

Consent Guidance for Children Looked After Needing Surgery

Including Dental Extraction

Introduction

The parental responsibility for Children Looked After (also known as Looked After Children or Children in Care) varies depending on the legal framework under which the child is in the care of the Local Authority. This can lead to confusion about who can consent and how consent can be given for surgery or any procedure involving a general anaesthetic.

Purpose of this guidance

Surgery has been delayed due to not being able to get informed consent from the person who has parental responsibility. The aim of this guidance is to prevent delays.

This guidance is for Local Authorities and Acute Hospital Trusts within Bath and North East Somerset, Swindon and Wiltshire Clinical Commissioning Group (BSW CCG). The guidance is to support clinicians, social workers, and social work managers to ensure that the right person gives informed consent at the right time for each individual child.

Definitions (legal framework Children Act 1989)

Children Looked After - A child is 'looked after' (in care) if they are in the care of the local authority for more than 24 hours. Children can be in care by agreement with parents or by order of a Court. The exception to this is unaccompanied asylum-seeking children who automatically become children looked after.

Section 20 Accommodated – children who are in the care of the local authority with the agreement of their parents. The parents have parental responsibility and would need to give informed consent

Interim Care Orders and Care Orders – court orders that enable the local authority to share consent with the parents. It is good practice for the parent/s with parental responsibility to consent. If this is not possible then the local authority can consent this would normally be done by a Director of Children Services or a senior manager within children services (see below for local guidance).

Parental Responsibility

In England and Wales, all biological mothers automatically have Parental Responsibility over their children as soon as they are born. The following people also automatically have Parental Responsibility:

- A father if he was married to the mother at the time the child was born
- An unmarried father if he jointly registered the birth

- Same-sex partners, if they were civil partners or married at the time the child was born, or at the time of fertility treatment

Parental responsibility can only be removed from a birth parent by an adoption order when parental responsibility is given to the adoptive parents by the Court.

Fathers can also gain parental responsibility by

- Re-registering the birth in their joint names if the father/same-sex parent
- Entering into a Parental Responsibility Agreement with the mother
- Obtaining a Parental Responsibility Order from the Court, which is the only other choice if the other above options aren't possible

A biological father could also get Parental Responsibility by subsequently marrying the biological mother, and also by obtaining a Child Arrangement Order stating that the child lives with them, as that will automatically grant the person with Parental Responsibility.

Special Guardianship Orders (SGOs) granted by the Court will also give parental responsibility to the adult given the special guardianship order.

Delegated Authority (Legal framework Children Act 1989 Guidance and Regulations Volume 2 (2015))

This is given to foster carers and will set out what they can and can't consent for. Delegated authority is agreed between Children Services and those with parental responsibility and will be specific for each child. Some foster carers may be able to consent for medical treatment.

Informed Consent

Permission granted in full knowledge of the possible consequences, typically that which is given by a patient to a doctor for treatment with knowledge of the possible risks and benefits. Giving consent for surgery should not be just signing the consent form. The person giving consent must understand the possible risks and benefits before they give consent.

Processes

Process for a child's Social Worker who becomes aware that a child looked after needs surgery or a dental extraction

- 1) Social Worker to obtain the details of the surgical team and ensure that they know that the child is looked after and who can give informed consent
- 2) Social Worker to obtain the date of the planned operation
- 3) Social Worker informs the appropriate senior manager
- 4) Social Worker arranges for the person who can give informed consent to meet with the surgical team to give informed consent (See local guidance). This is normally done in person. A Virtual meeting may be acceptable, but this will depend on the surgical team's policy.

Local Authority Arrangements

Local authority	Who can consent if parents not available	Contact details
Swindon	Craig Liversage Service Manager Children Looked After, Care Leavers and Corporate Parenting	CLiversage@swindon.gov.uk
Wiltshire	Iona Payne Head of Children in Care and Young People	iona.payne@Wiltshire.gov.uk Tel: 01225 718506 MB: 07880486748
Bath and North East Somerset	Rachel Ward Head of Service: Care Outcomes	Rachael_ward@bathnes.gov.uk 07976 184698

Processes for the Surgical Team

- 1) If the surgical team thinks the child is looked after they need to speak to the child's social worker to check who can give informed consent
- 2) Arrange with the social worker for the person who can give informed consent to meet with a member of the surgical team to set out the risks and benefits of the surgery and give informed consent.

Emergencies

If emergency treatment or anaesthetic is required a clinician can decide it is in the child's best interest to go ahead if there is no one with parental responsibility to consent.

Children who can consent for treatment

Children over the age of 16 and 17 - People aged 16 or **over are entitled to consent to their own treatment**. This can only be overruled in exceptional circumstances. Like adults, young people (aged 16 or 17) are presumed to have sufficient capacity to decide on their own medical treatment, unless there's significant evidence to suggest otherwise. If it is thought that a 16- or 17-year-old doesn't have capacity, then legal advice needs to be sought.

Children Placed in BaNES, Swindon and Wiltshire by other Local Authorities

If there are issues regarding consent for a child looked after placed in BSW ICB footprint by another local authority and the clinician cannot contact the child's social worker, please contact the Designated Nurse for Children Looked After.

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