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HNW Divorce: What a Difference a Year Makes

PRIVATE LAW UPDATE

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This update will focus on decisions dealing with the following issues:

- Challenging arbitration awards
- Orders prohibiting counsel from acting
- Unnecessary private law applications
- Relocation and the welfare analysis
- The fallibility of oral evidence
- Similar fact evidence
- Parental alienation
- The Private Law Children Assessing Risk of Harm report
- Re H-N and Others – finding of fact hearings
- F v M coercive and controlling behaviour and Scott schedules
- Covid Guidance
- International Update
- 1980 Hague Convention
- Vaccination

Challenging arbitration awards:

***Haley v Haley* [2020] EWCA Civ 1369** was a financial remedy case where the husband sought to challenge an arbitration award by way of appeal, or, on the basis that the court should not convert the award into an order of the court, because it was unfair. The Court of Appeal had to determine what test should be applied (in both financial remedy and children proceedings).

The Court of Appeal ultimately concluded: *"the logical approach by which to determine whether the court should decline to make an order in the terms of the award, is by reference to the appeal procedure and approach found in the FPR 2010"* [paragraph 73]. The court held that it would only substitute its own order for that of the arbitrator *"if the judge decides that the arbitrator's award was wrong; not seriously or obviously wrong, or so wrong that it leaps off the page, but just wrong"* [paragraph 74].

Challenging arbitration awards (cont.):

When one party refuses to agree to the conversion of an arbitral award into a consent order, the Court of Appeal suggested it would be logical to 'triage' the case, with the reluctant party having to 'show cause' why such an order should not be made [paragraph 73].

The biggest implication is that parties now have only to persuade a court that an award is *"just wrong"* in order to appeal an arbitral award with which they disagree. This is a lower threshold than previously thought and means the same test applies when challenging both court-based judgments and arbitral awards. It remains unclear whether *Haley* will lead to a greater number of challenges to arbitral awards in the family law sphere (and beyond); the scope to do so certainly seems wider.

Orders prohibiting counsel from acting:

In ***Ahmed v Iqbal (Order Preventing Counsel from Acting)*** **[2020] EWHC 2666 (Fam)** MacDonald J was concerned with an order made prohibiting counsel from representing a client in the context of private law children proceedings.

The father's barrister had previously worked as a legal executive and advised the father in respect of an immigration application and at the same time communicated with the mother. After the parties separated the mother made a complaint against the legal executive based on alleged misconduct. The father then instructed the barrister to represent him in contested children proceedings during which the mother made further allegations against her. The barrister, in response, complained to the police.

Orders prohibiting counsel from acting (cont.):

District Judge Carr made an order that the father's counsel should, in the exceptional circumstances, be prohibited from representing the father. MacDonald J, on dismissing the father's appeal, confirmed that such orders would only be made in exceptional circumstances:

> *"The learned Judge was justified, on the evidence before him and having exercised appropriate caution having regard to the rarity of the order sought, in concluding that this was an example of the extremely rare cases in which it is appropriate for the court to direct that counsel should not continue to act for a party to proceedings because their continued participation would lead to a reasonable lay apprehension of unfairness, creating a real risk of counsel's continued participation resulting in the order made at trial being set aside on appeal."*

Unnecessary private law applications:

In ***Re B (a child) (Unnecessary Private Law Applications)*** **[2020] EWFC B44** HHJ Wildblood QC dealt with an appeal against a decision for a mother to produce five years' worth of medical records in private law proceedings, which was found to be disproportionately invasive. The judge took the opportunity to highlight the number of unnecessary court applications and the implications on the running of the court system. He estimated his court would have double the number of outstanding private law cases in January 2021 that it had in January 2020. He observed *"not only is unnecessary litigation wasteful. It clogs up lists that are already over-filled – in terms of the over-riding objective, it amounts to an inappropriate use of limited court resources (see Rule 1.2(e) of The Family Procedure Rules 2010)".*

Unnecessary private law applications (cont.):

He highlights the possible consequences for litigants who do not take heed.

"[9] Therefore, the message in this judgment to parties and lawyers is this, as far as I am concerned. Do not bring your private law litigation to the Family court here unless it is genuinely necessary for you to do so. You should settle your differences (or those of your clients) away from court, except where that is not possible. If you do bring unnecessary cases to this court, you will be criticised, and sanctions may be imposed upon you. There are many other ways to settle disagreements, such as mediation."

Relocation and the welfare analysis:

In ***WS v KL*** **[2020] EWHC 2548 (Fam)** Knowles J dealt with an appeal against an order allowing a mother to remove two young children permanently to Hong Kong, and found that the judge at first instance had failed to conduct a proper welfare analysis of the available options for the children or a proportionality assessment.

The judge, whilst identifying various factors in the welfare checklist as to why the mother's proposal was better than the father's, had failed to undertake a holistic assessment of the options and failed to explicitly evaluate his findings and link them to the welfare checklist.

This is a useful case for practitioners emphasising the importance of undertaking a detailed and evaluated assessment of a child's welfare when dealing with applications of this sort.

The fallibility of oral evidence:

In ***Re A (A Child)*** **[2020] EWCA Civ 1230** the Court of Appeal was concerned with an appeal against findings made in private law proceedings that the father had poisoned the mother and her parents, killing the maternal grandfather. The Court of Appeal in allowing the appeal provided helpful guidance about being mindful of the fallibility of memory and the pressures of giving oral evidence.

"[33] ... More recently, the courts have looked at the issue of what can, in broad terms, be identified as the fallibility of oral evidence. The issue of the extent to which a court should rely on the recollection of witnesses and the fallibility of human memory first arose in a commercial setting through observations made by Leggatt J (as he then was) in ***Gestmin SGPS SA v Credit Suisse (UK) Ltd and Another [2013] EWHC 3560 (Comm)*** *('Gestmin') at [15] – [22], and more recently in* ***Blue v Ashley [2017] EWHC 1928 (Comm)*** *at [68] – [69].*

The fallibility of oral evidence (cont.):

[34]. In the Gestmin case, at [22], Leggatt J expressed the view that the best approach for a judge to adopt in a commercial trial was to place little, if any, reliance on a witness's recollection of what was said in meetings and conversations; rather factual findings were to be based on inferences drawn from documentary evidence and known or probable facts. This was followed in Blue v Ashley, where Leggatt J at [70], having rehearsed his own earlier observations in Gestmin, approached evidence of a crucial conversation in a way that was '[m]indful of the weaknesses of evidence based on recollection'.

[35]. The Court of Appeal considered both of these cases in ***Kogan v Martin and Others [2019] EWCA Civ 164*** *('Kogan'). This was a case where the judge at first instance had wrongly regarded Leggatt J's statements in Gestmin and Blue v Ashley as an "admonition" against placing any reliance at all on the recollections of witnesses.*

[36]. The Court of Appeal in Kogan emphasised the need for a balanced approach to the significance of oral evidence regardless of jurisdiction."

The fallibility of oral evidence (cont.):

In reaching the decision that the appeal should be allowed, King LJ said the following at paragraph [50]:

"Fairness required a rigorous analysis of all the evidence relevant to the 'leaning over' issue. In my judgment, the judge inappropriately favoured an aspect of the oral evidence of the mother over a significant amount of contemporaneous and written evidence, without reference to that evidence, or sufficiently explaining why she had done this. This omission, in my view, inevitably serves to undermine the findings made against the father."

Similar fact evidence:

In ***R v P (Children: Similar Fact Evidence)*** **[2020] EWCA Civ 1088** the court was concerned with a mother's allegations of coercive and controlling behaviour against the father. The mother sought to rely on previous allegedly coercive and controlling behaviour towards another third party as similar fact evidence. The mother appealed the court's decision to refuse to admit this evidence. Jackson LJ on hearing the appeal referred to the decision in *O'Brien v Chief Constable of South Wales Police* [2005] UKHL 26 when the House of Lords considered the issue of similar fact evidence in civil cases, where it is contended that an individual's behaviour in other circumstances makes it more likely that he will have behaved in the manner now alleged because it is evidence of a propensity to behave in that way [see paragraphs 3 – 6].

This decision is potentially very useful to practitioners dealing with domestic violence cases.

Similar fact evidence (cont.):

[3] Admissible evidence must be relevant, being either probative or disprobative.

[4] Whether or not evidence is probative, and therefore relevant, and therefore admissible, is an objective test.

[5] Consideration must be given to the significance of the potential evidence.

[6] Such significance must be weighed against causing unfair prejudice or other negative effects of inclusion such as increased time, cost, and resources. Unless the significance outweighs the prejudice "*by a considerable margin*" the evidence is likely to be excluded. While justice must aim to achieve the right answer the process must be fair to all parties.

Similar fact evidence (cont.):

At paragraph [24] of the judgment Jackson LJ confirmed that this analysis also applies to family cases:

"There are two questions that the judge must address in a case where there is a dispute about the admission of evidence of this kind. Firstly, is the evidence relevant, as potentially making the matter requiring proof more or less probable? If so, it will be admissible. Secondly, is it in the interests of justice for the evidence to be admitted? This calls for a balancing of factors of the kind that Lord Bingham identifies at paragraphs 5 and 6 of O'Brien."

Jackson LJ then goes on at paragraph [25] to deal with the extent to which the facts relating to the other occasions have to be proved for propensity to be established, and refers to paragraph [39] in the case of ***R v Mitchell* [2016] UKSC 55.**

Parental alienation:

In ***Re S (Parental Alienation: Cult: Transfer of Primary Care)*** **[2020] EWHC 1940 (Fam)** the court ordered a transfer of residence of a 9 year old to his father's care in circumstances where despite repeated warnings the mother had failed to disengage from the cult of Universal Medicine. In reaching the view that a transfer of living arrangements was in the child's best interests, Williams J set out the relevant considerations on making such orders:

"[59]. The welfare of the child is the paramount consideration. I bear in mind the welfare checklist, the presumption of parental involvement contained in section 1(2A), that an order which transfers the primary care of a child and restricts their relationship, and thus which significantly interferes with the relationship between the child and a parent, should only be made where it is necessary and proportionate. Whilst a significant order, as the Court of Appeal emphasised, a transfer of primary care is not limited to cases of last resort…

Parental alienation: cult; transfer of primary care (cont.):

... Such an order will be appropriate where assessment of the paramount welfare of the child justifies such an order. In a case such as this the evaluation of paramount welfare and the necessity or proportionality of the appropriate order to give effect to that evaluation of paramount welfare are inextricably linked; and indeed, in a case such as this, the conclusions as to paramount welfare make the resulting order necessary and proportionate.

[60]. Although the parameters of this hearing were set on a fairly narrow basis by the Court of Appeal, inevitably in conducting the ultimate evaluation of paramount welfare I have sought to survey the totality of the welfare landscape and have considered all of the circumstances and the welfare checklist as part of that survey. Ultimately the evaluation of welfare on the evidence as it stands before me was my function."

The Private Law Children Assessing Risk of Harm report:

On 25 June 2020, the government published its report: ***Assessing risk of harm to children and parents in private law children cases***. It is a lengthy document and was accompanied by the government's short "**implementation plan**", setting out responses to the recommendations made. The panel's undertaking was the result of overwhelming concerns from MPs, women's groups, and domestic abuse charities.

Over 1,000 consultation responses were considered by the panel. The vast majority (nearly 70%) came from mothers, many of whom considered they and their children had been failed by the family court.

However, **Cafcass has stated** in their response that they "*do not agree that the criticisms in the report reflect* [their] *current practice*".

The Private Law Children Assessing Risk of Harm report (cont.):

There are constraints on resources in the family justice system (including Cafcass), which has become over-burdened with the increasing numbers of public law cases. It was noted that if they are to be undertaken with the required care, domestic abuse cases (including fact finding hearings) require judicial time and adequate court facilities: resources which are all too scarce. The steep rise in the number of litigants in person has also placed further demands on the judiciary.

The report identifies four main obstacles to effectively tackling domestic abuse in the family courts.

1. Resource constraints
2. A *"pro-contact culture and minimisation of abuse"*
3. A 'silo working' system: failure to co-ordinate criminal, public law, and private law proceedings which at times work in contradictory ways
4. The adversarial process and the fact that only in a few cases are the children separately represented

The Private Law Children Assessing Risk of Harm report (cont.):

The implementation proposals regarding these final two barriers include piloting an "integrated domestic abuse court" with two strands:

1. A 'one family one judge' approach: family and criminal proceedings involving domestic abuse are heard concurrently by the same judge
2. An 'investigative approach to the family courts': moving away from the current 'adversarial' system, will be explored.

This "problem-solving approach" would have judicial continuity as a key feature and be comprised of three phases: initial investigation and information exchange, an adjudication phase, a follow-up phase.

The Private Law Children Assessing Risk of Harm report (cont.):

The panel also noted several structural disadvantages within the family court process, which impact on victims of domestic abuse:

1. The lack of access to legal representation (economic disadvantage) with most private law children cases now involving at least one litigant in person
2. Lack of access to legal aid in rural areas
3. Areas with low or no availability for other interventions, services, and support
4. Women with uncertain immigration status were under particular pressure to reconcile or agree contact
5. Some participants felt 'othered' and belittled by the court and identified their experience as racism

The Private Law Children Assessing Risk of Harm report (cont.):

The panel raised concerns about some attitudes within the magistracy and judiciary, particularly a lack of understanding around coercive control and of the effects of trauma on victims and how they might impact on assessments of credibility (judgments of alleged victims appearing 'over' or 'under' emotional when giving evidence. The implementation plan makes some reference to further training and notes that new materials for family judges are being piloted by the judicial college. There is also a commitment to trial improved guidance and training on beliefs and cultural issues.

The panel also noted that where a party was not legally aided, the costs of obtaining police disclosure could be prohibitive, risking important evidence not being before the court. In response, the government has stated that it will review guidance for police forces on fees for disclosure of evidence in cases involving domestic abuse, alongside the National Police Chiefs Council.

The Private Law Children Assessing Risk of Harm report (cont.):

The panel identified the practical difficulties for victims of domestic abuse attending court with victims reporting concerns for their physical and mental wellbeing at each stage of the proceedings:

1. Travelling to court
2. In the court building
3. Being present in the courtroom
4. The prospect of attending court for multiple hearings to achieve an outcome

Also, victims face the possibility of either cross-examining or being cross-examined by their abuser, depending on how each party is represented.

The Private Law Children Assessing Risk of Harm report (cont.):

The panel broadly analysed the orders made in cases involving domestic abuse, summarising the belief that progressive contact and co-parenting are promoted, whereas dependence on the court is discouraged. There is particularly widespread sentiment that **PD 12J** makes no discernible difference to the types of orders made, with contact "almost always" being ordered.

The panel concludes that **s.91(14)** orders are unsuccessful in protecting victims from further abuse through repeated attempts by perpetrators to litigate. Broadly, the threshold for s.91(14) orders to be made is considered too high, whereas the threshold for leave to apply once s.91(14) orders are made is too low. The recommendation of the report is conclusive in stating that measures to *"reverse the 'exceptionality' requirement for a section 91(14) order should be included in the Domestic Abuse Bill"*, amending, replacing, or supplementing s.91(14) of the Children Act 1989 in an Article 6 compliant way, with specific policy objectives to be reflected in statute. In addition, there is a recommendation that the CAP incorporates a procedure for identifying and summarily concluding abusive applications.

Re H-N and Others (children) (domestic abuse: finding of fact hearings):

The court was concerned with four appeals from orders made in private law proceedings each involving allegations of domestic abuse. As well as deciding each of the appeals, the court took the opportunity to provide guidance about several matters which commonly arise in the Family Court in such cases.

The court permitted the intervention of a number of interested parties, namely: Cafcass (First Intervener); Rights of Women, Women's Aid Federation of England, Welsh Women's Aid, and Rape Crisis England & Wales (Second Intervener); Families Need Fathers (Third Intervener); and Association of Lawyers for Children (Fourth Intervener).

At present there are a number of initiatives aimed at reviewing the approach to domestic abuse in private law proceedings dealing with applications for 'live with' or 'time spent' (contact) orders made by a parent in relation to their child(ren). These initiatives include the Report of June 2020 ('The Harm Panel Report') and the President of the Family Division's 'Private Law Working Group' report dated 2 April 2020. In addition to the work now being carried out in the light of the recommendations made by the two reports, the Domestic Abuse Bill is currently before Parliament.

Re H-N and Others (children) (domestic abuse: finding of fact hearings) (cont.):

The court set out as a background the statistics in relation to private law cases. In 2019/2020 over 50,000 private law applications were made, with approximately 40% including allegations of domestic abuse. Over 4,000 magistrates and Family judges hear cases with issues of this nature. The Family Justice system is overborne with work exacerbated as a result of the Covid 19 pandemic.

The court was satisfied that the modern approach to domestic abuse discussed in the judgment at [24 – 34] is well understood and has, through experience and training, become embedded with the vast majority of judges and magistrates sitting in the Family Court. There is, however, no room for complacency, and the Family Court is engaged in a continuing process aimed at developing and improving its procedures [14]. A judge who fails properly to determine the issues before him or her is likely to be held on appeal to have been in error.[54]

Re H-N and Others (children) (domestic abuse: finding of fact hearings) (cont.):

The Guidance was given against the backdrop of Family Proceedings Rule 2010: Practice Direction 12J - Child Arrangements and Contact Orders: Domestic Abuse and Harm (PD12J) which sets out what a court is required to do in domestic abuse cases.[10]

The court, parties, and both reports accepted that PD12J remains fit for purpose, namely, to provide a structure enabling courts first to recognise all forms of domestic abuse and thereafter on how to approach such allegations when made in private law proceedings. The present appeals demonstrate that difficulties have, however, arisen in interpretation and implementation [29].

The court focused upon the fact that central to the modern definition of domestic abuse is the concept of coercive and/or controlling behaviour and that such behaviour can cause harm to children living in a household [32-33]. The Family Court must consider whether there has been a pattern of such behaviour as part of its approach to domestic abuse cases.

Re H-N and Others (children) (domestic abuse: finding of fact hearings) (cont.):

Specific guidance:

1. **Finding of fact hearings [38]:** need to consider the nature of the allegations, the relevance to the decision to be made in relation to the child, and the need for the court to decide if a fact-finding hearing is 'necessary and proportionate';
2. **Scott Schedules [42]:** the time has come for there to be a move away from Scott Schedules as a means of identifying issues to be tried by the Family Court. Scott Schedules, which identify specific factual incidents tied to a particular date and time may fail to focus on the wider context and whether there has been a pattern of coercive and controlling behaviour;
3. **Approach to controlling and coercive behaviour [51]:** the need to evaluate the existence or otherwise of a pattern of coercive and controlling behaviour without significantly increasing the scale and length of private law proceedings, in circumstances where delay is inimical to the welfare of a child and the courts; and
4. **Relevance of criminal law concepts [61]:** They should not be imported into the Family Court, though no one should shy away from the ordinary use of terms such as 'rape'. There is a distinction between understanding the potential psychological impact of sexual assault and the importance of Family judges avoiding being drawn into analyses of factual evidence based on criminal law proceedings [64]. Completion of a free-standing sexual assault awareness training programme for Family judges is a mandatory requirement for all Family judges.

F v M [2021] EWFC 4

Hayden J made several findings of coercive and controlling behaviour in the context of the father's application for contact and confirmed the need for the court to assess a pattern or series of acts cumulatively:

- [4] "*'coercion' will usually involve a pattern of acts encompassing, for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or 'a series of acts', the impact of which must be assessed cumulatively and rarely in isolation.*"
- [60] "*the significance of isolated incidents can only truly be understood in the context of a much wider picture.*"
- [100] "*understanding and evaluating coercive and controlling behaviour requires isolating what may sometimes seem to be relatively innocuous incidents and locating them in a context which illuminates their greater significance.*"
- [108] "*evidence which may not be significant, in isolation, may gain greater relevance when placed in the context of the wider evidential canvas.*"

Though no guidance was given, it was recognised that this type of abuse may not be captured by formulaic Scott Schedules which carry the risk of obscuring harm perpetrated through a pattern of behaviour.

Contact and Covid-19

- **1 April 2020 - President's Guidance**
- **15 February 2021 – House of Commons Library guidance**

Procedure update

- **August 2020** the Lord Chief Justice issued an updated Practice Direction on committals for contempt of court in open court.

- Pilot Practice Direction 36U which deals with the service of Part 4 Family Law Act 1996 applications entered into force on **3 August 2020** and remains until **3 May 2021**. It makes express provision for the court to direct service by a method other than personal service where there is good reason to do so.

- The Family Procedure (Amendment No. 2) Rules 2020 entered into force on **1 October 2020**, amending FPR 2010 and substituting a new Part 37 streamlining the procedure for proceedings for contempt of court.

International update

Re M (a child) **[2020] EWCA Civ 922**: The Court of Appeal decided that, whilst the exercise of the inherent jurisdiction when a child is habitually resident outside of the United Kingdom is not confined to 'dire and exceptional' or the 'very extreme end of the spectrum' of circumstances, there must be sufficiently compelling circumstances to require the court to exercise such a protective jurisdiction.

Re P (Discharge of Passport Order) **[2020] EWHC 3009:** A Bulgarian mother with indefinite leave to remain in the United Kingdom issued proceedings seeking the British/Bulgarian father to provide authority for their child to return to England and Wales, and for the father's passport to be seized as he was a flight risk and to force him to engage with the proceedings. Cobb J held that passport orders against parties should only be made for finite time periods and not where the sole purpose is to coerce a party into any particular action. Once granted, and a passport has been seized, the order is unlikely to endure beyond the conclusion of proceedings and should be kept under review. Indefinite passport orders would likely require unusual and extreme circumstances as they should rarely, if ever, be more than a very temporary measure.

International Update (cont.)

Re E (BIIa: Recognition and Enforcement) **[2020] EWCA Civ 1030**: The case concerned competing proceedings in England and Spain where the children had lived most of their lives in England and Wales and were habitually resident here. Though concerning Article 23(e) of Brussels II revised Regulation (Council Regulation (EC) No 2201/2003) the court considered the wider issue of concurrent applications for enforcement and recognition alongside a welfare application. The Court of Appeal held that:

1. The court should consider whether it has the power to make an order due to habitual residence and if the other court is no longer seised;
2. If it does, to what extent is it appropriate to embark on a welfare assessment of matters already decided by the other court;
3. If it is, how the case can be managed to ensure the issues for decision are clearly set out and the requirement to determine an enforcement application without delay is observed;
4. If an order which is unreconcilable with a foreign order will be made, whether it would be right to make such an order, taking a cautious approach and giving full weight to the conclusions and findings of foreign court.

1980 Hague Convention

B (A Child Abduction Article 13(b)) **[2020 EWCA Civ 1507**: Successful appeal against a decision refusing to set aside a return order under the 1980 Hague Convention. The court set out the approach to be followed in such applications, noting all four stages may be conducted in a single hearing though more often in two dealing with stages 1-2, and then 3-4 respectively:

1. Decide whether to permit reconsideration;
2. If so, decide extent of further evidence;
3. Decide whether to set aside the existing order; and
4. If set aside, determine the substantive application.

M (Children) (Habitual Residence: 1980 Hague Convention) **[2020] EWCA Civ 1105:** The Court of Appeal considered an appeal from a return order under the 1980 Hague Convention and restated the caselaw, noting that the 'see-saw' analogy deployed by Lord Wilson in *Re B* does not replace the guidance in *A v A* and the court should not lose focus on the child's current situation at the relevant date.

1980 Hague Convention (cont.)

B (A Child) (Abduction: Habitual Residence) **[2020] EWCA Civ 1187:** A family relocated from Australia to France, and then travelled to England and Wales where the mother retained the child. The Court of Appeal found that the 1980 Convention applies whenever a child is habitually resident in a contracting state (here Australia), other than the requested state (here France), at the date of the alleged wrongful removal or retention, and that, therefore, the 1980 Convention applied to the mother's retention when the child was habitually resident in Australia not France, even though the father's application was for return to France.

Lord Justice Moylan considered that the court has the power under the 1980 Convention to order return to a 'third state', one other than the child's habitual residence (here France), however, considerable care must be taken and such an order should be used only when affecting what is effectively the child's return.

Vaccination

***M v H (Private Law Vaccination)* [2020] EWFC 93:** A father sought an order that the children be vaccinated in accordance with the NHS vaccination schedule, with the support of the children's guardian. The mother opposed the application. The court held that absent:

1. A credible development in medical science or peer-reviewed evidence indicating significant concern for the vaccine's efficacy or safety; and/or
2. A well evidenced medical contraindication specific to the child,

a court is unlikely to find that vaccination as recommended by Public Health England and set out in the routine immunisation schedule is not in the child's best interests. Further, a jointly instructed expert report authored by an expert immunologist would likely be needed to assess any claimed medical developments/new peer-reviewed research.

The court considered that the views in *Re H (A Child: Parental Responsibility Vaccination)*, though obiter, make is hard to see a case where a vaccine approved for use in children, including those for Covid-19, would not be found to be in a child's best interests absent new research/medical developments or contraindications.

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