



Neutral Citation Number: [2022] EWHC 1165 (Fam)

Case No: FD22P00346

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13th May 2022

Before :

MRS JUSTICE ARBUTHNOT

Between

BARTS HEALTH NHS TRUST

Applicant

-and-

HOLLIE DANCE

1st Respondent

-and-

PAUL BATTERSBEE

2nd Respondent

-and-

ARCHIE BATTERSBEE
(through his 16.4 Guardian)

3rd Respondent

Fiona Paterson (instructed by **Kennedy's Law**) for the **Applicant**
Bruno Quintavalle (instructed by **Andrew Storch Solicitors**) for the **1st Respondent and 2nd Respondent**
Maria Stanley (instructed by **Cafcass Legal**) for the **3rd Respondent**

Hearing dates: 12th and 13th May 2022

EX TEMPORE JUDGMENT

Mrs Justice Arbuthnot:**Introduction**

1. This is an application arising out of a tragic accident which occurred at his home on 7th April 2022 when Archie aged 12 somehow hanged himself from the banisters using a dressing gown cord.
2. The mother did everything she could to resuscitate Archie and called an ambulance. Archie was unconscious for some minutes and not breathing. When the ambulance came the paramedics tested Archie and found him to be in a coma, he had suffered a cardiac arrest and he was unresponsive. They continued with the resuscitation started by the mother, and they found a pulse. Very sadly it would appear that there was no oxygen going to Archie's brain for about 40 minutes and it is this which has caused the catastrophic damage to his brain that has been described by the doctors involved in his care.
3. Archie was taken first to a local hospital in Southend where he continued to be mechanically ventilated; his pupils were fixed and dilated, an initial blood gas test suggested a poor prognosis, a CT scan was performed and the specialists there noted that he had damage consistent with a hypoxic brain injury. Attempts were made to reduce the swelling to Archie's brain and for a while his pupils recovered their reactivity to light.
4. Archie was quickly transferred to the Paediatric Intensive Care Unit at the Royal London Hospital. He has remained there since then and has not regained consciousness. He is breathing by way of mechanical ventilation.
5. Various tests were conducted on Archie with the full support of Archie's parents and second opinions obtained from specialists at other hospitals including another London teaching hospital with relevant expertise.
6. The concerns of the clinicians are that Archie has brain swelling, severe hypoxic ischaemic encephalopathy which affected the "deep grey matter" of the brain and other signs which are consistent with asphyxia related to the incident.

Archie

7. I have read all about Archie. He is a lovely little boy who is good at boxing and gymnastics. I was shown a wonderful photograph of Archie with a gymnastics medal which shows how good he is at this sport.
8. Archie is very happy at home, and he is surrounded by a family who love him a great deal. He has two older brothers and an older sister he is very close to. Since he has been in hospital his local community have enveloped him and his family in love and support. There has been fundraising going on and a lot of warm supportive messages have been received by the family.
9. The family, meanwhile, especially his mother, have not left his side in the five weeks that have passed. These weeks must have been the worst imaginable possible time for this family. The hearts of everybody in this courtroom go out to them at this awful time.
10. The mother told the Guardian, Ms Demery, that she wished to care for Archie whatever the future held. She said that a few days before Archie had held her fingers so tightly that her fingers turned red. She believes this shows Archie has potential for recovery.

Archie's treatment

11. On 8th April 2022 a repeat CT scan took place which showed there had been worsening in his condition. On the same day, Archie's case was discussed by the neurosurgical team at the Royal London with a team at another London teaching hospital with relevant expertise. They agreed that there was no helpful surgical intervention which could be offered. In layman's terms the damage to Archie's brain was too widespread to be assisted by surgery.
12. Between 10th and 11th April 2022 Archie developed changes which suggested diabetes insipidus, a condition which is highly correlated with brain stem death.
13. An EEG was performed which showed that there was very severe global cerebral dysfunction. An MRI scan took place on 15th April 2022 which showed signs of lack of oxygen affecting the entire brain parenchyma. The imaging showed consistency with severe irreversible hypoxic ischaemic brain damage.
14. Another EEG took place on 20th April 2022 and this time external stimulation was provided to see if Archie reacted to this. This was in the form of music videos and messages from friends and family and boxers whom Archie admired. Very sadly, there was no brain activity detected.

15. On 11th May 2022, Archie had a CT angiography with Ms Dance's consent. I have not heard that there was any change in his presentation detected.
16. The specialists at the Royal London and those who have given second opinions are unanimously of the view that the indications are that Archie is "brain stem dead". Even if he is not, they are concerned that his prognosis is extremely poor. They say he is unlikely to be able to breathe for himself if he is removed from the ventilator.
17. There is a nationally approved test for brain stem death. The clinicians suggested this testing needed to take place and the procedure was explained to the family. The family had serious reservations particularly about one of the steps in the test; the apnoea test, which would involve Archie being taken off the ventilator. The family worried that that would cause Archie even more brain damage than he had sustained already. They were worried about the risks of the procedure.
18. Although there have been one or two difficulties in the relationships between some of the medical staff and the family, I was delighted to read in the Guardian's report that the nurses and family have nothing but good to say about each other.

Application

19. It is the difference of opinion between the family and the clinicians about the brain stem death testing that has brought this matter to court today.
20. The Trust is making an application for a Specific Issue Order under section 8 of the Children Act 1989 for brain stem testing. This is in accordance with a particular protocol which follows particular steps in a particular order. The Trust makes an application for a declaration that it is lawful and in Archie's best interests for that brain stem testing to take place.

Proceedings

21. The application came first before Roberts J on 28th April 2022 at a time when Archie's family was not represented, Archie was joined as a party on that date and a Guardian, Ms Demery was appointed. A half day hearing was fixed for 12th May 2022 because of the urgency of Archie's situation. A second directions hearing took place on 4th May 2022 in front of Morgan J when the family was represented.
22. In the Trust's original application, it asked for a second declaration that if the tests confirmed the clinical view that Archie was brain stem dead then they sought a

declaration that mechanical ventilation should be removed from Archie at the appropriate time. Today, sensibly, they did not pursue their application for the second declaration.

23. The respondents to the application are Archie's mother and father, Ms Dance and Mr Battersbee, but the family are all in court, they are very concerned about Archie and they speak with one voice.
24. I observed the mother, the father, two brothers and a fiancée Ms Ella Carter who was the spokesman for the family and other extended family members. They struck me as tremendously dignified as they listened to evidence and submissions about their little boy which must have been extraordinarily difficult to listen to.
25. Six weeks ago, Archie was a happy little boy with lots of interests with a loving family surrounding him. Six weeks later he is in intensive care, unresponsive and mechanically ventilated. The mother's burden must be a particularly heavy one as she has had to relive the last weeks during the evidence and submissions.
26. The Guardian, Ms Demery, met Archie on 6th May 2022 and his family and also spoke to various clinicians. In her report, she supported the Trust's application for the first declaration in relation to the testing, but she supported the family in relation to their views about the second declaration which was then sought. I was grateful to the Guardian who had managed to see Archie, talk to his mother as well as some of the doctors caring for this young boy, write a very helpful report, all in a very short period of time.
27. The application in relation to what is in Archie's best interests was listed for half a day. I was fortunate to have the assistance of experienced counsel Ms Paterson for the Trust, Mr Quintavalle for the mother and father and Ms Stanley, solicitor advocate for the Guardian. In the event, half a day was not sufficient, and a day was taken hearing the evidence of the independent expert Dr Playfor who had seen Archie on 9th May 2022, followed by submissions.
28. Today, as I was due to give judgment, I was told that a new statement had been provided by Dr F, a Consultant Paediatric Intensivist at the Royal London Hospital, written in response to an email sent by the legal representative of the family late last night. Information had come to light from the family in relation to the apnoea test administered to Archie by Dr Playfor. Today I heard from Dr F, considered that new evidence and gave judgment.

Evidence

29. I had statements from the doctors caring for Archie and also from the advocate for the family Ms Ella Carter who is Archie's brother's fiancée. I read statements from specialists at the Royal London Hospital including Dr Y, a Consultant in Paediatric Critical Care at the RLH; Dr F, D, a Consultant Paediatric and Adult Neuroradiologist, Mr E, a Consultant Neurosurgeon and Dr N, a Consultant Paediatric Neurologist. Second opinions in the bundle were from Dr U a Consultant Paediatric Neurologist and Mr O, a Consultant Paediatric Neurosurgeon both from another London teaching hospital with relevant expertise.
30. I was assisted by the Guardian, Ms Demery's report. In reaching my decision I have taken all the evidence into account, particularly the evidence of Ms Carter.
31. From Ms Carter's second statement, I read that Archie had opened his eyes recently and tears had come out in response to a painful procedure. In recent days too whilst he has been unconscious, Archie has been christened along with other family members including his mother. I hope that they find support from their faith in the days ahead.
32. For the decision I had to make in relation to whether the brain stem test was in Archie's best interests, initially I heard from the independent expert Dr Playfor.
33. In the recent days, Dr Playfor had been instructed to give an independent view about the seven-step brain-stem test that the trust wished to perform on Archie. He gave evidence adopting his report before he was cross-examined by Mr Quintavalle and by Ms Stanley for the Guardian.
34. Dr Playfor had read all the papers and reports produced by the Trust and the two statements from Ms Carter on behalf of the family. He had read Archie's medical notes, he had considered the imaging, the second opinions obtained from other clinicians and importantly he had read the documentation produced by the family's representatives. This included articles from American medical journals written by a Dr Shewmon set out in appendices.
35. Dr Playfor explained that the brain stem is responsible for the key functions keeping us alive, such as controlling the heart rate and breathing. He had examined Archie on 9th May 2022. He tested him for responses. Dr Playfor put pressure on Archie's nail beds and got no reaction. His pupils did not react to the light. There was no response to

stimulation of Archie's cornea. He tested Archie's reflexes by pouring 50ml of ice-cold water into his ear. He looked to see if deep suction in the throat would stimulate coughing or a gag response, but it did not. He noted that Archie did not open his eyes and nor did he move. He was "entirely unresponsive" (para 3.5).

36. Dr Playfor having increased the oxygen flow from 21% to 100% then tried an informal apnoea test lasting two minutes. There was no sign of Archie breathing spontaneously. Dr Playfor noted that the heart rate and blood pressure remained stable during the test.
37. Dr Playfor gave his opinion at paragraph 4 of his report. He explained that Archie had received "clinical care to an appropriate standard throughout". Archie was unresponsive through all the tests performed on him and had suffered a "catastrophic hypoxic-ischaemic brain injury,": a brain injury caused by lack of oxygen to the brain,
38. Having conducted his own tests, Dr Playfor said it was "very likely... that if formally tested, Archie would meet the criteria necessary to determine death according to neurological criteria".
39. In his report Dr Playfor set out the usual path for critically ill children such as Archie. There could be one of two approaches. In the first, tests for brain stem death would be performed in accordance with the Academy of Medical Royal Colleges' 2008 'Code of Practice for the Diagnosis and Confirmation of Death' ("the Code of Practice"). In the second, with the agreement of the family, a palliative pathway might be followed, and the child would be taken off the mechanical ventilation.
40. In his report at paragraph 4.10, Dr Playfor set out the many institutions which endorsed the Code of Practice test. He said it had been updated over the years. The test follows seven sequential steps which are then repeated within about an hour. The seventh and final step is the apnoea test which is of such concern to the family.
41. He said the apnoea test was an essential component in the "clinical determination of brain stem death; the aim being to demonstrate an absence of respiratory effort despite intense physiological stimulation caused by rising levels of carbon dioxide in the blood" (para 4.11).
42. He explained the procedure and the risks and benefits of the test. The test takes place at the bedside. It involves stopping temporarily mechanical ventilation, but Dr Playfor

explained that Archie would still be provided with a constant flow of oxygen at a safe level through the windpipe.

43. The way it works is that the carbon dioxide in Archie's body is allowed to increase in a controlled way which should stimulate Archie to breathe, in the meanwhile he remains oxygenated. His oxygen levels would be monitored and if they dropped below 85% the test would stop. The test was to see if the patient responds by breathing.
44. The risks were set out in Dr Playfor's report at 4.12 onwards. It is a "significant physiological challenge" and a "degree of physiological derangement is inherent due to the nature of the test" and "patients will experience elevated carbon dioxide levels (hypercapnoea) and a degree of respiratory acidaemia as a result of this".
45. Mr Quintavalle for the family asked a number of questions about the risks to Archie from the test. Dr Playfor firmly maintained that the majority of apnoea tests were completed without incident, but he accepted there was a small risk of complications.
46. These are expressed in para 4.13 of his report where the expert says that "peripheral vasodilation and depression of cardiac function leading to hypotension, which is one of the most common complications of an apnoea test, suggested to occur in 7-39% of cases". Dr Playfor explained that this was particularly likely in patients with pre-existing heart problems, Archie was not one such.
47. Hypoxaemia can occur but this is particularly in patients with pre-existing lung issues, again this was not a concern for Archie.
48. Significantly, Dr Playfor in evidence said these are usually transient problems when they do occur and might lead to the stopping of the apnoea test but would have no longer term complications.
49. There are other rare complications the expert set out at para 4.14. There are no significant studies in this area in the case of critically ill children and many of the reports date back to the 1990s at a time when the latest version of the Code of Practice was not being used. The important point he made was that the guidance had been improved over the years.
50. Dr Playfor summarised the risks of serious complications occurring during the apnoea test as very small. This was in the context of him carrying out a two minute informal

apnoea test. He noted that Archie's oxygen level did not drop below 100% and this was a good sign for the formal apnoea test that would take about five minutes.

51. Dr Playfor said it was important for Archie's clinical status to be clarified and that would inform the family and clinicians as to next steps. In his opinion, the benefits of conducting brain stem tests outweighed the very small risks.
52. Dr Playfor had answered a number of written questions from Archie's family.
53. He said it was not in Archie's best interests to undergo any surgery or further radiological investigations. He could not see how these would benefit Archie. This was not a case where the brain had been damaged in a car accident on one side only, the damage had been caused by the lack of oxygen getting to the whole brain so surgery to relieve pressure in the brain was not appropriate.
54. Dr Playfor said the assessment recommended by the Academy of Medical Royal Colleges was reliable in determining brain stem death. No additional tests would need to take place; although in certain unusual cases these could be useful, Archie's case was not one of those.
55. Dr Playfor had been provided with various reports in US medical journals and he was questioned extensively about them by Mr Quintavalle.
56. Despite Mr Quintavalle pressing Dr Playfor and putting to him various parts of the article written by Dr Shewmon where the risks of the procedure were set out, the expert was firmly of the view that the risks to Archie of the test were very small.
57. Dr Playfor said that Dr Shewmon was describing situations in the USA where very different codes of practice were used. Dr Playfor said that much of the data in the US medical article had been taken from patients where there had been traumatic brain damage. The data was also outdated. The changes in cerebral blood flow in traumatic brain injury could not be equated with Archie's situation. He could not extrapolate data from one situation and use it for the other.
58. He said another important factor was that the data and conclusions drawn by Dr Shewmon were taken from adults not children. The adults had heart disease and cardiovascular problems, they had traumatic brain injuries and not the hypoxic ischemic encephalopathy affecting the entire brain that Archie has. The risks to Archie of hypotension were very very small.

59. He was asked about various cases of individuals mentioned in the medical journals and in the newspapers who were able to breathe after having been declared brain dead after an apnoea test. He explained he had every confidence that the updated test could identify irreversible apnoea. The process involved two separate apnoea tests and the cases described in the medical journal predated the most recent guidance.
60. He maintained throughout his evidence that the apnoea test carried very low risks and the likelihood of some complications had reduced over time with the development of brain stem testing techniques. Archie would be tested with the latest version of the approved test.
61. He said the papers concerned “clinical circumstances not relevant to AB, and all refer to different codes of practice” (para 5.8). Just one example of the difference between the testing in the US and the testing in this jurisdiction, is that in the former, the apnoea test takes place over a longer period of between 10 to 15 minutes.
62. In the written questions he was asked to consider the benefits of various other forms of testing. He said that it was not in Archie’s best interests to undergo these. The only test which would be in Archie’s best interests was the formal brain stem test recommended by the Code of Practice.
63. When it came to the balance of harm, in evidence, he was clear that wheeling Archie, in what would be a mobile intensive care unit, to a testing department in a different part of the hospital was when human errors could occur. Archie would be more at risk in those circumstances. It was a relatively small risk when moving Archie but it could have catastrophic consequences. He said the risk of an apnoea test was not comparable to the risk of a move within the hospital. There was not the same array of complications with the former which was a relatively simple procedure.
64. In his final questions Mr Quintavalle asked about Archie’s best interests. Dr Playfor said it was in Archie’s best interests to have formal brain stem testing, there was no reason to do anything other than that. Dr Playfor said no other tests would be acceptable, the national guidance was clear that the brain stem test including for apnoea should be conducted. The tests needed to be done to inform the family and the clinicians as to the next steps.

65. There was some question about whether a cervical spine injury may have been caused to Archie but not have been picked up by the tests, but it was clear in re-examination that scans had been carried out and nothing of that nature found.
66. The Guardian did not give evidence but provided a report considering the issues in the case and making a recommendation.
67. The family will not have come across a Guardian before, and although it is probable they will have been informed about this, I considered it might be helpful for me to explain her role. The Guardian in this case Ms Demery, is based at the High Court. The team is a specialist group of Guardians who have a great deal of experience of complex cases such as Archie's. Her role is to consider what is in Archie's best interests from his point of view.
68. I hope the Guardian will forgive me for saying this, but this particular guardian is not slow in speaking her mind. If she had concerns about the proposed testing or indeed, the way Archie was being treated, she would have said so.
69. In her report she set out the enquiries she had made. She spoke to both parents by telephone on 3rd May 2022. She attended court on 4th May and met other members of the family. On 6th May 2022, she visited Archie in hospital and spent 90 minutes with his mother and also spoke with his nurse. The Guardian spoke to various clinicians. She read the written questions put to Dr Playfor on behalf of the parents and read his report and answers.
70. The Guardian recognised the total commitment the family have shown to Archie and how his mother had placed his needs above her own as their family life had ground to a halt. She noted however, that the test proposed was fully endorsed by the medical profession and considered it was in Archie's best interests for there to be the formal brain testing.
71. I was informed late last night (12th May 2022) that contrary to the expert's evidence and counsel for the Trust's submissions, the mother and father's representative was saying in an email to the Trust that Archie went into hypotension for a number of hours after the apnoea test carried out by Dr Playfor. Furthermore, he said, Archie's CO2 levels had climbed to 7.2 immediately after the apnoea test from his normal level of around 4 to 5.2.

Today's hearing

72. Today I was due to give judgment instead I heard evidence from Dr F the Consultant Paediatric Intensivist from the Royal London Hospital who is Archie's treating clinician. She had written a statement in response to an email from the parents' representative. Dr F exhibited three documents all from 9th May 2022 (the day of Dr Playfor's visit) including Archie's nursing notes, a document entitled Paediatric Critical Care Unit with graphs and a range of results from hourly tests and finally a flowsheet with the result of tests undertaken every hour to two hours.
73. Dr F said that Dr Playfor had visited Archie between 10.40 and 11.05 am. She could tell from a review of the paper charts that during his visit Archie's observations were stable. She said that any physiological changes would have occurred at the time of the examination. There was nothing in the notes that indicated "instability" before, during or in the hour after the assessment (para 3 of third statement).
74. Dr F was questioned by Mr Quintavalle about the measurement for Archie's CO₂ which fluctuated during the day. She explained that the rise of CO₂ between 1pm and 4pm which was seen on the charts was explained by a change in settings in the ventilator. In addition, Archie was being moved in the bed and washed and he had to have physiotherapy to deal with secretions. She did not believe that the apnoea test undertaken by Dr Playfor led to a rise in Archie's CO₂ level two hours after the test.
75. Dr F was asked about the drop in Archie's blood pressure. She explained that this was related to Archie having a larger output of urine of 375mls at 1pm and the difficulty of getting the dose of vasopressin right at 2pm to compensate for the loss of urine. They had seen this on other occasions and this issue had led to a drop in his blood pressure. She explained that Archie passes large amounts of urine which leads to "big swings" in his blood volume and in his blood pressure. The drop in blood pressure was not linked to the rise in CO₂ and neither were connected to the apnoea test carried out by Dr Playfor.
76. The mother did not give evidence, but Mr Quintavalle suggested to Dr F that she had seen a sudden rise in Archie's blood pressure which set off an alarm before a doctor ran in. There was no reference to this event in the notes, but the consultant accepted that although she would have expected it to be there, it was not impossible for it to have been missed.

77. In any event, I noted if there had been a sudden increase in blood pressure that was missed in the charts produced by the witness, it was a very transient change and clearly had no lasting ill effect on Archie.
78. I found Dr F a credible witness whose professionalism was clear. I did not doubt her account that the apnoea test was not linked to the fluctuations in CO₂ or blood pressure seen on 9th May 2022.

Discussion

79. The arguments deployed by Ms Paterson on behalf of the Trust were that it was clear to the clinicians treating Archie and now to Dr Playfor, an independent expert, that Archie needed to have the brain stem test to assess his brain stem function. He was unresponsive and had been so for a number of weeks and was unable to breathe on his own. Although he was currently stable that could change at any time.
80. The brain stem test is set out in the nationally approved Code of Practice. The test used for adults and children comprises seven steps during which the patient's various responses are tested. These all happen at the bedside, and I accept as described by Dr Playfor, they are relatively straightforward.
81. The family of Archie through counsel Mr Quintavalle question the necessity of the brain stem test as they believe that he is still alive, but they do not object to six of the seven steps set out in the Code of Practice.
82. It is the seventh step they object to. The family suggests that the risks of the seventh step are too high. It could lead to further brain injury because Archie's ventilation will be removed during the seventh step. They suggest too that the test is unreliable and have relied on reports in the press of individuals who have been declared brain dead following a brain injury but then recovered consciousness.
83. Dr Playfor was able to consider papers in medical journals in the USA but in essence questioned their relevance. His evidence was that the information set out there was outdated, it was based on old Codes of Practice, the data was taken usually from adults some of whom had health issues and were mostly from those who had suffered traumatic brain injury.
84. I noted that Mr Quintavalle was not able to provide any articles which undermined the safety or reliability of the Code of Practice tests being undertaken in hospitals up and

down the country. I accepted Dr Playfor's strongly held view that the American articles were not considering the tests used or the updated Code of Practice followed in this country.

85. As regards the newspaper reports, it was hard to know what the underlying circumstances of each case were and no conclusions relevant to Archie's particular case could be drawn.
86. The family says that the clinicians are wrong in taking their decision not to operate on Archie to relieve the pressure from the swelling of his brain and the implication is that that might make a difference to his condition.
87. The question of Archie having surgery to relieve the pressure on his brain was considered by Dr Playfor who rejected the proposal. His opinion mirrored the views of a consultant neurosurgeon who himself obtained a second opinion. I have no reason to doubt Dr Playfor's evidence on the point. He explained in a clear way that the severe hypoxic brain injury suffered by Archie would not be assisted by an operation to relieve the pressure on the brain. It may have been different had his injury been caused by a head injury to one part of his head.
88. The family suggested various alternative tests which could be conducted on Archie instead of the apnoea part of the brain stem test. These tests might include a further CT angiogram, an MR angiogram and MRI or a Doppler ultrasound. Dr Playfor considered the alternative tests and was of the view that the risks from moving Archie to the correct department would put him more at risk than the formal apnoea test. I had no reason to doubt his evidence.

Decision

89. Having weighed up the arguments for and against the brain stem test, in my judgment, on balance, all seven parts of the test should take place. The risks to an otherwise healthy young boy, with no pre-existing health issues, using the up-to-date Code of Practice, are very small. This is a procedure carried out nationally on children and adults in Archie's tragic situation.
90. I noted that Dr Playfor had conducted an informal apnoea test for two minutes on 9th May 2022 and although Archie's CO₂ level increased his oxygen level did not drop below 100%. There is no risk of further brain injury to Archie in the circumstances where oxygen continues to be supplied through the windpipe.

91. Dr Playfor's informal test was a positive indication for the formal test. It was clear from the evidence of Dr F today that his test had had no ill effects on Archie.
92. From what I have seen of the care given by the doctor and nurses to Archie, I have no doubt the procedure will be carried out with great care following strictly the guidance in the Code of Practice, the measurement of Archie's oxygen level will continue and if it drops beneath 85%, the apnoea test will be abandoned.
93. A step such as this will enable the family and those treating Archie to know whether he is alive or dead. The formal test will prove or disprove the clinicians' views. It seems to me that the family as well as the clinicians' need to have the results of this formal test. I have accepted the evidence that no surgery would help Archie nor would any of the tests put forward by the parents.
94. I understand on a human level, the family's deep anguish and concern for their young son; they hope and pray for the best, for him to recover and live the life they wished him to have, or even for him just to remain alive. They have felt Archie's grip tighten on their hand, they saw his eyes open, and everyone can appreciate how much they must dread the results of this test.
95. The application for the formal test and the evidence supporting the application have been considered by the independent expert, Archie's Guardian and now the Court. It is in Archie's best interests for the test to take place. The very small risks of the procedure are clearly outweighed by the benefits of knowing formally what Archie's condition is.
96. I make a Specific Issue Order under section 8 of the Children Act 1989 and the declaration that it is lawful and in Archie's best interests for brain stem testing to take place.
97. That is my judgment.

