

Neutral citation number: [2025] EWCOP 29 (T3)

Case No: COP 14028041

IN THE COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th July 2025

Before :

MRS JUSTICE ARBUTHNOT

Between

(1) PATRICIA'S FATHER

(2) PATRICIA'S MOTHER

(3) PATRICIA'S AUNT

Applicants

-and-

PATRICIA (by her litigation friend, the Official Solicitor)

1st Respondent

-and-

**NORFOLK AND NORWICH UNIVERSITY HOSPITALS
NHS FOUNDATION TRUST**

2nd Respondent

-and-

**NORFOLK AND WAVENEY INTEGRATED
CARE BOARD**

3rd Respondent

-and-

**CAMBRIDGESHIRE AND PETERBOROUGH
NHS FOUNDATION TRUST**

4th Respondent

Mr Oliver Lewis (direct access, pro bono) for the **Applicants**
Ms Victoria Butler-Cole KC (first two hearings) and Mr Parishil Patel KC (instructed by the
Official Solicitor) for the **1st Respondent**
Ms Katie Gollop KC (instructed by Browne Jacobson) for the **2nd Respondent**
Ms Katie Scott (instructed by Mills and Reeve) for the **3rd Respondent**
Ms Sophia Roper KC (instructed Kennedys) for the **4th Respondent**

Hearing dates: 3rd and 4th March, 10th March, 13th March and 17th March, 7th and 8th April, 20th May 2025.

Further written submissions 20th June 2025. Draft judgment circulated to parties 3rd July 2025.

This judgment was handed down to parties via email at 2pm on 9th July 2025. A transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of Patricia must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Decision – Case Management

Introduction

1. This is a case management decision as to whether I should adjourn to an unknown date making any decisions in these proceedings or whether I should now make the decisions that are required in the case.
2. The substantive proceedings started after an application was brought by the parents and aunt of a young woman whom I shall refer to as Patricia. Patricia is aged 25 and has lived with anorexia nervosa (“AN”) since she was aged about 10. Patricia is very ill because she is not consuming sufficient calories. She is malnourished. When this case started in March 2025, her body mass index (“BMI”) was thought to be around seven or eight and I was told she weighed about 19kg, which is what many five year olds weigh. She had not been able to walk unaided for two years and suffers bed sores. She has osteoporosis.
3. Patricia also has been diagnosed in the recent past with autism, antisocial personality disorder and with pathological demand PDA avoidance (“PDA”). The combination of these and AN means that although she has repeatedly said she wishes to live, she refuses to consume the calories that she requires to be able to walk without a Zimmer frame, let alone to have an enjoyable and productive life out of hospitals and Specialist Eating Disorder Units (“SEDUs”).
4. Patricia had said she wanted to go to a SEDU but when this case started she was not medically fit enough to go to one because of her low BMI and her lack of medical stability.
5. Throughout these proceedings Patricia has been an in-patient at Norfolk and Norwich University Hospitals Foundation Trust (“the hospital”).

6. Patricia's situation was considered by the Court of Protection in 2023, when it declared in accordance with Patricia's strongly expressed views that it was in her best interests that no forced treatment should take place and that Patricia should be given autonomy to make her own decisions about whether she put on weight or not. The parents and aunt were not parties in the 2023 proceedings, there was no appeal and they said they had not understood the import of the decisions made. Since then Patricia's weight and BMI have reduced and she is extremely ill.
7. An only child, her family love her deeply and her parents and aunt contended that the declarations of 2023 should be lifted so that Patricia can have the treatment the clinicians consider she needs, otherwise she was likely to die soon.
8. The applicants were represented pro bono by Oliver Lewis. I am very grateful for his assistance. The first respondent is Patricia, through her litigation friend, the Official Solicitor, who is represented by Mr Patel KC. The second respondent is the hospital represented by Miss Gollop KC. The third respondent is Norfolk and Waveney Integrated Care Board ("the ICB") represented by Miss Scott and the fourth respondent is the Cambridgeshire and Peterborough NHS Foundation Trust ("the CPFT") represented by Miss Roper KC.

The application to lift declarations made in by Moor J in 2023

9. The application came first into the High Court Family Division urgent list on 3rd March 2025 when the applicants relied on a statement from Dr Ibrahim, a Consultant Child and Adolescent Psychiatrist with a special interest in eating disorders. The urgency was that the applicants believed that Patricia was about to be discharged by the hospital to a palliative care setting, to die. I issued an injunction that until the case was concluded Patricia was not to be discharged from the hospital.
10. On 4th March 2025, three of the parties had been served and were represented. The Official Solicitor represented Patricia as she had in part of the proceedings in 2023. The case was then adjourned to Monday 10th March 2025.
11. On 10th March 2025, the CPFT was joined as a party. The matter was adjourned to 13th March for the hospital and ICB to put together a plan which would enable nasogastric ("NG") feeding with restraint to be provided by a specialist agency, if the court endorsed a lifting of the earlier declarations made by the Court of Protection in 2023. The agency consulted said restraining Patricia would put her too much at risk.
12. At that stage Patricia did not know about the application being made by her parents and aunt. There were concerns about the potential effect on her if she found out. It was proposed that Patricia would be told about it by the applicants before the Official Solicitor's representative met her on Wednesday.
13. Patricia found out about the application on the morning of 13th March 2025. She was distraught. Patricia then spoke to the Official Solicitor's representative and I had a

remote meeting with her later that morning. She then joined for some of the hearing. It was not clear whether she accepted that her parents were the applicants.

14. I heard evidence that day from three of her treating specialists, Dr PI, a consultant gastroenterologist based at the hospital, Dr W a psychiatrist based at SEDU1, a SEDU which was close to the hospital and Dr B a Clinical psychologist and a director of SEDU1. Dr Ibrahim gave evidence on 17th March 2025. I heard submissions on Wednesday 19th March 2025.
15. By 18th March 2025, the hospital was clear that they would not accommodate forced feeding by nasogastric tube, unless there was a SEDU committed to providing the follow-on care which had to involve forced feeding if necessary.
16. On 19th March Miss Scott on behalf of the ICB said she had no evidence that it was safe for Patricia to be restrained. The ICB was going to make enquiries with another company which specialised in restraint of particularly vulnerable patients.
17. On 7th April 2025, I had a second short meeting with Patricia. Her weight had come up to 21.5kg. I heard from Dr PI again. I heard from Professor Robinson, who had been the independent expert who gave evidence in the earlier proceedings in 2023.
18. On 8th April 2025 I heard from Professor S who had treated Patricia, at what we called SEDU 2, for a lengthy period of time. Finally I heard from both of Patricia's parents.
19. Subject to various short statements including one I mention in paragraph 19 and a position on SEDUs dated 10th June 2025, 8th April was the last day of the evidence.
20. I adjourned the case to 20th May 2025, to obtain written evidence from another specialist in restraint. That expert was the second one to say it would be too risky to Patricia to try and restrain her to enable NG feeding to take place.
21. By 20th May 2025, a SEDU, which we shall call SEDU 3, said they might admit Patricia for treatment when they had a bed available if the 2023 declarations were lifted. I heard submissions from the parties and then adjourned to obtain further information.
22. Unfortunately six weeks on, no bed is available at SEDU 3 and it could be weeks before a bed might become available. The evidence is that the offer of a bed depends on a number of complex variables, including assessing whether the relationships between the present cohort of patients and a new patient coming in would be beneficial for both. It is not a straightforward decision for a SEDU and I do not criticise SEDU 3 for wanting to get it right.
23. I have been provided with an update dated 10th June 2025 from the local Provider Collaborative which finds places for patients including anorexics about potential SEDUs for Patricia. The local Provider Collaborative considered SEDU 3 to be the best fit for Patricia. The ward where Patricia would be based is part of a larger psychiatric hospital so support staff are accessible. There are also links with a local acute hospital should Patricia require any medical intervention. NG feeding can be

provided. The consultant at SEDU 3 had met Patricia and her parents and understands the family dynamics.

24. The local Provider Collaborative set out the other SEDU options. It had referred Patricia to other units in November 2023, after the orders made by Moor J. No SEDU would agree to accept her. This was because of her medical stability, extreme malnutrition, her chosen goals and the Moor J orders that no treatment should be forced on Patricia.
25. In October 2024, Patricia was re-referred to units. None would take her at the time but some set out goals she had to achieve before they would consider her for assessment for admission. Patricia was sent this information.
26. In March 2025, the local Provider Collaborative contacted a private unit in London after a witness had said it might be able to treat Patricia. The unit said it would not assess Patricia unless the 2023 decisions were lifted. In March too, two other units said they might be available if the 2023 decisions were overturned.
27. I received further submissions on 20th June 2025 in an email and I set out the various positions of the parties below.

The parties' positions on 20th June 2025

28. I was told that Patricia was now walking with the help of a Zimmer frame but her intake of calories remained very low, about 1000 per day and she was refusing to allow herself to be monitored. Her weight was 22.2 kilograms and her BMI about 9. She is extremely vulnerable.
29. The parties invited me to consider their latest written submissions. There were three decisions I could make.
30. The first was whether the decision should be postponed until there was a bed in SEDU 3 for Patricia to go to. This was put forward by the applicants but not supported by any of the respondents.
31. Mr Lewis for the applicants contended that the only advantage of a decision now was the local Provider Collaborative may be in a position to identify a bed in an alternative SEDU but it was not clear whether it would do that. If the local Provider Collaborative, which sources beds at specialised units, indicated it would do that "speedily" then the family would support a decision being made. If that was not going to happen, they questioned the point or purpose of a pre-bed judgment.
32. I noted that in further information provided to me alongside the submissions that the local Provider Collaborative had not agreed to look for a bed in other SEDUs if I lifted the declaration.
33. The family set out the risks to Patricia of decisions being made now. Patricia would reduce her calories and return to the refeeding danger zone which would prevent a

transfer to a SEDU. An expression that Patricia frequently uses in correspondence with my clerk (and others), is that she will “down tools” if the declarations are lifted.

34. To avoid that risk the family asked the Official Solicitor to make a best interests decision not to tell Patricia about the judgment until a SEDU bed was available. Mr Lewis argues her right to life outweighed any advantage to her of being informed of the court’s decision immediately. They accepted this would put Patricia’s legal team in a difficult position but said that at least the court’s best interests decision would be capable of being implemented. Understandably the Official Solicitor has not responded to the request from the applicants.
35. The second decision, was whether as a matter of principle I would be prepared to revisit Moor J’s rulings from 2023. The respondents were agreed that I should consider that application. The third decision, on the basis that I was prepared to revisit the 2023 orders, was whether I would discharge them or amend or clarify them in some way. If I decided I would be prepared to revisit the 2023 rulings, the parties had different approaches to the third decision when there was no SEDU currently willing to take Patricia.
36. Miss Gollop KC for the hospital, where Patricia has been for some time, and the CPFT invited the Court to decide both issues. The hospital relied on three particular arguments, the more significant one was that Patricia has said repeatedly that she wants to know what her position is. Indeed on 2nd July 2025, when I was considering the case, I received another email from Patricia saying that she wanted a decision. The decision she wanted was that the declarations should not be lifted.
37. The hospital’s second argument was that the information from the local Provider Collaborative suggested that without a decision on the second issue the problem of other SEDUs not assessing Patricia remained. This was due to the 2023 decisions which prevented any forced treatment. If they were lifted then other SEDUs might become available, including SEDU 3. The third point made by the hospital was that Patricia was “medically optimised” for transfer or discharge and no longer required to be in an acute hospital.
38. The hospital recognised that there was a risk that Patricia would take on fewer calories if the 2023 orders were lifted but there were risks whichever decision was taken.
39. Miss Roper KC for the CPFT echoed the arguments relied on by the hospital. Patricia needed to know her position and the uncertainty was causing her distress. The second reason was that she was ready for discharge or transfer and SEDU 3 which was most likely to be able to provide a bed for her, and indeed other SEDUs would only have a bed for Patricia if the declaration was discharged.
40. Furthermore, the CPFT argued that both decisions should be taken at the same time. The decision on jurisdiction was linked with the decision on outcome. It was proportionate to consider the two issues together particularly where there had been evidence and written and oral and no further hearing was necessary. If both the

decisions were taken together this would enable plans to be made in Patricia's best interests.

41. Miss Roper pointed out too what would happen if the declarations were not discharged. The focus for Patricia would be on nursing homes and no further treatment. A palliative care situation in essence which was what brought these proceedings to court in early March 2025.
42. The CPFT argued that if the court determined jurisdiction only then that would not advance the case. If the court found it had jurisdiction but made no decision on the second issue, it would increase the "ongoing tension and frustration" while not providing for any future steps. Miss Roper pointed out that a decision that the court did not have jurisdiction would not conclude the proceedings as until Patricia's destination was resolved, the matter remained before the court and the court might be invited to revisit the decision that the court did not have jurisdiction.
43. Ms Roper recognised that there was a risk that Patricia would take in fewer calories if the court did consider it had jurisdiction to revisit the 2023 declarations but there was a risk that that could happen anyway. A decision on both issues had benefits which could be balanced against the risk, which a decision on jurisdiction alone did not.
44. Mr Patel KC for the Official Solicitor and Miss Scott for the ICB invited the court to decide the first issue only and postpone a decision about the second issue whilst waiting for further information about a bed in a SEDU, particularly in SEDU 3, before deciding whether to discharge the 2023 orders.
45. The ICB considered the effect on Patricia of the wait for the decisions the court was being asked to make. It described the effect as "extremely difficult" for her but in the balance was its concern that Patricia might stop eating if the declarations were lifted. If she did that and there was no SEDU bed then she might become too unwell to access a SEDU and might be at risk of dying.
46. Another point made by Miss Scott was that if Patricia was discharged to a nursing home pending a bed becoming available at a SEDU and then being assessed for that bed, she may not be able to be admitted to the SEDU as she would no longer be in an acute hospital setting.
47. Throughout the proceedings, Patricia has sent regular emails to my clerk setting out her wishes. The latest email was received on 2nd July 2025. There were consistent themes across the emails. She had said that she wished to go to a SEDU and in particular to SEDU 1 This is an independent SEDU which does not carry out NG feeding under restraint.
48. The psychiatrist and psychologist from SEDU 1, who had known Patricia for many years had given evidence. Although Patricia wanted to go there, SEDU 1 could not accommodate her because of her mobility issues. It may well be that Patricia was desperate to go to SEDU 1 not just because it was closer to home but also because it

did not offer NG feeding under restraint as one of its treatments. The 2023 orders could remain in place if SEDU 1 had a bed for her.

49. Patricia had a consistent position which she repeated to me when I met her, and which was set out in her emails that she did not want to be force fed. She said she was terrified by the thought and said she would fight any attempt to do this. She had been force fed before which she described as torture. She suffered from PTSD and the idea of this was causing her to bang her head and to have panic attacks.
50. Another repeated threat which I take seriously was that she would “down tools” if the declarations were lifted. I take that to mean she would stop taking even the few calories she consumes.

Issues for this Court

51. The issue is whether I should adjourn the decision using my case management powers until a bed is available at SEDU 3. The next issue, if I decide not to adjourn, is whether in principle I should consider re-visiting the 2023 orders and finally, if so, whether it is in Patricia’s best interests that I should discharge the orders.
52. If I decided to revisit the 2023 decisions, the question would be whether it was in Patricia’s best interests to make a similar order to that made by Moor J or, to the contrary, lift the orders made by that court which would allow Patricia to receive whatever treatment the clinicians treating her consider she needs, whether that involves force feeding or not. The lifting of the orders would bring her position into line with nearly every other anorexic patient in the country.
53. It is not disputed by the parties that there is reasonable cause to believe that Patricia does not have capacity to conduct the litigation herself and to make decisions as to her medical treatment for AN. It is not the position that someone with AN would never have capacity, it depends on their state of health. I heard unchallenged evidence that the brain shrinks as the AN takes hold. Patricia is at a very low weight indeed with a BMI amongst the lowest in the country. Her cognition is greatly affected by this disease.

First Issue - Case management decision

54. The first issue is a case management decision. I am told by Mr Lewis for the applicants that if I decide I am going to make decision about issues two and three above, whether in principle I could re-visit Moor J’s orders in 2023 and either postpone the decision on whether to discharge Moor J’s decisions or make a final decision on the application, either by making a declaration that Patricia should or should not be forced to have treatment, then he would ask the court for a separate case management decision which he would like to consider with a view to appealing it.
55. Mr Lewis’ argument is that the decisions I must make should be adjourned as a whole until a bed is available at SEDU 3. His argument is that if one or other of the substantive decisions are made, Patricia will “down tools” as she calls it and stop eating. The

applicant says it is in Patricia's best interests for both decisions to be made when the court has all the information before it.

56. The arguments made by the other parties are set out above.

Decision

57. Bar a statement from an agency which specialises in restraint, the substantive evidence was completed on 8th April, some three months ago. Submissions were made on 20th May and again on 20th June 2025. The wait has been to find out whether SEDU 3, the only SEDU currently willing to consider a bed for Patricia, has one available for her. SEDU 3 is said to be the best fit for Patricia.
58. SEDU 3 has no bed available for Patricia currently and it has no idea when one will become available. I am told it may be weeks or longer.
59. Patricia has been waiting since 13th March 2025 for a decision from the court. She has been distressed and there is no certainty about when the waiting will finish. It must be very obvious to her what the court is waiting to hear about.
60. The upside of waiting for longer, is that a decision could be made in the knowledge that there is or is not a bed at SEDU 3. That would mean that she would then be assessed by SEDU 3 and if the decision is to revisit Moor J's orders and it is a positive assessment then she could transfer there.
61. The downside of not making decisions now is that other SEDUs which might be available were I to lift the orders would not be willing to assess Patricia to see if she could enter their unit.
62. There are risks involved whichever decision I take. There is a serious risk that Patricia will stop eating and "down tools" although I accept the hospital's contention that on occasions Patricia has said she will not do something when she later does. I accept that Patricia needs certainty and these court proceedings have been hanging over her since she found out about them on 13th March 2025. I accept though that a decision I may make may provide her with certainty but not with the decision she craves. I accept that this highly intelligent woman is aware of the on-going discussions about SEDU availability. I am told the SEDU 3 consultant met Patricia and her parents, and she will have known why.
63. I accept too that Patricia has been at the hospital for a lengthy period of time and she is not receiving treatment. A decision, on both substantive issues would resolve her future, either she would be offered a SEDU – SEDU 3 or another if I were to lift the 2023 orders which are a bar to her admission to a unit – or I would leave the 2023 orders untouched in which case she would leave hospital to go to palliative care or to her parents' home to die. I understand there is a serious risk that if I were to lift the declarations there might be a hiatus between the decision and the offer of a bed in a SEDU during which time, as she has done before, Patricia could reduce her calorific intake.

64. This is a complex case, there is no easy decision, Patricia will suffer and may well down tools whatever decision I make. Having considered the arguments I have decided not to adjourn and wait for a time when SEDU 3 may have a bed available for Patricia. I will make a decision on both the issues raised with me by the parties. To make one decision only would be as harmful to Patricia as both decisions in my view. If I were to decide to revisit Moor J's decisions, that will cause Patricia distress, to make both decisions at the same time, will also cause distress but will ensure that there is some progress in the plans for Patricia. In my judgment decisions need to be made in Patricia's best interests now.