



R (on the application of Axon) v. Secretary of State for Health and Anr.

[2006] EWHC 37 (Admin)

Country: United Kingdom

Region: Europe

Year: 2006

Court: High Court of Justice in Northern Ireland, Queen's Bench Division

Health Topics: Child and adolescent health, Health care and health services, Health information, Infectious diseases, Sexual and reproductive health

Human Rights: Freedom of expression, Right of access to information, Right to family life, Right to privacy

Facts

The Applicant, Sue Axon, alleged that the Family Planning Association violated the rights of parents under article 8 of the European Convention on Human Rights (ECHR) (right to respect for private and family life). The Association provided confidential advice and treatment regarding contraception, sexually transmitted infections and abortion to persons under the age of sixteen without parental consent. The Applicant argued that article 8 of the ECHR required doctors to inform parents of children under 16 in cases where such advice or treatment was given except where doing so might prejudice the child's physical or mental health.

The Applicant also claimed that the 2004 guidance publication by the Department of Health entitled "Best Practice Guidance for Doctors and Other Health Professionals on the Provision of Advice and Treatment to Young People under Sixteen on Contraception, Sexual and Reproductive Health" was unlawful and interfered with the article 8 rights of a parent. The Secretary of Health opposed the declaration and submitted that the 2004 guidance was lawful.

Decision and Reasoning

The Court rejected the Applicant's argument that medical professionals are not obliged to keep confidential advice and treatment given to persons under sixteen years of age on contraception, sexually transmitted infections and abortion. It upheld the House of Lords' decision in *Gillick v. West Norfolk and Wisbech Area Health Authority* [1985] 3 All ER 402 that a doctor could lawfully give contraceptive advice or treatment to a girl under the age of sixteen years of age without the consent of the girl's parents provided that he was satisfied that the girl had sufficient maturity to understand what is involved. The doctor would also have to be satisfied that the following conditions were met:

- 1) that the girl (although under 16 years of age) would understand his advice;
- 2) that he could not persuade her to inform her parents or allow him to inform that parents that she is seeking contraceptive advice;
- 3) that she was very likely to begin or to continue having sexual intercourse with or without contraceptive treatment;
- 4) that unless she received contraceptive advice or treatment her physical or mental health or both were likely to suffer;
- 5) that her best interests required him to give her contraceptive advice, treatment or both without parental consent.

It also held that any limitation on the young person's right to confidentiality as proposed by the Applicant would infringe articles 12, 16 and 18 of the United Nations Convention on the Rights of the Child and would probably deter young people from seeking advice and treatment on contraception, sexually transmitted diseases and abortion. The Court also found from the evidence that the 2004 guidelines did not violate article 8(1), but even if it did, any infringement of a parent's article 8(1) rights could be justified under article 8(2) insofar as it would be "in accordance with the law" and "necessary in a democratic society" for the protection

health or for the protection of the rights of others.

Decision Excerpts

It is appropriate to bear in mind that the ECHR attaches great value to the rights of children as I will explain in paragraphs 144 to 146 below. Furthermore the ratification by the United Kingdom of the United Nations Convention on the Rights of the Child (UNC) in November 1989 was significant as showing a desire to give children greater rights. The ECHR and the UNC show why the duty of confidence owed by a medical professional to a competent young person is a high one and which therefore should not be overridden except for a very powerful reason. In my view, although family factors are significant and cogent, they should not override the duty of confidentiality owed to the child. It must not be forgotten that this duty was described in *Z v Finland* (supra) as "a vital principle in the legal system of all Contracting Parties to the Convention". Para.

I appreciate that Mr Havers is not proposing that medical professionals will be at liberty to disclose all advice and treatment, which it is proposed to give in respect of contraception and sexually transmitted infections because on his formulation, the medical professional would be entitled not to disclose information where "to do so would or might prejudice the child's physical or mental health so that it is in the child's best interest not to do so". Nevertheless the fact that the general rule would be that medical professionals could pass on advice and confidential details of treatment to parents would be likely to have the effect of deterring many young people from seeking advice on sexual matters as happened between the decision of the Court of Appeal and that of the House of Lords in *Gillick*, as I have explained in paragraph 68. I consider that the likely foreseeable consequences of such development to be very disturbing, if not chilling. Para. 72.

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