

Information Sharing

How to judge capacity to give consent

How to judge a child or young person's capacity to give consent to sharing of personal information

This guide describes how to judge the capacity of a child or young person to give consent to sharing of personal information. It should be read in conjunction with the other Information Sharing 'How to' guides, *Information Sharing: Guidance for practitioners and managers*¹ and any relevant local organisational or professional guidance.

This guide is for practitioners and managers who may have to make decisions and share personal information on a case-by-case basis. It does not relate to bulk or pre-planned sharing of information between organisations or systems (see *Information Sharing: How to identify which rules apply when sharing information*). This guide describes best practice: it does not replace consent policies and procedures where these already exist.

Best practice in judging capacity to consent

A young person aged 16 or older is presumed in law to have capacity to consent, unless there is evidence to the contrary. Children aged 12 or over may generally be expected to have sufficient understanding, and younger children may also have sufficient understanding. Capacity to consent is not simply based on age. You should also consider the child or young person's capacity to understand the consequences of giving and not giving consent. They should not be treated as unable to make a decision until all practicable steps to help them have been taken.

When assessing a child or young person's understanding you should explain the issues using their preferred mode of communication and language. This should be done in a way that is suitable for them, taking into account all you know about them from your work with them, particularly their age, language and likely understanding. If you have just started to work with them, this will be an integral part of your work and getting to know them. You must ensure

¹ *Information Sharing: Guidance for practitioners and managers* (HM Government, 2008)
<http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00807-2008>

that they really understand the issues and are not just agreeing to what is proposed.

If you are unsure whether they have the capacity to consent then you should consult your manager or another professional advisor. The child or young person's parent or carer, another professional working with them, or an advocate, where available, may be able to provide relevant information or advice.

Considerations about whether a child has sufficient understanding are often referred to as Fraser guidelines, Fraser competency or Fraser-Gillick competency. For more details see the glossary in *Information Sharing: Guidance for practitioners and managers*.

Judging capacity to consent

The following criteria should be considered when assessing whether a child or young person on a particular occasion has sufficient understanding to consent, or to refuse consent, to sharing of information about them:

- **Can the person understand the question being asked of them?**

For example, are they taking an active part in the discussion? Can they rephrase the question in their own words? How would they explain it to their parent or carer?

- **Do they have a reasonable understanding of what information might be shared, the main reasons for sharing the information and the implications of sharing that information, and of not sharing it?**

For example, what do they say they think would happen if they agree to the information sharing? Why do they think it is important to share the information? Who do they think it might be shared with? What do they think would happen if they say no?

- **Can they appreciate and consider the alternatives, weighing up one aspect against another and express a clear and consistent personal view?**

For example, you could encourage them to say out loud, or write down, their view of the pros and cons. You could recheck these views later or at a later meeting.

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