

# Medical Treatment and the courts

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# Topics

- *Bland*
- *Pretty*
- *W v M*
- *Aintree v David James*
- *Tracey*
- *M v N*

# *Airedale NHS Trust v Bland* [1993] AC 789

- ANH is medical treatment (analogy with ventilation)
- Treatment must be in Ps' best interests
- Not in best interests to receive futile treatment
  - **either** because futile treatment cannot be of benefit, so there is nothing to weigh in the balance,
  - **or** because a person in VS has no interests, so the concepts of best interests and the balance sheet have no application
- Seek declaratory relief under the inherent jurisdiction if it is proposed to withdraw ANH

# *Pretty v United Kingdom* (2002) 2 FLR 45

- Progressive MND
- Sought undertaking from DPP that her husband would not be prosecuted if he assisted her to commit suicide in accordance with her wishes
- Blanket nature of bad on assisted suicide within state's margin of appreciation

# *Pretty*

- The way she chooses to pass the closing moments of her life is part of the act of living, and she has a right to ask that this too must be respected (per Lord Hope) [64]
- It is under Article 8 that notions of the quality of life take on significance [65]

# *Pretty*

- Many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or moral decreptitude which conflict with strongly held ideas of self and personal identity [65]

# MCA

## **1 The principles**

(1) The following principles apply for the purposes of this Act.

...

(5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

(6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

## **4 Best interests**

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.

...

(5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

# MCA (cont)

(6) He must consider, so far as is reasonably ascertainable—

(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),

(b) the beliefs and values that would be likely to influence his decision if he had capacity, and

(c) the other factors that he would be likely to consider if he were able to do so.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of—

...

(b) anyone engaged in caring for the person or interested in his welfare

...

(10) “Life-sustaining treatment” means treatment which in the view of a person providing health care for the person concerned is necessary to sustain life.

# *W v M* [2011] EWHC 2443 (COP)

- Balance sheet approach
  - No test of ‘intolerability’, but reliance on Code of Practice (5.31) to whether treatment is ‘overly burdensome’
  - Balance of experience
  - No significant weight to be given to M’s wishes in the absence of a binding ADRT [230]
  - Possibility that M had changed her mind
- 
- The future...

# *Aintree University Hospitals NHS Foundation Trust v James (2013)*

- 7 months in ITU
- Unanimous decision not to treat further if serious deterioration in treatment
- Family disagreed
- Applied to Court of Protection

# *Aintree v David James*

- Court of Protection: declarations refused
- Court of Appeal: appeal allowed, reasons given 3 months later
- Supreme Court: significant weight to be given to subjective wishes and feelings

# *R (Tracey) v Cambridge University Hospitals NHS Foundation (2014)*

- 63 year old woman with terminal lung cancer and serious RTA (admitted to neuro critical care on 19 Feb 11)
- 23, 25 Feb attempts to wean off ventilator
- 26 Feb deteriorating – plan for arrest needed
- Considered inappropriate to re-ventilate if successful weaning off ventilator

# *Tracey*

- 27 Feb “discussion” with daughter – note recorded “Daughter in picture”
- 27 Feb First DNACPR notice
- Removed 2 Mar when family objected
- 5 Mar Second DNACPR notice
- 7 Mar arrested and died

# *Tracey*

- 68% of population die in hospital
- 80% of those die with DNACPR notices
- le over 50% of those dying

# *Tracey*

- Procedural duty on doctor to consult patient when contemplating DNACPR
- No absolute right to CPR
- No legal obligation to offer second opinion
- SSH not obliged to promulgate national policy

# *Tracey*

- Distinguished from other decisions to withhold life-sustaining treatment because “taken in advance and they therefore present an opportunity for discussion with patients and their family members”

# *M v N (2015)*

- Whether in N's best interests to receiving CANH via PEG tube
- 68 year old with progressive MS
- (Applying Aintree) P remains at the very centre of the decision making process [27]

# M v N

- Where the wishes, views and feelings of P can be ascertained with reasonable confidence, they are always to be afforded great (if not always predominant) weight [28]
- Diagnosis: MCS
- Disrespectful to preserve her further in a manner **she** would regard as grotesque

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