Gillick and Fraser Guidelines Practitioner Briefing

Welcome to this briefing to raise awareness of and help practitioners and their managers understand Gillick Competence and Fraser Guidelines. The messages in this Briefing are just as important for those working in adult services. In this briefing we refer to children which includes young people.

Gillick Competency and Fraser Guidelines are legal judgements that set out the 'rules' around when a child is deemed to be competent to make their own decisions. They originate from a case where in 1982 Victoria Gillick took her local health authority in West Norfolk, and the Department of Health and Social Security (DHSS) to court, in an attempt to prevent doctors from giving contraceptive advice and/or treatment to under 16-year-olds without parental consent

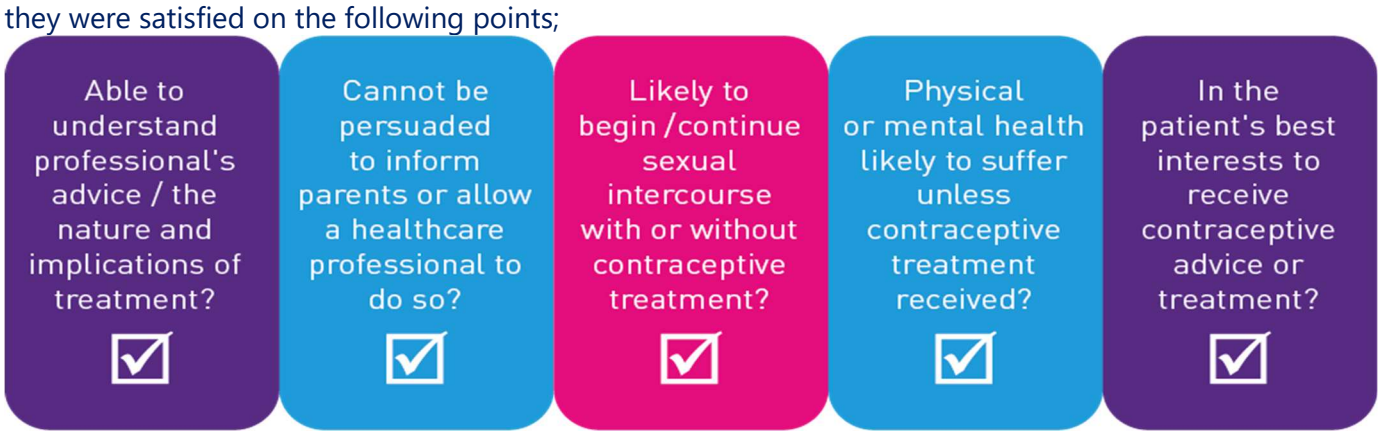
Law Lords Judgement: The case escalated through the Courts and ultimately a judgement was made by the House of Lords where it was heard by Law Lords Lord Scarman, Lord Bridge and Lord Fraser. The Lords dismissed the issue of parental rights as something that only exists for the benefit of the child, and which is something that diminishes as the child grows and matures. The judgement established that a parent's authority and power to make decisions for their child is not absolute.

The term **'Gillick** Competent' is taken from the comments by Lord Scarman when issuing his judgement on the case. He said: **"...it is not enough that she should understand the nature of the advice which is being given. She must also have a sufficient maturity to understand what is involved."** In other words, a child can consent if they fully understand the medical treatment and any implications that might arise from it. These comments are often referred to as the test of Gillick Competency.

Testing Competency; Gillick Competency is now widely used by other practitioners. When testing competency practitioners should consider:

- child's age, maturity and intellect
- do they understand the problem or issue, and what it involves?
- do they understand the risks, implications and any consequences, that may arise from their decision?
- do they understand the advantages and disadvantages of the issue they face?
- do they understand any advice or information they have been given?
- do they understand any alternative options (if available)?
- can they articulate a rationale around their reasoning and decision making?

Lord **Frasers's guidelines** relate to comments he made about dealing with the issue of contraceptive advice. He stated that a doctor could give contraceptive advice and treatment to a girl under 16, provided they were satisfied on the following points;



Health practitioners should still encourage the child to inform their parent(s) or get permission to do so on their behalf, but if this permission is not given they can still give the child advice and treatment. If the conditions are not all met, however, or there is reason to believe that the child 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.

Under 13 There is no lower age limit for Gillick competence or Fraser guidelines to be applied. That said, it would rarely be appropriate or safe for a child less than 13 years of age to consent to treatment without a parent's involvement. When it comes to sexual health, those under 13 are not legally able to consent to any sexual activity, and therefore any information that such a person was sexually active would need to be acted on, regardless of the results of the Gillick test.

16-17 year olds are presumed in law, like adults, to have the **capacity to consent to medical treatment**. However, unlike adults, their refusal of treatment can in some circumstances be overridden by a parent, someone with parental responsibility or a court. This is because we have an overriding duty to act in the best interests of a child. This would include circumstances where refusal would likely lead to death, severe permanent injury or irreversible mental or physical harm.

Under 16: safeguarding considerations if a child under the age of 16 presents to a health care practitioner, then discloses a history raising safeguarding concerns:

- If they are **not** deemed to be Gillick competent, the health practitioner is obliged to raise the issue as a safeguarding concern and escalate their concerns through the safeguarding process
- If they **are** deemed to be Gillick competent and disclosure is considered essential to protect them from harm or to be in the public interest, the health practitioner should escalate concerns through the safeguarding processes
- In **both** cases, the health practitioner should inform the child of this action, unless doing so could pose significant additional risk for their safe care.

It is reasonable for the local authority or police to decide whether it is appropriate to inform the parents of the concerns raised. In some circumstances this may not be in the best interest of the child.

Summary

Gillick competence is the principle practitioners use to judge capacity in children to consent to medical treatment. Fraser guidelines are used specifically for children requesting contraceptive or sexual health advice and treatment. Where a person under the age of 16 is not Gillick competent and therefore is deemed to lack the capacity to consent, it can be given on their behalf by someone with parental responsibility or by the court. However, there is still a duty to keep the child's best interests at the heart of any decision, and the child should be involved in the decision-making process as far as possible.

For further information:

NSPCC - Gillick Competence and Fraser Guidelines.

Consent to examination, treatment or care (2009).

Brief guide: capacity and competence to consent in under 18s CQC 2019.

Wheeler R (2006) Gillick or Fraser? A plea for consistency over competence in children. BMJ 332(7545): 807

Gillick v West Norfolk & Wisbech AHA & DHSS [1983] 3 WLR (QBD).

Axon, R (on the application of) v Secretary of State for Health [2006] EWHC 37 (Admin).

Mental Capacity Act 2005.

Please access the Pan Bedfordshire Child Protection Procedures and register for updates.