

**IN THE COURT OF PROTECTION  
IN THE MATTER OF THE MENTAL CAPACITY ACT 2005  
AND IN THE MATTER OF AD  
B E T W E E N:**

**CASE NO: 12219141**

**AN INTEGRATED CARE BOARD**

**Applicant**

**-and-**

**(1) AD**

**(by his litigation friend, the Official Solicitor)**

**(2) AC**

**Respondents**

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**ORDER (Authorisation of Covid-19 Vaccination)**

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**IMPORTANT WARNING**

**THESE PROCEEDINGS ARE IN PUBLIC BUT SUBJECT TO A TRANSPARENCY ORDER. PUBLICATION OF ANY INFORMATION CONTRARY TO THE TRANSPARENCY ORDER IN RELATION TO THESE PROCEEDINGS MAY BE IN CONTEMPT OF COURT.**

**ANY PERSON FOUND IN CONTEMPT MAY BE FINED OR SENT TO PRISON.**

**IF YOU ARE SERVED WITH THIS ORDER YOU SHOULD OBTAIN A COPY OF THE TRANSPARENCY ORDER. READ IT EXTREMELY CAREFULLY. YOU HAVE THE RIGHT TO ASK THE COURT TO VARY OR DISCHARGE THE TRANSPARENCY ORDER.**

**BEFORE** HHJ Brown sitting in public as a Judge of the Court at Milton Keynes of Protection on the papers



**ON:** 6<sup>th</sup>. November 2023

**ISSUED:** 06 November 2023

**WHEREAS** the court has before it a personal welfare application dated 22 April 2021 in respect of the first respondent (“**AD**”) in relation to Covid-19 vaccination, brought pursuant to the Mental Capacity Act 2005

**UPON** the court being content to make the order without the attendance of the parties or their representatives at a hearing

**AND UPON** the court reading:

- Final Orders dated 6 May 2021 and 5 May 2023
- its previous judgment in this matter Re A (Covid-19 Vaccination) [2021] EWCOP 47
- report of first (unsuccessful) attempt at administering the Covid-19 vaccination dated 10 May 2023
- minutes of the Round Table Meetings dated 19 April 2023 and 21 June 2023
- witness statements of:
  - Deputy Director of Quality of the ICB (“**Mr Y**”) dated 7 December 2022 and 16 December 2022
  - Lead Nurse for Covid-19 Vaccination Programme (“**Ms C**”) dated 27 April 2023 and 20 October 2023
  - Social Worker (“**Ms B**”) dated 2 May 2023
  - AC (mother) dated 18 April 2023, 1 May 2023, 3 May 2023, 30 June 2023 and 27 October 2023
- reports of “AD’s IMCA” dated 29 March 2023 and 17 October 2023
- independent expert report of Dr Taylor (Consultant Anaesthetist) dated 8 November 2022, addendum report dated 2 October 2023 and response to clarification questions dated 20 October 2023
- updated Covid-19 Vaccination Care Plan dated 31 October 2023



- written submissions of the ICB dated 1 November 2023, AC dated 30 August 2023 and the Official Solicitor on behalf of AD dated 31 October 2023 with her proposed amendments to the Covid-19 Vaccination Care Plan.

**AND UPON** it being recorded that:

- A. AD is diagnosed with a moderate learning disability (and is on the learning disability register), autism and Down’s Syndrome. He is of BAME ethnicity. He is estimated to be clinically overweight. He is categorised as “at higher clinical risk” and at higher risk of more serious consequences from Covid-19.
- B. AD does not engage with health or social care professionals or with any health interventions.
- C. On 6 May 2021 the court determined that:
- (i) AD lacks capacity to make decisions regarding the administration of Covid-19 vaccination and make decisions regarding his medication (including the use of anxiolytic and pain relief medication) to be given in connection with the administration of the Covid-19 vaccination; and
  - (ii) It is lawful and in AD’s best interests to be given the first and second dose (the primary course) of Covid-19 vaccination in accordance with a care plan which included the covert administration of anxiolytic medication (Temazepam) before receiving the vaccine and pain relief following administration.
- D. An attempt to administer the vaccination was unsuccessful on 10 May 2021. Alternative mechanisms to administer the vaccination have been explored and a report provided by independent expert Dr Taylor (Consultant Anaesthetist) who recommended a higher initial dose of Temazepam to be covertly administered, but noted that if this is unsuccessful there are no other approaches he could recommend which would have an acceptable risk/benefit profile.
- E. On 5 May 2023:



- i. the Court determined that it is lawful and in AD's best interests to be given the first and second dose (the primary course) and the first booster dose of Covid-19 vaccination in accordance with a care plan which included the covert administration of anxiolytic medication (Temazepam) before receiving the vaccine and pain relief following administration; and
  - ii. the court recorded that in the event that the administration of the first and second dose of the primary course and the booster dose of the Covid-19 vaccination has been successful, it is minded to determine any application by the ICB for authorisation of further/booster doses on an ongoing basis (in accordance with Governmental guidance relevant at the time) on the papers and is not minded to list the matter for further oral hearing;
- F. A further attempt to administer the Covid-19 vaccination was unsuccessful on 12 May 2023, as AD did not drink the cold drink that had the covert anxiolytic medication (Temazepam) in it and therefore vaccination was not attempted. A further attempt at vaccination could not be made before AD changed residence and the Spring Covid-19 Vaccination Programme concluded.
- G. AD's residence and care package is commissioned by the Local Authority. There are separate health and welfare proceedings regarding AD's residence (the ICB is not a party to those proceedings). AD has moved to the "**New Residence**" and receives care there from "**SCC Care Provider**".
- H. A round table meeting took place on 21 June 2023 attended by AC (AD's mother), AD's Senior Learning Disability Nurse (Mr Z), AD's IMCA, AD's Social Worker (Ms B), the Lead Nurse for Covid-19 Vaccination, representatives from the ICB, representatives from SCC Care Provider and AD's solicitor, instructed by the Official Solicitor. At that meeting:
  - (i) AD's Senior Learning Disability Nurse, AD's IMCA, AD's Social Worker, the Lead Nurse for Covid-19 Vaccination and the representatives for the ICB agreed that they consider that it is in AD's best interests to receive the course of the Covid-19 vaccination in the Autumn 2023 Vaccination Programme;



- (ii) AC (AD's mother) considers that it is not in AD's best interests to receive the course of the Covid-19 vaccination.
- I. From Autumn 2023, the JCVI Autumn 2023 Statement advises that the primary course of Covid-19 Vaccination should consist of a single dose.
- J. Following the recent BA2.86 variant of Covid-19, the Autumn 2023 Covid-19 Vaccination Programme commenced on 11 September 2023 (starting with those resident in care homes and care home staff, with all other eligible persons thereafter) and will continue until 31 January 2024.
- K. The Lead Nurse for Covid-19 Vaccination has confirmed to the ICB that AD remains eligible for and recommended to receive Covid-19 vaccination in accordance with the JCVI Autumn 2023 Statement because he falls within a "clinical risk group" (as now set out in Table 4 of the Covid-19 Greenbook Chapter 14) as a person with a "chronic neurological disease" – namely both being on the learning disability register and also having Down's syndrome. As such, he is a person whom the JCVI advises (and NHS England has accepted) should be offered a Covid-19 vaccination.
- L. The Lead Nurse for Covid-19 Vaccination has confirmed that the guidance is now that any booster dose of Covid-19 Vaccination is administered no sooner than 3 months' after the last dose. The timing of administration of the primary course of Covid-19 Vaccination for AD would determine whether he would be eligible for the first booster dose during the Autumn 2023 Covid-19 Vaccination Programme.
- M. AD's Senior Learning Disability Nurse has updated the Covid-19 Vaccination Care Plan to (i) reflect the recommendations of Dr Taylor (Independent Expert Consultant Anaesthetist); (ii) reflect the JCVI Autumn 2023 Statement and (iii) reflect AD's New Residence and SCC Care Provider. It provides for covert anxiolytic/sedation and covert pain relief medication. There is to be no use of physical restraint to administer the Covid-19 vaccination. The Covid-19 Vaccination Care Plan states that if AD is alert, non-compliant or aggressive, the vaccination attempt should be abandoned.
- N. The Covid-19 Vaccination Care Plan provides for the professionals to consider whether there are any side effects after each vaccination.



O. The following timetable is proposed by the ICB for administration of the Covid-19 vaccination for AD:

- (i) primary course on 6 November 2023;
- (ii) first booster dose on or around 3 months after the primary course.

P. The ICB, the Official Solicitor on behalf of AD, AD's Social Worker, IMCA, Senior Learning Disability Nurse and the Lead Nurse for Covid-19 Vaccination consider that it is in AD's best interests to receive Covid-19 vaccination and a booster dose at the intervals as outlined above.

Q. For the reassurance of any vaccinators and care provider for AD, the court has authorised the Covid-19 vaccinations to proceed and has determined that it is in AD's best interests to receive Covid-19 vaccination (including a booster) in accordance with the relevant care plans (as amended and updated from time to time). Consent from either AD or AC is not relied upon, and is not necessary, as the lawful basis for the administration of any Covid-19 vaccination.

R. Either the care provider, AD's Social Worker, AD's Senior Learning Disability Nurse or the vaccinator will contact AC by telephone after any vaccination appointment to update her as to how it went.

**AND UPON** the court recording that in the event that the administration of the primary course and the first booster dose of the Covid-19 vaccination has been successful, it is minded to determine any application by the ICB for authorisation of further/booster doses on an ongoing basis (in accordance with Governmental guidance relevant at the time) on the papers and is not minded to list the matter for further oral hearing

**AND UPON** the court the having made a Transparency Order of in relation to this application on 23 April 2021, which provides that no person shall publish any information that might lead to the identification of AD, his family, his care provider, the health and social care professionals involved in his care or any material or information that identifies or is likely to identify where any person listed above lives, or is being cared for, or their contact details



**IT IS DECLARED PURSUANT TO SECTION 15(1) OF THE MENTAL CAPACITY ACT 2005 THAT:**

1. AD lacks capacity to:
  - (a) conduct these proceedings;
  - (b) make decisions regarding the administration of a Covid-19 vaccination; and
  - (c) make decisions regarding medication (including anxiolytic and pain relief medication) to be given in connection with the administration of his Covid-19 vaccination.

**IT IS DECLARED AND ORDERED PURSUANT TO SECTIONS 15(1) AND 16(2) OF THE MENTAL CAPACITY ACT 2005 THAT:**

2. It is lawful and in AD's best interests for the primary course of a Covid-19 vaccination to be given to AD in accordance with the Covid-19 Vaccination Care Plan. Such Covid-19 Vaccination Care Plan may be updated and amended by the ICB, including in relation to which trained person(s)/team/organisation shall administer the vaccination and to incorporate any learning from any previous (attempts at) administration of any vaccination, provided that such amendments or updates do not permit the use of physical restraint or higher level of sedation beyond 30mg of Temazepam or 4mg dose of Lorazepam or 10mg dose of Diazepam, as prescribed in the current Covid-19 Vaccination Care Plan. It is lawful and in AD's best interests for a further attempt at Covid-19 Vaccination to be undertaken in accordance with the Covid-19 Vaccination Care Plan in the event that the attempt is unsuccessful (in the circumstances set out in the Covid-19 Vaccination Care Plan).
3. It is lawful and in AD's best interests for a booster dose of a Covid-19 vaccination to be given to AD, in accordance with the relevant governmental guidance pertaining at the time, in accordance with the Covid-19 Vaccination Care Plan (as amended and updated by the ICB). The timeframe between the primary course and a booster dose to be determined by those responsible for AD's healthcare. Such Covid-19 Vaccination Care Plan may be updated and amended by the ICB, including in relation to which trained



person(s)/team/organisation shall administer the vaccination and to incorporate any learning from any previous (attempts at) administration of any vaccination, provided that such amendments or updates do not permit the use of physical restraint or higher level of sedation beyond 30mg of Temazepam or 4mg dose of Lorazepam or 10mg dose of Diazepam, as prescribed in the current Covid-19 Vaccination Care Plan. It is lawful and in AD's best interests for a further attempt at Covid-19 Vaccination to be undertaken in accordance with the Covid-19 Vaccination Care Plan in the event that the attempt is unsuccessful (in the circumstances set out in the Covid-19 Vaccination Care Plan).

4. The court consents on behalf of AD for him to be given the Covid-19 vaccine, including both the primary course and a booster (as recommended) in accordance with the Covid-19 Vaccination Care Plan (and as to be updated in accordance with this order).
5. In so far as giving effect to this order will amount to an interference with AD's Article 8 ECHR rights, such interferences are lawful and are hereby authorised by the court as being necessary and proportionate.

**IT IS FURTHER ORDERED THAT:**

**Report of Vaccination Appointments**

6. The court is to be informed when AD has received the first dose of Covid-19 vaccination.
7. The care provider (as it is from time to time), in conjunction with the vaccinator, shall provide a written report (which can be in the format of an email) summarising each vaccination appointment as soon as practicable after the appointment to AD, with copies sent to AD's GP practice, the ICB, the CLDT, AC and to the Local Authority as the commissioner of his care. Whilst the Official Solicitor remains appointed as AD's litigation friend in these proceedings, she shall also receive a copy of any report. Such reports to include a description of steps taken, AD's presentation, whether the vaccination was successful and who was present.

**Application for Further Boosters/Doses of Covid-19 Vaccination on an Ongoing Basis**





8. By **1 April 2024** the ICB has permission to file and serve a COP9 application seeking authorisation of Covid-19 vaccination booster/further doses on an ongoing basis. The grounds for any such application shall include an update as to how the administration of the primary course and first booster dose of Covid-19 vaccination has gone and confirmation of whether AD has suffered any significant side effects or adverse reactions following the first and second dose. Should there be a further updated Covid-19 Vaccination Care Plan, this shall also be included. The ICB shall file a proposed draft Order. Should either the Official Solicitor on behalf of AD or AC dispute any application by the ICB for authorisation of Covid-19 vaccination booster/further doses on an ongoing basis, they shall file and serve written submissions (setting out their reasons) by no later than **15 April 2024**.
9. In the event that written submissions disputing the application by the ICB for authorisation of Covid-19 vaccination booster/further doses on an ongoing basis be filed, the ICB shall file and serve written submissions in response by no later than **29 April 2024**.
10. The court will consider the matter on the papers in the first instance.

#### **Disclosure Permissions**

11. There is permission for information about and documentation from these proceedings (including this order, the Covid-19 Vaccination Care Plan (as updated and amended) and the Transparency Order (and accompanying Record of Information Sheet) to be provided to any organisation or person involved in AD's care and support where it is appropriate to do so for the purpose of delivering that care and support, and to:
  - (a) AD's father (AG);
  - (b) GP Practice A, GP Practice B and any future GP practice;
  - (c) AD's IMCA (who is also his Rule 1.2 Representative in the *Re X* deprivation of liberty streamline proceedings for AD's deprivation of liberty at his placement) and any future IMCA or advocate;



- (d) SCC Care Provider and any future care provider;
  - (e) The CLDT and any future community learning disability team;
  - (f) The Local Authority;
  - (g) The Acute Trust;
  - (h) The Community Trust and any future community trust;
  - (i) Any provider of the Covid-19 vaccination;
  - (j) Any member of the Multi-Disciplinary Team (as it is from time to time for AD);
  - (k) any relevant safeguarding authority (if deemed necessary);
  - (l) any relevant regulator or commissioner of the GP, AD's care provider, the ICB, the Acute Trust, the Community Trust and the Local Authority (if deemed necessary);
  - (m) any insurer, indemnity organisation or professional body of any party and any provider (person/team/organisation) of the vaccination.
12. The ICB shall ask the relevant health and social care bodies to place copies of the following documents in AD's health and social care records (including his GP records, his records held by the Local Authority, his records held by the Community Trust and his records held by the SCC Care Provider): a copy of this Order, the Covid-19 Vaccination Care Plan (as amended and updated) and a copy of the Transparency Order (and accompanying Record of Information Sheet). As far as is practicable, the ICB shall ask for these documents to be provided to any future GP practice, care provider or community team involved with AD.

**Return and Liberty to Apply**

13. Should it not be possible to administer the primary course of the Covid-19 vaccination in accordance with the Covid-19 Care Plan before the conclusion of the Autumn 2023 Covid-19 Vaccination Programme, the ICB shall liaise with the parties as to the



circumstances (which may include convening an RTM) to consider whether there is agreement that it is no longer in AD's best interests to receive Covid-19 vaccination:

- (a) In the event that there is agreement that it is no longer in AD's best interests to receive Covid-19 vaccination, the ICB shall file a short written update to the Court to that effect. Upon filing of such written update, these proceedings shall be automatically concluded and the Official Solicitor shall be discharged as litigation friend for AD as of that date.
- (b) In the event that there is a disagreement as to whether or not it remains in AD's best interests to receive Covid-19 vaccination on the basis that a party/parties contend that there has been a change in circumstances subsequent to the court's judgment that calls for a re-evaluation of AD's best interests, the ICB shall file a COP9 application seeking to restore the matter to court for further directions.
- (c) In the event that neither (a) nor (b) apply and the ICB proposes to administer the first vaccine at a later date, the ICB shall file an agreed varied order re-scheduling the steps set out in this order if and so far as necessary, or apply to the court if the new dates cannot be agreed.

14. There is general liberty to the parties to apply on notice via a COP9 application.

#### **Litigation Friend and Conclusion of Proceedings**

15. These proceedings shall stand concluded on **31 May 2024** without the need for further order and the Official Solicitor shall be discharged as litigation friend for AD as of that date, unless any party makes an application to the court prior to that date for further directions in relation to the administration of the Covid-19 vaccinations for AD.

#### **Effect**

16. This order shall take effect when made notwithstanding that it has not yet been sealed.

#### **Costs**



17. No order as to costs, save a detailed assessment of the first respondent's publicly funded costs.

