weigh the information and arrive at a decision
- To communicate that decision
- A willingness to make a choice (including the choice that someone else should make the decision)
- An understanding of the nature and purpose of the proposed intervention
- An understanding of the proposed intervention's risks and side effects
- An understanding of the alternatives to the proposed intervention and the risks attached to them
- Freedom from undue pressure
- The ability to retain the information



# How can competence be promoted?

When assessing a child/young person's competence it is important to explain the issues in a way that is suitable for their age. Professionals should promote an environment where children/young people can engage in decisions as much as they are able. The child or young person's ability to play a full part in decision making can be enhanced by allowing time for discussion.

## Best practice

- Professional to confirm what agencies the information may be shared with and to make clear that consent can be withdrawn at any time.
- Evidence that valid verbal and/or written consent has been obtained should be recorded at the initial meeting, recorded on eTAF/IYSS database and on any relevant paperwork that you use for initial meetings/contact meetings.
- Valid consent means that the young person and/or those with parental responsibility have been provided with appropriate information.
- Evidence noted in the record, at the initial meeting or gathered at a one to one may include:
  - Giving the child/young person and parent information about the reason for and nature of advice, intervention, treatment.
  - Giving children/young person friendly information leaflets.
  - Asking children/young people for their views.
  - Getting feedback from young people on advice given and one to one interventions and treatment.
  - Discussing with children/young person and/or parents other options available and the advantages and disadvantages of advice/intervention/treatment.
- Professionals should aim to involve all children/young people aged 13 years and above in decisions relating to their advice, interventions and treatment.
- Professionals should always encourage children/young people to involve their parent/carer in decisions about their care/intervention/treatment.
- Government guidance advocates that persons with parental responsibility should be involved in decisions about children/young people's care unless there is a very good reason for not doing so.
- If however the competent child/young person under the age of 16 is insistent that his/her family should not be involved their right to confidentiality must be respected unless such an approach would put them at serious risk of harm.
- If a decision is made to disclose information to a Gillick competent children's/young person's parents/carer against his/her wishes the young person should be informed before the information is disclosed to the parents/carer.
- Confidentiality - If the child is Gillick competent it follows that he/she also has right to confidentiality.

## In an emergency situation

When a person with parental responsibility is not available to consent, in these circumstances the child/young person's best interest must be considered and advice, intervention, treatment, referral limited to what is reasonably required to deal with the particular emergency.



# Appendix A:

## Gillick- competency checklist

Complete with all young people, under 16 years and 16 and above if there is a reason to believe that they lack capacity, this is to demonstrate competence to consent.

### Gillick- competency assessment checklist

The ability to understand that there is a choice and that choices have consequences

YES ☐ NO ☐

The ability to weigh the information and arrive at a decision

YES ☐ NO ☐

To communicate that decision

YES ☐ NO ☐

A willingness to make a choice (including the choice that someone else should make the decision)

YES ☐ NO ☐

An understanding of the nature and purpose of the proposed intervention

YES ☐ NO ☐

An understanding of the proposed intervention's risks and side effects

YES ☐ NO ☐

An understanding of the alternatives to the proposed intervention, and the risks attached to them

YES ☐ NO ☐

Freedom from undue pressure

YES ☐ NO ☐

Ability to retain the information

YES ☐ NO ☐

# Appendix B:

## Fraser Guidelines

The 'Fraser Guidelines' specifically relate only to contraception and sexual health. They are named after one of the Lords responsible for the Gillick judgement but who went on to address the specific issue of giving contraception advice and treatment to those under the age of 16 without parental consent. The House of Lords concluded that advice can be given in this situation as long as:

1. He/she has sufficient maturity and intelligence to understand the nature and implications of the proposed treatment
2. He/she cannot be persuaded to tell his or her parents or to allow the doctor to tell them
3. He/she is very likely to begin or continue having sexual intercourse with or without contraceptive treatment
4. His/her physical or mental health is likely to suffer unless he/she receives the advice or treatment
5. The advice or treatment is in the young person's best interests.

Professionals should still encourage the child/young person to inform his or her parent(s) or get permission to do so on their behalf, however if this permission is not given they can still give the child/young person advice and treatment. If the conditions are not all met, or there is reason to believe that the child/young person is under pressure to give consent or is being exploited there would be grounds to break confidentiality.

Fraser guidelines originally just related to contraceptive advice and treatment but, following a case in 2006 they now apply to decisions about treatment for sexually transmitted infections and termination of pregnancy.

# Appendix C:

## Parental responsibility

A person who has parental responsibility for a child/young person has the right to make decisions about their care and upbringing. Important decisions in a child/young person's life must be agreed with anyone else who has parental responsibility.

The following people automatically have parental responsibility:

- All birth mothers
- Fathers married to the mother at the time the child was born
- Fathers who are not married to the mother, but are registered on the child's birth certificate. The registration or re-registration must have taken place after December 2003.
- Civil partners and partners of mothers registered as the child's legal parent on the birth certificate.
- Parental responsibility maybe shared with the local authority if the child is the subject of a care order.
- Others may acquire parental responsibility, for example through a court residency or parental responsibility order.