Consent: The Story of Gillick

Mrs Victoria Gillick was outraged by a Department of Health circular published in the early 1980s that offered guidance to practitioners offering family planning services to under 16 year olds. She took on a legal case to try to have this circular declared unlawful, arguing that such treatment should only be given with parental consent.

The story of the case illuminates many aspects of the care of older children in all clinical spheres, not only family planning.

At the time of the case, the FLRA (1961) had defined the age at which minors could consent to medical procedures at 16. At that age one could consent to any procedure, including receiving family planning advice and treatment. Thus consent was defined at that time by a “status criterion”- age 16.

Doctors and nurses were sometimes faced with under 16s presenting for family planning advice and treatment and found themselves in a grey legal area. This led to the Department of Health circular stating that in strictly limited circumstances, staff could treat under 16s.

The trial judge in the High Court considered several issues. Could an under 16 have sufficient mental maturity to consent to family planning treatment? Was it aiding and abetting unlawful sexual intercourse for a healthcare professional to provide contraception? The Sexual offences act 1956 proscribes such sexual intercourse.

The judge held that such a person could have sufficient mental maturity and in this he followed a similar Canadian case. He also stated that it was not an offence for a healthcare professional to prescribe contraception as an accessory to unlawful sexual intercourse.

Mrs Gillick was unimpressed and appealed. The three appeal court judges took a different view: they said that parents had duties to their children and rights over them and could prevent their children from consenting to procedures they found wrong.

So for a period of time, clinicians found themselves in a therapeutic limbo. Faced with under 16s in need of contraceptive advice, they could do nothing lawfully other than advise against sex.
The Health Authority involved appealed to the House of Lords and the issues were raised again in that court. In the end, Mrs Gillick lost the case, the majority holding against her. The most important reasoning is much-quoted. Lord Scarman held that parents do indeed have duties to their kids, and rights over them “only so far as to discharge those duties”. So when a child grows and matures, and the duties needed fall away, then so do the rights. And thus parents cannot prevent a minor consenting to family planning treatment if they are of sufficient maturity.

Lord Fraser defined 5 famous criteria that expanded on this

1) a minor should understand the doctor’s advice
2) the doctor could not persuade the minor to discuss with her parents
3) she was likely to have sexual intercourse even if treatment were not offered
4) unless she received contraceptive advice, her physical or mental health (or both) would suffer
5) her best interest required treatment or advice without parental consent.

The first of these is the most important as it applies to all medical treatment and advice.

The Law Lords thus reset the legal standard of consent in minors from a status criterion at age 16 to a capacity criterion as understanding.

Mrs Gillick’s role in all of this has been to lend her name to the legal standard of competence in minors. Gillick competence means that a minor has understanding and can thus consent.

Dr John Spicer 2005