APPENDIX E: GILLICK COMPETANCE / FRASER GUIDELINES

It is a principle of the law in England and Wales, that consent is needed before medical treatment is commenced on a patient. Without the consent of the patient a criminal offence is committed and the patient may bring a civil action against the health-care professional who initiated the treatment. The fact that a patient may be a child, who is under the age of 18 years in English law, does not remove the need for consent to be provided. The Family Law Reform Act [1969] section 8(1) states “The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian”. However, this provision did not apply to those under 16 years of age.

In 1982 Mrs 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. Mrs Gillick had challenged the lawfulness of Department of Health guidance that doctors could provide contraceptive advice and treatment to girls under the age of 16 without parental consent or knowledge in some circumstances. Mrs Gillick lost the case finally in 1985 when the Law Lords upheld the decision in **Gillick v West Norfolk & Wisbech Area Health Authority [1985] UKHL 7 (17 October 1985)**

When trying to decide whether a child is mature enough to make decisions, people often talk about whether a child is 'Gillick competent' or whether they meet the 'Fraser guidelines'. These labels are often used interchangeably but actually relate to separate though related terms,

Gillick competent, according to Mr Justice Woolf (1982); "...*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."*

Therefore the test is that the young person;

- understands the problem and implications
- understands the risks & benefits of treatment
- understands the consequences if not treated
- understands the alternative options

- understands the implications on the family

- is able to retain (remember) the information
- is able to weigh the pros and cons
- is able to make and communicate a reasoned and weighed decision regarding their wishes.

Fraser guidelines are more specific and originally related only to the provision of contraceptive advice, as Lord Fraser (1985) put it; "...*a doctor could proceed to give advice and treatment provided he is satisfied in the following criteria:*

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." While Fraser was specifically about contraceptive advice and treatment, the case *Axon, R (on the application of) v Secretary of State for Health [2006] EWHC 37 (Admin)* makes clear that the principles apply to decisions about treatment and care for sexually transmitted infections and abortion, too.

The question of whether the provision of such advice to a person below the age of consent would engage the criminal law was answered by “The Sexual Offences Act 2003”. This Act stated that “, a person is not guilty of aiding, abetting or counselling a sexual offence against a child where they are acting for the purpose of:

- protecting a child from pregnancy or sexually transmitted infection,
- protecting the physical safety of a child,
- promoting a child’s emotional well-being by the giving of advice.

This provision therefore permits health professionals and others working with young people to provide confidential advice or treatment on contraception, sexual and reproductive health to young people under 16.

As a general rule applying the tests provided by the Judge in “Gillick” will be sufficient for your decision to be ‘reasonable in all the circumstances of the case’.