Press Release: A Comment on the Latest High Court Judgement on Archie Battersbee

The latest High Court judgement in the ongoing case of Archie Battersbee further undermines the place of parents in making medical decisions for their children. It also invokes "dignity" in a way that threatens the dignity of all those living with profound disability.

Archie Battersbee has lain in a coma for four months while doctors, the courts, and his parents have argued over his fate. On the 13th June, the High Court decided he was probably dead[1]. On the 6th July, the Court of Appeal judges criticised the way that this decision was made and "strongly caution[ed] judges in future cases of this kind from being drawn into attempting to declare death […] where none of the medical witnesses has themselves made a diagnosis of death"[2]. The Anscombe Bioethics Centre had also argued this in a statement on 17th June[3].

In the latest judgement of the 15th July 2022, Mr Justice Hayden concluded that "the Court cannot authorise or declare lawful the continuation of this present treatment […because it] compromises Archie's dignity, deprives him of his autonomy, and becomes wholly inimical to his welfare. It serves only to protract his death, whilst being unable to prolong his life"[4].

This High Court judgement is deeply problematic as it states that withdrawal of treatment is not only permissible but obligatory. Furthermore, it alleges that providing treatment to an unconscious patient with no prospect of recovery is per se contrary to a patient's "dignity" and "autonomy". This is a threat to many profoundly disabled people.

Despite the fact that Archie has remained alive for more than four months, it is denied that the treatment is able to "prolong his life". Yet, that same treatment is said to "protract his death". This is contradictory. Someone who is dying is living, and to prolong dying is to prolong living. By "prolong his life", Hayden J clearly means a life which, in his view, is worth living. It may be of limited benefit to prolong this last phase of life, but in some cases it may be of great significance to the patient or to people close to the patient.

The Catholic tradition recognises that treatments that sustain life but provide only limited benefits and which are intrusive, burdensome and/or costly, are not obligatory. They are "extraordinary" and doctors are under no obligation to offer them and patients are under no obligation to accept them. If there is no realistic prospect of recovery, then, in principle, it could

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[1] *Barts Health NHS Trust v Dance & Battersbee* [2022] EWHC 1435 (Fam): https://www.judiciary.uk/judgments/barts-health-nhs-trust-v-dance-battersbee/

[2] *Barts Health NHS Trust v Dance & Ors (Re Archie Battersbee)* [2022] EWCA Civ 935, para 37. https://www.judiciary.uk/judgments/dance-battersbee-v-barts-health-nhs-trust-and-another/

[3] *Press Statement on Archie Battersbee: "Very Likely Dead" is not Dead Enough*, Anscombe Bioethics Centre (17 June 2022): https://www.bioethics.org.uk/news-events/news-from-the-centre/press-statement-on-archie-battersbee-very-likely-dead-is-not-dead-enough/

[4] *Barts Health NHS Trust v Dance & Ors (Re Archie Battersbee)* [2022] EWFC 80, para 46. https://www.judiciary.uk/judgments/barts-health-nhs-trust-v-battersbee/

be ethical to withdraw intensive care and ventilation. On the other hand, extraordinary treatment may be provided if the patient wants it and if providing it does not prevent others from receiving the treatment they need.

The Centre has commented frequently that English law habitually fails to recognise the responsibilities and rights of the parents in cases relating to the medical treatment and care of children[5]. This is shown in the present case by the appointment of a guardian to represent the interests of Archie, as though the parents are less well-qualified to represent his interests. Decision-making should not be taken from the parents unless and until they have been shown to be unreasonable and a threat to their child. They remain the people who know their child best.

If Archie has no hope of recovery, then it seems prima facie reasonable for the hospital to seek to withdraw intensive care (if ordinary treatment and basic care are still provided). The practical conclusion of this judgement may well be defensible. However, the speculation that such withdrawal is what Archie "might have wanted"[6], and the claim that remaining on intensive care "compromises Archie's dignity"[7], involve projections of views or feelings onto him in a way that is both unwarranted and ethically deeply problematic.

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Notes to Editors:

- For more information on the Anscombe Bioethics Centre, see our website www.bioethics.org.uk
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[5] *Press Statement – Charlie Gard: Doing the Right Thing for the Right Reasons*, Anscombe Bioethics Centre (7 July 2017): https://bioethics.org.uk/press-room/press-statements/press-statement-charlie-gard-doing-the-right-thing-for-the-right-reasons/; *Press Statement – Alfie Evans: A Brief Statement of the Fundamental Ethical Principles*, Anscombe Bioethics Centre (2 February 2018): https://bioethics.org.uk/press-room/press-statements/press-statement-alfie-evans-a-brief-statement-of-the-fundamental-ethical-principles/; *Press Statement – Pippa Knight: The Benefit of Being Cared for Unawares*, Anscombe Bioethics Centre (4 February 2021): https://bioethics.org.uk/press-room/press-statements/press-statement-pippa-knight-the-benefit-of-being-cared-for-unawares/; *Press Statement – Alta Fixler: Subsidiarity and the Importance of Circumstances*, Anscombe Bioethics Centre (4 August 2021): https://www.bioethics.org.uk/news-events/news-from-the-centre/press-statement-the-alta-fixsler-case-subsidiarity-and-the-importance-of-circumstances/

[6] *Op. cit.*, *Barts Health NHS Trust v Dance & Ors*, EWFC 80, para 32.

[7] *Ibid.,* para 46.