


Relying on parental consent for treatment and restraint against a child's wishes

13 September 2024  Katie Viggers

In the recent case of [An NHS Trust v A Mother \[2024\] EWHC 2207 \(Fam\)](#), Mr Justice Francis ruled that the parents of a 12-year-old girl, who had been diagnosed with anorexia nervosa and depression and had been assessed as lacking Gillick competence, could consent on her behalf to medical treatment involving naso-gastric (NG) tube feeding and restraint, given that they were in agreement with the clinical team.

The judge found that NG Tube feeding, even if contrary to a non-Gillick competent child's wishes, does not fall within a special category of cases that requires court authorisation. The judge held that certain parts of the Mental Health Act (MHA) Code of Practice, which suggest that there are limits on the decisions which can be taken by parents in relation to treatment of their children under the age of 16, is erroneous. In this article, we take a closer look at the case and the principles that can be taken from it.

Factual background

At the centre of this case is G, a 12 year old girl with a diagnosis of anorexia nervosa and depression. G had reached the point where she had ceased all consumption of food and drink and was therefore in a life-threatening position.

In August 2023, G was admitted to an intensive intervention unit at a specialist NHS Trust hospital. By this time, she was refusing food and liquid both orally and via her NG tube. She was having to be restrained to receive NG feeds, with up to four staff being required on some occasions. G was not however detained under the MHA.

G was assessed by a Child and Adolescent Consultant Psychiatrist as not being Gillick competent in respect of NG tube feeding and the restraint required to ensure NG feeding. The treatment and restraint were however consented to by G's mother and father.

The NHS Trust made an application to the High Court for a declaration that it was lawful to rely on parental consent for G to be restrained in order to receive NG feeding.

What was the key issue?

The key issue for the High Court judge to determine was whether it was permissible for the Trust to rely on parental consent for treatment and restraint of G. The Trust argued that, whilst case law demonstrated it was, the MHA Code of Practice suggested that it was not lawfully permissible to rely on parental consent in the circumstances. Although G was not actually detained under the MHA, the Trust contended it was nevertheless bound by the Code. The judge agreed, noting that the Code is "*to be seen as guidance for registered medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.*"

The Trust referred to paragraphs 19.40 and 19.41 of the Code, which refer to the "scope of parental responsibility". These paragraphs highlight that there is a "*need to establish whether the particular decision can be authorised by parental consent or not*" and set out a number of factors that need to be considered when determining whether a particular intervention can be undertaken on the basis of parental consent. The Code also includes "Example B" on page 203, which is a hypothetical scenario involving a 14 year old girl who is anorexic and requires, but is resistant to, NG tube feeding. In the scenario, the girl is assessed as not being Gillick competent. The Code says that "*as this is a particularly invasive form of treatment and the girl is likely to resist the insertion of the tube, it would not be appropriate to rely on parental consent to authorise this intervention.*"

What did the judge conclude?

The judge said that the MHA Code of Practice came into force in 2015 but that practitioners must be guided by the developing case law in this area. The Code must follow the case law. From time to time the Code will be developed and updated based on judicial precedent.

The judge referred to the earlier case of **AB v CD** [2021] EDWHC Civ 741 (Fam), in which it was stated that the “special category” of treatment of children which require court approval are very limited. The only case where there has been a legal requirement to come to court in respect of treatment of a child, where both parents have consented to that treatment, is in relation to “non-therapeutic” sterilisation of an 11 year old. The case authorities to date have therefore established that, where a child lacks Gillick competence to make their own decision, and there is agreement between the clinical team and parents as to the best interests of the child, a parent can consent to both medical treatment and any consequent deprivation of liberty. This enables clinicians lawfully to carry out the treatment plan. In those circumstances, no court authorisation is required.

The judge found that the guidance in the Code of Practice suggesting that there are limits on the decisions which can be taken by parents in relation to treatment of their children under the age of 16 is erroneous. Where there is a consensus between the clinical team and the parents, the parents can provide their consent for the child’s treatment.

Therefore, in G’s situation, given the parents and the treating medical team are “at one”, it is lawful for the NHS Trust to rely on parental consent. An application to court to authorise the treatment is not only unnecessary, but would make an already almost unbearable situation even more difficult, and would also cause huge expense and delay.

Finally, the judge found that the Code of Practice, which has not been updated since 2015, requires updating.

How can we help?

Navigating the legal issues concerning the treatment and consent of children and young people can be complex. At Browne Jacobson, we specialise in providing clear, effective legal advice and representation in these matters. If you’re facing a difficult situation and need professional guidance, please don’t hesitate to contact us. Together we can work towards a resolution.

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