Parental Responsibility v Medical Neglect

Content

- Looks at extent of parental responsibility and key and relevant features of the Children Act
- Medical neglect – what is it?
- What are the possible reasons for a rise in cases?
- Court intervention- High Court or Family Court

- This presentation will not cover :--
- Who has parental responsibility
- Private/public law disputes between parents
- End of life/palliative care decisions for children

Parental Responsibility

- Legal definition founded in Children Act 1989 which moved away from seeing children as “possessions”. However the law sees parental responsibility as fundamental and that the State should help with this role rather than interfere.
- **Parental responsibility** means the legal **rights**, **duties**, powers, **responsibilities** and authority a **parent** has for a child and the child's property. A person who has **parental responsibility** for a child has the right to make decisions about their care and upbringing. **This does not extend to any abuse being permissible whether intended or not**.

Child’s Welfare is Paramount

- This concept embedded into fact child is seen legally as an **independent entity .**
- Separate status and legal representation in most cases
- Cornerstone principle is that the **child’s welfare is paramount**. Considerations of medical care is **not excluded** from this key principle.
- Parental omission or non compliance to permit a child to receive medical care **can be medical neglect** and where this occurs the child not the parent must be held central.

Threshold Criteria

- Can be reached where a parent prevents a child accessing or receiving medical care which without the child is **either suffering or likely to suffer significant harm.**
- Permits for intervention on the basis of future as well as actual harm
- Harm need only be a serious possibility rather than a probability
- **We see cases of children with life threatening conditions who are unable to access care due to parental choice.**
- Cases - Court has held that a child with a life threatening condition eg epilepsy /asthma denied evidenced medical care may meet the threshold

Medical Neglect

- **Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children (July 2018) defines neglect as :-**
- *A persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:*
- *Provide adequate food, clothing and shelter (including exclusion from home or abandonment)*
- *Protect a child from physical and emotional harm or danger*
- *Ensure adequate supervision (including the use of inadequate care- givers)*
- ***Ensure access to appropriate medical care or treatment***
- *It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.*

Why are seeing more cases?

- Ethos of health professionals always being correct and advice followed is gone. Cardiac Inquiry of the 1990's changed the face of clinical governance and actively encouraged patients to question and this led to a much more robust system of consent and knowing the risk v benefits of a given care pathway or treatment. This extends to parents using their PR status to make key medical decisions for their child.
- Rise in popularity of alternative therapies means that parents may wish to turn to these rather than conventional medicine. Care pathways can be more complex
- Faith and/or culture may play a part eg. Jehovah's witness cases
- The internet! Parents can access information and research their child's condition
- Confusing picture – parents can bring child to medical attention but won't permit any or optimum care to the child.

Does social class play a part? *

- “One of the most frequently discussed issues was that affluent parents’
- confidence and sense of entitlement meant that they felt they could diagnose
- their own needs, expected children’s social care to accommodate them, and
- felt that they had a right to challenge those in authority. Practitioners reported
- that active engagement techniques, such as having a formal signed
- agreement and goal setting, often did not work with affluent parents”
-
-
- “the thinking was on the importance on holding the child as a central focus of the
- assessment, so that the parents’ interests did not outweigh consideration of
- what was in the child’s best interest”

- *An Exploration of How Social Workers Engage Neglectful Parents from Affluent Backgrounds in the Child Protection System 2017 Professor Claudia Bernard
Goldsmiths, University of London

Interventions

- In each case vital to understand why the parents do not want their child to receive treatment or care and be able to identify the tipping point **ie parental choice around care competing with the child's best interest and safety to extent that threshold met. Remember child's welfare is paramount.**
- Who has the best rapport with the child and parent?
- Seek safeguarding expertise and advice early on.
- Utilise Team around the Child meetings – risk share between the various components of health (primary and secondary care and beyond). Monitoring in the community important. What care is being provided in the community?
- Where parents bring child regularly as their conditions yo yo – bring into complex case meetings. Flagging up systems for regular attenders.

Court intervention

- This may involve declarations for care to be given under the jurisdiction of the High Court **BUT THIS HAS LIMITS**.
- If a parent will not permit care under any circumstances and all options have been exhausted child may need to come under a care order and the matter be managed in the family court. If professionals cannot secure and rely upon sustained and reliable care to the child this intervention may be necessary**. It is a matter of degree and seriousness.**
- Two recent cases where child has been saved from death after serious deterioration (asthma and severe epilepsy)
- Health professionals evidence vital to support Local Authority