

This factsheet summarises the legal position in Northern Ireland relating to the provision of contraceptive advice and supplies to young people. Particular reference is made to the provision of contraception to under 16s without parental consent.

## Key facts

- A doctor or other health professional can provide contraceptive advice and treatment to those under 16, without parental consent, in certain circumstances.
- Doctors and other health professionals must try to obtain a young person's consent to involve their parents before providing contraceptive advice or treatment. If they are not successful, they may proceed only if they are satisfied on specific matters, including the young person's maturity and ability to understand what is proposed.

## Current legislation

### Over 16s

The age of sexual and medical consent in Northern Ireland is 16. Young people over the age of 16 can give consent to their own surgical, medical or dental treatment without obtaining the consent of parents. In cases where a young person is judged not competent to give valid consent, then the consent of a parent or guardian must be sought. This power only extends until the young person reaches the age of 18.<sup>1</sup>

Sexual health and reproductive healthcare clinics treat all patients over the age of 16 alike, whatever their marital status or age. Patients who have agreed to use any medical method of contraception (i.e. oral contraceptives, injections, implants, IUS, IUD) are asked if they have any objections to their doctor being informed. If there are none, the GP is then not only made aware of the prescription, but is also given the opportunity to make known any possible contraindications. If a patient does not want their GP to be informed, the clinic doctor must exercise their own judgement in deciding whether the patient's best interests would be served by prescribing a medical method, or whether another contraceptive method should be offered (i.e. condom, diaphragm, cap).

### Under 16s

Parental consent is required for the treatment of a young person under the age of 16 unless the treatment can be justified on the grounds of necessity, or it can be demonstrated that the minor was capable of giving an informed consent. GPs and family planning doctors must use their clinical judgement about giving treatment, but should not breach a patient's confidence. It is important to note that some GPs offer a limited contraceptive service to young people, or to all their patients, eg they might refuse to prescribe emergency contraception for moral reasons.

### Confidentiality and the under 16s

Historically contraceptive advice and treatment for the under 16s was the subject of much controversy and confusion and led to many young people being afraid to approach their GP about contraception, because they feared the consultation would not remain confidential.

The General Medical Council in their Good Medical Practice (2013) <sup>2</sup> states:

‘A confidential sexual health service is essential for the welfare of children and young people. Concern about confidentiality is the biggest deterrent to young people asking for sexual health advice. That in turn presents dangers to young people’s own health and to that of the community, particularly other young people.’

However confidentiality cannot be maintained if the young person is judged to be involved in abusive or seriously harmful sexual activity including:

- Significant differences in age, maturity or power between sexual partners.
- The young person’s sexual partner is in a position of trust eg a teacher, youth leader, social worker.
- Evidence of emotional, violent or psychological pressure, bribery or payment to engage in sexual activity or to keep it secret.
- Drugs or alcohol being used to influence a young person to engage in sexual activity.

Penetrative sex with a child under 13 years is, in law, defined as rape/assault by penetration therefore the health professional will not be able to maintain confidentiality.<sup>3</sup>

### History

Although much of the following focuses on statutory bodies in Great Britain, it is, except where stated, equally applicable to Northern Ireland.

The original advice to healthcare professionals was provided in Section G of the 1974 Department of Health and Social Security (DHSS, now Department of Health DH) Memorandum of Guidance, which stated that a doctor was “not acting unlawfully provided he acts in good faith in protecting the girl against the harmful effects of intercourse”.<sup>4</sup>

The Memorandum incorporated the advice of the Medical Defence Union in the same year: “The Medical Defence Union have advised that the parents of a child, of whatever age, should not be contacted by any staff without his or her permission, even though as a matter of clinical judgement the refusal of permission to involve the parents may affect the nature of the advice to the child. Nevertheless, it would always be prudent **to seek the patient’s consent to tell the parents.**”

In December 1980, as a result of mounting concern regarding young people, the DHSS reissued Section G of the Memorandum to stress that the Department hoped that a doctor “will always seek to persuade the child to involve the parent or guardian”, but that ultimately, the decision must be for the clinical judgement of the doctor, a view supported by FPA.<sup>5</sup>

The wording of the revised Memorandum made it quite clear that obtaining parental consent was the norm and that any departure from this practice was the exception. However, the Department recognised that abandoning the principle of confidentiality for under 16s might discourage young people from seeking professional advice at all.

The Memorandum noted that in some cases, such as the breakdown of family relationships, the consequences of withholding contraceptive advice or treatment, for such matters as unwanted pregnancy or sexually transmitted infections might be more of a threat to stable family life than the consequences of providing it without parental consent. The Department advised that, in such cases, health professionals must follow their clinical judgement.

### Current legislation

The current situation stems from the House of Lords' ruling in the Gillick case (see below for further details). The Law Lords ruled that: "A girl under 16 of sufficient understanding and intelligence may have the legal capacity to give valid consent to contraceptive advice and treatment including necessary medical examinations. Giving such advice and treatment to a girl under 16 without parental consent does not necessarily infringe parental rights. Doctors giving such advice in good faith are not committing a criminal offence of aiding and abetting unlawful intercourse with girls under 16."

The Law Lords further ruled that the doctor's decision to give contraceptive advice and/or treatment to underage girls should be guided by the following points:

- The girl, although under 16, is capable of understanding the doctor's advice.
- She cannot be persuaded to involve her parents.
- She is very likely to begin or continue having sexual intercourse, with or without contraceptive treatment.
- Her mental or physical health (or both) is likely to suffer if contraceptive advice or treatment is withheld.
- The provision of contraceptive advice or treatment without parental consent is in her best interests.

The Law Lords emphasised that doctors should not regard this as a licence to ignore the wishes of parents. Following the House of Lords' decision, the DHSS issued revised guidelines (see Appendix 1 for the full text).<sup>6</sup>

Further reference to children and young people, and their consent to medical treatment and right to confidentiality can be found in the Data Protection Act 1998, the Access to Health Records (Northern Ireland) Order 1993, the Charter for Patients and Clients, and Services for Children and Young People (1997).

- **Data Protection Act 1998** – Under this act, young people under 16 have the right of access to personal information stored on computers, providing the data user considers the young person capable of understanding the request. A parent or guardian will be given access only if the young person has consented or is deemed to be incapable of understanding the nature of the request.
- **Access to Health Records (Northern Ireland) Order 1993** – This gives individuals, including under 16s, the right of access to recorded information about themselves that is not already covered by rights of access to computerised records under the Data Protection Act 1998 (previously Data Protection 1984). If the individual is under 16, parents and guardians will usually be able to see their

records, but if the child is judged capable of understanding why parents want to see the records, they must give their consent. In some cases, access may be denied, eg if it might cause serious harm or distress to the young person or someone else.

- **The Children (Northern Ireland) Order 1996** – This act does not change the above legislation. It refers to the aforementioned rights and provides further details.

### The Gillick case

Public attention was drawn to the dilemma concerning contraception and under 16s by a protracted campaign mounted by Mrs Victoria Gillick. Following the publicity given to the 1980 DHSS revised Memorandum, Mrs Gillick wrote to her local area health authority seeking an assurance that no contraceptive advice or treatment would be given to her daughters without her knowledge and consent.

West Norfolk and Wisbech AHA was unable to provide this assurance and in 1982, Mrs Gillick sought a High Court ruling against her AHA and the DHSS on the grounds that the 1980 circular was unlawful and that no AHA employee could therefore give advice to her children without her consent.

On 25 July 1983, the High Court ruled that the DHSS guidelines were not unlawful.<sup>7</sup> Mrs Gillick's claim was dismissed on the grounds that, by giving contraceptive advice or treatment to patients under 16, doctors were not aiding the crime of underage sex and nor were they infringing parental rights. However, in December 1984, the Appeal Court overturned this ruling, and Mrs Gillick's declaration was granted with immediate effect.<sup>8</sup>

The case rested on the importance of parental consent and, except for advice in an 'emergency' or 'with leave of the Court', healthcare professionals were deemed to be acting illegally if they provided contraceptive advice or treatment to a girl under 16 without the consent of her parents. DHSS guidance was suspended, which led to a large drop in the number of under 16s attending family planning clinics.<sup>9</sup> The DHSS appealed to the House of Lords and in October 1985, by a three to two majority, the House of Lords ruled that the guidance given to doctors by the DHSS was not unlawful.<sup>10</sup> Following this decision, the DHSS guidance was reinstated immediately, although a full review was announced to take account of the Law Lords' judgements and the wide range of views expressed on the issue. The revised guidelines, issued on 6 March 1986, are reproduced in full in Appendix 1.<sup>6</sup>

### References

1. Department of Health. *A guide to consent for examination or treatment*. 1990, HC(90)22.
2. General Medical Council. *Good medical practice (2103)*. 2014
3. Northern Ireland Office. *Safer from Sexual Crime: Protecting children and young people*. 2009
4. *Family Planning Services. Memorandum of guidance*. Issued with Health Service Circular HSC(IS)32, WHSC(IS)22. Department of Health and Social Security, 1974.

5. Health Services Management. *Family planning services for young people*. Advance copy LASSL(81)2. Later issued as HN(81)5. WHN(81)5 Department of Health and Social Security, 1980.
6. Health Services Management. *Family planning services for young people*, HC(86)1, HC(FP)(86)1, LAC(86)3, WHC(86)17, WHC(FP)(86)10, WOC(86)15. Department of Health and Social Security, 1986.
7. *Gillick v Norfolk and Wisbech AHA and the DHSS* (1985) 2 Weekly Law Reports (England) 413.
8. *Gillick v Norfolk and Wisbech AHA and the DHSS* (1984) Queen's Bench Reports (England) 581.
9. Health Services Management. *Family planning and abortion services for young people*, HC(84)34, HC(FP)(84)10, LAC(84)25, WHC(84)39, WHC(FP)(84)9, WO Circular (84)68. Department of Health and Social Security, 1984.
10. *Gillick v Norfolk and Wisbech AHA and the DHSS* (1986) Appeal Cases (England) 112.

### APPENDIX 1

#### HEALTH CIRCULAR HC(86)1 LOCAL AUTHORITY CIRCULAR HC(FP)(86)1 LAC(86)3 CONTRACEPTIVE ADVICE AND TREATMENT FOR YOUNG PEOPLE UNDER 16

1. The following guidance draws the attention of health authorities and others concerned to the considerations doctors and other professionals need to have in mind when providing contraceptive advice and treatment to young people under 16, and to the circumstances in which such advice and treatment can be given without parental knowledge or consent. This guidance results from a review of that in Section G of the Memorandum of Guidance of the Family Planning Service, as specified in the appendix to Health Notice (81)5 and Local Authority Social Services Letter (81)2 in the light of the House of Lord's decision in the case of *Gillick v West Norfolk and Wisbech AHA and the DHSS* delivered last October.
2. In considering the provision of advice or treatment on contraception doctors and other professional staff need to take special care not to undermine parental responsibility and family stability. The doctor or other professional should therefore always seek to persuade the young person to tell the parents or guardian (or other person in loco parentis), or to let him inform them that advice or treatment is given. It should be most unusual for a doctor or other professional to provide advice or treatment in relation to contraception to a young person under 16 without parental knowledge or consent.
3. Exceptionally, there will be cases where it is not possible to persuade the young person either to inform the parents or to allow the doctor or other professional to do so. This may be, for example, where family relationships have broken down. In such cases, a doctor or other professional would be justified in giving advice and treatment without parental knowledge or consent, provided he was satisfied:
  - a) that the young person could understand his advice and had sufficient maturity to understand what was involved in terms of the moral, social and emotional implications;

- b) that he could neither persuade the young person to inform the parents, nor to allow him to inform them, that contraceptive advice was being sought;
- c) that the young person would be very likely to begin, or to continue having, sexual intercourse with or without contraceptive treatment;
- d) that, without contraceptive advice or treatment, the young person's physical or mental health, or both, would be likely to suffer;
- e) that the young person's best interests required him to give contraceptive advice, treatment or both without parental consent.

4. Decisions about whether to prescribe contraception in such cases are for a doctor's clinical judgement. If a doctor who is not the young person's general practitioner has formed the view, after due consideration of the points made above, that it is in the best interests of the young person to prescribe contraception without parental knowledge or consent, it may be advisable and helpful for him with the young person's agreement, to discuss the matter in confidence with her own general practitioner before making his decision.

5. In organising contraceptive services for young people, health authorities may find it helpful to make separate, less formal arrangements than those for older age groups. The staff should be experienced in dealing with young people and their problems.

### Other Northern Ireland factsheets

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