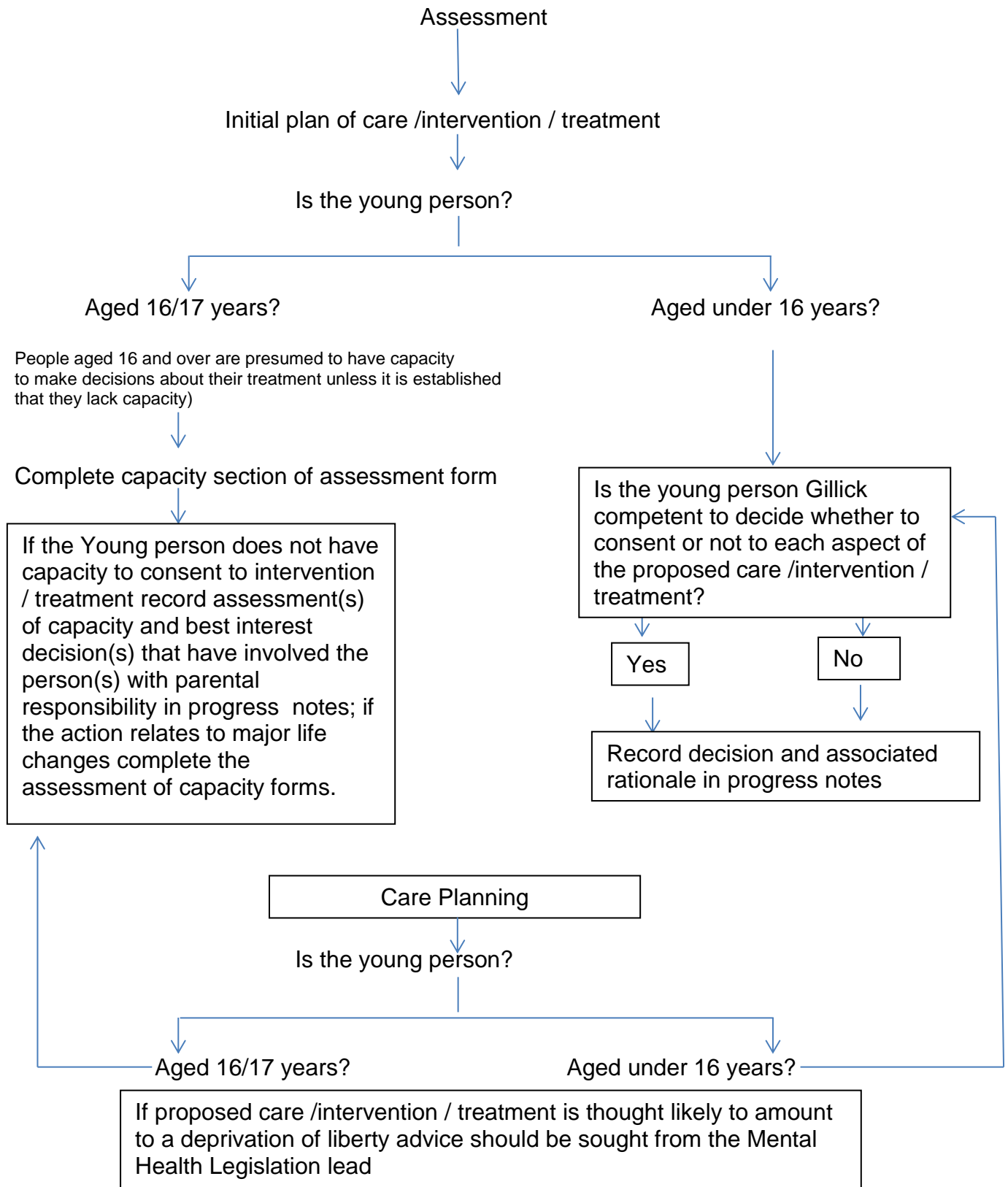


**Appendix 4d**

**Consent to treatment process for CYPS Community Services**



**The Mental Health Act 1983 Code of Practice Chapter 19 provides the following guidance:**

## **Children and young people and consent**

- 19.21 The valid consent of a child or young person will be sufficient authority for their admission to hospital and/or treatment for mental disorder; additional consent by a person with parental responsibility will not be required. It is good practice to involve the child or young person's parents and/or others involved in their care in the decision-making process, if the child or young person consents to information about their care and treatment being shared.
- 19.22 Consent should be sought for each aspect of the child or young person's admission, care and treatment as it arises. 'Blanket' consent forms (ie forms that purport to give consent to any proposed treatment) are not acceptable and should not be used.
- 19.23 A young person must have the capacity, or a child must have competence, to make the particular decision in question (see paragraph 19.24 below). They must have sufficient information to make that decision (see chapter 4) and not be subject to any undue influence when doing so (see paragraph 24.34). Unlike adults, the refusal by a competent child or young person with capacity under the age of 18 may in certain circumstances, be overridden by a court.....

## **Assessing a young person's capacity and a child's competence to make decisions**

- 19.24 Before relying on the consent of a child or young person it is necessary to ascertain whether they can give valid consent. The test for assessing whether a child under 16 can give valid consent differs from that of a young person aged 16 or 17. The capacity of a young person aged 16 or 17 to consent is assessed in accordance with the MCA, while the test for children under 16 is determined by considering whether they are 'Gillick competent'. Practitioners with expertise in working with children and young people should be consulted in relation to these assessments. The different tests are explained in more detail below.
- 19.25 Practitioners should consider the following three questions which should be read in conjunction with the paragraphs below:
- Has the child or young person been given the relevant information in an appropriate manner (such as age appropriate language)?
  - Have all practicable steps been taken to help the child or young person make the decision? The kind of support that might help the decision-making will vary,

- Depending on the child or young person's circumstances. Examples include:
  - steps to help the child or young person feel at ease
  - ensuring that those with parental responsibility are available to support
  - their child (if that is what the child or young person would like)
  - giving the child or young person time to absorb information at their own pace,
  - and considering whether the child or young person has any specific communication needs (and if so, adapting accordingly)
- Can the child or young person decide whether to consent, or not to consent, to the proposed intervention?

## **Decision-making and young people**

- 19.26 The MCA applies to people aged 16 or over, so young people must be assumed to have capacity to make the decision about a proposed admission to hospital and/or treatment unless it is established that they lack capacity, as is the case with adults
- 19.27 Section 2 of the MCA states that a person lacks capacity in relation to a matter if at the relevant time they are unable to make a decision for themselves in relation to the matter 'because of an impairment of, or a disturbance in the functioning of, the mind or brain'. It does not matter whether the impairment is permanent or temporary (see section 2(2)). Section 3 of the MCA then states that a person is unable to make a decision if they are unable to:
- understand the information relevant to the decision
  - retain that information
  - use or weigh that information as part of the decision-making process, or
  - communicate their decision (whether by talking, sign language or any other means)
- 19.28 The MCA also states that a person must not be regarded as unable to understand the information relevant to the decision if they are able to understand an explanation of it given in a way that is appropriate to their circumstances. It is therefore essential that steps are taken to enable a person to understand information, such as using simple language and visual aids (see section 3(2) MCA).

- 19.29 Where there are concerns that the young person is unable to make the particular decision, the young person's capacity should be assessed by a professional with expertise in working with children and young people. Wherever possible, consideration should be given to whether the decision could be delayed to a time when the young person might be able to make the decision.
- 19.30 If the young person is unable to decide about the proposed action at the relevant time 'because of an impairment of, or disturbance in the functioning of, the mind or brain', they will lack capacity as defined in section 2 of the MCA. The reason for the young person's inability to decide about the proposed admission or treatment may be because of their mental disorder. Alternatively, the young person's inability to decide might arise from a temporary 'impairment of, or disturbance in, the functioning of, their mind or brain' that does not amount to a mental disorder (e.g. an impairment or disturbance caused by the distress related to the proposed admission or treatment). In either case, the young person will lack capacity within the meaning of the MCA and the MCA will apply in the same way as it does for adults. It may therefore be possible for the particular decision to be made in accordance with the MCA for, and in the best interests of, the young person.
- 19.31 When assessing a young person's capacity to make the decision in question, practitioners should be aware that in some cases a young person may be unable to make a decision for reasons other than an impairment of, or a disturbance in the functioning of, their mind or brain (even if that is only temporary). In such cases, the person will not lack capacity within the meaning of the MCA. For example, a young person who is informed that they need to be admitted into hospital may, in the particular circumstances of the case, be unable to make a decision. This might be because they find themselves in an unfamiliar and novel situation, having never before been asked to absorb that type and quantity of information, or they are worrying about the implications of deciding one way or the other.
- 19.32 In such cases (which are likely to be rare) every effort should be made to ensure that the young person is supported in making the decision (e.g. by involving those with parental responsibility and/or advocates). Steps should also be taken to explain fully and clearly why admission is thought necessary, what the alternatives to the admission are and why they are considered not to be the best option. Save where the case requires urgent action, the young person should be given the time that they need to think things over and ask for clarification.
- 19.33 It is important that practitioners are aware of the distinction between those cases that fall within the MCA and those that do not. If it is not clear whether the young person's inability to decide is because of an 'impairment of, or a disturbance in the functioning of, the mind or brain' or whether due to some other reason, a specialist opinion should be sought from a professional with expertise in working with children and young people.....

## **Decision-making and children under 16**

- 19.34 Children under 16 should be assessed to establish whether they have competence to make a particular decision at the time it needs to be made. This is because in the case of Gillick, the court held that children who have sufficient understanding and

intelligence to enable them to understand fully what is involved in a proposed intervention will also have the competence to consent to that intervention. In such cases, the child is sometimes described as being 'Gillick competent'. A child may be Gillick competent to consent to admission to hospital, medical treatment, research, or any other activity that requires their consent.

- 19.35 The concept of Gillick competence reflects the child's increasing development to maturity. The understanding required to make decisions about different interventions will vary considerably. A child may have the competence to consent to some interventions but not others. The child's competence to consent should be assessed carefully in relation to each decision that needs to be made.
- 19.36 When considering whether a child has the competence to decide about the proposed intervention, practitioners may find it helpful to consider the following questions.
- Does the child understand the information that is relevant to the decision that needs to be made?
  - Can the child hold the information in their mind long enough so that they can use it to make the decision?
  - Is the child able to weigh up that information and use it to arrive at a decision?
  - Is the child able to communicate their decision (by talking, using sign language or any other means)?
- 19.37 A child may lack the competence to make the decision in question either because they have not as yet developed the necessary intelligence and understanding to make that particular decision; or for another reason, such as because their mental disorder adversely affects their ability to make the decision. In either case, the child will be considered to lack Gillick competence.