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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 18/01/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

Between:

A MOTHER

Applicant

-v-

A FATHER

Respondent

IN THE MATTER OF FIVE CHILDREN (AGED 16, 13, 10, 7 and 5 YEARS)

Ms S Simpson QC with Ms G Brady BL (instructed by PJ Flanagan & Co Solicitors) for
the Applicant

Ms M Smyth QC with Ms S Walker BL (instructed by Keenan Solicitors) for the
Respondent

Ms M Connolly QC with Ms S O'Flaherty BL (instructed by the Official Solicitor)
representing the interests of the children

McFARLAND J

Introduction

[1] This judgment has been anonymised. Nothing can be published that will identify the children.

[2] The Mother has applied for a specific issue order to permit the vaccination of the children against a series of illnesses. The background is that the Mother and the Father were married in May 2002 but became separated in 2015, prior to the birth of their youngest child. During the marriage both agreed that the children should not be vaccinated as part of the routine public health immunisation programme

recommended for children. The reason, or reasons, for this is a matter of contention and the court has not been asked to make any specific ruling in relation to this at this stage. The application is opposed by the Father, but is supported by the Official Solicitor.

Vaccinations

[3] The children’s general medical practitioner has recommended that the children be vaccinated in line with the public health programme in accordance with the following table:

Child	Disease
The 5 year old child and the 7 year old child	Diphtheria, Tetanus, Pertussis (whooping cough), Polio, Haemophilus influenza type B and Hepatitis B Menigococcal C Measles, Mumps and Rubella
The 10 year old child, the 13 year old child and the 16 year old child	Diphtheria, Tetanus, Polio. Menigococcal A, C W and Y disease Measles, Mumps and Rubella

The programme includes initial immunisation and booster doses.

[4] Although not covered by the Mother’s C2, application was made at the hearing to include participation in the Covid-19 vaccination programme in accordance with the Public Health Agency’s recommendation which currently states that 12 year olds should receive the vaccination and one booster. I will allow the Mother to amend her C2 to include Covid-19 vaccinations.

The Law

[5] The Mother and the Father share parental responsibility for each of the children. Parental responsibility means “*all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child*” (Article 6(1) of the Children (NI) Order 1995 (“the 1995 Order”).

[6] Article 18 of the United Nations Convention on the Rights of the Child 1989 provides:

“States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.”

The best interests of the child involves consideration of the ‘welfare checklist’ and also includes consideration of the ‘no order’ principle (see Article 3 of the 1985 Order):

“3(1) Where a court determines any question with respect to –

(a) the upbringing of a child ... the child’s welfare shall be the court’s paramount consideration.

(2) ...

(3) ... a court shall have regard in particular to –

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(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;

(g) the range of powers available to the court under this Order in the proceedings in question.

(4) ...

(5) Where a court is considering whether or not to make one or more orders under this Order with respect to a child, it shall not make the order or any of the orders unless it considers that

doing so would be better for the child than making no order at all."

[7] In *Re H* [2020] EWCA Civ 664 King LJ carried out a comprehensive review of the law in relation to vaccinations in the context of the public law and parental objection. That review took into account the legislative framework and the existing case law. Her conclusions are stated at [104] which I set out in full:

"Pulling together the threads of this judgment, I have concluded that:

- i) Although vaccinations are not compulsory, the scientific evidence now clearly establishes that it is in the best medical interests of children to be vaccinated in accordance with Public Health England's guidance unless there is a specific contra-indication in an individual case.*
- ii) Under s.33(3)(b) CA 1989 a local authority with a care order can arrange and consent to a child in its care being vaccinated where it is satisfied that it is in the best interests of that individual child, notwithstanding the objections of parents.*
- iii) The administration of standard or routine vaccinations cannot be regarded as being a 'serious' or 'grave' matter. Except where there are significant features which suggest that, unusually, it may not be in the best interests of a child to be vaccinated, it is neither necessary nor appropriate for a local authority to refer the matter to the High Court in every case where a parent opposes the proposed vaccination of their child. To do so involves the expenditure of scarce time and resources by the local authority, the unnecessary instruction of expert medical evidence and the use of High Court time which could be better spent dealing with one of the urgent and serious matters which are always awaiting determination in the Family Division.*
- iv) Parental views regarding immunisation must always be taken into account but the matter is not to be determined by the strength of the parental view unless the view has a real bearing on the child's welfare."*

[8] *Re H* related to a local authority exercising its public law functions. Keegan J in *Re Finn* [2020] NIFam 12 approved the general approach in *Re H* in the context of private law disputes, such as this one. She also referred specifically to ECtHR

decisions and Article 8 ECHR considerations. These included the decision in *Boffa v San Marino* which held that the obligation to undergo vaccinations applied to everyone regardless of any personal or religious beliefs. At the time of the *Re Finn* judgment, the decision in *Vavricka v Czech Republic* was still outstanding. That judgment delivered on 8 April 2021 was a strong judgment from the Grand Chamber of the ECtHR approving quite stringent measures in the Czech Republic requiring compulsory vaccination against nine common childhood diseases (including the diseases mentioned in the table at [3] above) with sanctions such as fines against parents and exclusion from school of children who had not been vaccinated. The measures complained of by the applicants in *Vavricka* (who had been fined or whose children had been refused enrolment at schools) were held to have been in a reasonable relationship of proportionality to the legitimate aims pursued by the Czech State (to protect against diseases which could pose a serious risk to health) through the vaccination duty.

[9] There is therefore a strong line of jurisprudence both nationally and internationally supporting the current scientific consensus concerning the use of vaccinations for protection of children from a number of serious childhood diseases.

Consideration

[10] No specific scientific or medical evidence was placed before me. However, I am content to rely on the analysis of King LJ, Keegan J and the Grand Chamber of the ECtHR in relation to the efficacy of the various vaccination programmes.

[11] The Father's objections are based on his genuinely held views. These views are based on some research that he has carried out. He has no medical or scientific expertise. An email sent on his behalf by his solicitors on 3 February 2021 sets out ten objections which could be categorised as to include objections based on side-effects, the use of inappropriate ingredients in vaccines, insufficient testing, pressure described as "being terrorised" from government, and biblical teaching. The Father also refers to what he describes as severe adverse reactions and deaths recorded "online by parents."

[12] In the light of the overwhelming consensus on the part of credible scientific and medical sources, and the consistent advice offered by public health agencies in Northern Ireland, in the United Kingdom and internationally there is a very strong evidence base supporting the view that it is generally in the best interests of otherwise healthy children that they be vaccinated.

[13] In certain instances, it may not be in the interests of some children that they receive certain vaccines but this differentiation should be driven by medical advice specific to that child and in particular the child's medical condition. No such advice has been given to any of the children in this case.

[14] The Father's objections are not based on any credible scientific research or reliable data. The court can, and should, consider such research if it is available. Similarly, any valid peer reviewed research within the scientific or medical community will be worthy of consideration. The reality is that such research and evidence does not exist. There are some side-effects which have been identified for all of the vaccines, but the strong consensus is that the general benefit to any child vastly out-weighs the recognised side-effects or other identified risks.

[15] The general benefit, which is often forgotten or given undue weight, is the fact that the diseases which the vaccination programmes combat have been largely eradicated from our society by the effective use of vaccines, and many children and the parents who have to care for them, have been spared premature death or the trauma of having to suffer severely debilitating and long-lasting symptoms throughout their childhood and into adulthood.

[16] Religious beliefs of parents should also be considered, but the strength of such beliefs have to be considered in the light of the general welfare of the child.

[17] Keegan J in *Re Finn* at [46] (iv) carried out an application of the welfare checklist and her analysis which is generalised in approach applies equally to each of the five children, save for one exception in relation to the children's wishes and feelings. It has been reported to the court that each of the children have expressed in general terms their support for obtaining the various vaccines to the Official Solicitor. This is of more importance in relation to the older children, with the eldest, and possibly the second child, being *Gillick* competent in respect of their own ability to consent to medical treatment (see *Gillick v West Norfolk and Wisbech Authority* [1986] AC 112).

[18] I do not propose to set out in a repetitive form my analysis in respect of each child. There are common themes when the 'welfare checklist' is applied, but I am satisfied that notwithstanding the Father's objections it is in each child's interests to receive the vaccination programmes set out at [3] and [4] above.

Conclusion

[19] In the circumstances I will grant the Article 8 specific issue order in respect of each child. It will be for the Mother, acting on the advice of the medical professionals to determine the sequencing of the vaccination programme for each of the children but it should be started for each child as soon as possible. Her solicitor should lodge draft orders which should include the current recommended vaccinations for each child and should also include an order should the Public Health Agency Covid-19 advice change to include any of the three younger children by virtue of their age.

[20] There will be no order as to costs between parties, but there will be the usual taxation orders in respect of the costs of legally assisted parties.