

Introduction to the second set of articles

In this second series of articles, we cover what's new in consent and some legal views on the controversial subject of futility. Paul Sankey – a lawyer – explains The 'Montgomery' Case, and its impact on how we should obtain consent from patients. The ruling legally formalises the concept that a patient should be aware of any risks that might be important to them as individuals. You can't avoid telling a patient a risk just because you think they might not want to know. However, it doesn't mean you can just recite a whole list of risks and then consider this informed consent! Many would feel it wrong (for the individual, and to greater society in terms of care costs) to subject a patient to care which seems 'futile'. However, how do we avoid it and what do we do when we reach an impasse with the next of kin? In a second article, Paul expands on Simon Lindsay's discussion of Best Interests (JICS reference) and explains what you can do if things get difficult. Finally, Andrew Hannam – a lawyer – discusses the tragic case of Charlie Gard – which exemplifies what can go wrong when the family and clinicians disagree on continuing life sustaining treatment and their views become polarised. This case, which was played out in front of the media spotlight, was ultimately determined by what was found to be in Charlie's best interests. On appeal, the parents had argued that the decision should be for the parents to make and should only be interfered with if such a decision would expose the child to significant harm. Great Ormond Street Hospital argued that prolonging treatment (in this case with an experimental drug) was not in his best interests and would cause significant harm to Charlie. His family disagreed. Andrew suggests some key learning points from this case – in particular, the possibility of early mediation. When you get to the European Court of Human Rights you're probably too late! Whilst this case relates to a small child – it's important to remember that the legal principles that Andrew discusses apply equally to adults.

Richard Innes and Hugh Montgomery