Valid consent is just as important when treating children and young people as it is with adults. In some situations children are able to give consent themselves, and sometimes others need to take the decision on their behalf. This factsheet sets out the basic information to enable you to obtain the appropriate consent from children and young people.

Basic principles

When caring for children, you have an overriding duty to act in the best interests of the child. When making decisions regarding treatment, the child or young person should be involved in the decision as much as possible, depending on their level of understanding. If the child is not capable of consenting themselves, you will need the consent of a person with parental responsibility or, in some circumstances, the court, in order to proceed with treatment.

Age and capacity

Aged 16 and 17

The legal age of capacity in Scotland is 16. These rules around capacity differ across the UK jurisdictions. In Scotland, 16 and 17-year-olds can consent to medical treatment or intervention without needing parental consent. If a 16 or 17-year-old in Scotland lacks the capacity to consent, they should be treated as an adult who lacks capacity (under the Adults with Incapacity (Scotland) Act 2000). Doctors have a duty of confidentiality to 16 and 17-year-olds and should not usually disclose information to parents without the patient’s consent.

Younger than 16

Children under 16 can consent to medical treatment if they understand what is being proposed. It is up to the doctor to decide whether the child has reached sufficient maturity to understand the nature and possible consequences of the procedure or treatment.

It is very unlikely that parents would be able to overrule the wishes of a child deemed mature enough to make their own medical decisions. For example, a 15-year-old boy who has been declared competent by his doctor can consent to receiving tetanus immunisation, even if his parents do not agree with it.

Very young children, and those who are not considered to be capable of making their own decisions, cannot either give or withhold consent. Those with parental responsibility need to make the decision on their behalf.

In an emergency situation, when a person with parental responsibility is not available to consent, the doctor has to consider what the child’s best interests are and then act appropriately. The treatment should be limited to what is reasonably required to deal with the particular emergency. Wherever possible, it is advisable to discuss the case with a senior colleague, if available. In all cases, it is important to document fully what decisions were made and why.

What happens if the child withholds consent?

If a child is under 16 and is not yet competent, those with parental responsibility can consent on behalf of the child, even if the child is refusing treatment.

A competent child is legally entitled to withhold consent to treatment. However, if the parents and treating doctor believe that withholding consent may be detrimental to the patient’s wellbeing, legal advice may be required. This area of law is complex and careful consideration should be given to the specific factors in the case.

Parents or the courts cannot overrule a refusal of treatment by a patient with capacity who is over 16 (the legal age of capacity in Scotland). However, the question of overruling a decision, if it would be in the patient’s best interest, has not yet been tested in the Scottish courts. Case specific legal advice may be required.

What happens if the parents withhold consent?

If a competent child refuses treatment and his/her parents agree with the decision, but you do not believe that it is in the best interests of the child, you should take legal advice on how to proceed.
The same principle applies if the parents of a non-competent child choose to withhold consent for what you believe to be necessary treatment. You are obliged to act in the child’s best interests and may need to apply for a court order to proceed with treatment.

**Documentation**

It is important to record any decision made in the patient’s notes. This should include the information that was provided to the patient and the parents and how the decision was reached.

**Further information**

- MPS factsheet – *Parental Responsibility* – www.medicalprotection.org
- MPS factsheet – *Adults with Incapacity Act* – www.medicalprotection.org
- GMC, 0-18 years: *guidance for all doctors* – www.gmc-uk.org/guidance
- Royal College of Paediatrics and Child Health – www.rcpch.ac.uk
- Houston (Applicant) 1996 SCLR 943

For medicolegal advice please call us on:

0845 605 4000

or email us at: querydoc@mps.org.uk

www.mps.org.uk
This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association. The Medical Protection Society Limited. A company limited by guarantee. Registered in England No. 36142 at 33 Cavendish Square, London, W1G 0PS.

For medicolegal advice please call us on:
0845 605 4000
or email us at: querydoc@mps.org.uk
www.mps.org.uk