

Gillick: Who decides?

Dr Len D'Cruz

Head of BDA Indemnity

Recently, there have been references in the media to the concept of Gillick competence. These references appeared in news stories and articles about medical decisions involving young patients. Whilst healthcare workers will understand the significance of this term, it is less likely that patients and their families will.

The renewed interest in Gillick first arose when, in September 2021, an Appeal Court ruled in favour of a clinic and doctors, allowing them to decide, in consultation with under 16-year-old patient, whether the provision of treatment and prescribing of puberty blockers for them was appropriate without requiring a court's consent.¹

That same month, children aged 12 to 15 in England were being offered the first dose of a COVID-19 vaccine based on the advice of the Chief Medical officers for the UK. Media reports raised the obvious question – is it possible for children to have sufficient capacity to consent to a vaccine that has side-effects and no long-term trial data?²

The US Centres for Disease Control and Prevention (CDC) subsequently recommended that children between the ages of 5 and 11 receive the Pfizer-BioNTech paediatric COVID-19 vaccine in October 2021.

These were both potentially emotional areas of medical treatment.

Where does the Gillick concept come from?

A Department of Health and Social Security (DHSS) circular in 1980 stated that, in certain circumstances a doctor could lawfully prescribe contraceptives for a girl under 16 (a minor) without the consent of the parents.

Mrs Gillick was a mother of five children, one of whom had sought and obtained contraceptive advice from the family doctor. The child in question was below the age

at which she could lawfully consent to intercourse and her mother challenged the government's authority to interfere with her rights as a parent to provide guidance to her children.

Mrs Gillick lost her first hearing in the High Court but later won a unanimous decision in her favour in the Court of Appeal. She subsequently lost in a 3:2 decision in the highest court in the land, the House of Lords.

The upper house

Their lordships decided that a parents' rights did not exist beyond safeguarding their children but that, in some circumstances, minors have the right to consent to their own treatment without the knowledge or approval of their parents.

Lord Scarman proposed that 'the parental right to determine whether or not their minor children below the age of 16 will have medical treatment terminates, if and when the child achieves sufficient understanding and intelligence to understand what is proposed.'³ This test became known as 'Gillick competence' and is an essential part of consent guidance in healthcare and family law.

Lord Fraser, in the same case, proposed guidelines in relation to contraceptive advice provided to under 16-year-olds which became known as the 'Fraser' guidelines.

In a similar decision, made a few years later,⁴ a child is said to be Gillick competent regardless of their age if they can:

- a. Understand the nature, consequences, and alternatives of the proposed treatment
- b. Possess the ability to:
 - ♦ Retain
 - ♦ use and weigh up the decision and
 - ♦ communicate the decision.

On that basis they can choose to either consent to or refuse treatment they are offered.

If a child refuses a treatment which may lead to the death or a severe permanent



injury, the courts can intervene to overrule that decision.

In your dental surgery

In practical terms, most children and young people will attend a dental practice along with someone who has parental responsibility.

The age of consent in the UK 16. The rules around capacity differ across the UK but a 16-17-year-old who is deemed to have capacity, can consent to dental care without needing parental consent.

For the purposes of dental care, the more invasive procedure, the less irreversible it is (eg. extractions), the more elective the procedure - the more likely a dentist would be advised to consult with someone who has parental responsibility before undertaking the treatment on patients under 16-year-old.

References

1. Bell and another v The Tavistock and Portman Foundation Trust and other [2021]EWCA Civ 1363.
2. Covid vaccine for 12-15 year olds- can children give consent and overrule their parents? Available online at: www.itv.com/news/2021-09-13/covid-vaccine-for-12-15-year-olds-how-will-the-vaccine-rollout-for-children-work-and-why-only-one-dose (Accessed December 2021).
3. Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC112, 187[D].
4. Re C (adult refusal of treatment) [1994] 1WLR 290.

<https://doi.org/10.1038/s41404-021-0994-y>