

CAMHS referrals: consent to referral

Parental responsibility

The Children Act 1989 sets out who has parental responsibility:

- The child's parents, if married to each other at the time of conception or birth.
- The child's mother, but not the father if they were not married, unless the father has acquired parental responsibility via a court order or a parental responsibility agreement or the couple subsequently marry.
- The child's legally appointed guardian – appointed either by a court or by a parent with parental responsibility in the event of their own death.
- A person in whose favour a court has made a residence order concerning the child.
- A local authority designated in a care order in respect of the child (but not where the child is being looked after under section 20 of the Children Act 1989, also known as being 'accommodated' or in 'voluntary care').
- A local authority or other authorised person who holds an emergency protection order in respect of the child.
- Foster parents, step-parents and grandparents do not automatically have parental responsibility.

(Seeking consent: working with children in Department of Health, 2001)

The Children Act 2004 sets out the parental responsibility for unmarried fathers:

Unmarried fathers do **not** have automatic parental responsibility. Unless they have registered or re-registered their names on their children's birth certificates after 1 December 2003, in which case they **will** have parental responsibility for their children. Therefore:

- If an unmarried father has a child after 1 December 2003 and is registered on the birth certificate, he will have parental responsibility.
- If a child was registered before 1 December 2003 and the father was not named on the birth certificate, the child can be re-registered to include the father's name. Once this has been done, the father will have parental responsibility.
- If an unmarried father's name is already on the birth certificate and the child was registered before 1 December 2003, the law has not changed this situation so the father will not have parental responsibility (unless obtained by other means).

(Children's Legal Centre, 2006)

Young people's competence to give consent

If a young person is not legally competent (does not have 'capacity') to give consent for themselves, consent will need to be gained from someone who has parental responsibility for them, unless it is an emergency and it would be unreasonable to wait.

If a young person is competent to give consent for themselves, consent should be sought directly from them. The legal position regarding 'competence' is different for young people aged over and under 16.

Young people aged 16 and 17 are presumed in law to be competent to give consent for themselves. However, it is still good practice to involve their families and/or carers in decision-making. Young people under 16 are not automatically presumed to be legally

competent to make decisions about their healthcare. However, they may be competent if they can demonstrate that they are 'Gillick' or 'Fraser' competent. There is no specific age when a young person becomes competent; it will depend on the young person, their own development, and the seriousness and complexity of the treatment. It is considered to be good practice to involve parents in decision making.