

undergone a lot of medical and surgical interventions may be able to weigh for themselves whether the anticipated improvement is worth another period in hospital and it may be appropriate to defer to their opinions.

3:3 Consent to examination and treatment

3:3.1 Prerequisites for valid consent

In order for the consent of any person to be valid it must be based on competence, information and voluntariness. In our view, this can be broken down into several fundamental points:

- a) the ability to understand that there is a choice and that choices have consequences;
- b) a willingness to make a choice (including the choice that someone else choose the treatment);
- c) an understanding of the nature and purpose of the proposed procedure;
- d) an understanding of the proposed procedure's risks and side effects;
- e) an understanding of the alternatives to the proposed procedure and the risks attached to them, and the consequences of no treatment;
- f) freedom from pressure.

3:3.1.1 Gillick and the legal position on minors' consent

The general legal position has been briefly mentioned in 3:1.2.1. This was challenged in 1982, when Mrs Gillick went to court seeking a declaration that the advice issued by the DHSS, which said that under-16s could be treated without parental consent, was wrong and did not reflect the true legal position. After recourse to the Court of Appeal (which ruled in favour of Mrs Gillick) and House of Lords (which ruled against her), the final judgement confirmed that people under 16, who understand what is at stake, can legally consent to therapeutic treatment without reference to their parents. This continues to be the legal position. If the minor has enough maturity to understand the implications of what is being proposed and the treatment is in his or her interests, the treating doctor is not at risk of civil action or criminal prosecution. If the proposed treatment is not in the interests of the person under-16 because, for example, it involves donation of tissue to another patient or participation in non-therapeutic research, parents should be involved and even their consent may not be sufficient, either legally or ethically, if the procedure involves risk or suffering (see 3:3.5, and 3:6 and 3:7 below).

3:3.1.2 Consent to contraception and abortion

The focus of Mrs Gillick's case was the provision of contraceptive advice or treatment. She wanted the health authority to instruct doctors not to give contraceptive or abortion advice or treatment to any of her daughters without parental consent. The Lords were divided on the issue, although the majority (three to two) took the view mentioned above, that a mature minor could decide for herself. The conflicting legal views stated at the various levels of the appeal may be thought to reflect a general disquiet about the issues involved. Medical evidence shows that early sexual intercourse increases the risks of sexually transmitted disease and cervical cancer. There may also be a danger of psychological or emotional damage. Many people, however, believe that some under-16-year-olds will have sexual intercourse regardless of the doctor's opinion and that they are better protected if they have at least been advised, in confidence, of the risks and if they have access to measures which minimise those risks. The BMA has tended towards the stance that establishing a trusting relationship between the patient and doctor at this stage will do more to promote health than if doctors refuse to see young patients without parental consent.

All agree, however, that a request for contraception by a girl under 16 who refuses to allow her parents to be informed poses problems for doctors. In considering such cases, there are a number of issues which doctors should consider:⁷⁵

- i) the doctor should assess whether the patient understands his or her advice;
- ii) the doctor should discuss and encourage parental involvement and explore the reasons if the patient is unwilling to inform her parents;
- iii) the doctor should take into account whether the patient is likely to have sexual intercourse without contraceptive treatment;
- iv) the doctor should assess whether the patient's physical or mental health or both are likely to suffer if she does not receive contraceptive advice or treatment;
- v) the doctor must consider whether the patient's best interests require him or her to provide contraceptive advice or treatment or both without parental consent.

Some object that this is a counsel of perfection, impossible for a busy doctor to carry out. In general practice and family planning clinics, however, experienced nurses are often able to provide appropriate counselling and to discuss the medical and emotional implications with the patient. The BMA and a number of other bodies (RCGP, FPA and Brook Advisory Centres) have been alarmed by the rising pregnancy rate