

## Case Summary

### ***Wye Valley NHS Trust v Mr B* [\[2015\] EWCOP 60 \(Peter Jackson J\)](#)**

#### Issue

Best interests – P’s wishes and feelings

#### Facts

Mr B was a 73 year old with a long standing history of mental illness together with poorly controlled diabetes. He had experienced persistent auditory hallucinations in which he heard voices of angels and of the Virgin Mary. Although he did not consider himself to belong to any particular religion, he considered that Mary wished him to be a Catholic.

Mr B developed a chronic foot ulcer that did not heal despite various interventions. In 2014, he was admitted to hospital. He resisted medication and antibiotics for his foot with the consequence that his condition markedly deteriorated. His foot was not only infected by putrefying and the bone itself became infected.

An application was made by the NHS Trust to the Court of Protection for declarations and decisions as to Mr B’s medical treatment and, specifically, authority to the Trust to carry out an amputation on his leg. It was clear from the evidence that if the amputation was not carried out, Mr B would succumb to an overwhelming infection within a matter of days; conversely, his life expectancy if the operation was successful would be in the order of 3 years.

#### Decision

Peter Jackson J accepted the clear evidence before the court that Mr B lacked capacity to make treatment decisions about his foot in light of his compromised ability to understand the information and a clear inability to weigh the relevant medical evidence. When it came to conducting the best interests balancing exercise, Peter Jackson J rejected a submission that Mr B’s wishes and feelings should be automatically discounted because he lacked capacity. Rather, placing great weight on the wishes and feelings of Mr B, as well as his religious views, he came to the clear conclusion that an enforced amputation would not be in Mr B’s best interests.

#### Practice implications

Peter Jackson J has made clear just how far along we have come on the journey to recognising the dangers of treating capacity as a cliff-edge off which one falls into the clinging embrace of paternalism. The approach endorsed by Peter Jackson J to the construction of best interests decisions on behalf of those lacking capacity is one that is light years removed from the paternalistic model that still remains prevalent in so many settings. He sought to recognise Mr B as an “individual human being”, echoing Lady Hale’s phrase from *Aintree*, and emphasised that “the wishes and feelings, beliefs and values of people with a mental disability are as important to them as they are to anyone else, and may even be more important.”

The full version of this case report can be found [here](#). Further reports, articles and guidance notes can be found on our dedicated Mental Capacity Law Resources Page by [clicking here](#).