

Redbridge Safeguarding Children Partnership (RSCP)

## Multi-Agency Guide for Professionals - Gillick Competency and Fraser Guidelines: Capacity and consent of children

What is this?

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. 'Gillick competence' refers to a child under 16 with capacity to make any relevant decision. Children aged 16 and 17 years old can be presumed to have capacity to consent to treatment. At the age of 18, in law, a child becomes an adult and will then have full autonomy. Children who are under 16 may be sufficiently mature to decide for themselves and not want their parents involved, which will require a professional to consider if they are Gillick competent in relation to any medical intervention or treatment. 'Fraser Guidelines' are used specifically to decide if a child can consent to contraceptive or sexual health advice and treatment.

Here in Redbridge, we take a [Childs Rights Based Approach](#). Whilst always seeking to support families, we uphold the seven principles of Children's Rights i.e. Interdependence and Indivisibility; Best Interest; Participation; Dignity; Non-Discrimination; Transparency and Accountability; Life, Survival and Development. A competent child has the same rights to confidentiality as an adult. In cases where clinicians disagree with parents the 'best interest' is supported in law.

### Background

Both frameworks arise from the landmark case Gillick v West Norfolk and Wisbech AHA (1985), which considered whether doctors could provide contraception to under-16s without parental consent. In 1985 Victoria Gillick took her local health authority, (West Norfolk and Wisbech Area) 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-old children without parental consent.

The case escalated through the Courts and ultimately a judgement was made by the House of Lords. The Lords stated that the issue of parental rights is something that only exists for the benefit of the child, and which is something that diminishes as the child grows and matures. Lord Scarman said: "*parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision.*". They therefore concentrated on the issue of whether a child could consent to medical treatment and determined that in certain circumstances a child could consent to treatment, and that in these circumstances a parent had no power to prohibit treatment.

The judgement established that a parent's authority and power to make decisions for their child is not absolute. The rights of the parent reduce as the child reaches the necessary maturity

required to have a sufficient understanding and intelligence around the specific matter requiring a decision.

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 he/she fully understands the medical treatment and any implications that might arise from it. These comments are referred to as the test of Gillick competency.

The House of Lords confirmed that:

A child under 16 may lawfully consent to treatment if sufficiently mature and understanding. Special criteria (the Fraser Guidelines) apply specifically to contraceptive advice/treatment.

Whilst primarily for medical decisions these principles now apply broadly across multi-agency safeguarding, medical, and social-care practice. For example, if a child or young person:

- would like to have therapeutic support but doesn't want their parents or carers to know about it, or
- is seeking confidential support for substance misuse.

## Definition

A child is Gillick competent if they have:

Sufficient understanding and intelligence to comprehend fully the nature, purpose, and potential consequences of the decision or treatment, risks, side-effects, and alternatives, and implications of refusing.

## Key Principles

- Decision-specific: Competence varies by decision; a child may be competent for one decision but not another.
- Not age-based: Age alone cannot determine competence.
- Voluntary consent: Consent must be free of coercion.
- Dynamic capacity: Understanding may fluctuate (e.g., due to mental-health factors).

## Refusal of Treatment

- Under 16: A Gillick-competent young person can consent, but refusal may be overridden by the courts if necessary for their best interests.
- Ages 16–17: They can consent independently, but refusal may still be overridden in life-threatening situations (courts/parental responsibility).

## Establishing Gillick Competence

Some things for professionals to consider when assessing whether a child is Gillick competent:

- child's age, maturity (physical and mental) 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?

Professionals should satisfy themselves that the child has come to the decision without any form of coercion, exploitation or influence from a third party. **Any assessment completed needs to be documented clearly and that competency should be reassessed if circumstances or decisions changes (and again this must be documented clearly).**

Professionals should encourage a child who is deemed Gillick competent to inform their parents 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.

## Fraser Guidelines

Applicable only to contraceptive and sexual-health advice/treatment for under-16s.

A professional may provide contraceptive advice/treatment to a young person under 16 without parental knowledge or consent if all the following apply:

1. that the young person (although under the age of 16 years of age) will understand the **professional's advice**
2. the young person cannot be persuaded to inform their parents
3. the young person is likely to begin, or to continue having, sexual intercourse with or without contraceptive treatment
4. that unless the young person receives contraceptive treatment, their physical or mental health, or both, are likely to suffer
5. **that the young person's best interests require them to receive contraceptive advice or treatment with or without parental consent.**

These points have become known as the Fraser Guidelines and whilst they specifically refer to contraception, the medical fraternity have widely accepted them to apply to other treatments. **There may be exceptions to this 'rule' where a child refuses to consent to treatment, and refusal means that they are likely to suffer "grave and irreversible mental or physical harm".**

## Safeguarding and Confidentiality

There is no lower age limit for Gillick competence or Fraser guidelines to be applied. However, it would be rarely that it would be appropriate or safe for a child younger than 13 years to consent to treatment without a **parent's** involvement. In relation to sexual health, those under 16 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 competency test.

- While you can technically consider Gillick competence, it is extremely unlikely that a child under 13 would be deemed competent, especially for decisions relating to sexual health. Children under 13 also cannot legally consent to sexual activity, meaning any disclosure of sexual activity is automatically a safeguarding concern requiring action.
- 13–15: May be Gillick competent. Professional judgment and safeguarding considerations are essential.
- 16–17: Presumed to have capacity to consent to treatment, but parental involvement may still be appropriate depending on context.

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 young person.

## **Agency Responsibilities**

Agencies should ensure the following:

- Gillick and Fraser principles embedded into consent policies;
- staff have the appropriate training in assessing competencies and applying guidelines;
- documentation standards are clear and that there are protocols in place for safeguarding referrals when necessary;
- clear multi-agency information sharing thresholds and MASH referral triggers defined within any agency policy; and
- mandatory senior consultation requirement – to ensure that escalation sit within safeguarding guidance.

How can I find out more?

Further information for professionals can be found via the links below.

CQC

[Brief guide Capacity and consent in under 18s v3.pdf \(cqc.org.uk\)](https://www.cqc.org.uk/publications/brief-guide-capacity-and-consent-in-under-18s-v3)

NSPCC Learning

[Gillick competence and Fraser guidelines | NSPCC Learning](https://www.nspcc.org.uk/learning/gillick-competence-and-fraser-guidelines/)

British Medical Journal (BMJ)

[Editorial: Gillick or Fraser? A plea for consistency over competence in children, April 2006](https://www.bmj.com/lookup/doi/10.1136/bmj.332.7697.1000)

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