

# Consent for Children and Young People Transitioning to Adult Services

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## Why have I been given this patient information?

As your child grows older, they will move from children's services into adult health services. This change known as transition also affects how consent and decision-making work.

## 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?

**Children under 16** can sometimes make their own decisions about treatment if they have enough maturity, understanding and intelligence to fully understand what is involved. This is called being Gillick competent.

If your child is not able to fully understand the treatment or its risks, then a parent or someone with parental responsibility will be asked to give consent.

Even when parents give consent, your child's views will always be listened to and taken into account.

**Young people aged 16 and 17** are presumed to have the capacity to make their own decisions about treatment, just like adults, unless there is significant evidence to suggest otherwise.

If professionals are worried that a young person lacks capacity, they will carry out a capacity assessment following the Mental Capacity Act.

From age 16, if a young person cannot consent for themselves, parents with parental responsibility can consent on their behalf if the decision is one that a parent would normally make, with decisions made in the young person's best interests.

It is considered good practice to encourage family involvement, unless this would not be in the young person's best interests.

**Children 13 years old and under** - There is no strict lower age limit for Gillick competence, but in practice, children under 13 are very unlikely to have enough maturity to consent to medical treatment on their own.

In almost all cases, consent will be sought from someone with parental responsibility.

### **Mental Capacity Act 2005 (MCA):**

The Mental Capacity Act 2005 is a law that helps protect and support people who may not be able to make certain decisions for themselves. It applies to anyone aged 16 or over.

It covers decisions ranging from everyday things to important choices about treatment or care.

A person may lack capacity for many reasons (e.g., learning disability, brain injury, mental illness), but this can change over time and can be different for different decisions.

If someone does not have capacity to make a specific decision, then the decision must be made in their best interests and in the least restrictive way possible.

### **Best Interests: Who is the best interest decision maker?**

The decision maker is the person responsible for carrying out the action or treatment. This could be a doctor, nurse or social worker depending on the type of decision.

Families must be consulted and their views considered, but the professional responsible for the intervention is the final decision maker.

**16- to 17-year-olds** - young people aged 16 and 17 are presumed to have capacity to make their own decisions unless there is good reason to think otherwise.

If a 16 or 17 year-old is assessed as not having capacity for a particular decision:

- Parents may be able to make a best-interests' decision if it is the kind of decision a parent would normally be expected to make, and

- There is nothing to suggest the parental decision would be invalid or unsafe.

However, parents cannot agree to anything that would amount to a deprivation of liberty.

Professional guidance emphasises that clinicians may still need to make the final decision if the issue relates to healthcare.

### **When your child turns 18**

Once a young person reaches 18, the legal framework changes:

Everyday care or routine decisions -

Often these can still be supported by the person's main carer, which may be a parent, but only if:

- It is clear what the person would want
- The decision does not require a professional judgement.

Medical treatment or healthcare decisions -

The doctor or healthcare professional proposing the treatment is the legal decision maker for best-interests' decisions.

This can understandably be difficult for parents who have always made decisions on behalf of their child. However, the MCA requires professionals to:

- Consult with families
- Consider the person's wishes, feelings and values, and
- Make the decision that is safest and most appropriate for the young adult.

## **Deputyship**

A young person must be 18 or over to make a *Lasting Power of Attorney (LPA)*, and they can only do this if they have the mental capacity to understand what it means.

Some young people may never have the capacity to create an LPA for future decision-making.

If your child turns 18 and still needs someone to make certain decisions for them because they lack capacity, you can apply to the Court of Protection to become their Deputy. This gives you the legal authority to continue making decisions on their behalf.

A Deputy's role is similar to an Attorney, but the key difference is that the Court chooses the Deputy because the young person cannot make this choice themselves. Deputies must follow the Mental Capacity Act (MCA) Code of Practice, which means:

- Acting in the young person's best interests
- Making decisions that are the least restrictive option
- Staying within the limits of the Court order

There are different types of deputyships, such as those for health and welfare or for property and finances. The Court will set out exactly what decisions the Deputy is allowed to make.

## Collaborative Decision Making

When a young person is not able to make a particular decision for themselves, professionals must make the decision in their best interests. The Mental Capacity Act requires the decision maker to consult with the people who know the young person well, including parents, carers and others involved in their care. This helps ensure that the final decision reflects the young person's wishes, values, beliefs, and what they would want if they were able to decide.

For more complicated decisions, or when people involved do not agree, a Best Interests Meeting may be arranged. This brings everyone together to share information and discuss what would be safest and most beneficial for the young person.

### **When there is disagreement?**

#### **If your child is under 16**

We always aim for parents, carers and professionals to agree on what is safest and best for the child. Sometimes, though, people may have different views. If this happens, we may:

- Ask another doctor or specialist for a second opinion
- Bring in someone neutral to help as a mediator
- Hold a Best Interests Meeting where everyone discusses the options together

If agreement still cannot be reached, there is a specialist Court that can help decide what is in the child's best interests. This step is only taken as a last resort, and we will support you throughout the process.

### **Young people aged 16 and 17**

Although 16- and 17-year-olds can normally make their own decisions about treatment, their refusal can be overturned by the Court if the treatment is needed to prevent serious harm or save their life.

### **Glossary:**

**Child and Young person** – anyone who has not yet reached their 18<sup>th</sup> 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 [ulth.pals@nhs.net](mailto:ulth.pals@nhs.net)

Children's Community Services and the Safeguarding Children and Young People team.

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