Determination of application for permission to appeal

After considering submissions from the parties at an oral hearing this afternoon, the Supreme Court has declined to grant permission to appeal.

The Supreme Court has also ordered that a further stay of the High Court's order be granted until 5pm on Friday 9 June in order that the European Court of Human Rights can determine the appellants' request under rule 39 of the Rules of that Court.

In effect this means that the matter will not be considered further by the Supreme Court, but the appellants now have the opportunity to ask the ECHR in Strasbourg to give an indication to the United Kingdom of any interim measures which it (or the President of that Court) considers should be adopted in the interests of the parties or for the proper conduct of the proceedings before it.

Lady Hale's explanation of the Supreme Court's decision, as delivered in court on 8 June 2017

Charlie was born on 4 August last year, so he is now ten months old. He had all the appearance of a normal baby at birth. But he has a rare inherited disease, infantile onset encephalomyopathy mitochondrial DNA depletion syndrome (MDDS). This means that his condition has deteriorated seriously since he was born. He cannot move his arms or legs or breathe unaided. His brain is also severely affected, and there was a significant decline in the level of his brain functioning in January of this year. He is kept alive by a mechanical ventilator.

His parents agree that his present quality of life is not worth living. But they have been offered the prospect of a new treatment in the USA, deoxynucleoside therapy, which, it is thought, might result in some amelioration of this disease. This has never been tried on human beings or animals with this particular disease. The judge, having heard the evidence, concluded that 'the prospect of the nucleoside treatment having any benefit is as close to zero as makes no difference. In other words, as I have said, it is futile'.

Any court is bound to feel utmost sympathy for devoted parents who are desperate to explore every possible way of preserving the life of their gravely ill but much loved baby son. As parents we would all want to do the same. And this case is unusual in that the parents are not asking the hospital to provide or continue treatment at public expense. It is the hospital which has asked for permission to withdraw artificial ventilation and provide only

palliative care. Charlie's parents are asking that the hospital continue to keep Charlie alive by artificial means until they can take him to the United States for the treatment which has been offered there and for which they have raised the funds to pay. How, they argue, can the hospital try to prevent them from transferring the care of their son to another team?

However, as judges, and not as parents, we are concerned only with the legal position. We are bound to accept the factual findings of the trial judge, who has heard the evidence, including the evidence of the doctor in the USA who is prepared to offer treatment, and the judge found that further treatment would be futile. The legal test which he applied was whether further treatment would be in Charlie's best interests and in his order he expressly found that it would not be.

The parents argue that this is not the right legal test. In this sort of case the hospital can only interfere in the decision taken by the parents if the child is otherwise likely to suffer significant harm. But that apart, it is argued, decisions taken by parents who agree with one another are non-justiciable. Parents and parents alone are the judges of their child's best interests. Any other approach would be an unjustifiable interference with their status as parents and their rights under Article 8 of the European Convention on Human Rights. But there are several answers to this argument.

Firstly, applications such as this are provided for by statute: the Children Act of 1989. There was an application for a specific issue order in this case, as well as under the inherent jurisdiction of the High Court. Both are governed by the same principles. Section 1, sub-section 1 of the Children Act 1989 provides that the welfare of the child shall be the paramount consideration in any question concerning the upbringing of the child in any proceedings. This provision reflects but is stronger than Article 3.1 of the United Nations Convention on the Rights of the Child, which says that in any official action concerning the child, the child's best interests shall be a primary consideration.

Furthermore, where there is a significant dispute about a child's best interests the child himself must have an independent voice in that dispute. It cannot be left to the parents alone. This has happened in this case because Charlie has been represented by a guardian.

That guardian has investigated the case in his best interests and the guardian agrees with the hospital and with the judge's decision.

So, parents are not entitled to insist upon treatment by anyone which is not in their child's best interests. Furthermore, although a child can only be compulsorily removed from home if he is likely to suffer significant harm, the significant harm requirement does not apply to hospitals asking for guidance as to what treatment is and is not in the best interests of their patients. As the Court of Appeal found, it is in any event likely that Charlie will suffer significant harm if his present suffering is prolonged without any realistic prospect of improvement. This was found by reference to the judge's conclusions on the evidence.

Finally, the European Court of Human Rights has firmly stated that in any judicial decision where the rights under Article 8 of the parents and the child are at stake, the child's rights must be the paramount consideration. If there is any conflict between them the child's interests must prevail.

In short, therefore, it is quite clear that the hospital was entitled to bring these proceedings, and the judge was required to determine the outcome of these proceedings. In doing so, he applied the right test and his factual findings cannot be challenged on appeal. It follows, that the proposed appeal does not raise an arguable point of law of general public importance and so permission to appeal must be refused.