IN THE COURT OF PROTECTION **Case No: 14181429**

IN THE MATTER OF: HDEB

BEFORE HHJ BECKLEY

NCN: **[2026] EWCOP 12 (T2)**

HANDED DOWN ON 4 FEBRUARY 2026

ON THE APPLICATION OF:

1) JB
2) SB

JUDGMENT

Introduction and background

1) HDEB is a 22-year-old man. He is the youngest of four siblings. HDEB was diagnosed with autism, attention deficit hyperactivity disorder and oppositional defiant disorder when he was 2-years-old. In the last two years he has also been diagnosed with epilepsy. HDEB requires 1:1 support during the day, waking night supervision and 2:1 support when he is displaying heightened behaviour and when he is in the community.

2) JB and SB are HDEB's loving and caring parents. HDEB lived with JB and SB until his needs became too great to be met at home, and he moved to PC in Berkshire where he thrived. When he turned 18, he moved to his current residential placement, BC in South Wales. JB and SB's care for and commitment to HDEB is clearly demonstrated by the fact they have moved house twice, firstly to Berkshire and latterly to south Wales so they can be close to and have very regular contact with him. In my view, no parents could have done more for their child than JB and SB have

done for HDEB. He is fortunate to have JB and SB as his parents and to receive their love and support.

3) By COP1 dated 5 June 2025, JB and SB applied to be appointed as joint and several deputies for personal welfare ("PWDs") for HDEB. They sought authority to make decisions in relation to the following aspects of HDEB's welfare: consenting to medical and dental examination and treatment; choosing where and with whom he should live (in accordance with section 4 of the Mental Capacity Act 2005 ("MCA") and limited to choosing between available options); provision of care services; matters of day to day care, including diet and dress; whether he should take part in work placement opportunities, leisure or social activities; and making and conducting complaints about his care or treatment.

4) The COP1 stated that JB and SB were seeking permission to apply to be appointed as PWDs, but JB and SB did not need the Court's permission to make the application as they were already HDEB's deputies for property and affairs (section 50 (1)(d) MCA).

5) The COP3 assessment of capacity filed with the application was thoroughly prepared by a consultant psychiatrist and was clear that HDEB is unable to make decisions about his personal welfare and that is because of his autism.

6) In support of their application, JB and SB filed comprehensive witness statements from themselves, a transitions officer at PC, the Chief Executive Officer of an autism charity and HDEB's aunt. They also filed an email from HDEB's social worker which stated that the local authority had no objections to the appointment of PWDs for HDEB and offering to provide a witness statement if required by the Court.

7) I considered the application and all the supporting evidence on 9 July 2025 and made an order dismissing the application. My order referred to sections 5 and 16(4) of the MCA and the decision of Mr Justice Hayden in *Re Lawson, Mottram & Hopton* [2019] EWCOP 22.

8) By COP9 dated 11 August 2025, JB and SB sought a reconsideration of my order under rule 13.4 of the Court of Protection Rules 2017.

9) By order dated 10 October 2025, I listed a hearing of the reconsideration application on 13 January 2026. I required JB and SB to file a further witness statement setting out instances where they submit that HDEB's best interests would have been better served if he had PWDs making decisions on his behalf. JB filed such a witness statement dated 5 January 2026.

10) The hearing took place on 13 January 2026. JB and SB were ably represented by Ms Francesca Gardner of Counsel. Ms Gardner had filed a detailed position statement and her instructing solicitors, Rook Irwin Sweeney, had filed an electronic bundle (to

which I will refer). On the morning of the hearing, Ms Gardner provided me with a copy of the judgment of Mr Justice Poole in *Parr v Cheshire East Council* [2026] EWCOP 1 (T3), which had been handed down on the previous Friday.

11) I indicated at the hearing that I would provide a draft written judgment by the end of January 2026 and that if I refused the application, I would grant permission to appeal to a Tier 3 judge.

Law

12) (1) Section 1 sets out five general principles which apply for the purposes of the MCA 2005:
(2) A person must be assumed to have capacity unless it is established that he lacks capacity;
(3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success;
(4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision;
(5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests;
(6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

13) Section 16 sets out the court's power to appoint deputies.
(1) This section applies if a person ("P") lacks capacity in relation to a matter or matters concerning—
(a)P's personal welfare, or
(b) P's property and affairs.
(2) The court may—
(a) by making an order, make the decision or decisions on P's behalf in relation to the matter or matters, or
(b)appoint a person (a "deputy") to make decisions on P's behalf in relation to the matter or matters.
(3) The powers of the court under this section are subject to the provisions of this Act and, in particular, to sections 1 (the principles) and 4 (best interests).
(4) **When deciding whether it is in P's best interests to appoint a deputy, the court must have regard (in addition to the matters mentioned in section 4) to the principles that—**
(a) a decision by the court is to be preferred to the appointment of a deputy to make a decision, and
(b) the powers conferred on a deputy should be as limited in scope and duration as is reasonably practicable in the circumstances. (my emphasis)

(5) The court may make such further orders or give such directions, and confer on a deputy such powers or impose on him such duties, as it thinks necessary or expedient for giving effect to, or otherwise in connection with, an order or appointment made by it under subsection (2).
(6) Without prejudice to section 4, the court may make the order, give the directions or make the appointment on such terms as it considers are in P's best interests, even though no application is before the court for an order, directions or an appointment on those terms.
(7) An order of the court may be varied or discharged by a subsequent order.
(8) The court may, in particular, revoke the appointment of a deputy or vary the powers conferred on him if it is satisfied that the deputy—
(a) has behaved, or is behaving, in a way that contravenes the authority conferred on him by the court or is not in P's best interests, or
(b) proposes to behave in a way that would contravene that authority or would not be in P's best interests.

14) *In Lawson, Mottram and Hopton (appointment of personal welfare deputies)* [2019] EWCOP 22, Hayden J (as the then Vice President), was invited to determine: "what is the correct approach to determining whether a welfare deputy should be appointed?". Hayden J highlighted and clarified a number of key principles, as follows [§53]:
a. The starting point in evaluating any application for appointment of a PWD is by reference to the clear wording of the MCA 2005. Part 1 of the Act identifies a hierarchy of decision making in which the twin obligations both to protect P and promote his or her personal autonomy remain central throughout;
b. Whilst there is no special alchemy that confers adulthood on a child on his or her 18th birthday, it nevertheless marks a transition to an altered legal status, which carries both rights and responsibilities. It is predicated on respect for autonomy. The young person who may lack capacity in key areas of decision making remains every bit as entitled to this respect as his capacitous coeval. These are fundamental rights which infuse the MCA 2005 and are intrinsic to its philosophy. The extension of parental responsibility beyond the age of eighteen, under the aegis of a PWD, may be driven by a natural and indeed healthy parental instinct but it requires vigilantly to be guarded against. The imposition of a legal framework which is overly protective risks inhibiting personal development and may fail properly to nurture individual potential. The data which I have analysed (paragraph 26 above) may, I suspect, reflect the stress and anxiety experienced in consequence of the transition from child to adult services. As a judge of the Family Division and as a judge of the Court of Protection I have seen from both perspectives the acute distress caused by inadequate transition planning. The remedy for this lies in promoting good professional practice. It is not achieved by avoidably eroding the autonomy of the young incapacitous adult;
c. The structure of the Act and, in particular, the factors which fall to be considered pursuant to Section 4 may well mean that the most likely conclusion in the majority of cases will be that it is not in the best interests of P for the Court to appoint a PWD;

d. The above is not in any way to be interpreted as a statutory bias or presumption against appointment. It is the likely consequence of the application of the relevant factors to the individual circumstances of the case. It requires to be emphasised, unambiguously, that this is not a presumption, nor should it even be regarded as the starting point. There is a parallel here with the analysis of Baroness Hale in *Re W* [2010] UKSC 12. In that case and in a different jurisdiction of law, the Supreme Court was considering the perception that had emerged, in the Family Court, of a presumption against a child giving oral evidence. The reasoning there has analogous application here: 22."*However tempting it may be to leave the issue until it has received the expert scrutiny of a multi-disciplinary committee, we are satisfied that we cannot do so. The existing law erects a presumption against a child giving evidence which requires to be rebutted by anyone seeking to put questions to the child. That cannot be reconciled with the approach of the European Court of Human Rights, which always aims to strike a fair balance between competing Convention rights. Article 6 requires that the proceedings overall be fair and this normally entails an opportunity to challenge the evidence presented by the other side. But even in criminal proceedings account must be taken of the article 8 rights of the perceived victim: see SN v Sweden, App no 34209/96, 2 July 2002. Striking that balance in care proceedings may well mean that the child should not be called to give evidence in the great majority of cases, but that is a result and not a presumption or even a starting point*."

e. To construct an artificial impediment, in practice, to the appointment of a PWD would be to fail to have proper regard to the 'unvarnished words' of the MCA 2005. (*PBA v SBC* [2011] EWHC 2580) (Fam). It would compromise a fair balancing of the Article 6 and Article 8 Convention Rights which are undoubtedly engaged;

f. The Code of Practice is not a statute, it is an interpretive aid to the statutory framework, no more and no less. It is guidance which, whilst it will require important consideration, will never be determinative. The power remains in the statutory provision;

g. The prevailing ethos of the MCA is to weigh and balance the many competing factors that will illuminate decision making. It is that same rationale that will be applied to the decision to appoint a PWD;

h. There is only one presumption in the MCA, namely that set out at Section 1 (2) i.e. 'a person must be assumed to have capacity unless it is established that he lacks capacity'. This recognition of the importance of human autonomy is the defining principle of the Act. It casts light in to every corner of this legislation and it illuminates the approach to appointment of PWDs;

i. P's wishes and feelings and those other factors contemplated by Section 4 (6) MCA will, where they can be reasonably ascertained, require to be considered. None is determinative and the weight to be applied will vary from case to case in determining where P's best interests lie (*PW v Chelsea and Westminster Hospital NHS Foundation Trust and Others* [2018] EWCA Civ 1067);

j. It is a distortion of the framework of Sections 4 and 5 MCA 2005 to regard the appointment of a PWD as in any way a less restrictive option than the collaborative and informal decision taking prescribed by Section 5;
k. The wording of the Code of Practice at 8.38 (see para 20 above) is reflective of likely outcome and should not be regarded as the starting point. This paragraph of the Code, in particular, requires to be revisited.

15) In *Parr v Cheshire East and Anor* [2026] EWCOP1 (T3), Poole J stated at [37], 'Hayden J made very clear *in Lawson, Mottram and Hopton* (above) that there is no presumption against appointment of a PWD. A PWD is not needed merely because a child with complex needs has become an adult. It is unlikely to be appropriate if there is a single significant decision to be made. In most cases the appointment will not be required but in some it will. Here, there is likely to be a series of decisions to be made about Ruby's health and welfare…..' He emphasises at [40} …. But this judgment is not an inducement to make applications for appointment as a PWD in cases where the appointment would not be appropriate. I have applied not departed from Hayden J's judgment in *Lawon, Mottram and Hopton* (above).'

Capacity

16) There is no disagreement that HDEB lacks capacity to make decisions regarding his personal welfare. The presumption of capacity at section 1(2) of the Act is effectively rebutted by the COP3 capacity assessment filed with the application.

Discussion

17) My starting point is HDEB's right to respect for his autonomy. He is a 22-year-old man; it has been more than 4 years since JB and SB held parental responsibility for him. HDEB's disabilities may mean that he is less able to exercise his autonomy than a non-disabled person, but that does not mean that his right to autonomy should be any less jealously guarded. As Hayden J stated at [53b] of *Lawson, Mottram and Hopton*, '*The young person who may lack capacity in key areas of decision making remains every bit as entitled to this respect as his capacitous coeval*.'

18) Sections 4 and 5 of the Act envisage a system of collaborative and informal decision-making. JB and SB are people whose views must be taken into account by any person making a best interests decision on HDEB's behalf (section 4(7) MCA). They are engaged in caring for him and interested in his welfare (section 4(7)(b)); they are also property and affairs deputies appointed by the court (section 4(7)(d)). It seems to me virtually impossible that any best interests decision make could claim that it is not practicable and appropriate to consult JB and SB given their love for and knowledge of HDEB and the fact that they have twice moved house to be close to where he is living.

19) As an experienced Court of Protection judge, I recognise that the system of collaborative decision-making envisaged by sections 4 and 5 of the MCA does not always run as the statue intends. It is for this reason that I ordered JB and SB to file a second witness statement as set out at a paragraph 9) above.

20) JB, in his second witness statement (pg 106), describes a number of difficulties that JB and SB have faced when dealing with statutory bodies. As he acknowledges, the majority of examples are from when HDEB was a child and JB and SB still had parental responsibility.

21) JB and SB had great difficulty in ensuring that HDEB was provided with an adequate 52-week residential school placement (paras 12-15, pgs 108 and 109); indeed they had to appeal to a SEND tribunal. However, HDEB's local authority agreed that a residential school was required just before a final SEND tribunal hearing and conceded that it should be a 52-week rather than term-time placement without JB and SB having to issue a second appeal.

22) JB and SB faced further difficulties when HDEB had to move on from PC (paras 18-19, pg 110). His local authority proposed a placement which JB and SB felt was completely unsuitable for HDEB. They had to take steps to find a placement and were able to source BC. Again, I am pleased that JB and SB were able to persuade the local authority that BC was the right place for their son.

23) JB describes how difficult it is for HDEB to communicate when he is anxious and unhappy (para 22, pg 111). His family have learned to observe him and to anticipate his needs. I'm sure JB is right to say that professionals, including social workers, find it difficult to understand HDEB's needs and wishes. However, for HDEB's autonomy to be respected, those professionals are going to have to learn how to effectively communicate with him. They cannot simply rely on HDEB's family to let them know what HDEB wants, needs or is trying to communicate. They can learn from the experience and knowledge of his family how to best communicate with and understand him.

24) There was a frightening incident when a new dental surgeon at first refused to accept the advice that JB and SB had received from a senior anaesthetist that it wasn't in HDEB's best interests to receive a general anaesthetic (para 23, pg 112). The dentist did eventually accept that alternative treatment should be provided, but JB and SB consider that is only because they had parental responsibility. Whether that was the case is impossible for me to know. However, the new dental surgeon would be bound to consult JB and SB regarding HDEB's dental treatment pursuant to section 4 MCA.

25) In my view, the examples given by JB and SB demonstrate how collaborative decision-making can work and has worked in HDEB's best interests. Often it isn't

simple and straightforward, but when decision makers have taken JB and SB's views into account (as section 4 MCA says they must), along with their own professional knowledge and experience the right decisions appears to have been made.

26) JB and SB seek authority to make day to day decisions including as to diet, dress, leisure and social activities. As I suggested to JB and SB in the hearing, that cannot be practical. The person at BC who is deciding whether HDEB should wear his big coat or a light jacket, eat a curry or a jacket potato or watch the TV or walk outside (assuming for this judgement that HDEB lacks capacity to make those decisions himself) cannot realistically be expected to contact JB and SB who, if they were PWDs, would have the authority to make those decisions on HDEB's behalf. In my view, those ongoing, day to day decisions are ones that Parliament intended to be made with the protection of section 5 MCA.

27) JB and SB accept that they would only be able to choose between available options offered by statutory bodies. PWDs, like Court of Protection judges, cannot compel a statutory body to create or, in particular, pay for a favoured option. JB and SB submit that as PWDs they would be able to lead on the process of decision making and gather information. They describe instances of a complete absence of discussion or planning before decisions have to be made. I am afraid that I don't consider that the appointment of PWDs would overcome such difficulties which commonly arise because of the very great pressures on statutory bodies.

28) It seems that HDEB may have to move on from BC in July 2026 when his current placement comes to an end. This is obviously an issue of great concern for JB and SB. They are concerned that the local authority isn't taking the necessary active steps to source available options, which could perhaps include an extension of HDEB's stay at BC. It is the decision as to where HDEB should live, deciding between available options, that they consider to be the most important decision that they would and should be able to make as PWD.

29) A number of scenarios could develop. SB and JB and the local authority may agree on which available option is in HDEB's best interests. In that case the collaborative decision making envisaged by sections 4 and 5 MCA will be relatively straightforward. Secondly, the local authority could be neutral between 2 options, but when having taken into account the views of SB and JB agrees with SB and JB as to which is the option that is in HDEB's best interests. The third option is that the local authority presents available options but there is disagreement between SB and JB on the one hand and the local authority on the other as to which is in HDEB's best interests. In that situation, SB and JB consider that the decision should be theirs as PWDs. I am afraid that I disagree with them. If there is such a disagreement in relation to a decision as important as residence, then section 16 (4) (a) says that a decision of the court is to be preferred to the appointment of PWDs to make the decision.

30) I note that a transitions officer at PC, the Chief Executive Officer of an autism charity and HDEB's aunt all actively support JB and SB's application. I also note that the local authority does not oppose it. In my judgment, those are all persons whose views I should take into account when making this decision, and I do so. Their views, however, are not determinative of my decision.

Conclusion

31) I know that this decision will be very disappointing for JB and SB, but I do not find it to be in HDEB's best interests to appoint JB and SB as PWDs for HDEB. I find that collaborative decision making has worked in his best interests. I consider that if there are disagreements over major decisions, such as residence, the Court of Protection should resolve those disagreements rather than PWDs. I consider that the appointment of PWDs would be an unnecessary infringement of HDEB's right to autonomy as a 22-year-old adult.

32) I want to make absolutely clear that my decision is not any reflection on JB's and SB's love and concern for HDEB nor is it based on any concerns as to their parenting. They are completely committed to HDEB and to his welfare. They understand him and have shown themselves to be very capable of working collaboratively with professionals. HDEB could not have wished for better parents.

33) I recognise that HDEB will not just require a one-off decision, but a series of ongoing decisions. It seems to me that those ongoing decisions should be made collaboratively rather than by PWDs.

34) I am clear that there is no presumption against the appointment of PWDs, as Mr Justice Hayden made clear. However, I do not find that it is in HDEB's best interests to have PWDs making welfare decisions on his behalf.

35) I recognise that I have come to a different decision in this case than Mr Justice Poole did in *Parr* , despite the circumstances of HDEB, JB and SB having similarities to that of Ruby and Alison Parr. I do, therefore, grant permission to JB and SB to appeal to a Tier 3 judge if they wish to do so.