Neutral Citation Number: [2020] EWHC 3221 (Fam)

Case No: FD20P00257

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/10/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

AN NHS FOUNDATION TRUST

Applicant

and

(1) AB (by her Child's Guardian)
(2) CD
(3) EF

Respondents

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- -

Mr Conrad Hallin (instructed by **Capsticks Solicitors**) for the **Applicant**
Mr Christopher Osborne (instructed by **Cafcass**) for the **First Respondent**
The Second and **Third Respondents** were unrepresented

Hearing dates: **21 October 2020**

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Approved Judgment

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MRS JUSTICE LIEVEN

The Judge hereby gives leave for this judgment to be reported in this anonymised form. The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them may be identified by name or location.

Mrs Justice Lieven DBE :

Background

1. This is an application by an NHS Foundation Trust for a declaration that AB by reason of her minority lacks capacity to consent to or refuse cataract surgery and associated care and treatment, and an order that is in AB's best interests for her to undergo cataract surgery in both eyes, and that to the extent that admitting AB to the hospital for the surgery and consequential care is against her wishes and constitutes a deprivation of her liberty, such deprivation is lawful.

2. The Trust were represented before me by Mr Hallin; the child AB, through her Guardian, by Mr Osborne of Cafcass Legal; and CD, the Second Respondent who is AB's father, appeared before me representing both himself and the Third Respondent who is AB's mother.

3. The background history to this matter is set out in the witness statement of Dr T who is the treating obstetrician who has been looking after AB since 2018.

4. AB was first referred by her health visitor in October 2013 because of concerns about poor vision in both of her eyes. She was seen by the Trust in January 2014 (Dr T was not involved at this stage) and she was diagnosed with cataracts in both eyes.

5. Her vision at that stage, I read from Dr T's statement, in her right eye was at 6/15 and her left eye at 6/7.5. She was initially prescribed glasses to improve her sight and she was due for a review in 2 months.

6. Following that first consultation back in 2014 there were then a series of missed appointments. She was seen once in August 2014 but then, again, the parents did not bring her to appointments on a number of occasions and she was eventually discharged, not having been seen again, in November 2014. It is right that I note that there is no suggestion in the medical reports at that stage that surgery would have been necessary.

7. In about December 2017, according to Dr T, a new referral was received by the Trust from AB's optician who was concerned about deterioration in her vision.

8. There were then, again, a series of missed appointments. Her father is reported to have said to the nurse who rang from the Trust that he did not want any surgery on his daughter's cataracts and wanted to explore other options including herbal medication. She was brought to the Trust to be seen on the 21st February 2018 and that was the first time Dr T saw her. By that stage AB was 8 years old. According to Dr T it was clear that AB had extremely poor vision in both eyes due to the progression of the cataracts. Dr T says that the father informed her that he had been putting herbal remedies into AB's eyes.

9. Dr T explained AB's difficulties to the father and, according to Dr T, the father acknowledged at that stage that AB did need surgery to remove the cataracts. Dr T explained the nature of the surgery to him, including that it was a very straightforward operation with a very good chance of success.

10. The parents then missed the next appointment on the 27th March with no response when they were contacted. The father attended on 11th April 2018 with AB and in June 2018 he asked for a second opinion. A second opinion was then provided by Dr M from the Trust's Eye Department. Dr M reported in very similar terms to Dr T that AB needed surgery on the cataracts.

11. Both parents attended on 14th August of that year and, according to Dr T, agreed to surgery and a date for surgery was given in either November or December 2018. However, the parents did not bring AB for a pre-operative appointment before the surgery and cancelled the surgery.

12. The father then contacted the Trust and Dr T asking for a third opinion. This was commissioned from Dr L at a local hospital where AB was seen on the 25th March 2019. Dr L's opinion was effectively the same as Dr T's and Dr M's, which was that AB needed surgery. She then attended the clinic again in September 2019 with her father and her father asked that she be referred to the local Vision Aids clinic, but again her parents failed to keep the appointments. In any event, Dr T didn't think that that clinic would be of any benefit, given the nature of AB's condition.

13. Dr T, on 11th December 2019, wrote a letter to the parents explaining the severity of AB's condition, her need for surgery and the potential for legal action. The parents attended an appointment with Dr T on 22nd January 2020, however their views remained unchanged and an application was finally made to the court, according to the chronology, in early May 2020. I note that this stage that this was 6 years after AB had first been diagnosed with cataracts and over 2 years after the second referral in November 2017.

14. The matter came before Mrs Justice Russell and she ordered that a fourth opinion, this being the second independent opinion, be commissioned. This was commissioned from Dr A who is a specialist paediatric ophthalmologist. I have statements both from Dr T and from Dr A and I heard very brief oral evidence from both of them. This was largely in order to give the opportunity to CD, the father, to ask them questions.

15. AB's diagnosis is explained in Dr T's report and by Dr A. AB has cataracts in both eyes which, as Dr T puts it, reduces her vision to extremely low levels. Dr T says that the result of the review of AB's eyesight, which she sets out in her second statement, was that her vision in her right eye is now further reduced to 6/48 on the Snellen scale, which equates to 0.9 on the LogMAR scale, compared to an assessment in January 2020 when it was 6/38 or 0.8. The higher the reading on the LogMAR scale, the worse the eyesight is. Her left eye vision has been stable at 6/38, 0.8 LogMAR, since 14th August 2018.

16. Dr A's report records effectively the same diagnosis. There are very slightly different readings, but as Dr A explained it, one can have slightly different readings at different times. However, there is no doubt whatsoever from the two opinions that I have seen, and the recent assessments, that AB is suffering from a very small amount of vision and there has been very significant deterioration over time.

17. I note at this stage that the father, who gave evidence to the court, said that he did not consider AB's vision to be so seriously impaired. He referred to the fact that she can function in various different environments, including environments that she is not

familiar with. Dr T's report says that this is likely to be a function of the fact that AB is good at adapting her functioning particularly in familiar environments.

18. Dr T's report explains that in terms of the future prognosis, cataracts will not get better on their own and it is extremely likely that without further intervention AB's eyesight will continue to get worse to a point that gets close to complete blindness. Dr T and Dr A both explain in their statements that the only treatment for this condition is surgery. Dr A is absolutely clear, she says: *"the only treatment which would restore AB's vision is cataract surgery and a delay in her having the surgery risks the cataracts getting worse, her losing her independence and her quality of life, will hamper her ability to cope with the demands of high school and to be a fully competent and able teenager and adult."*

19. The father has suggested throughout that an alternative treatment is herbal remedies and eyedrops. He has referred to websites which sell eyedrops which claim to improve eyesight, including that impaired by cataracts. Both of the expert clinicians whose evidence I have seen are in no doubt that eyedrops will not assist. Dr A says: *"other treatments available such as eyedrops sold on the internet will not work in improving cataracts in children. There is no evidence that they work, and they would not in any way be able to reach the lens of the eye to affect its central part where the cataract is."* I note at this point that Dr A explained this when she saw CD. Indeed, CD referred to Dr A's views when he gave evidence and appeared, I thought, before lunch to be amenable to understanding this point. However, despite that he has not, as I will explain, changed his position.

20. In terms of the risks of the proposed cataract surgery, Dr T addressed this in her report at paragraph 22. She explains that although there are small risks associated with any surgery, the risks involved in cataract surgery are extremely low. The risks of any complications in cataract surgery account for only 2%-3% of patients overall, but even that gives an unduly worrying view of the risk. When one drills down into the actual risks, there is a small risk of infection, usually between 0.4% and 0.7%, but, when it does occur, in the vast majority of cases it can be treated with antibiotics. There is a very minor risk of bleeding inside the eye but that is rare and usually resolves itself. There are some post-operative risks but those can be mitigated to a very large extent by keeping the patient under review. Therefore, I am confident that all the risks have been considered by Dr T and none of those risks are anything more than minimal. I should say that that analysis of risks entirely accords with Dr A's position.

21. In terms of the parents' position, CD, the father, sent an email on the morning of the hearing which set out a brief explanation of their position and he gave oral evidence to the court. In terms of his position, he explains that the parents have tried to, and wish to continue to try to, lead to the cataracts getting better naturally, as they put it. They have helped AB with improving her diet to help her vision and to make lifestyle changes to make her more active and thus healthier. AB was removed from school in February 2020 just before the Covid-19 lockdown commenced. This was in part because the father had been very concerned about her handwriting and he was keen to tell me that since she has been home schooled she has been able to read smaller text sizes and her handwriting has improved.

22. Her parents believe that she should follow a natural approach to the cataracts getting better and that this, as they put it, takes time to work. The father said to me, as he has previously, that there is no rush in terms of providing surgery for the cataracts. He says in his statement that he is concerned that once surgery is done, it cannot be reversed.

23. He also says in the documents and repeated on a number of occasions during the course of the hearing, that AB has been able to function on a relatively normal basis on a day-to-day level and that she goes in and out of the house, she goes to an activity centre adventure park and she can function. He says that: *"she herself believes that her eyes have got better and she does not want an operation at the moment, she wants her eyes to get better naturally."* The father was keen to emphasise to me that he and the mother want the best for AB and do not want to rush into an operation.

24. The father argued that AB has the maturity to make the decision for herself and that she has matured considerably since Miss B, the social worker, saw her.

25. It appears, although it is very unclear how far this goes, that part of the parents' resistance to surgery is because the mother had a very bad experience with surgery to her leg in the relatively recent past. It isn't possible, or probably appropriate, to investigate this too deeply, however it does appear that this particular concern about surgery arising from the mother's experience has itself only arisen well after AB's cataracts were first diagnosed. Therefore, the parents' fear of surgery from the mother's experience does not seem to explain the missed appointments going back to 2014. Further, and in any event, although it is easy to understand somebody's reluctance to undergo surgery, there is very little relationship between vascular surgery of the leg and routine cataract surgery.

26. The Guardian's position is that she supports the Trust's application. The Guardian has met both the parents and AB over WhatsApp and has had a long conversation with AB on her own. The Guardian sets out some important information from her school and a report was prepared by what's called a Habilitation Worker at the school, Miss T. In April 2019 the following was set out by Miss T, which gives a good sense of how her eyesight was affecting AB:

> *"[AB] also told me that she walks home of an evening with her dad and her younger brother but would be very scared to cross any roads on her own. [AB] told me that she enjoys going swimming with the school and also with her family. When I asked if she helps out with jobs at home, [AB] told me that she sometimes cuts fruit in the kitchen with help from her mum, 'mum keeps an eye on her', and that in the past she's accidentally cut her fingers on more than one occasion when she's cut vegetables with a sharp knife. She also told me that she has accidentally cut her hands on sharp edges at home but not told her family for fear of worrying them. I emphasised the importance of telling her parents when things like that happen and [AB] agreed that she should have told somebody. [AB] was able to explain her vision quite effectively. She told me that she sees better to the left than the right side but can't see to the sides as well as she can to the front. When I asked what kind of light conditions were easiest and most difficult, [AB] told me that bright sunlight was quite difficult and relative darkness quite early on in the*

morning was also difficult to see in, moderate light was best. [AB] showed me how she cups her hands around her eyes to cut out glare, something I observed her doing when we were outside with her friends. When we went into a small intervention room, [AB] fell to the floor missing where she thought a sofa was, the sofa covered part of the wall silhouetted by a bright window behind it. [AB] told me that she often bumps into people and furniture in class. Today I also conducted an informal test of [AB's] visual field (confrontation test). [AB's] fields of vision appear to be significantly reduced, [AB] did not appear to be able to perceive objects beyond approximately 45 degrees from the central point of her vision in any direction. However, a more formal test would certainly be necessary to establish actual visual field perception."

27. That gives a fairly clear description of the kind of problems that AB has both inside and outside the home. Dr T and Dr A say that over the years AB has lost stereoscopic vision. In other words, she can no longer see 3D because of the impact on both eyes separately. It is easy to see that this could have a very significant effect in terms of her ability to locate herself in a room or in a particular environment.

28. The guardian records the conversation she had with AB where AB told her: *"I can see most of the things like see in far distance, sometimes we're driving my dad asks "what's that road, what's that on the car, the yellow thing" and she told me that she wears brown tinted glasses to help when she goes out to play."*

29. In her conclusions the Guardian says that AB presented as a friendly, social child who was happy to engage and was proud in the work that she was doing. She records the fact that AB's ambition is to be a teacher of small children when she is older and that she is keen to learn and very keen to engage in education. The Guardian refers to the fact that AB is now home educated and certainly the Guardian's view is that that means that she is more limited in the contact that she has with children of her own age. She notes that the evidence seems to suggest that AB's problems with her eyesight has already affected her independence and somewhat set her apart from her peers because she could not join in with activities. Those problems may well be exacerbated by the insular life that she is now living.

30. The Guardian also refers to the witness statement of Miss B, the social worker, who met AB in early 2020 and who has visited her on a regular basis. It is Miss B's opinion that AB does not have the maturity or the understanding to be able to make a decision for herself about the proposed surgery. It is the Guardian's view that, although full regard and respect should be given to AB's wishes and feelings, her refusal to undergo surgery needs to be seen in the context of the parent's opposition.

31. The Guardian makes the important point, which I entirely accord, that CD and EF are loving parents who truly believe that what they are doing is in AB's best interests and who only want the best for her, but the Guardian says that her concern is that AB may continue falling behind socially and educationally and will struggle to become the teacher that she wants to be if her vision is not repaired.

32. The Guardian also records that the evidence from the school suggests that AB, before she left the school, had been seriously falling behind her age cohort and the assessment of the school was that she was some 2 to 3 years behind her age

appropriate performance. I note that there is no evidence to suggest that that falling behind is for any reason other than the impairment of AB's vision.

The Law

33. The law in relation to this matter is well-trodden ground and I can take it relatively shortly. The first issue is whether AB is herself *Gillick* competent to make the decision. The concept of *Gillick* competence was neatly paraphrased by Lord Donaldson in *Re R (A Minor) (Wardship: Consent to Treatment)* [1992] Fam 11 at page 26A:

> *"What is involved is not merely an ability to understand the nature of the proposed treatment … but a full understanding and appreciation of the consequences both of the treatment in terms of intended and possible side effects and, equally important, the anticipated consequences of a failure to treat."*

34. The evidence of Miss B, the social worker, is that AB does not have a full understanding either of the consequences of her condition nor of the risk or benefits of surgery. The father argues that AB can make the decision for herself and is mature and understands the position well.

35. The next issue in law is the position of parental responsibility. Normally it would be for parents to consent to or refuse treatment on behalf of their child if the child was not *Gillick* competent. Where, as here, the Trust, or in some cases the local authority, applies to the court to exercise its inherent jurisdiction there is no doubt that the court can override the refusal of consent by a parent. That proposition is set out in a series of cases and I need only refer to *Re T (Wardship Medical Treatment)* [1997] 1 WLR 242 at 250A and the judgment of Butler-Sloss LJ (as she then was).

36. The principles in cases such as this were very neatly summarised by Holman J in *An NHS Trust v MB* [2006] EWHC 507 where he set out 10 principles, 7 of which are relevant here, to be applied when a best interests judgment has to be made under the inherent jurisdiction relating to child treatment decisions:

> *"1. As a dispute has arisen between the treating doctors and the parents and one, and now both parties have asked the court to make a decision, it is the role and duty of the court to do so and to exercise its own independent judgement.*
>
> *2. The right and power of the court to do so only arises because the patient in this case, because he is a child, lacks the capacity to make a decision for himself.*
>
> *3. I am not deciding what decision I might make for myself if I was hypothetically in the situation of the patient nor for a child of my own if in that situation nor whether the respective decisions of the doctor on the one hand or the parents on the other are reasonable decisions.*
>
> *4. The matter must be decided by an application of an objective approach or test.*

> *5. That test is in the best interests of the patient, best interests are used in the widest sense and include every kind of consideration capable of impacting on the decision. These include non-exhaustively medical, emotional, sensory, pleasure, pain and suffering and instinctive, the human instinct to survive considerations.*
>
> *6. It is impossible to weigh such considerations mathematically but the court must do the best it can to balance all the conflicting considerations in a particular case and see where the final balance of the interests lie.*
>
> *7. and 8. go specifically to life-saving treatments and are not relevant here.*
>
> *9. All these cases are very fact-specific, i.e. they depend entirely upon the facts of the individual case.*
>
> *10. The views and opinions of both doctors and parents must be carefully considered. Whereas in this case, the parents spend a great deal of time with their child, their views may have a value because they know the patient and how he reacts so well although the court needs to be mindful that the views of any parents may be understandably coloured by their own emotions or sentiment. It is important to stress that the references to the views and opinions of the parents their own wishes, however understandable in human terms, are wholly irrelevant to the consideration of the objective best interests of the child save to the extent in any given case they may illuminate the quality and value to the child of the child parent relationship."*

37. Finally, there is a judgment of Thorpe LJ where he summarises what a judge in my situation needs to do when carrying out a best interests assessment, Re A [2000] 1 FLR 549 at pg 560:

> *"There can be no doubt in my mind that the evaluation of best interests is akin to a welfare appraisal. The speeches in Re F (Mental Patient: Sterilisation) [1990] AC 1 read in their context can only bear this interpretation: see particularly the speech of Lord Goff at 77D-G. Subsequently the Law Commission in their 1995 report on mental incapacity recommended an extensive evaluation of best interests: see paragraph 3.28. The latest statement of government policy in Making Decisions shows that the government currently accepts the Law Commission's recommendation: see paragraph 1.10. Pending the enactment of a check list or other statutory direction it seems to me that the first instance judge with the responsibility to make an evaluation of the best interests of a claimant lacking capacity should draw up a balance sheet. The first entry should be of any factor or factors of actual benefit. In the present case the instance would be the acquisition of fool proof contraception. Then on the other sheet the judge should write any counterbalancing dis-benefits to the applicant. An obvious instance in this case would be the apprehension, the risk and the discomfort inherent in the operation. Then the judge should enter on each sheet the potential gains and losses in each instance making some estimate of the extent of*

> *the possibility that the gain or loss might accrue. At the end of that exercise the judge should be better placed to strike a balance between the sum of the certain and possible gains against the sum of the certain and possible losses. Obviously only if the account is in relatively significant credit will the judge conclude that the application is likely to advance the best interests of the claimant."*

38. I have to say that I am not sure that quite such a mathematical approach is ever possible, but in the exercise that I am about to do, I will do my best to achieve Thorpe LJ's objectives.

Conclusions

39. My first conclusion is that AB is not *Gillick* competent. She is only 10 years old and I accept the report of Miss B that she does not have the level of maturity to understand the risks and benefits of the surgery being proposed or, to put it another way, the risks involved in having surgery. The evidence I have seen both from Miss B and the Guardian suggests that AB doesn't fully understand the benefits of surgery, but, most importantly, she does not fully understand the consequences of not having surgery and where that will leave her in terms of long-term visual impairment.

40. It also appears from the evidence that she does not have a full understanding or ability to weigh up the very limited risks of the surgery. The evidence suggests, unsurprisingly, that she has been highly influenced by her parents, who themselves are unable to weigh up the risks and benefits of the proposed surgery.

41. In my view, it is very clear from the evidence that AB is not *Gillick* competent in respect of the decision whether or not to have cataract surgery. In those circumstances, as I have already explained in the analysis of the law, it is a matter for the court to decide what is in AB's best interests.

42. In terms of Thorpe LJ's balance sheet, this is an extremely clear case. The starting point is that AB's eyesight is now very severely impaired; she has been seen by four consultants, two of them independent consultants, all of whom come to the same conclusion. Her eyesight has deteriorated very significantly and is only likely to get worse. On those issues there is no medical doubt.

43. The father has said that AB can now read smaller text and that she can get around on her own. However, the father himself accepts that she has visual impairment, she is having to wear dark glasses in order to prevent glare, and I don't understand his evidence to be that her eyesight is not impaired. To the degree that AB has proved herself to be good at adapting to the situation, that does not mean that the current position is in any way acceptable or in her best interests.

44. Secondly, her impaired eyesight seriously impacts both on her life now and, perhaps almost more importantly, on her life in the future. She is 2 to 3 years educationally behind her cohort, her visual impairment has already impacted on her social life and that is likely to be much more serious as she enters into adolescence. Her ability to progress educationally will be seriously impacted and Mr Hallin refers very appropriately to the fact that she wants to be a teacher. None of this means of course that somebody who is visually impaired, or indeed completely blind, cannot do

exceptionally well educationally and be a teacher or anything that he or she wants to be. However, that is not the point here - the point is that AB's impaired eyesight is easily repaired by a surgical intervention, she doesn't need to learn how to cope with visual impairment when that impairment can be solved.

45. Thirdly, the surgery being proposed here, cataract surgery, is highly likely to be successful; Dr T spoke about something like a 98% or possibly even higher, success rate. This is that relatively rare situation in this type of case where there is an almost guaranteed solution to the problem that the person is facing.

46. Fourthly, the risks from that surgery are very small. I cannot emphasise too much, and I say this to try to address the parents and to try to persuade them, that cataract surgery is not a risky surgery. It is not like having major surgery on your leg, it is a surgery which is carried out routinely in the UK and around the world with minimal risks. To the degree that there are risks in any surgery, most of those risks are entirely treatable as Dr T has explained. I suspect my words will fall on deaf ears because I know the four consultants, probably on numerous occasions, have already explained this to CD and EF, but I feel it is my duty to try to do so again.

47. Fifthly, the father says he would accept surgery as effectively a last resort but that there is no rush and alternatives should be proposed. With respect to CD, I strongly disagree with both of those propositions. There is no evidence, and I would like to underline that again to CD, there is <u>no evidence</u> that alternative remedies, such as herbal remedies, work to reverse the effects of cataracts. Indeed, there is absolutely uniform clinical evidence that they do not work to reverse cataracts.

48. I also strongly disagree with the proposition that there is no rush. I cannot think of words to try to explain this to CD and EF clearly enough. I hope that EF, as AB's mother, will understand that AB is being very severely disadvantaged by the parents not letting her have this treatment. AB is obviously a bright, lovely, clever, sociable girl – please let her achieve what she wants in life by letting her have this surgery. Every week that the parents delay, she is getting more and more left behind educationally. The parents are, I am sure without meaning to, disadvantaging her. They are actively harming her by not letting her have the surgery and that is so clear from the evidence. For these reasons, there is a rush to get on with this surgery and let AB see as she is perfectly capable of doing.

49. Sixthly, AB's wishes and feelings are of course relevant to my judgment, but she is a 10 year old girl in a family which is so pressurising her not to want to have the surgery. I do not suppose for one moment she can think about this independently or reach her own views. I fully understand that at the moment she is scared of the surgery and she does not want it to go ahead. However, I look to CD and EF, to please help and support AB to go ahead with this surgery by reassuring her that thousands of children have had this surgery around the world and the risks are miniscule.

50. Therefore, in terms of her wishes and feelings, I take them into account, but my view is they are likely to have been strongly influenced by the father and probably the mother over the last number of years, and for those reasons I am not going to accept her wishes and feelings.

51. So far as the views of the parents are concerned, I do take them into account but, with all respect to the parents, they seem to be unable to understand and weigh up the evidence as to the scale of benefit as against the level of risk of this type of surgery. As Holman J said, the parents' own wishes and feelings are not in themselves relevant, their only relevance is so as to illuminate AB's wishes and best interests. Therefore, the fact that the parents oppose the surgery is not, in my view, itself relevant.

52. Finally, in conclusion, in my view the balance here is very clear. This is a case where the benefits overwhelmingly outweigh the risks and it is plainly in AB's best interests to have the operation. I also make clear at this stage that I consider it to be in her best interests to have bilateral cataract surgery, to have the surgery on both eyes at the same time. According to Dr T the risks of bilateral surgery are no greater than the risks of surgery on one eye and the benefit is that there will only be one operation and therefore only one general anaesthetic, only one post-operative period. It also, given the history of this matter, minimises the risks of the parents not cooperating either before or after the surgery.

<u>Delay</u>

53. Before I conclude this judgment, I want to say something about the timing of this application. As I have already explained, AB was first diagnosed with cataracts in 2014. At that stage there were a series of missed appointments by the parents and effectively she was lost to the system between 2014 and 2017. I have not analysed the degree to which those years in itself have led to long-term damage which could have reversed at that stage. It may be that that period matters little.

54. However, AB was referred again in 2017 and she was seen in early 2018. After that, there was a series of missed appointments and of CD saying that they would go ahead with surgery and then not going ahead. It was some almost 2.5 years after she was first seen in 2018 that an application was made to the court.

55. I did raise this issue at the end of the hearing, however, I did not raise it with Dr T when she gave evidence because I did not want to give any suggestion that I had pre-judged matters before I heard CD's evidence. Mr Hallin has asked me to defer any comments so that the Trust can put in further material but, from previous experience of these kind of delays, that is merely a way of ensuring that no comment is made in the judgment and therefore relevant judicial comments are not more widely disseminated.

56. I have no doubt that Dr T and the Trust have at all stages sought to do their utmost to try to get parental support and believed this was in AB's best interests. I fully accept that in difficult cases like this it is very important to engage the parents and to try to reach agreement with the parents.

57. However, what has occurred in this case is a factor that comes up in other cases. In the period when a Trust is trying to reach agreement with a parent, there is actually detriment to the child. In AB's case there has been a 2.5 year delay from when she was first referred to when the matter even got into the court door. During that time her eyesight has deteriorated and she has slipped far behind her peers in educational attainment.

58. In my view, there are cases where a Trust has to accept that the parents are either not going to agree to the proposed treatment or that they are going to be so ambivalent that the appropriate step is to go to court. I fully appreciate that by going to court it escalates the matter and it may in some cases make agreement more difficult, but there are cases where that is a price that must be paid in the child's best interests.

59. I also fully accept that the court has to be careful not to judge these things with the benefit of hindsight. However, this is a case where it should have been apparent far earlier that legal action was going to be necessary. There is a very consistent history of CD not engaging and not following through with assurances about accepting treatment. The Trust appears to have taken every statement by CD at face value and not considered the history of the case.

60. So Mr Hallin has persuaded me not to be as critical as I might have been, but I do want to put it on record that there is a concern by the court that sometimes in these difficult cases the understandable desire to reach agreement with the parent actually leads to severe detriment to the child, because of the length of delay.