

YOUNG PERSON'S CLINIC POLICY ON ASSESSING CAPACITY TO MAKE DECISIONS

April 2019



APPLY PRINCIPLES OF MENTAL CAPACITY ACT (to all those >16yrs)

1. Assume an individual has capacity to make their own decisions unless proven otherwise
2. Take all practical steps to *support* an individual to make their own decisions
3. Individuals are entitled to make *unwise* decisions
4. If an individual lacks capacity, all decisions made on their behalf must be in their *best interests*
5. Always consider the *least restrictive option* when making decisions for those who lack capacity

ASSESS CAPACITY IF IN DOUBT

<16yrs: Use Gillick Competency Assessment: see overleaf *

>16yrs: Use legal 4 point test of capacity: **CURB**

C: can the person **communicate** their decision (by any means)?

U: does the person **understand** the information relevant to their decision?

R: can the person **retain** the information for long enough to make the decision?

B: can the person **balance**, weigh up or use the information relevant to the decision?

IF PERSON LACKS CAPACITY

Can the decision in question be delayed?

*If the decision cannot be delayed, document the basis on which treatment is continued as per **BADLIP***

B: Best Interest: can a best interest decision be made?

AD: Advanced Decision: is there an advance decision to refuse treatment?

L: Lasting Power of Attorney (LPA): has a LPA been appointed and registered with the Office of Public Guardian?

I: Independent Mental Capacity Advocate (IMCA): if a patient has no family or friends who can be consulted about the decision then an IMCA must be involved

P: Proxy: if there are unresolved conflicts, consider local ethics committee or court of protection appointed deputy

SPECIAL GROUPS TO CONSIDER IN WHICH CAPACITY/LACK OF CAPACITY SHOULD BE DOCUMENTED

- UNDER 16 YEARS OF AGE
 - Use Gillick Competency proforma to assess and document capacity
- SIGNIFICANT MENTAL HEALTH CONDITION
 - LEARNING DISABILITY
 - HEAD INJURY
 - DEMENTIA
 - ACUTE CONFUSION
 - SEVERE DEPRESSION/PSYCHOSIS (if detention necessary: need to apply mental health act)

ADDITIONAL POINTS

- REASSESS CAPACITY FOR ALL NEW DECISIONS AND WITH EVERY CHANGE IN CIRCUMSTANCES AS IT IS NOT FIXED AND CAN VARY
- IF A PERSON IS NOT DEEMED TO HAVE CAPACITY TO CONSENT TO TREATMENT THE CONSULTATION CAN STILL REMAIN CONFIDENTIAL

LAW AND GUIDANCE AROUND CONSENT IN A MINOR

- **ENGLISH LAW:** *Minor is a person < 18 years*
- **FAMILY LAW REFORM ACT 1969:** *states that a child of 16 years and above can consent to treatment without involvement from a parent or guardian*
- **FRASER GUIDELINES:** *developed in 1985 by Lord Fraser: allow any child under the age of 16 years to consent to treatment without involvement from a parent or guardian IF they are Gillick competent.*
 - ***GILICK COMPETENCY RULES/FRASER GUIDELINES**
 - The young person understands the professional's advice
 - The young person cannot be persuaded to inform their parents or guardian
 - The young person is likely to begin or continue having sexual intercourse with or without contraception
 - If they do not receive that treatment, their physical or mental health is likely to suffer
 - The young person's best interest requires then to receive contraceptive advice or treatment with or without parental consent
 - These principles can be applied to consent for any treatment