

M v H and others

[2020] EWFC 93

Family Court

MacDonald J

15 December 2020

Judgment

The Applicant appeared in person

The First Respondent appeared in person

Mr Richard Hunt (instructed by [a firm]) for the Second Respondent

Hearing dates: 10 December 2020

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 15 December 2020.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter the question before the court is whether it is in the best interests of P, born in [year] and now aged [an age], and T, born in [year] and now aged [an age], to be vaccinated in accordance with the NHS vaccination schedule. The application for a specific issue order under s 8 of [Part II](#) of the Children Act 1989 requiring the children to be vaccinated is made by the father of the children, M. The father appears in person. The application is resisted by the mother of the children, H. The mother also appears in person. The children are represented through their Children's Guardian by Mr Hunt of counsel. The Children's Guardian supports the father's application.

2. The father's application initially concerned the MMR vaccine but ahead of this hearing the question before the court has widened to include 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. Notwithstanding that the ambit of the father's application

has widened in the lead up to this hearing, I have decided that it is appropriate at this hearing to confine my decision to whether it is in the children's best interests to receive each of the vaccines that are currently included on NHS vaccination schedule, including the MMR vaccine.

3. With respect to vaccinations for possible future travel, I am satisfied that it would not be appropriate today to make an order with respect to travel vaccinations that may or may not be required at some unspecified point in the future. The court has no information regarding when and to where such future travel by one or both of the children will take place and therefore, axiomatically, no information on the then extant requirements for vaccination in the destination identified (if any) or the then state of each child's health at the point at which such vaccinations are proposed should a dispute between the parents arise. Within this context, the mother stated during cross-examination by Mr Hunt that she would be happy to consider travel vaccinations as and when the need arose and was "not ruling them out".

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

5. The father's application is made on ongoing private law proceedings. Those proceedings are listed for further hearing before District Judge Brown on 21 December 2020 on the question of a child arrangements order. Having regard to the issues raised by the father's application, and in circumstances where the Children's Guardian was clear that it would be of considerable benefit for this discrete issue to be determined prior to the final hearing of the substantive proceedings, the Designated Family Judge referred this matter to me in my capacity as Family Division Liaison Judge for the Northern Circuit. On 1 December 2020 I agreed that the application for the specific issue order should be reallocated to me for early hearing prior to the final hearing of the substantive private law proceedings. On 2 December 2020 Her Honour Judge Bancroft gave directions setting up a hearing before me to determine the application for a specific issue order.

6. Within the foregoing context, at the outset of this hearing the mother made an application to adjourn this hearing to enable her to secure legal representation. Having heard submissions from the parties I refused that application. Whilst it is a significant step to deny to a party an adjournment for the purposes of obtaining legal representation, I was satisfied that the mother would not be prejudiced by the court taking that course in this case.

7. The issue in this case is which of two competing courses of action is in the children's best interests and is not an issue that is legally complex. Within this context, as evident from her

two comprehensive statements, the mother has a detailed and intricate knowledge of the facts and matters she relies on in opposing the father's application. In those circumstances, I was satisfied that the mother was well able to argue her own case without the assistance of counsel. In addition, the mother made clear to the court that the primary motivation for wishing to be represented by counsel was because she was concerned about being in court with the father in light of previously alleged conduct on his part. However, this case proceeds as a remote hearing and, whilst required to see the father on the screen, the mother was accordingly not required to be in the same room as the father. Finally, the issue of vaccination has now hung over the substantive proceedings since March 2019. As I have noted above, the Children's Guardian is clear that it would be of considerable benefit for this dispute between the parents to be determined prior to the final hearing of the substantive proceedings. Within this context, I was satisfied that the delay caused by an adjournment of the application would be inimical to the children's best interests, leaving as it would this dispute outstanding as at the date of the final hearing on 21 December 2020.

8. As I had anticipated, the mother conducted the hearing in a way that demonstrated *complete* mastery of the evidence and principles on which she relies in opposition to the father's application, including cross-examination of the father (undertaken by addressing her questions to me, with the father then providing his answer to those questions) and of the Children's Guardian. The mother also made carefully structured and detailed oral closing submissions summarising her arguments before the court. During the course of the hearing I also allowed the mother time, when requested, to collect her thoughts with respect to the questions she wished to ask of the father and with respect to those matters she wished to address by way of closing submissions. The mother remained scrupulously courteous and calm throughout the hearing, notwithstanding that the issue before the court is clearly one that she feels very strongly about.

9. In determining the father's application for a specific issue order I have had the benefit of two statements from the father, two statements from the mother and the Position Statement of the Children's Guardian. As I have alluded to, I have also had the benefit of hearing evidence from the father, the mother and the Children's Guardian and closing submissions from the parents and from Mr Hunt on behalf of the children. The mother also invited the court to consider a number of pieces of information gleaned from the Internet, including videos posted on YouTube featuring an American paediatrician called Larry Palevsky and an American nephrologist called Suzanne Humphries, and I have done so.

10. Finally by way of introduction, the court does not have before it a jointly instructed expert report in this case with respect to the safety and efficacy of the childhood vaccines currently set out on the NHS vaccination schedule. On 2 December 2020 the order of HHJ Bancroft recorded as follows:

"The Mother was informed that if she seeks to rely on expert evidence she needs to make an application in writing before the next hearing and any application will be considered at the next hearing".

11. The mother has made no application for a jointly instructed expert pursuant to Part 25 of the FPR 2010. Whilst the mother did, at the start of this hearing, raise the issue of expert evidence, it was plain that she was contemplating instructing her own expert in support of her case rather than seeking permission for a jointly instructed expert report on the issues in dispute before the court. In any event, having regard to the observations of the Court of Appeal in *Re H (A Child: Parental Responsibility: Vaccination)* [2020] EWCA Civ 664 at [54] that I deal with in more detail below, I am satisfied that absent 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 or a well evidenced contraindication specific to that subject child, it is not necessary for the court to have the assistance of expert evidence in cases where the

question in issue is whether a child should or should not have vaccinations that have been approved and recommended by the relevant public health authorities.

BACKGROUND

12. This case has an unfortunate background history that is common to many cases in which disputes arise with respect to the welfare of children following relationship breakdown.

13. The mother and father were in a relationship from 2004 to 2017. Subsequent to the breakdown of the parties' relationship earlier proceedings in relation to the children were stayed for the purposes of mediation. The father issued his present application for a child arrangements order and a specific issue order on 4 March 2019. Within the application for a specific issue order the father sought an order requiring that the children be vaccinated with the MMR vaccine. Notwithstanding this, it is clear that the primary focus of these proceedings since they were issued in March 2019 has been on the issue of a child arrangements order.

14. Shortly after the issue of those proceedings the mother asserted that the children had made statements that she understood to be allegations of sexual abuse by the father. This resulted in the father being arrested and interviewed by police. No further action was taken by the police. In addition, allegations of domestic abuse in the parents' relationship were also raised against the father by the mother.

15. In light of allegations made by the mother, the matter was listed for a finding of fact hearing, which hearing took place on 22 to 24 January 2020 before District Judge Brown. Whilst a large number of allegations had initially been placed before the court, in the event only two findings were pursued before the court. Findings of sexual abuse were not pursued against the father. Within this context, in a judgment delivered on 11 February 2020 the District Judge found that on one occasion the father struck the mother, causing her to fall to the floor in front of P, and on one occasion, attended the mother's home, banged on the door, was verbally abusive, threatened not to return the children and drove his car in a dangerous manner, striking and damaging a gate post. The District Judge considered that those findings did not constitute a bar to direct contact between the children and their father.

16. Contact has not progressed smoothly since the finding of fact hearing. At a hearing on 27 March 2020 the Children's Guardian recommended that the children should gradually spend more time with the father, moving ultimately to an arrangement akin to the care of the children being shared between the parents. Mr Hunt informs the court that the recommendation of the Children's Guardian at this point in the proceedings was informed by their stated wish to have a relationship with their father. Little progress was then made following the hearing on 27 March 2020 but a further limited and gradual re-introduction and increase in contact was agreed between the parents at a further hearing on 13 May 2020 with a final hearing to deal with still contested matters listed on 19 and 20 August 2020. At that final hearing a further agreement was reached on the issue of child arrangements, with a comprehensive plan for increasing contact being put in place. As I have noted above, the further final hearing with respect to child arrangements for P and T is listed on 21 December 2020.

17. The matter now comes before me for determination of the father's application for a specific issue order in the circumstances I have outlined above.

SUBMISSIONS

The Father

18. The father submits that it is in the children's best interests to have their childhood vaccinations as specified on the NHS schedule of vaccinations, including the MMR vaccine. He is concerned that the illnesses against which the children can be vaccinated by reference to the NHS schedule of vaccinations can have debilitating outcomes for children if caught by them. The father points to the fact that measles can be "life threatening". The father contends that he has never been in agreement with "anti-vaccination" and asserts the position with respect to vaccination of the children has been controlled by the mother. The father submits that it is appropriate for a parent to be guided by the recommendations of the NHS and Public Health England (hereafter PHE) in deciding whether to vaccinate the children in circumstances where he is not an expert in immunology and infectious diseases.

The Mother

19. As I have noted, the mother filed and served two detailed statements setting out in clear terms her objection to the father's application. It is clear that those statements represent, in part, the product of what the mother described in evidence as six years' worth of extensive "research" into the question of vaccination. In circumstances where the mother readily conceded during cross-examination by Mr Hunt that she had no scientific qualifications beyond school level biology, it was also clear that the mother used the term "research" to describe the process of information gathering online that had provided her with the material which underpinned her arguments against the vaccination of the children.

20. The material relied on by the mother in her statements comprised a newspaper article, a document that purported to be the factsheet from an MMR vaccine, a flyer entitled "The Babies Aborted for Vaccines", a list of papers which, and doctors who maintain that there is a link between the MMR vaccine and autism, a list entitled "Historical Data on Vaccines and Outbreaks" and, as I have mentioned, material from an American paediatrician called Larry Palevsky, who the mother described as "world renowned" but who also appears, from the information contained in the mother's evidence and the online material she invited me to consider, to be a very vocal advocate against vaccination engaged in advancing a very specific anti-vaccine agenda. In her second statement the mother cited a paper said to demonstrate that refined sugar reduces a child's immunity for up to five hours, a paper said to demonstrate the health outcomes for unvaccinated children are better than for vaccinated children and a YouTube link to a video from Dr Suzanne Humphries, an American nephrologist. Once again, it is apparent from this material that Dr Humphries is also very vocal advocate against vaccination engaged in advancing a very specific anti-vaccine agenda.

21. Within the context of the foregoing information, the mother's objections to the children receiving the vaccinations specified on the NHS vaccination schedule can be distilled into the following grounds.

22. First, the mother repeatedly asserted that "vaccination is not immunisation". As noted by Lady Justice King in *Re H (A Child: Parental Responsibility: Vaccination)* at [3], "Vaccination is the administration of a vaccine to help the immune system develop protection from a disease. Immunisation is the process of becoming immune to the disease following vaccination." Within this context, by her submission the mother appeared to mean that a given vaccination is not 100% effective and will result, in some children, in no antibodies being produced and, therefore, in no immunity against the disease in question. In this context, the mother cited information she contends demonstrate that vaccinations result in no antibodies being produced in between 2 and 10% of cases. This of course means that, if those figures are correct, antibodies *are* produced in between 90 and 98% of cases. Thus the mother's first argument is perhaps more accurately expressed as 'vaccination is not inevitably immunisation'. Further, the mother asserted that the MMR vaccine does not offer lifelong immunity, by contrast to contracting the diseases which the MMR vaccinates against, which the mother asserted confers lifelong immunity.

23. Second, the mother contended that vaccination does not prevent a person from “carrying” the disease. By this submission, I took the mother to be suggesting that this undermines the assertion that vaccination reduces the incidence of disease in a given population.

24. Third, the mother contends that the diseases against which the NHS vaccination schedule provides for vaccination are childhood illnesses which, in healthy and well-nourished children, are generally mild, with serious complications being uncommon in that group of children and fatal complications being even less common in that group of children. Within this context, the mother submitted that, in circumstances where P and T have a mainly organic, vegetarian diet high in nutrients and minerals and low in refined sugar (the mother contending that the latter lowers the effectiveness of white blood cells in their immunological role), she boosts the children's immune systems appropriately. As a result, the mother contends that P and T have strong immune systems and that, accordingly, should they contract the diseases against which vaccination is recommended by PHE they would not suffer complications (some of which, such as the danger of rubella in pregnancy, are in any event not relevant to the children) and would recover easily. The mother also relies on the fact that the children's “wellness” is kept high, they spend a good deal of time outside and therefore “absorb lots of vitamin D” and that immunity can be genetically inherited, the father in this context having had mumps. In these circumstances, the mother asserts that the children are not in any of the “at risk” categories for complications in childhood diseases and do not require vaccination. As evidence of this, the mother asserts that the children have been in contact with diseases such as Chicken Pox “as well as lots of other viruses, colds” but have not become ill.

25. Fourth, the mother contends that further research is required into question the efficacy and probity of vaccinations for children generally. In particular, the mother concentrated on concerns she asserts exist regarding the *ingredients* in the MMR vaccines. The mother provided a detailed breakdown on the ingredients she contends such vaccines contain, and makes clear her objection to those ingredients being injected into the children, the crux of the mother's submission in this context being that this is wrong to do so without studies being done into the long term effects of the ingredients in the vaccine, with further studies required to “confirm that this is a safe delivery method of vaccines and the long term effect [of] the ingredients entering the brain.” Within this context, the mother articulated her fear that decisions will be made in favour of vaccinating children before the evidence comes to light to demonstrate it is dangerous and detrimental to do so.

26. Fifth, at the same time the mother asserts that recommendations of PHE regarding the vaccination of children are falling behind the developing science. Within this context, the mother asserts that new research undermining the probity and efficacy of vaccination is not being taken into account by the Government or Public Health England. In particular, the mother told the court that, having “listened to the experts who know about these things”, there are signs of vaccines possibly being responsible for long-term health issues in children more serious than the childhood illnesses they aim to prevent. In particular, the mother relies on what she contends are studies that increasingly show that the health outcomes of unvaccinated children are better than those for vaccinated children. The mother further asserted, without referring to any peer reviewed research, that there are studies being done on some of the ingredients of MMR vaccine, such as the MSG and neomycin, which are starting to prove links between vaccination and Alzheimer's disease.

27. Sixth, the mother contends that the side effects of vaccines are more detrimental to children than the effect of the diseases they vaccinate against. In this regard, the mother submitted that payments made by the UK Vaccine Damage Payments Unit confirms that “vaccine damage is real” and that the balance of harm falls in favour of refusing vaccinations. The mother sought to demonstrate this by comparing what she contended have been only two deaths of children under ten years of age from measles in the last 10 years (relying on ONS data) with

the far greater number of claims that have been to the UK Vaccine Damage Payments Unit. Further the mother contends that, if vaccinated, there is a high chance that the children will develop a mild form of the relevant diseases (although this is not necessarily consistent with the mother's assertions regarding the strength of P and T's immune systems) without the guarantee of immunity and without achieving lifelong immunity.

28. Seventh, the mother argued that, in any event, the children should be tested for "natural immunity" before the court moves to authorise the vaccination of the children. By this submission the mother appeared to be contending for testing to show whether the children had already had the diseases in question asymptotically and therefore were immune to the same without the need for the administration of vaccines in accordance with the NHS schedule of vaccinations. As I have noted, the mother contended that contracting the disease for the children would result in "lifelong natural immunity" for them.

29. Eighth, the mother submitted that, in circumstances where vaccinations are not compulsory in the United Kingdom and she is not alone amongst parents objecting to the vaccination of children, any specific issue order made by the court requiring the children to be vaccinated would amount to an unnecessary and disproportionate breach of the children's right to private and family life under Art 8 of the ECHR. Indeed, the mother went further and asserted that, in this context, to order the vaccination of the children "would constitute assault or even grievous bodily harm". In this context, the mother relied on an assertion that, when together, she and the father had agreed between themselves not to have the children vaccinated after discussing the issue in detail and after a nurse had been unable to answer their questions satisfactorily at one of the appointments at which vaccination was due to take place.

30. Ninth, and finally, the mother argues that this case is distinguishable to those reported previously in the authorities, and in particular can be distinguished from the decision of the Court of Appeal in *Re H (A Child: Parental Responsibility: Vaccination)*. Prior to the hearing, and in circumstances where the mother and the father appear in person, I caused a copy of that authority to be circulated to the parties in circumstances where it was an authority that the court would be required to consider and an authority that helpfully summarises the law in this area. With respect to the principles articulated in *Re H (A Child: Parental Responsibility: Vaccination)*, the mother submitted that *Re H (A Child: Parental Responsibility: Vaccination)* was a case concerning public law proceedings and that, in this case, there are no wider concerns regarding the children's welfare, both children being well cared for and, for the reasons advanced by the mother that I have rehearsed, having robust and well maintained immune systems. Within this context, the mother urged the court to determine this case "in isolation" from previous decisions, including that of *Re H (A Child: Parental Responsibility: Vaccination)*.

The Children's Guardian

31. The Children's Guardian submitted that in light of the background to this case, the protracted litigation and the difficulties with the parents being able to compromise, the Court needs to determine the issue of vaccination without delay in order that the parents can concentrate on resolving the issue of child arrangements. Within this context, the Children's Guardian is clear in her recommendation that, taking into account public policy, the recommendations of PHE and the NHS and the decision in *Re H (A Child: Parental Responsibility: Vaccination)*, it is plainly in the children's best interests to be vaccinated in accordance with the NHS schedule of vaccinations. The Children's Guardian contends that having regard to these matters, the court is able safely to conclude that the risk to T and P's health in respect of not receiving any recommended vaccinations would be far greater to their health than the risk of T and P receiving vaccinations. Within this context, the Children's Guardian urges the court to make the specific issue order with respect to vaccination sought by the father in this case with respect to both P and T.

THE LAW

32. [Section 3\(1\)](#) of the Children Act 1989 defines parental responsibility as “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.”

33. As I noted in *H v A (No. 1)* [\[2015\] EWFC 58](#), the rights, duties, powers, responsibilities and authority that comprise 'parental responsibility' are contingent in nature because they are inseparably connected with a parent's obligation to meet the welfare needs of his or her children and arise out of that obligation. A parent's rights, duties, powers, responsibilities and authority insofar as they concern their children are only derived from their obligations as a parent and exist only to secure the welfare of their children (see *Family Law Review of Child Law, Guardianship and Custody* Law Com. 172 (1988) para 2.4 and Art 18 of the United Nations Convention on the Rights of the Child). Within this context the concept of parental responsibility “emphasises that the duty to care for the child and to raise him to moral, physical and emotional health is the fundamental task of parenthood and the only jurisdiction for the authority it confers” (see *Introduction to the Children Act* HMSO 1989 para 1.4).

34. Thus, in *Re D (A Child)* [\[2014\] EWCA Civ 315](#) Lord Justice Ryder (as he then was) reiterated that the concept of parental responsibility describes an adult's responsibility to secure the welfare of their child, which is to be exercised for the benefit of the child not the adult. The status conferred by parental responsibility relates to welfare and not the mere existence of parenthood or parenthood.

35. Within the foregoing context, the courts have repeatedly emphasised that in most cases it is in a child's best interests for *both* parents to have and to exercise parental responsibility for the child together. In this case, both parents have parental responsibility for P and T but they disagree fundamentally with respect to the best course of action in each child's best interests when it comes to vaccination.

36. [Section 2\(7\)](#) of the Children Act 1989 provides that where more than one person has parental responsibility, each of them may act alone and without the other (or others) in meeting that responsibility (although nothing in s 2(7) of the Act is to be taken to affect the operation of any enactment that requires the consent of more than one person in a matter affecting the child). However, Section 2(7) of the 1989 Act does not give one party priority over the other in the exercise of parental responsibility.

37. Within this context, whilst in *Re H (A Child: Parental Responsibility: Vaccination)* the Court of Appeal raised the question of whether, when there is a dispute between parents with parental responsibility regarding vaccination, that dispute should still continue to be a matter which must be brought to court, *per* Thorpe LJ in *Re C (Welfare of Child: Immunisation)* [\[2003\] 2 FLR 1095](#), in *Re H (A Child: Parental Responsibility: Vaccination)* at [94] King LJ ultimately observed as follows:

“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, 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.”

38. Thus, where two parents with parental responsibility disagree as to the proper course of action with respect to vaccination, the court becomes the decision maker through the mechanism of a specific issue order made pursuant to its jurisdiction under [s 8](#) of the Children Act 1989. When considering whether to grant a specific issue order requiring vaccination as being in each child's best interests, those best interests are the court's paramount consideration pursuant to s 1(1) of the 1989 Act and the court must have regard to the matters set out in the 'welfare checklist' contained in [s 1\(3\)](#) of the Children Act 1989 (*Re C (Welfare of Child: Immunisation)* [2003] 2 FLR 1095). Pursuant to s 1(5) of the 1989 Act the court should not make a specific issue order unless doing so would be better for the child than making no order at all. With respect to the matters that inform the exercise of the court's jurisdiction under s 8 of the 1989 Act where the parental dispute concerns vaccination, the courts have considered the issue in a number of cases.

39. In *Re C (Welfare of Child: Immunisation)* Thorpe LJ made clear that there is no general proposition of law that the court will not order vaccination in the face of rooted opposition from the child's primary carer. In *Re B (A Child: Immunisation)* [2018] EWFC 56 His Honour Judge Clifford Bellamy sitting as a High Court judge observed as follows at [93] to [94], in a passage expressly endorsed by the Court of Appeal in *Re H (A Child: Parental Responsibility: Vaccination)* at [74]:

“[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 past, 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.”

40. Finally, as I have noted and within the foregoing context, in *Re H (A Child: Parental Responsibility: Vaccination)* the Court of Appeal undertook a comprehensive review of this area. Whilst that case concerned public law proceedings under [Part IV](#) of the Children Act 1989, the Court of Appeal also reviewed the position in private law proceedings under Part II of the 1989 Act. Within the context of its meticulous and comprehensive review of the historical background and the case law, the Court of Appeal articulated the following conclusions with respect to the vaccination of children generally:

- i) It cannot be doubted that it is both reasonable and responsible parental behaviour to arrange for a child to be vaccinated in accordance with the Public Health Guidelines but there is at present no legal requirement in this jurisdiction for a child to be vaccinated.
- ii) Although vaccinations are not compulsory, scientific evidence now establishes that it is generally in the best interests of otherwise healthy children to be vaccinated, the current estab-

lished medical view being that the routine vaccination of infants is in the best interests of those children and for the public good.

iii) All the evidence presently available supports the Public Health England the advice and guidance that unequivocally recommends a range of vaccinations as being in the interests both children and society as a whole.

iv) The specific immunisations which are recommended for children by Public Health England 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.

v) The evidence base with respect to MMR overwhelmingly identifies the benefits to a child of being vaccinated as part of the public health initiative to drive down the incidence of serious childhood and other diseases.

vi) The clarity regarding the evidence base with respect to MMR and the other vaccinations that are habitually given to children should serve to bring to an end the approach whereby an order is made for the instruction of an expert to report on the intrinsic safety and or efficacy of vaccinations as being necessary to assist the court to resolve the proceedings pursuant to FPR Part 25, save where a child has an unusual medical history and consideration is required as to whether the child's own circumstances throw up any contra-indications.

vii) Subject to any credible development in medical science or peer reviewed research to the opposite effect, the proper approach to be taken by a court where there is a disagreement as to whether the child should be vaccinated is that the benefit in vaccinating a child in accordance with Public Health England guidance can be taken to outweigh the long-recognised and identified side effects.

viii) 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.

ix) This approach to the medical issues does not act to narrow the broad scope of the welfare analysis that is engaged when considering the best interests of the child with respect to the question of vaccination.

41. Finally with respect to the law, the mother contends that a specific issue order requiring the vaccination of the children would breach their right to respect for private and family life under Art 8 of the ECHR. Within this context, I note that in *Re K (Forced Marriage: Passport Order)* [2020] EWCA Civ 190 at [44] the President endorsed the approach to proportionality in *Bank Mellat v HM Treasury (No 2)* [2013] 3 WLR 179 as follows:

“[44] Further, I, like Moylan LJ, would specifically draw attention to the approach that is to be adopted to an assessment of proportionality as described by Lord Reed JSC in *Bank Mellat v HM Treasury (2)* as set out in paragraph 33 of Moylan LJ's judgment. All four of the elements in the four part test in *Bank Mellat* are important and, for completeness, the full test is:

- (1) whether the objective of the measure pursued is sufficiently important to justify the limitation of a fundamental right;
- (2) whether it is rationally connected to the objective;
- (3) whether a less intrusive measure could have been used without unacceptably compromising the objective; and

(4) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.

(See *Bank Mellat*: Lord Sumption at [20]; and especially on question (3), *per* Lord Reed at [70] to [71] and [75] to [76]).”

DISCUSSION

42. I am satisfied that it is in the best interests of both P and T to make a specific issue order pursuant to [s. 8](#) of the Children Act 1989 requiring each of the children to be given each of the vaccines that are currently specified on the NHS vaccination schedule. My reasons for so deciding are as follows.

43. There was little dispute between the parents with respect to the factual background to this application, although they did diverge on the extent to which, originally, they had been in agreement that the children should not be vaccinated. The mother contended that, when together, she and the father had agreed between them not to have the children vaccinated after discussing the issue in detail and after a nurse had been unable to answer their questions satisfactorily at one of the appointments at which vaccination was due to take place. For his part, the father demurred with respect to this assertion. Whatever the true position, and as I observed on a number of occasions during the course of the hearing, it is now abundantly clear that there exists a frank dispute between parents who each hold parental responsibility as to whether the children should be vaccinated, which dispute is not capable of compromise between them and that, in the circumstances, accordingly requires the court to determine by way of a specific issue order under [s.8](#) of the Children Act 1989.

44. In *Re H (A Child: Parental Responsibility: Vaccination)* the Court of Appeal came to the clear conclusion that we have now reached the point where, whilst not compulsory, scientific evidence establishes that it is generally in the best interests of otherwise healthy children to be vaccinated, the current established medical view being that the routine vaccination of infants is in the best interests of those children and for the public good. Within this context, the Court of Appeal was equally clear that, subject in each case to the broad range of welfare factors the court is required to consider when determining an application for an order under s.8 of the 1989 Act, a court will be unlikely to conclude that immunisation with the vaccines that are recommended for children by Public Health England and set out in the routine immunisation schedule is not in a child's best interests absent (a) 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. I am satisfied that neither has been demonstrated by the mother in this case.

45. With respect to the first point, the Court of Appeal further made clear in *Re H (A Child: Parental Responsibility: Vaccination)* by its endorsement of the observations of the court in *Re B (A Child: Immunisation)*, the court will only be in a position to conclude that there significant concern for the efficacy and/or safety of one or more of the vaccines that is the subject of the application if there is a credible development in medical science or new research demonstrating this. That will require, at a minimum, the existence of new, peer reviewed research conducted by a reputable specialist or institution. Further, *if* such credible, peer reviewed research were to emerge then, within the context of an application before the court concerning disputed vaccinations, it would likely need to be the subject of a jointly instructed expert report authored by an expert in the field of immunology instructed in accordance with the long established principles underpinning the admission of expert evidence pursuant to FPR Part 25.

46. There is before this court no credible development in medical science or new peer reviewed research demonstrating to the required standard a significant concern for the efficacy and/or safety of any of the vaccines currently listed on the NHS vaccination schedule. Whilst the mother has put before the court material from a variety of online sources, and whilst she clearly places great store by the material on which she relies, none of that material constitutes evidence of a credible development in medical science or reliable, peer reviewed research concerning the safety and/or efficacy of the vaccines in issue. Further, and within this context, it is important to be clear that tendentious, partial and partisan material gathered from the Internet (what Sedley LJ in *Re C (Welfare of Child: Immunisation)* accurately characterised as “junk science”) and placed before the court to support a personal belief regarding the probity and/or efficacy of vaccinations does not and cannot amount to evidence capable of demonstrating to the required standard a significant concern for the efficacy and/or safety of any of the vaccines currently listed on the NHS vaccination schedule. As Thorpe LJ noted in *Re C (Welfare of Child: Immunisation)* at [23], it is important that partisan material that pursues a particular contentious agenda with respect to vaccination is not allowed to distort the forensic process with which the court is engaged, which forensic process must be informed by reliable, scientifically credible evidence:

“[23] In the end I do not find any of the authorities cited by Miss Gumbel directly in point. Nor is direct authority necessary once the present case is seen not as some significant novelty requiring guidance from this court but as a standard s 8 application which has attracted a great deal of publicity and public interest simply because the specific issue in dispute is both topical and contentious in the wider society to which we all belong. But that wider dimension must not distort the forensic processes leading to the determination of whether the application should be granted or refused.”

47. Within the foregoing context, I have of course borne carefully in mind the mother's strongly expressed views regarding the probity of vaccinating the children. However, in doing so I must be guided by the approach articulated by the Court of Appeal in *Re H (A Child: Parental Responsibility: Vaccination)* which made clear at [101] that “while the views of parents must always be taken into account, the weight that is given to them depends not upon the vehemence with which they are expressed but upon their substance”. Within this context, whilst the mother holds a very firm belief regarding the probity of vaccinating P and T, that position is based on her strong personal belief that vaccination is not required and presents a greater risk than do the diseases being vaccinated against rather than on any credible evidence indicating significant concern for the efficacy and/or safety of one or more of the vaccines that is the subject of this or a well evidenced medical contraindication specific to one or both of the children. In these circumstances, whilst strongly held, I am not able to attach determinative weight to the objections raised by the mother in this case.

48. With respect to the second point, namely whether there exists a well evidenced medical contraindication specific to the children who are subject of the application, there is no evidence before the court to suggest that for either P or T the vaccinations recommended by PHE and listed in the NHS vaccination schedule are medically contraindicated.

49. Finally, with respect to the mother's submission that to make a specific issue order requiring the children to receive the vaccinations set out in the NHS schedule of vaccinations would constitute a disproportionate interference in the Art 8 rights of P and T, I am not able to accept that submission. In so far as making a specific issue order requiring the children to receive the vaccinations set out in the NHS schedule of vaccinations amounts to an interference in the children's Art 8 rights (as to which I express no definitive view), I am satisfied that the objective of vaccination, namely to protect the children from the consequences of the diseases vaccinated against and the population more widely from the spread of such diseases, is sufficiently important to justify the limitation of a fundamental right and is rationally connected to the objective. Within the context of vaccination, I am further satisfied that a less intrusive measure

(for example the dietary options advanced by the mother) could not be used without unacceptably compromising the objective of the vaccination programme. Finally, within the context of the twin objectives of the vaccination programme in seeking to protect the children from the consequences of the diseases vaccinated against and to protect the population more widely from the spread of such diseases, and having regard to the well evidenced consequences of such infections for individuals and their spread within communities, I am satisfied that the specific issue order requiring vaccination strikes a fair balance between the rights of P and T and the interests of the community.

50. In all the circumstances, holding P and T's best interests as my paramount consideration and having regard to the matters I am required to consider under [s. 1\(3\)](#) of the Children Act 1989, I am satisfied that best interests of both P and T to be vaccinated in accordance with the NHS vaccination schedule. It is now clearly established on the basis of credible, peer reviewed scientific evidence that it is generally in the best interests of otherwise healthy children to be vaccinated with those vaccines recommended for children by Public Health England and set out in the routine immunisation schedule which is found in the Green Book published in 2013 and updated as necessary since. It is equally well established that the benefit in vaccinating a child in accordance with Public Health England guidance can be taken to outweigh the long-recognised and identified side effects. The mother has placed no evidence before the court to gainsay these conclusions in respect of P and T, either by way of a medical contra-indication specific to either child or new, credible evidence regarding the safety and efficacy of the vaccines set out in the NHS schedule of vaccinations. I am satisfied on the evidence before the court that there are no other welfare considerations that are contra-indicative to P and T to receiving those vaccinations having regard to [s. 1\(3\)](#) of the Children Act 1989.

CONCLUSION

51. Having regard to the reasons set out above, I make a specific issue order pursuant to [s. 8](#) of the Children Act 1989 requiring each of the children to be given each of the childhood vaccines that are currently specified on the NHS vaccination schedule with the father to be responsible for arranging the same and ensuring T and P are taken to the GP for scheduled immunisations for the remainder of their childhood. A copy of the order in this regard will be sent to the children's GP by the solicitor for the children and placed on each of the children's medical records. I will reserve to myself in the first instance any future applications with respect to vaccinations against the virus responsible for causing COVID-19 and vaccinations for the purposes of travel.

52. Finally, whilst the Court of Appeal did not reach a definitive conclusion on the question of whether, in private law proceedings, the question of vaccination should or should not continue to require court adjudication where there is a dispute between holders of parental responsibility, the observations of the Court of Appeal in *Re H (A Child: Parental Responsibility: Vaccination)* summarised at paragraph [40] of this judgment, whilst strictly *obiter*, make it very difficult now to foresee a case in which a vaccination approved for use in children, including vaccinations against the coronavirus that causes COVID-19, would not be endorsed by the court as being in a child's best interests, absent a credible development in medical science or peer-reviewed research evidence indicating significant concern for the efficacy and/or safety of the vaccine or a well evidenced medical contraindication specific to the subject child.

53. That is my judgment.