

# Child-Friendly Justice in Mental Health Settings in England & Wales

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- ***Access to Justice: Children Detained under the Mental Health Act 1983***

- ***To examine the provision of information to young people detained under the Mental Health Act 1983***



# Detention rates in children under 18 years in England

- Year ending 31 March 2024:
  - **963** detentions reported (mainly s2/s3)
  - **689** 16 and 17 years
  - **274** 15 years and under
- Large number detained at least 50km away from their home



## Mental Health Act 1983

CHAPTER 20

### ARRANGEMENT OF SECTIONS

#### PART I

##### APPLICATION OF ACT

Section

1. Application of Act: "mental disorder".

#### PART II

##### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

###### *Procedure for hospital admission*

2. Admission for assessment.
3. Admission for treatment.
4. Admission for assessment in cases of emergency.
5. Application in respect of patient already in hospital.
6. Effect of application for admission.

###### *Guardianship*

7. Application for guardianship.
8. Effect of guardianship application, etc.
9. Regulations as to guardianship.
10. Transfer of guardianship in case of death, incapacity, etc., of guardian.

###### *General provisions as to applications and recommendations*

11. General provisions as to applications.
12. General provisions as to medical recommendations.
13. Duty of approved social workers to make applications for admission or guardianship.
14. Social reports.
15. Rectification of applications and recommendations.

A

# UN Convention on the Rights of the Child

**Article 12** : Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.



# UN Convention on the Rights of the Child

**Article 37** : Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.



# s.132 Mental Health Act 1983



Mental Health Act 1983

Hospital managers shall take such steps as are practicable to ensure the patient understands-



What rights of applying to a tribunal are available to them



Including giving requisite information both orally & in writing

# Guidelines on Child-Friendly Justice



- Children should be thoroughly informed on their rights to have recourse to judicial proceedings.
- **Guideline 2:** Children should receive information in a manner adapted to their age and maturity, in a language that they can understand, in a gender and culture sensitive form.
- **Guideline 4:** Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services such as specialized websites and helplines established.

# Methodology

- Mixed methods
- **Freedom of Information Requests** to find out:
  - *what* information is provided to detained children; and
  - *how* that information is presented
- **Diamond 16** – to assess detained children’s knowledge about the information provided to them



# Freedom of Information Requests

- Freedom of Information Act 2000
- Why do FOI requests?
- Sent by post/email/direct website request to 30 NHS Mental Health Trusts in 2019 and repeated in 2024. Sample selected to provide a geographical spread of NHS Trusts.
- Content analysis of information provided to see **what** is provided.
- Content analysis to see if information is provided in an **appropriate** way to children – used Flesch-Kincaid Formula to consider readability and whether child-friendly.





# FOI Request

“Please provide us with copies of any brochures, leaflets or information packs that you provide to detained children in compliance with section 132. If patients are directed to online or digital materials to provide them with the relevant patient information in compliance with section 132, please provide the links so that we can access the information in the same way that the patient would. We make this request in accordance with the Freedom of Information Act 2000.”

# Flesch-Kincaid Formula

Flesch Reading Ease	Flesch Kincaid Grade Level
<p>S2</p> <p>scores ranged from: 66 (easily understood by 13 to 15-year-old school students) to 92.1 (easy to read, easily understood by an average 11-year-old school student)</p>	<p>S2</p> <p>Scores ranged from: 2.4 (reading age of a 7 to 8 year old) to 8.1 (reading age of a 13-14 year old) and the average was 6.94 (reading age of an average 12-13 year old).</p>
<p>S3</p> <p>scores ranged from 69 (easily understood by 13 to 15-year-old school students) to 88.4 (easy to read). The average 69.3 (easily understood by 13 to 15-year-old school students)</p>	<p>S3</p> <p>ranged from 3.1 (reading age of an eight to nine year old) to 8.0 (reading age of a 13-14 year old) and the average was 7.2 (reading age of an average 13 year old).</p>

# FINDINGS

- Inaccurate & misleading information
- Incomplete information
- Lack of age-appropriate materials
- Lack of specialised websites



## ADMISSION TO HOSPITAL FOR ASSESSMENT

(Section 2 of the Mental Health Act 1983)

1. Patient's name	
2. Name of the person in charge of your care (your "responsible clinician")	
3. Name of hospital and ward	

### Why am I in hospital?

You are being kept in this hospital under section 2 of the Mental Health Act 1983. You have been examined by two doctors and they think that you have a mental disorder and you must stay in hospital so that the person in charge of your care (your responsible clinician) can find out what is wrong and how to help you.

### How long will I be here?

You can be kept here for up to 28 days.

During this time you must not leave unless your responsible clinician tells you that you may. If you try to leave the staff can stop you, and if you do leave you can be brought back.

If you were already being kept in hospital under section 4 of the Mental Health Act, then the time you have already been in hospital counts as part of the 28 days.

In your case the 28 days end on:

Date:

### What happens next?

Your responsible clinician will tell you if they think you are well enough to leave hospital. This could be at any time during the 28 days.

Your responsible clinician may decide that you need to be in hospital for longer than 28 days, in which case you may be kept in hospital under section 3 of the Mental Health Act instead. They must make this decision before the 28 days are up. If this happens, you will be given another leaflet that explains what it means.

### What treatment will I be given?

Your responsible clinician and other members of staff will talk to you about any treatment they think you need. In most cases you will have to accept their advice.

There are different rules for some special treatments, like electro-convulsive therapy (ECT). If the staff think you need one of these special treatments, the rules will be explained to you and you will be given another leaflet.

### Can I appeal?

Yes, you can appeal against the decision to keep you in hospital under section 2.

To do this, you can ask the Hospital Managers to let you leave. You can do this at any time. The Hospital Managers are a special committee of people set up within the hospital to decide whether people should be kept in hospital. They may want to talk to you before deciding whether to let you leave.

You can write to the Hospital Managers at:

Or you can ask a member of staff to help you contact the Hospital Managers.

Your nearest relative can also write to the Hospital Managers to say that they want you to be allowed to leave hospital. This leaflet explains further down who your nearest relative is. If your nearest relative does this, the Hospital Managers must let you leave within 72 hours unless your responsible clinician tells them you might be a danger to yourself or other people if you are allowed to leave. If this happens, it will be another six months before your nearest relative will be able to tell the Hospital Managers again that they want you to leave, if you are still being kept in hospital then.

You can also ask a Tribunal to say you should no longer be kept in hospital. You can only do this during the first 14 days of the 28 days you can be kept in hospital.

### What is a Tribunal and what happens?

The Tribunal is an independent panel which can decide whether you should be allowed to leave the hospital. It will hold a meeting with you and with staff from the hospital who know you. This meeting is called a "hearing". You can ask someone else to come to the hearing to help you, if you want. Before the hearing, the members of the Tribunal will read reports from the hospital about you and your care. One of the members of the Tribunal will also come to talk to you.

If you want to apply to the Tribunal you can write to:

The Tribunals Service  
PO BOX 8793  
5th Floor  
Leicester  
LE1 8BN  
Tel. 0845 2232022

You can ask a solicitor to write to the Tribunal for you and help you at the hearing. The hospital and the Law Society have a list of solicitors who specialise in this. You will not have to pay for help from a solicitor with this. It is free of charge under the Legal Aid scheme.

### Help from an independent mental health advocate

You are entitled to help from an independent mental health advocate if you want it. These advocates are independent of people involved in your care. They can help you get information about your care and treatment, why you are being kept in hospital, what it means and what your rights are. They can come to see you and help you understand what you are told by people involved in your care and treatment. If you want, they can help you talk to these people or they can talk to them for you. They can also help you with the Tribunal.

You can contact the independent mental health advocacy service yourself. There should be a telephone where you can contact the advocacy service and talk to them in private. You can ask a member of staff where this telephone is.

The telephone number for the advocacy service is:

If you do not want to contact the advocacy service yourself, you can ask a member of staff to contact the advocacy service for you. You can also ask your nearest relative to contact the advocacy service for you.

### Letting your nearest relative know

A copy of this leaflet will be given to the person the Mental Health Act says is your nearest relative.

There is a list of people in the Mental Health Act who are treated as your relatives. Normally, the person who comes highest in that list is your nearest relative. The hospital staff can give you a leaflet which explains this and what rights your nearest relative has in connection with your care and treatment.

In your case, we have been told that your nearest relative is:

If you do not want this person to receive a copy of the leaflet, please tell your nurse or another member of staff.

### Changing your nearest relative

If you do not think this person is suitable to be your nearest relative, you can apply to the County Court for someone else to be treated as your nearest relative instead. The hospital staff can give you a leaflet that explains this.

### Your letters

All letters sent to you while you are in hospital will be given to you. You can send letters to anyone except someone who has said they do not want to get letters from you. Letters to these people can be stopped by the hospital staff.

### Code of Practice

There is a Code of Practice that gives advice to the staff in the hospital about the Mental Health Act and treating people for mental disorder. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.

### How do I complain?

If you want to complain about anything to do with your care and treatment in hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedure, which you can use to try to sort out your complaint locally. They can also tell you about any other people who can help you make a complaint, for example an independent mental health advocate (see above).

If you do not feel that the hospital complaints procedure can help you, you can complain to an independent Commission. This is called the Care Quality Commission and it monitors how the Mental Health Act is used, to make sure it is used correctly and that patients are cared for properly while they are in hospital. The hospital staff can give you a leaflet explaining how to contact the Commission.

### Further help and information

If there is anything you do not understand about your care and treatment, a member of staff will try to help you. Please ask a member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this leaflet has not answered.

Please ask if you would like another copy of this leaflet for someone else.

## S132 RIGHTS CHECKLIST MHA 1983

**This checklist details all of your rights whilst you are detained under this section of the MHA. You can keep a copy of this if you would like to.** A record of any attempts to give you your rights under s132 will be recorded on your care record

### SECTION 2 - Admission for Assessment

You are being held under Section 2 of the Mental Health Act 1983 Amended 2007, known as Admission for Assessment

You have been detained for a period of up to 28 days initially, on the advice of 2 doctors, so that the doctors can find out what is wrong and how they can help you.

If you want to leave before the end of the 28 days, and you cannot get the agreement of your doctor, you can apply to the Hospital Managers or to the Tribunal Service to ask if they will consider your discharge. You have 14 days from the date that your section was enforced to apply to the Tribunal Service. If your doctor believes you don't have the capacity to do this, s/he will put in a request for a referral for you.

The Hospital Managers – sometimes referred to as Lay Managers - are a specifically selected panel of three or more people who are not employees of the hospital. These Managers have received suitable training to understand the Mental Health Act 1983 and how risk is assessed. They have the power to authorise your continued detention or discharge from detention as well as refer to the Tribunal Service and make recommendations on your behalf.

Your Nearest Relative also has the right to order your discharge, but must give your doctor 72 hours' notice in writing. If the doctor disagrees with this request, s/he can bar it.

You can only be kept in hospital longer than 28 days if your doctor feels that it would be in your best interests and he/she makes new arrangements. If your doctor is thinking of doing this, then he/she will talk to you about it before the end of the 28 days.

The doctor will talk to you about any treatment that is felt necessary and in most cases you will have to accept your doctor's advice.

If you try to leave before a doctor says you can, you can be stopped by the staff.  
If you do leave without permission, you can be brought back to the hospital.

If you want to apply to the tribunal

First-Tier Tribunal (Mental Health)  
PO BOX 8793  
5<sup>th</sup> Floor  
Leicester  
LE1 8BN  
Tel: 0300 123 2201



you can write to:

You must write your letter within 14 days of being on a section 2.

You can ask a solicitor to write to the tribunal for you and help you.

The staff can give you the names of solicitors who can help you.



2



Section 2 of the Mental Health Act says that 2 Doctors and a Social Worker have agreed you **MUST** stay here.



You **MUST** stay for up to 28 days so that Doctors can help you.



If you go before 28 days without the Doctor saying Nurses will bring you back.



After 28 days the Doctor will write to say if you go or stay.



Remember - if you think you can go before 28 days - talk or write to the Hospital Managers or your Doctor.



You can also write to the Mental Health Review Tribunal before 14 days and they will arrange a review.



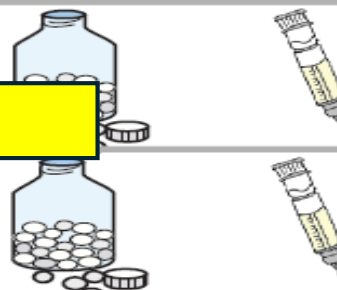
The Tribunal is 3 people from outside the hospital. You can either have a Solicitor and/or advocate to speak for you.



We can help you to write if this is difficult for you.



You are in this hospital to get the right help.



The Doctor will talk to you before giving you medicine.

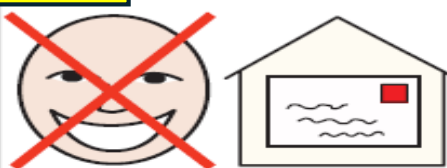
If you say 'NO' the Doctor can still give you medicine.



Sometimes a Doctor **MUST** talk to other staff before helping you.



If you are unhappy, speak to the Nurses, Doctor or write to the Hospital Managers.



If you are still unhappy you can write to the Mental Health Act Commission.

# headspace toolkit

For Young People who are  
Inpatients of Mental Health Services

*Your right to know  
and your right  
to be heard'*

**DOWNLOAD  
YOUR  
TOOLKIT** HERE

TOOLKIT

CONTACT

LINKS

MHC Website

DOWNLOADS

*What is  
the Toolkit?*

*Why express  
yourself?*

*Your Rights*

*Why am I  
in hospital?*

*What should  
the Unit  
be like?*

*Can I make  
my own  
decisions?*

*The Mental  
Health Act  
(the legal bit)*

## About the Mental Health Act & being detained under it (the legal bit )

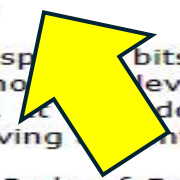
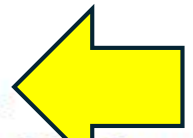
### The Mental Health Act 2001

The Mental Health Act is the law that relates to mental health care and treatment in Ireland. It applies both to adults (aged 18 and over) and young people.

There are some specific bits of the Act that only apply to young people although these bits are more relevant to you only if you have been diagnosed with a mental disorder. It sets down what must and mustn't happen if someone is diagnosed as having a mental disorder.

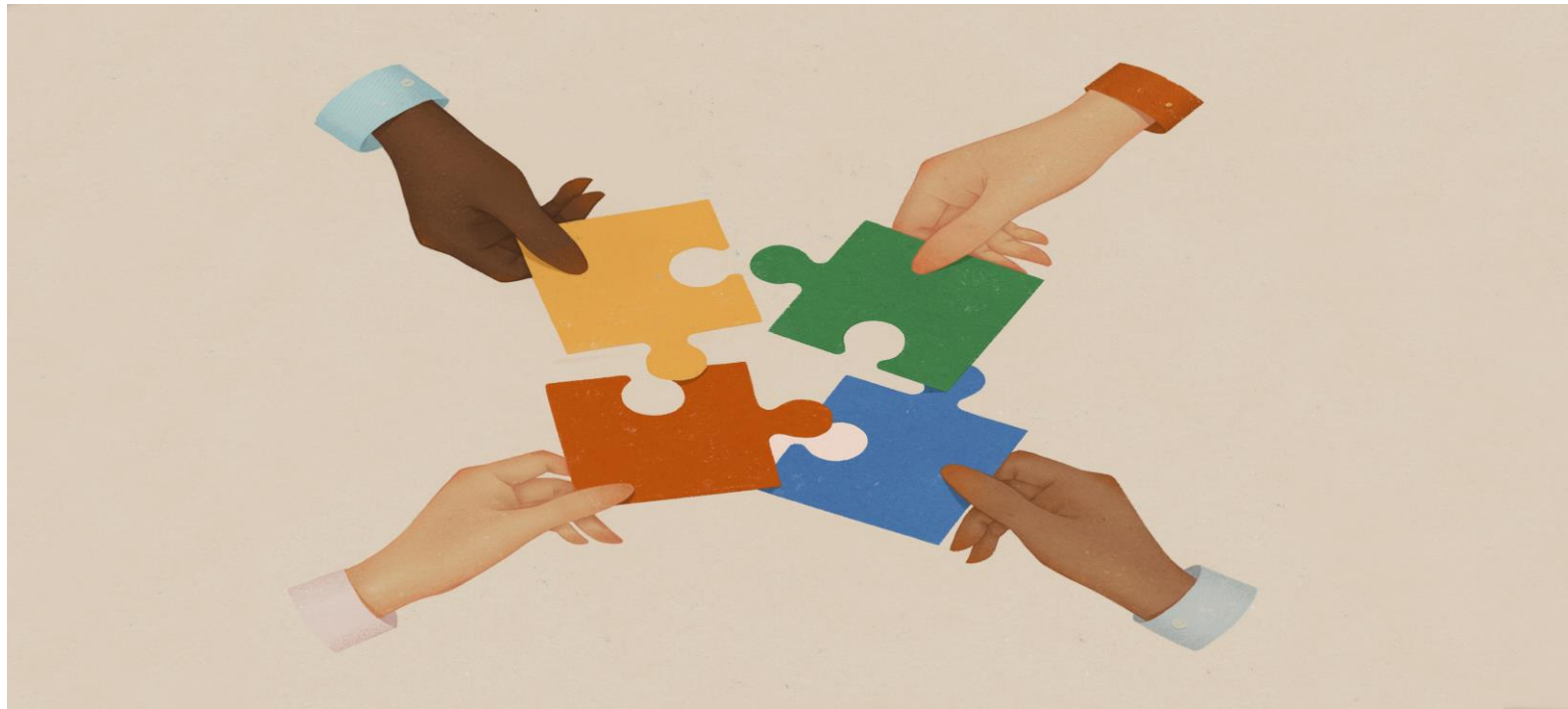
There is also a Code of Practice that sets out what should happen if a young person is admitted to hospital. The Code of Practice is not something that doctors and your team must follow, but they must have a very good reason not to.

The Act is set out in sections that deal with specific things, and these sections are numbered. So, for example, Section 3 sets out what is meant by a mental disorder.

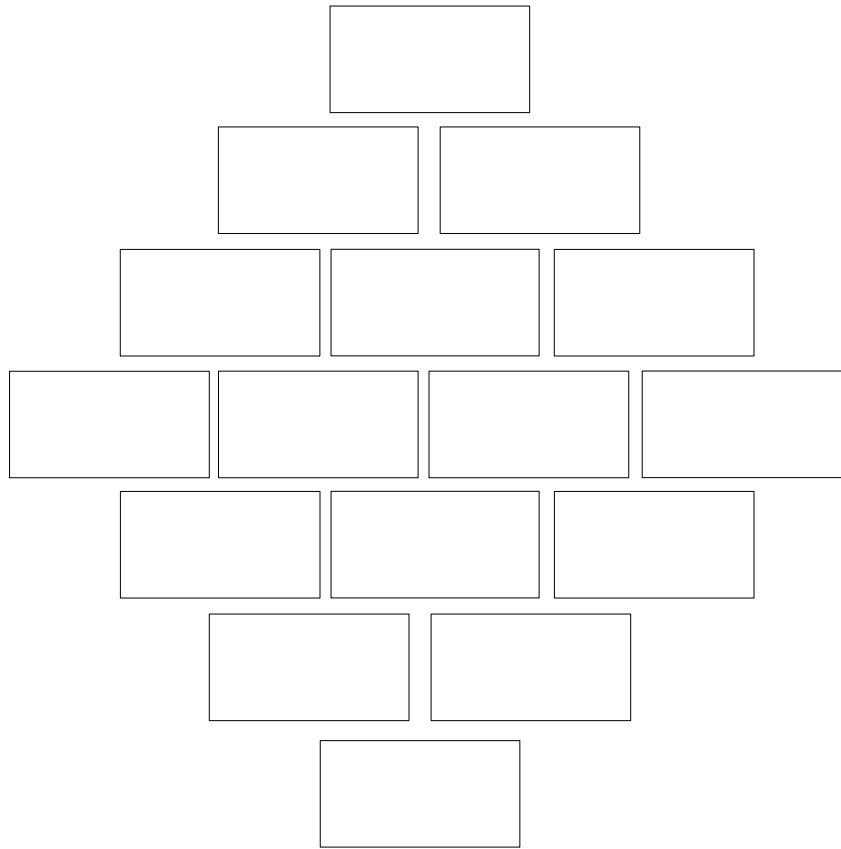


# PHASE II

## Engaging with detained children

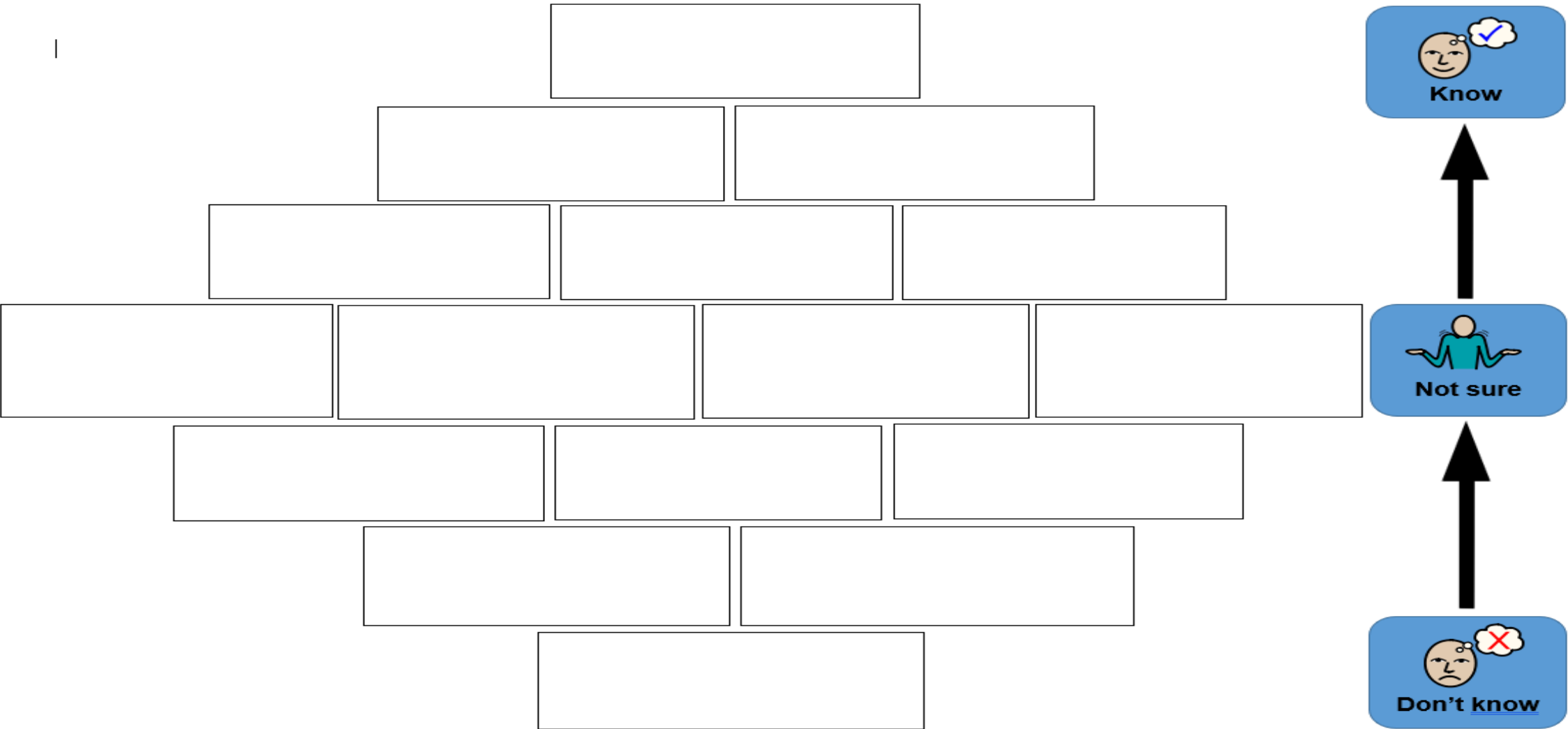


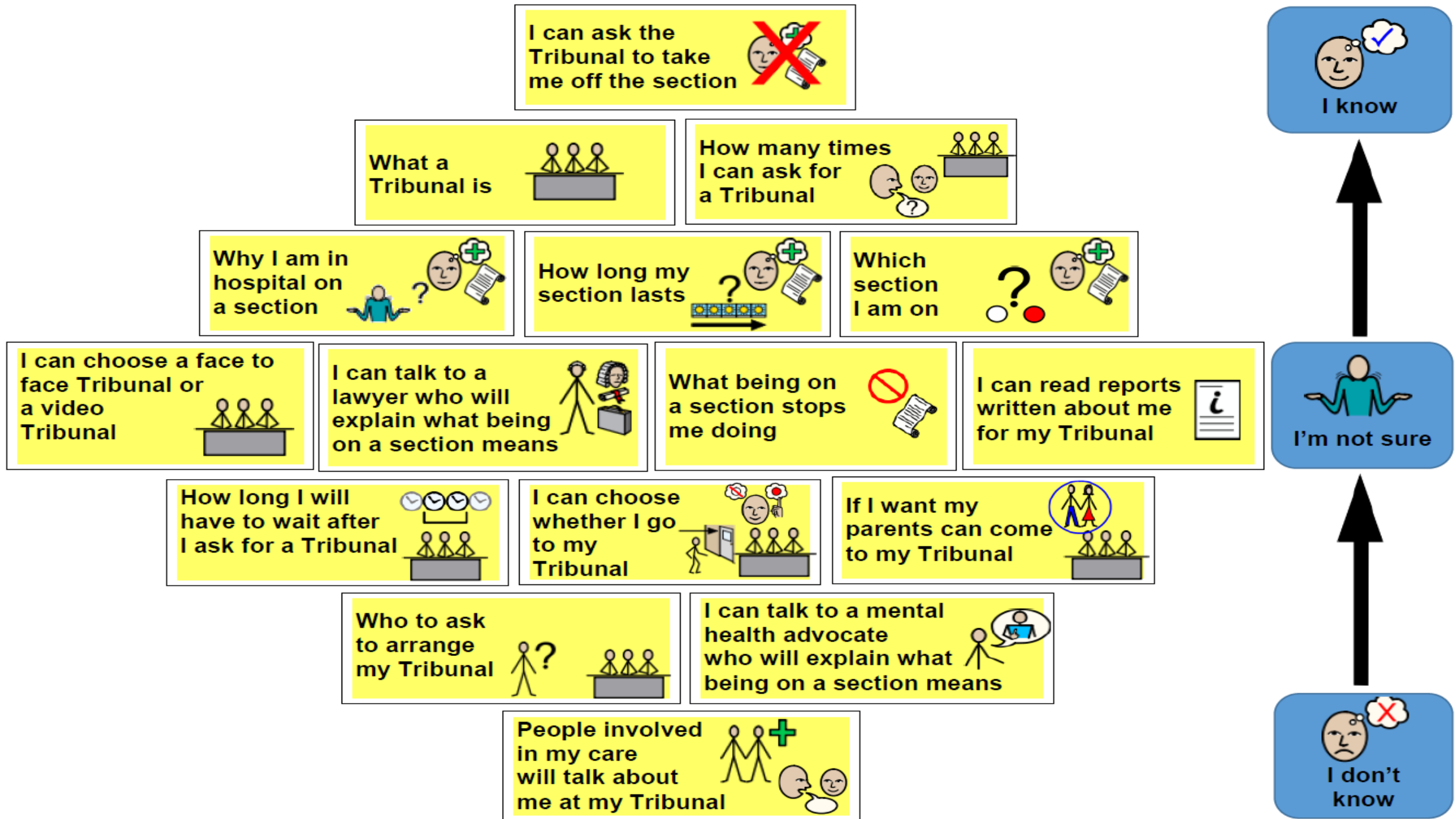
# What is a Diamond 16 and why use it?



- Visual data collection tool.
- Participants use cards with words, statements and/or pictures to rank them according to the descriptor being tested – here, knowledge of information.
- Simple and quick data collection tool.
- Can provide qualitative and quantitative data.
- Participants play an active role in the research.
- Analysis.

# Diamond 16 and detained children

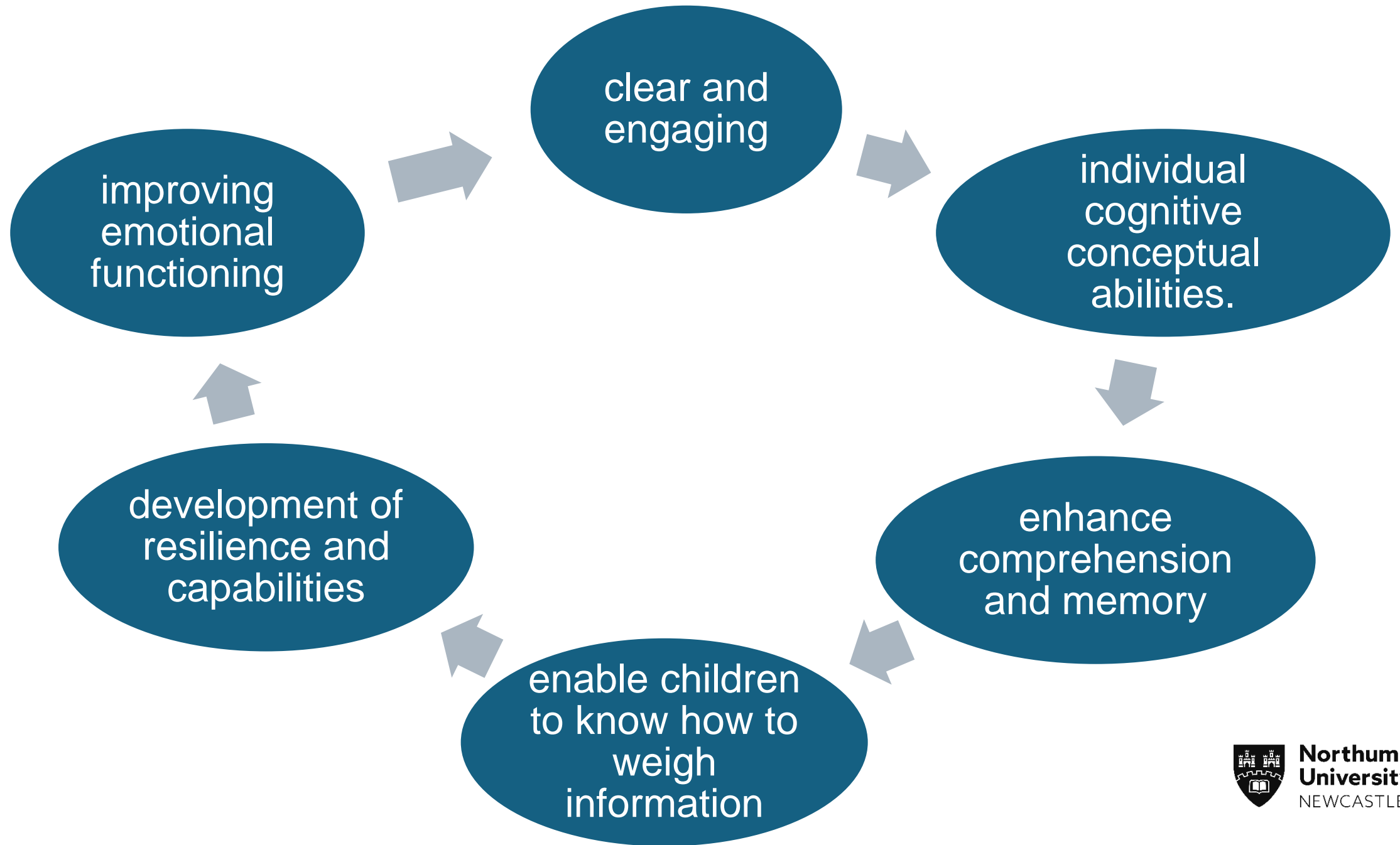




# Children participating in decision-making



- help them to separate fantasy from reality
- empowers children
- promotes the child's evolving autonomy







- a distinct injustice by which someone is harmed in their ‘capacity as a knower ‘
- the root cause of epistemic injustice - ‘structures of unequal power and prejudice which exclude some, but not others, from participation in knowledge practices’

M. Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: OUP, 2007)

A. Hanna, ‘Silent Epistemologies’ (2022) 31(1) *The International Journal of Children's Rights*, 40

# A Lo. 'Hermeneutical Injustice and Child Victims of Abuse' (2023) 37(3) *Social Epistemology* 364



- obstruct children from participation, by providing the information in a way which undermines children's participation and agency
- information regarding how they could exercise their participatory rights was presented in a way which ensured that the child's participatory rights were inevitably marginalised.
- structural environment facilitates young people who wish to express and articulate their views, experiences and opinions

**R Ritunnano, 'Overcoming Hermeneutical Injustice in Mental Health: A Role for Critical Phenomenology ' (2022) 53(3) *Journal of the British Society for Phenomenology* 243**

- a subject does not have the interpretive resources to adequately understand or express some important aspect of her experience;
- the lack of interpretive resources is due to the fact that the subject belongs to a social group which is hermeneutically marginalised;
- the same subject is harmed by this lack of meanings.

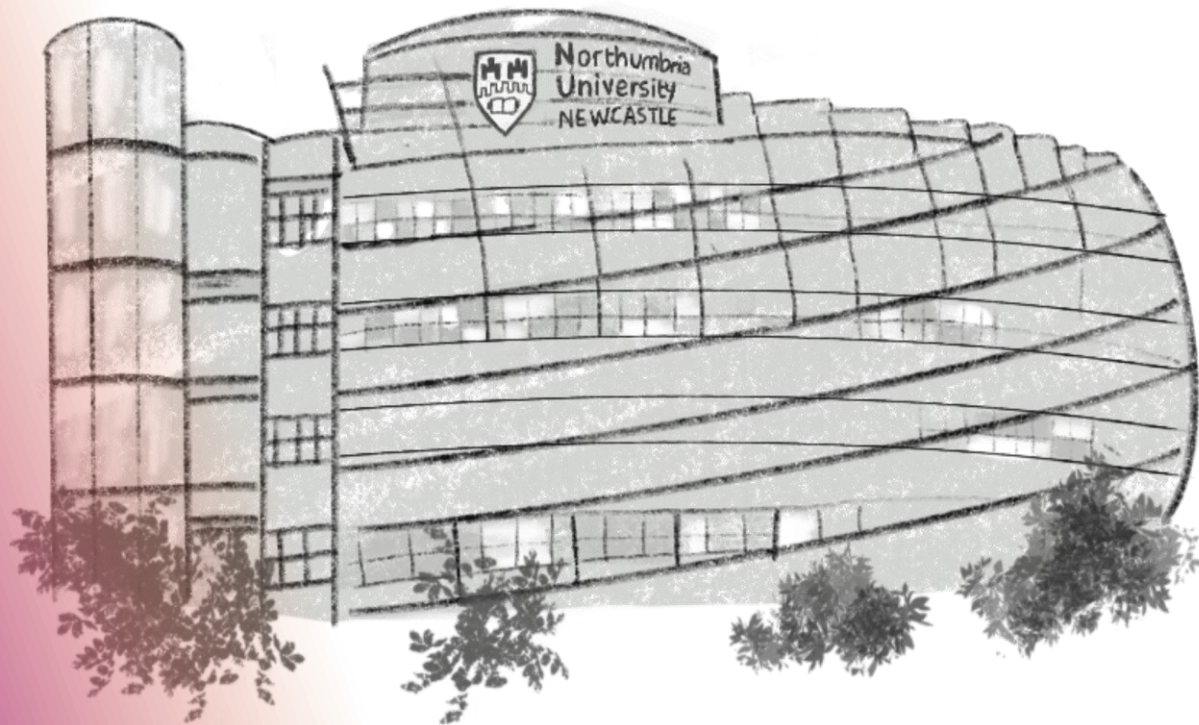
# Like to hear more about the study & our findings?



**Children's Rights European Academic Network (CREAN) webinar:**

**Children Challenging Their Detention under the Mental Health Act 1983: The Right to Receive Child-Friendly Information as a Core Feature of Their Participation Rights**

**Wednesday 13<sup>th</sup> January 2025, 14:00-15:00 Online (via Zoom)**



## Contact us:

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