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**DEPARTMENT OF HEALTH AND SOCIAL SECURITY**

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*From the Minister for Health*

cf. PL p.c.

The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
London
SW1A 2AT

24th June 1985

Dear Willie,

MRS VICTORIA GILLICK v DHSS

I am writing to inform colleagues of the impending hearing of our Department's appeal to the House of Lords against the judgements of the Court of Appeal in this case, and of the action we propose to take following receipt of the Lords judgements.

The case arises from an assurance which Mrs Gillick sought from her local health authority that her daughters would not be given advice or treatment on family planning or abortion without her specific consent. The health authority declined to give the assurance. That was in accordance with the Department's guidance, which stresses the importance of seeking to involve parents but recognises that advice or treatment can be given without parental consent if need be. A copy of this guidance is enclosed.

Mrs Gillick challenged both the Health Authority and the Department's guidance in the High Court and lost. The Court of Appeal however ruled in her favour last December and declared that, except in cases of emergency or with the leave of a court, the provision of contraceptive and abortion advice and treatment to young people under 16 is not lawful without parental consent. The judgements opened up the question of consent of young people to other actions. While their effect is unclear, they can be interpreted as meaning that no important decision affecting the upbringing or welfare of a young person under 16 can be taken except by his or her parents or a competent court. This could in our view include any significant medical treatment, for example surgery, other than possibly in an emergency. The judgements also contain a view of continuing parental control of 16 to 18 year olds at variance with the previously understood position in common law.

I announced immediately that we would be appealing to the House of Lords for clarification of the law and that, meanwhile, existing Departmental guidance in relation to contraceptive and abortion services for young people under 16 was suspended.

The House of Lords hearing of our appeal against the Court of Appeal judgements will start on 24 June and could last for several days. The detailed judgements will

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probably not follow for a few weeks, but the Lords' basic findings might be available at the end of the hearing if they were persuaded that there was exceptional urgency because of the public interest. In view of the intense interest in the case, the Government will need to be ready with a statement of intentions immediately the import of the judgement is available. My assessment of the possible outcomes and our response is set out below.

In the event of judgements not requiring the consent of young people's parents to contraception and abortion I propose that we should reinstate the suspended Departmental guidance temporarily and review it in the light of the legal action.

We said before the Court of Appeal hearing that we would review the guidance as soon as possible in the light of the result of the legal proceedings. Revision of the suspended guidance would take a little time as we considered the detailed implications of the judgements - some consultation with the public and interested organisations and professions would be necessary - and it might not be possible or desirable to issue revised guidance before the autumn. I do not think we could justify a further period in which no authoritative guidance was available from the Government if the House of Lords had supported the basic premise of the existing guidance. I would however want to make a statement indicating the legal effect of the Lords judgements and explaining that the reinstatement was temporary pending the outcome of an early review.

If the judgements had the effect of requiring the consent of young people's parents to contraception and abortion, we would need to withdraw the Departmental guidance on abortion and contraception forthwith. If the judgements also had the effect of requiring consent to other forms of medical treatment, on which no guidance currently exists, we should need to consider with the health professionals and health authorities what further advice should be issued.

It is of course possible that judgements will be more complex. In that case we will have to look at them carefully before deciding whether or not to reinstate the existing guidance pending a review. In this event we would not commit the Government to any line of action in advance of further consultation with colleagues.

It is also possible that the House of Lords might say that legislation to clarify the position is needed. I would obviously not respond to that without further consideration. Clearly any legislation would be highly controversial and, although it might be consistent with the results of the interdepartmental review of Child Care Law, it could not be a high priority for parliamentary time.

Subject to colleagues views, therefore, I propose to make a statement by written answer as soon as possible after we know the House of Lords' conclusions, to say whether or not we intend to reinstate the guidance temporarily pending a review. I would also make sure that the implications of the Lords' judgements were communicated to all those involved in providing abortion and family planning services.

I am copying this letter to the Prime Minister, the members of H Committee, Michael Havers and Kenneth Cameron and to Sir Robert Armstrong.

KENNETH CLARKE