

Under 16s: consent and confidentiality in sexual health services

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Any competent young person in the United Kingdom can consent to medical, surgical or nursing treatment, including contraception and sexual and reproductive health. They are said to be competent if they are capable of fully understanding the nature and possible consequences of the treatment. Consent from parents is not legally necessary, although the involvement of parents is encouraged. (A parent is someone with legal parental responsibility. This is not always a biological parent.)

Young people are owed the same duties of care and confidentiality as adults. Confidentiality may only be broken when the health, safety or welfare of the young person, or others, would otherwise be at grave risk¹⁻³.

In England and Wales, the Sexual Offences Act 2003 does not affect the ability of professionals to provide confidential sexual health advice, information or treatment if it is in order to protect the young person from sexually transmitted infections or pregnancy, to protect their physical safety or to promote their emotional well-being.

England, Wales and Northern Ireland

Much of the law affecting consent is not set out in legislation but is common (judge-made) law (see *History of Government policy*).

It is considered good practice for health professionals to follow the criteria commonly known as the Fraser guidelines:

- that the young person understands the advice and has sufficient maturity to understand what is involved
- that the doctor could not persuade the young person to inform their parents, nor to allow the doctor to inform them

- that the young person would be very likely to begin, or continue having sexual intercourse with or without contraceptive treatment
- that, without contraceptive advice or treatment, the young person's physical or mental health would suffer
- that it would be in the young person's best interest to give such advice or treatment without parental consent.

In 2004, the Department of Health issued revised guidance for health professionals in England. This covers confidentiality, duty of care, good practice and the Sexual Offences Act 2003. The recommendations include that services should produce an explicit confidentiality policy and advertise that their services are confidential to under 16s⁴.

The original guidance still applies in Wales and Northern Ireland^{5,6}.

Scotland

Under the Age of Legal Capacity Act 1991, those under 16 may consent to medical treatment if, in the health professional's opinion, they are capable of understanding the nature and possible health consequences of the procedure or treatment. There is no specific Government guidance.

While confidentiality is not directly addressed in Scottish law, it is generally understood that all competent patients are owed the same duty of care and confidentiality. Guidance from professional and regulatory bodies, and the Government, gives adults and children the same rights to confidentiality^{1,2,7}.

Under 16s: consent and confidentiality in sexual health services (cont)

Health professionals in schools

Health professionals, including school and community nurses, may provide confidential contraceptive and sexual health advice and care in response to individual requests from young people. In this case they are bound by their professional codes of conduct.

However, health professionals contributing to a school sex education programme must follow the school's sex education policy. It is good practice for this distinction to be agreed and recorded in the policy⁸.

Medical records

Young people under 16 have the right of access to personal information (including medical records) stored on computers and to their written medical records providing that the holder of the records considers them capable of understanding the nature of the request. A parent or guardian will not be given access unless the young person consents or is incapable of understanding the nature of the request and the granting of access would be in their best interests (Data Protection Act 1998, Access to Health Records Act 1990, Access to Health Records (Northern Ireland) Order 1993).

History of Government policy

1974 DHSS advised that doctors could provide contraceptive advice to a girl under 16 without advising her parents although they should always seek the girl's consent to tell her parents⁹.

1980 Section G of the 1974 memorandum was reissued¹⁰ emphasising the recommendations that doctors should 'seek to persuade the child to involve the parents or guardian'. Ultimately, the decision must be for the clinical judgement of the doctor.

Mrs Victoria Gillick failed to gain the reassurance of her local area health authority (AHA) not to provide contraceptive advice or treatment to her daughters without her knowledge or consent.

1982 Mrs Gillick sought a High Court ruling against her AHA and the DHSS to prevent advice being given to her daughters without her consent on the grounds that the 1980 circular was unlawful.

1983 High Court judgement that the DHSS guidelines were not unlawful and Mrs Gillick's case was dismissed.

1984 On 20 December the Appeal Court overturned the High Court ruling. Parental consent was judged to be important and except for advice given in an 'emergency' or 'with leave of the Court' health care professionals were deemed to be acting illegally if they provided contraceptive advice or treatment to girls under 16 without parental consent.

DHSS guidance was suspended, leading to a big drop in attendance at family planning clinics by under 16s.

1985 DHSS appealed to House of Lords. The Law Lords, led by Lord Fraser, ruled that the DHSS guidance was not unlawful and this was reinstated immediately.

1986 Following a full review, revised guidelines, based on the House of Lords ruling, were produced in March¹¹.

References

- 1 General Medical Council. *Confidentiality: protecting and providing information*. GMC, 2004.
- 2 Nursing and Midwifery Council. *Code of professional conduct*. NMC, 2002.
- 3 Department of Health et al. *Working together to safeguard children: a guide to inter-agency working to safeguard and promote the welfare of children*. Stationery Office, 1999.
- 4 Department of Health. *Best practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health*. DH, 2004.

Under 16s: consent and confidentiality in sexual health services (cont)

- 5 Welsh Office. *Family planning services for young people*. Welsh Health Circular WHC(86)17. 1986.
- 6 Northern Ireland. Department of Health and Social Services. *Family planning services* (letter). DHSS, 1987.
- 7 NHS in Scotland. Management Executive. *A guide to consent to examination, investigation, treatment or operation*. 1992.
- 8 White, Sheila. *Confidentiality in schools: a training manual*. Brook, 1995.
- 9 Department of Health and Social Security. *Family planning services*. Memorandum of guidance. Issued with HSC(IS)32. DHSS, 1974.
- 10 Department of Health and Social Security. *Family planning services for young people*. HN(80)46. DHSS, 1980.
- 11 Department of Health and Social Security. *Family planning services for young people*. HC(86)1. DHSS, 1986.

Further reading

British Medical Association. *Consent, rights and choices in health care for children and young people*. BMJ Books, 2001.

Royal College of General Practitioners et al. *Confidentiality and young people: improving teenagers' uptake of sexual and other health services*. RCGP and Brook, 2000.

Further information

For further information on the material covered in this factsheet, and other subjects related to sexual health, contact **fpa's** Library and Information Service.

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