

# GP mythbuster 8: Gillick competency and Fraser guidelines

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**Categories:** Organisations we regulate

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We have updated and republished this mythbuster to provide even greater clarity about the difference between these two terms. We have also added a section about safeguarding concerns.

When consenting children to medical treatment, the terms 'Gillick competence' and 'Fraser guidelines' are frequently used interchangeably despite there being a clear distinction between them.

Gillick competence is concerned with determining a child's capacity to consent. Fraser guidelines, on the other hand, are used specifically to decide if a child can consent to contraceptive or sexual health advice and treatment. By confusing them, we lose crucial details necessary for obtaining consent. This mythbuster clarifies the principles, laws and guidelines used when we assess children's ability to make decisions about their treatment, as well as the [differences between Gillick competence and Fraser guidelines](#).

# Age of consent

In law, a person's 18th birthday draws the line between childhood and adulthood (Children Act 1989 s105) - so in health care matters, an 18 year old enjoys as much autonomy as any other adult. To a more limited extent, 16 and 17 year-olds can also take medical decisions independently of their parents. The right of younger children to provide independent consent is proportionate to their competence - a child's age alone is clearly an unreliable predictor of his or her competence to make decisions.

## Gillick competence

Victoria Gillick challenged Department of Health guidance which enabled doctors to provide contraceptive advice and treatment to girls under 16 without their parents knowing. In 1983 the [judgement from this case](#) laid out criteria for establishing whether a child under has the capacity to provide consent to treatment; the so-called 'Gillick test'. It was determined that children under 16 can consent if they have sufficient understanding and intelligence to fully understand what is involved in a proposed treatment, including its purpose, nature, likely effects and risks, chances of success and the availability of other options.

If a child passes the Gillick test, he or she is considered 'Gillick competent' to consent to that medical treatment or intervention. However, as with adults, this consent is only valid if given voluntarily and not under undue influence or pressure by anyone else. Additionally, a child may have the capacity to consent to some treatments but not others. The understanding required for different interventions will vary, and capacity can also fluctuate such as in certain mental health conditions. Therefore each individual decision requires assessment of Gillick competence.

If a child does not pass the Gillick test, then the consent of a person with parental responsibility (or sometimes the courts) is needed in order to proceed with treatment.

## Fraser guidelines

The 'Fraser guidelines' specifically relate only to contraception and sexual health. They are named after one of the Lords responsible for the Gillick judgement but who went on to address the specific issue of giving contraceptive advice and treatment to those under 16 without parental consent. The House of Lords concluded that advice can be given in this situation as long as:

1. He/she has sufficient maturity and intelligence to understand the nature and implications of the proposed treatment
2. He/she cannot be persuaded to tell her parents or to allow the doctor to tell them
3. He/she is very likely to begin or continue having sexual intercourse with or without contraceptive treatment
4. His/her physical or mental health is likely to suffer unless he/she received the advice or treatment
5. The advice or treatment is in the young person's best interests.

Health professionals should still encourage the young person to inform his or her 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

Young people aged 16 or 17 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 young person under the age of 16 presents to a health care professional, then discloses a history raising safeguarding concerns:

- If they are **not** deemed to be Gillick competent, the health professional 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 professional should escalate concerns through the safeguarding processes
- In **both** cases, the health professional should inform the young person 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 young person.

## Summary

Gillick competence is the principle we 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 or young person should be involved in the decision-making process as far as possible.

## Further information

[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](#)

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