



Consent, capacity
and competence:
what to consider
when a young
person is making
a decision



We are
research
active

Aims

- Overview of concept of consent
- Competence in children and young people
- What does the Mental Capacity Act say



Safeguarding Key Principles

Adult

Empowerment
Prevention

Proportionality
Protection
Partnership
Accountability

Children

Safeguarding is everyone's responsibility: Each professional and organisation should play their full part

Child centred approach: For services to be effective they should be based on a clear understanding on the needs and views of children

What is consent?

- The consent process is information provision, discussion and decision-making.
- For professionals consent is the permission, approval or agreement given by a person to enable the provision of care, advice, support or referral.
- Valid consent underpins care delivery whether basic care or major surgery



Consent

- For the consent to be valid, the person must:
 - have capacity to make the particular decision;
 - have received sufficient information to make it;
 - not be acting under duress.



Consent

- Only people who have parental responsibility for the child can give consent on their behalf and it is important to check this with the adult who accompanies the child
- A young person aged 16 or 17 has an explicit right [s.8 Family Law Reform Act 1969] to provide consent to surgical, medical or dental treatment and unless grounds exist for doubting her/his mental health, no further consent is required.



Competency

- Whenever possible the permission of a parent should be sought for children under 16 prior to any medical treatment. However a child of any age can give consent if they have 'sufficient understanding and intelligence to enable him or her to understand fully what is proposed'
- The young person may refuse some or all of the treatment, although a court can potentially override this refusal.



Mental Capacity Act

- Applies to everyone over the age of 16
- 5 underpinning principles
 - Principle 1: Assume a person has capacity unless proved otherwise.
 - Principle 2: Do not treat people as incapable of making a decision unless all practicable steps have been tried to help them.
 - Principle 3: A person should not be treated as incapable of making a decision because their decision may seem unwise.
 - Principle 4: Always do things or take decisions for people without capacity in their best interests.
 - Principle 5: Before doing something to someone or making a decision on their behalf, consider whether the outcome could be achieved in a less restrictive way.
- 2-stage test
- 4 abilities
- Deprivation of Liberty Safeguards
- Liberty Protection Safeguards



Thanks!

Any questions?



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