

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/01/2017

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

London Borough of Barnet

Applicant

- and -

AL

First

- and -

Respondent

NT

Second

- and -

Respondent

TL

Third

- and -

Respondent

AN

Fourth

- and -

Respondent

HV

Fifth

- and -

Respondent

AG

Sixth

- and -

Respondent

DL, KL, SL and ML

Seventh to Tenth
Respondents

Ms Hannah Markham QC and Ms Charlotte Georges (instructed by the Local Authority Solicitor)
for the Applicant

Ms Barbara Connolly QC and Ms Meena Gill (instructed by Osbornes Solicitors) for the Third
Respondent

Mr John Tughan QC and Ms Deborah Piccos (instructed by TV Edwards Solicitors) for the Seventh
to Tenth Respondents

By agreement the court did not hear submissions from the remaining respondents

Hearing date: 24 January 2017

Judgment Approved

THE HONOURABLE MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and

addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. The court is concerned with care proceedings in respect of DL, KL, SL and ML. The application with which I am currently concerned relates only to SL, who was born in June 2016 and is now aged 7 months. SL is the subject of an interim care order in favour of the local authority.
2. The local authority now applies under the inherent jurisdiction for a declaration that it is in SL's best interests for the local authority to be given permission to arrange for him to receive the Haemophilus Influenza Type b (Hib) vaccine (hereafter, the 'Hib' vaccine) and the pneumococcal conjugate (PCV) vaccine (hereafter the 'PCV' vaccine) in circumstances where the mother objects to this course of action.
3. The mother of children is TL, the third respondent. Also parties to these proceedings are the father of DL, AN, the father of ML, HV and the maternal grandparents, AL and NT. KL's father, it has now been confirmed, is AG. He too has been joined as a party to these proceedings. The father of SL has yet to be identified. By agreement between the parties, the court head submissions on the issue of vaccination from the local authority, the mother and the Children's Guardian only.
4. These proceedings have a considerable history the details of which I do not need to recite for the purposes of this judgement, save to observe that there were previous proceedings in respect of SL's siblings in the Family Court in 2014, in which proceedings certain expert evidence was heard, to which I shall refer briefly later in this judgment.
5. The present proceedings are due to come on for final hearing later this year, at which time the court will be required to consider matters of disputed fact and to determine the long term welfare of each of the children who are the subject of these proceedings, including the long term welfare of SL.

APPLICATION

6. As I have noted, the local authority applies under the inherent jurisdiction for a declaration that it is in SL's best interests for the local authority to be given permission to arrange for him to receive the Hib vaccine and the PCV vaccine. It is fair to say that over the course of the time the issue of immunisation has been before the court the mother has consented to other immunisations that the local authority wish SL to have. However, the mother maintains her objection to SL being administered the Hib vaccine and the PCV vaccine.

EVIDENCE

7. The court has before it a document entitled "*Response to Enquiry*" from the Designated Doctor for Children's Safeguarding for the local authority, Dr Paul de Keyser, a consultant paediatrician.

8. Whilst making clear that he does not have expert knowledge on the subject of immunisations, Dr de Keyser sets out the UK Immunisation Schedule as contained in the “Green Book” published by the Department of Health. Dr de Keyser notes that the UK Immunisation Schedule provides that the Hib vaccine is given at 8, 12 and 16 weeks of age, with a booster within a month of the first birthday. He further notes that the PCV vaccine is given at 8 weeks and 16 weeks, with a booster within one month of the first birthday.
9. Dr de Keyser describes the problems that can result from infection with Haemophilus Influenza Type b, which include a number of serious illnesses, particularly in young children, and in particular meningitis, septicaemia, pneumonia, pericarditis, epiglottitis, septic arthritis, cellulitis and osteomyelitis. Dr de Keyser relates that many children who develop such infections become very ill and need in-patient treatment with antibiotics. He cites the statistic that 1 in every 20 children with Hib meningitis will die and that those who survive may suffer long term problems, including hearing loss, seizures and learning disabilities. Dr de Keyser further notes that the Hib bacteria can be transmitted to others through infected droplets in coughs and sneezes.
10. With respect to pneumococcal infections Dr de Keyser relates the difficulties that can result from such infections. He states that pneumococcal infections are caused by the bacterium *Streptococcus pneumoniae*, which infection can lead to pneumonia, septicaemia and meningitis. At their most serious, Dr de Keyser states such infections may lead to permanent brain damage or death.
11. Within this context, and in light of the mother’s objections to SL receiving the Hib vaccine and the PCV vaccine, I directed a jointly instructed expert report to assist the court in determining the application made by the local authority. The court now has before it an expert report from Professor Kroll (Professor of Paediatrics and Honorary Consultant in Paediatric Infectious Diseases at Imperial College London and St Mary’s Hospital) dated 14 January 2017. That report opines that there is no medical reason why SL ought not to have the vaccinations in issue. Professor Kroll appends to his report the Department of Health guidance entitled *Immunisation Against Infectious Diseases* (2006), updated in 2010. In particular, Professor Kroll states as follows in relation to the two vaccinations in dispute.
12. Haemophilus influenza Type b is a serious bacterial infection caused by Hib germs that usually strikes children under the age of 5 years of age. Prior to the introduction of the Hib vaccine into the UK Immunisation Schedule, Hib infection was the leading cause of bacterial meningitis. Hib meningitis can be a rapidly progressive infection, hard to diagnose and treat in time to prevent permanent damage or, in some cases, death.
13. With respect to the Hib vaccine, there are no living or dead bacteria in the Haemophilus Influenza Type b (Hib) vaccine. The vaccine provokes a potent immune response that protects against such infection. There are no absolute contra-indications to a child receiving Hib immunisation other than a personal history of hypersensitivity to the vaccine. Such reactions are extremely rare. Reaction to vaccination in another family member is not generally considered a contra-indication to vaccination. When Hib vaccines were given on their own (they are now given in combination) most children vaccinated had no reaction to the vaccine. Mild swelling and redness at the injection site was reported in about one in ten recipients. When now given in combination studies do not reveal any increase in severe reactions. The Hib vaccination has, at the population level, been dramatically successful in reducing the

incidence of Hib meningitis and other serious bacterial infection. A partial primary course of Hib immunisation is not effective and the full three doses of the primary schedule are important to protect up to the age of one, when the booster is needed for full protection.

14. With respect to the PCV vaccine, Professor Kroll states that pneumococcal disease comprises a range of bacterial infections. All persons are vulnerable, but children under the age of 2 years old are particularly so. In children the commonest infection is an ear infection but germs may invade and cause much more serious diseases in the lungs by way of pneumonia, or the bloodstream by way of septicaemia and meningitis. Pneumococcal germs can cause a particularly severe, brain damaging form of meningitis, with about half of the survivors left with some form of disability. The disease is fatal in approximately one in ten children who are infected. Pneumococcal meningitis is hard to diagnose and treat in time to prevent complications. Professor Kroll opines that this issue is getting worse with the rise in anti-biotic resistant strains, making prevention by vaccination more important.
15. With respect to the PCV vaccine, there are no living or dead bacteria in the PCV vaccine, but rather purified capsule polysaccharides from the thirteen commonest pneumococcal strains. There are no absolute contra-indications to a child receiving PCV immunisation other than a personal history of hypersensitivity to the vaccine. Again, such reactions are extremely rare. Following vaccination, most infants will be, transiently, irritable or sleepy, or briefly off feeds. Mild swelling and redness at the injection site is common, as is transient fever. However, such reactions do not generally contraindicate further vaccination. The reactions are typically mild and self-limiting. The PCV vaccine is predicted to prevent between 80 and 90 percent of invasive pneumococcal infections and has been highly effective in reducing the incidence of invasive pneumococcal infections in vaccinated children.
16. Professor Kroll was instructed to consider SL's medical history. He concludes that there is nothing in his medical history (including his diagnosed kidney abnormality) that absolutely, or relatively contraindicates immunisation, nor that would render such immunisation more likely to be ineffective than in any healthy child. Moreover, Professor Kroll opines that the family history of infection of measles that he identifies suggests that SL lived in circumstances in which the transmission of common childhood infections occurred, meaning he should be afforded the protection conferred by the full UK immunisation schedule.
17. The mother's opposition to SL being given the Hib vaccine and the PCV vaccine is based primarily on adverse reactions to being so immunised that she states that her other children have undergone in the past. Professor Kroll was accordingly also asked to consider whether there is anything in the older children's medical records that causes him concern regarding SL receiving the disputed immunisations. Professor Kroll, being careful to note that the abbreviated medical records provided to him may not be complete, makes clear that in none of the records he reviewed relating to SL's siblings detail any significant adverse reaction to vaccination in general or to Hib or PCV vaccination in particular in any of the children. Professor Kroll further opines that even had there been evidence in the medical records of some reaction, this would not, in general, constitute a medical contraindication to vaccinating SL.
18. Within the foregoing context, Professor Kroll concludes that there is no medical reason why SL ought not to have the vaccinations in issue according to the UK immunisation schedule. He further concludes that withholding the Hib and PCV vaccines for SL would mean deliberately maintaining his vulnerability, which is at its

maximum given his present age, to two very serious infections which are major causes of infection, including bacterial meningitis. Professor Kroll is clear that whilst not providing total protection, a full course of vaccination provides a “*very substantial degree*” of protection against these infections. He concludes that, in his expert medical opinion, SL needs to be immunised without delay and to receive booster immunisations at the appropriate time.

19. Whilst disagreeing with the conclusion reached by Professor Kroll, the mother did not seek to require Professor Kroll to attend for cross examination. The mother made no application under Part 25 of the FPR 2010 for permission to instruct another expert in the case.
20. In response to the local authority’s application, the mother was directed on 14 November 2016 to file and serve a statement by 4pm on 21 January 2017 setting out the basis of her objections to SL receiving these vaccinations, to include any particularised accounts of any adverse reactions in her other children on which she relies, supported by medical records detailing those adverse reactions (if any). The mother has not filed and served such a statement. Neither has the mother provided the court with the medical records that evidence the alleged incidences of adverse reactions leading to hospital attendances that the mother instructed Ms Connolly QC and Ms Gill to bring to the attention of the court on her behalf during their oral submissions at this hearing, which submissions I deal with below.

SUBMISSIONS

21. On behalf of the local authority, Ms Markham QC and Ms Georges submit that the local authority should be given permission to ensure that SL receives the Hib vaccine and the PCV vaccine, the administration of such vaccines being in his best interests. Developing this submission, in particular Ms Markham QC and Ms Georges argue that:
 - (a) The local authority acknowledges the mother’s views regarding the immunisation of SL. The local authority further recognises that the declaration it seeks trespasses on the mother’s Art 8 right to respect for her private and family life insofar as the decision whether or not to immunise a child is ordinarily a function of the exercise of parental responsibility.
 - (b) On the evidence before the court however, the balance of risk is clear. Namely, the expert evidence indicates clearly that the risk attendant on giving the vaccines to SL are outweighed by the risks of not giving them to him, in particular when regard is had to the likely gravity of the consequences of the former when compared to potential gravity of the consequences of the latter.
 - (c) Moreover, on the evidence before the court, the decision whether to immunise SL against Hib and pneumococcal infections is not a finely balanced one. Rather, it is plain on the evidence before the court that vaccination is in his best interests.
 - (d) Had the local authority received further information or evidence suggesting that there was some doubt, or a finer balance with respect to the question of whether SL should receive the vaccines in issue, the local authority may have changed its position. However, no such information or evidence has materialised notwithstanding the directions of the court.
22. Within the context of the mother not having complied with the direction of the court to file and serve by 4pm on 21 January 2017 a statement setting out the basis of her

objections to SL receiving these vaccinations, Ms Connolly QC and Ms Gill made the following submissions on behalf of the mother:

- (a) Applications for a declaration that it is in the child's best interests to receive vaccinations are rare. In respect of the decision whether or not to vaccinate a child, parents are accorded a significant degree of autonomy by the State. Ordinarily, a parent in the position of the mother would get to decide whether to have a child immunised as a function of the exercise of that parent's parental responsibility and would not be brought to court if the parental decision were that the vaccinations should not be given.
 - (b) The mother relies on three alleged instances of her older children attending hospital following what the mother contends were adverse reactions to immunisation. Whilst the mother has not produced the records associated with these attendances (or, it must be observed, evidence that such records were requested but unavailable), and whilst none of the asserted instances are referred to in the records reviewed by Professor Kroll, she asserts to the court that VL suffered a swollen leg, that DL suffered an ear infection and the CL developed a rash.
 - (c) The mother's objections, and the extent to which they are reasonable, must be viewed in the context of the particular matters with which these proceedings are concerned, albeit matters wholly unrelated to the issue of immunisation, and in the context of the SL not being in her care, which factors heighten the mother's concerns regarding the administration of the vaccines to SL in the context of the alleged adverse reactions experienced by SL's siblings.
 - (d) Whilst the consequences of SL catching the diseases, which the respective vaccines are designed to protect against are potentially grave, risk of SL catching the diseases against which the vaccines protect is low, as is the risk that the diseases will have a grave outcome if SL were to catch them.
 - (e) Within this context, the mother's considered decision with respect to the vaccination of SL should be respected by the court and the application of the local authority dismissed having regard to the legal principles applicable to that application.
23. On behalf of SL, Mr Tughan QC and Ms Piccos submit that it is plainly in SL's best interests for the outstanding vaccinations to be given to him. As does the local authority, on behalf of SL Mr Tughan QC and Ms Piccos recognise that a parent is, ordinarily, accorded a significant degree of autonomy by the State in deciding in the exercise of their parental responsibility whether to vaccinate a child. However, in circumstances where there is a dispute between those holding parental responsibility for SL (namely, the mother and the local authority) such that the court is required to determine that dispute by reference to SL's best interests, Mr Tughan QC and Ms Piccos submit that the evidence before the court indicates that the balance of risk falls firmly in favour of SL receiving the vaccinations on the UK Immunisation Schedule that he has not received to date.
24. With respect to the weight to be attached to the views of the mother, Mr Tughan QC and Ms Piccos submit that the court must consider these views through the prism of the aspects of the mother's personality identified in the expert evidence in the 2014 proceedings, specifically an obsessive compulsive personality disorder with schizoid personality traits, paranoid personality features and narcissistic personality features.

THE LAW

25. As Ms Connolly QC and Ms Gill point out, applications of this nature are rare and there are only a limited number of reported decisions concerning the issue of immunisation.
26. In *Re C (Welfare of Child: Immunisation)* [2003] 2 FLR 1054, a case which considered a dispute between two parents with parental responsibility within the context of the framework provided by s 8 of the Children Act 1989, Sumner J held that the children concerned should receive immunisations appropriate to their age against the wishes of the mother but in line with the recommendation of the expert medical evidence before the court (which in that case included a report from Dr Kroll instructed by CAFCASS Legal). Sumner J's decision was upheld on appeal. In *Re C (Welfare of Child: Immunisation)* [2003] 2 FLR 1095, Thorpe LJ rejected the repeated categorisation of the course of immunisation as non-essential invasive treatment and considered it to be more correctly categorised as preventative healthcare. Within this context, he observed that:
- “[16] The apparent freedom of each [parent] to act alone is not, however, unfettered. As Dame Elizabeth Butler-Sloss P said in the case of *Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* [2000] 1 FLR 571 at 577D:
- ‘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 under s 2(7) of the Children Act 1989. Such a decision ought not to be made without the specific approval of the court. Sterilisation is one example. The change of a child's surname is another.’
- [17] In that case the court held that the circumcision of the child should only be carried out where the parents agree or where a court, in settling the dispute between them, decides that the operation is in the best interests of the child. In my opinion this appeal demonstrates that hotly contested issues of immunisation are to be added to that ‘small group of important decisions’.
- [18] 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 (s 1(1) of the Children Act 1989) and also have regard to the s 1(3) checklist.”
27. At first instance in *Re C (Welfare of Child: Immunisation)* Sumner J made clear that he had had regard to the wide scope for parental opposition to medical intervention in respect of a child, which he summarised as ranging from obvious cases where the objection would be widely regarded as having no validity in child welfare terms to cases where there is scope for genuine debate on the issue. Within this context, Sumner J acknowledged a parent's right to choose whether they accepted medical advice to have their children immunised and that immunisation was a subject of genuine public debate. Sumner J further made clear that his decision should not be seen as a *general* approval of immunisation for children and that each case is fact specific.
28. In *Re A, B, C and D (Welfare of Children: Immunisation)* [2011] EWHC 4033 (Fam), Theis J considered the issue of vaccinations in the context of children who were the subject of final care orders, where the dispute was between the local authority, who

shared parental responsibility under those orders, and the parents with parental responsibility as to whether the children should be vaccinated. Within this context, Theis J proceeded to determine the question under the auspice of the inherent jurisdiction of the High Court. She concluded the children in that case should be vaccinated. Theis J articulated the following applicable legal principles:

“[9] There is no dispute between the parties as to the law. Once the inherent jurisdiction is invoked the welfare of the child is the paramount consideration.

[10] The Court of Appeal in *Re J (A Minor) (Wardship: Medical Treatment)* [1991] 1 FLR 366 considered the future medical management of a severely brain-damaged premature baby with a considerably shortened life expectancy. Lord Donaldson MR said at 370 ‘...The court, when exercising the *parens patriae* jurisdiction, takes over the rights and duties of the parents, although this is not to say that the parents will be excluded from the decision-making process. Nevertheless, in the end, the responsibility for the decision whether to give or to withhold consent is that of the court alone.’

[11] In this case the dispute is the exercise of parental responsibility as between the parents and the Local Authority. I have been referred to a number of cases that look at how the parent's views should be considered by the court. In *Re Z (A Minor)(Freedom of Publication)* [1996] 1 FLR 191 Sir Thomas Bingham MR said at 217 B-C:

‘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’.

In *Re T (Wardship: Medical Treatment)* [1997] 1 FLR 502 Butler Sloss P said at 509 that

‘...it is clear that when an application under the inherent jurisdiction is made to the court the welfare of the child is the paramount consideration. The consent or refusal of consent of the parents is an important consideration to weigh in the balancing exercise to be carried out by the judge. In that context the extent to which the court will have regard to the view of the parent will depend upon the court's assessment of that view. But as Sir Thomas Bingham MR said in *Re Z*, the court decides and in doing so may overrule the decision of a reasonable parent’.

[12] The court also has to carefully consider Article 8 of the European Convention and, in particular, consider whether what is proposed is a justified and proportionate interference with family life.”

29. Within the context of the last point elucidated by Theis J concerning rights under Art 8 of the ECHR, Art 24 of the United Nations Convention on the Rights of the Child provides that States parties to that Convention recognise the right of the child to the enjoyment of the highest attainable standard of health and, within that context,

imposes on States parties an obligation to pursue full implementation of that right, including the taking of appropriate measures to combat disease.

30. The most recent decision on immunisation appears to be a further decision of Theis J in the case of *F v F (MMR Vaccine)* [2014] 1 FLR 1328. In that case, Theis J made the following important observation in relation to cases of this nature at [21]:

“This is an issue concerning the exercise of parental responsibility that in most circumstances is negotiated between the parents and their decision put into effect. Parents often have to make decisions for children to meet their welfare needs, as Ms Vivian observed that is ‘what parenting is about’. As with many aspects of the exercise of parental responsibility, in particular as children get older, it will often require discussion and explanation by the parents of their decision to their children which may be against their wishes and feelings. This has not been possible in this case as the parents disagree and the court has been asked to step in to make the decision. The court can only make decisions on the evidence that it has in each particular case and by considering the welfare needs of each child. By doing so in this case the court does not in any way dictate how this issue should be decided in other situations; each case is fact specific. This case is only concerned with the welfare needs of these children.”

31. Thus, where there is a dispute between those holding parental responsibility (whether as between parents or between parents and a local authority holding a care order) as to whether such a vaccination or vaccinations should take place the court has jurisdiction to determine the dispute. In determining the question before the court, the welfare of the child is the paramount consideration of the court. Within this context, the court must accord appropriate weight to the views of the parent or parents having assessed those views and must exercise an independent and objective judgment on the basis of the totality of the evidence before it, including, but not limited to, the expert evidence.
32. In this case the court is concerned with the issue of vaccinations in the context of children who are the subject of care orders and thus the dispute is between the local authority sharing parental responsibility for the child and the parent with parental responsibility. In the circumstances where SL is in the care of the local authority, by virtue of s 9(1) of the Children Act 1989 the local authority cannot apply for a specific issue order with respect to the issue of vaccination. Further, given the gravity of the issue in dispute, it is not appropriate for the local authority simply to give its consent to immunisation pursuant to the provisions of s 33(3) of the Children Act 1989 on the basis of its shared parental responsibility for SL under the interim care order (see *A Local Authority v SB, AB & MB*) [2010] 2 FLR 1203 and *Re Jake (Withholding Medical Treatment)* [2015] EWHC 2442 (Fam)).
33. In the circumstances, as in *Re A, B, C and D (Welfare of Children: Immunisation)* [2011] EWHC 4033 (Fam), and whilst the C2 application made by the local authority on 21 October 2016 is for an order in existing Children Act proceedings, the application the local authority pursues before this court must in fact be an application for relief under the inherent jurisdiction of the High Court. The local authority requires leave to make such an application, which application for leave is to be considered against the criteria set out in s 100(4) of the Children Act 1989. Being satisfied that the relief sought by the local authority does not contravene s 100(2) of the Children Act 1989 and that the criteria for granting leave to the local authority to make an application under the inherent jurisdiction set out in s 100(4) of the Act are met, I granted permission for the local authority to make an application for relief under the inherent jurisdiction of the High Court.

DISCUSSION

34. Having considered the evidence before the court and listened carefully to the submissions made on behalf the local authority, the mother and SL by their respective leading and junior counsel, I have decided that it is in SL's best interests to receive the outstanding Hib vaccine and PCV vaccine and that the court should accordingly declare that it is in SL' best interests for the local authority to be given permission to arrange for him to receive the Hib vaccine and the PCV vaccine. My reasons for so deciding are as follows.
35. I am satisfied that the balance of risk as between administering the outstanding Hib vaccine and the PCV vaccine to SL and not doing so plainly favours immunisation.
36. Whilst I accept that Professor Kroll identifies what might be described as low grade side effects of the administering of the vaccines (mild swelling and redness at the injection site in a minority of children given the Hib vaccine and mild swelling and redness at the injection site and transient fever in children given the PCV vaccine) and a very low risk of hypersensitivity to the vaccine, he is also clear as to the grave, and potentially fatal, consequences of the diseases the vaccines are designed to prevent, including bacterial meningitis. None of this expert evidence was disputed by the mother.
37. Whilst the mother submits that risk of infection is low, and whilst the expert evidence supports that contention to a certain extent, it is plain on the evidence before the court that the consequences of that risk becoming manifest are grave indeed, with the meningitis in particular being a rapidly progressive infection, hard to diagnose and treat in time to prevent permanent damage or even death. Within this context, it is also important to note Professor Kroll's evidence that withholding the Hib and PCV vaccines for SL would mean maintaining his vulnerability to serious infection at the point at which the risk of such infection is at its maximum given his present age. I also place weight on Professor Kroll's evidence that the family history of infection of measles that Professor Kroll identifies suggests that SL lived in circumstances in which the transmission of common childhood infections has occurred. Again, none of this expert evidence was disputed by the mother.
38. Professor Kroll considered carefully SL's medical records and having done so concludes that SL has no medical history contraindicative for vaccination according to the UK immunisation schedule. This fact further reinforces my view that the balance of risk as between administering the outstanding Hib vaccine and the PCV vaccine to SL and not doing so plainly favours immunisation.
39. Whilst the mother seeks to persuade the court that VL suffered a swollen leg, that DL suffered an ear infection and CL developed a rash as a result of receiving the vaccinations in issue, each necessitating attendance at hospital, on the evidence that has been placed before the court I am far from satisfied that this was in fact the case.
40. The mother has not produced a statement as directed detailing these incidents by reference to dates and the hospitals visited. She has likewise failed to produce the records associated with these attendances as she was directed to do. As I have already noted, the mother has not even placed before the court evidence that such records were requested. None of the asserted instances relied on by the mother are referred to in the medical records for the children reviewed by Professor Kroll (accepting that Professor Kroll highlights the possibility that those records may be incomplete). In the circumstances, I am not satisfied that the mother has demonstrated to the satisfaction of the court that the instances she cites in fact occurred. In any event, the

unchallenged evidence of Professor Kroll is clear that even had there been some reaction in the other children, this would not, in general, constitute a medical contraindication to vaccinating SL.

41. In summary, the evidence of Professor Kroll makes clear that immunisation is the only practical way to prevent SL from contracting infections each of which carries an appreciable risk of dangerous, and potentially fatal complications in a healthy child. All the evidence before the court is that immunisation is largely (but not wholly) effective in this respect and has a very low level of side effects, which side effects are generally mild and transient. Professor Kroll has confirmed, having reviewed his medical records, that there is no medical reason why SL should not receive the outstanding immunisations. Even if his siblings suffered an adverse reaction to the vaccines (which, for the reasons I have already set out, is far from being established to the satisfaction of the court) such reactions are not contraindicative of SL receiving the vaccines. In the circumstances, I am satisfied on the evidence before the court that, in relation to SL, the benefits of vaccination outweigh the risks by a clear margin.
42. I acknowledge Ms Connolly QC and Ms Gill's submission that parents are ordinarily accorded a significant degree of autonomy when deciding whether to have their child immunised as a function of the exercise of their parental responsibility. Whilst, historically, vaccination was compelled by law under the Vaccination Act 1853 and subsequent legislation, vaccination is not now compulsory in this jurisdiction, the Vaccination Act 1898 having introduced an exception allowing parents who did not believe vaccination was efficacious or safe to obtain a certificate of exemption (introducing the concept of the "conscientious objector" into English law) and the National Health Service Act 1946 having thereafter repealed the compulsory vaccination laws in their entirety. However, I cannot accept Ms Connolly QC and Ms Gill's submission that, ordinarily, a parent *in the position of the mother* (my emphasis) would get to decide whether to have a child immunised as a function of the exercise of her parental responsibility.
43. The fact that this court is required to decide whether SL should be immunised is, in this case, a function of a dispute between those who hold of parental responsibility for SL, namely the mother and the local authority (the identity of SL's father not being known). Where there is such a dispute the court is under an obligation to determine that dispute in accordance with the legal principles articulated above. That determination is not an example of overreaching by the State into an area of parental choice but, rather, is an example of the court discharging its obligation to ensure the welfare of the child is safeguarded in circumstances where those charged with meeting the child's welfare needs cannot agree on how that end is best achieved. Again, as Theis J noted in *Re A, B, C and D (Welfare of Children: Immunisation)*, in *Re Z (A Minor)(Freedom of Publication)* [1996] 1 FLR 191 Sir Thomas Bingham MR said at 217 B-C:

"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”.

44. Thus, the fact that parents are ordinarily accorded a significant degree of autonomy when deciding whether to have their child immunised as a function of the exercise of their parental responsibility where there is no dispute between them, and the fact that, accordingly, this issue rarely comes before the court, does not, in circumstances where there is in this case a frank disagreement between her and the local authority as to what is in SL’s best interests, mean that this mother is being somehow singled out as compared to other parents with respect to the issue of vaccination.
45. The fact that parents are ordinarily accorded a significant degree of autonomy when deciding whether to have their child immunised as a function of the exercise of their parental responsibility where there is no dispute does, however, mean that when the issue has to come before the court, the court must accord proper weight to the views of the parent. I have of course given very careful consideration to the mother’s objections to vaccination. It is not difficult to see how the, albeit unrelated, events with which this court is concerned have focused her mind on the potential risks of vaccination to SL’s wellbeing. The mother has decided that those risks outweigh the risks of not vaccinating SL. A parent is fully entitled to make a decision based on their assessment of the likelihood of infection and how severe that infection might be in terms of outcome.
46. However, I must and do have regard to the fact that the mother’s evaluation does not accord with the expert medical evidence before the court. Indeed, that medical evaluation reaches a diametrically opposed view. Whilst welfare is a very wide concept, and whilst the principle of best interests means more than just medical best interests, the unchallenged conclusions of the expert instructed to assist the court on the question of immunisation are, necessarily, a powerful pointer towards what is in SL’s best interests on the question of immunisation. I must also have regard to the fact that, whilst the mother submits that her considered view is grounded in her direct experience of adverse reactions in her other children, she has not in any way evidenced the factual basis she contends grounds her reasoned evaluation of the risks on this basis, despite being given every opportunity to do so. These matters significantly reduce the weight I am able to attach to the mother’s views in respect of the vaccination of SL as against the evidence of the expert.
47. Lastly in respect of the mother’s views, whilst I note the submissions of Mr Tughan QC and Ms Piccos regarding the impact of the expert opinion in the 2014 proceedings regarding the mother’s personality traits, in circumstances where I have not heard evidence on how those matters may impact on the mother’s views on the subject matter presently before the court, I make clear that I have not taken account of those matters when evaluating the mother’s views and the weight to attach to them.
48. Within the foregoing context, having regard to all of the evidence before the court and evaluating the position by reference to the principle that SL’s welfare is the court’s paramount consideration, I am satisfied that it is in SL’s best interests to receive the outstanding Hib and PCV vaccines.
49. Finally, I have, as I must, paid careful regard to the Art 8 right of the mother to respect for her family life. A decision by the court (as a public authority pursuant to s 6(3)(a) of the Human Rights Act 1998) to authorise the immunisation of SL in the face of the mother’s objection, and in circumstances where parents are ordinarily accorded a significant degree of autonomy by the State when deciding whether to have their child

immunised as a function of the exercise of their parental responsibility where there is no dispute, constitutes an interference in the mother's Art 8 right to respect for family life. For that interference to be lawful it must be justified by reference to the terms of Art 8(2). Having regard to the evidence set out above, I am satisfied that the interference in the mother's right to respect for family life under Art 8 constituted by a decision of this court to authorise the immunisation of SL against her wishes is in accordance with the law and necessary in a democratic society in the interests protecting SL's health and, accordingly, is a justified and proportionate interference. I am reinforced in this conclusion by the fact that a decision to authorise the immunisation of SL accords with his right to the enjoyment of the highest attainable standard of health under Art 24 of the UNCRC.

CONCLUSION

50. For the reasons I have given, I am satisfied that it is appropriate in this case to make a declaration under the inherent jurisdiction of the High Court that it is in SL's best interests for the local authority to be given permission to arrange for him to receive the Hib vaccine and the PCV vaccine and I do so.
51. Finally, I make clear that the decision of the court is not a judgment on whether immunisation is a good thing or bad thing generally. Like Sumner J and Theis J before me, I emphasise that the court is not saying anything about the merits of vaccination more widely and does not in any way seek to dictate how this issue should be approached in other situations. This judgment is concerned solely with an evaluation of one child's best interests based on the very particular circumstances of this case and on the evidence that is available to the court.
52. That is my judgment.