

**Ethical and legal challenges in children's mental healthcare:
Part 1 – duty of care and rights**
by Dr Moli Paul

In Part 1, we considered the following:

- the law and ethics may overlap in parts but can differ
- the clearest duty of care is to the referred child but clinicians may, under some circumstances, owe duties to parents and other family members
- the best interests of the child should be prioritised but basic, developmental and autonomy interests all need to be taken into consideration
- different justifications for prioritising different rights can lead to different actions so we should clarify the type and category of rights being discussed and balance different people's rights and the different rights of individuals
- children have rights to protection, provision and participation regardless of whether they are competent to consent
- the need to identify who holds parental responsibility and who has parental rights.

Reflection questions

(1.3) Reflection – Sarah

What do you think you would do in this situation?

Do we have a duty of care to Sarah?

Do we have a duty of care to her parents?

Would you see Sarah's parents despite Sarah's objections?

(1.13) Reflection

Are children and young people's 'best interests' different from adults 'best interests'?

(2.4) Reflection – Simon

Will you respect Simon's refusal to take his medication? What are the rights-based justifications for your decision?

(2.14) Reflection

Do all biological parents have legal parental responsibility? Can anyone else have legal parental responsibility?

(2.18) Reflection – when rights collide

What are John and his parents' rights?

Would you arrange for the individual therapy?

Would it make a difference to your reasoning if he did protest or need to be coerced? What would be your reasoning? Remember the usefulness of checking whether it is justified, appropriate, proportionate, applicable and necessary to override any rights.

References

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Further reading

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2. UNICEF. Convention on the Rights of the Child. [[website](#)]
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4. Fortin, J. (2003) *Children's Rights and the Developing Law*, Cambridge University Press, Cambridge.
5. Parents and children's rights. Direct.gov.uk [[website](#)]
6. Children's rights alliance for England [[website](#)]
7. The Children Act and reports [[website](#)]