

Neutral Citation Number: [2024] EWHC 3331 (Fam)

Case No: FD24C40785

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13<sup>th</sup> September 2024

**Before :**

**MRS JUSTICE ARBUTHNOT**

**In the matter of C (A Child)**

**Between :**

**BETSI CADWALADR UNIVERSITY HEALTH BOARD**

**Applicant**

**- and -**

**C**

**(a child, through her Children's Guardian)**

**Respondent**

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**Thomas Jones** (instructed by NWSSP Legal and Risk Services) for the **Applicant**  
**Matthew Carey** (instructed by Allington Hughes Law) for the **Respondent**

Hearing date: 13<sup>th</sup> September 2024

**JUDGMENT**

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**MRS JUSTICE ARBUTHNOT:**

1. This is an urgent application in relation to C, who is a young person aged 17. The applicant seeks a declaration that it is lawful and in C's best interests to be given life-saving insulin medication against her wishes.

## Background

2. In January 2023, C was diagnosed with Type 1 Diabetes and, after a period of stabilisation and training, was discharged to her family home. As part of the management of her diabetes, C was required to either self-administer insulin or to have it administered by her parents on multiple daily occasions.
3. There are two types of insulin: short acting insulin and long acting insulin, which is given every 24 hours. C's regime required administering short acting insulin at mealtimes, the doses of which depend on the amount of carbohydrates she takes and her blood glucose value. She needs additional insulin correction doses at mealtimes and in-between meals if she has identified to have high blood glucose. She also has long acting insulin which is given 24 hourly.
4. There have been problems since that time in that she has not managed her insulin appropriately or safely. She has been required to have numerous consultations, far more than any other child with diabetes, due to her poor compliance with insulin administration and poor blood glucose monitoring. This has led to hospital admissions, given her poor control and the risk that this could lead to diabetes keto acidosis and prolonged admissions to the children's ward. C has had numerous assessments by the CAMHS team and has ongoing involvement with social services, children's ward staff and the paediatric diabetes team.
5. On 9 August 2024, a deprivation of liberty order was made to ensure that she could be confined to the ward and restricted her to a particular area on the ward to ensure that her parents could keep control of her insulin.
6. On 8 September 2024, C was admitted to the children's ward with severe diabetes keto acidosis as she had not taken insulin for a few days. During the initial management, her condition deteriorated rapidly and she became at risk of death due to brain swelling. The adult intensive care unit became involved and she slowly recovered, and her normal treatment resumed last Sunday. C's insulin continued to be stored securely on the children's ward and C became involved in making management decisions regarding her carbohydrate calculation and insulin doses.

7. On 12 September 2024, yesterday morning, she had a correction dose of insulin at 6.30am and then totally refused to administer any forms of insulin, short or long acting. The treating team have become extremely concerned and professionals have tried to get C to agree to receive insulin, as have the parents, who have been present at most of the hearing, to try to support and administer her insulin, but, so far, have not been able to do so.

## **Evidence**

8. I heard evidence from Dr E, a consultant paediatrician who looks after children with diabetes in the hospital where C is currently based. Dr E was concerned that C would again suffer from diabetes keto acidosis. After Dr E gave his evidence, he interrupted proceedings as he had just heard from the ward that C was indeed now suffering from diabetes keto acidosis and urgently needed to attend to her welfare. I told the doctor that I was going to make the declaration sought by the Health Board so that he could attend to her urgently.
9. Dr E was called and then questioned by Mr Jones and then by Mr Carey. The parents who are here made it clear they support the hospital's application. Dr E was clear of the urgency of the situation. His evidence was that this is particularly concerning as she is a young person with capacity and, as could be seen from a note on her mobile telephone, she had made it clear that she had an intention to end her life before next year. There is an assumption that in preventing the administration of insulin she was trying to end her own life.
10. The CAMHS team had been involved in her case and had been informed of her ongoing suicidal thoughts. C was in the process of being assessed by Dr K, CAMHS consultant, to consider formal assessment under the Mental Health Act 1983. Dr E's evidence was that her insulin was being closely monitored at present to ensure that she was not developing diabetic keto acidosis. He noted that the staff have all tried to persuade her to have insulin, but all measures have not worked. Dr E was asked questions about the restraint that would be required in order to ensure she was given her medication, and he noted that it would involve up to four members of staff (with

one member of staff administering the insulin). Administration of insulin would be required up to four times a day (unless there is a deterioration in C's health). Dr E noted that C's condition could deteriorate at any time since she has not had long acting insulin in her body since the evening of 11<sup>th</sup> September 2024.

11. C's parents made it clear that they support the hospital's application.

### **Legal principles**

12. Mr Jones very helpfully provided me with a copy of **A NHS Trust and X [2021] EWHC 65 (Fam)** and he has reminded me of the principles in relation to treatment decisions in respect of children.

13. C is aged 17. She is not being treated under the Mental Health Act 1983. She does not come within section 8 of the Children Act 1989, as she is aged 17. She is presumed to have capacity to make this decision for herself. Her case, therefore, comes within the inherent jurisdiction of the High Court.

14. Where a *Gillick* competent child refuses to consent to medical treatment, the court may, in the exercise of its inherent jurisdiction, override the child's wishes in the child's best interests and give its consent to his or her treatment. In relation to medical treatment neither the decision of a *Gillick* competent child under the age of 16 nor the decision of a child aged 16 or 17 is determinative in all circumstances. There are circumstances in which the decision of a child, including 16 and 17 year olds, can be overridden by the court. The court must start from the general premise that the protection of the child's welfare implies at least the protection of the child's life and it is the duty of the court to ensure so far as it can that children survive until adulthood.

15. At paragraph 57 of **A NHS Trust and X [2021] EWHC 65 (Fam)**, Sir James Munby summarises the following points: (1) Until the child reaches the age of 16 the relevant inquiry is as to whether the child is *Gillick* competent. (2) Once the child reaches the age of 16: (i) the issue of *Gillick* competence falls away, and (ii) the child is assumed to have legal capacity in accordance with section 8, unless (iii) the child is shown to

lack mental capacity as defined in sections 2(1) and 3(1) of the Mental Capacity Act 2005.

16. At paragraph 58, Sir James Munby references the decision of the Divisional Court in **Bell & Anor v The Tavistock And Portman NHS Foundation Trust [2020] EWHC 3274 (Admin)**. Having considered the application, in the context of the particular treatment in question, of *Gillick* competence in relation first to children aged 13 or under and then in relation to children aged 14 and 15, the court continued (para 146):

“In respect of a young person aged 16 or over, the legal position is different. There is a presumption of capacity under section 8 of the Family Law Reform Act 1969. As is explained in [in *In re W (A Minor) (Medical Treatment: Courts Jurisdiction)* [1993] Fam 64], that does not mean that a court cannot protect the child under its inherent jurisdiction if it considers the treatment not to be in the child’s best interests.”

17. At paragraph 33, the court considered the case of **Re JM (A Child); A NHS Trust v M and others [2015] EWHC 2832 (Fam), [2016] 2 FLR 235, para 24**. The court noted that whatever may be the appropriate procedure for a child under the age of 16, there can be no doubt that an application under the inherent jurisdiction is available in relation to such a child and that in relation to a child who has reached the age of 16 the application should, as Mostyn J recognised, be sought solely under the inherent jurisdiction, and not under the Children Act 1989.

18. C is an intelligent young person and there is no doubt that she has capacity to make this decision for herself. Under the inherent jurisdiction, the court can override a child’s wishes and feelings, if it is in his or her best interests to do so and give its consent to the treatment.

## **Discussion**

19. The declarations that I am invited to make are that it is lawful and in C’s best interests, firstly, for her to receive medical treatment for her diabetes in circumstances where there is risk of serious harm or death, notwithstanding her refusal to consent

and, secondly, for staff to use restraint in order to effect such treatment, provided that at all times it is the least restrictive necessary, proportionate and in accordance with the relevant policy on the use of restraint.

20. When I look at the balancing exercise, the benefits to C of course include that she may well die if she is not given her insulin medication through diabetes keto acidosis. This is a particularly serious condition and, as we now know, this has in fact occurred in the last half an hour or so. The condition itself can lead to brain swelling and, ultimately, death. I do start from the general premise that the protection of the child's welfare implies at least the protection of the child's life and it is the duty of the court to ensure so far as it can that children survive until adulthood. The downside is that, if she refuses insulin, she will be restrained, which could be up to four people, depending on how violently she attempts to resist but the attempt to give her insulin will of course be a psychological and emotionally damaging experience because no person wants to be restrained at all. It may be that when she is told of the existence of the order that she may prefer not to be restrained, and she may decide to take it, we do not know that is the downside but the upside is saving this young person's life.
21. I have no doubt that in this case it is in C's best interests to make this declaration. I find that it is in C's best interests to administer life saving medication against her wishes. The Guardian has not been able to speak to her, she has refused to meet the Guardian. I have taken it that she would oppose this order but I override her wishes and feelings and declare that the treatment is in her best interests.
22. There also have to be amendments to the existing deprivation of liberty order. I amend the order to, additionally, sanction C's restraint and supervision by up to four members of staff at the hospital. I also amend the order to allow the applicant to use physical restraint or sedation. That restraint includes proportionate restraint in order to prevent C from leaving the ward or in order to return her to the ward.
23. However, I only grant the relief sought for a period of seven days. The matter will be listed on Tuesday 17 September 2024 before a High Court Judge at 10.30am, where C will be invited to take part and her position put before the court, if necessary, separately from the Children's Guardian and be separately represented. She has been

invited before in relation to deprivation of liberty hearings, but she has not engaged. The Children's Guardian will make her enquiries in advance of that hearing. I also direct the joinder of the relevant local authority and C's parents.

24. I make the declarations sought by the Health Board.