

**IN THE COURT OF PROTECTION**  
**IN THE MATTER OF THE MENTAL CAPACITY ACT 2005**  
**IN THE MATTER OF AD**

**B E T W E E N:**

**A CCG**

**Applicant**

**- and -**

**(1) AD**

**(by his litigation friend, the Official Solicitor)**

**(2) AC**

**Ms. Rickard of Counsel on behalf of the CCG.**

**Mrs. C – Mother of AD in person.**

**Mr. Fernando of Counsel on behalf of AD through the Official Solicitor.**

Hearing held remotely on 6.5.2021.  
Judgment formally handed down in the absence of the  
parties on 7.5.2021.

-----  
**Approved Judgment**

.....  
**This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of all the parties must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

1 **Her Honour Judge Brown sitting at Milton Keynes.**

2  
3 This court had adjourned this hearing in order for Mrs. C to gain legal representation.  
4 Mrs. C appeared in person. No application for a further adjournment was made.

5  
6 This court heard an application by the CCG for the following declarations and orders;

7  
8 ***IT IS DECLARED PURSUANT TO SECTION 15 OF THE MENTAL CAPACITY***  
9 ***ACT 2005 THAT:***

- 10  
11 1. *AD lacks capacity to:*  
12 *a. conduct these proceedings;*  
13 *b. make decisions regarding the administration of a Covid-19 vaccination and*  
14 *any booster vaccinations; and*  
15 *c. make decisions regarding medication (including anxiolytic and pain relief*  
16 *medication) to be given in connection with the administration of his Covid-19*  
17 *vaccination.*  
18  
19 2. *It is lawful for the first and second dose of a Covid-19 vaccination to be given to*  
20 *AD as soon as practicably possible in accordance with the care plan (as amended*  
21 *and updated) attached to this order, that care plan including provision for the*  
22 *administration of covert anxiolytic medication prior to receiving the vaccine and*  
23 *covert pain relief (as required) following administration; the timeframe between*  
24 *the first and second dose to be determined by those responsible for AD's*  
25 *healthcare including his General Practitioner. Such care plan may be updated*  
26 *and amended to incorporate any learning from any previous (attempt at)*  
27 *administration of the Covid-19 vaccination, provided that such amendments or*  
28 *updates do not permit the use of force.*  
29  
30 3. *It is lawful for booster dose(s) of a Covid-19 vaccination to be given to AD, in*  
31 *accordance with the care plan (as amended and updated) attached to this order,*  
32 *as and when his General Practitioner considers the same appropriate, providing*  
33 *that the earlier doses of the vaccination have been successfully administered in*  
34 *accordance with the care plan (as amended and updated) attached to this order*  
35 *and provided that any amendments or updates to the care plan do not permit the*  
36 *use of force.]*

37  
38 ***IT IS ORDERED PURSUANT TO SECTION 16 OF THE MENTAL CAPACITY***  
39 ***ACT 2005 THAT:***

- 40  
41 4. *It is in AD's best interests to be given the AstraZeneca Covid-19 vaccination as*  
42 *soon as practicably possible in accordance with the care plan (as amended and*  
43 *updated) attached to this order, that care plan including provision for the*  
44 *administration of covert anxiolytic medication prior to receiving either dose of the*  
45 *vaccine and covert pain relief (as required) following administration, and*  
46 *providing that any amendments or updates to the care plan do not permit the use*  
47 *of force. The timeframe between the first and second dose is to be determined by*  
48 *those responsible for AD's healthcare including his General Practitioner.*  
49

1 5. *It is in AD's best interests to be given booster dose(s) of a Covid-19 vaccination,*  
2 *in accordance with the care plan (as amended and updated) attached to this*  
3 *order, as and when his General Practitioner considers the same appropriate,*  
4 *providing that the earlier doses of the vaccination have been successfully*  
5 *administered in accordance with the care plan (as amended and updated)*  
6 *attached to this order and provided that any amendments or updates to the care*  
7 *plan do not permit the use of force.]*  
8

9 **The court declared that AD lacks capacity to make decisions in respect of the**  
10 **administration of the Covid 19 vaccination, that it is lawful for AD to be given**  
11 **two doses of the Astra- Zeneca Covid 19 vaccine in accordance with the care plan**  
12 **(no use of force) but refused the application to allow for the administering of the**  
13 **booster in a few months' time, without agreement or further application to the**  
14 **court.**

15  
16 **These are the reasons for my decisions;**

17  
18 AD is a man in his thirties, who lives in supported living with a 24/7 package of care  
19 and support from a private Care Provider, commissioned by the Local Authority, not  
20 by the Applicant CCG. AD has diagnoses of moderate Learning Disability, Down's  
21 Syndrome and Autism. He is clinically overweight, with an estimated BMI of 31. He  
22 is of BAME heritage. The evidence before the court is that these factors make AD  
23 'clinically extremely vulnerable' to Covid-19. AD experiences significant health  
24 anxiety and finds health interventions distressing: he consistently refuses to engage  
25 with them.

26  
27 AD is unable to comply with social distancing measures or wear PPE such as a mask,  
28 and he is a sociable person.

29  
30 A letter from AD's social worker notes, [H19]:

31  
32 *It is important to note that [AD] is a young man who likes to access the*  
33 *community. He enjoys going out with staff visiting local restaurants, parks*  
34 *and other places of interest (when permitted) and must have 1-1 care at all*  
35 *times due to the risk posed to him. [AD] has no understanding of COVID 19,*  
36 *social distancing, the need to not touch surfaces and the overall risk he is*  
37 *exposed to by the Covid 19 virus.*

38  
39  
40  
41 AD has also been described by his own care provider, "AD has no concept of  
42 social distancing and will run to hug those staff he has a particularly positive  
43 relationship with".

44  
45 In a letter from his senior Learning Disability nurse it is noted at [H20]:

46  
47 **DYNAMIC FACTORS:** [AD] does not engage with any health appointment  
48 and resists all investigations, whether they are invasive or non-invasive. Our  
49 records indicate this is a long standing issue. This behaviour which challenges

1 services would mean that in the event that [AD] were to contract COVID-19  
2 he would likely be resistant to any cute healthcare which may be required to  
3 manage his health needs.  
4

5  
6  
7 The CCG supported by the Official Solicitor submits that AD is therefore at  
8 increased risk of contracting the virus due to his inability to take measures to  
9 prevent the same; and he would be likely to refuse the healthcare needed to  
10 treat the virus if he were to contract it. AD's risk of contracting the virus will  
11 further rise when he resumes community activities as lockdown measures  
12 ease.  
13

14 The CCG has no direct role in AD's care and support, but has brought this  
15 application in order to ensure that his best interests in relation to vaccination  
16 are determined expeditiously. The CCG consider that AD should receive his  
17 Covid-19 vaccine as soon as possible: The CCG argues that the benefits far  
18 outweigh the risks. AD's father agrees, as do all professionals involved in  
19 caring for AD, but AD's mother, Ms. C, disagrees. Given the substantive  
20 disagreement from AD's mother, the CCG as a concerned public authority has  
21 placed this matter before the Court of Protection.  
22

23 The CCG has completed a thorough best-interests analysis which is at [J4-9]  
24 of the bundle.  
25

26 The substantive issues before the court are:

- 27
- 28 a. Whether AD lacks capacity to make the decision whether to receive his  
29 Covid-19 vaccine (and any supportive medication such an anxiolytic  
30 and pain relief); and
  - 31 b. Whether it is in AD's best interests to receive his Covid-19 vaccine in  
32 accordance with the proposed care plan at [F1].
  - 33 c. Whether the court should approve the administering of the Covid 19  
34 booster at this hearing, to be administered in several months' time.  
35  
36  
37

38  
39 **AD's capacity**

40  
41 All those involved with AD agree that he lacks capacity to make a decision  
42 about the Covid-19 vaccination and any medication to facilitate its  
43 administration: as well as any anxiolytic and/or pain relief medication.  
44

45 The court has considered at length the COP3 at [B1] which sets out the  
46 capacity evidence of the Senior Community Learning Disability Nurse. The  
47 Senior Community Learning Disability Nurse confirms AD's diagnoses at 7.1  
48 [B6]. He explains at 7.2 and 7.3 that during the capacity assessment on 14  
49 April 2021, AD was unable to express understanding by any means. The

1 Senior Community Learning Disability Nurse communicated with AD using  
2 AD's usual communication method (verbal communication), and also tried to  
3 use NHS Easy Read information and a Very Easy Read leaflet. He also used  
4 slight touch to indicate the injection site. AD did not respond to any  
5 communication, and was unable to answer any questions about the need for  
6 the vaccine or the procedure. The Senior Community Learning Disability  
7 Nurse concluded after this assessment that AD was unable to understand the  
8 information relevant to the decision concerning the vaccine, and therefore that  
9 AD lacked capacity to make the decision.

10  
11 The Operations Manager of Care Provider's assessment of AD's capacity is at  
12 [D1]. She is the Operations Manager of AD's care provider. Her assessment  
13 sets out how staff who care for AD went through information about the  
14 vaccine, supplied by MIND, with AD on four occasions in January. On all  
15 occasions when a picture showing a vaccine being administered was used, AD  
16 shook his head and said 'no'. However, he demonstrated limited  
17 understanding of the information given to him about the Covid-19 virus. The  
18 manager of care provider gives her view that AD has "*little or no*  
19 *understanding of what the Covid-19 infection is*" [D1]. She states that her  
20 assessment is based on "*our knowledge and experience of working closely with*  
21 *AD over the last 2 years*" [D3].

22  
23 Nurse undertook a further assessment of AD's capacity in relation to making  
24 decisions about anxiolytic medication and pain relief medication [D4-6].  
25 During his assessment, he confirmed that AD's preferred method of  
26 communication was adopted and that easy-read information regarding the  
27 medications were provided [D5]. He concluded that AD is unable to  
28 understand the relevant information or weigh it in the balance and therefore  
29 that AD lacks capacity to make such decisions.

30  
31 The CCG argues that the evidence is sufficient to demonstrate on the balance  
32 of probabilities that AD is unable to make the decision for himself in relation  
33 to the Covid-19 vaccination, anxiolytic medication and pain relief medication  
34 per s.2 of the Mental Capacity Act 2005 ("the MCA"). It is argued that the  
35 first of the four limbs in s.3(1) of the MCA is met: AD is unable to understand  
36 the information relevant to these decisions, per s.3(1)(a). That is a position  
37 with which the Official Solicitor agrees. Mrs. C does not dispute capacity.

38  
39 The court is therefore satisfied that AD lacks capacity to decide whether to  
40 receive his Covid-19 vaccination and related anxiolytic and pain relief  
41 medication in accordance with the proposed Care Plan dated 16 April 2021.

#### 42 43 AD's Wishes and Feelings

44  
45 AD has a history of refusing healthcare intervention and will say "no" when  
46 introduced to a healthcare professional [B9]. AD's IMCA, states that AD has always  
47 been resistant to medication intervention (possibly caused by a traumatic incident as a  
48 child) [H5-H6]. The applicant recognises that the experience is one that could be  
49 distressing to AD and have proposed a plan in respect of sedation before the vaccine

1 and the manner in which the vaccine is delivered which is designed to cause AD the  
2 least distress [F1-F5].

3  
4 It is reported that staff members caring for AD have attempted to go through the easy  
5 read social story concerning Covid-19 virus and the vaccine. It was noted that AD had  
6 limited capacity but clearly objected to the injection and would shake his head to  
7 verbalise 'no' [H29-H30].  
8

### 9 AD's Participation

10  
11 The Official Solicitor has carefully considered AD's participation in these  
12 proceedings. The CCG applied for permission not to inform AD of these proceedings  
13 because it could distress him and impact on the provision of intervention. This view  
14 has since been supported by IMCA, AD's parents and the manager of care provider.  
15 The Official Solicitor has accepted this position. As a result of the likelihood of  
16 causing AD distress, AD disengaging with professionals (thereby preventing the  
17 success of the vaccination) and as a meeting would likely not provide any more  
18 information about AD's wishes and feelings, it is considered disproportionate to  
19 notify AD of the proceedings.  
20

21 Furthermore, IMCA has expressed to AD's representative, Ms Bergin, that AD has  
22 varying levels of engagement with videocall. Therefore, in order to meet with AD to  
23 seek to obtain his wishes and feelings, it would likely require a face to face visit;  
24 given AD's vulnerability if he contracts Covid-19 this is an additional factor  
25 considered in the decision not to meet with AD.  
26  
27

### 28 **AD's best interests in respect of receiving the Covid 19 A-Z vaccine.**

29  
30 All persons concerned with AD's care, as listed below at (a)-(f), consider that it is in  
31 his best interests to receive the Covid-19 vaccine. AD's mother known as Mrs. C  
32 strenuously opposes the administering of the Astra-Zeneca vaccine (or any Covid  
33 vaccine.). The following support the application;  
34

- 35 a. AD's father (AG);
- 36 b. Nurse, Senior Community Learning Disability Nurse;
- 37 c. AD's social worker from the Local Authority;
- 38 d. The operations manager of AD's care provider;
- 39 e. IMCA, AD's Independent Mental Capacity Advocate;
- 40 f. AD's GP.

41  
42 Previously Mrs. C held a Lasting Power of Attorney for AD in respect of both health  
43 and welfare and finances, but that these were revoked following an application made  
44 by the Local Authority earlier this year.  
45

46 Mrs. C set out her concerns in emails dated 1 March 2021 [E1-18], 9 April 2021  
47 [E19-103] and 22 April 2021 [E127 -131]. The court heard Mrs. C who set out her  
48 concerns and opposition to the administering of the Covid 19 vaccine.  
49

1 **Mrs. C's concerns.**  
2

3 1. Mrs. C considers that it is not in AD's best interests to receive the vaccine for  
4 the following reasons:

- 5  
6 (i) The force or restraint would be too traumatic and destroying for him.  
7 (ii) AD will not be able to trust people and his life will be filled with fear.  
8 (iii) It will cause him physical or psychological damage, a loss of dignity  
9 and emotional and mental trauma.  
10 (iv) It would be best to wait as there may be another form of treatment  
11 which would be better for AD.  
12 (v) AD had some painful experiences at his previous care home. He has  
13 come a long way to restoring his identity and is able to trust the care  
14 provider's staff.  
15 (vi) It may cause AD to exhibit uncontrollable behaviour with pain and  
16 hurt.  
17 (vii) It would be an infringement on his human rights under the European  
18 Convention on Human Rights, Articles 2, 3, 5, 6, 8 and 29.  
19 (viii) It would amount to unlawful use of restraint and a potential claim for  
20 assault, unlawful deprivation of liberty and scrutiny from Regulators.  
21 (ix) Restrictive intervention should only be used as a last resort.  
22 (x) AD had mild symptoms in early 2020, he had a severe cough.  
23 (xi) AD is clinically severely vulnerable but he is healthier than the average  
24 person in any given community sector, he hardly ever gets a cold and  
25 has never had any health ailment and has no underlying diseases.  
26 (xii) AD has allergies to eggs, cheese and other products, giving him the  
27 vaccination could cause an anaphylactic shock.  
28 (xiii) When AD was a baby, he had a routine vaccination and was rushed to  
29 hospital with pneumonia for days with a high fever.

30  
31 2. In respect of the vaccine itself Mrs. C states:

- 32 (i) The Government has announced that the pandemic is over and  
33 therefore the risk of contracting Covid 19 is now very low.  
34 (ii) The government announced the vaccination does not guarantee  
35 prevention of Covid-19 or stop transmission.  
36 (iii) It is not proven safe and the testing and trials for safety has not been  
37 completed.  
38 (iv) The incidence of adverse side effects is very high.  
39 (v) It is not possible to give treatment if effects arise, especially with  
40 anaphylactic shock.  
41 (vi) Vitamin D and C are better treatments.  
42 (vii) There are two injections and another injection may be required if there  
43 is another new variant of the virus.  
44 (viii) Centers for Disease Control and Prevention (CDC – an American  
45 nation public health agency) announced Covid-19 has a recovery rate  
46 of 99.97%.  
47 (ix) Mrs. C considers that when immune systems now attack proteins, it  
48 cannot distinguish between proteins which sit on the virus and those  
49 which sit on our own cells. In the long term (or even in 5 months), we

1 will start to see all the people who have taken the vaccine fall very  
2 sick, have organ failure and die.

3 (x) Mrs. C describes that many specialists expect even more people to  
4 experience deadly side effects after the next “quack” dose and when  
5 they come into contact with natural virus similar to SARSCoV2. It has  
6 not been shown that this experimental gene therapy protects against  
7 infection and serious disease (Covid-10) [E3]. Even the producers  
8 admit that we have to live with these viruses (and vaccines) forever.

9 (xi) ‘The allergic reactions can be fatal. And their injection is not a  
10 “vaccine.” This experimental gene therapy (EGT), which they call  
11 covid-19- “vaccine” has not been shown to prevent  
12 infection/transmission or disease.’

13 (xii) ‘No vaccine or genetic treatment protects as well as vitamin D3 (4000  
14 IE) and zinc (50 mg). Even the Pfizer CEO admitted himself that he  
15 will not be taking the vaccine.’

16 (xiii) Mrs. C addresses the ingredients in the vaccination and appears to  
17 reference this when stating the vaccine contains a ‘Chimpanzee  
18 Adenovirus produced in a Genetically Modified human embryonic  
19 kidney.’ Furthermore, she questions if it contains MRC-5 which she  
20 states is aborted fetal and other DNA which people have the right to  
21 decline.

22  
23 These concerns will be addressed below.

24  
25 Mrs. C has made further points against the vaccine; “*It is in the long term (or even as  
26 short as 5 months) that we started (sic) to see all the people who have taken the  
27 vaccine to fall very sick and have organ failure and will die*”, and “*many specialists  
28 expect even more people to experience deadly side effects after the next ‘quack’ dose  
29 and when they come into contact with natural virus similar to SARSCoV2, weeks or  
30 months later*”, and “*No vaccine or genetic treatment protects as well as vitamin D3  
31 (4000 IE) and zinc (50mg)*” and, erroneously, “*the current law is parents have to give  
32 consent for any vaccination and if they don’t give consent, then it is a criminal offence  
33 to vaccinate*”.

34  
35 Pages [E6-18 and E21-103] of the bundle are documents Mrs. C has provided: a  
36 mixture of documents, screenshots of websites including Twitter, photographs and  
37 hyperlinks. This set of documents, the origin of which is unclear, include statements  
38 to the effect that the vaccine contains “*nanoparticles which allow definitive control of  
39 people vaccination, thanks to 5G*” and “*4 fragments of HIV which give to vaccinated  
40 people: AIDs syndrome and immunodeficiency*” [E24]. The diagram at [E34],  
41 duplicated at [E76], appears to demonstrate that “*sensor nanoparticles*” will be  
42 injected into vaccine recipients which will then interact with mobile phones in order  
43 to send information via mobile 5G networks to the “*cryptocurrency system*”. The  
44 diagram features Bill Gates. At [E36] is a narrative concerning the intention of the  
45 “*New World Order*” to “*fully control and enslave the world’s population by  
46 monitoring and weakening it*” through the Covid-19 vaccine; similar appears at [E77].  
47

48 In respect of Mrs. C’s submissions, Ms. Rickard makes the following submissions  
49 that many of Mrs. C’s arguments are,



1 “well-known, extraordinary and dangerous misinformation concerning the  
2 Covid-19 vaccine, of the kind which is rife online. It should be given no  
3 weight in the Court’s assessment of AD’s best interests. Per Hayden J. in *SD v*  
4 *Royal Borough of Kensington and Chelsea* [2021] EWCOP 14 (at paragraph  
5 31), it is not the function of the Court of Protection to provide a forum for  
6 ventilating speculative theories. The Court must make its decision in light of  
7 the credible professional evidence concerning AD, and concerning the risks  
8 and benefits specific to him.”  
9

10 Addressing two of the key points put forward by Mrs. C;  
11  
12  
13

14 Use of force.

15 The plan put forward for the administering of the vaccine does not use force.  
16 This court has not given permission for force to be used.  
17 Senior Learning Disability Nurse agrees with Mrs. C that force or restraint  
18 should not be used. Force or restraint is therefore not an issue.  
19

20 Distrust will be caused.

21 The professionals who have drawn up the proposed Care Plan do not believe  
22 the administration of the vaccine in accordance with the Care Plan will have  
23 this effect.  
24

25 The court notes that Mrs. C wishes that AD reside with her alone in her home. She  
26 argued that he could effectively isolate with her and she can care for him.  
27  
28

29 The court did not have before it any application in respect of AD’s best interests to  
30 move him from his sheltered accommodation. The current evidence before the court  
31 is that AD’s needs are being met in his current accommodation.  
32  
33

34 **The plan is as follows;**  
35

36 AD will have received a mild sedative in advance of the vaccination, which in  
37 addition to the sedative effect will have the effect of preventing memory formation.  
38 The nurse administering the vaccine will not be a member of AD’s care team. He/she  
39 will swiftly enter the room, administer the vaccine then leave immediately. AD will  
40 be wearing a short sleeve top to allow quick access to his deltoids. Before, during and  
41 after the procedure AD will be distracted by members of his care team. This plan was  
42 scrutinised and questions were asked on behalf of the Official Solicitor. Having  
43 reviewed the plan, this plan is now approved by the Official Solicitor on behalf of  
44 AD.  
45

46 The views of others.  
47

48 AD’s father AG whilst not present at the hearing (having been given notice of the  
49 hearing)

1 Operations Manager of AD's care provider, has confirmed that AD's s father supports  
2 the proposed plan to vaccinate AD [H27]. Ms Bergin has also exhibited to her COP24  
3 witness statement a telephone conversation with AG in which he confirmed his view  
4 that it is in AD's best interests to receive the vaccine without delay.

5  
6 Professional evidence.  
7

8 AD's social worker, has stated that there is an urgent need for AD to have the Covid-  
9 19 vaccine [H19]. AD's social worker states that AC's views are not substantiated by  
10 medical evidence. In respect of AD, he has no understanding of social distancing and  
11 the need to not touch surfaces or the risk he is exposed to [H19].  
12

13 AD's IMCA outlines in her latest report dated 19 April 2021 that the issue of whether  
14 AD receives the vaccine should be referred to court but considering the potential risk  
15 to him administering the vaccine accords with the principles in the Mental Capacity  
16 Act 2005 (MCA) [H25]. Ms Bergin has also filed an attendance note from speaking to  
17 AD's IMCA who expressed concerns about AD accessing the community without  
18 having been vaccinated and noted the importance to AD of engaging with activities in  
19 the community.  
20

21 The Operations Manager states that AD did not show any adverse reaction to staff  
22 having to wear PPE but he has no concept of social distancing and will run and hug  
23 staff he has a particularly positive relationship with [H29]. The Operations Manager  
24 states that it is in AD's best interests to have the vaccine in accordance with the plan  
25 proposed [H30].  
26

27 AD's GP, states that the risk of Covid-19 is reduced in the order of 60-70% after the  
28 first dose and more than 85% after a second dose. AD's GP also outlines the potential  
29 risks arising from the vaccine [H12-H13]. In respect of the proposed sedative,  
30 Temazepam, the side effects include anxiety, headaches, nausea, vision disorder etc  
31 [H13]. In respect of the Oxford Astra Zeneca vaccine there are common side effects  
32 and the issue of blood clotting is extremely rare. AD's GP considers it is in AD's best  
33 interests to have the vaccine as proposed [H13].  
34

35 Senior Learning Disability Nurse comments that it would not be in AD's best interests  
36 to delay until August/ September 2021 to see whether there are alternative treatments.  
37 It is his view that it is in AD's best interests to have the Covid-19 vaccination [H35].  
38

39 The Deputy Director of Quality, on behalf of the applicant has provided three witness  
40 statements. In the CCG's Deputy Director of Quality's second witness statement he  
41 addresses the concerns raised by Mrs C[E133-E136]:

- 42 (i) It is difficult to comment on AD's wellness or the strength of his  
43 immune system but the guidance from the NHS is clear that all adults  
44 with Down's Syndrome are considered extremely clinically vulnerable  
45 to Covid-19.
- 46 (ii) The care provider does not consider that the proposed plan will have a  
47 negative impact on the relationship between AD and his support team.
- 48 (iii) He is not aware of any confirmed evidence that Vitamin D and C and  
49 zinc are effective to prevent a person from contracting Covid-19.

- 1 (iv) The GP does not have any allergies recorded for AD and he has been  
2 given food with eggs in without adverse reaction.
- 3 (v) It would not be in AD's best interests to wait for "anti-viral" treatment  
4 or Allacetro because both are not aimed at immunizing against Covid-  
5 19 but treating it.
- 6 (vi) Liquid or nasal forms of the vaccination are not certain and, in the  
7 event this is successfully developed it will be some time away and the  
8 delay is not in AD's best interests.
- 9 (vii) The EU Regulator and UK Regulator has not linked blood clots to the  
10 Astra Zeneca vaccine definitively.
- 11 (viii) Hydroxychloroquine use instead of the Covid-19 vaccination is not  
12 recommended; it has significant potential side effects; requires close  
13 monitoring with regular blood tests; and a study is referred to which  
14 concluded it is unlikely to be of benefit for preventing Covid-19.
- 15
- 16 3. The CCG's Deputy Director of Quality concludes that it is in AD's best  
17 interests to have the Covid-19 vaccine in accordance with his Care Plan  
18 [E136].

19  
20

21 The CCG's Deputy Director of Quality sets out in his first witness statement the  
22 proposed plan to administer AD with the vaccine [E106-E108 §14-21]. The CCG's  
23 Deputy Director of Quality sets out that the Astra Zeneca vaccine can be transported  
24 and administered in AD's own home (unlike the Pfizer or Moderna vaccine) [E107  
25 §16]. On 15 April 2021 a multidisciplinary meeting was held where it was determined  
26 to be in AD's best interests to receive the Astra Zeneca vaccine. The proposed Care  
27 Plan envisages AD receiving an anxiolytic in advance of the vaccination. It is  
28 proposed that AD receives Temazepam in a cold drink [F4]. This has the benefit of  
29 relaxing AD and preventing short term memory formation [E107 §20]. It is proposed  
30 that the medication is given covertly [E108 §20]. It is proposed that his GP provide  
31 AD with PRN paracetamol should AD experience any side effects [E108 §21].

32

33 The Official Solicitor raised a number of questions in respect of the proposed Care  
34 Plan which have been addressed by the CCG in a response dated 29 April 2021:

- 35 (i) It is not proposed to inform AD of the vaccination as this would  
36 increase his anxiety and the sight of a needle is likely to distress him. It  
37 is noted that easy-read leaflets have already been provided and  
38 explained to AD;
- 39 (ii) It is considered unwise to continue with the vaccine if AD presents  
40 with signs of aggression. The anxiolytic is to be taken with breakfast  
41 and a carer who AD likes will sit with him whilst he has breakfast/  
42 drink to maximise the chance of AD having the sedative;
- 43 (iii) If AD shows signs of aggression or the sedative does not appear to be  
44 working effectively the vaccine will be cancelled and rearranged;
- 45 (iv) The person administering the vaccine will not be part of AD's care  
46 team. Their intervention will be brief. It is noted that the needle for the  
47 vaccine is small and will reduce the likelihood of AD responding to it  
48 when under the sedative;

- 1 (v) There has been consideration of administering the vaccine without the  
2 need for covert anxiolytic medication including (i) no alternative  
3 measures. There are concerns about AD's general anxiety to health  
4 professionals and also a needle phobia (ii) use of desensitisation  
5 technique. It is noted that this has been attempted for the purpose of  
6 cutting AD's nails but has been of limited effect. The SLDN has  
7 recommended the use of an anxiolytic which would help relax AD and  
8 also prevent him from remembering the appointment. Administering  
9 the vaccine without the anxiolytic medication would make it more  
10 likely that AD would be combative or distressed and cause longer term  
11 emotional trauma, which could jeopardise a second dose and further  
12 health intervention;
- 13 (vi) AD has been prescribed diazepam in order to facilitate cutting his  
14 nails but this was of limited effect due to the timing of the diazepam  
15 being given;
- 16 (vii) The likelihood of AD experiencing side effects from the sedative is  
17 low. AD does not present with any contra-indication for the  
18 medication. AD's GP has also confirmed that he is unlikely to  
19 experience side effects from the medication;
- 20 (viii) It is noted that Temazepam has a shorter half-life than Diazepam and  
21 the sedating effects will wear off sooner. It can also be prescribed in an  
22 oral solution format so AD can take this with a cold drink;
- 23 (ix) AD has had soluble paracetamol prescribed in the past;
- 24 (x) AD was not registered at the GP practice in 2016 and 2017 and it is  
25 unclear when he received the influenza vaccine;
- 26 (xi) It is noted that AC has stated AD had an adverse reaction to a  
27 childhood vaccination but his father denies this;
- 28 (xii) AD does have a Positive Behavioural Support Plan (PBS) but the  
29 existing plan reflects behaviours that AD's care providers report are no  
30 longer presenting;
- 31 (xiii) Desensitisation programmes have been tried in the past but did not  
32 work;
- 33 (xiv) If AD does not take the Temazepam with a cold drink there would be a  
34 conversation with the pharmacist regarding changing the means of  
35 administration;
- 36 (xv) Following the administration of the first dose there will be an  
37 evaluation of the risks/ advantages of a second dose to assess the  
38 benefits of a second dose.

39  
40 Mr. Fernando sets out the position of the Official Solicitor as follows,

41  
42 "The Official Solicitor considers that the applicant's Care Plan is carefully considered  
43 and the responses to questions posed are reassuring. Further, it is not considered that  
44 the objections raised by Mrs. C both in respect of (i) the purported effect on AD of  
45 receiving the vaccine (ii) issues with the vaccine itself outweigh the benefits of AD  
46 receiving the vaccine. It is of note that AD has no concept of social distancing or why  
47 it is required. He is social and regularly partakes in activities which would expose him  
48 to the virus. He is vulnerable because of his ethnicity; diagnosis of Learning  
49 Disability, Downs's Syndrome and Autism and his high BMI. The Official Solicitor  
50 therefore considers it is in AD's best interests to receive the vaccine in accordance

1 with the Care Plan [F1-F5]. A balance sheet has been annexed to this position  
2 statement setting out points that have been considered in order to reach the position  
3 that it is in AD's best interests to have the vaccination. The balance sheet is not  
4 purported to be comprehensive of all of the issues taken into account.

5  
6 In reaching this position the Official Solicitor has considered the recent case law and  
7 conducting a balancing exercise consider the factors of particular relevance to AD. In  
8 *E (Vaccine)* [2021] EWCOP 7, *SD v RBKC* 2021 EWCOP 14, *NHS Tameside &*  
9 *Glossop CCG v CR and SR* [2021] EWCOP19 the court was particularly persuaded to  
10 approve the proposed Covid-19 vaccinations due to the vulnerability of the  
11 individuals. As set out AD is considered extremely vulnerable to if he contracts  
12 Covid-19.”

13  
14 The court has been reminded by Counsel for the CCG and the Official Solicitor  
15 Hayden J's comments in the case of *SD (set out above.)*

16  
17 I respectfully agree with the submissions of both Ms. Rickard and Mr. Fernando that  
18 the concerns submitted by AC in relation to the efficacy and basis for the vaccination  
19 are not for the court to determine. The court is of course concerned with the particular  
20 application before it.

21  
22 On behalf of the Official Solicitor Mr Fernando also submits that the principle in  
23 s.1(6) of the Mental Capacity Act 2005 that any act done should be in achieved in a  
24 way that is less restrictive of the person's rights and freedom of action. Furthermore,  
25 that s.6(3) MCA 2005 provides that acts done to prevent harm to P should be  
26 proportionate to (a) the likelihood of P's suffering harm, and (b) the seriousness of  
27 that harm. The Official Solicitor notes there is a general recognition of the benefits of  
28 the Covid-19 vaccination; however, the complexity in AD's case is his resistance to  
29 medical intervention and the distress it could cause him.

30  
31 The Official Solicitor accepts that the proposed use of sedative medication is the least  
32 restrictive means why which AD may permit the vaccination. The Official Solicitor  
33 does not consider that use of physical restraint would be proportionate and invites the  
34 court to make directions making clear that the use of physical restraint is not  
35 authorised.

36  
37 The Covid-19 pandemic has caused untold grief, distress and worry, for so many  
38 families and individuals in many different situations. I entirely understand why there  
39 is genuine and legitimate concern from some, about the administering of a new  
40 vaccine to combat a new virus. People legitimately and in good faith, raise questions  
41 about its efficacy and possible side effects. I approach Mrs. C's concerns with  
42 profound respect and deep compassion. I accept that she genuinely holds these  
43 concerns and is acting out of what she considers, to be the best interests of her child.

44 Ms. Rickard submits to the court that under s.4(7) of the MCA, AC's views must be  
45 taken into account when determining AD's best interests, but they are not  
46 determinative.

47  
48 This court reminds itself of the dicta, per Hayden J. in *SD* (cited above), at paragraph  
49 26: “*strongly held views by well-meaning and concerned family members should be*  
50 *taken into account but never permitted to prevail nor allowed to create avoidable*

1 *delay. To do so would be to expose the vulnerable to the levels of risk I have*  
2 *identified, in the face of what remains an insidious and highly dangerous pandemic*  
3 *virus”.*  
4

5 Similarly, AD’s opposition to healthcare interventions must be taken into account, in  
6 that the administration of the vaccine will be against his wishes and feelings: but his  
7 wishes and feelings are not determinative. These factors must be weighed in the  
8 balance, with all the other evidence about the risks to AD of contracting Covid-19  
9 versus the risks to him of carrying out the vaccination in accordance with the  
10 proposed Care Plan.

11  
12 I have to look at the professional evidence and the best guidance available to the court  
13 at the current time, in the best interests of AD. I have been very impressed with the  
14 care that the professional team working with AD has taken to consider his particular  
15 case and his need for the vaccination. When the balance of evidence from all those  
16 interested in AD’s welfare is considered, in my judgment it is overwhelmingly in  
17 favour of him receiving the vaccine.

18  
19 I am satisfied that on balance, it is in AD’s best interests to be administered the Astra-  
20 Zeneca two shot vaccine. I am further impressed by the careful thought that has gone  
21 into how that vaccine can be administered without causing AD distress. I note the  
22 careful consideration of this plan by the Official Solicitor on behalf of AD. In my  
23 judgment, it is in AD’s best interests for the vaccine to be administered in accordance  
24 with the care plan which does not involve the use of force.

25  
26 In the event it is not possible to administer the vaccination to AD successfully and a  
27 more restrictive care plan is proposed, the matter should be brought before the court  
28 for further directions.

29  
30  
31 **Should the court approve administration of the booster at this hearing.**

32  
33 On behalf of the CCG, Ms. Rickard submitted that the booster would only be  
34 administered if the plan in respect of the two shots of the A-Z vaccine went well and  
35 there were no serious adverse reactions. The team caring for AD would look at all of  
36 the information available and consider what is in AD’s best interests at the appropriate  
37 time. Allowing this order now would save on a further application.

38 However, the application in respect of the booster jab is opposed on behalf of AD.

39  
40 Mr. Fernando submits,

41 “It is difficult for the Official Solicitor to take a position on this when AD’s response  
42 to the first vaccination is not known and the position regarding revaccination has not  
43 yet been determined. Further, the discussion for the booster is not part of current  
44 government policy or guidance and AD should be afforded the opportunity to  
45 consider it at the appropriate time as would be afforded if he had been assessed to  
46 have capacity.”

47  
48 Mrs. C was opposed to the booster, given her strenuous opposition to the two shot  
49 vaccine.

1 On this issue I respectfully agree with the submissions on behalf of the Official  
2 Solicitor. The guidance and medical advice may have changed by the time any  
3 booster may be required. Any individual would wish to consider whether to have the  
4 booster at the time that it is available and those representing AD should be afforded  
5 the same opportunity. I respectfully accept the submission of the Official Solicitor  
6 that it would represent “overreach” to sanction administration of the booster at this  
7 time.

8  
9

10 My sincere thanks to Ms. Rickard and Mr. Fernando for their excellent written and  
11 oral submissions.

12 My thanks to all the professionals who have considered this case so carefully, in the  
13 interests of AD.

14 My thanks to Mrs. C who put her case clearly. I hope she will be able to accept the  
15 judgment of this court.