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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF AN APPLICATION UNDER THE CHILDREN (NORTHERN IRELAND) ORDER 1995

AND IN THE MATTER OF AN APPLICATION UNDER THE JUDICATURE (NORTHERN IRELAND) ACT 1978

A FATHER

Applicant;

v

A MOTHER

Respondent.

IN THE MATTER OF FINN (A MINOR) (SPECIFIC ISSUE: VACCINATION)

Mr Niall Hunt QC with Ms Siobhan O'Connor BL (instructed by McCoubrey Hinds Solicitors) for the Applicant Father
Ms Moira Smyth QC with Ms McGrane BL (instructed by Murray Kelly Moore Solicitors) for the Respondent Mother
Ms Melanie Rice BL (instructed by the Official Solicitor who was appointed to represent the interests of the child)

KEEGAN J

Nothing must be published which would identify the child or his family. I have anonymised the parties and the name given to the child in this judgment is not his real name.

Introduction

[1] There is one issue before the court, namely whether this child who is now 4 years old should receive vaccinations. Two applications seek relief in relation to

this matter, namely a Specific Issue Order Application pursuant to Article 8 of the Children (Northern Ireland) Order 1995 ("the Children Order") and an application for declaratory relief under the inherent jurisdiction of the High Court. This is a private law case. The father of the child agrees with vaccination, the mother of the child does not.

[2] This matter was heard by way of remote sight link hearing as a request was made to hear this specific application prior to determination of other issues. The other main issue which requires to be determined is a relocation application being brought by the mother which will be listed in the next number of months. In dealing with this application I heard submissions from counsel and I received oral evidence from the mother. I have considered all of this along with the helpful written submissions filed by counsel.

Factual Background

[3] Whilst this is a case about vaccination, I start with some background of court proceedings. I can see that proceedings began in August 2018 when the father initiated wardship proceedings in relation to this child because of a concern that the mother and child had left the country to live in the Isle of Wight. Those proceedings were subsumed in a C1 application brought by the father dated 9 August 2018 which sought various reliefs including a residence order, a prohibited steps order and that the court adjudicate on vaccination. There is also a formal application by the mother for relocation to the Isle of Wight dated 21 September 2018.

[4] The case was initially heard before Master Wells. She appointed the Official Solicitor and she gathered together some evidence in relation to vaccination within Northern Ireland. I will come to that in a moment. The Master also engaged social services and directed mediation which did not prove fruitful. The matter then transferred to the High Court Judge and I took carriage of the case by way of review of files in the context of the Covid-19 pandemic. By virtue of the FCI1 Form, all counsel highlighted the issues in the case, namely the outstanding relocation issue and the vaccination issue and, as I have said, I was asked to deal with vaccination as a discrete issue as soon as possible.

[5] The parties' relationship history is set out in a series of affidavits which have been generated for the various proceedings before the court. Drawing from these documents, it appears that the parties were in a relationship from August 2014 for two years. They separated when Finn was 3 months old and he has lived with his mother since separation. From August 2016, when the parties separated, the mother and father appeared to work out contact arrangements which steadily grew to comprise the current contact of mid-week and weekend contact including overnight contact. I note some pausing of that during Covid-19 which is not a concern at this stage. But, in any event, it is quite clear that both parents have an appropriate relationship with this child. It is also clear that the mother commenced a relationship with a new man from the Isle of Wight and she has another child with

that man. The father is also in a new relationship. Both parents are educated and both parents are, it seems, committed to the child.

The evidence

[6] Each parent has filed affidavits in relation to the vaccination issue. The father's arguments in support of the application are encapsulated in paragraphs 5-8 of his affidavit of 18 November 2019 as follows:

> "5. When Finn was born the defendant told me that she did not wish to have him immunised with any vaccinations. The defendant and I had a big argument about this issue and foolishly, to keep the peace, I acquiesced on this issue. The defendant told me that if I knew what she knew about vaccinations following the extensive research she had completed that I too would not wish to have Finn vaccinated due to the risks involved. I now regret this decision as I am aware of how foolish and irresponsible it is to fail to immunise Finn against preventable illness and disease.
>
> 6. The defendant and I attended with Finn's GP for his 12 week review. During this appointment the issue of vaccinations arose and the GP advised us that Finn should be vaccinated against preventable illness and disease. The defendant refused to do so. I did not challenge this at the time as I was trying to settle Finn as the nurse was examining him and I did not want to cause a scene.
>
> 7. I have always wanted to have Finn immunised and I cannot comprehend the defendant's position and why she would put Finn at risk of serious illness and even death when he could be vaccinated and protected.
>
> 8. Finn was hospitalised in December 2018 with bronchitis. The paediatrician on duty asked the defendant and I if Finn's vaccinations were up to date and the defendant said he had not been vaccinated and we did not agree to vaccinate him. The paediatrician said he was not going to lecture the defendant and I about this issue but he said that he recommended that Finn be vaccinated."

[7] The core of the mother's case is contained in her affidavit of 15 January 2020 wherein she states:

> "2. Before Finn was born I thought about how I wanted to care and parent for Finn. I decided that I wanted to breast feed Finn, did not want him to be vaccinated and I would use cloth nappies. I reached this decision after researching the issues and giving them careful consideration. I wanted Finn to have the best possible start to life.
>
> 3. I discussed my parenting approach with the applicant, it was not forced upon the applicant. I asked him to carry out his own research in the area. The applicant agreed that Finn should not be vaccinated, I remember him commenting that formaldehyde is in vaccinations.
>
> 4. I am opposed to Finn being vaccinated. The ingredients contained within the vaccinations concern me.
>
> 5. I do not want for these ingredients to be injected into Finn. I understand that the level of these ingredients is low in the vaccine. However, I do not want them injected into my son at any dosage level. I do not think it is in his best interests to have these ingredients in his body. I worry that Finn will have an adverse reaction to the ingredients…
>
> 6. I am concerned about the risks that the vaccinations potentially pose for Finn. I have psoriasis which is an auto immune condition. I would worry that Finn may also have a compromised immune system and that he will be at risk by being vaccinated. I am also concerned about Finn potentially having an allergic reaction to the vaccinations.
>
> 7. I have been informed about the safety of vaccinations, I recently spoke to my health visitor and was informed the vaccinations are safe. I am aware that there is a vaccination damage payment that the government pays if you have an adverse reaction to a vaccination. It concerns me that such a payment exists for vaccinations that are supposed to be safe."

[8] In the mother's second affidavit of May 2020, she also refers to the fact that in August 2016 she attended the GP's surgery with the father. The mother explains that

at this appointment the parents were asked to sign a document to confirm their position in relation to the vaccination of Finn and that the father signed the document confirming that they did not want Finn to be vaccinated. The mother has exhibited a copy of this document which I have seen and which is not disputed. The mother also disputes that at a GP appointment in October 2018 she ranted and raved at the GP.

[9] In paragraphs 5, 6 and 8 of this second affidavit the mother also questions the father's motivation in bringing this application as follows:

> "5. The father changed his position in relation to vaccination in early 2018. This was in and around the time I commenced a new relationship and there were issues with contact. I cannot help but feel that his attitude changed to vaccination as an attempt at revenge. I do not think his change in attitude is motivated by concern over Finn's health, rather he is trying to get at me for seeking to relocate.
>
> 6. I am opposed to Finn being vaccinated. I have a moral issue with some of the contents of the vaccines. I accept that these are in small doses, however I do not want embryo or human aborted foetal tissue injected into Finn…
>
> 8. I have read Dr Elliman's report. I do not seek to contest the contents of this report. I accept medically that the greater proportion of the population can be vaccinated without any risk. Having considered the report, in the event that Finn suffered an animal bite or cut, I would agree to Finn receiving a tetanus injection if such medical was assessed as necessary."

[10] The mother gave some oral evidence to me in which she reiterated her position in a calm and focussed way. She told me that she also has a 9 month old child who she has not vaccinated. She said that when pregnant she did research about this issue which convinced her against vaccination. She said that she had not reached the position lightly. The mother explained that she was worried about Finn having an adverse reaction and how that would make her feel. She thought this would undermine her as a parent. She said she was shocked by the ingredients in vaccines when she did her own research and that when together the father agreed with her on that. The mother denied that at any stage she ranted and raved to a GP, but she accepted that her objection to vaccination was indicated to the GP.

[11] During her evidence the mother also confirmed that Finn did not receive the Vitamin K shot when born. In answer to questions, she agreed that she would allow

the child to have a tetanus if medically required and necessary. She also confirmed that she accepted Dr Elliman's medical view. In answer to questions about Dr Elliman's report, she said that she was not aware that some of the substances that she objects to including formaldehyde are found in fairly common products such as apples, pears and potatoes. She understood that the dosage of substances in vaccines was low and she understood that Dr Elliman had addressed this in his report. The mother also was aware of the risk of diseases set out in Dr Elliman's report but she did not think that Finn was at risk. She agreed that parents can change their mind on these issues.

[12] The mother also accepted that whilst the parents both agreed Finn should not be vaccinated at one stage, the doctor said that if they ever changed their minds they could be contacted about it. She referenced herd immunity as a safeguard in relation to Finn. The mother did not raise any particular medical issues that Finn had that would make him susceptible to an adverse reaction. She reiterated her point that this issue was essentially being raised by the father now due to his issue with her new partner and she thought his motivation was to prevent relocation.

[13] Overall, the mother gave evidence in a very forthright way. She is clearly looking after this little boy and his half-sibling very well. As I have already said, this is an educated woman who understands the medical consensus in relation to vaccination of children. She has changed her view regarding tetanus but she maintains an objection which is she says, based upon a fear of an adverse reaction and a moral view about the contents of the vaccinations.

The report of Dr David Elliman

[14] This expert report was jointly commissioned and it was admitted in evidence by agreement without the need for formal proof. Dr Elliman is a fully registered medical practitioner with recognised expertise and experience in this field. From October 2016, he was employed half-time by Great Ormond Street Hospital and seconded to Public Health England (PHE) where he worked in screening, including being clinical lead for the new-born blood spot screening and new-born and infant physical examination programmes. He had no immunisation role in PHE. He has honorary consultant contracts with Wittington Health and North Central London NHS Trust which are to provide clinical advice and teaching in relation to immunisation. He is an Honorary Senior Associate Professor at UCL Great Ormond Street Institute of Child Health. Dr Elliman has provided expert evidence in a number of legal cases, some in relation to circumstances where those with parental responsibility have disagreed on whether a child should be immunised, such as *Re B (A Child: Immunisation)* [2018] EWFC before His Honour Judge Clifford Bellamy.

[15] At Table 1 of his report Dr Elliman sets out the vaccines that would be offered as routine to all children up to and including 5 years of age in the UK.

Table 1: The Universal Immunisation Schedule in operation in the United Kingdom in April 2020 for children up to, and including, 5 years old

Age	Vaccine	Comments
8 Weeks	Diphtheria/Tetanus/Acellular Pertussis/Inactivated Polio Vaccine/Haemophilus influenza type b/Hepatitis B (DTaP/IPV/Hib/HepB) Meningococcal B vaccine (MenB) Rotavirus vaccine	This is given as a combined injection. This is given by injection. MenB is not given to children at or older than two years old, unless they are at particular risk of meningococcal disease. This is given as oral drops. The first dose MUST be given before 15 weeks of age.
12 weeks	DTaP/IPV/Hib/HepB Pneumococcal conjugate vaccine (PCV) Rotavirus vaccine	 This is given by injection. PCV is not given to children at or older than two years old, unless they are at particular risk of pneumococcal disease. The second dose MUST be given before 24 weeks of age.
16 weeks	DTaP/IPV/Hib/HepB Men B	
12 months	Hib/MenC PCV MenB Measles, mumps and rubella (MMR)	This is given as a combined injection This is given as a combined injection
2 years	Live attenuated influenza vaccine (LAIV)	Given by nasal spray at the beginning of the 'flu' season
3 years	Live attenuated influenza vaccine (LAIV)	Given by nasal spray at the beginning of the 'flu' season
3 years 4 months	Diphtheria/Tetanus/Acellular Pertussis/Inactivated Polio Vaccine (DTaP/IPV) MMR	 This can be given earlier
4 years and yearly throughout primary school	Live attenuated influenza vaccine (LAIV)	Given by nasal spray at the beginning of the 'flu' season

[16] In his report, Dr Elliman states that the programme is almost identical across all four nations in the United Kingdom. He points out that the only substantive difference recently has been in the rate of roll out of influenza vaccine in school age children as this was much faster in Northern Ireland than in England initially but both jurisdictions are now in step. Dr Elliman states that the vaccines are offered universally, because all children are at risk of these diseases. In his report, he states

that "It is true that malnutrition, poverty, overcrowding, chronic medical conditions, etc may increase the chances of catching some of these diseases and/or making them more likely to be serious, but all children are susceptible to a significant degree." This is a national schedule and the only significant variation in practice is that in some areas, the second dose of MMR vaccine may be given earlier than 3 years 4 months. This is considered to be a reasonable variation on the national schedule. The schedule does change as new vaccines are added and the numbers of doses of older vaccines change. Some vaccines i.e. Rotavirus, Meningococcal B and Pneumococcal conduit vaccines are not given beyond certain ages, except in special circumstances. Dr Elliman states that as Finn is too old for these, he is not prescribed them. He then states there are other vaccines that may be given to children who are at higher risk of a particular disease. Additional doses of Hepatitis B vaccine are given to babies of mothers with Hepatitis B or who are living in a household where there is someone with Hepatitis B. BCG is given to all babies in areas where the incident of TB is high or where a parent or grandparent comes from a country with a high incident of TB. The vaccine is also given to older children who fall into this latter risk group.

[17] Dr Elliman confirms the position in the United Kingdom is contained in the Green Book: Immunisation against infectious disease, published in 2013 and updated since then. This also applies in Northern Ireland. This guide stipulates that while parents should be strongly advised to allow their children to have the above vaccines, in the UK, none are compulsory and the parents' wishes would be respected, even if they were in conflict with medical advice. Dr Elliman states that as far as he is aware, in the UK, with one exception, the decision as to whether or not a child should be immunised has only being taken to court when there has been a difference of opinion between those with parental responsibility. Dr Elliman then explains the practice, in that contracts exist between General Practitioners ("GPs"), the main providers of vaccines to pre-school children, and the National Health Service ("NHS"). A GP can choose not to give vaccines and would therefore receive less remuneration. GPs are expected to follow evidence-based practice and to make parents aware of the immunisation schedule. Should they not give immunisations themselves, they would be expected to inform parents where the vaccines may be obtained. They are not banned from offering alternatives to vaccines, but would be expected to make it clear to parents that this is not NHS policy and provide the evidence base, or lack of it, for such alternatives. Vaccines for school aged children are usually provided by the School Health Service or a specially commissioned vaccination service.

[18] Dr Elliman then sets out the evidence for the benefits and risks of vaccines recommended for children up to the age of 5 years. He highlights general points about the safety of vaccines. He also refers to vaccine contents in some detail. He then refers to other general safety issues such as allergic reactions, local reactions, immune overload and contra indications. Finally, he describes the diseases and the vaccinations against them starting with diphtheria, tetanus, pertussis (whooping cough), polio, haemophilus influenza type B (HIB), Hepatitis B. Dr Elliman then

refers to the combined vaccines. He refers to meningococci and meningococcus (MC). He refers to measles, mumps, rubella (MMR) (German measles). He also deals with the combined MMR which is the only vaccine available on the NHS to protect against measles, mumps and rubella. In this section of his report, Dr Elliman refers to the 1998 paper which was published in the Lancet, a leading medical journal, in which the authors claimed that they had found a link between bowel disorders and autism in a group of children and linked this to the MMR vaccine. He points out that in 2010, Dr Wakefield who was involved in this research and a colleague were removed from the Medical Register by the General Medical Council ("GMC") and banned from practicing medicine in the UK because of a failure to reveal a potential financial conflict of interest and ethical irregularities. Two weeks later, the Lancet retracted the original paper stating that:

> "Following the judgment of the UK General Medical Council's Fitness to Practice Panel on January 28, 2010, it has become clear that several elements of the 1998 paper by Wakefield et al are incorrect, contrary to the findings of an earlier investigation. In particular, the claims in the original paper that children were consecutively referred and that investigations were approved by the local Ethics Committee have been proven to be false. Therefore, we fully retract this paper from the public record."

[19] Dr Wakefield's colleague was later reinstated after a judicial review but Dr Wakefield has not appealed the GMC decision. Dr Elliman points out that in 2011, the British Medical Journal published a series of articles claiming that the study published in the Lancet was fraudulent. He confirms that numerous studies have been published since then and have found no link between MMR and autism.

[20] Dr Elliman then refers to influenza and the forms of vaccine for that. He also refers to alternatives to vaccination which have been suggested but in his opinion none is as effective. These alternatives are isolation, homeopathy, breastfeeding and healthy diet.

[21] Dr Elliman then examines Finn's medical history. He recounts that Finn was born at 41 weeks gestation i.e. within the normal range of duration of pregnancy. No problems were recorded during pregnancy or the neo-natal period. His birth weight of 3.5 kilograms was within the normal range. Vitamin K was not given at birth. He had an ultrasound of his lower spine because he had a dimple over the spine but it was normal. On 5 July 2016, a letter was sent from the GP practice inviting the parents to make an appointment for Finn's vaccinations. The mother returned the letter stating that she did not want the child to have any vaccinations and he has had none. When seen for his 6-8 week review on 15 July 2016, Finn was reported as being totally breastfed and, apart from some gastroesophageal reflux, was well. On 17 August 2016, he was seen by his GP for his routine physical examination, this was recorded as normal. At one year old, Finn had some peanut

butter and developed a raised red rash over his body. Skin prick tests and blood tests for peanut allergy were negative. The tests were repeated in September 2019. In January 2019, Finn had some dental extractions. He has no other medical history of note. He was seen by a speech and language therapist in April 2019 and noted to have reduced concentration and delay in understanding language. It was planned to review him in July 2019.

[22] In the discussion section of his report, Dr Elliman explains that vaccines are given to people for two reasons. The prime reason is to protect them from getting the disease and suffering its effects. This applies to most vaccines and for some is the sole reason. An example of this is the tetanus vaccine. On the other hand, with most vaccines, if the uptake of the vaccine is high enough transmission of the disease is interrupted. This is known as herd or community immunity and means people who are susceptible are protected because most of the rest of the population are immune and so cannot pass on the disease. In relation to the diseases referred to, Dr Elliman explains that whooping cough is still circulating and can be very unpleasant, even in older children. Diphtheria, tetanus, HIB and Polio are now, he says, thanks to immunisation, very uncommon. However, in the UK, diphtheria, tetanus and HIB still occur. He states that as Polio has not yet been eradicated from the world, there is a danger that it could be reintroduced into the UK. Dr Elliman states that it is likely that the incidence of Polio will increase as some countries will postpone vaccination campaigns due to the Covid-19 pandemic. Dr Elliman refers to the fact that Hepatitis B infection contributes significantly to liver cancer and cirrhosis, significant causes of death and illness, even in the UK. He says the vaccine is very effective and has a good safety record. He states that the only limitation on its use is expense. He says he supports its use as part of the National Immunisation Programme and recommends that Finn has a Hepatitis B containing vaccine. He states that measles can be a very unpleasant illness, with high incidents of complications and hospital admissions and can prove fatal. Dr Elliman also states that Rubella can be a devastating disease for an unborn baby. He points out that the only way of eradicating Congenital Rubella Syndrome is by immunising all children in early childhood. He states that mumps is still common and can be very unpleasant, causing meningitis in some cases. He says that Meningococcal C disease is now much less common, due to the vaccination, and he would recommend Finn has an MC containing vaccine. He states he would also recommend the annual nasal spray influenza vaccine.

[23] Dr Elliman then responds to the 16 questions that have been asked of him. In reply, Dr Elliman is clear in recommending vaccination for Finn. He also says, when asked are there any other issues, that "at the time of writing, there is a pandemic that is causing considerable disruption to the Health Service. There are anecdotal accounts of immunisations being delayed. As the situation worsens, this could become more of a problem. If there is a significant reduction in immunisation, there could be a rise in some of the vaccine-preventable diseases. This would make it even more important to ensure that Finn's immunisations are as up to date as possible."

[24] The overall view of Dr Elliman is that vaccination will provide protection for Finn against the diseases in question. Having considered the contra-indicators he states there are no side effects of the vaccines other than minor effects and these are off-set by the benefits of the protection from the vaccine. In Dr Elliman's opinion, the benefits of the vaccine outweigh any risk of side effects. Table 8 sets out the vaccinations which Dr Elliman recommends for Finn and how they can be administered as follows.

Table 8: Vaccinations recommended for Finn

Age	Vaccine	Comments
As soon as possible	Diphtheria/Tetanus/Acellular Pertussis/Inactivated Polio Vaccine/Haemophilus influenza type b/Hepatitis B (DTaP/IPV/Hib/HepB Measles/Mumps/Rubella (MMR) Hib/MenC	These can, and should, be given on the same visit
4 weeks later 8 weeks later 12 months after 3rd dose of DTaP/IPV/Hib/HepB	DTaP/IPV/Hib/HepB MMR DTaP/IPV/Hib/HepB DTaP/IPV	These can, and should, be given on the same visit These can, and should, be given on the same visit

Advice from the Chief Medical Officer in Northern Ireland

[25] In response to a request from the Official Solicitor at the earlier stages of this case, the Chief Medical Officer of Northern Ireland set out the policy in Northern Ireland on childhood vaccines prior to pre-school and school. This is in correspondence dated 19 December 2018:

> "Immunisation policy in Northern Ireland is set by the Department of Health, on advice from the Independent Joint Committee for Vaccinations and Immunisations (JCVI). This Committee regularly reviews the epidemiology of vaccine preventable diseases in the UK and makes recommendations on the introduction of new programmes in response to changes in disease incidents and the likely cost effectiveness of vaccination programmes. Northern Ireland, in line with the rest of the UK, has a very comprehensive vaccination

programme, free at the point of delivery for those eligible by virtue of age or risk status.

Vaccination is considered a highly effective way to protect a child against a range of serious and potentially fatal diseases.

All of the vaccination programmes in place in Northern Ireland are based on informed consent.

There are no specific Northern Ireland based vaccination policy documents that cover all of the different types of vaccinations currently available.

As mentioned previously, all the vaccination programmes are based on advice and recommendations from JCVI. The Green Book (which applies in Northern Ireland) contains all the latest information and vaccination procedures, for vaccination preventable infectious diseases in the UK."

[26] Dr Mc Bride's correspondence also contains the following view:

"Vaccination will help protect a child against a range of serious and potentially fatal diseases. If a child is not vaccinated, they are at higher risk of catching and becoming very ill from a range of vaccine preventable diseases. The timings of all vaccinations are based on advice and recommendations from JCVI. Any vaccine preventable disease can strike at any time and therefore it would be very difficult to quantify the individual risk faced by an unvaccinated child entering pre-school or school as this will also depend on their general health and their normal living conditions. In theory the more people the child comes in contact with the greater the risk of catching an illness. It is safe to say that they would be at greater risk than their vaccinated peers of catching an illness that the other children have been vaccinated against. This is particularly true of a disease such as measles, which is one of the most contagious viral diseases known. The disease spreads quickly among people who are not immune through vaccination or prior infection with measles."

Legal Context

[27] I begin with the provisions of the Children Order. First, both parents have parental responsibility for this child. There is no issue that the father has acquired parental responsibility in accordance with Article 7:

> "(1) Where a child's father and mother were not married to each other at the time of his birth the father shall acquire parental responsibility for the child if
>
> (a) he becomes registered as the child's father."

[28] Article 5 of the Children Order states that:

> "5.—(1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.
>
> (2) Where a child's father and mother were not married to each other at the time of his birth—
>
> (a) the mother shall have parental responsibility for the child;
>
> (b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with the provisions of this Order.
>
> …
>
> (4) More than one person may have parental responsibility for the same child at the same time.
>
> …
>
> (6) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to affect the operation of any statutory provision which requires the consent of more than one person in a matter affecting the child."

[29] Article 6 of the Children Order defines parental responsibility as follows:

"6.—(1) In this Order "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

(2) It also includes the rights, powers and duties which a guardian of the child's fortune or estate (appointed, before the commencement of Part XV (guardians), to act generally) would have had in relation to the child and his property.

…

(4) The fact that a person has, or does not have, parental responsibility for a child shall not affect—

(a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or

(c) any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property.

(5) A person who—

(a) does not have parental responsibility for a particular child; but

(d) has care of the child,

may (subject to the provisions of this Order) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare."

[30] Article 8 of the Children Order makes provision for orders in respect of children. Article 8(1) includes the power of the court to make what is called a Specific Issue Order. This means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise in connection with any aspect of parental responsibility for a child. Article 11(7) of the Children Order also provides that:

"(7) An Article 8 order may—

(a) contain directions about how it is to be carried into effect;

(b) impose conditions which must be complied with by any person—

(i) in whose favour the order is made;

(ii) who is a parent of the child concerned;

(iii) who is not a parent of his but who has parental responsibility for him; or

(iv) with whom the child is living;

and to whom the conditions are expressed to apply;

(c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;

(d) make such incidental, supplemental or consequential provision as the court thinks fit."

[31] Pursuant to Article 3 of the Children Order, in determining any question with respect to the upbringing of a child, the child's welfare shall be the paramount consideration. By virtue of Article 3(4) if the court is considering whether to make an Article 8 order and the making of such an order is opposed by any party, the court shall consider the welfare checklist contained in Article 3(3). The no delay principle is contained in Article 3(2). By Article 3(5), the court is also enjoined not to make an order unless it considers that doing so would be better for the child than making no order at all.

[32] In addition to the Children Order application, I also have before me an order for declaratory relief under the inherent jurisdiction. As I explained at the hearing, I query whether or not this is actually required in a private law dispute about parental responsibility where a Specific Issue Order is available under the Children Order rubric to deal with such disputes. I therefore allowed some additional submissions on this point. In those submissions, the Official Solicitor maintains that declaratory relief is not required if I were minded to make an Article 8 Order given the provisions of Article 11(7) which allow the court to make conditions consequential and supplemental in a specific issue order. Ms Rice BL makes the point that change of name applications are different, hence the need for declaratory relief in some other cases. I note with interest the position of both of the parents' solicitors who informed me there is a difficulty with General Practitioners responding to specific Issue Orders given the requirement for consent. I am grateful to the solicitors for raising this practical issue which I will try to address in this case.

[33] I now turn the jurisprudence that has been put before me, in particular, some cases from England & Wales. The most recent case is *Re H (A Child) (Parental Responsibility: Vaccination)* which is a decision of the Court of Appeal given by Lady Justice King. Ultimately, this is a decision about procedure in public law proceedings, however it is useful in terms of highlighting some of the issues in private law as well.

[34] This case also reiterates the medical consensus in relation to vaccination. At paragraph 34 King LJ states:

> "[34] The current established medical view is that the routine vaccination of infants is in the best interests of those children and for the public good. The specific immunisations which are recommended for children in this country are set out in the Routine Immunisation Schedule which is found in the Green Book: Immunisation against infectious disease, published in 2013 and updated since."

[35] In dealing with private law cases, King LJ sets out the train of jurisprudence starting with the case of *Re C* [2003] 2 FLR 1054 where Sumner J granted applications for specific issue orders sought by two fathers in respect of their daughters requiring each of them to be given age appropriate immunisations. Each of the mothers opposed the applications on the basis that the immunisations posed an unacceptable risk to the health of the children. This decision was upheld on appeal in a decision given by Thorpe LJ in the case of *Re C (Welfare of Child: Immunisation)* [2003] EWCA Civ 1148.

[36] The decision of Theis J is also useful as it was in a private law context. The case is reported at *F v F (MMR Vaccine)* EWHC 2683 Fam. In this case, Theis J made specific issue orders having held that it was in the best interest of two children to receive the MMR vaccination. This was a case where the views of two teenagers had to be taken into account and so it is somewhat different from the facts of this case. Also at issue was the debate about the MMR vaccine. But ultimately, in that case, the judge decided that the vaccination should be given on the basis of a welfare analysis after taking into account the competing parental positions.

[37] A further case is *Re B (A Child: Immunisation)* [2018] EWHC 56 where Judge Clifford Bellamy sitting as a Deputy Judge of the High Court ordered the immunisation of a child in private law proceedings. This is the case in which Dr Elliman was the expert. In this case, the Judge stresses that the outcome is guided by a welfare analysis in relation to a particular child and:

> "93. In making that order, like MacDonald J, I make it clear that my judgment is not a commentary on whether immunisation is a good thing or a bad thing generally. I

> am not saying anything about the merits of vaccination more widely. I do not in any way seek to dictate how this issue should be approached in other situations. I am concerned only to determine what is in B's best welfare interests.
>
> 94. That said, it is, in my judgment, appropriate to make the point that this is now the sixth occasion when the court has had to determine whether a child should be vaccinated in circumstances where a birth parent objects. On each occasion the court has concluded that the child concerned should receive the recommended vaccine (save that in Re C and F (Children) Sumner J decided that the older child, aged 10, should not have the HIB vaccine, because the danger for her had passed, or the Pertussis vaccine, because there was no approved vaccine for a child of her age). With respect to the vaccines with which I am concerned, in the absence of new peer-reviewed research evidence indicating significant concern for the efficacy and/or safety of one of those vaccines, it is difficult to see how a challenge based on efficacy or safety would be likely to succeed."

[38] In the Court of Appeal in *Re H*, King LJ agrees with Deputy Judge Bellamy. Her ruling also suggests that given the medical consensus, applications of this nature should not necessarily have to come to court for adjudication, see paragraph 93. The Court of Appeal did not reach a concluded view on this as regards private law and so it is left open for future debate. In any event, the opinion is stronger in public law where Trusts have the power to determine matters of parental responsibility pursuant to Article 52(3) the Children Order. That was the issue in play in *Barnet London Borough Council v AL* and others [2017] 4 WLR 53. Of course, private law is different as King LJ says at paragraph 94:

> "94. Regardless of whether immunisations should or should not continue to require court adjudication where there is a dispute between holders of parental responsibility, there is in my judgment a fundamental difference as between a private law case and a case concerning a child in care. In private law, by s.2(7) CA 1989 (our equivalent of the Children Order), where more than one person has parental responsibility, each of them may act alone and without the other. Section 2(7) does not however give one party dominance or priority over the other in the exercise of parental responsibility. Each parent has equal parental responsibility, even though the day to day realities of life mean that each frequently acts

alone. This applies particularly where the parties live in separate households and one parent is the primary carer. As Theis J put it in F v F at paragraph [21]:

> 'in most circumstances [the way parental responsibility is exercised] is negotiated between the parents and their decision put into effect.'

As neither parent has primacy over the other, the parties have no option but to come to court to seek a resolution when they cannot agree."

[39] For my own part, I am uncomfortable with the suggestion that one parent can unilaterally decide a matter such a vaccination under the provisions of Article 5(6) of the Children Order, which is the Northern Ireland equivalent of the Children Act. I therefore see a place for disputes to come to court on these issues, particularly as each case must be determined on its own facts, taking into account the characteristics of each particular child. Thankfully, these cases are rare as usually there is a consensus between parents. Also, as there is now a medical consensus, cases are unlikely to involve long or disputed medical testimony.

[40] Some other cases were referred to me which I make some mention of. Firstly, Ms Smyth QC referenced a decision of the Irish Supreme Court *North Western Health Board v W and another* [2001] IESC 90. Whilst non-binding and a constitutional case, Ms Smyth referred to some of the principles in the case drawing from the dicta of Chief Justice Susan Denham. Denham CJ stressed the fact that the decision as to a medical test was one which parents make about their children every day, decisions that are not usually challenged by anyone and which a court would be slow to impose save in exceptional circumstances. This is an interesting case to read but it differs markedly from this case not least because in it the parents were united in their opposition to the test.

[41] I am also grateful to Ms Rice BL for developing the European Convention on Human Rights (ECHR) points that may be in play in a case such as this. There is limited law in this area and it is rooted in the compulsory provisions in various European states but it is nonetheless important to note because, in this case, the Article 8 rights to family life of the adults and the child are engaged. In particular, if there were to be vaccination of this child it would represent an interference with the rights of the mother to a family life of her choosing. Article 8 is, however, a qualified right and so an interference can be justified in this case for the legitimate purpose of the protection of health. The Article 8 rights of the child must also be engaged because a vaccination is an intrusive intervention which affects the private life of the child. This is easily justified within a public health sphere. Reference has also been made to Article 24 of the United Nations Convention on the Rights of the Child, which enshrines the right of the child to have the enjoyment of the highest attainable

standard of health and, within that context, imposes on states an obligation to pursue full implementation of that right, including the taking of appropriate measures to combat disease.

[42] The ECHR decisions that have been highlighted are as follows. Firstly, the case of *Solomakhin v Ukraine* [2012] ECHR 244 2903. This was in the context of compulsory vaccinations by a member state. The ECtHR found that whilst a member state's compulsory vaccination scheme against Diphtheria was contrary to Article 8(1) of the ECHR, it was justified because it was aimed at the legitimate purpose of preventing the spread of Diphtheria. In *Acmanne v Belgium Application No: 10435/83* the ECtHR also found that compulsory screening for Tuberculosis of a child amounted to medical treatment that was provided without consent but also found it was justified as it was aimed at protecting the health of the child concerned and public health generally. In *Boffa and 13 others v San Marino Application No: 26536/95 of 1998*, the ECtHR also considered whether or not Article 9 applied in this general area. Article 9 protects personal beliefs and acts linked to such beliefs but the court did not find that Article 9 was engaged because it does not guarantee a right to behave in the public sphere dictated by such a belief and the term practice in the article does cover every act that is motivated by a belief. In terms of vaccinations, the ECtHR emphasises that the obligation to undergo vaccination applies to everyone regardless of their belief and so it does not constitute an inference with Article 9.

[43] There is a case currently before the ECtHR awaiting adjudication of *Vavricka and others v The Czech Republic* (No: 47621/13). This is before the Grand Chamber and is a case about whether or not the obligation to vaccinate and the sanctions taken against the parents, which in this instance were notably denying access to school, respected freedom of conscience and family freedoms in accordance with Articles 8 and 9 of the Convention and Article 2 of Protocol No: 1 to the ECHR.

[44] *The case of Re SL (Permission to Vaccinate)* [2017] EWHC 125 also considered Article 8 engaged. The exercise being that with regard to the mother's rights under Article 8, these had to be balanced as the objector against the Article 24 rights under the United Nations Convention on the Rights of the Child and ultimately the interference with the mother's right to respect for family life has to be justified and proportionate.

[45] Incidentally, the Official Solicitor also raised Article 2 rights in respect of Finn. I reach no concluded view in relation to that issue as I did not hear any substantial arguments on the point. My concentration has been on Article 8 and whether or not interference is justified and proportionate. As I have said, I am not convinced that Article 9 applies. In the argument filed on behalf of the father, various other jurisdictions are referred to, namely Australia and the USA. It is clear from the comparative analysis that sanctions are imposed in certain jurisdictions if children are not vaccinated: they may not be able to attend school and there generally seems to be a stricter regime in other parts of the world. That coincides with some of the European cases which deal with compulsory vaccination. That is not the case in our

jurisdiction, a factor which must be borne in mind when considering the regulation of parental responsibility.

Conclusion

[46] Having considered the facts of this case, the evidence provided by both parents, the unchallenged accepted evidence of Dr Elliman, the legal submissions provided by all parties including the Official Solicitor on behalf of Finn, and the evidence of the mother, my conclusion is in favour of vaccination of this child. The welfare of Finn is the paramount consideration. This case is fact specific to him. I have also taken a holistic view of the case rather than the two stage approach suggested by Mr Hunt QC. I have reached my conclusion for the following reasons:

(i) The undisputed expert evidence of Dr Elliman is clearly in favour of vaccination. This reflects the medical consensus which appears in the cases I have read. Dr Elliman does not accept that herd immunity provides the answer. There is nothing within the make-up of Finn that would militate against him having the vaccinations contained in Table 8.

(ii) I would have reached my decision regardless of Covid 19. However, Dr Elliman raises the current pandemic. Undoubtedly, this highlights the vulnerabilities of adults and children to disease and the need for an effective vaccine. It also highlights the potential consequences of delay. Other than that, Dr Elliman does not have sufficient evidence at the moment to say that the risks are heightened but this is clearly an evolving situation.

(iii) In light of the undisputed medical evidence, I am far from convinced that it would be unsafe for Finn to have the vaccinations. Rather, the evidence of Dr Elliman is clear that any small risks from vaccination are outweighed by the benefits.

(iv) Applying the welfare checklist to this issue I find as follows:

Article 3(3)(a) – The ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding

Finn is just 4 years old and so this is not a relevant consideration.

Article 3(3)(b) – His physical, emotional and educational needs

Finn has basic physical needs and requires to be kept safe. He is dependent on the adults around him and so it seems to me that everything should be done to provide for his good physical and emotional health.

Article 3(3) – The likely effect of any change in circumstances

If Finn were to receive the vaccination, no contra-indicators have been identified that would compromise his health. Obviously, if he were not to receive the vaccination schedule, there are some issues that may arise because there is a risk articulated by Dr Elliman that not being vaccinated would militate against his health and may have very serious consequences for him.

Article 3(3)(d) – His age, sex, background and any characteristics of his which the court considers relevant

I consider it relevant that Finn is a young child. He is due to start Primary 1 in September and so it is important that this issue is dealt with now. He also lives with a younger half sibling who will not be vaccinated.

Article 3(3)(e) – Any harm which he has suffered or is at risk of suffering

Clearly Finn has not suffered harm but he is at risk of suffering some harm if he is not vaccinated. This is potential physical harm. He may suffer emotional harm as well particularly if there were to be an ongoing dispute. This is not at the level of significant harm that would lead to statutory intervention. However, it may come into the mix in looking at general issues of neglect but that would depend on the circumstances of each case. I stress that this is a child who appears to be very well cared for and it is not a case where the threshold criteria is under consideration.

The child could suffer emotional harm if the mother feels undermined and this has a knock on effect upon family life. However, the mother did not highlight any extreme strain. She has accepted that Finn should have a tetanus if in immediate need. She presents as a responsible and educated woman and so I think that any upset could be managed.

Article 3(3)(f) – How capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant?

There is no issue about the availability and capability of each parent. It is simply a matter that the parents have a dispute about this one issue.

Article 3(3)(g) – The range of powers available to the court under this Order in the proceedings in question

The proceedings in question allow me to make an Article 8 Order. It does not seem to me a case where no Order is appropriate because there is a clear disagreement between the parents that needs resolved.

(v) I have also considered the views of both of the parents. I found the mother to be a witness who genuinely holds beliefs about how to raise her child in a certain way. She was very anxious about the potential harm to Finn should he be vaccinated. However, her arguments do not stand up to any scrutiny. Her concern about harm to Finn is not supported by any of the medical evidence, as Finn does not have any predisposition which points against vaccination. The mother should be reassured by the expert evidence and the fact that Finn has had no major issues during his life which would increase the risk of an adverse reaction.

Her objections in relation to the contents of vaccines are not sustainable based on the medical opinion. Her objections on the basis of there being a compensation scheme are not well founded as the fact of this does not mean that the vaccinations are unsafe *per se*. The mother is also intelligent enough to see that if Finn were in danger he should receive a tetanus.

(vi) I have also considered the father's views. He has changed his mind on this issue. In one sense, that is not particularly surprising since he no longer lives with the mother. I do think there is some strength in the point that there is a nexus between this and the separation of the parents and potentially the relocation application. However, this is not determinative to sway me against vaccination. That said, the father should not think that the course that I am taking gives him any tactical advance in relation to future applications. I am satisfied that he was in favour of keeping the child unvaccinated at a certain stage when he lived with the mother. I do not accept the father's case that he was bullied into that. He is an educated person who agreed with the mother at that time. However, things do change. I note that there was a conversation with the paediatrician in December 2018 whenever vaccinations were raised. This case is not turning on the particular motivations of either parent, it is turning on what is actually best for the child.

(vii) The Article 8 Rights of the mother are engaged. I recognise that making an Order for vaccination would interfere with her rights to family life. However, I consider that this is proportionate and a justifiable interference with Article 8 on the basis of protection and provision of healthcare for the child.

(viii) The child also has Article 8 rights and the provisions contained in Article 24 of the United Nations Convention on the Rights of the Child highlight the fact that a child should have the enjoyment of the highest attainable standard of health.

(ix) I have taken into account the views of the Official Solicitor who supports vaccination for Finn. Helpfully, she has also put forward the views of the Chief Medical Officer which is in support of vaccination of children in Northern Ireland.

(x) I recognise that there is no compulsory vaccination programme in Northern Ireland and, as such, if both parents agreed, this matter would not lead to any intervention in the child's life. Some may think it anomalous that the court should intervene at all in those circumstances as parents make choices for children every day as part and parcel of parenting. Against that, vaccination is taken up by most families in Northern Ireland and so some might say it is highly irresponsible to refuse vaccination for a young child. I need say no more about these propositions.

The fact remains that there is an *impasse* here because of parental disagreement and doing nothing does not solve the problem. There is provision in law for a court to determine disputes in relation to any aspect of parental responsibility where there is a disagreement. With an issue such as this, I do not think that one parent can act alone without the view of the other parent being taken into account.

(xi) I have considered Article 3(5) of the Children Order and in doing so it is my view that an order is required to determine this issue and making an order would be better than making no order at all.

(xii) I have considered Article 3(2) of the Children Order and in doing so I consider that there should be no further delay in relation to this issue, particularly as this boy is due to start Primary 1 in September. I was not told that there is any delay in the provision of vaccination in Northern Ireland at the moment.

(xiii) The welfare of Finn is the paramount consideration. He should have the benefit of vaccination to protect him from illness. Having considered all factors in this case that is the inevitable conclusion.

Conclusion

[47] In light of the above, I am clearly of the view that vaccination is an appropriate course for this young child. I will make an Article 8 Specific Issue Order. I hope that this will be sufficient, however, I have an open mind if a declaration is required in relation to consent. In the first instance, all parties will have to discuss the practicalities such as when the vaccinations will occur and who will take the child. I am sure that both parents will keep Finn's welfare in mind to make sure that the vaccinations are delivered in the least disruptive way. I encourage a consensual approach, however, there is liberty to apply if any issues arise. I ask that counsel draft an Article 8 Order within the next 10 days, bearing in mind the flexibility provided by Article 11 (7) (d).