Potential scenario for moot

The appellant is a Maryam Begum, parent of Amara Begum who is a 16-year-old child who has suffered a fatal car accident involving a catastrophic brain injury and is now in a permanently vegetative stage and irreversible coma. Doctors at the hospital have confirmed that Amara’s heart and respiratory systems have stopped working, although cannot confirm that her brain stem has stopped working or give a time limit for this to take place. Doctors have confirmed that all life-prolonging measures are now exhausted or foregone, there is no alternative left but to proceed to death determination.

Amara now remains on elective ventilation, as this is the hospital’s policy following the passing of presumed consent legislation. The purpose of this elective ventilation is to prolong the lives of dying donors using mechanical ventilation of the lungs, the aim of which is to assist in the procurement of organs, rather than for the benefit of the donor.

Amara did not specifically register a decision about whether she would donate her organs or not prior to her accident although mentioned to her family members that she thought that she ‘might like to’ donate her organs when she passed away, as they had been learning about it in school.

Amara has type AB negative blood, the rarest of the eight main blood types.

The appellant and family are members of the Muslim community. Although organ donation is permitted and supported by Islamic law, many members of the community believe that this should not take place until clinical brain death has been declared as they believe that this is when the ‘spirit’ leaves the body. Maryam shares this belief and wishes to wait for this to happen.

Rebecca, a 6-year-old patient at the same hospital as Amara, is on the waiting list for a kidney transplant, having suffered from kidney disease her entire life. Rebecca has type AB negative blood, and has so far struggled to find a match, as none of her family members have this blood type, and there is a national shortage. Rebecca has been given 4 months to live if she does not have a transplant soon.

Doctors have informed Maryam that Amara is a perfect match, but she refuses to consent to the organ donation since Amara is not brain dead, and her religion prohibits organ donation unless brain death is pronounced. Under the new legislation, Doctors do not have to follow Maryam’s wish, as Amara is presumed to have consented to this organ donation herself. Parents are no longer allowed to veto children’s wishes. Further, Doctors believe that Amara’s wishes were evident from discussions she had had with her family. Doctors go ahead with the transplant and Rebecca receives the kidney.

Maryam is bringing a judicial review based on the new organ donation legislation. Her challenge is based on grounds of irrationality in the legislation based on religious freedom, Amara’s age, and a breach of the appellant’s human rights in accordance with the European Convention on Human Rights, including article 3 and article 9.