

The Child And Medical Treatment: The Chance To Live, Or To Die With Dignity?

A Conversation With
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And Dr Imogen Goold

Sick girl to be treated against parents' wishes, judge rules

28 February 2019

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What do we do when there is a clear medical route to be taken for the child which none the less conflicts with the parents wishes ?

An NHS Trust v Child B and Mr and Mrs B [2014]

Manchester University Hospital v M and OA [2019]

The Best Interests Test



“the focus is on whether it is in the patient's best interests to give the treatment”

In considering the best interests of this particular patient at this particular time, decision-makers must look at:

- ✓ his **welfare** in the widest sense, not just medical but social and psychological
- ✓ the **nature of the medical treatment** in question, what it involves and its prospects of success
- ✓ what the **outcome** of that treatment for the patient is likely to be
- ✓ what the **individual patient's attitude** towards the treatment is or would be likely to be

Baroness Hale in *Aintree NHS Trust v James* [2013]

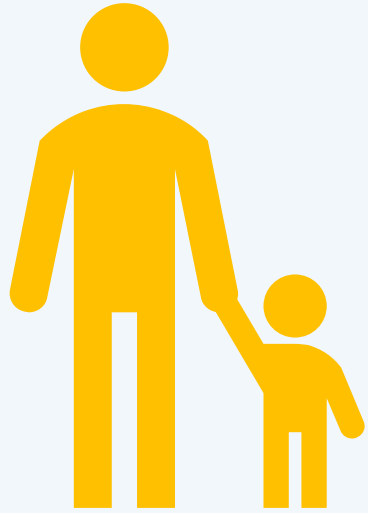
Parental Responsibility



- The child is a person, not property
- The State already intervenes where parental responsibility is not fulfilled (adequately)
 - ❑ Children Act 1989
 - ❑ United Nations Convention on the Rights of the Child

'Parental rights to control a child do not exist for the benefit of the parent. They exist for the benefit of the child and they are justified only in so far as they enable the parent to perform his duties towards the child, and towards other children in the family.'

Lord Fraser, *Gillick* (1986)



Parental Responsibility

In the medical context, where should parental wishes have particular weight?

- Palliative care and privacy in death, bringing the child home
- Quality versus quantity of life – the child's preferences



Parental Responsibility

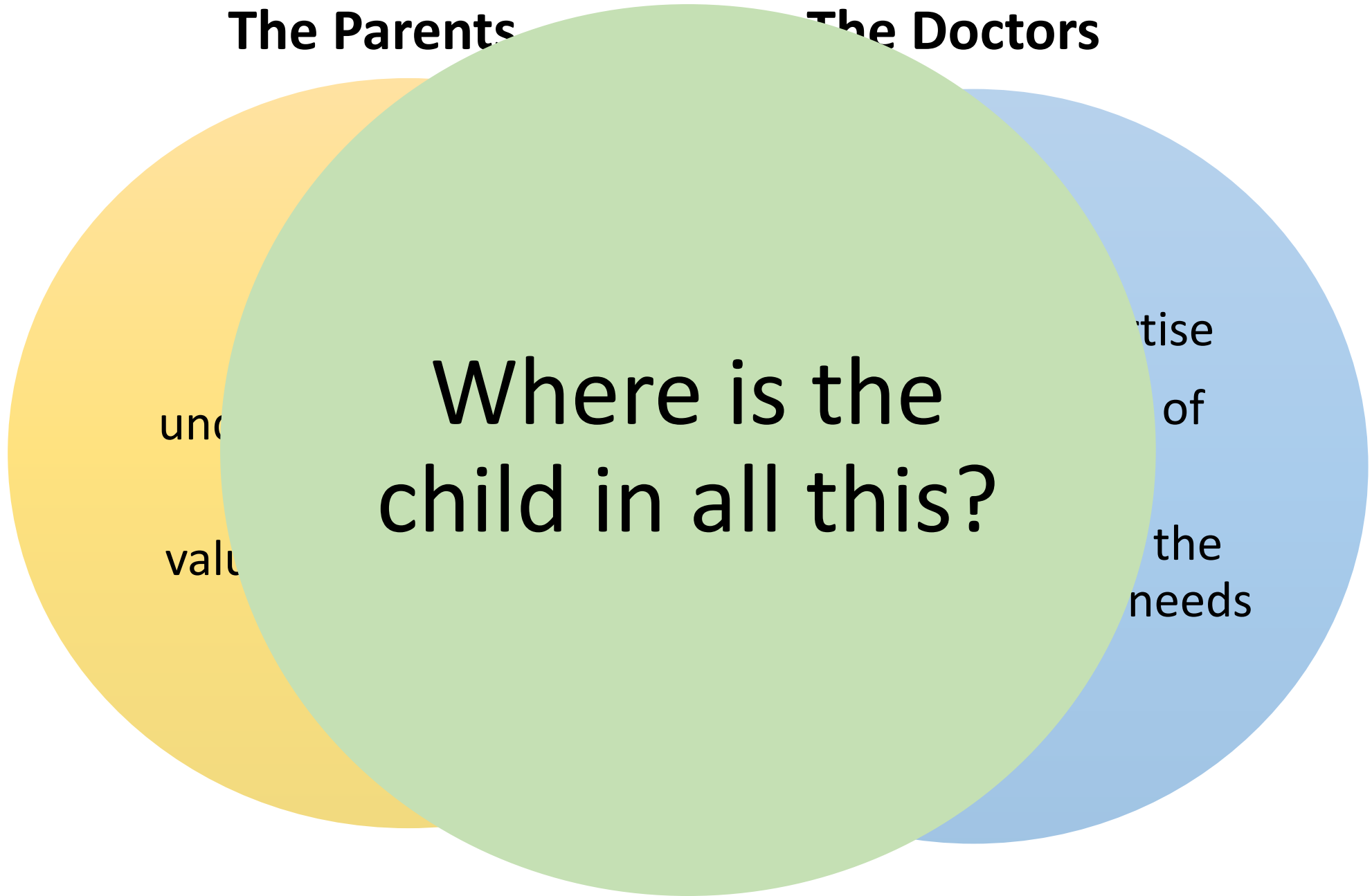
Sometimes it's less clear how much weight parents' wishes should be given.



Re Ashya King [2014] EWHC 2964 (Fam)

The Parents

The Doctors



**Where is the
child in all this?**

unc

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the
needs

When should the court intervene?

...And when do they in practice?

✓ Current test: best interests

I will apply, for the benefit of the sick, all measures which are required, avoiding those twin traps of overtreatment and therapeutic nihilism.

Modern version of the Hippocratic Oath - Louis Lasagna, Tufts University

? Alternative: serious risk of significant harm

it's our job, our legal and moral obligation, to stand up for him and say when we think that enough is enough...we did everything that we could, even though we thought he should be allowed to slip away in his parents' arms, peacefully, loved.

...

We did it with every fibre of our being telling us that it was wrong, we should stop. But we couldn't."

Anonymous GOSH staff member, The Guardian, 4th August 2017

When should the court intervene?

...And when do they in practice?

- ? Alternative: serious risk of significant harm
 - ✓ Reflects current practice
 - ✓ Respects parental autonomy
 - ✓ Legitimate bounds of State intrusion into private life
 - ✓ Parents better placed to make value judgements
 - ✓ Respects range of reasonable parenting values

But it's not that simple!

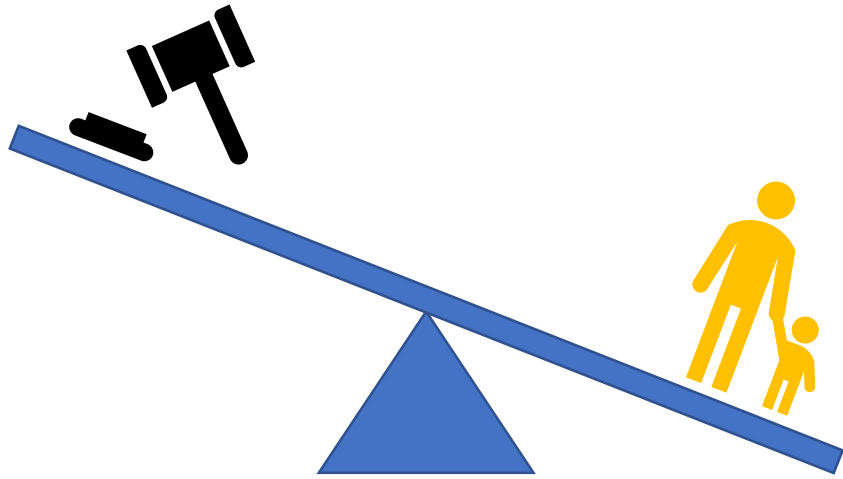
When should the court intervene?

...And when do they in practice?

? Alternative: serious risk of significant harm

- ✗ Impact on practice
- ✗ Impact on parental decision-making
- ✗ Impact on parental feelings

But it's not that simple!



The Tipping
Point?

Achieving consensus advice for paediatricians and other health professionals: on prevention, recognition and management of conflict in paediatric practice

Mike Linney,^{1,2} Richard D W Hain,³ Dominic Wilkinson,^{4,5}
Peter-Marc Fortune,⁶ Sarah Barclay,⁷ Vic Larcher,⁸
Jacqueline Fitzgerald,² Emily Arkell²

Looking Forwards





Each case is as
unique as the child.

The only constant is
that there are no
easy answers.