JUDGMENT OF THE UK SUPREME COURT IN THE CASE OF CHARLIE GARD, 19 JUNE 2017

1. The court refers to the transcript of the judgment delivered orally by Lady Hale on behalf of the court on 8 June 2017.

2. By that judgment, this court explained why it had decided to refuse permission to the parents to appeal to it against the order of the Court of Appeal dated 25 May 2017. But its refusal was subject to a reservation of jurisdiction to grant a further stay of the declarations dated 11 April 2017. There is a logical problem about a stay of a declaration (as opposed to an order) but this is no time to wrestle with it. As is agreed, the practical effect of any stay would be that, for as long as it continued, it would not be unlawful for the doctors and other staff at Great Ormond Street Hospital ("the hospital") to continue to provide artificial ventilation, nutrition and hydration ("AVNH") so as to keep Charlie Gard alive.

3. Pursuant to its reservation of jurisdiction, this court on 8 June 2017 stayed the declarations until 5.00 p.m. on 9 June in order that the ECtHR might determine a request by the parents for the adoption of interim remedies under Rule 39 of its Rules of Court. On 9 June this court extended the stay to midnight on 13/14 June.

4. At the request of the UK government, the court has arranged the short hearing today, at which it, the parents, the hospital and the guardian who has represented Charlie throughout these proceedings, have all appeared by counsel.

5. The UK government asks this court to give any directions which it considers appropriate in the light of the following:

(a) a request to the UK by the ECtHR on 9 June 2017 in accordance with Rule 39 to ensure that the hospital would continue to provide Charlie with AVNH until midnight on 13 June;

(b) a request to the UK by the ECtHR on 13 June to ensure that the hospital would continue to provide it until midnight tonight (19 June) and, if by then the parents had filed a substantive application to the ECtHR, to ensure that the hospital would continue to provide it until the court had determined it; and

(c) recent indications on the part of the ECtHR to the UK that it would treat any such application with the utmost urgency and that, once an

application was received, it would aim to issue a time-table for its determination.

6. So the main subject of the short hearing today has been whether this court should direct yet a further short stay of the declarations.

7. It is hard to over-stress the difficulty which, in this desperately painful case in which the intensity of the parents' feelings is so entirely understandable, the prospect of yet a further stay places upon this court, upon the hospital and, of course overarchingly (and as his guardian submits), upon Charlie himself.

8. In the courts of the UK these proceedings have finally run their course.

9. Over three days early in April 2017 Mr. Justice Francis heard oral evidence from the clinicians treating Charlie at the hospital; from four other UK doctors whom the hospital had asked to give second opinions; and from a fifth UK doctor whom the parents had been permitted by the court to instruct to give evidence. In the event they each shared the view that the treatment proposed by the parents to be given to Charlie in the US would be of no effective benefit to him. The judge also received evidence by telephone from the doctor in the US who was offering the proposed treatment.

10. By his judgment dated 11 April 2017 Mr Justice Francis found, by reference to all that evidence and in accordance with the submissions of the hospital and on behalf of Charlie by his guardian, that:

(a) Charlie had already suffered structural brain damage, almost entirely irreversible (paras 105, 106);

(b) it was not certain whether Charlie is suffering pain but it is likely that he is suffering it and at more than a low level (paras 22, 113, 114);

(c) the clinician in the US who was offering the treatment favoured by the parents conceded that the chances of its securing meaningful brain recovery were vanishingly small (para 105); and

(d) the proposed treatment would not only be futile but might well cause pain, suffering and distress to Charlie (para 49).

11. Mr. Justice Francis therefore made formal declarations that it was in Charlie's best interests not to undergo the suggested treatment in the US; that it was not in his best interests for artificial ventilation to continue to be provided to him; that on the contrary it was in his best interests for the clinicians treating him to withdraw it and to provide him only with palliative care; and that it was therefore lawful for them to do so, provided always that, in doing so, they adopted all such procedures as were most compatible with maintaining Charlie's dignity.

12. On 25 May 2017 the Court of Appeal unanimously dismissed the parents' appeal. It had not been suggested to Mr. Justice Francis that a relevant test might be whether the harm which Charlie was suffering was "significant". But the suggestion was made to the Court of Appeal, which considered it clear that the effect of the judge's findings was that the harm which he was suffering was "significant" (para 114).

13. On 8 June 2017 this court decided, by the judgment delivered by Lady Hale, that it was not arguable that the UK courts lacked jurisdiction to make a ruling in circumstances such as the present; and also not arguable that, if they had jurisdiction to do so, their determination should not be reached by reference to the best interests of Charlie. It considered – as Lady Hale explained – that in its view the domestic law of the UK entirely accorded with the interpretation placed by the ECtHR on articles 2 and 8 of the Convention.

14. Mr. Justice Francis made his declarations on 11 April 2017. Since then there have been numerous successive stays of them.

15. Every day since 11 April 2017 the stays have obliged the hospital to take a course which, as is now clear beyond doubt or challenge, is not in the best interests of Charlie. The hospital finds itself in an acutely difficult ethical dilemma: although the stays have made it lawful to continue to provide him with AVNH, it considers it professionally wrong for it to have continued for over two months to act otherwise than in his best interests.

16. Charlie's guardian submits, with evident reluctance and regret, that the time has come for the court to decline yet a further stay and so to allow him, with maximum dignity and in such circumstances as can afford the utmost sensitivity to the desperate situation of the parents, to slip away.

17. We three members of this court find ourselves in a situation which, so far as we can recall, we have never previously experienced. By granting a stay, even of

short duration, we would in some sense be complicit in directing a course of action which is contrary to Charlie's best interests.

18. But, from a *legal* point of view and in this very limited procedural context, are the best interests of Charlie necessarily always paramount ? There is, says Mr. Gordon QC on behalf of the parents, another requirement in play, namely that such rights as they have under articles 2 and 8 (and, added Mr. Gordon, possibly also under 5) should be effective. Until the ECtHR has had at any rate some opportunity to consider the application to be filed today, would not the court be violating their right to an effective remedy by taking the course suggested by Charlie's guardian ?

19. Mr. Gordon makes a second point: this court, by its two previous orders for stay, has already endorsed an approach to wait – within reason, of course – for the ECtHR to give at least some consideration to the proposed application of the parents. Why stop now ?

20. With considerable hesitation we direct that the judge's declarations be further stayed for a period of three weeks, namely until midnight on 10/11 July 2017. We respectfully urge our colleagues in the ECtHR to do everything in their power to address the proposed application by then. We consider at present that we would feel the gravest difficulty if asked to act yet further against Charlie's best interests by directing an even longer extension of the stay.

21. We attach a rider which arises out of a curious exchange between the court and Mr. Gordon at the hearing today. In the light of alleged past difficulty experienced by the legal advisers for the hospital and for the guardian in persuading the parents' legal advisers to provide them with copies of all documents and other material already submitted to the ECtHR, the court asked Mr. Gordon for an assurance that all further documents, letters and emails to be submitted or sent on behalf of the parents to the ECtHR would be copied not only to the UK, as respondent to the proposed application, but to the hospital and the guardian. At first Mr. Gordon received instructions not to give that assurance on grounds (so it was said) that it might involve a breach of confidentiality. Within seconds, however, good sense had apparently prevailed and the assurance was given. Today's stay is conditional on full compliance with it.

22. By way of postscript, the court was today informed that the proposed application to the ECtHR will be made not only by the parents but also by or on behalf of Charlie. It is not, of course, for this court to comment on how the ECtHR should address the status of an application made by parents on behalf of a child for a declaration that his rights have been violated by decisions found to have been

made in his best interests. But, as the ECtHR well knows, our procedures have required that Charlie's participation in the domestic proceedings should at all times have been in the hands of an independent professional guardian.