

High Court considers vaccinations and the court's inherent jurisdiction (London Borough of Barnet v AL and others)

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Family analysis: The Family Division granted a local authority's application to vaccinate a baby against its mother's wishes. Charlotte Georges, barrister at the 36 Group, who was junior counsel for the local authority, comments on what lessons family practitioners can learn from the case.

Original news

London Borough of Barnet v AL and others [2017] EWHC 125 (Fam), [2017] All ER (D) 75 (Feb)

The Family Division declared, under the court's inherent jurisdiction, that it was in the best interests of a seven-month-old child in local authority care for the authority to be given permission to arrange for him to receive Haemophilias Influenza Type b and pneumococcal conjugate vaccines, against the mother's wishes. The benefits of vaccination outweighed the risks by a clear margin.

What is the background to the case?

Proceedings were issued by the local authority following lengthy involvement with the family spanning a number of years. The proceedings themselves are complex and are subject to reporting restriction orders in respect of the children. This issue was just one of many in a multifaceted, complex case.

What issues did the case raise?

This specific issue arose in respect of the mother's refusal to consent to ensure her youngest child (who was born during the course of proceedings) received the standard vaccinations usually given to a child within its first six months. Given that the child, SL, was subject to an interim care order this therefore raised the issue of whether the local authority could administer these vaccinations to the child without the agreement of a parent with parental responsibility.

A further issue was whether a court ought to intervene by making a declaration that a local authority can ensure such immunisations could be administered in circumstances where those who share parental responsibility cannot agree. The child's views were separately represented by its guardian.

What were the main arguments put forward?

The local authority relied on Professor Kroll, the jointly instructed court expert. He provided an expert report setting out:

- the full details of the two immunisations in question
- facts in respect of the diseases they sought to immunise against, and
- the risks involved in either being or not being immunised

His expert opinion was that on balance the welfare of the child required immunisation.

The mother was invited to file a statement setting out her full reasons in opposition to the immunisations. She failed to do so. However, her counsel argued that the benefits of such immunisations were outweighed by the risk as it was argued that her older children had reacted badly following their immunisations. There was no evidence to substantiate that this was the case.

Both the expert and the court had had the opportunity to review the medical and GP records relating to the child's older siblings in order to ascertain whether there were any such documented reactions.

What did the judge decide and why?

The judge declared that the local authority should be permitted to ensure that the child is immunised as sought.

The judge acknowledged the arguments on behalf of the mother that in ordinary circumstances parents are accorded a significant degree of autonomy and acknowledged that vaccinations are no longer compulsory in this jurisdiction. However, it was confirmed that where there is a dispute between those who share parental responsibility then the court is required to determine the issue.

At para [43] MacDonald J said:

'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.'

The judge further relied on the lack of formal evidence from the mother in respect of her claim that her older children had experienced negative reactions to their immunisations. There was no statement from her or medical evidence at all to support such a suggestion. The judge in considering this relied on the report of Professor Kroll who, having access to the children's medical records, could not identify any serious reaction to their immunisations.

To what extent is the judgment helpful in clarifying the law in this area?

This case reiterates the rare nature of such decisions and circumstances in which the court would find itself in the position of having to make such a declaration. It reinforces that in a case of this nature, a local authority is right to seek court assistance in finding a resolution to issues which cannot be agreed upon.

It confirms that the appropriate application in such circumstances is for a declaration under the inherent jurisdiction of the High Court. Theis J in her ruling in *Re A, B, C and D (Welfare of Children: Immunisation)* [2011] EWHC 4033 (Fam) was of the view that once the inherent jurisdiction is invoked the welfare of the child is the paramount consideration.

This decision does not alter the current guidance. However, given both how rare these cases are and how few authorities there are, it is a further helpful decision building on the earlier judgment of Theis J. This judgment also reminds practitioners that a court is not making findings in respect to children in general, and all cases must be addressed and decided in relation to a specific child.

What practical lessons can those advising take away from this case?

In any proceedings where a local authority share parental responsibility and there is a dispute as to vaccinations, then the local authority should make an application under the inherent jurisdiction for a declaration permitting them to provide the child with such immunisations. Such application ought to be assisted by an expert report providing details of the relevant vaccinations or diseases and possible side effects.

Interviewed by David Bowden.

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