

Neutral Citation No: [2025] NIFam 14

Ref: HUM12901

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 27/11/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

Between:

A HEALTH AND SOCIAL CARE TRUST

Plaintiff

and

BT BY HER GUARDIAN AD LITEM THE OFFICIAL SOLICITOR TO THE
COURT OF JUDICATURE OF NORTHERN IRELAND

First Defendant

and

LT

Second Defendant

INHERENT JURISDICTION: DECLARATORY ORDER RE DISCHARGE OF
PATIENT FROM HOSPITAL

Michael Potter (instructed by the Directorate of Legal Services) for the Plaintiff
Timothy Ritchie (instructed by the Official Solicitor) for the first Defendant
The second Defendant appeared in person

HUMPHREYS J

This judgment has been anonymised as it involves a patient. The ciphers given to the defendants are not their initials. Nothing must be published which would identify the patient.

Introduction

[1] The first defendant, BT, is an 86 year old woman who was admitted to hospital in March 2025 suffering from renal failure. She has limited life expectancy. The

plaintiff Trust makes the case that she has no ongoing acute medical need and no longer requires in-patient hospital care. The second defendant, LT, is her daughter. Both defendants are opposed to the discharge of BT from hospital.

[2] The court appointed the Official Solicitor to act as guardian ad litem for BT for the purposes of this litigation.

[3] The Trust seeks the following relief:

- (i) A declaration that BT lacks decision-making capacity in relation to the matters concerning to where she resides;
- (ii) A declaration that the Trust is entitled to take all necessary steps to transfer BT to a suitable facility and to provide such care and treatment as is in her best interests.

The evidence

[4] The court had the benefit of a detailed report from Dr Conor Barton, Consultant Psychiatrist, who interviewed BT and considered her medical history. He found that she was confused, most likely due to dementia of either a vascular or mixed aetiology. He identified impairments in her memory, attention, social cognition and language. As a result, BT would not be able to function independently.

[5] Dr Barton concludes that, on the balance of probabilities, BT does not demonstrate capacity to make a decision on her ongoing healthcare, specifically with reference to her ability to decide on her discharge and placement. He has formed this opinion for the following reasons:

- (i) BT is unable to understand the information relevant to the decision and does not accept the medical team's assessment that she is medically fit for discharge;
- (ii) BT does not retain information for long enough to make the necessary decision. She is unable to recall advice given to her relating to her physical limitations;
- (iii) She is unable to appreciate the relevance of information imparted to her, but rather contends that she is entitled to open-ended hospital care as she has paid her taxes all her life;
- (iv) BT cannot process information in relation to the other options open to her, including potential placement and care options.

[6] Counsel for the first defendant, instructed by the Official Solicitor, agreed that BT lacked the necessary capacity.

[7] The court also received evidence from a senior social worker, Elaine Sloan. She recounted how, since March 2025, numerous meetings and discussions had taken place with both BT and LT in order to attempt to agree a discharge pathway. None of these had proved successful. Both expressed the view that BT should remain in hospital indefinitely and rejected any proposals for a care home placement or a home care package.

[8] Ms Sloan articulated the Trust's concerns which are:

- (i) BT does not require in patient care;
- (ii) She is presently at risk of hospital acquired infection;
- (iii) There is significant pressure on hospital beds, required by other patients with acute conditions; and
- (iv) She is best suited to a nursing home placement where the necessary level of care could be provided.

[9] Ms Sloan also explained that the Trust had been in discussions with a care home provider which owns facilities close to where LT resides. There is no availability at the moment in these homes but this position is likely to change. An available bed had been identified in one nursing home situated some distance away from the family home. Other nursing homes had expressed concerns about accepting BT in circumstances where LT did not consent.

[10] Ms Louise Harvey, of the Official Solicitor's office, prepared a report dated 22 October 2025. During the course of her discussions with BT, the claim that she was entitled to remain in hospital as she had paid her taxes was repeated. This desire was expressed despite the fact that she had various complaints about the way in which she had been treated in hospital. BT stated that she did not want to go to a nursing home as she did not want to pay for it.

[11] Ms Harvey did attempt to explain the facilities which would be available at a nursing home and its relative advantages but none of this was accepted by BT.

[12] Ms Harvey also discussed the issues with LT who expressed her firm view that her mother needed to be in hospital. She said it was disgraceful that an elderly woman would be "put out" of the hospital environment.

[13] A meeting also took place with Dr El-Hag, Consultant Geriatrician, who explained that BT is currently receiving no medical intervention whatsoever, but is just subject to routine observations. He was very concerned in relation to the likelihood of exposure to infection on the ward, particularly coming into the winter months. It was Ms Harvey's overall conclusion that it would be in BT's best interests if she were discharged to a nursing home.

The second defendant's submissions

[14] LT presented the court with a lengthy document setting out her objections to the Trust's application. Her principal concern is the movement of her mother out of the hospital and the potential harm that may cause. She contends that if her mother were to die as a result of such a move, this would constitute corporate manslaughter on the part of the Trust.

[15] This risk of premature death underpins most of LT's submissions. She relies on the right to life enshrined in article 2 of the European Convention on Human Rights ('ECHR') and the prohibition on torture, inhuman and degrading treatment in article 3.

[16] There is, however, no evidence adduced that a structured move from hospital to a nursing home, undertaken by experienced professionals, would create a risk to the life of BT or otherwise subject her to the type of treatment forbidden by article 3.

The legal principles

[17] This application is brought pursuant to the inherent jurisdiction of the court to make decisions on behalf of incapacitated adults. The continuing failure to bring Part 6 of the Mental Capacity Act (Northern Ireland) 2016 ("the 2016 Act") into force means that the inherent jurisdiction must continue to be invoked in this type of case.

[18] In *Re SA* [2005] EWHC 2942, Munby J stated:

"It is now clear, in my judgment, that the court exercises what is, in substance and reality, a jurisdiction in relation to incompetent adults which is for all practical purposes indistinguishable from its well-established *parens patriae* or wardship jurisdictions in relation to children. The court exercises a 'protective jurisdiction' in relation to vulnerable adults just as it does in relation to wards of court." (para [37])

[19] This jurisdiction is exercised on the basis of the best interests of the incompetent or incapacitated adult, in accordance with law and compatibly with ECHR rights.

[20] In relation to the issue of capacity, Butler Sloss J stated in *Re MB (Medical Treatment)* [1997] 2 FLR 426:

"A person lacks capacity if some impairment or disturbance of mental functioning renders the person unable to make a decision whether to consent or to refuse treatment. That inability to make a decision will occur when:

- (a) The patient is unable to comprehend and retain the information which is material to the decision ...
- (b) The patient is unable to use the information and weigh it in the balance as part of the process of arriving at the decision."

[21] This approach is now reflected in section 1 of the 2016 Act. Section 3(1) provides:

"For the purposes of this Act, a person who is 16 or over lacks capacity in relation to a matter if, at the material time, the person is unable to make a decision for himself or herself about the matter (within the meaning given by section 4) because of an impairment of, or a disturbance in the functioning of, the mind or brain."

[22] Section 4 defines "unable to make a decision":

"(1) For the purposes of this Part a person is "unable to make a decision" for himself or herself about a matter if the person –

- (a) is not able to understand the information relevant to the decision;
- (b) is not able to retain that information for the time required to make the decision;
- (c) is not able to appreciate the relevance of that information and to use and weigh that information as part of the process of making the decision; or
- (d) is not able to communicate his or her decision (whether by talking, using sign language or any other means);

and references to enabling or helping a person to make a decision about a matter are to be read accordingly."

[23] In light of the findings and opinion of Dr Barton, which were not contradicted by any other medical evidence, I find that BT lacks capacity to make decisions about her residence and healthcare.

[24] The court is, therefore, empowered to make such decisions on behalf of BT, such power to be exercised in accordance with her best interests. The court has considered the totality of the evidence furnished, and the opinions expressed by Ms Harvey as well as the medical and social worker professionals.

[25] LT has genuinely held understandable concerns about the effect a transfer to a nursing home may have on her elderly and frail mother. However, the evidence presented to me is clear and unequivocal. Such a transfer is manifestly in BT's best interests. I say this for the following reasons:

- (i) She is not undergoing and does not require any hospital treatment at present;
- (ii) She can and will obtain an appropriate level of nursing care in a care home environment;
- (iii) There is no evidence that the transfer will cause harm to BT;
- (iv) Continuing to stay in hospital puts BT at risk of hospital acquired infections; and
- (v) Hospitals face significant challenges in obtaining and allocating beds for those individuals who require inpatient treatment, an issue which will be exacerbated in the coming months.

[26] Since there is no evidence of a real and immediate risk to BT's life, or of any inhuman or degrading treatment, I find that her rights under article 2 and 3 ECHR are not engaged. Equally, the proposed action does not involve any deprivation of BT's liberty and therefore article 5 ECHR is not in play. The proposal to move her against her will and that of her daughter does represent an interference with her right to privacy and family life under article 8. However, such interference is entirely necessary and proportionate, given my findings in relation to BT's best interests. The move to a different environment may cause some upset and disruption but this ought to be entirely manageable. The process will entail careful planning and the taking of appropriate steps to manage stress, which may involve the administration of medication where necessary.

Conclusion

[27] For the reasons outlined, I am satisfied that the Trust is entitled to the declaratory relief sought:

- (i) BT lacks decision making capacity in relation to matters of where she resides and what healthcare she requires, and all issues relating to her discharge from hospital to a care facility; and

- (ii) The Trust has authority to take all necessary steps to transfer BT to a suitable facility and to provide such care and treatment for medical or welfare reasons as may be in her best interests, including the administration of medication where appropriate.

[28] This Order will be reviewed annually or otherwise at the direction of the court, and the parties will have liberty to apply.

[29] I will hear the parties as to any other ancillary relief being sought.