Neutral Citation Number: [2021] EWHC 1581 (Fam)

CASE NO: SD20C00702 / SD20C00785

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/04/2021

Before:

MR JUSTICE WILLIAMS

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Between:

East Sussex County Council	**Claimant**
- and -	
SB	**Respondents**
-and-	
LH	
-and-	
VB AND AB (Through the Children's Guardian)	

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Martin Downs (instructed by Orbis Law/ESCC) for the **Applicant**
Cherry Harding (Duncan Lewis Solicitors) for the **1st Respondent**
Litigant in Person (LH) **2nd RESPONDENT**
Luisa Morelli (Campbell Hooper and Co solicitors) **3RD RESPONDENT**

Hearing dates: 27 April 2021

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APPROVED JUDGMENT

THE HONOURABLE MR JUSTICE WILLIAMS

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 the children and members of their family 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.

Williams J:

1. AB, a boy, was born on [a date in] 2018, and is now 2 years and 5 months old. AB is the subject of an interim care order. The Local Authority is East Sussex County Council. The social worker for AB is Tina Heath. The local authority is represented by Martin Downs Counsel, instructed by Sadie Scott of Orbis Law/ESCC. The first respondent is SB, the mother, who is represented by Cherry Harding, counsel, instructed by Ms Adeeba Naseem of Duncan Lewis Solicitors. The second respondent is LH, the father of AB, who appears in person having been represented by solicitors (Fosters) and counsel at all hearings up until the hearing on 21 December 2020. The fourth - sixth, respondents are the children by their children's guardian Lucy Fox represented by Luisa Morelli, Counsel instructed by Anthony Forde of Campbell Hooper and Co solicitors. I am only concerned today with AB the sixth respondent.

2. The application before me today relates to the vaccinations that AB should have. The local authority proposed that AB have vaccinations in accordance with the Public Health England/NHS guidelines. The mother and father opposed this. The mother has made an application dated 20 November 2020 (F162) in respect of AB's vaccinations, which was before the court at the hearing on 21 December 2020 and was adjourned (F174). The issue of AB's vaccinations was to be considered at the ICO discharge hearing on 16 & 17 February 2021 but that did not go ahead due to the emergence of further allegations about the conduct of the parents from one of the children. The ICO remained in force and this issue was reallocated to a judge at High Court level.

3. The Local Authority applied for an EPO/interim care orders on 23rd June 2020 and interim care orders were made in respect of AB (and his sibling) on 7 July 2020 and he remains placed in foster care. Their older sibling is accommodated under s 20 of the Children Act 1989, although he is currently living with the maternal grandfather and refusing to use accommodation provided by the local authority. The ICO has remained in place despite applications being made by the parents for its discharge since then and most recently the case was before His Honour Judge Bedford when the ICO was renewed again. The basis of the threshold appears to be a combination of emotional abuse through exposure to domestic abuse, neglect arising in part at least from allegations in respect of the mothers mental health and more recently allegations of inappropriate sexualised behaviour.

4. Directions were made for the local authority to serve an immunisation plan by 4th November 2020 and on that day, the local authority informed the court and the parties in the following terms [21]

   "*Dear Sirs, LA immunisation Plan for AB. The LA have fully considered the parents' proposal for AB's immunisations. Due to AB being subject to an Interim Care Order the LA have liaised directly with the Looked After Children doctors and following confirmation that Dr Imad Boles, consultant paediatrician, Lead for immunisations in trust, recommended only the NHS vaccinations schedule, the LA recommend that AB have a vaccination catch up plan via the NHS schedule which will enable him to take these at his GP. Attached, by way of filing, is the response from the LAC doctors, the NHS vaccine schedule and relevant documents provided by the NHS regarding the vaccines proposed, common questions and side effects"*[K10]. 8.5.

5. The NHS vaccine schedule is:
Babies under 1-year old Age Vaccines
8 weeks 6-in- 1 vaccine, Rotavirus vaccine MenB
12 weeks 6 - in - 1 vaccine (2nd dose) Pneumococcal (PCV) vaccine Rotavirus vaccine (2nd dose)
16 weeks 6 - in - 1 vaccine (3rd dose) MenB (2nd dose)
Children aged 1 to 15 Age Vaccines
1-year Hib/MenC (1st dose) MMR (1st dose) Pneumococcal (PCV) vaccine (2nd dose) MenB (3rd dose)
2 to 10 years Flu Vaccine (every year)
3 years & 4 months MMR (2nd dose) 4-in-1 pre-school booster

6. The mother objected to the plan of the local authority and, as per the directions of HHJ Bedford [F115] made her application [F162] and put forward an alternate schedule. She has filed a detailed statement setting out her position and exhibiting various documents in support.

7. The mother and father have consulted Dr Halvorsen from Baby jabs to secure medical advice around immunisations. In line with his advice the parents propose the following;
<u>3 months 1st DTaP-IPV-Hib-Hep B, Men B & PCV & rotavirus</u>
<u>8 months 2nd DTaP-IPV-Hib-Hep B (in Malaysia)</u>
21 months Hib
22 months IPV
23 months measles
24 months MenACWY
25 months 3rd DTap
26 months measles antibody blood test and second measles vaccine only if not immune Complete course of polio if traveling to at-risk country
5 years DTap booster
12 years Men ACWY
15 years dT booster

8. The mother and father say that AB was born in the USA and was not given any vaccinations prior to his return to the UK when he was about four months old. At that time he attended the GP with his father who says that he was given the impression that vaccination was mandatory and so on or about 27 February 2019 AB received his first set of vaccinations; which would have been the usual eight week vaccinations under the NHS schedule; those being the six in one vaccine, the rotavirus and the meningitis B. A photograph of a Red Book was submitted on behalf of the mother which shows a page from a red book purportedly recording the eight-week vaccinations being given on 27 February 2019. The page shows the name of a doctor but does not record the usual information that accompanies entries in red books including the site, the batch number and the signature of the individual delivering the vaccine. The father had not seen the photograph provided by the mother but seemed to think that the Red Book was with the mother. The mother seems to suggest that the second entry shown on the photograph accompanied by the date'26/7' and the name of a doctor had also been entered in the Red Book at the time the vaccine was given. That entry also did not contain the batch number or site and on making further enquiries the mother said that the Red Book had gone missing, but she had retained

some pages. I'm afraid I was left confused as to whether the photograph submitted purported to be an original photograph predating the Red Book going missing or whether it was a photograph of some retained pages which the mother also seemed to suggest she had kept or whether a duplicate Red Book has been created and if so by whom. In her statement the mother produced some text messages between herself and a doctor which seem to record that AB had received a six -in -one vaccine 'Infanrix' which contained the same six constituents incorporated in the NHS six in one vaccine.

9. AB's medical records contain an entry for 3 December 2019 stating that 'child is staying with dad-mum made contact with surgery saying does not want child to be vaccinated without her consent'. This appears to have been shortly after the father collected AB from Malaysia.

10. Subsequently it was in June 2020 that AB became a looked after child and it seems that the issue of vaccination was first before the court by August following a LAC medical. I note it is referred to in the case summary filed for the August 2020 hearing, but matters do not appear to have progressed until October 2020 when directions were given, and the mother issued her application for an injunction and filed her evidence in support. The local authority and Guardian have not filed evidence in response but have relied on the absence of any matter identified in the mother's evidence which takes the case outside the parameters identified by the court of appeal in *Re H*.

11. The lack of certainty as to the vaccinations that AB has already received is unfortunate as uncertainty over his immunisation history would place him into the bracket '*Vaccination of individuals with uncertain or incomplete immunisation statu*s' where the general principle is that "*unless there is a reliable vaccine history, individuals should be assumed to be un-immunised and a full course of immunisation is planned. Individuals coming to UK partway through their immunisation schedule should be transferred onto the UK schedule and immunised as appropriate for age. If the primary course has been started but not completed, continue where left off-no need to repeat doses or restart course. Plan catch up immunisation schedule with minimum number of visits and within a minimum possible timescale-aim to protect individual in shortest time possible.'*

12. During the hearing I explored the means by which the mother (who commissioned the second set of vaccinations) and the local authority who currently have parental responsibility under the ICO could establish what immunisations were given (if any) in July 2019. The Schedule provided by 'Baby jabs' seems to suggest that they had accepted that the second set of vaccinations were given in Malaysia. Ultimately it will be a matter for the doctor treating AB to decide what vaccinations are appropriate having regard to what view they take of the reliability of the history. Plainly it is in AB's best interests that the local authority make contact with the doctor alleged to have given the vaccinations in Malaysia in order to establish what vaccines were given so that it can be recorded in AB's medical history and so that it can inform decisions as to his current vaccination needs. The ICO and the order from this hearing can be disclosed to the doctor in Malaysia in order to facilitate the obtaining of that information.

13. Subject to achieving clarity of the immunisations that AB has already received it would appear that the difference between the NHS schedule and the Dr Halvorsen schedule is as follows;
    a. The NHS schedule would involve the giving of the 3rd dose of the six in one vaccine including the polio element, the parents schedule would involve giving individual monthly vaccinations but not including polio.
    b. The NHS would involve the MMR vaccine, but the parents would vaccinate against measles and mumps but not rubella and so would not agree to the MMR vaccine.
    c. The NHS would vaccinate against haemophilus influenza and meningitis C, PCV13 and Men B whereas the parents would include PCV, meningitis and septicaemia with a further measles vaccine if antibody testing did not show immunity.

The Parents Case

14. In order to determine the issue, I have been provided with detailed documents by the parties legal representatives. I have read the mother's statement and exhibits and the position statement of the father. I heard submissions from the legal representatives and the father read a preprepared statement. A section of the case lines bundle was dedicated to the issue of vaccinations and I have referred to the material within that as well as other parts of the court bundle. I did not hear oral evidence from the parties; it was not suggested and nor did I consider it necessary in order to determine this issue.

15. The mother is very worried about the NHS schedule and her fear is that AB will be harmed by the delivery of vaccines that are not necessary for him and may contain aluminium which is unnecessary. The information on rubella makes clear she submits that it is not a direct risk to AB's health whereas the vaccination always carries some risk. The risks to AB from the rubella vaccine are greater than from the virus itself because he is male. Vaccination of him for rubella is for the benefit of the population at large and not AB himself. She is concerned about side-effects identified by Dr Douglas in LB Tower Hamlets and M, F and T (a child) 2020 EWHC 220 (Fam) at para 19. I note that whilst the evidence does support the proposition that rubella is generally a mild condition that complications can include thrombocytopacnia (the rate may be as high as one in 3000 infections) and post-infectious encephalitis (one in 6000 cases) (Lokletz and Reynolds, 1965; Plotkin and Orenstein, 2004). In adults, arthritis and arthralgia may occasionally be seen after rubella infection; chronic arthritis has 2013 rarely been reported (Plotkin and Orenstein, 2004). She says if there is no discernible medical benefit to AB, he should not have it and that were he in her care he would not have it. As the order is an interim one and he may be back in her care or that of both parents their views should carry particular weight it is argued.

16. In relation to aluminium content in vaccines the mother and father rely on what is contained in the 'Baby Jabs' information which says;
    "Dr Richard Halvorsen, our medical director, has been concerned for many years about the quantity of aluminium injected into babies injected into babies as part of the NHS immunisation schedule. He has calculated that babies given vaccines according to the recommended NHS schedule receive quantities of aluminium above both the World Health Organisation and USA recommended maximum safe intake levels. The

UK does not recommend any maximum safe levels. Scientists from the USA have now published research (https://www.sciencedirect.com/science/article/pii/50946672X17300950), that shares our concern at Baby Jabs. Though this research focuses on the US schedule, children in the UK receive a similar quantity of vaccines. The scientists write that babies are "at risk of acute, repeated, and possibly chronic exposures of toxic levels of aluminium in modern vaccine schedules." No research has ever been done to test what the maximum safe level of aluminium in a vaccine might be.

17. Ms SB argues that the court should make an order to prevent this happening under an interim order in particular as AB's long term future is not yet known and it is not known whether AB will be returning to his mother's care or in which country he will be living not. She relies on his US citizenship and says this programme would not be pursued there and that anti-body testing would be undertaken if the parents wished it. SB and LH therefore want an individualised programme of vaccination for AB. Their beliefs are said to be based upon advice from Dr Halvorsen, from many other sources including "Jabs" and her own personal beliefs. The mother is concerned that PHE favour the MMR or MMRV vaccination for reasons of cost. If it is possible to avoid those elements of the PHE regime that she has been warned against by adopting a different schedule and thus avoid the additional risks that she has been warned of, then she argues that there is little reason not to take that course. She says that whilst she gave AB the 2nd 6-in-1 vaccine it was after that that she carried out research that has led her to her current position and that whilst he had parts 1 and 2 of the polio vaccine he should not have 3rd unless he is travelling to a part of the world where the risk is a live one. She submits that the local authority must make an individualised welfare decision and she observes that the children's guardian has described the issue to be "finely balanced", but it seems that she needs to have an order to prevent that happening. She believes that monthly trips to London and occasional blood tests to check for anti-bodies are not a welfare detriment compared to the risks of vaccination and were she and the father the sole holders of PR that is certainly the course they would take.

18. She submits that this is a significant decision which there is no compelling urgency to take now and where a final hearing will be listed within the next several months which may result in AB's return to her and the fathers care. The court should not in effect take the decision out of their hands in those circumstances.

19. The father also opposes the NHS scheme on broadly the same grounds as the mother, emphasising that;

    a. AB is not at risk of rubella – it is the risk to others
    b. The LA have not proved the benefit to AB.
    c. Dr Halvorsen is CQC regulated and there is no reason to question his medical credentials or his proposed treatment plan.
    d. The last outbreak of Polio was 1984 and there are only 3 countries where it is a live issue
    e. Vaccines can cause damage – the vaccine damage payment scheme demonstrates this

f. An individualised programme by a qualified doctor is better for AB as that can include antibody testing to confirm whether he has existing immunity as he has had some jabs. The NHS scheme is a one size fits all.
g. The treating doctors now say there is no risk from the vaccines and that is simply wrong. He does not have faith in them
h. The parents will undertake the trips and meet the expenses and so there is no burden to the local authority.
i. He should not have vaccines including mercury or aluminium

20. The local authority and the Guardian both support the administration of a schedule of vaccines including making up missed vaccines in accordance with the NHS/PHE PhD recommended schedule. They do not accept that any of the objections put forward have any merit or that the parents' proposal would better promote AB's welfare than pursuing the NHGS/PHE schedule. Mr Downs made clear that the LA are not seeking to dictate to the GP what vaccinations are to be given but rather will be led by the advice they are given by AB's treating doctors as to what vaccinations are required for him to bring him into conformity with the NHS scheme. That it seems must be the appropriate course and they confirm they will provide the GP with such information as they can to enable that decision to be made with the fullest knowledge of AB's medical history.

The Legal Framework

21. The Court of Appeal gave extensive consideration to the issue of the local authorities power to consent to the administration of vaccinations to looked after children in **Re H (A Child) (Parental Responsibility: Vaccination)** [2020] EWCA Civ 664, [2020] 2 FLR 753.

22. The local authority may consent to the giving of the vaccinations as part of the legal powers they have as a joint holder of parental responsibility.

23. The Court of Appeal considered both the legal framework but also the evidence as to the medical benefits of vaccination to children. The following extract appear to me to be relevant to the application before me.

[25] It should be noted that s 33 applies equally to interim care orders as i t does to final care orders: s 31(11). The approach to vaccination does not depend upon whether a child is subject to an interim care order or a final care order. Many children who are subject to interim care orders are of an age where they would be expected to be vaccinated.
Vaccinations
[34] The current established medical view is that the routine vaccination of infants is in the best interests of those children and for the public good. The specific immunisations which are recommended for children in this country are set out in the routine immunisation schedule which is found in the Green Book: Immunisation against infectious disease, published in 2013 and updated since.
[35] Dr Douglas, in a report commissioned in these proceedings, set out a proposed programme of immunisation for T which is in compliance with that recommended in the guidance in relation to 'Children from first up to second birthday'. T, who has no contra-indications, will now be vaccinated in accordance with this programme.

[36] Dr Douglas summarised the consequences of failing to vaccinate a child by reference to a detailed consideration of the main characteristics of the diseases against which children in the UK are vaccinated and set that against an analysis of the potential side-effects in each case. I summarise Dr Douglas' analysis below, not in order to determine whether it is in the best interests of T to be vaccinated – that has been conceded and is obviously the case – but as context against which to consider whether the giving of vaccinations can be properly classified as serious medical treatment:
(i) Diphtheria, tetanus and whooping cough are all serious bacterial infections, each of which are potentially fatal and each of which are now rare in the UK due to the success of the vaccination programme.
(ii) Polio is a serious viral infection, also rare as a consequence of the vaccination programme.
(iii) Pneumococcus and meningitis B and meningitis C are each contagious bacterial infections which can lead to meningitis which can be fatal and with many who survive having serious permanent problems including learning difficulties and loss of limbs.
(iv) Haemophilus influenzae is a contagious bacterial infection that causes meningitis and a number of other serious illnesses. Although rare, due to the vaccination programme, 1 in 20 of those who contract the disease will die.
[37] Three well-known childhood infectious viral diseases are vaccinated via the well-known MMR vaccine (Mumps, Measles and Rubella):
(i) Measles can cause pneumonia and encephalitis and, rarely, death. Due to the fall in the uptake in the MMR vaccination it has become more common in the UK with 991 cases confirmed in 2018.
(ii) Mumps can be complicated by meningitis, encephalitis, hearing loss, and pancreatitis.
(iii) Rubella can cause a flu-like illness and rash. If contracted by a non-immune pregnant woman, it can cause miscarriage and severe birth defects.
[38] Dr Douglas set out the recognised side-effects of vaccination. It is unnecessary to set them out in detail here as Hayden J quoted the relevant evidence in full at para [18] of his judgment. Most commonly, the relevant vaccines can cause minor side effects in the form of short-lived fever, irritability and pain and swelling at the injection site.
[39] The MMR vaccine is slightly different i
n that it is comprised of a combination of attenuated live measles, mumps and rubella viruses which can, a little time after the injection, lead to the child getting a mild form of measles or mumps which lasts a couple of days. Certain rare complications exist but these are less likely to occur from the effects of the vaccination than from the natural virus infection.
[40] Finally, when considering vaccinations, Dr Douglas makes a further three points:
(i) Extensive research has not shown any link with the MMR vaccine and autism.
(ii) Vaccinations in the UK no longer contain thiomersal (a compound containing mercury) and there is no evidence that
problems such as dementia or autism.
(iii) Single vaccinations for the various diseases which are given in combined vaccinations are not recommended as there is no evidence that they are either more effective or safer in terms of side effects.
[41] For the purposes of this judgment, it is only necessary to consider the first of these points, namely the absence of any link between the MMR vaccine and autism.

Some consideration of this issue is required in order to provide the context against which a determination can be made by this court as to whether vaccinations are of themselves of such 'gravity' or 'seriousness' that a local authority cannot grant consent pursuant to its powers under s 33(3), CA 1989.
[42] Most, although not all, of the concerns about the safety of vaccinations which have led to the courts' involvement in decisions as to whether a child should be vaccinated relate to the MMR vaccination. This vaccination was introduced in this country in 1988 and became part of the routine immunisation programme carried out through the primary care programme and, particularly, health visitor services.
…
[53] It follows that, no matter what legitimate concerns parents may have had following the publication of Dr Wakefield's discredited paper, there is now no evidence base for concerns about any connection between MMR and autism. On the contrary the evidence, as set out in the unchallenged report of Dr Douglas in this case, 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.
[54] I have, in (relatively) short form, rehearsed the history in relation to the MMR controversy and summarised Dr Douglas' mainstream analysis in relation to the other vaccinations which are habitually given to children. I do so as it is my hope that it will serve to bring to an end the approach which seems to have grown up in every case concerning vaccinations, 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' (FPR 2010, r 25.4(3)).
[55] In my judgment, subject to any credible development in medical science or peer-reviewed research to the opposite effect, the proper approach to be taken by a local authority or a court 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. Any expert evidence should ordinarily, therefore, be limited to cases where a child has an unusual medical history and to consideration of whether his or her own circumstances throw up any contra-indications, as was the case in relation to one specific vaccine in Re C (Welfare of Child: Immunisation) [2003] EWHC 1376 (Fam), [2003] 2 FLR 1054 (see para [320]).
[56] I should be clear that I am here dealing with the purely medical issues which may arise in any specific case, and am not seeking to narrow the broader scope of a child's welfare and of any other relevant considerations which it may be appropriate for a local authority or a court to take into account when considering his or her best interests when considering the question of vaccination.

Is the giving of a vaccination to be regarded as a 'grave' issue?
[85] I cannot agree that the giving of a vaccination is a grave issue (regardless of whether it is described as medical treatment or not). In my judgment it cannot be said that the vaccination of children under the UK public health programme is in itself a 'grave' issue in circumstances where there is no contra-indication in relation to the child in question and when the alleged link between MMR and autism has been definitively disproved.
Proportionality
[98] It has not been argued by Mr Bailey on behalf of the parents that allowing the local authority to consent to the immunisation would represent a disproportionate breach of their Art 8 European Convention rights. I merely say for completeness that

if such an action on behalf of the local authority does represent an infringement of the parents' or child's rights under Art 8, I am satisfied that, when considered through the prism of Bank Mellat v HM Treasury (No 2) [2013] UKSC 39, [2013] 3 WLR 179 (as endorsed in a family context in Re K (Forced Marriage: Passport Order) [2020] EWCA Civ 190, [2020] All ER (D) 137 (Feb), at para [44]), any interference is proportionate
[104] Pulling together the threads of this judgment, I have concluded that:
(i) Although vaccinations are not compulsory, the scientific evidence now clearly establishes that it is in the best medical interests of children to be vaccinated in accordance with Public Health England's guidance unless there is a specific contra-indication in an individual case.
(ii) Under s 33(3)(b), CA 1989 a local authority with a care order can arrange and consent to a child in its care being vaccinated where it is satisfied that it is in the best interests of that individual child, notwithstanding the objections of parents.
(iii) The administration of standard or routine vaccinations cannot be regarded as being a 'serious' or 'grave' matter. Except where there are significant features which suggest that, unusually, it may not be in the best interests of a child to be vaccinated, it is neither necessary nor appropriate for a local authority to refer the matter to the High Court in every case where a parent opposes the proposed vaccination of their child. To do so involves the expenditure of scarce time and resources by the local authority, the unnecessary instruction of expert medical evidence and the use of High Court time which could be better spent dealing with one of the urgent and serious matters which are always awaiting determination in the Family Division.
(iv) Parental views regarding immunisation must always be taken into account but the matter is not to be determined by the strength of the parental view unless the view has a real bearing on the child's welfare.
[105] It follows that the appeal will be dismissed and that the declaration made by the judge that the local authority has lawful authority, pursuant to s 33(3), CA 1989, to consent to and make arrangements for the vaccination of T, notwithstanding the objection of the parents, will stand.

24. Mr Downs also referred me to the, Judgment handed down on 8th April 2021 by the Grand Chamber in the European Court of Human Rights in the case of (Vavřička and Others v The Czech Republic nos. 47621/13 and 5 others) which concerned a statutory scheme which made vaccinations mandatory subject to a fine and exclusion of an unvaccinated child from nursery school. The ECtHR did not find any breach of the parent or child's rights and concluded that the adoption of that scheme by that state did not infringe Convention rights

Evaluation

25. The starting point following *Re H* in a public law case such as this is that absent evidence the court is dealing with a child who has specific medical contraindications to the NHS/PHE schedule, that I should accept that it is in AB's medical best interests to undertake that schedule of vaccinations. The parents have not provided any evidence to suggest that AB is a child with any contraindications to the proposed NHS vaccination schedule; the only qualification to that is that if it is established that he has already had vaccinations that should be factored into the treating clinicians determination of what further vaccinations are needed either in order to fill any gaps in his vaccinations to date or which might overlap with any future vaccinations.

However, that is not properly described as a contraindication; it is simply part of AB's medical background that will be relevant to how he fits into the NHS schedule.

26. There is nothing in the mother's evidence which demonstrates any change in scientific or medical evidence as to the individual and public health benefits identified by the Court of Appeal. The material she refers to in her statement and the exhibits is all material as far as I can ascertain that has been in the public domain either specifically or in general terms for some time and in particular was available at the time the Court of Appeal considered *Re H*.

27. It seems to me then that Miss Harding is right in her acceptance that against that backdrop it is for the mother and father to establish that their proposal displaces the medical best interests determination in accordance with the Court of Appeal's decision either by an alternative medical best interests determination based on credible medical evidence or by some overarching welfare evaluation which has the effect of outweighing the re-H medical best interest evaluation.

28. Turning then to the particular points raised by the mother and the father.

29. Much of what the mother and father rely on seems to be a restatement of generalised concerns that were addressed by the Court of Appeal and I'm not prepared to undertake any exercise of re-evaluating matters which have been determined by the Court of Appeal. What seems to me to be the issue in this case is whether there is any credible evidential basis established by the parents which establishes that AB's welfare more generally would be better met by departing from the NHS schedule and implementing the parents 'Baby Jabs' schedule.

30. In terms of evaluating AB's medical best interests what seems to me to be missing is any evidence from a medical professional in support of the advantages to AB of pursuing this or the disadvantages of pursuing the NHS Schedule in comparison. The letter from 'Baby Jabs' which proposes an alternative schedule is not supported by any explanation still less a detailed explanation of the medical benefits to AB of adopting it. I do not know whether it is a standardised schedule commonly put forward by Baby Jabs or is tailored specifically to AB. The evidence exhibited to the mother's statement which derives from a variety of sources, most of which would have been available to or known to Dr Douglas and the Court of Appeal together with the letter from Baby Jab's do not in my view establish any credible evidential basis for departing from the Court of Appeal's evaluation of the medical best interests.

31. Although SB and the father emphasised that their position is not based on their concerns about the MMR arising from Dr Wakefield's discredited views, parts of the mother's statement clearly do arise from an unfounded fear based on alleged dangers

of the MMR. Other aspects rely on other material in the public domain which has all been taken into account by PHE and is covered by the Court of Appeal decision based on that and Dr Douglas' report.

32. The issue of mercury and aluminium was addressed in Dr Douglas' report and is specifically referred to by King LJ in the Court of Appeal decision. There is nothing in what the mother and father say which provides any credible evidential foundation for departing from the views espoused by Dr Douglas and endorsed by the Court of Appeal. Dr Halvorsen's personal views contained on the website do not amount to a change in the scientific and medical evidence which would cause me to revaluate the Court of Appeals evaluation.

33. The parents contend that an individualised programme provided through a private health provider is of more benefit to AB and that the local authorities rejection of private health should not operate to AB's detriment. Had the individualised program that the parents propose provided the same protection for AB and had it had the overall welfare benefits that the NHS schedule has I cannot see that its delivery by a private provider would be an obstacle and indeed it might have some merit but that is not what is contended for. The individualised program omits significant aspects of the NHS schedule in particular the MMR vaccine and the polio vaccine. Given that the parents objections to those components do not appear to me to address the entirety of the medical and other benefits to AB of having them the mere fact that it is an allegedly individualised program does not provide a credible or rational basis for departing from the NHS schedule.

34. The mother's contention that the NHS PHE schedule is determined by cost rather than medical benefit would seem to be unsupported by evidence – it would appear to be the most effective way to deliver the individual and public health benefits of vaccinations on a large scale.

35. The evidence would appear to establish that rubella is usually a mild condition and that it does not pose a significant direct risk to boys or to pre-pubescent girls, the significant risk that it poses is to pregnant girls and women where the condition can be responsible for miscarriages and significant birth defects. It is this risk which is addressed by the vaccination as the science establishes that the infection is generally caught by pregnant women from children. However, it also addresses the risks of complications arising in rubella. Rubella is part of the PHE programme for good reason; the personal benefit of not getting Rubella and the public health benefit but there is also a direct benefit to the child of not being in a position to infect another person particularly a pregnant woman. A child's welfare is a broad concept which is not restricted to medical best interests. It is in addition to the particular benefits to him more broadly in AB's best interests to play his role in public health.

36. The risks that the mother and father rely on which are outlined in Dr Douglas's evidence to Mr Justice Hayden and which was before the Court of Appeal are all known to the Court of Appeal and are part of the balance that court undertook. There is nothing that the mother or father rely on in this regard which gives any foundation for departing from the approach that the Court of Appeal identified.

37. The parents are right to identify that the local authority must make an individualised welfare decision in relation to a child. The Local Authority would have the ability to

undertake the vaccinations in accordance with the PHE/NHS schedule so he will receive those he ought to have received already and any due whilst in care of LA – if no order is finally made then M and F will undertake their own decision making. At present the ICO grounds seem to have been well made out and the local authority have the responsibility to make a decision in relation to vaccinations which fall due whilst in their care. The final hearing will not take place for some months and the PHE/NHS Guidance makes it clear that missed vaccinations should be made up as soon as possible and that other vaccinations should be undertaken in accordance with the stated timetables. If AB returns to his parents care there will be other times when decisions on vaccination will have to be taken and they will then be able to exercise their parental responsibility but at present the Local Authority has by reason of the court's decision on the interim care of AB, the power and responsibility to give consent to vaccination. It is not disempowering the parents but part and parcel of what responsible corporate parenting involves. Whilst the parents may put forward an individualised program for AB unless they establish on credible medical or other welfare grounds which displace the medical best interests that it is better for him than pursuing the NHS/PHE schedule, the local authority are likely to be making an individualised decision, albeit of course that individualised decision is likely to be identical in its outcome for most children because most of the significant factors which bear upon it are the same.

38. In relation to the objection to the polio vaccine the objection is to him receiving the 3rd component; the parents having already given him the first 2. That vaccination does not protect him from others he may come in contact with, it protects him if he travels in the world where he may be exposed, and it protects others. The fact that polio is not a direct risk at present in the UK misses the point of why it is not and also the more important point of the protection it gives from possible exposures.

39. There is a welfare benefit to a child in being vaccinated which goes beyond the purely medical benefits. They are part of a communal response to the serious dangers posed by these diseases. There is a clear welfare benefit to being part of that communal response and to avoid the position where he become the cause of an infection in a vulnerable person.

40. In respect of any overlap between the vaccinations that AB has already had I have little doubt that the NHS treating clinician will consider what jabs he has been shown to have had and will not repeat them unnecessarily.

Conclusion

41. I am satisfied that the parents have not established by credible evidence any matter which shows that:
    a. AB's medical best interests are otherwise than in accordance with the general position articulated by the court of appeal in *Re H*;
    b. There are any other matters which establish that other welfare considerations particular to AB's situation outweigh his medical best interests of under-going the NHS/PHE vaccination programme;
    c. It would not be disproportionate to allow the local authority to consent to those vaccinations which are due in the light of his age in order to bring AB in line with the NHS/PHE schedule and to place him in the position of the vast majority of children of his age; and
    d. any matter relating to the interim nature of the care order, his nationality or projections as to his future provide any rational or reasonable basis from departing from that position.
42. The LA and the parents should seek to establish with as much certainty as possible what vaccination was given in Malaysia. The LA have Parental Responsibility to enable them to make enquiries in this regard. The mother must hand over to the LA the Red Book if she has it in her possession.

43. Although AB's position is factually his own, it is no more than a variant of the position that the vast majority of children are in; the delay in his vaccinations and the relative uncertainty over what he has had are a product of the parents' poor record keeping and disagreements in relation to this most fundamental aspect of his health needs. They do not though identify him as a child in respect of whom there are contraindications which from a medical perspective take him outside the parameters of the Court of Appeal's guidance. Nor are there any other welfare matters which indicate that it is in his best interests not to undergo the NHS programme and to undergo the alternative scheme which omits important components of the recommended regime. The parents' concerns are, in the main, reframed versions of the matters considered by the Court of Appeal and no evidence has been put before me which justifies an alternative formulation of AB's medical best interests or any other broader welfare matter which has the effect of outweighing his medical best interests.

44. I therefore refuse the mothers application. AB will have the vaccinations recommended by his GP in accordance with their final clinical view on what he requires in the light of the evidence provided to them. The vaccinations should be given as quickly as possible allowing no more than 7 days for the obtaining of clarification from Malaysia of what the mother had given to him there.

45. That is my judgment.