



Vaccinations for Children in Care

Introduction

Although they are not compulsory, scientific evidence recommends that it is in the best medical interests of children to be vaccinated, in accordance with Public Health England's guidance, unless there is a specific contra-indication to suggest otherwise in an individual case.

Following a decision by the Court of Appeal - *May 2020 (Ref: H (A Child) (Parental Responsibility: Vaccination) [2020] EWCA Civ 664)* - the approach towards vaccinations in social care settings changed. Prior to this case a Local Authority could not authorise a vaccination contrary to the wishes of a parent. The judgement from this case created a significant intervention in the area of vaccinations, which redefined the scope of Local Authority powers under section 33 of the Children Act 1989.

This guidance clarifies the significance of this decision and provides the process to be followed by professionals where a dispute arises between the Children's Trust and parent(s) as to whether a child, who is subject to a Care Order (including an Interim Care Order) should be vaccinated.

It is also written in the spirit of an anti-vaccine movement among some parents who are concerned about the efficacy and/or safety of vaccines or who oppose them for other or religious beliefs.

Children in Care

Section 33(3) Children Act 1989 provides that:

(1) Where a Care Order is made with respect to a child it shall be the duty of the Local Authority designated by the order to receive the child into their care and to keep him in their care while the order remains in force.

(2) [...]

(3) While a Care Order is in force with respect to a child, the Local Authority designated by the order shall—

(a) have parental responsibility for the child; and

(b) have the power (subject to the following provisions of this section) to determine the extent to which

(i) a parent, guardian or special guardian of the child; or

(ii) a person who by virtue of section 4A has parental responsibility for the

child, may meet his parental responsibility for him.

(4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

Additionally, the obligations placed upon a Local Authority in respect of a child in care under section 22 Children's Act 1989 states:

“(3) It shall be the duty of a Local Authority looking after any child—

(a) to safeguard and promote his welfare; and

(b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

Where Parents Object to a Routine Vaccination

In terms of the law, vaccinations are categorised as preventative health care rather than medical treatment although the court of appeal view was that that was not the main issue.

Social Workers however should not disregard the stress and anxiety that vaccinations carry for loving and responsible parents who may have individual beliefs of their own towards them and a strong view as to whether their child(ren) should have them. Parents have a right to express their views and this must always be respected and taken into account before making a decision. However the circumstances should not be determined by the strength of the parent(s) views alone unless this view has a real bearing on the child's welfare.

The administration of standard or routine vaccinations should not be regarded as a 'serious' or 'grave' matter so they usually fall within the standard scope of Local Authority decision making for a child in care under Section 33. The only exception is where there are significant circumstances which suggests, that it may not be in the best interests of a child to be vaccinated.

In most cases it is therefore not necessary for Social Workers to routinely refer vaccination dispute cases to the High Court where a parent oppose the routine vaccination of their child.

Where there is a concern regarding the welfare of the child, it is appropriate for the Trust to seek lawful authority, pursuant to section 33(3) Children Act 1989, to consent to and make arrangements for the vaccination of the child, despite the objection of the parent(s).

The Children's Trust's Power of Authority

Under section 33(3) of the Children Act 1989, the Children's Trust has the authority to overrule the views of parents on the issue of vaccination, if they consider it to be in the best interests of a particular child. This authority applies equally to a child who is subject to an Interim Care Order.

As mentioned above this power was clarified in a Court of an Appeal ruling (*May 2020 (Ref: H (A Child) (Parental Responsibility: Vaccination) [2020] EWCA Civ 664*) on this issue.

As a result of this case where a parent wants to challenge a decision then the burden of bringing proceedings passes to the parents seeking to resist vaccination. The court made it clear that any application for an injunction under section 8 of the Human Rights Act 1998 was likely to fail unless there was 'cogent, objective medical and/or welfare evidence demonstrating a genuine contra-indication to the administration of one or all of the routine vaccinations.

Before Making the Decision

Before making a decision on a vaccination for a child with a Care Order or Interim Care Order, Social Workers should ascertain the wishes and feelings of—

- (a) the child;
- (b) his/her parents;
- (c) any person who is not a parent of his but who has parental responsibility for him/her; and
- (d) any other person whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.

In making any such decision the Trust must give consideration to the following:

- (a) having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;
- (b) to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

Please refer to [Voice of the Child Practice Guidance](#).

The Decision

Under section 33(3)(b) Children's Act 1989, the Children's Trust, with a Care Order or Interim Care Order in place, can consent to a child being routinely vaccinated where it is satisfied that it is in the best interests of that child, without the need to apply to the High Court, despite the objections of parents.

Following consultation with the parents and where it is deemed that there is no risk to the child the matter should be recorded on the child's e-record.

Authorisation of this decision should be made by a Manager of suitable seniority as outlined in the Trust's [Scheme of Delegated Decision Making](#).