

Consent for Children and Young People Transitioning to Adult Services

Reference Number: ULHT-LFT-3326 v2

Issued: September 2023

Review Date: September 2025



What is consent?

Consent to treatment means a person must give permission before they receive any type of medical treatment, test or examination. Consent is the process of you agreeing or giving permission for your child to have treatment. There may be circumstances where you will not be able to give consent for your child, such as when they have turned 16 years old and have the capacity to make the decision for themselves.

Valid consent for treatment or care is essential. In emergency situations a doctor can treat both a child and an adult without consent.

Strictly speaking, anyone under the age of 18 is a child. However, there is a distinction drawn between those under 16, who are referred to as “children,” and those of 16 to 17 years, who are termed “young persons.”

Who can give consent?

Under 14 years: Permission and consent will be sought from the parents/persons with parental responsibility. The child’s voice must be heard within the decision making process.

14 to 16 year olds: Can consent to their own treatment if they are believed to have enough intelligence, competence and understanding to fully appreciate what is involved in their treatment, including the risks. This is known as being ‘Gillick Competent’.

16 year plus: Have presumed capacity to make decisions for themselves and professionals need to support young people to do so where possible. If professionals do not believe the young person has capacity, they will evidence this by completing a capacity assessment. The Department of Health recommend that it is good practice to encourage young people of this age to involve their families in decisions about their care and unless it is not in the young person’s best interest to do so.

Mental Capacity Act (MCA):

The (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment. It applies to people aged 16 and over.

MCA requires that where a person lacks capacity for a particular decision, that decision must be made in their best interests. This must be tested against the question whether there is a less restrictive way to meet their best interest.

Best Interests: Who is the best interest decision maker?

The Mental Capacity Act states that the decision maker is the person intending to undertake the action.

16 to 17 year olds - Parents may be able to determine best interests where a 16/17 year old has been deemed to lack capacity if the decision is one that a parent should reasonably be expected to make and there are no factors that might undermine the validity of parental consent? A parent cannot authorise care that amounts to a Deprivation of liberty.

18 plus

For day-to-day decisions about care or activities of daily life, it is likely that the person's primary carer. This is often the parent(s).

For decisions about medical conditions and treatment, the law regards the decision maker as being the person responsible for delivering the treatment i.e. a Paediatric Consultant.

Understandably, this can cause distress and conflict where a parent who has made every decision all the child's life is then told that the parent is not the sole decision maker when a child over 16 needs medical treatment or investigations.

Deputyship

Lasting power of attorney cannot be given until the age of 18 and a young person may never have capacity to grant a lasting power of attorney for future decision making. Where ongoing decisions are required for a young person on their 18th birthday a parent can apply to the Court of Protection to appoint them as a "Deputy" which legally allows them to continue as decision maker. The deputy must follow the code of practice of the MCA and work in the best interests of the person.

Collaborative Decision Making

'Best Interest' decision making should always be collaborative. There is an obligation in the MCA to consult others involved in the young person's care and to take into consideration their views and feelings. This is to ensure that the decision maker is fully informed as possible about the young person's wishes, values and beliefs and what they want for themselves. A Best Interest meeting can be held for complex decision making and disputes.

When there is disagreement?

Under 16 - Ideally, we want everyone involved to agree a decision that is in the best interests of the child or young person. However, there may be circumstances where agreement is difficult, so additional people may be called in to provide a second opinion or act as an unbiased mediator. There is a specialist Court service that parents and the hospital can go to together if a decision cannot be agreed. We will support you through this process. We only approach the Court as a last resort.

Over 16 - If there is a dispute over best interests for a 16 year old plus this can be escalated to the Trust Safeguarding and Mental Capacity Team.

Glossary:

Child and Young person – anyone who has not yet reached their 18th birthday.

Collaborative - involving two or more parties working together. Court of Protection - is a **superior court of record** created under the Mental Capacity Act 2005. It has jurisdiction over the property, financial affairs and personal welfare of people who lack mental capacity to make decisions for themselves.

Decision-making - the action or process of making important decisions.

Parental Responsibility - Parental responsibility means the legal rights, duties, powers, responsibilities and authority a parent has for a child and the child's property.

Lasting power of attorney (LPA) - is a legal document that lets a person appoint one or more people to help you make decisions or to make decisions on your behalf.

Resources:

Gillick - <https://www.cqc.org.uk/guidance-providers/gps/nigels-surgery-8-gillick-competency-fraser-guidelines>

My adult still my child - <http://myadultstillmychild.co.uk/about-us/>

MCA – <https://www.nhs.uk/conditions/social-care-and-support-guide/making-decisions-for-someone-else/mental-capacity-act/>

If you have any questions, please ask the healthcare professional asking for your consent. You can also contact the Patient Advice and Liaison Service (PALS) office if you have any questions. You can telephone them on 01522 707071 (Lincoln) or 01205 446243 (Boston) or email them at pals@ulh.nhs.uk.

Children's Community Services and Children's and Young People Safeguarding Team

United Lincolnshire Hospitals NHS Trust has worked with AccessAble to create detailed Access Guides to facilities, wards and departments at our sites.

www.accessable.co.uk/united-lincolnshire-hospitals-nhs-trust

United Lincolnshire Hospitals NHS Trust endeavours to ensure that the information given here is accurate and impartial.

If you require this information in another language, large print, audio (CD or tape) or braille, please email the Patient Information team at patient.information@ulh.nhs.uk