

Case No. GG15P00160

Neutral Citation Number: [2016] EWFC 69 (Fam)  
IN THE FAMILY COURT

sitting in LINCOLN

Lincoln Family Court  
360 High Street  
Lincoln LN5 7PS

Monday, 5 December, 2016

Before:

HIS HONOUR JUDGE MARK ROGERS  
(Sitting as a High Court Judge)

-----

BC (Applicant)

And

EF (Respondent)

(In the matter of M and N)

-----

John Larking Verbatim Reporters, 305 Temple Chambers, 3-7 Temple Avenue, London  
EC4Y 0HP. Telephone: 0207 353 3300.

-----

MS KABWERU-NAMULEMA appeared on behalf of the Applicant.  
The Respondent father appeared in person.  
MS COMPTON (for MR SLATER and MS MITCHELL) appeared on behalf of the  
Guardian/children

-----

JUDGMENTJUDGE ROGERS:

1. The mother in this case is BC and the father is EF. The children with whom I am concerned are M, who is aged four, and N, who is two and a half. The history of the matter is clear from many of the documents and statements and other reports which have been filed. Unfortunately, the disputes in this case are longstanding and the proceedings giving rise to these applications have been going on, on any view, rather too long. There are a number of outstanding issues.
2. The issue immediately before the court is that of immunisation. There are other matters to discuss to which we will move on later this afternoon, but that first question of immunisation has been identified as capable of resolution as a discrete issue and so it was directed in the case management order made by the Family Court sitting in Grimsby before transferring the case to this court.
3. For the sake of completeness, since it gave rise to some uncertainty at an earlier stage of the proceedings I can confirm that I am dealing with this case at High Court Judge level. For the avoidance of any doubt I communicated with My Lord, Mr Justice Keehan, the Family Division Liaison Judge for this circuit upon the matter having been transferred in from the North Eastern Circuit. Whether or not there was formal authorisation given on that circuit I still am not clear, but Mr Justice Keehan has confirmed that he is content for me to deal with this case under Section 9 arrangements.

4. The mother and the children have both been represented in these proceedings by counsel. The father has attended throughout and conducted the proceedings in person. I am grateful to all concerned. Ms Kabweru has conducted this hearing, which, if I may say so, is one of great difficulty and sensitivity and with enormous importance for her client, with great skill and tenacity, advocating her client's case fearlessly without ever forgetting her duty to the court.
  
5. The background facts as to the functioning of the parties are relatively insignificant in terms of this discrete issue but need a very short brief mention. Both parties have had their difficulties and no definitive findings have as yet been made. The father is alleged to have had difficulties with alcohol and drugs and to have been unsupportive and inconsistent in his family relationships. The mother is said by him to be obsessive, over protective and narrow in her views. Precisely what are the father's qualities and deficits is relatively insignificant to this particular issue, which depends upon my assessment of best interests, save that the mother says that he has made a cynical and tactical change of position simply to distress and undermine her.
  
6. The mother's temperament on the other hand is an important factor. Mr Spooner in his report, which I acknowledge has not been tested in cross-examination and was not explored in detail in this hearing, has made some preliminary comments on the mother's temperament, describing it as apparently vaguely obsessional in flavour (at paragraph 90). He discusses in some detail her relationship with conventional medicine (paragraphs

159 and following) and describes her as potentially over-protective and having an over-valued sense of risk (paragraph 184). I place no significant weight on these untested opinions save to comment that they fit exactly with my observations, albeit from a non-psychological expert point of view.

7. Those preliminary matters give rise to a preliminary issue of fact. It is suggested by the father, as noted by Mr Spooner, that the mother has a suspicion (if that is the right word) of conventional medicinal methods. She denies that, saying that she is perfectly content to adopt conventional medicine if and when the need arises. On this small issue I prefer the father's account. I am sure that that is so. The mother herself has accepted that she tends to look for alternatives and I find the father is accurate, for example, in his description of her even being suspicious about the administration of something like Calpol.
  
8. The factual history is, briefly, that M has had some vaccinations. N has had none. The mother says that this, certainly with M, was the subject of agreement. The father says that he deferred to the mother effectively to keep the peace. I think there are elements of truth in both those propositions because the mother at the time, I find, was more proactive in the care arrangements and decision-making. The position is now much more polarised. The mother is fundamentally opposed to vaccination at all for N and anything further for M. The father, on the other hand, wants the vaccinations to be done and in his very short but powerful position statement by way of closing submissions he sets out what he sees

as the particular individual and public health advantages of those vaccinations.

9. I reject the proposition that he is behaving in a purely tactical way. His position is clear. It seems to me, although, of course, I have got no detailed knowledge of the background yet, having not investigated, that he seems a calm, stable and reflective individual, whatever may have been the position in the past, but I am quite sure that his view is put forward conscientiously. The principal sources of evidence for the hearing were the report and addendum of Dr Rajiv Mittal and the mother's own witness statement, which begins at page C1 in the bundle. At paragraph 266 at C42 in the bundle the mother says: "In making this statement I would like to add that I researched for hours and hours most days in preparation for this statement. This was very precious time that took me away from spending time with our children but I feel so strongly that, in writing this statement, I am in fact fighting to help keep their future health and wellbeing safe and healthy".
  
10. 267: "What I have learned simply is that, yes, vaccines do work some of the time, but there is a definite risk with vaccination. The vaccine manufacturers have cited that vaccines are 'unavoidably unsafe'. There is a very rare risk that either of the children will ever catch one of the diseases listed in this report. Both children are thriving and have strong immune systems which definitely helps in protecting them from diseases. No vaccine is vegan. No Doctor will criticise the actions of a vaccine or he/she will be afraid of losing their job."

11. 268: “It has not been easy reducing this research I have done to the information I have placed in this statement. Having to do so has given me the opportunity to focus even more than previously on the risk/benefit ratio to M and N in having further immunisations. Despite Dr Mittal’s recommendations, which were only to be expected, the perceived wisdom is that all children should be vaccinated, I am now even more certain than I was previously that the potential risks to our children are greater than the potential benefits from vaccination. M and N are very healthy children. They are fed only natural products. Their bodies are as free of toxins as I can possibly make them. Neither child is particularly ill these days. They have both recently had chicken pox but were not actually ill with it. They shook it off very quickly.”

12. 269: “I fully appreciate and understand that vaccinations are public health measures that aim to reduce, to eliminate the incidence of certain infectious illness in society via the recommended vaccine schedule. There are, however, too many unknowns regarding the long-term side effect of vaccinations. Vaccines contain products that I would not want my children’s bodies to accommodate. It is not natural to be injected with metal elements and as a vegan it goes against my beliefs for my children to be injected with something that is grown on animal cells or something that has been tested on animals. I continue to maintain that M’s persistent cough, eczema and cradle cap were a reaction to his vaccinations, something with which EF agreed at the time.”

13. Those short paragraphs, albeit appearing at page 43 of her statement, really encapsulate

her position. However, to get to that point she has throughout the body of the statement gone to enormous lengths, as she herself recognises, to set out her position. It seems to me that the essence of what she is saying, as well as that conclusion, begins, and I will not read it in full, from paragraph 10 of her statement under the general heading “Vaccinations” and she deals, properly in my judgment, with the chronology as she sees it, and as the statement continues she comes, at paragraph 22, to an important chronology which is reduced from exhibit BC6 into a short list of dates, and that, helpfully over that page and the following two, covers the period of M’s first set of vaccinations and follows. That, quite properly, raises for me a question of fact. However, I am sorry to say that between those first four or five pages, which are highly material and relevant, and those concluding remarks, which, as I have indicated, well encapsulate her case, is a volume of material which is simply difficult to digest. I understand how it has come about but I have to say that I deprecate a witness statement in the form filed. It would be unfair on the mother were she to be allowed to believe that a hearing of this sort, as she herself through counsel insists, is about the individual welfare needs of these boys, could become or should become akin to a hearing in the nature of a quasi public inquiry, because that is the only consequence of filing a statement of that sort.

14. It seems to me that parties who are represented have the advantage, which is so rare in private law proceedings now, of expert legal advice, and it seems to me that solicitors who know the rules of procedure and practice should in some way mediate or moderate the contents of a statement, not, of course, to change its import or the factual assertions,

but to make it a statement that complies with the normal requirements of forensic practice, because this statement is overwhelming. It is full of personal opinion and speculation. As I noted in part of the passage already cited, perhaps inadvertently or perhaps a quite significant indication, the statement is described as a “report”. That is how it reads. The reason it is unfair on the mother is because I have simply not been able to invest the time to read every reference that is there by way of a link to a website, article, report or more, and that is partly because the time constraint is there and makes it impossible but it is also a wholly disproportionate exercise, which is why I say that solicitors should moderate and help the production of a statement into a form that is manageable. Although a statement is the personal evidence of an individual, it seems to me that it is unhelpful for it to be the unadulterated material in no way modified. That having been said, on the other side of the equation the father has not filed evidence in the conventional form but he has stated his view very clearly and shortly and nothing could be plainer.

15. The Guardian’s advice by way of position statement, essentially, and understandably in my judgment, is to say that these are matters of expertise and the Guardian is therefore likely to follow or at least would listen carefully to the expert advice given.

16. Distilling it down, the mother’s case is this; that firstly M was vaccinated but had adverse reactions so that it would be unsafe for him, and by analogy for N, to receive any further or any fundamental vaccinations. Secondly, that the children are healthy. They have no



apparent immune compromise, that they will benefit from the protection of the herd, and that the diseases against which they would conceivably be vaccinated are in any event rare and in the unlikely event of contagion can be coped with. Thirdly, as a vegan, she disapproves of animal testing or animal based elements of the vaccines and that view conscientiously held should be respected. Fourthly, that notwithstanding the overwhelming medical consensus she believes that it is flawed and that the people who would agree with her are too afraid to speak out because of the pressure (or corruption arguably) of central government and regulatory agencies. She is even suggesting that Dr Mittal's colleagues and medical doctors in general practice know well the true position but either are afraid or refuse to speak out.

17. On her behalf counsel perfectly properly and candidly acknowledges that the mother had cast around to seek an expert who might support her view but was unable to find one. That, in my judgment, is obviously indicative. All that having been said, I do not doubt for a moment the mother's strength of feeling and her belief in the correctness of her position, but I have to say that I have serious concerns as to her ability to look objectively and even-handedly.

18. To the extent I can therefore, I must take the material provided by the mother into account, but for reasons already given I have not gone back to all of the sources referred to in her statement. Not only was that impractical for the reasons given but that would be an inappropriate exercise. It would involve the introduction of expert or quasi expert

evidence by the back door and that would be a grossly unfair step upon the father particularly as an unrepresented person. The starting point in my judgment on matters of medical expertise therefore must be the jointly instructed evidence of Dr Mittal. Counsel in her closing submissions advanced the proposition that with the benefit of hindsight perhaps Dr Mittal was not the correct expert to be instructed; that his evidence was too general and too much based upon government guidelines without his own personal opinion showing through. I accept, of course, that he is not a narrow specialist in the field of immunology, for example as a professor of immunology in an academic sense might be, but the parties agreed that the appropriate status of expertise was that of a practising paediatrician, which he is. I also accept that Dr Mittal made the mistake of at first believing that some vaccines could comply with a vegan lifestyle in terms of their production. That is obviously wrong, as he himself conceded, and he corrected detail of that sort, but his expertise is essentially about vaccination in the community, based both on his long personal and clinical experience but also, and quite properly in my judgment, on his knowledge of the subject from wider guidelines and research. I am quite satisfied that his personal knowledge and expertise was proper and apt for this case and was not significantly undermined notwithstanding the small errors he made.

19. At one point I put Ms Kabweru on the spot (as I am sure she recognised) because I was anxious to know quite how far the mother was casting her net. My understanding is that the mother accepts and concedes, albeit I suspect rather reluctantly, that vaccination has made the major contribution to public health that the mainstream of medical opinion

asserts. She also conceded through counsel that the process of vaccination has wiped out or reduced the incidence of serious contagious diseases in the last particularly half century. Perfectly properly therefore counsel narrowed her focus to the impact on these boys as individuals and urged me not to consider wider issues of general public health, and that is right. My focus is obviously on the interests of these individual children. The question arises in my mind, if that is so, what status do the mother's rather wider assertions therefore have and it seems to me that that must be an attack of somewhat limited scope although it is perfectly proper to have it in the overall balance.

20. It is necessary therefore to resolve the factual dispute. As I have said at C5, paragraph 22, the mother refers to exhibit BC6 and sets out in chronological order the medical appointments. In the course of the hearing we were taken to the individual entries and Dr Mittal was asked to comment. I hope at not too great length it seems to me I should give some brief analysis of that. It really starts at page C123 in the exhibits and on 14 December 2012 in manuscript it has been highlighted that the first vaccinations were given with consent of both mum and dad, as it is put, and they are there listed.

21. At C124 there is an entry on 27 December at the surgery: "History [M]. Cold, one week with runny nose and cough, cough much worse. Possibly something went down wrong way. Examination ..." then some general matters, "Cradle cap slightly red but not unduly so small [query] node left lower neck. Diagnosis URTI". On 2 January at the nurses' clinic, "Advice to carer regarding child skin care and other matters. Cradle cap

discussed”. Later at C125, 17 January at the surgery, further vaccinations received, and they are all listed there. On 22 January, “Telephone call from patient, call from parents requesting advice for breastfeeding and unsettled baby. Visit arranged for the next day.”

22. Later on, on what I think is 24 January although the hole-punch has unhelpfully obliterated the date, at the clinic with the nurse, “Advice to carer regarding child skin care. Advice about weight. Parent consent to child height and weight measured and other observations. Both mother and father present”, and mother I think has annotated that with “Skin worsening one week after vaccinations.”

23. Over the page, 126, 28 January, “Rash all over, raised, hot and uncomfortable”. 28<sup>th</sup>, “Later on in the morning seeing the Doctor. Healthy baby; has bad cold and last night covered in florid very red and angry rash. Hot and distressed last night. Feeding fine. Examination: well on examination. Diagnosis viral rash and eczema.” The following entry bar one, on 12 February, telephone triage with the nurse: “Examination: diarrhoea ongoing for last week, sudden onset. Breastfed and no change to mum’s diet, thought due to teething.”

24. Subsequently, on 20 February vaccinations again given and all listed. “Examination: fit and well. Seen by Dr G. Rash on chest, okay to give ims.” Then much later on, on C128, “History: telephone triage encounter. Examination, a rash, woke up with it on abdo [abdomen] and head, has eczema but mum says this is worse; very itchy. Had a

fever two days ago. Eating/drinking okay.” Then 4 June, later the same day seen by the Doctor: “Rash on body and face worse when hot. Started this morning. A bit under the weather last couple of days. No fever. Eating /drinking okay but not as much as normal. Slightly snotty nose and a few sneezes.” A bit further on: “Looks well. Vigorous few cervical nodes. Heart sounds normal; chest clear, abdo soft. Attend patchy urticarial rash on face, head, trunk and limbs, blanching.”

25. Also referred to directly in the evidence and put to Dr Mittal were the comments of Dr M from the Family Practice, which reads in part on 8 February 2016, obviously after the event, “I gather from notes he had his last vaccination on 20 February 2013 after a spell of being unwell with each vaccination. The parents made a joint decision not to vaccinate their children, this was after their observation that M had severe eczema type rashes and bowel symptoms of diarrhoea. From a medical point of view I cannot give any explicit guarantee that neither M nor his brother will get any adverse reactions from future vaccinations or encounter any long-term ill effects from the vaccination. My discussion with the parents has been that I cannot say that I can attribute all his symptoms post-vaccination related to adverse effects”, and then helpfully he summarises some of the guidance from the Green Book, so-called.

26. Against that background Dr Mittal gave his oral evidence in support of his already provided report and addendum. The report itself is dated 17 May 2016 and begins at E1. He starts with some general commentary and quotes from the Department of Health’s

Green Book on immunisation, Immunisation Against Infectious Disease 2013, which he describes as “the standard document.” He notes: “The primary aim of vaccination is to protect the individual who receives the vaccine. Vaccinated individuals are also less likely to be a source of infection to others. This reduces the risk of unvaccinated individuals being exposed to infection. This means that individuals who cannot be vaccinated can still benefit from the routine vaccination programme. This concept is called population or herd immunity. For example babies below the age of two months who are too young to be immunised are at greatest risk of dying if they catch whooping cough. Such babies are protected from whooping cough because older siblings and other children have been routinely immunised as part of the childhood programme. When vaccine coverage is high enough to induce high levels of population immunity, infections may even be eliminated from the country, for example diphtheria. If high vaccination coverage were not maintained it would be possible for the disease to return”. Later: “Almost all individuals can be safely vaccinated with all vaccines. In very few individuals vaccination is contra-indicated or should be deferred. Where there is doubt, rather than withholding vaccine, advice should be sought from an appropriate consultant paediatrician or physician, the immunisation coordinator or consultant in health protection.”

27. In relation to specific questions asked of him, at page E8 he said: “The question is with reference to the aforementioned, please advise us as to the appropriateness or otherwise of each child receiving immunisations in the light of their medical histories and notes

provided in this letter.” He answers: “Both M and N are healthy and don’t suffer from any significant medical illness. There is no evidence of any adverse effects following immunisation in M’s health records. In my opinion both children can be given the immunisations without any increased risk of adverse reactions or side effects as compared to normal children population.”

28. Question 4: “Please outline the short, medium and long-term effects, if any, of these children not being provided with any immunisations in the future with any risk this may impose, if any, to their health?” The response: “If children are not provided with any immunisations in the future they will be at increased risk from vaccine preventable diseases like diphtheria, polio, meningitis, measles, mumps and rubella, etc. I have covered this in my response. The benefits provided by most vaccines extend beyond the benefit to the individual who is immunised. There is also a significant public health benefit.”

29. He then goes on, as it turns out inaccurately, to deal with the impact of vegan practice, and I have already commented on that. At page 10 he summarises the conclusions as follows: “Both M and N are healthy children who don’t suffer from any significant medical illness. M is partially immunised and N is unimmunised. The mother told the CAFCASS family court adviser that M was very poorly after vaccination each time and also suffered from eczema badly. However, I have not seen any evidence of any significant adverse reaction following the vaccinations in their health records provided.

The immunisation of children against a multitude of infectious agents has been hailed as one of the most important health interventions of the 20<sup>th</sup> Century. Many commonly held beliefs about the risks of immunisations are not supported by available data and they frequently originate from the unsupported claims. As a paediatrician my role is provide the parents with the risks and benefit information necessary to make an informed decision and to attempt to correct any misinformation or misperception that may exist.” Then he goes on to recommend the following immunisations for the individual children, and sets them out and I need not read that.

30. In his addendum report of 16 June he simply responded to a series of further questions.

One is of significance. It reads in this way: “Are you able to say with certainty [my emphasis] that none of these fevers, the coughing or the eczema, were reaction to the immunisations and, if not, to what would you attribute the onset of these continuing symptoms?” Then he goes through many of the medical record notes that I have looked at and concludes by saying, “It is difficult to give a definite opinion in retrospect, but certainly the GP who examined M on both occasions did not attribute the symptoms to immunisations.”

31. I emphasised the word “certainty” because in that question lay a fallacy, because it is a wholly empty exercise to ask him to deal with certainty either one way or another, because that is not how things work, and certainly not, as I will explain, what my task is.



32. Question 3: “What specifically are the potential long-term side effects of the vaccines mentioned?” Answer: “Nothing in life, including vaccination, can be completely risk free but so far there is no evidence that vaccines cause long-term negative effects. All the evidence tells us that vaccinating is safer than not vaccinating. It is rare for people to have serious reactions to vaccines and so it is difficult to research these reactions because it can take a long time to gather examples to study. All serious reactions that get reported are investigated by the MHRA (Medicines and Healthcare Products Regulatory Agency).”

33. Question 6: “Does a breastfed child receive the mother’s immunity? Is it the case that the longer a child is breastfed the more immunities from infection a child is likely to receive from the mother?” Answer: “A breastfed baby receives immunity from the mother. Breast milk contains antibodies which means that babies who are breastfed have passive immunity for longer. However, this immunity is temporary and starts to decrease after the first few weeks or months. Hence it is important that childhood immunisation is begun when the baby is two months old.”

34. At paragraph 12, and I need not read it, he is asked to comment on the incidence of animal testing in the production of the vaccines, which he does.

35. In my judgment the first report, together with the questions and answers and supplementary material in the addendum, shows the careful nature in which the case was

put to him and the issues raised, and in my judgment his careful and balanced responses. But, of course, he was not simply left with his written evidence. He was required to attend and answered questions in cross-examination. In particular, counsel took him through the entries to which I have already referred in fact in rather greater detail than I have summarised them. He gave a series of answers, he accepts essentially repetitive, but this was his firm view. He said, for example, “I do not see these [the symptoms exhibited on 27 December] as side effects from the vaccine. Normally side effects arise in two days.” He said that a delayed response is more common with the measles vaccine. In relation to the January entries, he said, “It is highly unlikely for the child to be unsettled because of vaccination”. Later, “The rash I saw was quite common in babies. It is difficult to make a correlation with vaccination.” In relation to the end of January entries, “I don’t think that vaccine causes this.”

36. He was then asked, “Even if there was some element of causation, what would the implications be?” and he said, “I don’t think that there is any contra indication in respect of M.”

37. Later he was asked about the effectiveness or the widespread application of immunisation. He said, “Effective immunisation coverage is, of course, a factor. 95 per cent of the community are immunised. That causes there to be less exposure to risk. It is possible, nevertheless, to contract the diseases even if vaccinated, although not to 100 per cent. Booster vaccines are by definition designed to continue the coverage.”

38. He was asked about the adverse side effects, and he said, "It is not possible to predict whether a side effect will be mild or serious. Very rarely some adverse effect occurs but the benefits in my view outweigh the disadvantages." He said, "Before I was going to give evidence I looked for evidence and guidelines. There remains parental choice. There are parents who don't give the MMR." Then he was asked about any element of financial incentive or potential corruption behind the scenes and he rejected that saying there was not, as far as he knew, any financial incentive.

39. He was then asked about the individual vaccinations, and dealt with those individually. He accepted that science moves on; that views change, and, for example, the meningitis C programme has been discontinued.

40. He conceded, notwithstanding his original view, that there was not, as far as he was aware, an alternative vaccine which would satisfy a strict vegan. He also accepted that the simple passage of time, particularly, of course, for M, meant that some of the vaccinations had now passed the moment at which administration was recommended.

41. Looking at his evidence overall, and particularly dealing with the factual question first, notwithstanding that the mother plainly in her mind makes the link, and I am sure will continue to believe that that is so, I am not satisfied that the evidential base is there. This is a question of fact. The forensic approach of the court is to weigh the matter and decide

the matter on the balance of probabilities. It is not about possibilities or certainties. That is simply not the approach.

42. It follows that there must remain a possibility that there is a causal link but on balance I accept Dr Mittal's evidence that it is improbable and the matters recorded therefore in my judgment are not connected to the administration of the vaccinations. I find on balance that M did not suffer a causative reaction and so is not more susceptible to risk. Equally, there is no evidence that N would be in a higher risk category than the general population.

43. Having dealt with what seems to me the key factual issue I turn to the legal approach to the problem. I am asked to make a decision which falls in legal terms under Section 8 of the 1989 Act, a specific issue. A specific issue order under Section 8 is defined as an order giving directions for the purpose of determining a specific question which has arisen or which may arise in connection with any aspect of parental responsibility for a child.

44. Parental responsibility is also defined in Section 3 of the Act as follows: "In this Act, parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

45. In my judgment the decision to vaccinate or not is clearly an issue that falls within this

category of class of case. Every decision will depend upon its own individual circumstances under the umbrella of the general law, and that umbrella is clear that the decision to be taken by me will be driven by the provisions of Section 1 of the Act. The key question for me as defined is as follows: Section 1(1): “When a court determines any question with respect to the upbringing of a child, the child’s welfare shall be the court’s paramount consideration.” In coming to that consideration I must look at all of the factors in the case and Parliament has helpfully provided in Section 1(3), the so-called checklist, of key factors amongst all of the circumstances which are, to a greater or lesser degree, to be considered. It seems to me, of those the key ingredients are the physical needs of the children, the effect of change, the background and characteristics, the question of harm and the capability of the parents.

46. I also recognise that in a case of this sort and of this sensitivity that there is an engagement of the Article 8 rights of all of the parties, in particular the mother and the children are in the same residential setting, and the mother argues that the decision, if adverse to her view, is likely to be disruptive of family life. Of course, I must respect the family life of all concerned, but any order I make must be in accordance with the law and proportionate.

47. The guidance given in this area by the courts is to be found helpfully in three authorities and to some extent they were referred to in the closing submissions of the parties, although only by way of passing reference. Perhaps the most important, because it is a

decision of the Court of Appeal, is that of *Re C* (Welfare of child: Immunisation) [2003] EWCA Civ. 1148, which in fact I have at present in [2003] 2 FLR 1095. That was an appeal in an immunisation case against a decision of Sumner, J. The Court of Appeal held, dismissing the appeal:

(1) The submission that the judge reached the wrong conclusion by adopting the wrong test was without foundation. In all cases where the outcome of the application was dependent upon the judge's resolution of divergent expert opinion, the judge's assessment of the expert evidence was likely to be crucial to the outcome. The judge could not be criticised for making his assessment of and findings on the expert evidence before considering other relevant factors. The judge's function was to consider all relevant factors and to give each its due weight. The order in which such relevant factors were considered was a matter for the judge to decide. The judgment at first instance was manifestly conscientious and comprehensive. The applications were decided according to a consideration of the welfare of the children, and the judge's approach was above criticism.

(2) Where parents were in dispute about the immunisation of a child against infectious disease, neither parent had the right to make the decision alone and immunisation should be carried out only where a court decided that this was in the best interests of the child.

(3) There was no general proposition of law that a court would not order non-essential invasive medical treatment in the face of strong opposition from the

child's primary carer.”

48. The two other cases both, by coincidence, decisions of Theis, J in the Family Division are *LCC v A, B, C and D* [2011] EWHC 4033, and *F & F* [2013] EWHC 2683. The latter decision, also about immunisation in a private law context, has, it must be said, remarkable factual similarities to this case, even to the point of having a vegan dimension to it. The children in that case were older and their wishes and feelings were engaged, which, of course, does not apply in this case, but that apart it is of some factual significance. I mention that, however, simply to warn myself about being driven into a formulaic repetition of that decision, because this case depends on these facts as that case depended upon its facts. I think it unnecessary to read substantially from that. The head note, which I take from the Family Law Week version of that decision summarised is this: Theis, J considered the law finding the child's welfare was her paramount consideration. She reminded herself of Sumner, J's decision that these cases were all fact dependent as to the benefits and risks of immunisation to the individual child. She also reminded herself of the medical evidence of a Dr Ward in the previous decision, accepted by these parties namely ... and then she quotes: “With due consideration for established contra indications to vaccination in an individual case, it is otherwise in every child's interest to be protected against measles, mumps and rubella with the MMR vaccine.” She therefore made a declaration that the children should receive the vaccination notwithstanding the children's own wishes to the contrary.

49. One of the findings in her case was that the medical advice was for children to receive the vaccine although there are accepted risks of side effects, and then (4) “The emotional effect on the children of a decision being made against their wishes was taken into account. However, it was incumbent on the parents to assist and support the children in the consequences of the decision.” In other words, she was highlighting the importance of an exercise of parental responsibility in implementing the court’s view.

50. One submission made by Ms Kabweru was as to the correct approach where, for the sake of argument, one has a far more conscientious parent with a very strongly held view against an inconsistent or vacillating other parent. I have already made some preliminary findings which suggest this case does not fall precisely into that template, but it seems to me as a matter of general principle it is important to consider, and that was one of the reasons why I took further time to consider this case because I had not been addressed upon it in the legal context.

51. It is in fact in the end, in my judgment, very helpfully dealt with in the decision *Re C* from 2003. In the judgment of Thorpe, LJ, who gave the main judgment in the Court of Appeal he says this at paragraph 14 in the Family Law Report:

“14. Before expressing my conclusions on this central question I must set out the legal framework.” He refers to Section 8, the specific issue, and with parental responsibility, as I have myself. He goes on at paragraph 16: “The apparent freedom of each [parent] to act alone is not, however, unfettered. As the President



[Dame Elizabeth Butler-Sloss] said in the case of *Re J*: ‘There is, in my view, a small group of important decisions made on behalf of a child which, in the absence of agreement of those with parental responsibility, ought not to be carried out or arranged by one parent carer although she has parental responsibility ... Such a decision ought not to be made without the specific approval of the court.’ He then goes on to describe other decisions.

52. Then he continues:

“Of course where the obligation falls on the court to decide such an issue the court must apply the child’s welfare as its paramount consideration (see section 1(1)) and also have regard to the section 1(3) checklist.

19. I turn now to the authorities which Miss Gumbel has cited. The case of *Re Z* [1996] 1 FLR 191 concerned a conflict between a mother’s desire to further publicise the life of herself and her child in the face of injunction in wardship restraining the media from publishing information which would lead to the child’s identification. The mother’s application for permission to participate in the making of a television programme was refused by the judge and her appeal dismissed by this court. In the course of his judgment Sir Thomas Bingham MR analysed the function of the court in the following passage [at 217B]: ‘I understood the mother’s counsel to advance two reasons why discretion could only be properly exercised to the effect contended for. The first was that the court should never override the decision of a devoted and responsible parent such as

this mother was found to be. I would for my part accept without reservation that the decision of a devoted and responsible parent should be treated with respect. It should certainly not be disregarded or lightly set aside. But the role of the court is to exercise an independent and objective judgment. If that judgment is in accord with that of the devoted and responsible parent, well and good. If it is not, then it is the duty of the court, after giving due weight to the view of the devoted and responsible parent, to give effect to its own judgment. That is what it is there for. Its judgment may of course be wrong. So may that of the parent. But once the jurisdiction of the court is invoked its clear duty is to reach and express the best judgment it can'."

53. Thorpe, LJ, continued:

“Although that analysis was formulated in a wardship case, it equally defines the function of the court deciding an application for a specific issue order advanced by one and resisted by another, each holding parental responsibility in relation to the child.”

In my judgment that is a complete answer to the submission, notwithstanding the attractive presentation of it, which advances the fundamentally flawed argument that the mother's status in this case should in some way be elevated and her view be given greater weight than the interest of the child once objectively identified.

54. Just continuing for a moment with the authority, later Thorpe, LJ, dealing with the effect

of immunisation, says this:

“From the decision of this court in *Re J* Miss Gumbel sought to extract the proposition that the court will not order non-essential invasive medical treatment in the face of rooted opposition from the child’s primary carer.” Again, not dissimilar from the arguments in this case. The learned Lord Justice continues: “I unhesitatingly reject that submission. The judgments in the case of *Re J* expressly emphasise that the case turned on its particular facts and that no general guidance was to be drawn from it. In any event I reject Miss Gumbel’s repeated categorisation of the course of immunisation as non-essential invasive treatment. It is more correctly categorised as preventative health care.”

55. For the purposes of this case and following the guidance set out there, by which I am bound, it seems to me that the court is therefore an independent arbiter exercising a dispassionate objective judgment. The mere fact that the prominent parent has a strong view is a factor of little or no significant weight. Even if I had found that father was wilful, the court still would have to make an objective welfare-based decision once its jurisdiction was engaged. The impact on a parent, however, is a relevant factor. That is emphasised in both *Re C* and *F & F*. Equally, expert evidence is important. It is perhaps of significance that in *F & F* itself there was no expert evidence, so strong an inference was there that the medical mainstream had identified the best interest test. In this case, however, there is medical evidence which, of course, the mother does not accept, but Dr Mittal was forensically unshaken and in my judgment he is plainly in the mainstream.

His view is that vaccination is a general public good. It benefits society at large and crucially each of the individuals within it. In other words, his view accords with the view of Thorpe, LJ, in paragraph 22 to which I have referred.

56. Dr Mittal accepted that no vaccine is risk free or 100 per cent effective, but overwhelmingly the medical mainstream, to which he himself subscribes, is that vaccinations provide a personal and general advantage.

57. Ms Kabweru on behalf of the mother says that her client is trying to make an informed choice and that the court should be slow to overrule her opinion. That, as I have indicated, is inconsistent with the binding authority of *Re C*, but, in any event, it seems to me, with respect, that the submission highlights the difficulty. I am not choosing between the views of the parents or evaluating their sincerity which, as it happens, I find they both are. What I am doing is conducting a welfare based decision-making process.

58. The mother is saying even if I find, as I did on causation, that these children are not high risk, they live in an advanced Western environment of high levels of health care. The incidence of the diseases is in fact low and these children have no obvious compromise of their immunity. She says that she would administer conventional medicines if necessary but values highly her vegan lifestyle choices which have caused no harm. Dr Mittal agrees that they have not. The children are healthy, and, to his credit, the father also agrees to abide by that lifestyle decision, but he, the father, says on reflection vaccination

is good not only in principle but will provide protection for these children. The Guardian similarly accepts Dr Mittal's view and recommends vaccination.

59. Therefore, my approach is as follows: having made the findings of fact that I have I also express myself satisfied as to the expert advice of Dr Mittal whose evidence in the round I accept. I prefer his assessment of the general public health benefits and reject the alternative views as put forward by the mother as unlikely to be in the mainstream.

60. I certainly reject the apparent view of the mother that at the heart of the medical establishment is corruption or an intimidatory role for healthcare professionals or regulatory authorities. In principle, therefore, I have no hesitation in finding that there are general advantages of vaccination. But, as I have been reminded, the specific welfare interests of these boys are the paramount consideration and need therefore to be focused upon very carefully. I do so by reference, firstly, to the welfare checklist. Under their physical needs it seems to me self-evident that they need if possible to be healthy and they need to be protected from disease. I accept that there will be some inevitable protection from the herd whether they are vaccinated or not, but I find that there is a lower level of protection and the herd is not a guarantee.

61. I equally accept that two individuals in the whole constituency of potential vaccinated children are miniscule in statistical terms, but Dr Mittal has reminded the court how quickly diseases can again become prevalent if immunity rates drop off significantly,

particularly given movements of people across the globe and inter-reacting and relating.

62. Secondly, the question of change: these two young children are probably too young to recognise the important events going on around them, or to react positively or negatively to those changes, but the change would be unseen. It would be their additional protection, but the other side of the change would be, as the mother suggests, distress for her in her everyday functioning which could cast a shadow over her parenting. I accept that that has to be balanced. Next, the background and characteristics: they are living with mother. She is nurturing. She advances enthusiastically the merits of breastfeeding with which, if I may say so, I agree. She accepts that there is involved in that the inevitable transfer of immunity and Dr Mittal dealt with that and agreed with that proposition. The mother adheres to veganism. She accepts that she opposes animal testing of medical and other products, and, of course, vaccination would involve the use of such products, and that, again, has to be carefully weighed.

63. She says, nevertheless, that she would not avoid conventional medical processes, including pharmaceutical products of that sort if necessary to secure her own or the children's health. Thus, as we discussed, her position is not absolutist in that respect. I have to say, as I indicated, that I have some reservations about her applying that general principle given the finding I have made.

64. The next item is harm: happily, as she submits and I accept, these children are not in the

highest risk category but risk remains there nevertheless. It is an avoidable risk in my judgment. The side effects if any, and they happen rarely, would not contra indicate administration of the vaccine and to the extent there is a balance, the advantages outweigh the disadvantages. On capacity, the mother can and will continue to meet their needs, and the father accepts that. She says, however, that that would be compromised because any adverse decision would shake her to her core and overturn her fundamental beliefs, and that is a matter of great concern but I am satisfied that she is committed to these children and has shown admirably her ability to put their needs ahead of her own.

65. As well as the matters in the checklist there are, of course, other significant circumstances in all the features in the case. The first is that which I have just mentioned, the impact upon her. Whilst the court, as I have indicated, is not in the business of exercising a preference between parents, it is important to look at the view conscientiously expressed by the principal carer and to look at the impact upon her, and so I do not for a moment disregard that as a feature and certainly do not regard her as an eccentric or anything of that sort, as was submitted I should not and I absolutely do not.

66. This case has some similarity with the approach adopted by the courts in relocation cases. The impact upon the residential parent of what they might see as a negative or adverse decision is, of course, a factor, but it is not determinative and is only one part of the overall assessment of best interests. I am truly sorry that the mother will regard the decision, which she can already guess I suspect, as wrong but my objective duty is clear.

67. Another factor is that of veganism: at one point, I cannot remember who, said, “it is not a religion, it is a lifestyle”, and, of course, that is true, but it is a core ingredient of this mother’s functioning and she adheres to it for ethical, practical and nutritional reasons and I respect all of those. This court expresses no view one way or another. It is in my judgment a perfectly valid lifestyle decision, but my decision today is narrower. It is not a comment on her or her general lifestyle choices, it is about the best interests of these children.

68. The other important general feature is that of public health. This is, as I indicated, not a general inquiry into the merits or demerits of immunisation in the wider context of society as a whole, and so the question of the public good therefore is of very limited scope in the inquiry. The mother through counsel accepts, although she agrees it is not an especially attractive argument, that she is content to take the advantage of the herd without making any positive contribution to it. I accept that vaccination or not of an individual child is statistically irrelevant to the overall issue of public health but I am entitled, I find, in looking at individual welfare to consider some wider implications. Through vaccination of an individual that is a signal of a shared responsibility, which is to the credit of and addresses the welfare of the individual. I emphasise, however, that in the scheme of things, this is a tiny factor and in no sense determinative or even significantly weighty.



69. A further factor in the balance is whether there should be different decisions for different vaccines, and in cross-examination and in her statement the mother sought to break down the individual items of controversy. In my judgment it is impossible to make such a differentiation in the forensic environment in which we exercise judgment. The mother's attempt to distinguish between the different levels of risk and vaccination goes back to what I regard as the flaw in the basic forensic approach to this case, but, in any event I prefer Dr Mittal's view that if a vaccination is age appropriate and not contra indicated medically it should be administered as a general proposition and in relation to each of the items to which he was individually referred.

70. There was, in conclusion, some debate about timing and we looked closely at the table in E17 and other guidance from the Department as to the appropriate time for various vaccinations or boosters along the timeline of a particular child. They are, of course, slightly arbitrary but my direction therefore is that the guidance as to timing is apt in this case. I have not myself undertaken that exercise. It seems to me that that will be a painstaking exercise to be undertaken by those to whom execution of this decision will fall.

71. I am not at the moment, as I understand it, asked to make a final determinative order. If possible the matter can proceed by way of acceptance of my judgment and agreement as to the way forward. The last thing I want to do is to impose an oppressive feeling of insistence upon any individual who upon mature reflection will be able to implement the

decision cooperatively and as a matter of parental responsibility. Of course I will do so if required, but at the moment this judgment is in the sense of declaratory relief but I hope it will be implemented consensually. As Ms Mitchell (then representing the Guardian) suggested, that has a number of attractions.

72. In all those circumstances, subject to any further argument about detail, I am satisfied that immunisation according to age definition is in the children's best interest and will be implemented in the very near future either by agreement or if necessary by order of the court, but I want to end by indicating how conscious I am of the sensitivity of this issue. That is precisely why these important decisions are best taken by parents collectively and cooperatively if they can, but the importance of the independent and objective arbiter that is found in the court to resolve such questions in the cases remains where the parents sadly cannot agree.

73. At the outset of the last hearing, which was after the close of evidence but before submissions, I admitted a further document, which was an extract from an article dealing with a report from *Frontiers in Public Health*. Rather against my better judgment I admitted that because it fell within the same category of material which I have in the course of this judgment found unsatisfactory, but in fairness I did look at that further documentation. I am afraid it reinforced my view. When one looks at it carefully it is not an argument against vaccination, notwithstanding it calls for further research, but just for the sake of completeness I can confirm that that did not in any way alter the preliminary

view to which I had come and which I now confirm in this judgment.

74. For all those reasons I will make the directions and orders in a moment accordingly.