



Case No: LU21P03356

IN THE FAMILY COURT AT LUTON

29th October 2021

BEFORE RECORDER ARCHER

B E T W E E N :

AA

Applicant

- and -

BB

Respondent

**Ms Shazia Haider-Shah appeared for the applicant mother
The respondent father appeared in person**

Hearing date: 13th October 2021

Judgment

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Recorder Archer:

1. I am concerned in this judgement with two boys: CC (25.6.07), now aged 14, and DD (28.9.10), now aged 11. Their parents are AA (the mother) and BB (the father) . I am giving this judgment following the hearing of the mother's application of 11th March 2021 for a number of section 8 orders in respect of the children, namely:
 - a. A child arrangements order to confirm the current shared care arrangements;
 - b. A specific issue order relating to which secondary school DD will attend from September 2022;
 - c. A specific issue order for the children to be given NHS recommended vaccinations including, when recommended, the Covid-19 vaccination, and;
 - d. A specific issue order in relation to the father's proposed visit to Australia.
2. The matter came before the court on 4th May 2021, when a section 7 report was ordered to consider the issues raised by the mother. That report was filed on 3rd August 2021 and the parties filed evidence in response. A DRA took place on 12th August 2021. It was apparent that the mother accepted the recommendations made by the CAFCASS officer, whilst the father did not. It was also noted at the DRA on 12th August that the Australian authorities required all visitors to be vaccinated against COVID-19 and the father therefore indicated at this hearing that he no longer intended to take the children to Australia on holiday. Accordingly, only issues (a) to (c) above required to be determined at this hearing.
3. This final hearing was listed before me remotely via MS Teams on 15th October 2021. AA was represented by counsel, Ms Haider-Shah. BB appeared in person. The hearing had a time estimate of three hours. During the hearing I heard oral evidence from Mubo Fashade, the section 7 reporter, and each of the parents. I heard submissions on behalf of each of the parents and allowed BB further time to obtain references to medical journals upon which he sought to rely. During the course of the hearing, I read the bundle of papers in its entirety, I read some written submissions which were helpfully prepared by Ms Haider- Shah and I took time to read the medical references to which BB referred me. Unfortunately, the time estimate did not allow for my giving judgement on the day of the hearing and so I resolved to give a judgement in writing at

the earliest opportunity and I regret that it has taken until today, 29th October 2021, for the written judgement to be handed down.

4. The children are of dual heritage with BB being of white British heritage and AA being of white South African heritage. The couple were married and accordingly BB has parental responsibility for both of the children. They lived in D-town in Bedfordshire. They separated in November 2017 although they continue to live together until August 2018, when the father moved to B-town, Hertfordshire.
5. They were supported through mediation to agree arrangements for the children following the divorce. A shared care arrangement is now in place whereby the children spend three nights in the care of each parent on an alternating basis. This appears to have been working well although the mother told me that at the time the shared care arrangement was agreed it had been anticipated that the couple would continue to live in the D-town area, whereas BB has moved to B-town, which is a little further away.
6. DD currently attends EE Primary Academy in D-town. There are no concerns about his attendance or presentation and he is described as a well-liked and popular pupil. He said to have lots of knowledge in his foundation subjects, to be particularly able in maths and whilst competent in English the school felt he was capable of more. Both parents are in communication with the school, the mother on a more regular basis.
7. CC attends FF Academy in D-town. There are no concerns about his attendance or presentation. He is also described as a popular student both in class and outside with his peers. His learning has been impacted upon by the recent lockdown and there are concerns that he is performing below his expected ability this year. The school are in regular communication with AA about CC's academic progress. There was one referral to the local authority in respect of CC but I do not find this to have been of particular relevance to the issues I am asked to determine.
8. It seems apposite to me to deal with each of the applications made by AA discretely and so I shall take each in turn in this judgement:

Whether there should be a child arrangements order confirming the current shared care arrangements

9. I had the benefit of a draft order prepared by AA's representatives. It was clear during the course of the hearing that this document in respect of the shared care arrangements accurately reflected what the parents had agreed. Whilst by and large those arrangements have been working satisfactorily for both parents, neither opposed them being confirmed in a child arrangements order at the conclusion of this hearing. I commend both parents for the way in which they have constructed these arrangements and for the way in which they have been able to give effect to them thus far, such that the boys are able to feel a full part of both parents' home. That is very much to the parents' credit.
10. In her section 7 investigation, Ms Fashade noted however that there is ongoing potential for conflict between AA and BB. In those circumstances, it appears to me that there is a tangible benefit to the children in the arrangements being confirmed by way of a child arrangements order, in order to minimise the possibility of disagreement about the arrangements in the future. I infer that Ms Fashade agrees with this proposal as she endorsed the continuation of the "current child arrangements order" albeit that no such order was yet in force.
11. I have taken full account of the no order principle in s1(5) of the Act, but I'm quite satisfied that it is in the best interests of CC and DD for the current arrangements to be enshrined in a child arrangements order. Accordingly, I approve paragraphs 3 to 5, 8 to 10 and 13 of the draft order at pages A1-4 of the bundle.

Whether there should be a specific issue order relating to which secondary school DD will attend from September 2022

12. At the time of the mother's application on 11 March 2021, she averred that DD had aspired to go to GG Grammar School with his second choice being FF Academy, the school where CC attends and where the rest of his peer group from EE Primary were likely to attend, it being a feeder school. AA stated that in the event that DD had not passed his 11+, he would have liked to attend FF Academy for the reasons I have already stated, but also because the boys from his football club attend that school. AA

stated that the father's position, now that he has moved to B-town, was that he would prefer DD to attend a school there.

13. Unfortunately, by the time of the DRA on 12th August 2021, it was clear that the father had not entered DD into the 11+ exam and the deadline for such an application had passed. Accordingly, DD was unable to sit the 11+ exam with a view to attending GG Grammar School. It was recorded that the father intended to put forward alternatives to FF Academy for DD.
14. Ms Fashade met with DD during the course of her section 7 investigation. He spoke positively about both his parents, describing his brother as "annoying," but "sometimes nice." He was clear that he lived between both parents' homes. DD expressed a wish to attend FF Academy for his secondary school because most of his friends from primary school and from his football team would be attending there and he would like to play for FF schools football team. Indeed, he told the Cafcass officer that FF would have the best school football team in the country as a result of his attendance and that of his teammates! It was also important to him that his brother attended that school and would be able to "look out for" him.
15. In his final evidence, BB states that he felt that DD had the academic potential to attend a grammar school and that this aspiration had been shared by AA until she had come to the decision that DD should attend the same school as his brother. He states that whilst DD's opinion as to which school he would like to attend is an important factor, it is the responsibility of the parents to guide his choice based on their knowledge of the schools and taking into account the schools' abilities to help him to thrive academically. With that in mind, the father's first choice of school for DD was HH School in B-town, followed by II CE Academy, in C-town, and lastly JJ Boys School, an independent day school. In support of those choices, BB drew to my attention that DD is above the academic standard in his core subjects, excelling in physical education and maths. He urged the court to consider the following factors in the selection of a suitable secondary school for DD:

- a. School past performance;
- b. Opportunities outside that of academic education;

- c. Social;
 - d. Culture and OFSTED performance;
 - e. Location and logistics, and;
 - f. DD's own opinion and desire on the school he wishes to attend.
16. BB has augmented those submissions with evidence from the Good Schools Guide as to the overall performance of FF Academy, HH School and II CE Academy.
17. In her final evidence, AA points to the fact that both of the children have lived in D-town from birth and are well-integrated into the local community. Whilst she had supported the possibility of DD attending GG Grammar School, BB had failed to register him for the entrance test and to ensure that he was properly tutored. Of the choices put forward by BB, the mother highlighted that JJ Boys School required an application to be submitted by 27th September, a deadline BB had missed, and that BB had not ensured that DD was prepared for the entrance exam which JJ Boys School would require.
18. In addition to the reasons articulated in her application, AA highlighted that FF had recently achieved a good OFSTED rating, that it provides a wide variety of sports and extramural activities and had a good choice of subjects in the sixth form. Last year, 80% of the sixth-form students applied to university and some had been accepted at Oxford, Cambridge, Imperial and other Russell Group universities. AA highlighted her experience of the teaching staff at FF, CC having been a pupil there for some three years. She contrasted this "informed opinion" of the school with that of BB who has only attended a few meetings at the school.
19. Of the father's other preferred options, AA highlights that GG School in B-town is a 30-minute drive from her home which would pose a logistical challenge in getting both boys to and from school. Furthermore, given that CC will continue to attend FF Academy (in D-town), the father is likely to experience logistical difficulties getting both boys to school and back when they are in his care. The mother highlights that the father's preferred school is in a different county and that may lead to the school holidays being on different dates which would cause further logistical complications to this

family. The mother tells the court in her statement that she has visited an open evening at HH school and while she acknowledges all of its positive attributes, she expresses concern that the primacy of focus on academic achievement may not be conducive to a pupil like DD.

20. As to II CE Academy, AA told the court that she and BB had already discounted this option in relation to CC as it was felt highly unlikely that he would meet their admissions criteria (not being in the catchment area, not coming from a feeder school and not being a regular churchgoer). It seemed unlikely to her on the same basis that DD would be accepted because of those matters. DD has not attended an open day at II. AA stated that JJ Boys as a private school is simply out of the financial reach of both parents and she would feel that it had been very unfair to CC not to have offered him a similar provision and she would be concerned about a rift developing between the boys because of this.
21. I heard oral evidence from the parties on these issues. Ms Fashade was quite satisfied that the boys' wishes and feelings have not been influenced by either parent. She felt she had gained a really good understanding of why DD wanted to go to FF Academy as set out in her report. He had told Ms Fashade that if he went to HH School, he wouldn't have any friends, he wouldn't know anybody and Ms Fashade was concerned that this lack of a friendship network may impact on his education. DD had told her that he wanted to go to his brother's school. She was clear that nothing she had read in BB's statement caused her to change her recommendations.
22. In cross-examination, whilst she accepted that it is for a child's parents to determine which school he attends, the parents have to think about the emotional and mental well-being of the child; the social and emotional factors pertaining to a school choice being as important for the child as the educational factors.
23. In her evidence the mother highlighted that allowing DD the opportunity to make an informed decision about the other school choices had passed, given that he had not been taken to any of the open evenings for the schools advocated by his father. AA was worried about the impact on the sibling relationship of the boys attending separate schools. AA did not accept that she had been explicitly against FF when the couple were in a relationship. Indeed, this would seem to be at odds with CC attending FF

Academy. AA gave the court some evidence that the motivation for father's move to B-town was his opinion that this was a socio-economically better area than D-town.

24. BB told the court that he had been advised not to book any open evenings for DD until this case has been resolved. In respect of the missed entrance exams, he told me that he had been advised that arrangements could be made for DD to sit the entrance exam separately, although there was no evidence from the schools themselves to this effect. During the course of cross-examination by Ms Haider-Shah, the father's grasp of the admissions criteria of each of the schools he put forward appeared less than comprehensive and at one stage he appeared to accept given the requirement to nominate schools in one county only on the application form, that FF Academy in all the circumstances would have to be the school that DD would attend.
25. In coming to a decision about this aspect of the case, the welfare of DD has been my paramount consideration. I have borne in mind the relevant factors of the welfare checklist in section 1(3) of the Act, in particular the wishes and feelings of DD, his emotional, physical, social and educational needs, the likely effect on him of any change in circumstances and any harm that he has suffered or would be likely to suffer.
26. DD is 11 years old and has expressed a clear wish to attend FF Academy. He has articulated his reasons for so doing both to his mother and to the CAFCASS officer. His reasons are cogent and understandable. Whilst it may be that one or other of the father's preferred schools offer an academically more rigorous approach, it is clear that DD has been invited to consider them and has rejected them and I note the mother's opinion that DD may not thrive educationally in HH School with its particular ethos. I note that the father has not taken steps to ensure that DD has been prepared for the entrance exams at two of the schools which he was for a time advocating during the course of these proceedings and that more recently DD has not been taken to open evenings at HH School or II CE Academy.
27. Both HH and FF School have equal OFSTED ratings and it is noted that children with higher academic ability can achieve well at FF. I agree with the evidence of Ms Fashade and the submissions of Ms Haider-Shah that DD's emotional needs militate in favour of his attending FF School which will be the school attended by his peers from EE Primary Academy, the school attended by his football team and the school attended by

his brother. It is likely to be emotionally harmful to DD to be forced to attend a school he does not wish to attend, where he does not have any friends and where he would be without the support of his brother.

28. Furthermore, it seems to me that the logistical consequences of the boys attending a different secondary school in a different county are likely to impact significantly upon them both and indeed on the parent in whose care they are residing at any given time.
29. For all of those reasons, in my judgment, it is in DD's best interest to attend FF Academy and I accede to the mother's application for a specific issue order in that respect. I approve paragraph 12 of the draft order as a result.

Whether there should be a specific issue order for the children to be given NHS recommended vaccinations including, when recommended, the Covid-19 vaccination.

30. In her application AA highlighted that the father had opposed DD having a flu vaccine at the beginning of 2021 and has subsequently refused to allow CC to have the HPV vaccine. It is AA's application that all NHS approved vaccinations should be given to the children as and when they fall due.
31. BB told Ms Fashade that in his view vaccination is for prevention. As the boys are very healthy, have no history of hospitalisation and appear to have good immune systems, he does not believe that they require vaccinations. He is particularly opposed to the COVID-19 vaccine. He has not had this nor does he intend to.
32. He elaborated in his statement that his position on vaccinations for the children is that any proposed vaccination should be considered on the basis of the risk of the child(ren) actually contracting the illness which the vaccination is intended to lower the risk of and on the underlying health of the children at the time of the vaccination. He takes exception to the mother, in his view, "blindly accepting" each and every vaccination proposed, noting the vaccinations aren't 100% foolproof and can cause unintended consequences. He concluded by stating that the response of a vaccine is determined by one's underlying health and immune system. He raises a specific objection to the HPV vaccination on the basis that he regards this as a vaccine primarily for the benefit of females and particularly to lower the risk of cervical cancer.

33. Reporting to the court on this issue, Ms Fashade said in respect of COVID-19 that it was not at the time compulsory for children under 18 in the United Kingdom (although that position has in fact changed in the meantime). She thought that CC was of an age whereby the implications of the HPV vaccine could be explained to him and that were he to wish to have this vaccine, his wish should be respected.
34. In oral evidence, Ms Fashade stated that she had discussed this issue with CC and he was of the view that if a vaccine prevented him from getting him ill, why should he not take it? From her discussions with the school and in her own assessment Ms Fashade felt that CC was of an age and understanding whereby he could understand the implications of having a vaccination. She said that the school nursing service could explain the risks and benefits to CC of the vaccinations proposed and Ms Fashade did not consider it her role to have detailed discussions with the children about the pros and cons of the specific vaccinations.
35. AA robustly rebuffed the suggestion that HPV was only relevant to women citing that it had relevance to a number of other cancers (of the anus, genitals, head and neck), to warts and to sexually transmitted infections. She questioned why the NHS guidance would recommend the vaccine to be given to boys if it was of no benefit to them. Whilst acknowledging that it may be that some vaccines aren't always effective, AA riposted that neither she nor BB had medical qualifications and that she would defer to the JCVI and the NHS for advice in this regard. She highlighted that BB had not provided any peer-reviewed evidence to support his case.
36. In the course of his closing submissions BB provided to the court two articles: one from the Government website which highlighted an article from the JCVI, a summary of which follows: "The assessment by the Joint Committee on Vaccination and Immunisation (JCVI) is that the health benefits from vaccination are marginally greater than the potential known harms. However, the margin of benefit is considered too small to support universal vaccination of healthy 12- to 15-year-olds at this time. It is not within the JCVI's remit to consider the wider societal impacts of vaccination, including educational benefits. The government may wish to seek further views on the wider societal and educational impacts from the Chief Medical Officers of the UK 4 nations."

37. I know that since that article was submitted on the 3rd of September 2021, the government guidance has in fact been amended to include the vaccination of 12- to 15-year-olds.
38. The import of the second article submitted by BB from the BMJ is effectively summarised in its title, “Whatever teenagers and families decide, their views must be heard and respected.” It constitutes an important reminder of the importance of discussing with children of this age and their parents the pros and cons of COVID-19 vaccination. It does not bear upon my decision one way or another.
39. In determining this aspect of the case, my attention has rightly been drawn to *Re M v H & others [2020] EWFC 93*. In that case, McDonald J was faced with a similar situation to that before me in the instant case. I set out the learned High Court Judge’s reasoning in full:

“44. In *Re H (A Child: Parental Responsibility: Vaccination)* the Court of Appeal came to the clear conclusion that we have now reached the point where, whilst not compulsory, scientific evidence establishes that it is generally in the best interests of otherwise healthy children to be vaccinated, the current established medical view being that the routine vaccination of infants is in the best interests of those children and for the public good. Within this context, the Court of Appeal was equally clear that, subject in each case to the broad range of welfare factors the court is required to consider when determining an application for an order under s.8 of the 1989 Act, a court will be unlikely to conclude that immunisation with the vaccines that are recommended for children by Public Health England and set out in the routine immunisation schedule is not in a child’s best interests absent (a) a credible development in medical science or new peer-reviewed research evidence indicating significant concern for the efficacy and/or safety of one or more of the vaccines that is the subject of the application and/or (b) a well evidenced medical contraindication specific to the child or children who are subject of the application...

45. With respect to the first point, the Court of Appeal further made clear in *Re H (A Child: Parental Responsibility: Vaccination)* by its endorsement of the observations of the court in *Re B (A Child: Immunisation)*, the court will only be in a position to conclude that there significant concern for the efficacy and/or safety of one or more of the vaccines that is the subject of the application if there is a credible development in medical science or new research demonstrating this. That will require, at a minimum, the existence of new, peer reviewed research conducted by a reputable specialist or institution. Further, *if* such credible, peer reviewed research were to emerge then, within the context of an application before the court concerning disputed vaccinations, it would likely need to be the subject of a jointly instructed expert report authored by an expert in the field of immunology instructed in accordance with the long established principles underpinning the admission of expert evidence pursuant to FPR Part 25.

46. There is before this court no credible development in medical science or new peer reviewed research demonstrating to the required standard a significant concern for the efficacy and/or safety of any of the vaccines currently listed on the NHS vaccination schedule. Whilst the mother has put before the court material from a variety of online sources, and whilst she clearly places great store by the material on which she relies, none of that material constitutes evidence of a credible development in medical science or reliable, peer reviewed research concerning the safety and/or efficacy of the vaccines in issue. Further, and within this context, it is important to be clear that tendentious, partial and partisan material gathered from the Internet (what Sedley LJ in *Re C (Welfare of Child: Immunisation)* accurately characterised as “junk science”) and placed before the court to support a

personal belief regarding the probity and/or efficacy of vaccinations does not and cannot amount to evidence capable of demonstrating to the required standard a significant concern for the efficacy and/or safety of any of the vaccines currently listed on the NHS vaccination schedule. As Thorpe LJ noted in *Re C (Welfare of Child: Immunisation)* at [23], it is important that partisan material that pursues a particular contentious agenda with respect to vaccination is not allowed to distort the forensic process with which the court is engaged, which forensic process must be informed by reliable, scientifically credible evidence:

"[23] In the end I do not find any of the authorities cited by Miss Gumbel directly in point. Nor is direct authority necessary once the present case is seen not as some significant novelty requiring guidance from this court but as a standard s 8 application which has attracted a great deal of publicity and public interest simply because the specific issue in dispute is both topical and contentious in the wider society to which we all belong. But that wider dimension must not distort the forensic processes leading to the determination of whether the application should be granted or refused."

47. Within the foregoing context, I have of course borne carefully in mind the mother's strongly expressed views regarding the probity of vaccinating the children. However, in doing so I must be guided by the approach articulated by the Court of Appeal in *Re H (A Child: Parental Responsibility: Vaccination)* which made clear at [101] that "while the views of parents must always be taken into account, the weight that is given to them depends not upon the vehemence with which they are expressed but upon their substance". Within this context, whilst the mother holds a very firm belief regarding the probity of vaccinating P and T, that position is based on her strong personal belief that vaccination is not required and presents a greater risk than do the diseases being vaccinated against rather than on any credible evidence indicating significant concern for the efficacy and/or safety of one or more of the vaccines that is the subject of this or a well evidenced medical contraindication specific to one or both of the children. In these circumstances, whilst strongly held, I am not able to attach determinative weight to the objections raised by the mother in this case.

48. With respect to the second point, namely whether there exists a well evidenced medical contraindication specific to the children who are subject of the application, there is no evidence before the court to suggest that for either P or T the vaccinations recommended by PHE and listed in the NHS vaccination schedule are medically contraindicated.

49. Finally, with respect to the mother's submission that to make a specific issue order requiring the children to receive the vaccinations set out in the NHS schedule of vaccinations would constitute a disproportionate interference in the Art 8 rights of P and T, I am not able to accept that submission. In so far as making a specific issue order requiring the children to receive the vaccinations set out in the NHS schedule of vaccinations amounts to an interference in the children's Art 8 rights (as to which I express no definitive view), I am satisfied that the objective of vaccination, namely to protect the children from the consequences of the diseases vaccinated against and the population more widely from the spread of such diseases, is sufficiently important to justify the limitation of a fundamental right and is rationally connected to the objective. Within the context of vaccination, I am further satisfied that a less intrusive measure (for example the dietary options advanced by the mother) could not be used without unacceptably compromising the objective of the vaccination programme. Finally, within the context of the twin objectives of the vaccination programme in seeking to protect the children from the consequences of the diseases vaccinated against and to protect the population more widely from the spread of such diseases, and having regard to the well evidenced consequences of such infections for individuals and their spread within communities, I am satisfied that the specific issue order requiring vaccination strikes a fair balance between the rights of P and T and the interests of the community.

50. In all the circumstances, holding P and T's best interests as my paramount consideration and having regard to the matters I am required to consider under s. 1(3) of the Children Act 1989, I am satisfied that best interests of both P and T to be vaccinated in accordance with the NHS vaccination schedule. It is now clearly established on the basis of credible, peer reviewed scientific evidence that it is generally in the best interests of otherwise healthy children to be vaccinated with those vaccines recommended for children by Public Health England and set out in the routine immunisation schedule which is found in the Green Book published in 2013 and updated as necessary since..."

52. Finally, whilst the Court of Appeal did not reach a definitive conclusion on the question of whether,

in private law proceedings, the question of vaccination should or should not continue to require court adjudication where there is a dispute between holders of parental responsibility, the observations of the Court of Appeal in *Re H (A Child: Parental Responsibility: Vaccination)* summarised at paragraph [40] of this judgment, whilst strictly obiter, make it very difficult now to foresee a case in which a vaccination approved for use in children, including vaccinations against the coronavirus that causes COVID-19, would not be endorsed by the court as being in a child's best interests, absent a credible development in medical science or peer-reviewed research evidence indicating significant concern for the efficacy and/or safety of the vaccine or a well evidenced medical contraindication specific to the subject child.”

40. In fairness to BB, he conceded by the end of the hearing that he had not put before the court any evidence of a nature or degree which would require the Court to go behind the recommendations of PHE and that even if he had, there was no *expert* evidence before me which would enable me to come to any different conclusion than that espoused by the medical experts at PHE.
41. Further to the recommendations of Ms Fashade and given that the father has failed to discharge the burden to disprove the scientific consensus underlying the recommendations of PHE (and clearly required in the light of the authority of *Re M v H & Others (ibid)*), I am quite satisfied that it is in the best interests of the children to be given all of the vaccines which are recommended from time to time in the NHS vaccination schedule. I make a specific issue order to that effect. For the avoidance of doubt and given the change in government guidance since the application was issued, this order extends to vaccination for COVID-19 for CC. In accordance with Ms Fashade’s assessment of his competence, any vaccination for CC should only be given if this accords with his own wishes and feelings.

Whether there should be a specific issue order in relation to the father’s proposed visit to Australia.

42. As I have already observed, it came to light prior to the final hearing that the Australian authorities will not allow an adult to enter Australian territory without having had the COVID-19 vaccination and BB continuing to refuse to have such vaccination, it has not been necessary for me to determine this aspect of the case because the father no longer intends to take the children to Australia. It seems to me that it would be prudent for those facts to be recited on the face of the order I made today.