



Wychwood School

## A Guide to Consent - Children and Young People

Based on

[www.medicalprotection.org/uk/resources/factsheets/](http://www.medicalprotection.org/uk/resources/factsheets/)

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This is particularly important in considering the prescription of contraception.

Valid consent is just as important when treating children and young people as it is with adults. In some situations children are able to give consent themselves, and sometimes others need to take the decision on their behalf. This factsheet sets out the basic information to enable you as parents and guardians to understand what constitutes appropriate consent from children and young people.

### **Basic principles**

When caring for children, you (parents, guardians and anyone *in loco parentis* such as Wychwood School) have an overriding duty to act in the best interests of the child. When making decisions regarding treatment, the child or young person should be involved in the decision as much as possible, depending on their level of understanding.

If the child is not capable of consenting themselves, the consent of a person with parental responsibility or, in some circumstances, the court, is required in order to proceed with treatment.

### **Age and capacity**

#### **Aged 18 and over**

In England, Wales and Northern Ireland, once a person reaches their 18th birthday, they are assumed to be a competent adult capable of consenting or refusing treatment, unless other factors prevent them from making informed decisions.

#### **Aged 16 and 17**

A child's affirmative consent (assent) to investigation or treatment deemed in their best interests, having achieved the age of 16, cannot be overruled by anyone with parental responsibility, although the court may in its capacity as *parens patriae*. In fact, Lord Donaldson MR, summarises that: "A minor of any age who is 'Gillick competent' in the context of particular treatment has the right to consent to that treatment, which again cannot be overridden by those with parental responsibility, but can be overridden by the court...".

#### **Younger than 16**

Children under 16 can consent to medical treatment (including the prescription of contraception) if they understand what is being proposed. It is up to the doctor to decide

whether the child has the maturity and intelligence to understand fully the nature of the treatment, the options, the risks involved and the benefits.

A child who has such understanding is considered Gillick competent (or Fraser competent). The parents cannot overrule the child's consent when the child is judged to be Gillick competent. For example, a 15-year-old Gillick competent boy can consent to receiving tetanus immunisation even if his parents do not agree with it.

Children under 16 who are not Gillick competent and very young children cannot either give or withhold consent. Those with parental responsibility need to make the decision on their behalf.

In an emergency situation, when a person with parental responsibility is not available to consent, the doctor has to consider what the child's best interests are and then act appropriately. The treatment should be limited to what is reasonably required to deal with the particular emergency. Wherever possible, it is advisable to discuss the case with a senior colleague, if available. In all cases, it is important to document fully what decisions were made and why.

### **What happens if the child withholds consent?**

If the child is not Gillick competent, the parents can consent on behalf of the child, even if the child is refusing the treatment. However, you should consider carefully whether overriding the consent of a distressed child, given the clinical circumstances at the time, is necessary. Often, if sufficient time is given, the parents will be able to encourage the child that the intervention will be beneficial. Professionals should aim to work in partnership with the parents, assuming that the child's best interests are paramount.

A competent child is legally entitled to withhold consent to treatment. However, even though the child or young person may be considered to be Gillick competent, there are some situations where their refusal can be overridden by those with parental responsibility. If the treating doctor believes that the withholding of consent may be detrimental to the patient's wellbeing, legal advice may be required. It may be necessary for a court to determine whether treatment can be given against the wishes of the competent young person.

Patients aged 16-17 can withhold consent to treatment, but this can be overruled in exceptional circumstances if it is considered to be in their best interests, either by someone with parental responsibility or by the courts.

### **What happens if the parents withhold consent?**

If a competent child refuses treatment and his/her parents agree with the decision, but professionals do not believe that it is in the best interests of the child, they should take legal advice on how to proceed.

The same principle applies if the parents of a non-competent child choose to withhold consent for what a doctor believes to be necessary treatment. Professionals are obliged to act in the child's best interests and these situations, whilst rare, will likely be fraught and legal advice should be sought. Working with the child and family to overcome the issues would be appropriate.