

CONSENT IN YOUNG PEOPLE

CLARE

Clare is fifteen. She has taken an large overdose of paracetamol. This is the ninth time this year.

She is taken to the local emergency department. She will not allow blood tests to be taken, or treatment given. The pattern of behaviour in hospital is always the same.

Can the staff override her refusal?

If so, how would you justify that decision?

An intravenous cannula is placed in her left arm. She tells staff that does not want the treatment and will remove the cannula herself as soon as she can. Then, six hours after admission, she removes the cannula.

Blood tests from admission suggest a minimal overdose. Catastrophic liver damage is now unlikely but further treatment is probably advisable. She refuses. Overriding her refusal will mean she must be physically restrained for a cannula to be resited.

Can the staff now override her refusal?

If her consent is not obtained, can further treatment be given without any consent?

In this situation, does her capacity to consent matter?

Clare threatens to walk off the ward. The on call consultant paediatrician decides to give intramuscular sedation.

He justifies the decision with reference to the Mental Capacity Act. Is he right?

BEN

Ben is seventeen. Several hours ago he was admitted to hospital with severe abdominal pain and vomiting. It is now likely that he has appendicitis.

Ben has a fear of needles.

When his consent is sought for the appendicectomy he bursts into tears and refuses to consent to surgery.

Can the staff override his refusal?

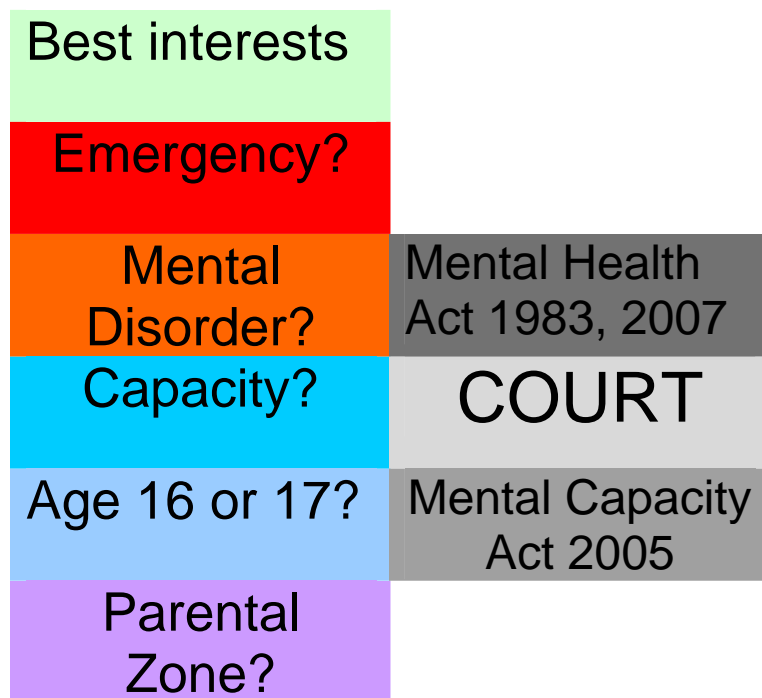
The consultant surgeon recognises Ben's intellectual capacity, but reasons that his fear of needles is obscuring his capacity to make this particular decision. He invokes the Mental Capacity Act to override Ben's refusal. Is he right to do so?

If not, how could the decision to override Ben's refusal have legal authority?

If instead of using Ben's consent, his mother is asked to consent. Are there any limits on her legal authority to consent on Ben's behalf?

Children Act 1989		
Gillick	FLRA	
	Mental Capacity Act 2005	
Mental Health	Act 1983 and 2007	

AN ALGORITHM FOR APPROACHING CONSENT



A GUIDE TO PARENTAL RESPONSIBILITY

The child's natural mother	
The child's natural father	if he was married at the time of the child's conception or at some time thereafter to the child's mother. If the parents have never been married the father may acquire it by entering into a parental responsibility agreement with the mother, or through a parental responsibility order made by a court. after 1 December 2003 (England and Wales), 15 April 2002 (Northern Ireland) or 4 May 2006 (Scotland), both of a child's legal parents have parental responsibility if they are registered together on the birth certificate
When parents have parental responsibility, neither lose it if they divorce, and responsibility endures if the child is in care or custody. It can, however, be restricted by court order and it is lost if the child is adopted.	
Adoptive parents	Where the child has been formally adopted, the adoptive parents are the child's legal parents and automatically acquire parental responsibility.
Child's guardian	An appointment usually takes effect on the death of the parents
Residence Order	Parental responsibility lasts for the duration of the order.
A local authority	acquires parental responsibility (shared with the parents) while the child is the subject of a care or supervision order. NB Foster parents do not usually have parental responsibility
Ward of Court	The High Court has powers to make certain orders regarding children where they have been removed, are in serious danger or at risk. The court will make the child "a ward". This means that the High Court will have responsibility for that child and no orders can be made or action taken which affects the child, unless permission is obtained from the High Court first. Since the introduction of the 1989 Children Act, wardship proceedings are only used in very rare circumstances.
Any person who has care of a child	may do "what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare." Children Act 1989 s3(5).