

Harm reduction and the under-16s

Judicial decisions on under-age contraception can help negotiate the legal minefield of harm-reduction work with juveniles

A NUMBER OF drug agencies are trying to formulate policies in relation to young people still legally the responsibility of their parents.¹

There is particular concern about offering needle exchange services without parental consent. Staff need to assess the level of professional risk-taking, while not discriminating on grounds of age.

Much can be learned from the celebrated case of *Gillick v West Norfolk and Wisbech AHA* and the DHSS, involving the provision of contraceptive advice and treatment to under-16s without parental consent, which was eventually dealt with by the House of Lords.² In the House of Lords judgment, some useful points were made about responsible practice which could as easily be applied to young drug injectors as to sexually active young women.

In the *Gillick* case conflict arose over Department of Health guidance on family planning services to young people, which recommended that in exceptional circumstances, under-16s could be treated without parental consent.

The guidance recognised that abandoning the principle of doctor/patient confidentiality for under-16s "might cause some not to seek professional advice at all. They could then be exposed to the immediate risks of pregnancy and of sexually transmitted diseases, as well as long-term physical, psychological and emotional consequences."

Strong parallels can be drawn between the harm-reduction objectives in *AIDS and Drug Misuse Part 1* from the Advisory Council on the Misuse of Drugs and the guidance at issue in the *Gillick* case. In their judgment, the Lords held that in general the rights of parents applied to duties over the child's welfare. However, circumstances might arise when a doctor (and other professionals) could use their discretion to act in the child's best interests without parental consent. Such circumstances would, the Lords said, be exceptional and might be regarded as action taken in an emergency.

Lord Fraser of Tulleybelton was one of the three who delivered the majority verdict in *Gillick*. I have adapted his judgment simply by substituting 'drugs' for 'contraceptive', and 'young person' for 'girl' or 'she'. Lord Fraser

said treatment without parental consent might be justified where a doctor is satisfied:

- ① that the young person, although under 16 years of age, will understand his advice;
- ② that he cannot persuade the young person to inform parents or to allow him to inform the parents that the young person is seeking drugs advice;
- ③ that the young person is very likely to begin or to continue using drugs with or without drugs treatment;
- ④ that unless the young person receives drugs advice or treatment the young person's physical or mental health or both are likely to suffer;
- ⑤ that the young person's best interests require him to give the young person drugs advice or treatment or both without parental consent.

Throughout the judgment reference was made to "clinical judgment". It was recognised that professionals other than doctors work with young women seeking contraceptive advice, but clearly the Law Lords were relying on the doctor's capacity to make medical judgments and supervise non-medical staff.

Effectively, the judges delegated responsibility for decisions about under-16s to professionals (doctors) better qualified than they to deal with such cases on an individual basis. This implies that professionals must themselves resolve the tension between parental rights and confidentiality, judging each case on its merits.

Many drug services employ a variety of professionals, often advised by medical staff. Involving a doctor in the delivery of services to young people will minimise legal risks and the possibility of drug services being ostracised by professionals in other agencies.

Careful thought should also be given to the intention of the person delivering the treatment. In *Gillick*, the judges held that those honestly acting in the best interests of the girl would not be guilty of aiding and abetting a criminal offence – in this case, unlawful intercourse. But a doctor who instead intended to facilitate unlawful sex could be guilty of a criminal offence.

Drug agency staff successfully handled this kind of difficulty some time ago when setting up needle exchanges. However, given the sensitivity of dealing with young people, it is worth thinking carefully about the way services are delivered. This may involve internal staff communication, supervision and support, as well as policy issues. A degree of professional consensus among drug services about treatment responses and standards of care for young people would afford some legal protection to staff working in this area. ■

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1. The concern has been over the under-16s, though in relation to drugs work, 17 years of age is the more relevant cut-off point as until then the youngster is in several ways still their parents' responsibility. Treatment without parental consent could be extended to treatment without the consent of those standing in loco parentis – for example, local authority staff – if appropriate conditions are satisfied.

2. *All England Law Reports*: 1985, 3, p.402-437.