

Dr Peter Saunders

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Christian Medical Fellowship

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Dear Dr Saunders

Thank you for your letter of 23 October 2018 in response to my letter of 24 September 2018. I am writing to follow up concerning your offer to publish the full paragraph from our statement to the Supreme Court on the cost of court proceedings for decisions about CANH, together with a short note from the BMA to help readers properly understand its context, as set out in my previous letter.

Please find below the short note to be published alongside the CMF's published response to the BMA consultation.

'The British Medical Association has long taken the view that a court declaration should not be required for decisions to withdraw clinically assisted nutrition and hydration (CANH), providing that there is agreement between the clinical team and those close to the patient that it is not in the patient's best interests to continue to receive CANH, and the decision is made in accordance with the law and agreed guidelines. There are many reasons for this view, one of which is the considerable cost, to both families and to the NHS, of initiating and funding court proceedings. Whilst this is entirely reasonable and appropriate expenditure where there is uncertainty or disagreement that needs to be resolved, it is more difficult to justify where all parties are in agreement about the appropriate course of action.

On this particular point, the full view of the BMA, as set out in our witness statement to the Supreme Court in *NHS Trust v Y*, states that:

"Importantly, the BMA is concerned about the cost to the NHS arising from proceedings having to be brought. The average cost to the NHS in bringing declaratory relief proceedings is £122,000 per case.¹ This figure is predicated on the NHS acting as the applicant and paying 50% of the Official Solicitor's costs (the usual order), the case lasting nine months and there being one preliminary hearing and one final hearing. £53,000 of this figure is litigation costs² with the remaining £69,000 representing the cost of ongoing care during the proceedings.³ If the cases in which declaratory relief is required are extended beyond PVS/MCS following sudden-onset brain injury, resulting in many more cases going to court, the total costs will escalate accordingly.



Furthermore, the process of preparing for and attending Court proceedings takes senior and specialist clinicians away from delivering front-line services. This is to the detriment of patients at a time when the NHS is under considerable strain.”

I look forward to receiving confirmation that the above explanatory note and the full paragraph from the witness statement have been published alongside the CMF’s response to the BMA’s consultation.

Yours sincerely



Dr John Chisholm CBE
Chair
Medical Ethics Committee

cc. Professor Sam Leinster

¹ Halliday, S, Formby, A and Cookson, R (2015) *An assessment of the court’s role in the withdrawal of clinically assisted nutrition and hydration from patients in the permanent vegetative state*, Medical Law Review 2015 Dec; 23(4): 556–587 at 580 Page 580.

² It is difficult to see how a proper investigation of the sort contemplated by the Official Solicitor could come in at less than this.

³ It is estimated that the annual cost of caring for a PVS patient is just under £92,000. Formby A, Cookson R, Halliday S *Cost Analysis of the Legal Declaratory Relief Requirement for Withdrawing Clinically Assisted Nutrition and Hydration from Patients in PVS in England and Wales* CHE Research Paper 108 February 2015.