The Gillick Judgment

Contraceptives and the under 16s: House of Lords ruling

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Last week, in a judgment anxiously awaited by doctors and family planning organisations, the House of Lords ruled that doctors can in certain cases lawfully prescribe contraceptives for the under 16s without a parent's consent. By the narrowest of majorities, three to two, their lordships set aside the declaration granted to Victoria Gillick by the Court of Appeal last December that the DHSS's advice that parental consent could be dispensed with in some circumstances was unlawful. The department's circular, withdrawn after the Court of Appeal ruling, has now been reinstated pending a full review of the official guidance on young people and contraceptives in the light of the House of Lords' judgment.

Mrs Gillick's crusade began in 1981 when she wrote to her area health authority, West Norfolk and Wisbech, expressly forbidding any medical staff employed by the authority to give contraceptive or abortion advice or treatment to any of her four daughters (since increased to five) while under 16 without her consent—not that Mrs Gillick thought the issue was likely to arise in the case of her own daughters, all strictly nurtured Catholics. But she objected to the DHSS guidance which, while expressing the hope that the doctor would try to persuade a child to involve parents and would proceed from the assumption that it would be most unusual to provide advice without parental consent, nevertheless allowed doctors to prescribe contraceptives without consent in exceptional cases.

Disagreement among judges

Having failed to win an assurance from the health authority, Mrs Gillick started proceedings against the authority and the DHSS. She sought declarations that the guidance was unlawful and wrong, and that no doctor or professional person employed by the authority might give contraceptive or abortion advice or treatment to any of her children below the age of 16 without her consent.

In the high court Mr Justice Woolf refused to grant the declarations and dismissed the action. But the Court of Appeal unanimously allowed Mrs Gillick's appeal—ruling that parental consent could be dispensed with only in an emergency or by court order—and granted the declarations she sought.

In the House of Lords the senior law lord, Lord Fraser of Tullybelton, Lord Scarman, and Lord Bridge of Harwich concluded that the DHSS advice was not unlawful, with Lord Brandon of Oakbrook and Lord Templeman dissenting.

Of the nine judges in three courts who have considered the case, therefore, five have ruled in Mrs Gillick's favour, and four have come down against her. This lack of judicial unanimity is a measure not only of the absence of clear legal precedent pre-Gillick but also of the difficult issues of public policy that the case raises. Now, ironically, thanks to Victoria Gillick, doctors will have a much firmer legal framework within which they can confidently work without fear of infringing the law.

Firmer legal framework for doctors

In their judgments Lords Fraser and Scarman fully reviewed the statute law and case law touching on the issue of consent by the under 16s. Lord Fraser concluded that there was "no statutory provision which compels me to hold that a girl under the age of 16 lacks the legal capacity to consent to contraceptive advice, examination, and treatment provided that she has sufficient understanding and intelligence to know what they involve."

He added: "Parental rights to control a child do not exist for the benefit of the parent. They exist for the benefit of the child and they are justified only in so far as they enable the parent to perform his duties towards the child and towards other children in the family." He quoted with approval Lord Denning's statement in *Hewer v Bryant* that the legal right of a parent to the custody of a child even before the age of majority is "a dwindling right which the courts will hesitate to enforce against the wishes of a child, and the more so the older he is."

The solution to the problem in the appeal, Lord Fraser continued, could no longer be found by referring to rigid parental rights at any particular age; it depended on a judgment of what was best for the welfare of the particular child. "There may be circumstances in which a doctor is a better judge of the medical advice and treatment which will conduce to a girl's welfare than her parents."

What doctors should do

The crux of Lord Fraser's judgment lays down more specific guidelines for doctors than the DHSS advice:

"The only practicable course is, in my opinion, to entrust the doctor with a discretion to act in accordance with his view of what is best in the interests of the girl who is his patient. He should, of course, always seek to persuade her to tell her parents that she is seeking contraceptive advice, and the nature of the advice that she receives. At least he should seek to persuade her to agree to the doctor's informing the parents. But there may well

be cases, and I think there will be some cases, where the girl refuses either to tell the parents herself or to permit the doctor to do so, and in such cases the doctor will, in my opinion, be justified in proceeding without the parents' consent or even knowledge provided he is satisfied on the following matters:

- (1) that the girl (although under 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 begin or 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."

He warned, however, that doctors ought not to regard this as a licence to disregard the wishes of parents whenever they found it convenient.

Parental rights founded on parental duties

The judgments of Lord Fraser and, particularly, Lord Scarman show the House of Lords exercising its creative function in extracting the principles from earlier cases, discarding outdated details, and applying the principles to present day circumstances. The principle of the law, said Lord Scarman, was that parental rights were derived from parental duty and existed only so long as they were needed for the protection of the person and property of the child. Parental right, he said, yielded to the child's right to make his own decisions when he reached a sufficient understanding and intelligence to be capable of making up his own mind.

With regard to contraceptive advice, he said, it was not enough for a girl to understand the nature of the advice given. "She must also have a sufficient maturity to understand what is involved. There are moral and family questions, especially her relationship with her parents; long term problems associated with the emotional impact of pregnancy and its termination; and there are the risks to health of sexual intercourse at her age, risks which contraception may diminish but cannot eliminate. It follows that a doctor will have to satisfy himself that she is able to appraise these factors before he can safely proceed upon the basis that she has at law capacity to consent to contraceptive treatment."

Dissenting, Lord Brandon of Oakwood said that to have sexual intercourse with a girl under 16 was a criminal act, and anything which promoted, encouraged, or facilitated such an act might itself be a criminal offence and must, in any event, be

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contrary to public policy. In his view, to give advice about contraception and prescribe contraceptives necessarily involved promoting, encouraging, or facilitating the act.

Also basing his conclusions largely on public policy considerations, Lord Templeman said a doctor was not entitled to decide whether a girl under the age of 16 should be provided with contraceptive facilities if a parent who was in

charge of her was ready and willing to make that decision in exercise of parental rights.

But a majority of the highest court in the country has restored the doctor's discretion, and this will remain the law unless and until Mrs Gillick takes her case further, to the European Commission of Human Rights—a step she has been quoted as saying she does not intend to take—or Parliament legislates to change it.

person in loco parentis) from the earliest stage of consultation. If the patient refuses to allow a parent to be told, the doctor must observe the rule of professional secrecy.

"But doctors must remain free to prescribe without notifying the parents in cases where they are satisfied of the emotional and physiological maturity of the girl and that it is in the best interests of her health that she should be given contraceptive advice and treatment."

BMA comments on Gillick judgment

The BMA issued the following statement following the House of Lords judgment.

"This important decision means that young girls who need help can once again go to their doctors for contraceptive advice, in confidence. The wide ranging judgment clarifies the right of doctors to help their young patients within the law and following the BMA's existing ethical guidance.

"The BMA has stated publicly on several occasions that early sexual intercourse is undesirable, both medically and emotionally. It has to be recognised that not all children are fortunate enough to have parents who are able or willing to give them support. It is these disadvantaged and vulnerable girls who are most at risk. In such cases the doctor may be the only responsible adult to whom these girls may turn. Doctors will continue to try to persuade young girls to involve their parents wherever possible.

"We know that a proportion of girls under the age of 16 are sexually active and we are satisfied that the guidance in the BMA's *Handbook of Medical Ethics* is wise and sensible advice to doctors. We believe that our guidance reflects a moderate consensus allowing doctors to provide advice to girls from both stable family backgrounds, where the profession is almost invariably successful in persuading girls to involve their parents, and also to deal with cases where parental relationships with the child have broken down irretrievably and where the doctor may be the girl's only contact with a responsible adult.

"Lord Fraser says 'It is notorious that children of both sexes are often reluctant to confide in their parents about sexual matters.' For this reason, the doctor should assess the patient's degree of parental dependence and seek to persuade the patient to involve the parents (or guardian or other

DHSS reinstates contraceptive advice

Following the House of Lords decision on contraceptive advice for the under 16s (p 1208) the Department of Health's guidance, which was suspended in December 1984, is being reinstated immediately. It is, however, to be reviewed. Mr Barney Hayhoe, Minister for Health, said: "We are studying the full text of the Law Lords' judgments very carefully and are drawing their conclusions to the attention of doctors, health authorities and all others responsible for providing services. The department's guidance relating to the provision of contraceptive services to young people under 16 is being reinstated with immediate effect but will be fully reviewed. The review will take account of the details of the Law Lords' judgments and of the wide range of views expressed on this issue. When the review is completed I will make a further statement."

MEDICAL NEWS

Nobel peace prize to IPPNW

The Nobel peace prize of \$250 000 has been awarded to International Physicians for the Prevention of Nuclear War. The organisation was founded in 1980 by Dr Bernard Lown, professor of cardiology at the Harvard School of Public Health in the United States, and his copresident, Evgueni Chazov, a Soviet academician and director general of the USSR Cardiology Research Centre. IPPNW is a federation of national affiliates, of which the United Kingdom has two—the medical Campaign Against Nuclear Weapons and the Medical Association for Prevention of War. Total membership of the IPPNW is around 135 000 in 41 countries (about 4000 in the UK). Dr Lown visited BMA House on 18 October and is pictured in the courtyard with Dr John Dawson (right), BMA under secretary responsible for the board of science, which prepared the report *The Medical Effects of Nuclear War*.

The federation is non-political, and its primary objective is to alert the people and governments of the world, both West and East, to the medical dimensions of the nuclear arms race: neither capitalism nor communism is the threat, but rather the weapons themselves. Because medicine could not be effective in the aftermath of a nuclear war IPPNW believes that doctors have a responsibility to work for the prevention of this ultimate epidemic. Moreover, many diseases and health problems, particularly in the Third World, could be eradicated if just some of the billions of dollars

spent each year in the nuclear arms race were used for health. In July IPPNW set out a "medical prescription"—that there should be a moratorium on all nuclear explosions, which should remain in effect until the successful negotiation and signing of a universal, comprehensive test ban treaty.

The council of IPPNW has yet to meet to decide

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how to spend the prize money. Projects that are planned, however, include regional conferences, a global tour by members from all parts of the world to convey the federation's message, and a tour of Africa by some members so that on their return home they can spread awareness of health needs, particularly in the Third World, that are not being met.

Nobel prize for medicine

The Nobel prize for medicine has been won by two American doctors for their work in elucidating the metabolism of cholesterol. Professors Joseph L.

Goldstein and Michael S Brown of the South Western Medical School of the University of Texas, Dallas, discovered the cell receptors that remove low density lipoproteins from the blood and allow them into the cell, where cholesterol plays an important part in maintaining their structure and function. They also showed that some patients have very few receptors, because of a genetic defect, with the result that blood concentrations of low density lipoproteins rise, leading eventually to atherosclerosis. In awarding the prize the Nobel committee commented that the Americans' research had opened up an approach to preventing atherosclerosis through increasing the number of receptors.

Number of people seriously injured at work increases

For the third year running there has been an increase in the number of people seriously injured at work, said David Eves, chief inspector of factories, in a press release to launch the Health and Safety Executive's report, *Manufacturing and Service Industries 1984 Report*. On average, each week in this country in 1984 three people were killed on construction or demolition sites and two were killed in some kind of maintenance work. Determined efforts must be made to improve this.

The report describes some of the achievements of the HM Factory inspectorate and industry in tackling occupational health and safety problems last year. The inspectorate is pursuing campaigns on roof work, steel erection, painting, and demolition and is helping to enforce the recent Asbestos Licensing Regulations and the first stage of the Control of Industrial Major Accident Hazards Regulations. Mr Eves emphasised the inspectorate's determination in tackling problems in occupational health and safety, but industry, and