

The House of Lords' decision in *In Re F* [1989] 2 WLR 1025; [1989] 2 All ER 545

5. This decision helped to clarify the common law in relation to general medical and surgical treatment of people who lack the capacity to give consent. No-one may give consent on behalf of an adult but the substantive law is that a proposed operation or treatment is lawful if it is in the best interests of the patient and unlawful if it is not. Guidance given in that case is set out below.

- i. In considering the lawfulness of medical and surgical treatment given to a patient who for any reason, temporary or permanent, lacks the capacity to give or to communicate consent to treatment, it was stated to be axiomatic that treatment which is necessary to preserve the life, health or well-being of the patient may lawfully be given without consent.
- ii. The standard of care required of the doctor concerned in all cases is laid down in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582, namely, that he or she must act in accordance with a responsible body of relevant professional opinion.
- iii. In many cases, it will not only be lawful for doctors, on the ground of necessity to operate or give other medical treatment to adult patients disabled from giving their consent, it will also be their common law duty to do so.
- iv. In the case of the mentally disordered, when the state is permanent or semi-permanent, action properly taken, may well transcend such matters as surgical operation or substantial medical treatment and may extend to include such (humdrum) matters as routine medical and dental treatment and even simple care such as dressing and undressing and putting to bed.
- v. In practice, a decision may involve others besides the doctor. It must surely be good practice to consult relatives and others who are concerned with the care of the patient. Sometimes, of course, consultation with a specialist or specialists will be required; and in others, especially where the decision involves more than a purely medical opinion, an inter-disciplinary team will in practice participate in the decision.

Documentation

6. Proposals for treatment should as a matter of good practice, be discussed with the multidisciplinary team and where necessary other doctors and, with the consent of the patient where this is possible, with their nearest relative or friend. The decisions taken should be documented in the clinical case notes. In cases involving anaesthesia, and surgery, or where the treatment carries substantial or unusual risk it would also be advisable for documentation to record that the patient is incapable of giving consent to treatment and that the doctor in charge of the patient's treatment is of the opinion that the treatment proposed should be given and that it is in the patient's best interests. A model form is suggested to register medical opinion – where a patient is incapable of giving consent (*Appendix B*).