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The Rt Hon Robert Buckland
Secretary of State for Justice
Lord Chancellor's Private Office
Ministry of Justice
102 Petty France
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9 June 2020

URGENT

Dear Mr Buckland,

We are writing to raise our concerns about an incredibly troubling judicial trend, most recently highlighted in the judgment of *Barnsley Hospital NHS Foundation Trust v MSP* [2020] EWCOP 26, where the courts have effectively disregarded the most fundamental of state obligations - that of protecting the sanctity of human life. This case falls on the heels of several other high-profile cases where judges have determined that an individual's life no longer had value and thus orders were made which inevitably led to the deaths of the individuals concerned. Many of these cases involved infant children: Charlie Gard, Isaiah Haastrup and Alfie Evans, the latter case being decided by the same judge, Mr Justice Hayden, who has now decided the *Barnsley Hospital* case.

The *Barnsley Hospital* case is unique in that it is not about removing life-sustaining treatment from someone who did not have capacity to make the decision himself. At paragraph 46 of the judgment, Justice Hayden admits that MSP was fully capacitous at the time that he consented to the procedure. It is apparent from the judgment that MSP had full capacity when he consented to the life-sustaining treatment, and unless it is withdrawn, causing his death, he is overwhelmingly likely to restore capacity in the future.

Section 4 of the Mental Capacity Act 2005 required Hayden J to consider "*(a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and (b) if it appears likely that he will, when that is likely to be.*". Nothing in the judgment answers those questions.

MSP is, by the Court's own description, emotionally and mentally vulnerable. He has a history of self-harming and is on medication following a diagnosis of being bi-polar (para. 16 of the judgment). Despite the fact that MSP was mentally and emotionally vulnerable, no evidence of his mental state is analysed by the court when addressing his earlier statements about not wanting to live with a stoma; and no discussion whatsoever takes place as to whether, with proper therapy addressing his emotional vulnerability, he may have wanted to live. Nor was any analysis undertaken of MSP's maturity level when he made his earlier wishes known, and how facing the real possibility of death may have dramatically changed his feelings about living with a stoma.

At its core, this judgment is about Mr Justice Hayden rejecting MSP's express desire to have his life saved by inserting himself into MSP's mind and will, suggesting that because of how he lived his life and his previous expressions about not wanting to live with a stoma, that regardless of what MSP actually told the hospital, in truth he actually wanted to die. To a reasonable mind, it appears that Mr Justice Hayden believes he is imputing to MSP his true wish to forsake lifesaving treatment because MSP likely did not have the courage under the circumstances to follow through with his own earlier wishes as expressed in his advanced decision.

This case represents judicial paternalism at its worst, and, on the face of the judgment, appears to amount to court ordered euthanasia. Neither assisted suicide or euthanasia are legal in the United Kingdom. The last time parliament addressed the issue, it voted overwhelmingly, 330 votes to 118, to reject changing the existing safeguards for preserving human life.

As indicated above, this is only the latest in the very long list of cases where life-sustaining treatment was withdrawn from children and adults in highly controversial circumstances. Other recent cases involved abortions enforced by the Court of Protection on women who did not want it.

All those cases are only known to the public because of the recent reforms of Lord Justice Munby, who has relaxed the strict rules on the secrecy of the proceedings of the Court of Protection and Family Division. There were probably dozens of similarly controversial earlier cases which we know nothing about. Despite Munby LJ's reforms, the system remains very secretive and not subject to a level of public scrutiny which is appropriate for life-and-death decisions taken by public authorities.

Barnsley Hospital is one of the inexplicable decisions generated by that system, which inevitably raise suspicion that the system has been infiltrated by pro-euthanasia judicial activists, who no longer decide cases impartially.

Now that another innocent life – that of MSP – hangs in the balance, we urge you to take urgent action to reform that system and restore public confidence in it.

We are asking you to set up a public inquiry into the system of determination of patients' 'best interests' in the Court of Protection and Family Division. The inquiry would need to review the cases of this nature decided by both Courts, both known and unknown, and make recommendations about the appropriate safeguards to be introduced. The process under Inquiries Act 2005 is flexible enough to ensure the fairness and transparency of such a review without compromising the privacy of the parties involved.

We have written to the solicitors for Barnsley Hospital to ask their clients to delay the withdrawal of treatment from MSP until you make a decision on this request, and possibly until the inquiry takes place. This is a matter of some considerable urgency.

We look forward to hearing from you as soon as possible.

Yours sincerely,

Andrea Williams

Chief Executive