Browne Jacobson

NHS South East London Integrated Care Board v JP: Four key takeaways for Integrated Care Boards

11 March 2025 Katie Viggers

In January 2025, Mr Justice Hayden handed down his judgment in NHS South East London Integrated Care Board v JP & Ors [2025] EWCOP 4 (T3). The case involved JP, a 64 year old who had been in a prolonged disorder of consciousness at the Royal Hospital for Neuro-Disability for nine years. Some weeks later, a supplementary judgment was published (NHS South East London Integrated Care Board v JP & Ors [2025] EWCOP 8 (T3)), addressing the delay that occurred in the case.

We've identified four essential points that Integrated Care Boards (ICBs) can derive from this second judgment:

- ICBs play a critical role in regularly reviewing the care commissioned to service users and should not act as "passive bystanders". ICBs should remain vigilant and proactive in ensuring that the care package continues to meet the service user's assessed needs appropriately.
- When determining a patient's best interests, family members' views should be sought solely to elucidate the likely wishes and feelings of P. The objective is not to ascertain the family's own wishes and feelings, which are, by themselves, of minimal relevance.
- ICBs or healthcare providers should not attempt to mediate family disputes over a patient's best interests, as this is likely to occlude the nature of the best interests inquiry and delay court applications.
- When it's necessary to involve the Court of Protection, proceedings must be issued promptly and there must be a robust and collaborative approach between healthcare providers and commissioners.

We've set out further detail about the case below. Browne Jacobson offers training to ICBs on the Court of Protection, including when and how to initiate court proceedings, and on assessing capacity and best interests. We also hold a regular, free mental health and capacity forum for healthcare providers and commissioners. Our next session will be on 8th July 2025. If you would like further details, please get in touch.

Background

In January 2016, JP suffered a ventricular fibrillation cardiac arrest while cycling to work, resulting in anoxic brain injury. After initial treatment, he was transferred to the Royal Hospital for Neuro-Disability (RHN) in April 2016. He was initially admitted to the brain injury service but shortly thereafter moved to the GP led ward, which effectively runs as a nursing home.

From the date of his injury, JP remained in a prolonged disorder of consciousness (PDOC), showing only the most low-level responses and keeping his eyes mostly closed. He required 24/7 nursing care. The medical consensus was that he probably couldn't experience pain, but it was impossible to be certain about this. JP remained in this condition for several years.

Court of Protection proceedings

An application was eventually made to the Court of Protection in February 2024, to determine whether it was in JP's best interests to continue to receive clinically assisted nutrition and hydration (CANH). The medical view was that CANH was burdensome, futile and should not continue, since it would not reverse JP's profound and irreversible brain damage.

JP's late partner, daughter, son and brother provided strong evidence that, notwithstanding his religious beliefs, JP would not have wanted treatment to continue.

By contrast, other family members believed JP's treatment should continue "until God was ready for him". However, the Judge noted that they did not explain why they thought JP would want this and that they appeared to supplement their own views for those of JP.

Mr Justice Hayden came to the clear conclusion that it would be contrary to JP's best interests to be provided with CANH.

Lessons for ICBs

Notwithstanding the high standard of nursing care provided, JP had slowly deteriorated in his condition over nine years before the matter was decided by the court. The reasons for the delay were explored and important takeaways for ICBs were highlighted.

ICBs must proactively ensure care packages meet patients' assessed needs

Mr Justice Hayden noted the critical role of ICBs in regularly reviewing the care commissioned to service users to ensure that the care package still meets their assessed needs. For these reviews to be effective, the ICB should not simply act as "passive bystanders", but should be vigilant and proactive in the process.

There must be "*regular, sensitive consideration of an individual's ongoing needs*" and "*a recognition that treatment, which may have enhanced the patient's quality of life or provided some relief from pain, may gradually or suddenly reach a pivoting point where it becomes futile, burdensome and inconsistent with human dignity*." The obligation is on the ICB to be vigilant to such an alteration in the balance.

Consult family members, but for the purpose of ascertaining the individual's views and feelings

Family members may have a variety of opinions on what is in an individual's best interests. However, the purpose of consulting family as part of the best interests process is not to ascertain their personal views and beliefs, but rather to **ascertain their views as to what the individual (P) would have wanted.** The personal wishes, feelings, religious, and cultural beliefs of family members are not relevant. Their views are being sought solely to determine the likely wishes and feelings of P.

In this case, the immediate family held clear, evidenced views that continuing treatment was contrary to what JP would have wanted. However, those views were not heard. The wider family's views became prominent, but as noted by the Judge, those views did not reflect JP's.

Consultation should be proportionate

Further, consulting with P's family should be proportionate. If reliable evidence as to P's views is available (as it was in this case from immediate family members), it is not helpful or in P's best interests to spend significant time tracking down wider family members, particularly if they are difficult to find. The consultation must be proportionate and avoid unnecessary delays.

ICBs and healthcare providers are not required to mediate family disagreements

Where there is disagreement within a family as to where P's best interests lie, that is a signal to bring the matter before the Court of Protection. In this case, the RHN drifted into a well-meaning attempt to mediate the family dispute, which resulted in delay.

The Judge clearly stated **there is no onus on either ICBs or healthcare providers to broker an agreement between family members**. Mediation in these circumstances risks conflating the family's views of best interests with the authentic views of P. Rather, where there is a dispute, an application to court should be made.

Court applications need to be made promptly

Mr Justice Hayden reinforced the importance of issuing proceedings promptly, noting that delays in court applications are unacceptable and contrary to the patient's best interests. The ICB acknowledged that it should have identified and referred JP's case to the Court of Protection sooner.

The ICB outlined its recent efforts to develop internal governance procedures, policies and training to prevent future delays in similar cases. A robust and collaborative approach between healthcare providers and commissioners, with proactive involvement from all parties, is essential to avoid delays in court applications.

It should be noted that both the ICB and the RHN issued apologies to JP and his family for the delay experienced in this case.

How can we help?

Browne Jacobson has a team of expert lawyers specialising in mental capacity law, best interests decision-making, and Court of Protection applications. We represent numerous ICBs across the country. If you have any questions about this article, require assistance with a case or would like to discuss training we can offer, please do get in touch.

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