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IN THE COURT OF PROTECTION  
[2021] EWCOP 66



No. 13364813

Royal Courts of Justice  
Strand  
London WC2A 2LL

Friday, 1 October 2021

Before:

THE HONOURABLE SIR JONATHAN COHEN  
(Sitting as a Judge of the High Court)

**(In Private)**

B E T W E E N :

A LOCAL AUTHORITY

Applicant

- and -

(1) GA

(by her litigation friend, the Official Solicitor)

(2) TA

(3) XA

(4) SR

(GA's Deputy for Property and Affairs)

(5) A CCG

Respondents

**ANONYMISATION APPLIES**

MISS E. KEEHAN (instructed by Legal Services, a Local Authority) appeared on behalf of the Applicant.

MISS F. GARDNER appeared on behalf of GA's Litigation Friend.

MISS A. NIZAMI appeared on behalf of TA.

MR P. MANT appeared on behalf of the CCG.

**J U D G M E N T**  
**(Via Microsoft Teams)**

## THE JUDGE:

- 1 I shall now give judgment on the issue of vaccination. This is an *ex tempore* judgment given because the matter is urgent. It may be, therefore, that it is not expressed quite as well as I would wish but I am clear as to what my conclusions and findings should be.
- 2 This case concerns a lady whose initials are GA. She is in her late eighties and lives in Yorkshire. She had dementia and Alzheimer's Disease (diagnosed in 2013) and had a stroke in 2017. She has suffered significant cognitive impairment and her ability to communicate is very limited. It is common ground between the parties that she does not have capacity to make decisions about the administration of vaccines against Covid-19, which is the issue before me. The evidence to that effect is overwhelming. Although told about the vaccine, she appeared to have no understanding of the information given. She was unable to repeat it when asked, and the questioner, who spoke in her native language, found it impossible to have any conversation with her about it. She was unable to weigh up any merits or demerits of the proposal or express any opinion as to it or as to her views. Accordingly, she lacks capacity and the court has to make a best interests decision for her.
- 3 The other parties to the litigation are as follows: The local authority is the applicant in these Court of Protection proceedings and the provider of the care and support that GA receives on a 24-hour a day basis with one or two carers present with GA in her home, the precise number depending on the time of day. GA is a party and she is represented by her litigation friend, the Official Solicitor.
- 4 The second and third respondents are two of her six surviving children. TA, the second respondent, until February of this year (2021) provided her care at her home. XA is one of TA's sisters and lives elsewhere in the north of England. The other four children were all invited to attend; none of them have, although a different daughter said that she would attend but in fact did not.
- 5 The fourth respondent is GA's Deputy for Property and Affairs, whose attendance was dispensed with at this hearing, and the fifth respondent is the local Clinical Commissioning Group, who made the application for the administration of the Covid vaccine.
- 6 TA for much of these proceedings has not been represented. In February 2021, when I dealt with this case over some five days, TA did not attend, but following the application by the local authority for his committal for alleged breach of an injunction, he instructed solicitors. Shortly before a hearing that was to take place on 5 July, those solicitors raised concerns that TA did not have capacity to conduct the litigation. As a result, I directed that a capacity assessment of him be carried out. It is right to say that TA at all times has strongly challenged any assertion that he does not have capacity. He declined to cooperate with the capacity assessment, which meant that Dr Saleem, who did carry it out, had to conduct the assessment on the basis of documents and some videos that were shown to him along with oral interviews with the social workers.
- 7 Subsequent to writing his report, Dr Saleem had a long conversation with TA, which he had to bring to an end as he felt he was making no progress. Dr Saleem opined that he could say with above 85 per cent certainty that TA was suffering from a serious psychotic mental disorder, which may be a primary psychotic disorder, such as schizophrenia, or symptom of severe mood disorder such as bipolar affective disorder. He continued to say that TA exhibits one of the typical central features of a psychotic disorder, namely paranoid delusions, particularly that TA firmly believes that there has been a huge conspiracy against

him and that the local authority have acted very detrimentally against his family. I will not recite the details of that, because they do not matter for this judgment. As I say, TA strongly challenges the opinion of Dr Saleem about that.

- 8 I would like to extend my thanks to the solicitors who TA instructed, and who he has apparently disinstructed, who have attended at this hearing, feeling that that was the proper thing to do in the light of the absence of any findings about capacity, which I will come to later in this hearing.
- 9 TA at the outset applied for an adjournment of this hearing. I refused his application because it seemed to me that it was overwhelmingly in the interests of GA that this issue should be determined. Indeed, TA was very critical of the CCG and/or the local authority for not bringing the issue of vaccination to the court a great deal sooner. I am satisfied that TA has suffered no prejudice by my continuing with the hearing. First of all, this application for an order had been very well advertised. It was certainly discussed at the hearing on 5 July and I recall, although perhaps not accurately, that it may have been discussed at the May hearing. Thus TA has had at least two-and-a-half months' notice that this application was likely to be made, and indeed I made an order on 5 August (some seven weeks or so ago) dealing with the directions for this application.
- 10 TA had previously expressed his views about the proposed vaccination and his opposition to it. He had every opportunity to address me further on that today. He spoke at great length, and at very great speed, and on three occasions I extended the time limit that I had previously given. I am entirely satisfied that he said everything that could be said and he was eventually able to conclude his submissions without the need for further extension of time. I have received the views of four of the siblings as to the reasons why a vaccination should not be given. I have not heard from XA, who declined to give her views to the local authority - she has throughout these proceedings subordinated her views to those of TA - and I have not heard from HA, who himself is without capacity.
- 11 The reasons for the urgency of the proceedings are obvious. GA is at high risk of serious illness or death from Covid-19 because of her age and her underlying health conditions and because she receives 24-hour care with multiple different care workers attending her house every day. So it is highly important that this issue is not left lying undecided.
- 12 In an email sent to me just before I was due to start giving judgment, TA argues that religious considerations, which he says have not properly been considered, are so important that this case should not go ahead. I declined his further application that I should adjourn the case. I have to apply a holistic test. The considerations that I need to apply are those set out at s.4 of the Mental Capacity Act 2005. At s.4(2) it states that the person making the determination must consider all the relevant circumstances in each case. I must also, by subsection (6) consider, so far as is reasonably ascertainable,
  - "(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement by him when he had capacity),
  - (b) the beliefs and values that would be likely to influence his decision if P had capacity, and
  - (c) the other factors that P would be likely to consider if able to do so".

- 13 By subsection (7) I must take into account the views of,
- "(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
  - (b) anyone engaged in caring for the person or interested in P's welfare,
  - (c) any donee of a lasting power of attorney granted by the person, and
  - (d) any deputy appointed for the person by the court,
- as to what would be in the person's best interests and, in particular, as to the matters mentioned in sub-paragraph (6)".
- 14 As I say, it is an holistic test and it includes, so that TA knows that I have considered it, cultural and religious matters, but I am firmly of the view that there is no one factor that outweighs the others and, specifically, I do not accept that religious issues predominate in this case. Indeed, that has never been suggested until TA said so in the course of his submissions to me.
- 15 Until I made an order in February 2021 that TA leave his mother's home for reasons that are fully set out in a judgment (which is on Bailii), TA had been her principal carer. It is to be noted from GA's medical records that for many years, while under his care, GA has had an annual flu jab. In 2010 she also received immunisations, first for Hepatitis and Typhoid and then secondly for Diphtheria, Polio and Tetanus, and in 2012 and in 2015 she was inoculated against Meningitis. This would appear to show that she has no difficulty in accepting conventional medical advice to receive inoculations which are available to the general population.
- 16 TA said this only happened as a result of him having made a best interests decision on her behalf following the grant to him of a lasting power of attorney, albeit one that was later suspended and, as I understand it, subsequently revoked by orders of the Court of Protection, as set out in my judgment of February 2021.
- 17 It is to be noted that in April 2021, after the departure of TA from GA's home, she also had blood tests which she accepted without any difficulty.
- 18 There is common ground made by the local authority, the Official Solicitor and the CCG. They all support the administration of the Oxford AstraZeneca vaccine. The reason that particular vaccine is selected is because it can be given at home by the GP who would visit to administer it. The Pfizer vaccine can only be given in a surgery. It is plainly much easier, much less disruptive and safer for GA, if the doctor was to visit her at home. The scientific evidence that the vaccine is safe and effective is clear and unequivocal. The GP does not share any concerns that GA is not strong enough to cope with the vaccination and there are no contraindications to her receiving the vaccine, and, say those who support the administration, that the advantages to her are overwhelming. The benefit of receiving a greatly enhanced degree of protection vastly outweighs the very small risks, which will be managed by close observation of GA.
- 19 There is, in addition, a factor which I regard of some small but not insignificant importance, namely that it would permit the far easier entrance of GA to the community from which she

has largely been isolated for a very long time. One of the complaints made against TA, and which I found to be proved, is that his mother had very much been isolated by him in her own home, with no access to the community, no access to other members of the family other than those that live with her, and no access to professionals. I accept that it is GA's wish to go into the community. I do not accept TA's assertion that that would be of no benefit to her. She told an intermediary that she wished to go to an Asian sweet shop, and I recall the evidence given in February when reports were given by neighbours that they used to see GA out and about but that was something that no longer happened under TA's regime.

- 20 The local authority have confirmed that if vaccinated, it would be making plans, following the usual risk assessment, to take GA out into the community. I am sure that would be very much in her interests. As I said, TA regarded that as something that simply would not happen and that under the local authority care, GA had become completely isolated. I again do not accept that presentation.
- 21 One of the issues before me in February was that two of her daughters and one son were completely unable to obtain access to GA in her home and two of those three children were the only ones with her grandchildren. I read, and I accept, that all three children regularly have contact now with their mother, and no doubt that is very much for her and their benefit.
- 22 Since February, TA and XA have not seen their mother. That is obviously a matter of great regret, but it does need to be pointed out that XA and the other brother (HA) had been offered the opportunity of going to the house to see their mother but have refused to take it up. In addition, TA has been given the opportunity of seeing her in the community but he too has refused to take it up, so it is difficult for him to argue that it is the local authority's actions that have led to this very unfortunate separation between these three children and their mother.
- 23 TA's submissions came down to these:
- (i) His mother was fearful of being injected.
  - (ii) She appointed TA as the protector of her wishes by way of a lasting power of attorney in 2000. All decisions taken since then about her medical care, and specifically immunisations, were taken by him, not her. Therefore, it is said, no weight can be put on the fact that she has had inoculations over the course of the last decade, because those were not her decisions but his.
  - (iii) She would prefer traditional medication rather than western intervention.
  - (iv) She had no confidence in professionals. Indeed, she held them in disdain. Her confidence was in TA and the decisions made for her by him.
- 24 Those beliefs that I have enumerated, he says, are typical of the Muslim community. He said on three occasions that if I had not - and I think I use his words accurately - kicked him out of the house, he would have taken steps to have had her vaccinated. When challenged by me on that, he said he might have taken steps, but in fact repeated "would" as I have just set out. His objection was that the court had taken matters out of his hands.
- 25 The wider family opposition can be expressed in this way. DA and MA in their different ways were concerned that their mother needed to improve her health first and they worried that the vaccine would make her weaker or have adverse side effects. MA went on to say that her mother had acquired antibodies by exposure to the condition in March 2020, but

there is no evidence in support of that at all. They said that it was necessary and better to leave the matter in the hands of Allah.

- 26 I respect their anxiety about what they say are the side effects of the vaccine, but that is something I am satisfied that the medical professionals have fully taken into account.
- 27 RA expressed the view that if his mother was to have the vaccine, he would want it to be the Pfizer vaccine because that had fewer side effects. He was ambivalent as to whether the vaccine should be administered. There seemed to me to be powerful reasons why AstraZeneca would be the better alternative, for the reasons that I have given, and as to the side effects, although there is a reported issue of a slightly enhanced risk of blood clots with the AstraZeneca vaccine, it seems that these primarily affect a much younger age group. There is very clear statistical evidence that the risks of the illness are much greater than the risk of side effects, which would, in any event, be ameliorated or reduced by the close attention that GA will be given.
- 28 I do think there is some force in the criticism by TA that this matter should have been brought before the court very much earlier, and indeed the Vice-President of the Court of Protection has made it clear in *SD v Royal Borough of Kensington & Chelsea* [2021] EWCOP 14 that if the matter is not capable of speedy resolution by agreement, the issue of vaccination shall be brought before the court expeditiously. This has been talked about too long and should have been acted upon earlier, but that does not mean that, now the application is made, it should not be dealt with properly on its merits.
- 29 I think it is probable that left to herself, GA would have accepted the vaccination. I come to that conclusion because of the vaccination history and the fact that it seems to me that it was plainly thought by those concerned, and by her, that it was in her best interests to receive vaccinations in the past. There is nothing about this vaccination which should lead to any different conclusion. I accept that receiving the vaccine would be consistent with her past wishes, beliefs and values so far as they can be ascertained.
- 30 The views of the family should, of course, be taken into account as part of the overall best interests assessment, but their opinions are non-expert opinions and their views about the safety of the vaccine should not be given any significant weight.
- 31 For the avoidance of doubt, I do not put any weight on the fact that the last immunisation that GA has received was in 2017. There was a lot that was going on at that time. In 2017 - towards the end of the year, I believe - she suffered a stroke. GA was then taken to a different part of the country to live with XA and it appears that somehow or other she fell through the net of the GP care system, no doubt in part also by the refusal of TA to cooperate with those who wished to intervene in his mother's care. I have a much better guide to her attitude to vaccines from the long period before 2017 than by looking at the gap between 2017 and now, when for much of that time, as I say, the caring authorities were barred access to GA by TA.
- 32 So for all those reasons, I come to the clear conclusion that it is in the best interests of GA to receive Covid vaccinations. Subject to one matter, which I will come to in a second, I therefore think it proper to make an order in the terms that have been agreed by the local authority, the Official Solicitor and the Clinical Commissioning Group. The one matter that I do want to consider is whether or not I should add a proviso that the first vaccine should not be administered before 11 October - that is 10 days from now - so that if any of the relatives wish to make an application to the Court of Appeal for a stay, that gives them

sufficient time to do so. It seems to me that it is proper that I should allow them what will be (it now being Friday afternoon) a clear week to do so if so minded. I do not intend to delay it any longer than that, and thereafter it will be a matter for the Court of Appeal.

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**CERTIFICATE**

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This transcript has been approved by the Judge.