

ARTICLE

The zone of parental control and decision-making in young people: legal derivation and influences

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SUMMARY

The 2007 amendments to the Mental Health Act 1983 and their accompanying *Code of Practice* produced new guidance on the limits of parental influence over young people's ability to consent. Previously, professional practice on decision-making and consent was guided by a combination of the Mental Health Act 1983 *Code of Practice*, the Family Law Reform Act 1969 and evolving English and Welsh case law. The 2007 amendments to the 1983 Act take heed of such influences and the *Code of Practice* specifically includes reference to European case law. What was previously left open to balanced professional interpretation has now been formalised into statute law. A central facet of this is the introduction of the concept of the zone of parental control, which derives largely from European case law. This article considers the derivation from case law of this novel concept and in particular its relationship with the European Convention on Human Rights.

DECLARATION OF INTEREST

None.

Nielsen v. Denmark (1989) drew upon previous legal judgments and has been elaborated on by others. This article reviews relevant statute law, UK case law and rulings of the European Court of Human Rights on these matters. In doing so, it aims to assist professionals in understanding the evolution of the legal background to the guidance under which they are expected to practice.

Statute law and consent in young people

UK statute law has made attempts to advocate for the autonomy of young people, but these have been viewed as hesitant and inconsistent (Ford 2001), giving some rights to young people, but drawing back from the consequences of fully allowing competent minors to consent and refuse treatment.

Lord Denning first described something akin to the zone in *Hewer v. Bryant* (1969), when he stated (at 430) that:

'the legal right of a parent to the custody of a child ends at the 18th birthday; and even up till then, it is a dwindling right which the courts will hesitate to enforce against the wishes of the child, the older he is. It starts with a right of control and ends with little more than advice.'

The 2007 amendments to the Mental Health Act 1983 and their *Code of Practice* (Department of Health 2008) introduced a new concept for the psychological care and treatment of children and young people – the zone of parental control (Box 1). The *Code* cites just one case, *Nielsen v. Denmark* (1989), as its main influence in deriving the zone of parental control. Although the zone of parental control as an unambiguous term is new, a similar paradigm in shadow form has been present in statute and case-law rulings for many decades but its limits and relevance left to professional interpretation. A number of authors have contrasted the legal basis for consent in young people with that in adults (Ford 2001; Shaw 2001; Paul 2004).[†] They discuss the rising autonomy of minors in relation to consent in the context of the paternalistic beneficence of parents and professionals. The zone of parental control, now described as a concept, promotes the importance of the autonomy of minors in an unprecedented but now formal way.

BOX 1 The zone of parental control

People with parental responsibility may in certain circumstances consent on behalf of a child under 16 to them being given medical treatment or being admitted informally for such treatment. Even in these circumstances, mental health professionals can rely on such consent only where it is within what in this guidance is called the 'zone of parental control'. This may also apply to young people of 16 or 17 years of age who are given medical treatment for mental disorder and who lack the ability to consent for themselves, and to decisions about such young people being admitted for such treatment informally if they lack capacity. The concept of the zone of parental control derives largely from case law from the European Court of Human Rights. It is difficult to have clear rules about what may fall in the zone, when so much depends on the particular facts of each case.

(Department of Health 2008: para 36.9)

[†]Readers might like to refer to a recent article and commentary in *Advances*: Sarkar SP (2011) In the twilight zone: adolescent capacity in the criminal justice arena. 17: 5–11; Grisso T (2011) Inconsistencies in legal and scientific perspectives on adolescents' capacities. 17: 12–14. Ed.

The Family Law Reform Act 1969

The Family Law Reform Act 1969 gave clear guidance to the professional in describing an age limit after which it was not necessary to seek parental consent in relation to treatment. Section 8(1) directed professionals to make the presumption that minors over the age of 16 held capacity to make decisions unless proven otherwise:

‘The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.’

The Mental Health Act 1983 Code of Practice

The Mental Health Act 1983 *Code of Practice* (Department of Health 1999) gave clear views about matters of consent, separating minors into those under 16 years of age and those aged 16–17. The competent under-16-year-old was allowed to consent to *accept* admission and treatment on their own behalf, irrespective of parental views: ‘The parents or other person with parental responsibility may arrange for the admission of children under the age of 16 to hospital as informal patients’ (paragraph 31.6). It went on to state that the refusal of a competent child under 16 years old to be treated could be overridden by ‘the courts or by their parents or other person who has parental responsibility’ (paragraph 31.12).

Furthermore, it stated: ‘Any 16 and 17-year-old “capable of expressing his own wishes” can admit him or herself as an informal patient to hospital, irrespective of the wishes of his or her parent or guardian’ (paragraph 31.8). Of particular note in relation to *refusal*, it stated that the ‘refusal of a competent 16 or 17-year-old to be medically treated can be overridden by their parents or other person who has parental responsibility for that 16 or 17-year-old or by the court’ (paragraph 31.16).

This was the first example of refusal and acceptance being treated separately by statute law. In the case of refusal, despite apparent competence, the minor’s competent views were subordinated to the views of those with parental authority or to the court.

Gillick and the empowerment of the capacitous minor

The epoch-making *Gillick v. West Norfolk & Wisbech Area Health Authority* (1985) case explored the issue of competence in autonomous decision-making in the minor aged under 16. The judgment elucidated two fundamental issues:

- whether a minor under the age of 16 had the legal capacity to give valid consent; and
- whether giving such advice and treatment to a minor under 16 without parents’ consent infringes the parents’ rights.

Lord Scarman opined (at 858) that ‘as a matter of law the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates if and when the child achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed’, i.e. that the child was judged ‘*Gillick* competent’. Furthermore, it expounded the view that the child should not simply understand the nature of the advice but should have sufficient maturity to understand what was involved. In relation to parents the professional should seek to persuade the child to involve the parents but if the child was deemed to be ‘of sufficient understanding and intelligence’ and parental involvement was refused, that the doctor should proceed without parental knowledge.

In other words, it was not only 16-year-olds who could be viewed as autonomous decision-makers, but capacitous under-16-year-olds too. Such minors could be allowed to make decisions about treatment for themselves, without professional recourse to parental views. But Lord Fraser warned (at 844):

‘That result ought not to be regarded as a licence for doctors to disregard the wishes of parents on this matter whenever they find it convenient to do so. Any doctor who behaves in such a way would be failing to discharge his professional responsibilities, and I would expect him to be disciplined by his own professional body accordingly. The medical profession have in modern times come to be entrusted with very wide discretionary powers going beyond the strict limits of clinical judgment and there is nothing strange about entrusting them with this further responsibility which they alone are in a position to discharge satisfactorily.’

Lord Scarman importantly commented that the ‘parental right or power of control of the person and the property of his child exists primarily to enable the parent to discharge his duty of maintenance, protection and education until he reaches such an age as to be able to look after himself and to make his own decisions’ (at 855).

However clear the ruling in *Gillick* appears to be, it did leave one question unanswered; if a child is *Gillick* competent what are the limitations and effects of their consent?

The distinction of refusal from acceptance and the role of parental authority

Three seminal UK cases (*Re R* (1991); *Re W* (1992); *Re K, W and H* (1993)) examined the limits of

parental rights in relation to adolescent autonomy and decision-making and were widely quoted by professionals in clinical practice.

Re R (1991)

Re R involved a 15-year-old hospital patient who refused antipsychotic treatment for psychosis. At the time of her refusal she appeared lucid and rational. The local authority, acting with parental authority, felt her to be *Gillick* competent and withdrew their consent to treatment. She was judged to be incompetent by a High Court judge, who stated that, should she have been competent, the parents or the court could not have overruled her refusal.

The subsequent Court of Appeal ruling stated that a court could override the refusal of a *Gillick*-competent minor and that of the child's parents or guardians. In the ruling, Lord Donaldson made for the first time a distinction between capacity to consent to and capacity to refuse treatment. He stated that although the consent of either a competent minor or their parent would suffice for treatment to be accepted, refusal of both the minor and the parents would be required for treatment to be refused. In doing so, he promoted (at 600) the gravity with which refusal should be considered above that of acceptance:

'I do not understand Lord Scarman to be saying that, if a child was 'Gillick competent' [...] the parents ceased to have a right of consent as contrasted to a right of determination i.e. a veto. In a case in which the competent child refuses treatment, but the parents consent, that consent allows the treatment to be undertaken lawfully.'

Re W (1992)

Re W involved a 16-year-old with anorexia nervosa. She refused transfer to a specialist treatment facility but the court overruled her refusal, even though at 16 she fell under the auspices of the Family Law Reform Act 1969 (which meant that she would be empowered to consent in the same manner as an adult). The court referred to the opinion of Lord Donaldson in *Re R* (1991) and considered that the 1969 Act covered only consent to, but not refusal of, treatment. The court ruled that a competent child under 18 years old, whose refusal of treatment might result in 'irreparable consequences', could be required to have that treatment against their will if any person with parental responsibility consented to the treatment and a doctor considered it necessary. In relation to decision-making, Lord Donaldson also described (at 770) adolescence as a 'period of progressive transition from childhood to adulthood and as experience of life is acquired and intelligence and understanding grow, so will the scope of the decision-making which should be left to the minor,

for it is only by making decisions and experiencing the consequences that decision-making skills will be acquired'.

Re K, W and H (1993)

Re K, W and H involved three 15-year-olds, two with unsocialised conduct disorder (under secure accommodation orders) and one with bipolar affective disorder, in relation to whom a secure order application had been made. The parents and the local authority (acting in loco parentis) had consented to the minors' admission but when the minors complained about the administration of forced intramuscular injections, the health professionals sought specific issue orders (Children Act 1989, Section 8 – Residence, contact and other orders with respect to children). The judge held that, even if the children were *Gillick* competent, the hospital need not seek further court approval because parental consent had been given.

Axon (2006) and competing Article 8 rights

The case of *R (on the application of Axon) v. Secretary of State for Health* (2006) provided an in-depth analysis of tensions in relation to decisions about 'health and moral welfare' between the rights of children in respect of their autonomy versus the right of responsible parents to support their child in making complex decisions (this case drew upon and analysed in depth the *Gillick* judgment).

Susan Axon (a single parent of five children, the younger two of whom were daughters aged 12 and 13 at the time that proceedings commenced) claimed that the document *Best Practice Guidance for Doctors and Other Health Professionals on the Provision of Advice and Treatment to Young People under 16 on Contraception, Sexual and Reproductive Health* (Department of Health 2004) was unlawful.

She contended that the *Guidance* was compatible with neither *Gillick* (and Lord Fraser's guidelines therein) nor Article 8 of the 1950 European Convention on Human Rights (the right to respect for private and family life, home and correspondence). In her view, it made doctors and other health professionals the 'sole arbiters of what is in the best interests of the child' and made 'informing parents the exception rather than the rule', thus excluding 'parents from important decision making about the life and welfare of the child'.

She further contended that medical professionals were under no obligation to keep confidential from parents advice and treatment of children in respect of these matters 'unless to do so might prejudice the child's physical or mental health'. Having herself had a termination of pregnancy, she asserted that it would not be in her daughters' best interests to allow

them to have an abortion without her, as a mother, having been ‘consulted in order that she could then help them through the trauma of an abortion and provide them with an effective after care’. Having herself had a termination of pregnancy, she asserted that it would not be in her daughters’ best interests to allow them to have an abortion without her, as a mother, having been ‘consulted in order that she could then help them through the trauma of an abortion and provide them with an effective after care’.

Lord Justice Silber reviewed in detail the *Gillick* ruling and European case law examining the competing Article 8 rights of children and parents. He concluded that the 2004 *Guidance* was lawful and compatible with the *Gillick* ruling and existing European case law. He stated (at 153):

‘there is nothing in this judgment which is intended to encourage young people to seek or to obtain advice or treatment on any sexual matters without first informing their parents and without discussing matters with them. On the contrary, it is to be hoped that all young people will do so.’

He also cited Lord Fraser’s words in *Gillick*, whereby ‘in the overwhelming majority of cases, the best judges of a child’s welfare are his or her parents’ and reiterated the centrality and continued relevance of Lord Fraser’s guidelines in the *Gillick* judgment.

Freedom of expression in minors and legislative paternalism – *Mabon* (2005)

In a residence order proceeding relating to six children, the three eldest objected to the so-called ‘tandem model’, whereby a guardian is automatically appointed and instructs a specialist family solicitor and in turn a specialist family barrister. The three eldest children applied under the Family Proceedings Rules 1991 to represent themselves. The judge refused the application, opining that there was little advantage to be gained from independent representation but many disadvantages, namely delay from the prolongation of the proceedings, unquantifiable emotional damage from contact with the material in this case and exposure to the harshness of the litigation process.

The Court of Appeal, noting that the tandem model was essentially paternalistic, concluded (at 28):

‘Although the tandem model has many strengths and virtues, at its heart lies the conflict between advancing the welfare of the child and upholding the child’s freedom of expression and participation. Unless we in this jurisdiction are to fall out of step with similar societies as they safeguard Article 12 rights (UNCRC [United Nations Convention on the Rights of the Child] – freedom to express views in

accordance with age and maturity of the child, and opportunity to be heard in judicial proceedings), we must, in the case of articulate teenagers, accept that the right to freedom of expression and participation outweighs the paternalistic judgment of welfare.’

In illuminating the interplay between the United Nations Convention on the Rights of the Child and the European Convention on Human Rights, Lord Justice Thorpe stated (at 26):

‘the rule is sufficiently widely framed to meet our obligations to comply with both Article 12 of the United Nations Convention on the Rights of the Child and Article 8 of the European Convention of Human Rights, providing that judges correctly focus on the sufficiency of the child’s understanding and, in measuring that sufficiency, reflect the extent to which, in the 21st century, there is a keener appreciation of the autonomy of the child and the child’s consequential right to participate in decision making processes that fundamentally affect his family life...’

European case-law rulings and consent in young people

Nielsen v. Denmark (1989)

This case considered the limitations in the treatment of minors under parental authority. The applicant, a young boy, originally alleged a breach of Article 5 of the European Convention (the right to liberty and security). His parents had separated when he was 2 years old, but he had kept in contact with his father, initially as an informal arrangement and then a formalised one. He did, however, remain with his mother. At the age of 8, after a holiday with his father, he refused to return to his mother. The authorities were contacted and the boy was placed in a children’s home, from which he escaped back to his father. Pursued by the authorities, the father and son went into hiding for 2 months. Eventually found, the father was arrested and the child was placed (with the consent of the mother) in the county hospital’s child psychiatry department.

The father applied for custody but it was declined in the best interests of the child; the boy disappeared from the hospital after 2 months and again went into hiding with his father. He was still 8 years old.

Three years later, the father once more initiated custody proceedings. The mother claimed that the boy had been harmed and, on the advice of a child psychiatrist, once more consented to his admission to a child psychiatry ward. The admission did not occur until the child was 12 years old, when the father had been arrested again. The father, on behalf of the boy, questioned the lawfulness of the detention. While in hospital, the boy received environmental therapy and regular individual time, but no medication. He had trips off the unit and although he expressed dislike of the unit he did not

attempt to run away. The unit was not a formally locked unit, being described as akin to the locked front door in a family home. After 6 months, the boy began to re-engage with his school peers and his discharge was planned.

The boy did not disagree that the experience in the unit had been a helpful one, but contested that the door had been locked and his liberty infringed. After a convoluted process and a temporary period of foster care he was placed, in keeping with his wishes, with his father. In addressing family life the court pertinently stated (at 61):

‘It should be observed at the outset that family life in the Contracting States incorporates a broad range of parental rights and responsibilities in regard to the care and custody of minor children. The care and upbringing of children normally and necessarily require that the parents or an only parent decide where the child must reside and also impose, or authorise others to impose, various restrictions on the child’s liberty. Thus the children in a school or other educational or recreational institution must abide by certain rules, which limit their freedom of movement and their liberty in other respects. Likewise a child may have to be hospitalised for medical treatment. Family life in this sense, and especially the rights of parents to exercise parental authority over their children, having due regard to their corresponding parental responsibilities is recognised and protected by the [European Convention on Human Rights] in particular by Article 8. Indeed the exercise of parental rights constitutes a fundamental element of family life.’

The court, balancing all possible angles on the case, did not find that an infringement of Article 5 had taken place. Moreover, the judgment stated that the court found the boy to have still been of an age when it was appropriate for a responsible parent to make decisions on his behalf, even against his wishes. It was a ‘responsible exercise by his mother of her custodial rights in the interest of the child’ (at 73).

Crucially, however, in relation to the issue of the zone of parental control, the judgment opined that the ‘rights of the holder of parental authority cannot be unlimited and it is incumbent upon the state to provide safeguards against abuse’ (at 72).

The primacy of children’s Article 8 rights amid the competing Article 8 rights of parents and children – European case law

Hendriks v. Netherlands (1983)

In the original application Hendriks made an application on behalf of his son, then aged 14. The parents had separated when the child was 2 and the father had had no contact for 12 years.

He claimed that:

‘his sons’ rights have been and were being violated by his subjection to one-sided custody; moreover [...]

his rights as a father have been and are being violated and that he has been deprived of his responsibilities vis-à-vis his son without any reason other than the unilateral opposition of the mother.’ (sect. 1, para. 3)

The Court, in commenting on the family unit, acknowledged:

‘The family is the natural and fundamental group unit of society and is entitled to protection by society and the State [...]. States [...] shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.’ (sect. 10.2, para. 2)

However, it went on to comment:

‘Article 8 [...] does not imply that the parent who is not awarded custody of his or her minor children is entitled to contact with them where such contact is clearly not in the children’s interest because it would cause considerable disturbance and tension in the family in which they are living. To recognise such an entitlement on the part of the parent not awarded custody would conflict with the children’s rights under Article 8 of the Convention.’ (sect. 8.3, para. 2)

When considering the need to balance competing rights, the Court noted:

‘Inasmuch as the scope of a parent’s right of access to his/her child is concerned, the State party indicates that such a right is not an absolute one and may always be curtailed if this is in the overriding interests of the child. Curtailment can take the form of denying the right of access to the parent not awarded custody or restricting access arrangements, for example by limiting the amount of contact.’ (sect. 8.4, para. 1)

Thus, if the Article 8 rights of children and parents compete, the Court will find in favour of the rights of children above those of parents if it is felt to be in the overriding interests of the child.

Elsholz v. Germany (2000)

In this case, the father of a 13-year-old alleged that the refusal to grant him access to his son, a child born out of wedlock, amounted to a breach of Article 8 of the Convention. He claimed further breaches of Articles 6 (right to a fair hearing) and 14 (freedom from discrimination in respect of the right to respect for family life). This was a complex and protracted case, which had originally been judged in the German courts when the child was 5 years old. The central argument of the father was that the mother had prevented access to his son and had so turned the son’s opinion against the father.

Financial compensation was awarded to the father for a violation of Articles 6 and 8 but, interestingly, the opinion of the 13-year-old son in not wanting contact with his father was upheld and included in the ruling of the case. In doing so, the Court noted (at 50):

MCQ answers

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‘a fair balance must be struck between the interests of the child and those of the parent and that in doing so particular importance must be attached to the best interests of the child, which (depending on their nature and seriousness) may override those of the parent. In particular, the parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child’s health and development.’

Yousef v. Netherlands (2003)

This case involved a child born to an unmarried couple in 1987. After the birth, the father lived with the mother and child for 1 year. He then moved abroad for 2 years and contact was limited to writing. The father returned and had fortnightly contact for 2 years. In that time the mother developed a terminal illness and made a will in which she expressed the wish that her family become the child’s guardians and that the child should live with her family. At the same time, the father made repeated requests to be recognised formally as the father, with the child’s surname changing as a result. The mother, before her death, objected to his formal recognition, arguing that the change of name was not in the child’s best interests even though ongoing contact was permitted. Moreover, she stated that the father only sought recognition as a means to be granted a residence permit, that he had no abode or employment and had not shown much interest in the child before her illness. She expressed the wish that after her death, contact be stopped.

The father alleged that his right to ‘private and family life’ had not been upheld and hence his Article 8 rights were violated and that Article 8 ‘vouchsafed [...] a father to recognise a child born out of wedlock as his’. Article 8 of the European Convention on Human Rights is a qualified right, the lawful infringement of which can only be justified if certain qualifications in Article 8(2) are met (Curtice (2009) has reviewed in detail in this journal Article 8 mental health case law).

The judgment found that the courts in The Netherlands had indeed considered the natural ties between the father and his child and had also considered the child’s interests in having a legal parent. The judgment concluded (at 65) that the child’s ‘interests were best served by allowing her to grow up in the family in which she had been placed after her mother’s death, in accordance with the latter’s express wishes and where she received the care she needed’. The Court emphasised (at 73) that ‘in judicial decisions where the rights under Article 8 of parents and those of a child are at stake, the child’s rights must be the paramount consideration. If any balancing of interests is necessary, the interests of the child must prevail’.

Discussion

The zone of parental control for the first time formally attempts to describe the limits of parental decision-making in relation to children and young people.

The *Code of Practice* accompanying the 2007 amendments to the Mental Health Act 1983 cites only one case as the basis for its clarity in describing the zone of parental control. The case supports the use of parental authority in a 12 year old treated in hospital against their expressed wishes. However, in a subtle way, the Court states that parental powers are not unlimited and any abuse of such powers needs to be safeguarded against.

This article demonstrates the historical sophistication of legal judgments over time and attempts to describe the complicated history of such judgments in balancing the rising autonomy of young people amid parental and family life from both UK (Box 2) and European case law (Box 3). As such, it can be seen that the influence of parents in decision-making about young people has been examined as an iterative process in UK statute law, UK case law and European law.

To ascribe the zone of parental control, as quoted in the 2007 Mental Health Act amendments, to one European ruling is too simplistic and it is crucial for practitioners to understand the subtlety of the law and its evolution in relation to this area of practice. It will be interesting to observe the development of case law in this area, particularly in relation to parent’s rights to uphold the family life and the family unit in the context of rising autonomy of young people.

BOX 2 Précis of key UK judgments in the evolution of the concept of the zone of parental control

The *Gillick* (1985) case began to promote the rights of young people in relation to their care and treatment, while respecting the existing guidance of the Mental Health Act 1983 and the Family Law Reform Act 1969.

Three seminal pieces of UK case law, which guided professional practice in this area (*Re R* (1991); *Re W* (1992); *Re K W and H* (1993)), re-examined parental and family influence, treated acceptance and refusal differently and upheld the importance of parental guidance in complex judgments.

The *Mabon* (2005) case raised the importance of freedom of expression in young people above paternalistic judgments about their welfare.

The *Axon* case (2006) revisited *Gillick* (1985) and approved the *Guidelines* opined by Lord Fraser therein.

BOX 3 Précis of key European Court of Human Rights rulings in the evolution of the concept of the zone of parental control

Nielsen v. Denmark (1989) – It was judged reasonable and not in violation of a child's Article 8 rights to admit a 12-year-old to an open psychiatric unit with parental consent. However, it was noted that parental authority was not unlimited, was open to abuse and of this the state needed to be aware (this case is similar to *Gillick* (1985) in that it promoted the rights of young people in relation to their care and treatment).

Three European Rulings (*Hendriks* (1983); *Elsholz* (2000); and *Yousef* (2003)) gave primacy to children's, as opposed to parental, Article 8 rights.

Hendriks v. Netherlands (1983) – A father claimed that in the process of his estranged partner denying him access to his child for 12 years, his Article 8 rights had been violated. The court judged that to allow access would cause a disturbance in the child's reconfigured family and that the

child's Article 8 rights were paramount.

Elsholz v. Germany (2000) – A father claimed that in denying him access to his child, his Articles 6, 8 and 14 rights had been infringed. Whereas the court found that his Articles 6 and 14 rights had been infringed and he was compensated, his Article 8 rights were subordinated to the rights of the child, because in the opinion of the court access would have disturbed the child's current family life.

Yousef v. Netherlands (2003) – A father claimed that, although estranged from his child born out of wedlock, the failure of the child's reconfigured family to recognise his paternity was an infringement of his Article 8 rights. The court upheld the deceased mother's wishes for the child and repeated that in balancing the rights of parents and children, the children's Article 8 rights must be of paramount concern.

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Hewer v. Bryant [1969] 3 WLR 425.

Mabon v. Mabon and Others [2005] EWCA Civ 634.

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Yousef v. Netherlands (App no 33711/96) [2003] 36 EHRR 20.

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MCQs

Select the single best option for each question stem

1 The zone of parental control:

- a is a concept introduced with the Mental Capacity Act 2005
- b applies only to psychological care of children and young people
- c applies only to medical treatment of children and young people
- d is a concept created with the introduction of the Mental Health Act 1983
- e applies to psychological care and treatment of children and young people.

2 With regard to the zone of parental control:

- a it applies only to those under 16 years of age
- b it derives mainly from UK case law
- c it derives mainly from European case law
- d the Mental Health Act *Code of Practice* cites much European case law to demonstrate the derivation of the concept
- e it does not promote the importance of the autonomy of minors.

3 With regard to the seminal *Gillick* case:

- a the case explored the issue of competence in autonomous decision-making in a minor less

than 14 years of age

- b the judgment implied that not only could 16-year-olds be viewed as autonomous decision-makers, but incapacitous under-16-year-olds could be as well
- c the decision suggested that the child need only understand the nature of the advice given and need not also have sufficient maturity to understand what was involved
- d a healthcare professional does not need to consider persuading a child to involve their parents in the decision-making
- e the decision suggests that if a child is assessed to be of sufficient understanding and intelligence, and parental involvement is refused, a doctor can proceed without parental knowledge.

4 With regard to the *Axon* judgment:

- a the case concluded that the Department of Health's *Best Practice Guidance for Doctors and Other Health Professionals on the Provision of Advice and Treatment to Young People under 16 on Contraception, Sexual and Reproductive Health* was unlawful
- b the case preceded the *Gillick* case
- c the case provided analysis of the *Gillick* case with respect to Article 3 of the European Convention on Human Rights

- d the case analysed the *Gillick* ruling with respect to competing Article 8 rights of children and parents
- e the judgment found that the Article 8 rights of the parent had been violated.

5 With regard to a child's rights and European case law:

- a Article 8 of the European Convention on Human Rights is an absolute right
- b when balancing child and parental Article 8 rights, European case law has found that the rights of the parent will be paramount
- c when balancing child and parental Article 8 rights, European case law has found that the rights of the child will be paramount
- d the rulings in the cases of *Hendriks*, *Elsholz* and *Yousef* gave primacy to parental as opposed to the child's Article 8 rights
- e the *Nielsen* judgment found that the admission of a 12-year-old to an open psychiatric unit with parental consent violated the child's Article 8 rights.