

INCISION

Gillick Competence - Consent to medical treatment for minors

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An adult of 'sound mind' can provide valid consent to medical treatment, including a refusal of treatment that would lead to deterioration in their health, or even death. For under-18s, the starting point is that consent to medical treatment for a child is required from a person with parental responsibility (PR), but there are a number of exceptions.

Who has parental responsibility?

The child's mother

The child's father if married at child's birth or registered as child's father and (only after 1 December 2003) has PR under a PR agreement or court order.

The child's guardian, if parents are dead

A local authority with a Care Order

A person with a Residence Order

The local authority, or authorised person, with an Emergency Protection Order

Informed consent for 16 and 17 year olds

Under s.8 Family Law Reform Act 1969 a minor with capacity can consent to medical treatment and it is unnecessary to obtain parental consent as the child is deemed 'Gillick competent'.



Gillick competence for children (under 16s)

A child with sufficient maturity and understanding to comprehend the nature and implications of treatment, may be considered 'Gillick competent' and able to consent to treatment. When considering competence clinicians need to consider the child's:

- Understanding of relevant information
- Ability to hold information in their mind long enough
- Ability to weigh up and use the information to decide
- Ability to communicate their decision

In the case of contraceptive advice, clinicians should refer to the Fraser Guidelines in the House of Lords' 1985 decision in the case of Gillick.

If a child is not Gillick competent, consent is required from a person with PR.

Refusal of treatment

Someone with PR can consent to treatment which is refused by a patient under the age of 18. However, the position is not always clear cut as parental rights under family law may clash with provisions in the Mental Capacity Act 2005 (MCA), Human Rights Act 1998 (HRA), Mental Health Act 1983 (MHA) and the MHA Code may need to be factored in. If the dispute remains unresolved an application to court may be needed.

Practical tips for dealing with Gillick competence and Fraser guidelines

Proof of status should be requested if there is any doubt about who has parental responsibility.

Even if a child under 16 appears mature and capable of understanding, ensure that they pass the four-point test and that the basis of the assessment has been fully documented.

Following the Supreme Court decision in Montgomery (2015), the patient should be warned of any material risks and any reasonable alternatives to the proposed treatment.

If there is an unresolved dispute between either a 16 or 17 year-old, or a Gillick competent under-16, refusing treatment and someone with PR, legal advice should be sought as a court order may be necessary.

Care should be taken not to unlawfully breach the young person's right to confidentiality.

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