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At a Court of Protection hearing today, before Mr Justice Keehan, I listened to doctors report on how they'd given 'futile' & "burdensome" treatment to a dying man over many weeks. It was like listening to a story of medical torture. [#EOLC](#) [#NotSecretCourt](#)

The patient, "KM", in his 50s, was admitted to hospital on 19 Jan with breathlessness & chest pain after long haul flight. It was a pulmonary embolism. Clots reached his heart. He then had a cardiac arrest. Then tested positive for Covid. He has severe & irreversible lung damage.

He's been kept alive for the last 15 weeks with ExtraCorporeal Membrane Oxygenation (ECMO). A machine transports blood from the body to an artificial lung (oxygenator) that, like the human lungs, adds oxygen and removes carbon dioxide.

The Hospital Trust (represented by Emma Sutton, [@sutton_es](#)) made an application to court to withdraw ECMO – with the result that KM would inevitably die, probably within minutes. The Trust considers that ECMO is "futile", "burdensome" & KM will never recover.

KM's family – his wife, adult son & brother-in-law - oppose the application. They strongly believe that KM would want to be kept on the ECMO machine & they want life-sustaining treatment continued. The family was represented in court by Sam Karim [@Kings_Chambers](#)

The Official Solicitor (with Michael Horne [@horne_mike](#) as counsel) represented KM. She commissioned a report from independent expert, Dr Chris Danbury. At the start of the hearing the OS did not take a position as to whether continuing treatment was in KM's best interests.

Evidence was given in court during the day by:

- the treating doctor ("Dr A") & the independent expert [@Medic_Mediator](#)
- and family members, & KM's pastor from the Pentecostal Church he attended

Dr A conveyed a powerful sense that he felt he was doing the wrong thing by his patient by keeping him on the ECMO machine

Dr A: Demands of being critically ill for long time require a lot of energy, we do all we can to mitigate this, but it's difficult to get more calories going in than are being used up. His muscle bulk has almost gone. Bones almost sticking through as so little muscle around them

KM is sedated into semi unconsciousness. He won't live much longer regardless of

any intervention. He has severe pressure sores (one is already through to his skull), & may have pain he can't express & be experiencing a 'sensation akin to drowning'

[#EOLC](#)

Family's barrister pointed to some notes recording that KM seemed 'comfortable'. Dr A said staff are reporting great moral distress "because they know they can't get him better & think they're causing him distress". It's them who care for him. I trust my expert nursing team.

This made me wonder why ECMO treatment was even on offer, especially as both his treating clinician & the independent expert said there was no chance of recovery. Over the next few weeks, they reported, his condition will only worsen & pain may be harder to manage. [#Futile](#)

Dr Danbury gives evidence next, with thorough, clear & devastating account of KM's condition. There is complete agreement between the clinical experts.

KM's wife is sworn in next: she says her husband is a very religious man – always put his faith in God – and has faith that whatever comes his way is what his Creator wants him to go through

Her own view is to ask to take KM off ECMO machine is tantamount to murder. Her husband would've stuck to the view that decisions about life & death are the prerogative of his Creator. His Creator has the prerogative to take human life but it should not be by human intervention

Questioned about the Drs saying KM is in pain she responds (through the interpreter) "That is nothing but the view of the doctors", & expresses the belief that "If he was going to die he would have been dead by now". She asks if there will be religious or cultural accommodation.

KM's son sworn in next: echoes his mother's account of KM's strong religious faith & adds "he wasn't someone who gave up".

Brother-in-law speaks next. Describes KM as a lovely, friendly man & committed church goer who had faith in Christ & believed God would heal him.

KM's pastor is final witness. He explains power to kill or to give life belongs only to God "so we cannot consent to remove machine... We're praying as an individual; we're praying as a church; we're praying as a family. We're not losing hope because we know miracles happen."

There was then an adjournment for Official Solicitor to finalise her position before hearing closing submissions

... & sorry it's taken longer than I thought it would to summarise my notes, so I will adjourn myself now & finish the thread in the morning with a few final tweets!

In closing submissions Trust's barrister acknowledged that ECMO could prolong life (up to 2 months) & recognised powerful evidence about KM's beliefs. But emphasised 'burdensomeness' & that ECMO had become futile.

She revisited evidence of necrosis, pressure sores, & that the pulmonary fibrosis was the worse the expert had ever seen & talked about withdrawal as allowing a 'dignified

death' (compared to uncontrolled dying process which lay ahead otherwise).

The Trust's submission is that 'the legal perspective is relatively straight forward'. No alternatives. Trust respect the religious beliefs but "a miracle is not capable of sensible implementation

The family's position was similarly unchanged. Their barrister underlined strong presumption in favour of life & giving weight to patient's wishes, and referred to KM's rights under Article 8 of the ECHR.

The family barrister asserted "there is always a chance of some recovery" and underlined that the evidence from KM's family showed that "The chance of a miracle is what he would have wanted"

The Official Solicitor, who had not taken a position either way at the start of the hearing, said the evidence had prompted some "anxious consideration" but she now supported the Trust's application. It was not in KM's best interests to continue with life-sustaining treatment.

Underlining there was "no hope of recovery" it was important to understand the experience that KM will have if ECMO continues, including issues such as decreasing efficacy of pain relief & increasing physical deterioration

What the next days & weeks would have in store for KM (if kept on the ECMO machine) "is frankly an existence of increasing misery" & "The mere fact that he cannot articulate that distress does not make it any less real"

The OS was clear that this was not to suggest that KM's wishes (including his religious views as articulated powerfully by his family + pastor) are irrational, "they are clear & genuine. But given clinical evidence they cannot be determinative of what is in his best interests."

The patient's wishes & feelings should always to be accorded great respect, but ultimately, the OS had concluded that the "magnetic factors" in this case are 'prolonging the process of dying' & an escalating existence of misery prior to the point of death'

The Official Solicitor's argument was also that given his condition & heavy sedation KM would not be aware that ECMO was being stopped. He would not KNOW that his wishes are not being accommodated (Mmmm, that made me do a double-take, what do others think???)

After six hours of hearing evidence & arguments the court is then briefly adjourned for Mr Justice Keehan to consider his judgment.

Oral judgement is delivered in court after short break (I'll post link to published version when available). [#CourtofProtection](#)

Mr Justice Keehan carefully details KM's condition & efforts to treat him. Summarises how initial more positive outlook (after treatment for embolism & cardiac arrest) was thwarted by Covid-19 which greatly exacerbated damage to his lungs & quickly became dominant pathology.

Judge notes challenge for family - in mid-January KM was perfectly healthy, but now they're told desperately ill & close to death. He also acknowledges that KM is deeply religious & notes the "moving evidence" from pastor & family members, including his wife of 23yrs

After outlining all the legal arguments Judge conclude that he's satisfied on the overwhelming medical evidence that continuing treatment on ECMO is entirely futile. There's no prospect of reversing the end stage damage to KM's lungs. Continued use of ECMO is prolonging his death

The judge says he is in no doubt whatsoever that in this very tragic case it's in the best interests of KM that ECMO and other life sustaining treatment is withdrawn & treatment moves to palliative care plan set out in the bundle. [#PalliativeCare](#)

Judge: KM's family can visit tomorrow & in the afternoon ECMO removed, inevitably leading to death. I knows family will be hugely disappointed Every sympathy for difficult position they're in, but hope they'll understand I've made judgment that I think is in KM's best interest.

As so often with [@OpenJusticeCoP](#) observers, I'm left with great respect for all involved in navigating these intensively difficult court hearings. Is there anything that can be done to stop cases getting to this point. I've now heard so many cases like this - hugely distressing.

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