

## **Editorial**

Last October the media in Britain paid massive attention to the legal dispute concerning the right of doctors in certain cases to prescribe contraceptives lawfully to children under the age of 16 without a parent's consent. The issue was finally settled on appeal to the highest court of the land, the House of Lords, where by the narrowest majority of 3:2 the Law Lords decreed that doctors can treat children provided that the child has been properly informed and understands what is involved.

The ruling is of great importance to paediatricians, for, though most will not be involved with issuing contraceptives to children, they sometimes do find themselves being consulted by children unknown to their parents or, more often, at variance with the child's parents over the correct management for a child. Those who read the full report of the judgment, which was published in the Law Reports earlier this year, cannot fail to appreciate the importance of the ruling for the future, for it means that absolute parental authority has gone.

Lords Fraser, Scarman, and Bridge decided that the parental right to control a minor child deriving from parental duty was 'a dwindling right which existed only in so far as it was required for the child's benefit and protection; that the extent and duration of that right could not be ascertained by reference to a fixed age, but depended upon the degree of intelligence and understanding of that particular child and a judgment of what was best for the welfare of the child; that the parents' right to determine whether a child under 16 should have medical treatment terminated when the child achieved sufficient intelligence and understanding to make that decision itself; that although in the majority of cases parents were the best judges of matters concerning the child's welfare, there might be exceptional cases in which a doctor was a better judge of the medical advice and treatment which would conduce to a child's welfare.'

In their separate judgments they make clear the way in which they arrived at these conclusions. Lord Fraser pointed out that 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 insofar as they enable the parent to perform his duty towards the child and towards other children in the family. He did not believe that 'a young person remains in fact under the complete control of his parents until he attains the definite age of majority, now 18 in the United Kingdom, and

that on attaining that age he suddenly acquires independence. In practice most wise parents relax their control gradually as the child develops and encourage him or her to become increasingly independent. Moreover, the degree of parental control actually exercised over a particular child does in practice vary considerably according to his understanding and intelligence and it would, in my opinion, be unrealistic for the courts not to recognise these facts.'

Lord Scarman, in recognising the difficulties when dealing with a field of medical practice where parental right and a doctor's duty may point in different directions, acknowledged that 'parental rights clearly do exist, and they do not wholly disappear until the age of majority. Parental rights relate to both the person and the property of the child custody, care and control of the person and guardianship of the property of the child. But the common law has never treated such rights as sovereign or beyond review and control. Nor has our law ever treated the child as other than a person with capacities and rights recognised by law. The principle of the law is that parental rights are derived from parental duty and exist only so long as they are needed for the protection of the person and the property of the child.' Further on he states that 'parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision.'

All the Law Lords acknowledged the problem of determining when a child had achieved a sufficient understanding and intelligence to enable him or her to understand fully the nature of the medical treatment proposed. None doubted that a 15 year old who had fallen and broken an arm would well understand the nature of the investigations and treatments that a doctor might propose. But with younger children there is less clarity. No court can decide on an absolute age and as absolute parental authority has gone it will be the doctor, in practice, who decides on the nature of 'proper' information and whether the child is of an age to understand it and give informed consent. Thus the responsibility on doctors is considerable. We agree with Lord Fraser that any important medical treatment for a child under 16 should normally only be carried out with the parent's approval. Lord Fraser, however, refers to the unusual circumstances in which a

doctor may be a better judge of the medical advice and treatment that will be conducive to a child's welfare than the parents and that in his opinion the parents do not have a right to veto.

The Law Lords' ruling is likely to have a wide influence on the welfare and management of children. Some will bemoan the lessening of parental rights, but many paediatricians will be glad of the increased recognition of the child's rights and will hope that more protection agencies, education authorities, and health services will remember the priority. The parents' duty is to bring the child to a mature understanding of the world and to protect the child from moral and physical harm, but when they are unable to do that others outside the family can sometimes protect the child better and preserve the child's rights.

No one will wish the ruling to be seen as unlimited licence for irresponsible people with a professional qualification. It is salutary to remember that two Lords, Brandon and Templeman, produced dissenting reports each of which is a well argued case

for denying doctors the right to intervene against parental wishes. But doctors dealing with children who welcome the decision and recognise their increased power must acknowledge the responsibility and trust that is placed upon them. Lord Fraser recognised the dangers and stated that it should not allow doctors to disregard the wishes of parents 'whenever they find it convenient to do so. Any doctor who behaves in such a way would be failing to discharge his professional responsibilities, and I would expect him to be disciplined by his own professional body accordingly. The medical profession have in modern times come to be entrusted with very wide discretionary powers going beyond the strict limits of clinical judgement, and there is nothing strange about entrusting them with this further responsibility which they alone are in a position to discharge satisfactorily.'

It is up to us to use the increased trust and power for the benefit of children, working with parents whenever possible and always in a way that is acceptable to the society in which we live.