

Gillick competency and Fraser guidelines

Balancing children's rights with the responsibility to keep them safe from harm

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When practitioners are trying to decide whether a child is mature enough to make decisions, they often talk about whether the child is 'Gillick competent' or whether they meet the 'Fraser guidelines'. The Gillick competency and Fraser guidelines help people who work with children to balance the need to listen to children's wishes with the responsibility to keep them safe.

Gillick competency

Gillick competency and Fraser guidelines refer to a legal case which looked specifically at whether doctors should be able to give contraceptive advice or treatment to under-16-year-old girls without parental consent. Since then, they have been more widely used to help assess whether a child has the maturity to make their own decisions and to understand the implications of those decisions.

In 1982 Victoria Gillick took her local health authority (West Norfolk and Wisbech Area Health Authority) and the Department of Health and Social Security to court in an attempt to stop doctors from giving contraceptive advice or treatment to under 16-year-olds without parental consent.

The case went to the High Court in 1984 where Mr Justice Woolf dismissed Mrs Gillick's claims. The Court of Appeal reversed this decision, but in 1985 it went to the House of Lords and the Law Lords (Lord Scarman, Lord Fraser and Lord Bridge) ruled in favour of the original judgment delivered by Mr Justice Woolf:

"...whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed,

so the consent, if given, can be properly and fairly described as true consent” (Gillick v West Norfolk, 1984).

Fraser Guidelines

The Fraser guidelines refer to the guidelines set out by Lord Fraser in his judgment of the Gillick case in the House of Lords (1985), which apply specifically to contraceptive advice. Lord Fraser stated that a doctor could proceed to give contraceptive advice and treatment to a girl under 16:

“provided he is satisfied on the following matters:

1. that the girl (although under the age of 16 years of age) will understand his advice
2. that he cannot persuade her to inform her parents or to allow him to inform the parents that she is seeking contraceptive advice
3. that she is very likely to continue having sexual intercourse with or without contraceptive treatment
4. that unless she receives contraceptive advice or treatment her physical or mental health or both are likely to suffer
5. that her best interests require him to give her contraceptive advice, treatment or both without the parental consent” (Gillick v West Norfolk, 1985).

How is Gillick competency assessed?

Lord Scarman’s comments in his judgment of the Gillick case in the House of Lords (Gillick v West Norfolk, 1985) are often referred to as the test of “Gillick competency”. He said:

“...it is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved.”

He also commented more generally on parents’ versus children’s rights:

“parental right yields to the child’s right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision.”

Implications for child protection

Adults working or volunteering with children in any context need to consider how to balance children's rights and wishes with their responsibility to keep children safe from harm. Key issues to bear in mind include:

- The child's safety is paramount. Child protection concerns must always be shared with the relevant agencies, even if this goes against the child's wishes.
- Underage sexual activity is a possible indicator of child sexual exploitation and children who have been groomed may not realise they are being abused.
- Sexual activity with a child under 13 is a criminal offence and should always result in a child protection referral.

References and further reading

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