

Vaccination of children in a (post) pandemic world

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As the Channel Islands and the rest of the world role encourage adults to roll up their sleeves for their COVID-19 vaccination, so begins a flurry of research to get shots to children for whom no vaccine has yet been authorised.

Vaccination can be a sensitive subject about which parents can hold strong, and sometimes, differing views. If two parents, both of whom hold parental responsibility for their children, are unable to agree about the administration of vaccinations, how is the issue to be resolved? This article explores the role the Court can play in this situation.

Vaccination programmes fall within the definition of medical treatment for children. As such, if parents cannot agree then it remains open to either parent to apply to the Court to ask it to intervene to make the welfare decision.

Such an issue arose recently in *M v H (Private Law Vaccination)* [2020] EWFC 93. The case involved two children, aged six and four. Their parents had separated and they lived with their mother who argued that the children should not receive the MMR vaccine. The father applied to the Court for a specific issue order that the children should receive the MMR vaccination. He subsequently widened his application and requested the court to direct that the children should receive each of the childhood vaccines that are currently included on the NHS vaccination schedule, the vaccinations that may be required in relation to future travel abroad by the children and vaccination against the coronavirus responsible for causing the COVID-19 infection.

The application came before MacDonald J, who directed that the children should receive the routine vaccinations. In doing so, the learned Judge examined relevant case law, and noted that, while it is both reasonable and responsible behaviour for a parent to arrange for a child to be vaccinated, vaccinations are not compulsory. He set out that scientific evidence establishes that it is generally in the best interests of otherwise healthy children to be vaccinated and that it was for the public good. He concluded that, while the Court will always take the views of parents into account, the weight that the Court gave to those views depended not on the vehemence with which those views were expressed, but on their substance.

He stated that a court will be unlikely to conclude that immunisation with the routine vaccines that are recommended for children by Public Health England is not in a child's best interests, absent:

(a) credible development in medical science or new peer-reviewed research evidence indicating significant concern for the efficacy and/or safety of one or more of the vaccines that is the subject of the application; and/or

(b) a well evidenced medical contraindication specific to the child or children who are subject of the application.

The mother had not demonstrated either of these things.

He declined to consider the travel vaccinations as they were speculative at this stage. In respect of the application for the children to receive a COVID-19 vaccination in the future, the Judge said as follows:

"I am also not prepared at this hearing to make a specific issue order with respect to the vaccination of the children against the

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coronavirus responsible for causing the COVID-19 infection. I wish to make abundantly clear to anyone reading this judgment that my decision to defer reaching a conclusion regarding the administration to the children of the vaccine against the coronavirus that causes COVID-19 does not signal any doubt on the part of this court regarding the probity or efficacy of that vaccine. Rather, it reflects the fact that, given the very early stage reached with respect to the COVID-19 vaccination programme, it remains unclear at present whether and when children will receive the vaccination, which vaccine or vaccines they will receive in circumstances where a number of vaccines are likely to be approved and what the official guidance will be regarding the administration of the COVID-19 vaccine to children. As I make clear at the conclusion of this judgment, having regard to the principles that I reiterate below it is very difficult to foresee a situation in which a vaccination against COVID-19 approved for use in children would not be endorsed by the court as being in a child's best interests, absent peer-reviewed research evidence indicating significant concern for the efficacy and/or safety of one or more of the COVID-19 vaccines or a well evidenced contraindication specific to that subject child. However, given a degree of uncertainty that remains as to the precise position of children with respect to one or more of the COVID-19 vaccines consequent upon the dispute in this case having arisen at a point very early in the COVID-19 vaccination programme, I am satisfied it would be premature to determine the dispute that has arisen in this case regarding that vaccine."

With clinical trials now underway in children, it may not be too much longer before the COVID-19 vaccination is approved for use in children. If that materialises, then the current case law, including *M v H*, will arguably present anti-vaccine parents with an uphill battle absent peer-reviewed research querying efficacy and/or safety or specific concern for the child in question.