

● Medico-legal advice

Children and medical treatment



Aisling Gannon, Partner and Head of Healthcare at Beauchamps Solicitors, on the law concerning medical treatment as it applies to those aged under 18 years

On December 22, 2009, the Law Reform Commission's consultation paper on 'Children and the Law: Medical Treatment' was launched. It examines the law concerning medical treatment as it applies to children, that is, persons under the age of 18.

In it, the Commission makes over 20 provisional recommendations for reform, which are aimed at:

(a) Ensuring that mature teenagers have their views taken into account when they seek medical treatment; and

(b) Providing clarity to healthcare professionals and families generally when caring for children.

The paper comments on the fact that there is no explicit statutory definition of what constitutes 'medical treatment' or wider terms such as 'healthcare' due to the fact that health care and medical treatments move at a rapid



pace, encompassing new and improving technologies and procedures.

The Commission provisionally recommends that, in the context of determining the scope of consent to medical care and treatment, a broad definition of healthcare and medical treatment should be used to encompass diagnosis and treatment and invites submissions on the form of these definitions.

Main recommendations

The main recommendations in the paper are as follows:

1. The Commission provisionally recommends that 16- and 17-year-olds should be presumed to have full capacity (based on a functional test of understanding) to consent to and to refuse medical treatment. This should apply to surgery and access to contraception.
2. The Commission recom-

mends that it should be provided in legislation that a person who is 16 years of age is presumed to have capacity to consent and refuse health care and medical treatment. In the context of refusal of life-sustaining treatment, it provisionally recommends that a 16-year-old may make a High Court application to have his purported refusal appraised. It also provisionally recommends that children aged over 12 years of age but less than 14 years of age may not be regarded as capable of refusing medical treatment.

3. The Commission provisionally recommends that a 14- or 15-year-old person could be regarded as capable of giving consent to healthcare and medical treatment, provided he has the capacity to understand the nature and consequences of the treatment being provided, and subject to the following conditions:
 - a. in the opinion of the med-

ical practitioner, the patient understands the nature and consequences of the proposed treatment;

b. the medical practitioner must encourage the patient to inform his parents or guardians;

c. the medical practitioner must consider the best interests of the patient; and

d. the medical practitioner must have due regard to any public health concerns.

4. The Commission provisionally recommends that it would be lawful for a health care professional to provide healthcare and medical treatment to 12- and 13-year-olds, subject to the following conditions:

a. the medical practitioner must notify the parents or guardians of the child and take account of their views;

b. the medical practitioner must take account of the views of the child in question;

c. the medical practitioner must consider the best interests of the patient; and

d. the medical practitioner shall have due regard to any public health concerns.

5. The Commission provisionally recommends that it should be provided in legislation that a person who is 16

years of age is presumed to have capacity to make an advance care directive.

6. The Commission provisionally recommends that the Mental Health Act 2001 be amended to make separate provision for people under 18; that all persons under 18 who are admitted and treated under the Mental Health Act 2001 should have access to an independent advocate; and that a Mental Health Tribunal (with an age-appropriate focus) rather than the District Court should review their admission and treatment.

The appendix to the paper also sets out a flowchart map on consent and refusal which summarises their proposals and this is an excellent easy-to-read summary of the recommendations for reform.

The paper contains the Commission's provisional recommendations therefore submissions on it are welcome. Those who wish make submissions must do so in writing by post to the Commission or by email to info@lawreform.ie by March 31, 2010.

This paper may be accessed at <http://www.lawreform.ie/publications/cpChildrenandtheLawMedicalTreatment.pdf>

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