

## Noteworthy Medical Treatment Cases

Below is a list of noteworthy cases in which members have been involved in recent years:

### Provision of Medical Treatment

- Cambridge University Hospitals NHS Foundation Trust v BF [2016] EWCOP 26 (MacDonald J) -- Court grants application by NHS Trust permitting surgery for suspected ovarian cancer in patient with paranoid schizophrenia – Vikram Sachdeva QC (Link to judgment [here](#))
- YZ v NHS Trust [2015] EWHC 2296 (McGowan J) – medical treatment of an individual detained under a hospital order and his transfer to a high security facility – Vikram Sachdeva QC, Fenella Morris QC (Link to judgment [here](#))
- Surrey and Sussex Healthcare NHS Trust v Ms AB [2015] EWCOP 50 (Keehan J) – Court granted application by NHS Trust for a declaration that an above the knee amputation was in a patient's best interests in circumstances where the patient suffered from a predominant persecutory delusional state which meant that she lacked capacity to take a decision about the need for amputation and did not understand that the alternative to amputation was death – Mungo Wenban-Smith (Link to judgment [here](#))
- Wye Valley NHS Trust v. B (by his litigation friend the Official Solicitor) [2015] EWCOP 60 (Peter Jackson J) - It was not in the best interests of a 73-year-old man who lacked capacity to sanction the amputation of his severely infected leg, even though not undergoing the operation would lead to his death. He was strongly opposed to the operation, and it was of great importance to give proper weight to his wishes and feelings - Vikram Sachdeva QC (Link to judgment [here](#))
- Re Ashya King [2014] EWHC 2964 (Fam) (Baker J) - The state had no business interfering with the exercise of parental responsibility unless the child was suffering or was likely to suffer significant harm as a result of being given unreasonable care. The parents of a child who required treatment following the removal of a brain tumour were given permission to take him to Prague for proton therapy, their having provided evidence of funding and transport arrangements, and the local authority and medical practitioners not opposing the plan – Vikram Sachdeva QC (Link to judgment [here](#))
- Birmingham Children's NHS Trust V B&C [2014] EWHC 531 (Fam) – Keehan J: Court granted application by an NHS Trust for authorisation to carry out urgently required life-saving heart surgery on a newborn baby in circumstances where his parents were unable to consent to the baby receiving a blood transfusion during the planned operation owing to their religious beliefs as Jehovah's Witnesses – Mungo Wenban-Smith (Link to judgment [here](#))
- An NHS Trust v. The Patient [2014] EWCOP 54, Holman J – Court granted application by NHS Trust for a best interests decision in relation to a 65 year old man who had a pressing need for surgery for breast cancer – a double mastectomy - who lacked

capacity due to a learning disability and autism to give or withhold informed consent, but was personally resistant to having an operation. A critical issue in the case was how/when the patient would be informed that the operation was going to take place in light of his likely violent negative reaction. Authority obtained to covertly sedate the man prior to informing him with guidance provided – Mungo Wenban-Smith (Link to judgment [here](#))

- Northants Healthcare NHSFT v. ML [2014] COPLR 439 Hayden J in which he considered the interface between the MHA and the MCA - Parishil Patel
- An NHS Trust v SR [2012] EWHC 3842 (Fam) (Bodey J) - It was lawful for an NHS trust to proceed with orthodox radio- and chemotherapy treatment on a child in danger of death from a malignant brain tumour, despite his mother's refusal to give her consent because of the undoubted side-effects. The father had consented, and the balancing exercise of advantages and disadvantages was clearly in favour of the treatment - Victoria Butler-Cole (Link to judgment [here](#))
- NHS Trust v L [2012] EWHC 2741 (COP) – The court granted a declaration that it was not in the best interests of a person suffering from extremely severe anorexia nervosa to be the subject of forcible feeding or medical treatment – Parishil Patel

### Procedure

- In the matter of C (Deceased) [2016] EWCOP 21 (Charles J) - Reporting restrictions orders made by the Court of Protection in serious medical treatment cases could extend beyond the death of the subject of those proceedings. There was no presumption or default position that such orders should end when the subject died. The court considered the general approach which it should take to granting such orders – Richard Spearman QC, Vikram Sachdeva QC & Victoria Butler-Cole (Link to judgment [here](#))
- Sandwell & West Birmingham Hospitals NHS Trust v. CD & Others [2014] EWCOP 23 (Theis J) - The court gave guidance on out-of-hours hearings in cases where significant medical treatment, or the withholding of treatment was at issue - Fenella Morris QC, Vikram Sachdeva QC, Mungo Wenban-Smith & Rose Grogan (Link to judgment [here](#))

### Pregnancy, Termination and Contraception

- CS (Termination of Pregnancy) [2016] EWCOP 10 (Baker J) – Court grants application by a Hospital Trust for orders in respect of a young woman lacking capacity that it would be in her best interests to undergo surgery terminating her current pregnancy - Vikram Sachdeva QC & Victoria Butler-Cole (Link to judgment [here](#))
- NHS Trust v FG [2014] EWCOP 30 – The court considered the obstetric care of a mentally ill woman who was about to give birth – Catherine Dobson (Link to judgment [here](#)) pregnancy, contraception, termination

- [A NHS Trust v DE](#) [2013] EWHC 2562 (Fam) (Eleanor King J) - Court granted application by an NHS trust permitting the sterilisation for non-therapeutic reasons of a male unable to consent to such a procedure. A vasectomy was in his best interests under the Mental Capacity Act 2005, where he did not want any more children and it would allow him to continue his long-term relationship with the mother of his child and would restore to him his lost skills and independence - Victoria Butler-Cole (Link to judgment [here](#))
- [Re P \(2013\)](#) [2013] EWHC 4581 (COP) (Peter Jackson J) - It was in the best interests of a pregnant woman who lacked capacity to sanction the taking of emergency measures, including a Caesarean section, when her child was delivered – Vikram Sachdeva QC (Link to judgment [here](#))

### End of Life

- [In the matter of Y \(Withholding of Medical Treatment\)](#) [2016] EWHC 206 (Fam) (Baker J) - A treatment plan proposed by a health board, which incorporated the withholding and withdrawal of treatment in respect of a premature baby with irreversible brain damage, was lawful and in the baby's best interests - Vikram Sachdeva QC (Link to judgment [here](#))
- [Aintree University Hospitals NHS Foundation Trust v. David James \(By his litigation friend the Official Solicitor\) & Others](#) [2013] UKSC 67 - The Supreme Court set out the correct approach to the making of decisions about whether to give life-sustaining treatment in the case of persons lacking the capacity to make such decisions for themselves – Vikram Sachdeva QC, Alexander Ruck Keene & Victoria Butler-Cole (Link to judgment [here](#))
- [R \(on the application of David Tracey\) v Cambridge University Hospitals NHS Foundation Trust & Others](#) [2014] EWCA Civ 822 - There was a presumption in favour of patient involvement when placing "Do Not Attempt Cardio-Pulmonary Resuscitation" notices on patients' medical files and there needed to be convincing reasons for clinicians to do so without consulting patients. It was inappropriate to involve the patient in the process if the clinician considered that to do so was likely to cause physical or psychological harm. However, clinicians should be wary of excluding patients from the process on the grounds that their involvement was likely to distress them - Vikram Sachdeva QC, Fenella Morris QC, Victoria Butler-Cole (Link to judgment [here](#))
- [An NHS Foundation Trust v. R \(A child\) & others](#) [2013] EWHC 2340 (Fam) (Peter Jackson J) - A hospital trust was permitted by interim order to reduce the treatment it would provide to a seriously ill 14-month-old child if his condition deteriorated pending a final order to permit the withdrawal of the artificial ventilation his life depended on. Continuing ventilation was not in his best interests as it would progressively increase his suffering, while his inability to interact with his environment gave him very little positive experience of life - Vikram Sachdeva QC (Link to judgment [here](#))
- [The NHS Trust v AW](#) [2013] EWCOP 78 (Peter Jackson J) – Court granted application by Trust for declaration that it is lawful and in best interests of a 57-year-old woman who was in a permanent vegetative state to withdraw active medical treatment, including

specifically artificial nutrition and hydration, albeit that this will lead to AW's death - Victoria Butler-Cole (Link to judgment [here](#))

- St George's Healthcare NHS Trust v. (1) P (by his litigation friend the Official Solicitor) (2) Q [2015] EWCOP 42 (Newton J) - It was in the best interests of a patient, who was in a minimally conscious state, for renal replacement therapy to continue. Video evidence taken by the patient's family had led to a different diagnosis of his state of consciousness. Standardised testing to ascertain a clear diagnosis was always necessary before an application was made to the court – Vikram Sachdeva QC, Parishil Patel (Link to judgment [here](#))
- Re NK (July 2015) (Cobb J). Withdrawal of life saving treatment from a 3 year old with a rare metabolic disorder - Nicola Greaney
- M v N (By her litigation friend the Official Solicitor) & Others [2015] EWCOP 76 (Hayden J) - It was not in the best interests of a 68-year-old woman who, due to the progressive and degenerative impact of multiple sclerosis, was impaired both physically and cognitively and in a minimally conscious state, to continue to receive life-sustaining treatment. Her wishes, coupled with the intrusive nature of the treatment and its minimal potential to achieve any medical objective, rebutted any presumption of continuing to promote life. It would be disrespectful to her to preserve her further in a manner that she would regard as grotesque, and the respect for her dignity and human freedom overwhelmed further prolongation of life – Vikram Sachdeva QC, Parishil Patel (Link to judgment [here](#))
- R (on the application of Nicklinson) v Ministry of Justice [2014] UKSC 38 – The Supreme Court considered whether the law relating to assisted suicide infringed the European Convention on Human Rights – James Strachan QC (Link to judgment [here](#))
- Gloucestershire CCG v. (1) AB (2) CD [2014] EWCOP 49 (Baker J) - The court granted a declaration that it was not in the best interests of a patient who was in a permanent vegetative state to receive artificial nutrition and hydration - Vikram Sachdeva QC (Link to judgment [here](#))
- King's College Hospital NHS Foundation Trust v T & Others [2014] EWHC 3315 (Fam) (Russell J) - The objective balance of the best interests of a 17-month-old child who had suffered catastrophic, irreversible brain injury lay in the withdrawal of mechanical ventilation (2015) 143 BMLR 202 - Vikram Sachdeva QC
- County Durham & Darlington NHS Foundation Trust v PP & Ors [2014] EWCOP 9 - Application granted for the withdrawal/non-escalation of treatment in end of life case - Victoria Butler-Cole (Link to judgment [here](#))
- Sheffield Teaching Hospitals NHS Foundation Trust v TH [2014] EWCOP 4 – the court considered an application to continue providing nutrition and hydration to a patient who was in a minimally conscious state – Jenni Richards QC (Link to judgment [here](#))
- NHS v (1) VT (2) A (2013) [2014] COPLR 44 - The court considered the lawfulness of placing a "Do Not Resuscitate" sign on the notes of a 72-year-old man who was in a frail

and minimally conscious state following a cardiac arrest and had no prospect of recovering any meaningful neurological function. In the event that his condition deteriorated, it would be unlawful to provide intensive care or resuscitation, other than bag and mask resuscitation. It could not be ethical or lawful to expect doctors to cause pain for no justifiable medical reason other than to accommodate the religious or other beliefs of a patient - Vikram Sachdeva QC

- An NHS Trust v L & Others [2013] EWHC 4313 (Fam) (Moynan J) - The court granted an NHS trust a declaration that in the event of a deterioration of the condition of a patient who had suffered a devastating neurological injury which left him in a minimally conscious state, it would not be his best interests to receive active resuscitation, despite the express wishes of his family; further, the court's jurisdiction was restricted to deciding between the available options – Vikram Sachdeva QC, Jenni Richards QC, Kate Grange (Link to judgment [here](#))

- A NHS Hospital v M and K [2013] EWHC 2402 (COP) Withholding of CPR and ICU treatment save for reversible conditions - Nicola Greaney (Link to judgment [here](#))

Re D [2012] EWCOP 885 – Case concerning withdrawal of artificial nutrition and hydration from a person in a persistent vegetative state - Victoria Butler-Cole (Link to judgment [here](#))

- NHS Trust v Baby X & Others [2012] EWHC 2188 (Fam) (Hedley J) - The court granted a declaration to the effect that it would be lawful for a medical team treating a severely brain-damaged baby to remove him from a ventilator, against his parents' wishes, and give him only palliative care. The medical evidence was to the effect that treatment was persistent, intense and invasive and served no purpose in terms of improving his condition - Vikram Sachdeva QC, Fenella Morris QC (Link to judgment [here](#))
- W (by her litigation friend B) V M (by her litigation friend the Official Solicitor) & Others [2011] EWHC 2443 (Fam) (Baker J) - In the circumstances it was not in the best interests of a patient in a minimally conscious state for artificial nutrition and hydration to be withdrawn. In such a case the court had to identify the factors on each side which were relevant to the patient's best interests and carry out a balancing exercise – Vikram Sachdeva QC and Victoria Butler-Cole (Link to judgment [here](#))
- W (by her litigation friend B) V M (by her litigation friend the Official Solicitor) & Others [2011] EWHC 1197 (Fam) (Baker J) - In an application to discontinue and withhold life-sustaining treatment and medical support to a 43-year-old patient suffering from a profound brain-wasting condition, the court gave guidance about the reporting of cases heard in the Court of Protection, with particular emphasis on the factors to take into consideration when balancing freedom of expression with the right to privacy - Vikram Sachdeva QC (Link to judgment [here](#))

### Deprivation of Liberty

- An NHS Trust v A [2015] EWCOP 71 – Case explores interface between the Mental Health Act 1983 and the Mental Capacity Act 2005 - Victoria Butler-Cole (Link to judgment [here](#))
- DH NHS Foundation Trust v PS [2010] EWHC 1217 (Fam) – the court authorised the use of force to sedate and convey a patient to hospital for life-saving surgery where she lacked capacity to consent and suffered from a phobia of hospitals and needles – Parishil Patel (Link to judgment [here](#)) deprivation of liberty/provision of treatment

### Capacity

- Heart of England NHS Foundation Trust v. BJ (by her litigation friend the Official Solicitor) [2014] EWHC 342 (COP) (Peter Jackson J) - Many people who suffered from mental illness were well able to make decisions about their medical treatment, and it was important not to make unjustified assumptions to the contrary. The temptation to base a judgement of a person's capacity upon whether they seemed to have made a good or bad decision, and in particular upon whether they had accepted or rejected medical advice, was absolutely to be avoided - Vikram Sachdeva QC (Link to judgment [here](#))

### Article 2

- Rabone v Pennine Care NHS Foundation Trust [2012] UKSC 2 – The Supreme Court held that Article 2 ECHR imposed an operational obligation on the state to protect mentally ill patients where there was a real and immediate risk of suicide – Jenni Richards QC (Link to judgment [here](#))

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