

UK court grants order enabling caesarean, finding temporary impairment



Key messages from the case

When an otherwise competent patient panics and makes an apparently irrational decision, questions of capacity and consent can be challenging. In this case, the UK Court of Appeal provided some guidance on navigating the line between competent refusal of treatment and temporary incapacity.

Details of the decision

MB was 33 weeks pregnant when she attended the ante-natal clinic for the first time and it was discovered her baby was in the breech position. Doctors recommended a caesarean and she agreed. She was admitted to hospital at 40 weeks' gestation for the caesarean. Over the next four days, MB requested and consented to the caesarean section but withdrew that consent initially because she refused to consent to anaesthesia by injection because of a needle phobia, then refused to consent to the caesarean using anaesthesia by mask. The caesarean was arranged and cancelled twice.

The hospital obtained a court order to enable the caesarean to proceed, and the patient appealed.

Capacity and consent

Capacity is specific to the decision being made.

An adult person is presumed to have capacity to consent to or refuse medical treatment unless or until that presumption is rebutted.

The court confirmed that a woman who has decision-making capacity may choose to refuse medical intervention, even if the reasons for the refusal

appear to be irrational, or for no reason at all, and even if this might lead to harm to herself or her unborn child.

The court noted that where a patient has decision-making capacity, doctors can only attempt to persuade the woman to agree to the intervention. If persuasion is unsuccessful, the doctors cannot take any steps towards medical intervention, even if the consequences of that decision are that the baby might die or be compromised.

Accordingly, the Court of Appeal confirmed the principle that a mentally competent person has the right to refuse medical treatment, even if refusal might lead to their death or in the case of a pregnant woman, death of or harm to her baby.

When does a patient lack capacity?

The court noted that:

"A person lacks capacity if some impairment or "disturbance of mental functioning" makes them unable to make a decision about whether to consent to or refuse treatment."

The person may be unable to make a decision because they cannot comprehend or retain the necessary information, or because they are unable to use the information and weigh it up to arrive at a decision.

Panic, indecisiveness, or irrationality does not themselves amount to incapacity, but might be symptoms or evidence of a lack of capacity.

Temporary factors such as shock, pain, or drugs might also be signs of eroding capacity – if such factors were operating to such a degree that the ability to decide was absent.

In this case, the patient wanted the child to be born, had consented to the caesarean but then panicked due to needle phobia and withdrew consent. The court considered that at that moment, her capacity was impaired and she was temporarily incompetent. Therefore, doctors could act in the emergency to administer anaesthetic if it was in her best interests, noting those interests are not limited to medical best interests.

Outcome

The court dismissed the appeal and ordered that doctors could proceed.

The patient ultimately accepted the court's decision and signed the consent form. She accepted the anaesthetic and a healthy baby was delivered.

Key lessons

A person with capacity has the right to refuse medical treatment. This applies even if:

- the reasons appear irrational,
- refusal might lead to harm to themselves or even their death, and
- in the case of a pregnant woman, refusal might lead to the death of or harm to her unborn child.

An adult person is presumed to have capacity unless or until that presumption is rebutted.

Factors such as pain, panic, shock or drugs can erode capacity to such an extent that the person has temporarily lost the ability to make a decision.

In complex cases such as this, we recommend you call Avant or seek legal advice.

References and further reading

- Avant factsheet – [Capacity: the essentials](#) 2020
- Avant factsheet – [Substitute decision-makers](#) 2020

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