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S O L I C I T O R S

COVID-19 vaccines for children: What happens when parents can't agree?



Denise Head, Managing Partner and Family Law specialist at Bates Wells & Braithwaite Ipswich, explores the concept of "parental responsibility" when it comes to vaccines.

These may be "extraordinary" times, but it is not the first time in recent years that parents have had to make important decisions about whether to vaccinate their children. In the early 2000s the MMR controversy, fanned by disgraced doctor Andrew Wakefield, caused years of damage and more recently, I received queries from parents with concerns regarding the HPV vaccine rollout.

The law, however, has remained constant in how it deals with child vaccination. For a child to receive any medical treatment, including a vaccine, consent is required. For children under the age of 16, this is usually from someone with parental responsibility, defined in s3 of the Children Act 1989 as "all the rights duties powers responsibilities and authority which by law a parent of a child has in relation to the child and his property". Mothers automatically have parental responsibility (PR) and fathers acquire PR either by being married to the mother at the time of the child's birth, by being named on the child's birth certificate, or by court order.

What happens if parents cannot agree?

Although every effort should be made for the parents (married, divorced or separated) to discuss the situation, whether direct method or perhaps by way of mediation, if agreement still cannot be reached, then one or both parents could apply to a court which will always base its decision on what is in the child's best interest. Court proceedings are a last resort. These applications take time, cost money and, now that vaccination has been approved by the UK government and is supported by bodies such as Public Health England, it is highly likely that a court will rule in favour of vaccination.

What about the child's opinion?

In cases where parents withhold consent but the child wants to go ahead, the guidelines say the vaccination teams will determine if the child is able to make an informed decision – known as Gillick competence – "As a matter of Law, the parental right to determine whether or not their minor child below the age of sixteen will have medical treatment terminates

if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed." From the age of 16, the capacity to consent is presumed.

For more information

If you are a parent with opposing views in your family about vaccination, and want further advice, please contact Denise Head or Scott Emsden.



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FOR FURTHER INFORMATION CONTACT

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