

11 July 2001

Medical Treatment: Bolam Principle

2.50 p.m.

**The Countess of Mar** asked Her Majesty's Government:

Whether it is within the remit of social services departments or the jurisdiction of the courts to choose which method of competent medical treatment (according to the Bolam principle) is best for a patient where more than one type of competent treatment is available.

**The Parliamentary Under-Secretary of State, Department of Health (Lord Hunt of Kings Heath):** My Lords, social services departments have no remit to determine medical treatment of patients. Where medical professionals have suggested that a range of potentially suitable medical treatments are available, in general an adult patient with capacity has the right to choose. Where an adult without capacity to choose, or a child, is the subject of relevant proceedings and there is a dispute about which treatment is in the best interests of the patient, the courts retain the ultimate right to decide what treatment should be given.

**The Countess of Mar:** My Lords, the Minister is aware of one particular case involving a child, although there are several. I understand that where a child is already following competent medical treatment, it is not within the jurisdiction of the courts to change that treatment. In view of the length of time during which I have been asking questions on this subject--it is three years since I first raised the matter with the noble Lord--can he please review the 15 well documented cases--more than in Cleveland--where

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social services child protection procedures have gone wrong and the families have been subjected to extremely harrowing court proceedings that have gone on for months and months? Will he also do what he can to prevent the 10 cases that are presently in the pipeline from going any further?

**Lord Hunt of Kings Heath:** My Lords, I cannot comment on the specific case to which the noble Countess has drawn to my attention, but I am always prepared to look at general principles. I have met the noble Countess to discuss this and I am happy to do so again. On the issue of decisions concerning clinical treatment, and where the jurisdiction of the court is concerned, many factors will be brought to bear in court proceedings relating to children. Taking child protection conferences as an example, the key decision that such a conference must make is whether or not to place a name on the child protection register. That is based on whether the conference is satisfied that the child is at continuing risk of significant harm. Such child

protection conferences are not empowered to override clinical judgments as to whether or not, for instance, children should be referred for additional medical opinions.

**Lord Clement-Jones:** My Lords, does the Minister agree that, because of the Bolam case and the comments of the judges in the Sidaway case earlier this year, it is important that any compensation scheme, such as discussed by the committee set up by the Secretary of State yesterday, should be based not on medical negligence, which is so difficult to define, but on no fault?

**Lord Hunt of Kings Heath:** My Lords, these matters have been discussed over many years. I certainly recognise the force of no fault compensation. We shall have to see the outcome of the current discussions. I am absolutely convinced that the rise in the number of medical negligence cases and the size of awards that the health service has to make put an intolerable burden on the National Health Service.

**Lord Crickhowell:** My Lords, I understand that the cases that the noble Countess has raised concern ME in children. In view of the devastating effects of that disease, the difficulty of diagnosing it and of finding an effective cure, and the controversy about what may be the right cure, will the Minister consider giving guidance to local authorities on the care that needs to be taken in handling such difficult cases?

**Lord Hunt of Kings Heath:** My Lords, I have a great deal of sympathy with the question posed by the noble Lord. He may be aware that the Chief Medical Officer established a working group in November 1998 to review management and practice in the field of CFS/ME. As part of that, a children's subgroup was established to look specifically at guidance in relation to children and young people. We expect the working group to complete its task shortly as it is due to report to the Chief Medical

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Officer in August 2001. The noble Lord is right to say that this is a controversial area. There is no consensus, but I believe that the eventual publication of guidance, at least detailing the range of treatments, will be extremely helpful in such situations.

**Earl Howe:** My Lords, does the Minister share my view that the majority of social workers are not trained to diagnose conditions in children such as autism, Asperger's syndrome, attention deficit syndrome, and hyper-activity syndrome? Does he also share my concern that in all too many cases wrong conclusions are reached by social workers, sometimes involving completely false accusations of child abuse and that great damage can be done to families as a result?

**Lord Hunt of Kings Heath:** My Lords, I want to make it clear that it is not for social workers to make clinical judgments. However, where a decision made, for instance, by a parent is considered by the medical professionals involved

not to be in the child's best interest, it would then be appropriate to seek a determination from the courts on the course of treatment that is in the child's best interest, or for social services to become involved.

I agree that we need to develop and improve training for social workers. In March, my right honourable friend the Minister of State concerned with social care announced that the professional qualification for social workers will change from a two-year diploma to a three-year degree course by 2003. In addition, the establishment of a general social care council will enhance professional training and, it is to be hoped, the esteem of the profession, which it is important to raise.

**The Countess of Mar:** My Lords, perhaps I did not express my serious concerns sufficiently strongly. Children and childcare relationships are being seriously damaged. In one case, the child has not spoken to an adult for two years as a result of the damage done to him while in hospital. I repeat that if the Minister does not intend to conduct a review, will he please commission an independent inquiry into what is happening? These cases are as serious as the Cleveland cases--they really are. I ask the Minister to take them seriously and not just to give mealy-mouthed answers.

**Lord Hunt of Kings Heath:** My Lords, I believe that that is a little unfair. I said to the noble Countess that I took the matter seriously and I met her two weeks ago to discuss a specific issue. Understandably, I am not allowed to talk about a specific case. As I said in my original Answer, I will continue the dialogue with the noble Countess to examine the general principles raised by these issues. These are ultimately matters for the courts. However, I accept that we need to ensure, particularly in the case of CFS/ME, that the most up-to-date guidance is available to social workers and clinicians as regards the conditions and range of treatments available.

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