The parliamentary scene

Vaccination/immunisation and compensation

Mr David Ennals, the Secretary of State for Social Services, had an unhappy question time on Tuesday 9 May when he announced the Government's scheme to give £10 000, tax free, to 'children or adults who have, since 5 July 1948, been severely damaged as a result of vaccination which has taken place in the United Kingdom against diphtheria, tetanus, whooping cough, poliomyelitis, measles, rubella or tuberculosis (BCG), or smallpox up to the date when its routine use ceased to be recommended.'

MPs with constituents who had suffered brain damage were quick to point out that £10 000 was a very small sum in comparison with the award likely to be made by a court if liability were accepted: Mr Jack Ashley estimated that the court would set compensation at £115 000 (or if inflation-proofed about £250 000).

Mr Ennals was reassuring. The £10 000 cash grant was being made because of the time that would inevitably be taken for the Government to reach its conclusions on the many important recommendations put forward by the Pearson Commission on Compensation for Personal Injury. Acceptance of the grant would not in any way prejudice individuals' rights to take action in the future.

However, there were two main areas of doubt. Firstly, how would brain damaged children be separated into those with proof of vaccine damage and those without? Secondly, why should they be separated into the haves and the have nots?

Mr Ennals told the House that the decision would be made on a balance of probabilities, with the right of appeal to an independent tribunal of two medical specialists and a legal chairman. That sounds very easy – but his answer ignored the weight of evidence that such assessments of probabilities are virtually impossible to make retrospectively. Indeed, when the Joint Committee on Vaccination and Immunisation examined the evidence in 1977 it came to the conclusion that 'retrospective analysis of cases of reported adverse reactions does not permit conditions such as childhood convulsions or encephalopathy, which occur coincidentally and unrelated to immunisation, to be differentiated from those in which such a relationship appears to exist.' Anyone with clinical experience in this field will know of sad cases in which the parents of a handicapped child are convinced that its mental retardation is due to vaccine damage despite evidence of another, organic cause. It is no part of a doctor's duty to try to convince such families that they are mistaken, and in many cases passive acceptance of the parents' rationalisation of their misfortune may have seemed a reasonable course. Looking for someone to blame is a natural human response to tragedy, and vaccination has become a popular scapegoat in Britain. When, however, the evidence is reviewed dispassionately it may prove inadequate to satisfy independent assessors. No matter where the balance of probabilities is set some families will find themselves on the wrong side and will believe they have been treated harshly.

Lord Pearson was well aware of this: and his commission's report was quoted by Sir George Young in the Commons discussion of the scheme. 'We do not think', said the report, 'that it is right to try to distinguish one severely disabled child from another and to produce a situation where two children have the same needs but one is compensated and the other is not.'

The old concepts of tortious liability and retributive justice should by now surely be seen to be outdated. The measure of a society's financial provision for a handicapped child should be the extent of its handicap, not the cause of it. Acceptance of that approach by the DHSS might prevent another saga of disappointment and envy such as that generated by the thalidomide litigation. Unfortunately the measure of damages set by the courts in cases of proved liability has been so high that a more equitable system would be open to the criticism of being cheap justice.

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