



# Consent Policy

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# **Stand-by-me Children's Bereavement Support Service**

## **Consent Policy**

### **1. General Principles**

Stand-by-me is guided by Gillick Competency guidelines in matters of consent for children and young people under the age of 18

### **2. Gillick Competence – Background**

Gillick competence is the principle we use to judge capacity in children to consent to medical 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.

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.

### **3. Gillick Competency – assessment**

Before a child or young person is deemed to be Gillick Competent, they will be assessed by a Stand-by-me professional in accordance with the principles laid out in section 7 (below).

If a child passes the Gillick test, he or she is considered 'Gillick competent' to consent to decisions concerning their care. 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 care, interventions or treatments but not to 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.

#### **4. Who should assess competence?**

Health professionals who assess competence need to be skilled and experienced in interviewing young people and eliciting their views without distortion. Stand-by-me professionals assessing competency will complete a Gillick Competency Assessment (see Appendix 1) and this will then be added to the child/young person's record.

#### **5. 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.

- **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

## 6. Safeguarding

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.

## 7. Gillick Competency test<sup>1</sup>

For a young person under the age of 16 to be competent, s/he should have:

- the ability to understand that there is a choice and that choices have consequences
- the ability to weigh the information and arrive at a decision
- a willingness to make a choice (including the choice that someone else should make the decision)
- an understanding of the nature and purpose of the proposed intervention
- an understanding of the proposed intervention's risks and side effects
- an understanding of the alternatives to the proposed intervention, and the risks attached to them
- freedom from undue pressure.

Competent under 16-year olds are sometimes referred to as being Gillick competent. In England, Wales and Northern Ireland children who are aged 12 or over are generally expected to have competence to give or withhold their consent to the release of information.

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<sup>1</sup> British Medical Association – Children & Young People Toolkit; Card 2

## **Appendix 1**

### **Gillick Competency Assessment** *(to be saved to child's record)*

**Name of Child / Young Person** .....

**Date of Birth**.....

Following a comprehensive assessment, taking into consideration the principles laid out below and in accordance with our Safeguarding Policy, I assess the above named child to be deemed competent for the purposes of making decisions about their care being provided by Stand-by-me Bereavement Support.

- the ability to understand that there is a choice and that choices have consequences
- the ability to weigh the information and arrive at a decision
- a willingness to make a choice (including the choice that someone else should make the decision)
- an understanding of the nature and purpose of the proposed intervention
- an understanding of the proposed intervention's risks and side effects
- an understanding of the alternatives to the proposed intervention, and the risks attached to them
- freedom from undue pressure.

**Name of professional assessing competency:**.....

**Role:**.....

**Date:**.....