

Court of protection best interest decision for Covid-19 patient



In circumstances where an individual lacks capacity and requires serious medical treatment, it will fall to a 'decision maker' (such as an attorney or deputy) to make medical decisions on their behalf. However, in circumstances where very difficult decisions have to be made, quite often those who are caring for the patient will disagree on what would be in their best interests. In these situations the [Court of protection](#)'s input can be sought to make a determination.

In the case of *Cambridge University Hospitals NHS Foundation Trust v AH and others (Serious Medical Treatment)* [2021] EWCOP 51 the patient had been admitted to hospital with Covid-19 and, very sadly, had suffered multiple organ failure and irreversible brain and nervous system damage as a result of the infection. She also required mechanical assistance to breathe and eat. Her treating clinicians were of the view that continued ventilation was not in her best interests and that she should be moved to palliative care, however her family could not agree as to whether or not the treatment should continue.

Following an application to the court, it court found that it would be in the patient's interests for ventilation to remain until such time as all of her children and family could be by her side. The court also considered it to be in her best interests to be moved somewhere where her privacy could be protected and she could rest.

In reaching its decision the court took the following points into account:

- It was resistant to a balance sheet exercise which simply listed the 'advantages and disadvantages' of competing options but, instead, considered a best interest decision required an assessment of a patient's medical, welfare and emotional needs as a whole;



- While the patient was religious, the court was not prepared to make an assumption of the view she would adopt solely because of her religion, as it felt that to do so would risk 'subverting rather than protecting her autonomy'; and
- It found that the patient's treatment was futile, that she was in both physical and emotional pain, her treatment was exhausting and she was on a small noisy ward which afforded minimal privacy and failed to respect her cultural norms

This matter demonstrates the extremely challenging issues that decision makers can be faced with and provides insight into the court's considerations when making a best interests assessment, highlighting the requirement to assess the whole landscape of a patient's needs.

It should be noted here that urgent applications can be made to the [Court of protection](#) in circumstances where swift action or decisions are necessary.

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