



**SUBMISSION BY  
NORTHSIDE COMMUNITY LAW CENTRE**

**ON THE  
LAW REFORM COMMISSION'S  
CONSULTATION PAPER ON  
CHILDREN AND THE LAW:  
MEDICAL TREATMENT**

**Northside Community Law Centre  
Northside Civic Centre  
Bunratty Road  
Coolock  
Dublin 17**

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**Submission to the Law Reform Commission**  
**On the Consultation Paper on Children and the Law: Medical Treatment**

**1.1** **Introduction**

Northside Community Law Centres (NCLC) wishes to take this opportunity to make a submission to the Law Reform Commission on the recommendations made in their recent consultation paper on medical consent and young people.

Northside Community Law Centre is an independent law centre, which offers free legal advice and representation to individuals and groups in the community who otherwise would not be able to get legal services.

NCLC works to protect and develop the legal, social and economic rights of individuals and groups. The law centre currently has 3 solicitors who specialise in the areas of Employment Law, Housing, Debt, Consumer Law, Social Welfare Appeals and Family Law. NCLC provides services to people that live within the electoral constituencies of Dublin North-Central and Dublin North-East. NCLC works extensively in many areas of law including offering advice to clients through our free legal information clinic, offering representation to clients in particular situations and offers free know your rights' talks on legal issues to local community organisations.

In order to make a detailed and knowledgeable submission to the Commission on medical negligence NCLC joined together with a local secondary school, Colaiste Dhulaigh in Coolock.

NCLC felt that as the proposals outlined in the Commissions recent report ultimately effect and will have significant consequences for young people it was essential that such young people were consulted and have their voices heard in any new laws that may be enacted.

In order to make a detailed submission to the Commission NCLC held a number of workshops with Transition Year (TY) students in Colaiste Dhulaigh Secondary School, Coolock. Over the course of a week from the 8<sup>th</sup> to the 11<sup>th</sup> of March

2010, NCLC held three one hour sessions with two different groups of Transition year students. These workshops and the opinions of the young people participating in the sessions form the basis of our report to the Law Reform Commission.

## **2.1 Structure of the Workshop sessions**

NCLC choose to work together with a local secondary school in preparing a report to the Law Reform Commission on their proposed changes to medical consent and young people. NCLC joined together with the Transition Year (TY) students of Colaiste Dhulaigh Secondary School in Coolock. NCLC chose to work with Transition Year students in Colaiste Dhulaigh secondary school as the school is a local, co-educational school and the students in TY were aged between 15 and 17 years.

The workshops took place with two different groups of TY students. Transition Year in Colaiste Dhulaigh is divided into two main class groups; an honours level class called 'Beckett' and a pass level class 'O'Casey'. The number of students from each class participating in the workshops ranged from 15-20 students. The number of students fluctuated slightly each day due to students being absent.

We gave three workshop sessions to each group separately however the findings from both groups overlapped greatly and are therefore combined together in our submission.

The first session involved an information talk. This session consisted of a very general overview of what is meant by the Law Reform Commission and what reforms the Law Reform Commission were proposing to the area of young people and medical consent. Both groups engaged very well in the discussion and appeared to have a good insight into the concept of law reform and the process of law making. From the first session certain issues began to arise, which were prominent themes throughout the workshop. These specific issues related to guardianship and in particular the rights of non-legal guardians such as grandparents, siblings and relatives to make decisions on behalf of young

people. It was also apparent at an early stage that the issue of sexual health and sexual consent was an important issue for the students. In this first session the Law Reform Commission's report was divided into a number of different areas and these areas were discussed separately by the students. These areas included

1. General medical consent and ages of consent
2. Sexual health and consent to sexual issues
3. Mental health and consent including addiction issues
4. Terminal illnesses and the right to refuse medical treatment

The second information session involved dividing the students into groups of five. Each group was given one of the above topics to discuss and working in groups the students had to develop their own laws in relation to each topic. This session was extremely important as the students themselves were involved in the process of law reform. The students had to discuss the topics amongst themselves before deciding on what format their new law would take. The students had to discuss the different ages they felt were appropriate for consenting to different medical treatments. The students also looked at the issue of making their new laws very youth centred and spent much time discussing definitions and language. The young people then wrote their new laws out on sheets of paper, to be presented to the whole group at the next session.

The third and final session began with the students presenting their new laws back to the whole group. The class as a whole then debated these new individual laws further. This exercise allowed the young people a chance to amend any of the proposed changes and ensured that they had a substantial grasp on the more detailed issues of medical consent. The final session also involved the students taking part in a detailed survey on the area of medical consent. A copy of the survey can be found in Appendix A of this report.

During the course of the three sessions with the students we used a number of different activities to ensure that they understood the different legal concepts and

also to help them engage fully in the process of law reform. The first session involved a general presentation or information talk where we explained the Law Reform Commission's proposals to the students. In this session we gave a presentation using flip charts to the students. As the legal concepts being discussed were very complex this presentation was informal in nature and developed into a questions and answers session. This information session was important as it was necessary in this first session to ensure that the students had a grasp of the legal issues. We gave out simplified hand outs to the students on the Commission's report. We also gave out a range of newspaper clippings specifically relating to the issue of the rights of terminally ill children. We discussed a number of English cases with the students however we found that the use of newspaper reports on the 'Hannah Jones' case was very effective in getting the students engaged. The students enjoyed reading the different newspaper reports and we found that throughout the sessions they continued to relate back to the media reports.

The second session involved dividing the class into smaller groups of 5 students. The students themselves chose the topics they wished to discuss. In this session the students were asked to discuss the topics within their groups and then write out the new laws they would introduce on the specific topics. In this session the students debated the issues amongst themselves and then wrote up their own laws. This session was important as throughout the first information session the issue of language was raised by the students. The students felt that any new legislation should be written in clear, simplified language which young people could easily understand. This second session gave the students the opportunity to write their proposals for law reform in language which could be clearly understood and comprehended by their peers.

In the final workshop session the students presented their new laws to the class in their groups. This exercise was important as it gave the students an opportunity to present their views and opinions individually to the class. Each student presented a different aspect of the law to the whole class. The students then joined together to finalise and agree their proposals.

### 3.1

### Survey Results

As part of the workshop process the transition year students completed a detailed survey to ensure that an accurate record of their opinions in relation to medical consent were detailed. 28 students completed the survey in total from the two transition year classes.

Out of these 28 students 17 were males and 11 were females. Also 8 of the students were 15 years of age and 20 students were 16 years of age. A summary of the relevant survey information is included under each relevant subheading in this submission. However an over-view of the survey results is included in this chapter.

**1) What is more important**

The age of a person: 2 (7%)

Or

The maturity of the person: 26 (93%)

**2) What age should you be allowed to visit a Doctor on your own and consent to general medical treatment and make decisions about your health on your own?**

16: 17 (60%)      15: 4 (14%)      14: 4 (14%)      13: 1 (4%)      12: 1 (4%)

Unsure: 1 (4%)

**3) Should the Doctor be made under law to discuss any health issue/ problem with the young person directly?**

Yes: 25 (89%)

No: 2 (7%)

Unsure: 1 (4%)

4) Should it be up to the young person to decide whether to discuss any health issues/ problems with their parents?

Yes: 27 (96%)

No: 0

Unsure: 1 (4%)

5) At what age should a young person be allowed to see a doctor for sexual health advice and to get contraception?

16: 11 (39%)

15: 7 (25%)

14: 2 (7%)

13: 5 (18%)

12: 1 (4%)

Unsure: 2 (7%)

6) Should the age of consent to sex be changed from 17 to 16?

Yes: 27 (96%)

No: 1 (4%)

7) Should a Doctor be allowed to give contraception to a girl under 16 if they think the girl is mature and understands fully all of the issues involved?

Yes: 25 (89%)

No: 3 (11%)

8) Should young people be allowed to refuse medical treatment?

Yes: 21 (75%)

No: 5 (18%)

Unsure 2 (7%)

**Comments:** 4 students felt that a decision to refuse treatment must depend on the particular circumstances of the case.

One student felt the decision to refuse should depend on the age of the young person and what the particular treatment is.

One student felt the decision to refuse treatment must depend on whether the young person involved understands the consequences of his/ her decision.

One person stated that young people should not be allowed to refuse treatment if their condition is terminal.

9) What age should you be allowed to refuse medical treatment at?

16:16 (57%)

15: 6 (21%)  
14: 3 (11%)  
13: 0  
12: 1 (4%)  
Unsure: 2 (7%)

**10)** Should young people with a terminal illness be allowed to refuse treatment and if yes at what age?

Yes: 20 (71%) No: 7 (25%)

Age: 16:10 (50%)  
15: 4 (20%)  
14: 3 (15%)  
13: 3 (15%)

**Comments:** one student stated that children with terminal illness should be entitled to make such a decision at any age if they are fed up living with their illness.

Another student stated that such a decision should depend on the maturity of the person not the age.

**11)** Should the parents of young people with terminal illnesses or doctors be allowed to make them have an operation or treatment?

Yes: 8 (29%) No: 20(71%)

**12)** Should young people with terminal illnesses be allowed to apply to the Court for the Right to Die?

Yes: 19 (68%) No: 5 (18%) Unsure: 2 (7%) N/A: 2 (7%)

**Comments:** two students stated that such a decision should be made jointly between the child and their parents.

**13)** Should young people with mental health issues be allowed to refuse treatment?

Yes: 6 (21%) No: 21 (75%) N/A: 1 (4%)

**14)** What age should young people with mental health issues be allowed to make decisions regarding their health?

18: 7 (25%)  
17: 2 (7%)  
16: 15 (54%)  
15: 2 (7%)  
Never: 2 (7%)

**15)** Should a young person in care be allowed to consent to medical treatment on their own and if so at what age?

Yes: 25 (89%)                      No: 2 (7%)

**Age:**

16: 18 (72%)  
15: 3 (12%)  
14: 2 (8%)  
Unsure: 2(8%)

**16)** Should a teenage mother be given full legal rights on the birth of her baby?

Yes: 21 (75%)                      No: 6 (21%)                      Unsure: 1 (4%)

**17)** Should a girl who gets pregnant before she is 16 be allowed to consent to all medical treatment regarding her pregnancy?

Yes: 23 (82%)                      No: 3 (11%)                      Unsure: 2 (7%)

**18) Should all young people be given free medical cards?**

Yes: 25 (89%)      No: 2 (7%)      Unsure: 1 (4%)

**Until what age:**

21:1 (4%)

19:2 (8%)

18: 10 (40%)

16: 2 (8%)

Until the young person is finished education: 8 (32%)

Always: 1 (4%)

Unsure: 1(4%)

**19) Should a privacy/ confidentiality rule be introduced into any new law?**

Yes: 23 (82%)      No: 2 (7%)      Unsure: 3 (11%)

**20) Do parents have a right to know about their children's health?**

Yes: 19 (68%)      No: 4 (14%)      Unsure: 7 (25%)

Comments: 7 students stated that Person should only be informed regarding their children's health if the children want them to know.

#### 4.1

#### Rights of the Child

NCLC submits that the issue of the age at which young people can consent to medical treatment is a very important issue and is in need of great consideration. The students who took part in the workshop sessions with NCLC were also of the belief that consenting to medical treatment was a substantial issue for young people.

Overall the students felt very strongly that at present Irish law does not adequately protect the voice of the child. The students felt that children had a definite right to be heard in any aspect that affects their lives. The students held that this right to be heard and informed included any medical issues concerning them but also extended to other matters such as custody issues relating to family law and any major decisions which might affect their lives including expulsion from school. The students held that this right of a child to have their voice heard should be given legal standing and should be expressly written into a separate children's act to deal exclusively with civil matters.

In general the students felt that the law at present is not very child focused and that particular issues which effect children should be included in separate pieces of legislation. The young people had particular regard to the Children's Act 2001 and felt that a similar piece of legislation should be included to legislate on all civil matters which effect young people.

With particular regard to medical consent, the students felt that all of the proposed changes to this area of law should be included in a new and separate piece of legislation. This new act should be clear and easy to understand and should be in simplified legal language. The young people stated that if they were to be adequately protected by the law, they must be able to understand all laws which relate to them and affect them.

## **5.1 Medical Treatment and age of consent- General overview**

The students participating in the workshops felt very strongly that the area of law relating to medical consent was in need of reform.

The young people felt that any new legislation enacted must clearly set out the different ages at which people can consent to medical treatment and should also clearly explain what was meant by medical treatment. The young people in the workshops divided medical treatment into specific categories. They felt that these categories should be dealt with separately by the legislature. These categories included general medical consent, consent to sexual health issues, consent to mental health issues and the rights of terminally ill children to consent to and refuse treatment.

The students stated that general medical treatment should be defined in any new legislation and should generally include the right to visit a doctor independently, the right to consent to general medical treatments such as emergency procedures and the right to make decisions regarding your health independently. In relation to medical procedures the students felt that where a person is held to have the capacity to consent to medical treatment this would include all medical procedures including invasive surgery procedures such as an appendectomy. NCLC submit that a broad definition of medical treatment should be included in any new legislation and has regard to the definition of medical treatment set out in Mosby's Medical Dictionary, 8<sup>th</sup> edition© 2009 Elsevier which defines treatment as

**1** The care and management of a patient to combat, ameliorate, or prevent a disease, disorder, or injury.

**2** A method of combating, ameliorating, or preventing a disease, disorder, or injury. Active or curative treatment is designed to cure; palliative treatment is directed to relieve pain and distress; prophylactic treatment is for the prevention of a disease or disorder;

Causal treatment focuses on the cause of a disorder; conservative treatment avoids radical measures and procedures; empiric treatment uses methods shown to be beneficial by experience; rational treatment is based on knowledge of a disease process and the action of the measures used. Treatment may be pharmacologic, using drugs; surgical, involving operative procedures; or supportive, building the patient's strength. It may be specific for the disorder, or symptomatic to relieve symptoms without affecting a cure.

Some debate arose as to whether elective procedures such as cosmetic surgeries should be included under general medical procedures. Both groups were divided over the issue of young people being able to consent to serious surgical procedures such as cosmetic surgery at the age of 16. In general both groups felt that 16 was very young to make such a serious decision, however both groups felt that consenting to general medical treatment would include cosmetic procedures. The groups felt that a special provision should be written into the act to deal with cosmetic procedures ensuring that teenagers aged 16 and over can only have cosmetic procedures where the doctor feels they are mature enough to make such a decision.

Both groups felt that the age of consent to general medical treatment should be 16 years of age. While the students agreed that at 16 young people can consent to all medical procedures including sexual health screening and contraception, the students felt that any new legislation should deal with particular medical procedures individually.

In relation to the survey results students were asked at what age a young person should be entitled to visit a doctor on their own and consent to general medical treatment.

- 60% of the students surveyed stated that the age of general medical consent should be set at 16 years of age.
- 14% of the students felt that the general age to consent to medical treatment should be 15.
- 14% felt that the general age for medical consent should be 14

- 4% felt that the general age for medical consent should be 13
- 4% felt that the general age for medical consent should be 12 and
- 4% were unsure as to the appropriate age to allow young people to consent to medical treatment.

In general both groups felt that all young people should receive free medical care. The majority in both groups held that all young people should receive a free medical card until they are 18 or as long as they remain in full time education. Both groups felt that the main barrier preventing young people from attending doctors was the cost. It was held in the workshops that young people are often embarrassed to discuss medical problems especially mental health or sexual health concerns with their parents, however as they can not afford to visit the doctor independently they simply ignore serious health issues. The young people felt that this practice was very detrimental to the health of young people. Of the students surveyed 89% felt that all young people should be given free medical cards. Of the 89% of students who felt that access to health care should be free for young people 40% felt that young people should receive a free medical card until they turn 18. While 32% felt that medical care should be free until young people are finished in education, usually 23 years of age. 8% of the students felt that medical cards should be available until young people turn 19 while another 8% felt 16 should be the cut off point for access to free health care. Finally 4% felt that free health care should be provided to everyone regardless of age and 4% were unsure as to the age limit.

## **6.1 Mature Minor Rule and Statutory Definition of Maturity**

In general the majority of the young people in both groups felt that the age of consenting to medical treatment should remain at 16.

However the young people did believe that a mature minor rule similar to the rule introduced into UK law by the Gillick case should be introduced into Irish law.

The young people discussed the mature minor rule in great detail in the context of sexual health issues; however they felt that such a rule should be introduced to all medical issues. In this regard the young people looked at the particular rule laid down in Gillick and held that this rule should be introduced into Irish law.

The rule laid down by the House of Lords in Gillick held that a 14- or 15-year-old person could be regarded as capable of giving consent to healthcare and medical treatment, provided he/ she has the capacity to understand the nature and consequences of the treatment being provided, and subject to the following conditions:

- A. in the opinion of the medical practitioner, the patient understands the nature and consequences of the proposed treatment;
- B. the medical practitioner must encourage the patient to inform his parents or guardians;
- C. the medical practitioner must consider the best interests of the patient; and
- D. the medical practitioner must have due regard to any public health concerns.

The young people felt strongly that a similar rule should be introduced into Irish law. In particular the young people had regard to the conditions laid down by the House of Lords. The students agreed that these conditions should be introduced into Irish law but felt that an additional test regarding the maturity of a young person should be introduced into Irish law. This issue of maturity was discussed at great length by both groups. Both groups felt that the mature minor rule must be defined and explained in any new legislation. In particular the students felt that the word maturity must be defined in any new legislation. We therefore

submit that there should be a statutory definition of mature included in any new legislation.

The young people discussed the issue of age versus maturity in detail and the students focused on what the words age and maturity means to them. In particular we found that there does not appear to be a satisfactory legal definition of maturity in any Irish legislation. Also as the Law Reform Commission does not propose a definition of maturity in their report NCLC therefore submits that maturity needs to be defined in any new legislation. In order to adequately explain the meaning of maturity to the students we used a psychological definition of maturity as an example for the students.

This definition stated that Maturity in psychology has little to do with age, but with the ability to react, cope and reason in an appropriate way for the situation and states that maturity is learned through experiences and comes from healthy growth.

NCLC therefore submit that a similar definition of maturity should be included in the Law Reform Commissions proposals for reform on this area of law.

The students discussed the psychological definition of maturity to aid them in coming up with their own definitions of maturity. We have included a number of examples of the student's individual interpretation of the word maturity which we submit should be considered by the Law Reform Commission.

What does the word maturity mean to you?

- Being able to make decisions for yourself.
- Being able to understand and realise the consequences of your actions.
- Being able to make responsible decisions, being grown up and being able to understand.
- Being able to act responsibly in different situations.
- Having a developed sense of mind and understanding.
- Acting like a responsible member of society.
- Being able to understand your rights and make your own decisions.

- Being able to understand what you're doing, being able to make your own decisions and understand the consequences of these decisions.
- Having responsibility for yourself and others, being smart and caring.
- Being grown up, knowledgeable and smart and knowing how to look after yourself including being able to make the right decisions in life.

From the workshop sessions it became apparent that the issue of age versus maturity was a great concern for the students. In particular the young people felt that the law currently places too much emphasis on the age of a person and does not adequately determine whether a person has the relevant maturity at a particular age to consent to matters including medical consent. Both groups of students submitted that a legal definition of maturity should centre on a young person having the full capacity and understanding to make their own decisions. The young people felt that having a statutory definition of maturity would add clarity to the law on medical consent and would ensure both young people and doctors were adequately protected by the law. The students stated that a statutory definition of maturity was most relevant and necessary in relation to the introduction of the mature minor rule into Irish law and should accompany the conditions to the mature minor rule as set out in the Gillick case.

In general both groups felt that the mature minor rule should be introduced into Irish law. In particular the young people felt that the mature minor rule is necessary in relation to sexual health issues. With regard to the mature minor rule the overall majority of young people felt that the rule should apply to 15 year olds. With regard to young people who are 15, it was held that such teenagers should be allowed to make decisions regarding their health care once they are held to be mature enough to understand the proposed treatment and any consequences of the treatment. In particular the second group of students felt that the issue of proving if the young person was mature was very important. The students had regard to the conditions laid down in the Gillick case and felt that these conditions were important. This group in particular felt that the doctor must

assess the maturity of the young person by asking the young person a series of questions relating to the treatment. The second group felt that as each doctor's opinion on maturity would vary it was essential that there was a standard test of maturity which would be posed to all young people. This would ensure that the test was objective and would be the fairest method of protecting young people. With regard to the age at which the mature minor should apply the majority of young people felt that the rule should only apply to 15 year olds. While some of the students felt that young people of 14 were old enough to make serious decisions, the majority of students in both groups felt 14 was too young to make serious decisions regarding a person's health. However both groups held that at 14 young people should be informed on all issues regarding their health and they should be informed independent of their parents regarding any concerns or risks if they are receiving surgical treatment. Both groups felt very strongly that all doctors should be subject to a duty to inform young people on all issues regarding their health and that this duty should be included in any new legislation. It was held that this duty to inform should be extended to all young people from the age of 12 onwards. The students in both groups felt that at present doctors discuss the young person's health with parents only and very often ignore the young person despite the fact that the young person may be present in the room. Both groups felt that doctors must include and inform young people of all issues relating to their health regardless of how minor the issue.

## **7.1 Sexual health**

In general both groups felt that the issue of sexual health was very important and an area where not enough attention is given at present. The young people discussed this issue in great detail and looked in particular at the Gillick case and the mature minor rule. In general both groups felt strongly that the age at which both boys and girls are allowed to consent to sex should be changed to 16 years of age. Both groups also felt that the general age at which young people should be allowed to receive contraception and sexual health testing should be 16. Both groups felt that the current situation whereby the age of consent to medical

treatment is 16 but the age of consent to sex is 17 does not make sense and only causes confusion for young people. In this regard the young people felt that the current age restrictions in place in the UK were preferred and should be adopted into Irish law. Both groups felt that the issue of sexual health should be included separately in any new legislation. The age at which a young person can consent to medical treatment including contraception and sexual health screening should remain at 16, however the mature minor rule should be introduced into Irish law with regard to young people aged 15 years.

With regard to 15 year olds the doctor must ascertain whether the young person involved is mature enough to consent to sex. The students felt that the doctors should take this opportunity to explain to the young people the consequences of entering into a sexual relationship and the importance of sexual health awareness. Again both groups felt that the doctor should ascertain a person's maturity by putting a number of questions to the young person and must also ensure that the young person is not being pressurised into making such a decision.

In general the majority of students in both groups felt that young people were not mature enough at 14 to consent to a sexual relationship. The students felt that young people were too young to consent to sex at 14. The students felt that if a 14 year old came to a doctor looking for contraception the doctor should inform the young person's parents. While the students were concerned of the consequences of a doctor refusing to give a 14 year old contraception, the students felt that informing the child's parents was more beneficial to the child than giving the young person contraception. The students felt that in such circumstances it was necessary to look at what is in the best interests of the young person involved and to ensure that the young person's best interests are protected at all times.

Both groups felt that the issue of sexual health was very important and sexual health awareness must be a priority for the Health Service Executive (HSE) and for schools. Both groups felt that it would be appropriate for the HSE to raise awareness and knowledge regarding sexual health and unplanned pregnancies

among young people to ensure that young people are fully aware of all issues relating to sexual health. Both groups felt that sexual health awareness should be mandatory in all schools and that free contraception, advice and counselling should be available in schools. Both groups felt that there is not enough awareness of sexual health in schools at present and that if sexual health was treated as a norm and was discussed openly and regularly then there would not be as many unplanned pregnancies among young people and the number of young people with Sexually Transmitted Diseases would not be on the increase. In relation to the survey results the students were asked as to what age they thought young people should be allowed to visit a doctor for sexual health advice and to get contraception.

- 39% of students felt that 16 was an appropriate age.
- 25% of students felt that 15 was an appropriate age.
- 7% of students felt that 14 was an appropriate age.
- 18% of students felt that 13 was an appropriate age.
- 4% of students felt that 12 was an appropriate age.
- And 7% of students were unsure as to the appropriate age.

With regard to the mature minor rule 89% of students surveyed felt that a doctor should be allowed to give contraception to a girl under 16 if they think the girl is mature and fully understands all the issues involved while 11% of students disagreed with the introduction of a mature minor rule.

Finally in relation to changing the age of consent 96% of the students felt that the age of consenting to sex should be changed from 17 to 16 while 4% of students disagreed with changing the age of sexual consent.

In relation to the area of sexual health issues, the students also discussed the issue of the rights of teenage mothers. In particular the young people felt that the fact that girls who give birth before they are 16 can consent to all treatment in relation to their own children but can not make certain decisions regarding their own medical health was confusing and did not make sense. Some of the

students felt that girls who become pregnant before they are 18 should be granted certain rights at an earlier age as a result of having a child. In particular the students felt that teenage mothers should be entitled to apply for and consent to a passport for themselves if they can obtain a passport for their child. The students also felt that teenage mothers should be entitled to make any decision regarding their pregnancy without needing the consent of their parents, the children in particular held that teenage mothers should be entitled to make emergency decisions regarding caesarean sections or other emergency procedures.

In relation to the survey results 82% of students felt that a girl who becomes pregnant before she is 16 should be allowed to consent to all medical treatment regarding her pregnancy. A further 11% of the students disagreed with this while 7% of the students were unsure of this issue.

In relation to the legal rights of teenage mothers 75% of students found that a teenager mother should be given full legal rights on the birth of her child.

Whereas 21% disagreed that teenage mother should be given full legal rights while 4% were unsure as to this issue

## 8.1

### Mental Health

Overall the students felt that the issue of mental health was a growing concern for young people in Ireland. In particular the young people felt that not enough information was available to young people regarding mental health issues. Regarding this issue the young people felt strongly that young people with mental health issues need greater protection and greater support than healthy children. In particular the groups discussed the issue of young people with eating disorders or psychological illnesses such as depression. They felt that young people with these types of illnesses should not be allowed to refuse treatment as the nature of their illness prevented them from being able to make a coherent decision. However the young people did have difficulties with the way people with mental health issues are currently treated by the law. In particular the students felt that people with mental health issues are not adequately supported by the law and that there is a danger that the current law prevents children with mental health difficulties from having their voices heard and their opinions taken into account. The young people looked at the Mental Health Act 2001 in particular. Specifically the students felt that this Act was not child centred and did not discuss certain disorders such as eating disorders or addiction problems in enough detail. The students felt that these were disorders which effect young people in particular and should be discussed in detail in a Mental Health Act. In particular the young people had regard to section 25 of the Mental Health Act which provides that a child can be placed in a treatment centre for a period of 21 days on the basis of a report by a psychiatrist. Section 25 allows for children to be put into treatment centres even where the parents or guardians can not be found or refuse to give consent.

**25.—(1)** Where it appears to a health board with respect to a child who resides or is found in its functional area that—  
(a) the child is suffering from a mental disorder, and

(b) the child requires treatment which he or she is unlikely to receive unless an order is made under this section, the health board may make an application to the District Court ('the court') for an order authorising the detention of the child in an approved centre.

(2) Subject to *subsection (3)*, a health board shall not make an application under *subsection (1)* unless the child has been examined by a consultant psychiatrist who is not a relative of the child and a report of the results of the examination is furnished to the court by the health board.

(3) Where—

(a) The parents of the child, or either of them, or a person acting in *loco parentis* refuses to consent to the examination of the child, or

(b) Following the making of reasonable enquiries by the health board, the parents of the child or either of them or a person acting in *loco parentis* cannot be found by the health board, then, a health board may make an application under *subsection (1)* without any prior examination of the child by a consultant psychiatrist.

(4) Where a health board makes an application under *subsection (1)* without any prior examination of the child the subject of the application by a consultant psychiatrist, the court may, if it is satisfied that there is reasonable cause to believe that the child the subject of the application is suffering from a mental disorder, direct that the health board arrange for the examination of the child by a consultant psychiatrist who is not a relative of the child and that a report of the results of the examination be furnished to the court within such time as may be specified by the court.

(5) Where the court gives a direction under *subsection (4)*, the consultant psychiatrist who carries out an examination of the child the subject of the application shall report to the court on the results of the examination and shall indicate to the court whether he or she is satisfied that the child is suffering from a mental disorder.

(6) Where the court is satisfied having considered the report of the consultant psychiatrist referred to in *subsection (1)* or the report of the consultant

psychiatrist referred to in *subsection (5)*, as the case may be, and any other evidence that may be adduced before it that the child is suffering from a mental disorder, the court shall make an order that the child be admitted and detained for treatment in specified approved centre for a period not exceeding 21 days.

(7) An application under this section may, if the court is satisfied that the urgency of the matter so requires, be made *ex parte*.

The students felt very strongly about section 25 of the mental health Act, in particular they were very concerned that young people with mental health issues could be put into treatment centres without parental consent in certain circumstances. The students felt that mental health was a serious issue for young people today but that section 25 was too severe in its remit and did not take into consideration what was in the best interests of children suffering from such disorders. The young people also felt that the different mental health disorders should be listed in any new law on medical consent and should include personality disorders and eating disorders. The students felt that any new legislation on medical consent should look at the issue of mental health from a young person's perspective and should aim to protect the young person at all times.

The young people felt that children and adults with mental health issues should have their circumstances reviewed on a regular basis. The students especially felt that people who have been put into special mental health units or treatment centres must be subject to independent reviews at regular periods. The students also felt that every child with mental health issues should be appointed an independent guardian or supervisor to look after the child and to ensure that the child's voice is heard in any medical or legal proceedings regarding the child. The students also had regard to young people with addiction problems. The students felt that whilst young people with such difficulties must be listened to and their opinions taken into account at all times they should not have the right to refuse treatment if it is deemed necessary by doctors. The students felt that allowing

young people with addiction problems to refuse treatment could be detrimental to their recovery.

With regard to the survey results 75% of the students felt that young people with mental health issues or addiction problems should not be allowed to refuse treatment. 21% felt that young people with such difficulties should be allowed to refuse treatment while 4% were unsure.

The young people were also asked at what age they thought young people with mental health problems should be allowed to make decisions regarding their health and lives.

- 25% felt that 18 was an appropriate age.
- 7% felt that 17 was an appropriate age.
- 54% felt that 16 was an appropriate age.
- 7% felt that 15 was an appropriate age.
- While 7% felt that children with mental health problems should never be allowed to make any decisions regarding their health care.

## 9.1

### Privacy

Both groups felt that another issue preventing young people from attending doctors or discussing their health issues was privacy concerns. Both groups felt that the current situation did not adequately protect a young person's privacy. The young students in the workshop felt that they were nervous about visiting their family doctors independently as they would fear that the doctor would discuss their health issues with their parents at another time or would put their health issues on a general medical file which was for their whole family. Both groups felt that a doctor-patient confidentiality clause should be written into any new law stating that in cases where patients are aged 16 or are aged 15 and are deemed mature for the purpose of the act doctors must respect the patients confidentiality. The young people felt that the issue of privacy arose in particular in relation to sexual health and mental health issues. Young people felt that

doctors would think it in the best interests of the patient to inform their parents if they had a sexually transmitted disease or were suffering from a mental health or addiction problem. It is therefore submitted that a privacy clause is written into any new legislation dealing with consent to medical treatment. With regard to privacy the majority of young people participating in the workshop felt that parents should be involved in any issues relating to the health of their children. The students felt that especially in the cases of mental health disorders and addiction problems, the parent's involvement was essential. However both groups felt that the onus was on the young people rather than the doctors to inform the parents.

While the law sets that age of consenting to medical treatment at 16, the students felt that as most young people aged 16 and over attend family doctors and often can't afford to visit a doctor independently it was very important to have a clear and transparent privacy clause written into the new legislation. The privacy clause would also encourage young people to attend doctors more often and discuss medical issues more frequently.

In regard to the survey results 82% of the student's survey stated that a privacy or confidentiality rule should be included in any new legislation on medical consent. While 11% were unsure as to a privacy clause and 7% of students felt that such a clause was unnecessary.

However while the survey results demonstrate that the issue of privacy was an important issue for the students at the same time the students felt that parents should be involved in the health and welfare of their children. The students felt that parents and children should work together in situations where children are ill. In this regard 68% of the student's survey felt that parents do have a right to know about their children's health. Of those surveyed 21% felt that parents should only be informed if their children want them to. And 11% stated that parents do not have a right to be informed of their children's health issues.

## 10.1 Children with Serious illnesses and terminal illnesses

The issue of children with serious illnesses and terminal illnesses resulted in significant debate among both groups. Firstly both groups felt that serious illness and terminal illness should be defined clearly in any new legislation. With regard to serious illnesses the young people held that this must be defined in any legislation and should include examples. The students felt that a serious illness could be defined as an illness that changes your life and would include diseases such as diabetes or epilepsy. The students held that young people dealing with these illnesses would in general be deemed more mature than other young people as in many circumstances dealing with serious illness makes children grow up faster and become more responsible. With regard to treatment and procedures, the students felt that young people with serious illnesses must be informed by doctors of all relevant procedures relating to their health. Then under the mature minor rule the young people would be able to consent to medical treatment at 15 as in the majority of cases they would meet the appropriate test of maturity.

The students then discussed the issue of whether young people should be allowed to refuse medical treatment and medical procedures. Firstly the students looked at the issue of young people with non-fatal illnesses and whether they should be allowed a say in the treatment and procedures prescribed. In relation to this issue 75% of those surveyed felt that young people should be entitled to refuse medical treatment. 25% of the students disagreed with this position. Of the students who disagreed, 13% felt that a decision to allow a young person to refuse treatment must depend on the particular circumstances of the case. Similarly 4% felt that a decision to refuse treatment should depend on the age of the young person and on what the particular treatment is.

Of those who completed the survey 4% felt that the decision to refuse treatment must depend on whether the young person involved understands the consequences of his/her actions. And 4% of students felt that young people should not be allowed to refuse treatment if their condition is terminal.

The students were also asked the age at which they felt young people should be allowed to refuse treatment at.

- 57% said young people should be allowed to refuse treatment at 16.
- 21% said young people should be allowed to refuse treatment at 15.
- 11% said young people should be allowed to refuse treatment at 14.
- 4% said young people should be allowed to refuse treatment at 12
- And 7% were unsure as to the age at which young people should be allowed to refuse treatment.

## **10.2 Terminal illnesses**

With regard to children suffering from terminal illnesses, this issue caused the most debate among the young people. Firstly the young people felt that terminal illness should be defined in any proposed legislation and should only refer to children whose likelihood of recovery is very slim or whose medical condition could be considered fatal.

The young people had particular interest in the case of 'Hannah Jones' and the different newspaper clippings on this case were used to engage the students in the debate. With regard to allowing young people with terminal illnesses the right to refuse treatment and ultimately have a say in their treatment the students focused on the issue of maturity and in particular the issue of age versus maturity. Most of the young people had severe concerns over allowing young people a right to refuse treatment and using the 'Hannah Jones' case as an example many of the students focussed on the fact that Hannah who was 12 years of age changed her mind regarding her decision to refuse treatment when she was 13 and sought to have the lifesaving operation. The students felt that the fact that she changed her mind highlighted serious issues or concerns with allowing children as young as thirteen to make life altering decisions and ultimately give them the right to decide to die. The students felt that children with terminal illnesses must be offered a greater say in their health care and must be

involved from an early stage in the decision making process regarding the health care. The majority of students felt that young people suffering from a terminal illness should be allowed to refuse treatment without first applying to the Courts. The majority of students felt that 16 was the most appropriate age at which a person with a terminal illness should be allowed to make a decision refusing medical treatment. The young people debated the issue of young people suffering and coping with terminal illnesses in great detail. Overall the children felt that ideally the young people and their parents should come to a joint decision regarding refusing treatment however in the survey results show that the majority of students feel that parents should not be able to force their terminally ill children into having an operation or further treatment. Similarly the majority of students felt that young people should be entitled to apply to the Courts directly for the right to die. The young people drew attention to the fact that such a Court process must be done quickly and with ease as children with terminal illnesses should not be faced with the further stressful situation of having to go before a High Court Judge or Tribunal. In general both groups felt that in relation to terminal illnesses the biggest issue was ensuring that such young people had a remit to have their voice heard. The young people felt that it was essential that children suffering from a terminal illness be treated as adults and should be entitled to have their concerns and views respected and considered by their parents, doctors and by the courts.

In relation to the survey results 75% of the young people stated that young people with terminal illnesses should be allowed to refuse medical treatment. The young people were then asked as to what age they felt young people with terminal illnesses should be allowed to refuse treatment at.

- 50% of the students who felt that young people with terminal illnesses should be allowed to refuse treatment felt that 16 was the appropriate age to make such a decision.
- 20% felt that 15 was the appropriate age.
- 15% felt that 14 was the appropriate age.
- 15% felt that 13 was the appropriate age.

With regard to this question it is important to note that some of the children made individual comments on their surveys relating to this topic. One student stated that children with terminal illnesses should be entitled to make a decision to refuse treatment at any age if they are fed up living with their illness. Another student stated that the decision to allow a young person to refuse treatment should depend on the maturity of the person and not the age of the person. With regards to allowing young people the right to apply to the High Court regarding their terminal illness 68% of the students surveyed held that young people with terminal illnesses should be allowed to apply to the High Court for the right to die. 18% of the students felt that young people should not be entitled to apply to the courts for such a right while a further 14% of students were unsure regarding this question. Also in relation to this question two students noted that such a decision should be made jointly between the child and their parents. As noted this topic regarding the rights of terminally ill children brought about a substantial amount of debate among the young people. In particular the O'Casey Class engaged in this topic particularly well. The students mentioned books and films which they had studied in Transition Year on the topic of terminal illness and seemed to relate this topic back immediately to their previous studies. However the students in the O'Casey group seemed to believe that such children needed to have parental involvement and found it much more difficult to comprehend that teenagers who were terminally ill could make such a serious decision independently. It was clear that many of these students felt that they personally were not mature enough to make an independent decision regarding a life or death health situation at their current age. However the students in the Beckett class whilst being the same age as their peers in the O'Casey class seemed to grasp the concept of age v maturity much better and were able to comprehend the issue and believed that teenagers should be able to make independent decisions regarding their health.

## 11.1

### **Guardianship and medical consent**

The issue of allowing people who are not the legal guardians of young people to consent to medical treatment and procedures also caused considerable debate amongst the young people. Many of the students participating in the workshop stated that they were living with and in the care of grandparents and older siblings. Some of the students were also living with foster parents or were in the care of the State and the issue of medical consent was very important to them. In general the students in both groups felt that the law should not be limited to only allow legal guardians consent to medical treatment on behalf of young people. The students felt that the law should allow the people who had the day to day care and responsibility of young people to consent to medical care on their behalf. In particular the young people felt that it made very little sense to refuse to allow a grandparent who was looking after a child and had responsibility for the child, to consent to medical care on behalf of the child. Many of the students felt that in situations where a child no longer lives with his/ her legal guardians it would be detrimental to the health of the child to refuse to allow his/ her day to day custodian to consent to treatment on his/her behalf. The students were especially concerned about the effects that any potential delay may have on the health of a child in an emergency situation. The young people stated that in general the legal definitions of guardians should be reformed and certain aspects of family law were in need of reform. In particular many students were concerned that in situations where their parents are not married and their father has not applied to the court for legal guardianship, then their father is not considered a legal guardian and can not consent to medical treatment on behalf of his child. The young people felt that un-married fathers should be granted automatic guardianship of their children to ensure that they are involved in any important decisions regarding their children's health.

In certain situations the students felt that where the young person's legal guardian is unavailable, the young person themselves should be allowed to consent to medical treatment. The students felt that such a decision should take

into account a number of factors including the age of the young person, the maturity of the young person and the seriousness of the health issue concerned. However the majority of the students felt that in most circumstances a family member or relative of the young person involved should be entitled to consent to medical treatment on behalf of the young person and the child themselves should only have to consent in rare situations where there was no-one else available to make such a decision. The students felt that the current law was too concerned with formalities. The students were especially concerned with the current situation whereby children who are in the care of the HSE and do not have a guardian available to consent to treatment must wait while the HSE apply to the Court to get permission to consent to treatment on their behalf. The students felt that in such situations where young people are in care situations, the young people involved should be entitled to consent to treatment themselves. The students felt that particular attention should be given to ensure that young people in care situations are listened to and that their rights are adequately protected. Many students noted that children in care situations do not have the protection and support of their family. The students also noted that children in care are often forced to grown up and mature faster than children in regular family situations due to their circumstances. Many children in care have had to look after themselves and the young people found that because of this they often mature faster than their teenage counterparts. In relation to the survey results the young people were asked as to who should consent to medical treatment on behalf of young people who are not living with their mothers or legal guardians. The majority of students answered either the person who cares for them or their grandparents. In relation to this question many of the students answered that older siblings should be allowed to consent and failing that the children themselves should have such a right. Similarly the students were asked who should consent to treatment on behalf of children in care. The answers given by the students included parents, the person caring for them, foster parents, the government, social workers and the child themselves. Certain students noted that with regard to children in care

consenting for them, the age of the child and the personal circumstances of the case should be taken into account. Many students also noted in relation to children in care their opinions should be taken into account along with their foster parents or social workers to ensure that the approach remains child centred. 89% of the students surveyed felt that a young person in care should be allowed to consent to medical treatment on their own while 11% disagreed with this. The students were also asked at what age children in care should be allowed to consent to treatment independently.

- With regard to the 89% of students who felt that young people in care should consent to treatment on their own 68% of these felt that 16 was the appropriate age.
- 12% felt that 15 was the appropriate age
- 8% felt that 14 was the appropriate age
- 4% felt that children in care should be allowed to consent to treatment on their own at any age
- While 8% were unsure as to the appropriate age

## 12.1

### Conclusion

Northside Community Law Centre is making this submission to the law Reform Commission on their recent report on children and the law: consent to medical treatment based on the workshops carried out with the Transition Year students of Colaiste Dhulaigh, Coolock.

NCLC along with the Students of Colaiste Dhulaigh submits that the law in relation to children and medical consent is in need of reform. In particular NCLC submits that the law in this area must be more child centred and focused on protecting children rather than protecting doctors from the threat of litigation. In this regard NCLC holds that a new piece of legislation should be introduced which would clearly set out the law in relation to medical consent. This piece of legislation should be clearly divided into the different aspects of this area namely; general medical consent, consent and sexual health issues, consent and mental health issues and consent and guardianship.

In relation to medical consent in general NCLC submit that the age of medical consent should remain at 16 years of age however NCLC agrees that the mature minor rule should be introduced into Irish law and should be based on the rule laid down by the House of Lords in the Gillick case. In particular NCLC submits that the mature minor rule should be put on a statutory footing and that the word mature should be clearly defined in any legislation. NCLC submits that the mature minor rule should apply to young people aged 15 years and should apply to all medical health procedures including sexual health issues.

NCLC also submit that the issue of medical consent and guardianship is a significant concern for young people today. NCLC therefore submits that where young people have been in the day to day care of a grandparent, sibling or other guardian for a substantial period of time, then that person should be entitled to consent to medical treatment on behalf of the young person. This issue should be clearly explained in any new legislation and the meanings of the different terms including the time limits should also be clearly explained.

Similarly in relation to children in care NCLC submit that the rights of these children need to be adequately protected and children in care should have a remit to have their voice adequately heard and their opinions respected. Foster parents and social workers should work with children in care to ensure that they are informed regarding any health issue concerning them and that any procedure or treatment is fully explained to them.

NCLC also submits that the issue of mental health care and addiction treatment was a significant concern for the students surveyed. In particular the young people felt that more education and information is needed regarding mental health problems. The young people felt that there is often a stigma attached to mental health issues and this prevents young people from dealing with such issues or prevents them from looking for help. The young people felt that the current legislation namely section 25 of the Mental Health Act 2001 was not child centred and did not adequately take into account the child's perspective. NCLC submit that the issue of mental health and children needs to be reviewed by the legislature and a more child centred approach to this issue should be taken. With regard to medical consent NCLC submits that children with mental health issues and addiction problems must be offered greater protection. NCLC submits that children with such issues should not be allowed to refuse treatment without their parents consent until they reach 18 years of age as their medical conditions prevent them from making an independent and informed decision. With regard to children placed in treatment centres for mental health issues either by their parents or by the HSE and the State NCLC submits that such children should have their medical circumstances reviewed on a weekly basis.

It is paramount that such children's own opinion are taken into account and form an integral part of the decision making process regarding their health care. NCLC also submit that children placed in medical health units should have an independent social worker appointed to their case to assist the child and to ensure that the child's concerns are addressed.

Finally NCLC submit that all of the issues relating to medical consent and children should be child centred. NCLC submits that any new legislation

regarding children should be in language which young people can understand and should be clear and transparent in order for young people to be able to fully use and comprehend any new legislation.

# APPENDIX

‘A’



## **CONSENT TO MEDICAL TREATMENT**

### **Northside Community Law Centre & Colaiste Dhulaigh Secondary School**

11)Name:

12)Age:

13)Gender

Male:

Female:

14)What is more important

The age of a person \_\_\_\_\_

Or

The maturity of the person \_\_\_\_\_

15)What does the word maturity mean to you?

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16)What age should you be allowed to visit a Doctor on your own and consent to general medical treatment and make decisions about your health on your own?

16 \_\_\_\_\_ 15 \_\_\_\_\_

14 \_\_\_\_\_ 13 \_\_\_\_\_ 12 \_\_\_\_\_

**17)**Should the Doctor be made under law to discuss any health issue/  
problem with the young person directly?

Yes\_\_\_\_\_ No\_\_\_\_\_

**18)**Should it be up to the young person to decide whether to discuss any  
health issues/ problems with their parents?

Yes\_\_\_\_\_ No\_\_\_\_\_

**19)**At what age should a young person be allowed to see a doctor for sexual  
health advice and to get contraception?

16\_\_\_\_\_ 15\_\_\_\_\_ 14\_\_\_\_\_

13\_\_\_\_\_ 12\_\_\_\_\_

**20)**Should the age of consent to sex be changed from 17 to 16?

Yes \_\_\_\_\_ No \_\_\_\_\_

**21)**Should a Doctor be allowed to give contraception to a girl under 16 if they  
think the girl is mature and understands fully all of the issues involved?

Yes\_\_\_\_\_ No\_\_\_\_\_

**22)**Should young people be allowed to refuse medical treatment?

Yes\_\_\_\_\_ No\_\_\_\_\_

**23)**What age should you be allowed to refuse medical treatment at?

16\_\_\_\_\_ 15\_\_\_\_\_

14\_\_\_\_\_ 13\_\_\_\_\_ 12\_\_\_\_\_

**24)**Should young people with a terminal illness be allowed to refuse treatment  
and if yes at what age?

Yes\_\_\_\_\_ No\_\_\_\_\_

Age\_\_\_\_\_

**15)** Should the parents of young people with terminal illnesses or doctors be allowed to make them have an operation or treatment?

Yes \_\_\_\_\_ No \_\_\_\_\_

**21)** Should young people with terminal illnesses be allowed to apply to the Court for the Right to Die?

Yes \_\_\_\_\_ No \_\_\_\_\_

**22)** Should young people with mental health issues be allowed to refuse treatment?

Yes \_\_\_\_\_ No \_\_\_\_\_

**23)** What age should young people with mental health issues be allowed to make decisions regarding their health?

18 \_\_\_\_\_ 17 \_\_\_\_\_

16 \_\_\_\_\_ 15 \_\_\_\_\_

14 \_\_\_\_\_ 13 \_\_\_\_\_

12 \_\_\_\_\_

**24)** If a young person is not living with or in the full time care of their parents who should be allowed to consent to treatment for them?

\_\_\_\_\_

\_\_\_\_\_

**25)** If a young person has been taken into care who should consent to treatment for them?

\_\_\_\_\_

\_\_\_\_\_

**26)** Should a young person in care be allowed to consent to medical treatment on their own and if so at what age?

Yes \_\_\_\_\_ No \_\_\_\_\_

Age \_\_\_\_\_

**27)** Should a teenage mother be given full legal rights on the birth of her baby?

Yes \_\_\_\_\_ No \_\_\_\_\_

**28)** Should a girl who gets pregnant before she is 16 be allowed to consent to all medical treatment regarding her pregnancy?

Yes \_\_\_\_\_ No \_\_\_\_\_

**29)** Should all young people be given free medical cards?

Yes \_\_\_\_\_ No \_\_\_\_\_

Until what age? \_\_\_\_\_

**30)** Should a privacy/ confidentiality rule be introduced into any new law?

Yes \_\_\_\_\_ No \_\_\_\_\_

**31)** Do parents have a right to know about their children's health?

Yes \_\_\_\_\_ No \_\_\_\_\_

**32)** Would you like anything else to be included in any new law on medical consent and young people

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## A list of Participants from Transition Year Students in Colaiste Dhulaigh

<b>O Casey 4</b>
Aaron Bellew
Amy Bergin
Anne-Marie Curtis
Shauna Daly
Lyndsey Dillon
Samantha Dreelan
Dean Hand
Ryan Ivory
Lynn Kenny
Tanya Morgan
Jade O Brien
Paul O Brien
Sean O Reilly
Teresa Redmond
Lynda Rigney
Tammy Roberts
Roisin Ryan
Philip Swan

<b>Beckett 4</b>
Laura Carter
Ciaran Casey
Lauren Cleary
Noel Corbally
Kevin Curtis
Kevin Darling
Ryan Dowler
Michelle Doyle
Sean Doyle
Christopher Hartnett
Gavin Higgins
Rachel Kearney
Linda Mulligan
Piaras Nguyen
Jamie O Brien
Kevin Riordon
Thomas Ryan
Ryan Scully
Dean Sheridan
Sarah Smyth
Emma Whelan-Mooney