

# A court order does not guarantee that a child will be immunised

*Despite evidence of its health benefits, immunisation remains a contentious issue for some people. Richard Griffith explores the court's limited role in ensuring parents have their children immunised.*

Childhood immunisation is a key tool in health protection and disease control used by the government to discharge its obligations under the European Social Charter 1961, Article 11, which requires that the UK protects health by:

- ‘Either directly or in co-operation with public or private organisations, to take appropriate measures designed:*
  - To remove as far as possible the causes of ill-health*
  - To provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility on matters of health*
  - To prevent as far as possible epidemic, endemic and other diseases’*
- (Council of Europe, 1961)*

Childhood immunisation is also the main instrument in the government's campaign to achieve the World Health Organization (WHO) target for interrupting indigenous measles, mumps, congenital rubella, poliomyelitis, neonatal tetanus, and diphtheria transmission (Cliff and Smallman-Raynor, 2013).

However, rates of immunisation have fallen over public concern about the safety of vaccines, and the consistent failure to achieve the 95% rate required to achieve population or herd immunity needed to effectively interrupt the transmission of

measles resulted in a major outbreak of the disease in Swansea in the summer of 2013.

Measles outbreaks at music festivals in 2016 were also attributed to festival goers who were not immunised against the disease as children (NHS Choices, 2016). These outbreaks have raised concerns among parents who now want their children immunised, sometimes bringing them into conflict with their anti-vaccination partners (Montague, 2016).

## Compulsory immunisation in the UK

Compulsory immunisation for smallpox was introduced by the Vaccination Act of 1853. The legislation was extremely unpopular and strongly resisted by the Victorians, who saw compulsory vaccination as an extreme example of class legislation that was enforced under Poor Law provisions that targeted working-class infants and inflicted multiple penalties on a public who considered themselves conscientious objectors. In 1867, a more elaborate administration system was established that allowed repeated fining of parents who refused to comply and seizure of goods to pay such fines, or even imprisonment. Public outcry continued and, faced with election defeat, the government was forced to decriminalise the Vaccination Acts.

Compulsory vaccination was not repealed until the National Health Service Act 1948, with no government since daring to force vaccination on the population.

## Immunisation and parental choice

Immunisation is not compulsory in the UK, so the courts cannot treat the matter

as a case of significant harm to a child that would warrant state intervention under the Children Act 1989.

However, where parents are in dispute with each other over an issue of parental responsibility, such as immunisation, then if negotiation fails they can ask the court to resolve the matter (Children Act 1989, section 8).

Although a question of private law, courts are still obliged to follow the provisions of the Children Act 1989 and consider the best interests of the welfare of that child (Children Act 1989, section 1).

Childhood immunisation was considered by the High Court (*A&D v B&E* [2003]) and subsequently by the Court of Appeal (*Re B (A Child)* [2003]) in a case concerning two girls aged 4 and 10 years whose mothers had fundamental objections to immunisation and had refused to allow their daughters to receive any of the usual childhood vaccinations. The girls' fathers made an application to the court seeking the immunisation of their children. The fathers, who had parental responsibility, argued that the immunisations were in the children's best interests.

## Specific issue orders

The specific issue order is:

- ‘...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.’ (Children Act 1989 s.8(1))*

In this case, it was the immunisation of the children in question. Previous cases have dealt with education (*A (Children)*

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(*Specific Issue Order: Parental Dispute*) [2001], emergency medical treatment (*Camden LBC v R (A Minor) (Blood Transfusion)* [1993] and witness interviews (*Re F (Specific Issue: Child Interview)*) [1995]).

As with all cases concerning children, the court must adopt the paramountcy principle and consider what is in the best interests of the welfare of the child, taking into account the welfare checklist, and then consider whether there are other good reasons why an order should be made (Children Act 1989, s.1).

On the question of immunisation, the judge concluded that immunisation would be in the best interests of the welfare of each child.

Subsequent cases concerning immunisation have to be considered on their particular facts, and in *Re B (A Child)* [2003] the Court of Appeal accepted that, in general, there is wide scope for parental objection to medical intervention. Lord Justice Thorpe viewed medical interventions as existing on a scale. At one end, there are the obvious cases where parental objection would have no value in child welfare terms; for example, urgent life-saving treatment such as a blood transfusion. At the other end are cases where there is genuine scope for debate and the views of the parents are important. Immunisation, he held, was an area where there was room for genuine debate.

Immunisation is voluntary and, generally, it is for those who have parental responsibility for a child to decide on immunisation. It is not a question of neglect or abuse that would trigger child protection proceedings.

Although medical authorities can obtain leave to apply for a specific issues order, it is unlikely that leave would be granted in the face of unified parental opposition.

### Court orders no guarantee of immunisation

More recently, the High Court found in favour of the father of sisters aged 11 and 15 years old, and ordered that they must receive the MMR vaccine (Hickey, 2013). Despite the granting of an order by the High Court, it is known that practical difficulties have, to date, prevented the

giving of the vaccine to the children (Hickey, 2013).

A number of enforcement measures are available to the court but these are at the discretion of the judge who will, again, need to balance the best interests of the child against the impact of any enforcement measure. Under the Family Proceedings Rules 1991, a penal notice may be attached to the order, and a person who failed to comply with an order would be jailed for contempt. Alternatively, the court could direct enforcement by arranging for the removal of the child by an officer of the court for the forcible administration of the immunisation. In practice, both remedies are unlikely to be sanctioned as their impact on the child's welfare would be detrimental.

The age of the children is also significant. As the sisters in this case were 11 and 15 years old, the judge was obliged to consider whether they were Gillick competent, and whether they had maturity and intelligence to refuse the MMR vaccine. The judge concluded that neither child was competent owing to the influence of the mother on their beliefs about immunisation (*Gillick v West Norfolk and Wisbech AHA* [1986]).

The practicality of giving a vaccine in the face of continued objection from these children is a real barrier to carrying out the court order. Failure to obtain the cooperation of the children makes it very difficult to safely give the MMR, despite a court order.

### Conclusion

Immunisation continues to be an emotive issue that gives rise to strong feelings, both for and against, and has resulted in hotly disputed cases between parents that the courts have been asked to resolve.

Resorting to litigation has, however, been a largely ineffective approach. The Courts do not grant an unquestioning hand-on-heart recommendation of immunisation, but provide a careful consideration of each case on its facts. Immunisation may not be appropriate in every case. The courts view immunisation as a voluntary process that both parents are entitled to be consulted on. Indeed, the



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Court of Appeal ruled it essential that in hotly disputed cases the consent of both parents must be given before proceeding.

Yet even where the courts have ordered that children be given the immunisation, the practicalities of actually doing so mean that the children remain unvaccinated. A court order is no guarantee that the vaccine will be administered. **BJM**

*A (Children) (Specific Issue Order: Parental Dispute)* [2001] 1 FLR 121

*A&D v B&E* [2003] EWHC 1376 (FAM)

*Camden LBC v R (A Minor) (Blood Transfusion)* [1993] 2 FLR 757

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Council of Europe (1961) European Social Charter, Turin 18.10.61. <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm> (accessed 20 January 2017)

*Gillick v West Norfolk and Wisbech AHA* [1986] AC 112 ((HL))

Hickey S (2013) Sisters must receive MMR vaccine, court rules. [www.theguardian.com/society/2013/oct/12/court-sisters-mmr-vaccine-against-will](http://www.theguardian.com/society/2013/oct/12/court-sisters-mmr-vaccine-against-will) (accessed 20 January 2017)

Montague J (2016) Measles outbreaks at festivals can't be blamed wholly on anti-vaxxers. <http://tinyurl.com/jczs9xl> (accessed 20 January 2017)

NHS Choices (2016) Public Health England: music festivals 'are measles hotspots'. <http://tinyurl.com/j39j9e2> (accessed 20 January 2017)

*Re B (A Child)* [2003] EWCA Civ 1148

*Re F (Specific Issue: Child Interview)* [1995] 1 FLR 819