



Balancing the rights of young people and their parents/carers in issues of Consent and Confidentiality

Professionals working with children and young people must balance the rights and wishes of young people with their responsibility to keep children safe from harm. This can be complex in the case of older adolescents, especially where a young person's wishes conflict with those of their parent/carer. It is therefore important to ensure that family members do not receive a confusing multi-agency response. This briefing sets out some basic principles for working with young people and their families.

Consent – what the law says

The law in relation to consent for older children is complex. Under the Children Act 1989 'child' refers to someone under the age of 18, however in relation to consent it means someone under the age of 16. 16 and 17 year olds are referred to as 'young people' and are presumed capable of consenting to their own health or personal care unless under the Mental Capacity Act 2005 they lack capacity to make specific decisions. The only grounds for overriding a 16 year old's expressed wishes would be that, if by not doing so, that young person or another individual would be exposed to unmanageable levels of harm.

The Gillick competency test requires practitioners to be satisfied that a young person not only understands the nature of any decisions to be made, but also has sufficient maturity to understand what is involved. If this is the case then parental rights will yield to the child's right to make their own decisions when s/he is capable of making up his/her own mind on the matter requiring a decision.

Examples of specific practice issues – Consent

- A young person who is exhibiting self harming behaviours or expressing suicidal thoughts or intentions and does not consent to parents being informed
- The extent to which a young person's views about the level of support they receive with intimate care are accepted when parents/staff feel that this is not in their interests, for example in a hospice, residential or hospital setting.
- A young person's right to consent to his/her end of life plan where this may conflict with a parent's views or wishes, for example decision about whether to resuscitate
- Concerns about risk of abuse or exploitation when a 'confidential' service is being provided and a young person does not wish parents to be informed, for example sexual health or mental health services
- A young person's right to consent to medical treatment in cases where parents have chosen not to fully share with them information about their medical condition

Confidentiality – what the law says

Young people have the same rights to confidentiality as adults and information (other than in exceptional circumstances) should be shared only with the young person's consent.

Where a young person lacks capacity to consent, information should only be shared with the consent of a person with Parental Responsibility. Health and care workers also have a professional duty to preserve service confidentiality by virtue of their Code of Professional Conduct and employment contracts. The disclosure of confidential documents is permitted only in limited and specific circumstances and then only the minimum necessary information for the purpose, giving consideration to the 'ownership' of the document and whether formal permission needs to be sought from the organisation which has produced it. Data Protection issues need to be considered and decisions made to share confidential information should always be proportionate, relevant and defensible, and in accordance with local information sharing protocols.

Examples of specific practice issues - Confidentiality

- Sharing of information in meetings – written and verbal
- The onward sharing of information which is 'owned' by another organisation
- A young person wants information withheld from parents/carers
- A young person has a reason to believe that a parent/carer will not respect their wish for information to be treated as confidential
- A young person's right to information about their own situation when parents want information withheld from them, for example a terminal diagnosis or death planning

- **Do** keep young people at the centre of your practice regardless of the needs and expectations of family members and other professionals
- **Do** be aware of the personal or professional motivators which influence your decision making, for example what you would want if you were the parent
- **Don't** assume that colleagues and other professionals will take the same approach to you in a particular case and be clear about how your roles differ and the impact this may have on practice decisions
- **Don't** over-focus on the needs or wishes of parents/carers, especially those who are particularly demanding or emotional
- **Do** ensure that your decisions comply with your organisation's policies and are defensible in legal terms
- **Do** ensure that professionals agree very early on a common approach to working/communicating with individual family members and review this on a multi-agency basis as the circumstances change
- **Do** hold conversations early on with young people about how issues of consent and confidentiality will be addressed in their particular situation and be honest about the limitations if appropriate
- **Do** continually 'check back' the understanding of young people, their parents/carers and other professionals at each stage of the process
- **Do** ensure parents/carers are given clear messages that young people will be given opportunities to speak to professionals alone and reinforce this verbally and in writing