



Neutral Citation Number: [2023] EWHC 2622 (Fam)

Case No: FD23P00482

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20 October 2023

**Before:**

**Paul Bowen KC (sitting as a Deputy Judge of the High Court)**

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**Between:**

**UPP (A Mother)**

**Applicant**

**- and -**

**A Local Authority (1)**

**WSP (A Child, by his Guardian) (2)**

**Respondents**

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**Re WSP (A Child) (Vaccination: religious objection)**  
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Jonathan Adler (instructed by Anna Stinton, Burke Niazi solicitors) for the Applicant  
Kate Hudson (instructed by Alison Goldring, London Borough of Haringey) for the First  
Respondent

Siobhan F. Kelly (instructed by Zahara Manji, Miles & Partners) for the Second Respondent

Hearing dates: 18 October 2023  
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**APPROVED JUDGMENT**

**This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court.**

## **Paul Bowen KC (sitting as a Deputy Judge of the High Court)**

1. I am concerned with a child, WSP, a boy born in February 2023 so now aged 9 months. WSP was made the subject of an interim care order in March 2023 and he has been in local authority care since that date. The application now before the Court is brought by the mother, UPP ('the mother'). She asks the Court to exercise its inherent jurisdiction to injunct the local authority from exercising its parental responsibility under s 33(3) of the Children Act 1989 ('the 1989 Act') to arrange for the child to receive routine childhood vaccinations, specifically: Diphtheria, tetanus, pertussis (whooping cough), polio, haemophilus influenzae type b (hib) and hepatitis B, Meningococcal group b disease (MenB), Pneumococcal disease (13 serotypes). The Local Authority had also intended to vaccinate WSP against two other viruses. The first, rotavirus, cannot now be administered as the time window in which that can take place has closed. The second, influenza, is not due until WSP is 2 years old so there is no urgency to resolve that issue.
2. The mother maintains that it is not in WSP's best interests to be vaccinated and that to vaccinate him without her consent would violate her rights under Article 9 of the European Convention on Human Rights ('the Convention'), both alone and when taken together with Article 14, as those rights are given effect by the Human Rights Act 1998 ('HRA'). The Local Authority and the Guardian oppose the application.
3. The application first came before Arbuthnot J sitting as the High Court Urgent Applications Judge who set it down for this hearing. The matter has since become more urgent. The Local Authority has already cancelled two vaccination appointments and the next is planned to take place on 26 October 2023. Given the urgency, I gave my decision at the end of the hearing. I dismissed the mother's application but reserved my reasons to be given in writing which I undertook to produce as quickly as possible. This judgment sets out those reasons. The identities of the parties have been anonymised for reasons of privacy. This judgment is a public document but nothing may be published that identifies the child or his parents.

### **Background**

4. WSP is the mother's only child. WSP's father has not been identified and so is not a party to the proceedings. During the mother's pregnancy, health care professionals raised concerns about her mental health as she appeared to be presenting with psychotic symptoms. On 26 October 2022, the mother was admitted for assessment under section 2 Mental Health Act 1983 ('MHA') and then for treatment under section 3 MHA. Whilst pregnant in hospital, the mother refused anti-psychotic medication which was administered compulsorily under s 58(3)(b) MHA with the support of a second opinion appointed doctor. Shortly before her due date the hospital was concerned that a natural delivery would cause significant trauma and further harm the mother's mental health and so decided the birth should be by caesarean section. The mother refused to undergo a caesarean section which necessitated an application to the Court of Protection. Moor J granted the NHS Trust an order enabling them to perform a caesarean

section without the mother's consent.<sup>1</sup> Following the birth, the mother and WSP remained at a mother and baby unit together.

5. The Local Authority were concerned that due to her mental health condition the mother would be unable to care for WSP safely. They sought an interim care order which was granted by the magistrates' Court on 7 March 2023. Following her discharge from section, in May 2023 the mother and WSP went to stay with her parents. Unfortunately, there was an incident on 9 May 2023 in which the mother is said to have physically and verbally attacked her parents. The mother and WSP returned to the mother and baby unit. On 22 June 2023 mother and WSP moved to another residential unit. The following day the provider terminated the placement after an alleged incident involving the mother. On 30 June 2023 the Local Authority was granted an order authorizing the separation of WSP from his mother's care and he was placed with his maternal grandparents, where he remains.
6. The Local Authority's concerns about the mother's ability to care for WSP include whether she is able to understand the importance of medical testing and treatment. Shortly after his birth, the mother was asked to consent to a heel prick test on WSP. Every child is offered this test once they are 5 days old which screens for nine conditions including sickle cell disease, cystic fibrosis and congenital hypothyroidism. The mother refused consent for the test then and maintained that refusal when asked by a number of healthcare professionals on six further occasions. The reason she gave at the time was that 'everyone was putting pressure' on her and that 'if she was at home, she would have been allowed to choose whether or not to do the test for her baby'. She later said that it was 'her choice' to refuse the test. The mother only gave her consent to this test at an earlier hearing when faced with the prospect of the Court making an order.
7. The question of parental consent has reared its head in acute form in relation to the issue of vaccination. The local authority wishes to arrange for WSP to receive the ordinary approved vaccinations for a child of his age. These will usually take place at 8, 12 and 16 weeks. The Local Authority states that they first raised the issue of vaccinations in June 2023 following WSP's separation from the mother but she has consistently refused to give her consent. Although that consent is not necessary, as the local authority can override a refusal of consent given its powers under s 33(3)(b) of the 1989 Act, the parent's views must always be sought and it is preferable if they agree with the authority. It was not until September that the Local Authority made clear that it would proceed to arrange for WSP to be vaccinated without the mother's consent using its powers under s 33(3)(b). The mother continued to object and lodged an application for an injunction to restrain the Local Authority from going ahead. That is the application that is now before me.
8. I should add that the mother has been assessed as having litigation capacity in the care proceedings but there has been no assessment of her capacity to object to

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<sup>1</sup> I asked to see a copy of the order and judgment of Moor J but the mother's solicitors were unable to obtain them. Neither the LA nor the Guardian were parties to this application and so were not privy to the judgment.

WSP's medical treatment. Given her history of mental health admissions and the pattern of her refusal of medical treatment, both for herself and her child, the issue of the mother's capacity to exercise her parental responsibility ought to be investigated. In the absence of evidence, I proceed on the assumption that the mother has such capacity, which I am bound to do by virtue of s 1(2) Mental Capacity Act 2005.

9. I had the benefit of a bundle prepared for this application containing three witness statements from the mother, with lengthy exhibits, and I was also provided with the bundle from the care proceedings. I have not found it easy to navigate these bundles. Also, I had no witness statement from the Local Authority addressing the statements prepared by the mother. Although they were under no obligation to file such evidence, Arbuthnot J gave them permission to do so. I would have found such a statement helpful, but have done the best that I can without one, given the urgency of the case and the time available.
10. At the hearing I heard submissions from Counsel for the mother, the Local Authority and the Guardian, for which I am grateful. The mother had attended in order to be available for cross-examination. Counsel for the Local Authority and the Guardian elected not to ask her any questions and the parties were content to proceed without oral evidence. In her witness statements the mother sets out her reasons for refusing consent to WSP's vaccinations. In short summary, she explains that some vaccinations use 'Vero cells' in their production and/ or development which are derived from the kidney of an African Green monkey; others use cattle or pork derived products; and all of them are at some stage tested on animals. The Local Authority and Guardian accepted this to be the case. The mother continued, the use of animal products or animal testing in the production of the vaccines means that some (but not all) Muslims consider their use to be '*haram*' (forbidden). Although the mother was herself vaccinated as a child, her parents were less orthodox in their Muslim beliefs. She, by contrast, considers that it would be contrary to her Muslim faith for WSP to be vaccinated. She is concerned that, if vaccinated, WSP would suffer emotional or psychological harm. If he does something *haram* without repenting, 'this would take him out of the fold of Islam, as he would not have adhered to the rulings of God made for people'. It would be harmful for him to have to repent for something he had no control over. He may feel he did something wrong, or would be confused about why the adults around him did something wrong. He may feel guilty and confused. He may question why his mother or grandparents did not stop the immunisations. He may also question his religion and his place within the family and/ or community if he has not allowed the same religious observances as others. He may develop a mistrust of professionals or feel intimidated by authority figures, who he may feel are intolerant of his religion. He may question the fairness of the legal system and its tolerance of his religion.
11. In response to a question put to her by me through her Counsel, the mother conceded that she had not suffered these harms herself even though she had been vaccinated with her parents' consent as a small child. She explained that was because her parents were not as strictly observant as she is, and that when she learned she had been vaccinated as a child this stiffened her resolve not to be vaccinated in future.

12. The Local Authority and the Guardian characterised the mother's evidence of harm as speculative and not based on any objective evidence. They pointed out that the mother had been vaccinated but had not suffered the same harm. They also pointed out that the mother had given inconsistent reasons for refusing vaccination. They noted, in particular, that during the course of her examination by Dr. Musters, a psychiatrist who was commissioned to assess her capacity to litigate in the care proceedings, she was asked about the basis of her objection to the heel-prick test. She explained that if she agreed to that then 'they'll carry on fighting for everything else', including immunisations. When asked what her opposition was to immunisations, she said 'immunisations cause more harm than good', and founded that belief on 'research'. She made no mention of her religious objections. Notwithstanding that submission, all parties submitted that I should proceed on the basis that her opposition to the vaccinations was genuinely based on her religious faith. I will do so.

### **Legal framework**

13. With one caveat, the law governing this application is authoritatively set out in the Court of Appeal's judgment of *In Re H (A Child)* [2013] Fam 133 ('*Re H*') which is binding on me. The infant child in that case, H, was in care and the local authority made arrangements for routine vaccinations as recommended by Public Health England pursuant to its powers under s 33(3) of the 1989 Act. The parents objected, so the authority applied to the High Court under s 100 of the 1989 Act for the Court to exercise its inherent jurisdiction to order that the child be vaccinated. The judge made the order and the parents appealed. The Court of Appeal dismissed the appeal, holding, materially, that there was no obligation on the local authority to bring proceedings under s 100 seeking the approval of the Court to routine vaccinations of this kind. The local authority had power under s 33(3)(b) to override the objections of a parent who retains parental responsibility without the need for further Court order. Vaccinations are not a sufficiently grave or serious matter as to require the imprimatur of the High Court, although it is open to a parent to bring an application for an injunction restraining the local authority from exercising that power. This is the procedure that the mother has adopted in this case.
14. Of particular relevance to this application are paragraphs [16-30] (the legal framework, which I adopt and do not repeat) and [101-102] in the judgment of King LJ, with whom McCombe and Jackson LJ agreed (with emphasis added):

101 The distinction drawn here between parental views that are inconsistent with the child's welfare and highly problematic cases where there is genuine scope for a difference of view remains a valuable one. It is a reminder that, while the views of parents must always be taken into account, the weight that is given to them depends not upon the vehemence with which they are expressed but upon their substance.

102 As must have become clear, I do not share the inhibition felt by the judges in some of the decided cases in expressing the view that the scientific evidence now establishes that it is generally in the best interests of otherwise healthy children to be vaccinated.

As Theis J said in *F v F* [2014] 1 FLR 1328, para 9: “With due consideration for established contra-indications to vaccination in an individual case, it is otherwise in every child’s interest to be protected . . .” It follows therefore that in my judgment, an application to invoke the inherent jurisdiction or to seek an injunction with a view to preventing the vaccination of a child in care is unlikely to succeed unless there is put before the Court in support of that application cogent, objective medical and/or welfare evidence demonstrating a genuine contra-indication to the administration of one or all of the routine vaccinations.

15. It may be seen from *Re H*, [102] that the starting point is that childhood vaccinations are in the best interests of otherwise healthy children. That is the established medical view, as explained at [34-42] of the judgment. In particular, these vaccines provide protection against a number of serious and potentially fatal diseases with only minimal side-effects. While those diseases are now rare, that is only because of the success of those immunisation programmes. Where there is a reduction in vaccination rates, there is a corresponding increase in infection rates: [45]. In the absence of evidence demonstrating a genuine contra-indication on medical or welfare grounds, a local authority will therefore be acting in the best interests of the child, consistent with its duty under s 22(3) of the 1989 Act, when exercising its parental responsibility under s 33(3)(a) to arrange for the vaccination of a child in their care. The local authority must take the child’s parents’ views into account [99] but, if the parent objects, the authority may override the parent’s objection in exercise of its power under s 33(3)(b). If a parent then brings an application for an injunction to prevent the local authority from vaccinating the child, it is not necessary for a local authority to produce evidence to demonstrate the benefits of vaccination. For the parents to succeed on such an application, they are under an evidential burden to produce ‘cogent, objective medical and/ or welfare evidence demonstrating a genuine contra-indication to the administration of one or all of the routine vaccinations’. Counsel for the mother accepted this was the effect of *Re H*.
16. The feature of this case that differentiates it from *Re H* is that the mother objects to vaccination on the grounds of her religious beliefs. In *Re H*, the parent’s objection was ‘driven by the fundamental belief that neither the Court nor the state, through the arm of the local authority, has any jurisdiction to take decisions in relation to his children’: [4]. Here, the mother’s objection is founded on her Muslim faith and is therefore protected by Article 9 of the Convention, which provides:

‘1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2 Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order,

health or morals, or for the protection of the rights and freedoms of others.’

17. The mother also complained that she is being discriminated against on the grounds of her religion in the enjoyment of her rights (she did not specify which rights) contrary to Article 14, which provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

18. The Article 9 and 14 arguments were not developed in any detail or by reference to any case-law. However, I was referred by Counsel to a passage in a ‘Guide on Article 9 of the European Convention on Human Rights’, produced by the ECtHR, which states at paragraph 35 that the Strasbourg Court ‘has not yet formally determined the question whether the guarantees of Article 9 of the Convention apply to a refusal to be vaccinated or to have one’s under-age children vaccinated on the basis of a critical stance on vaccination’. This passage refers to the Grand Chamber decision of *Vavříčka and Others v. the Czech Republic* [GC], 8 April 2021, which concerned the legality of the Czech compulsory system of infant vaccination. I have read that judgment. The Court in *Vavříčka* rejected the applicants’ Article 9 claim on the basis that the ‘beliefs’ relied upon as founding the objection to vaccination, which were not grounded in religion, were insufficiently cogent, serious, cohesive and important to attract the guarantees of Article 9. Accordingly, the claim was dismissed without consideration of its underlying merits: [335].
19. So Strasbourg has yet to rule definitively on the Article 9 compatibility of infant vaccinations, but the relevant principles, both at common law and under Article 9, are clearly set out, in characteristically illuminating terms, by Munby LJ in *Re G (Education Religious Upbringing)* [2013] 1 FLR 677 (*‘Re G’*), at [20-51]. Article 9 protects two rights. First, the right to *hold* (and change) any religious belief, which is absolute and unconditional. Second, the right to *manifest* one’s religious freedom in ‘worship, teaching, practice and observance’, which is a qualified right because its exercise may have an impact on others. The right may therefore be overridden by a state body, provided there is a sufficiently pressing need to do so for one of the purposes in Article 9(2) and the means used are both lawful (authorised by a law that is foreseeable, accessible and contains adequate safeguards) and proportionate, applying the four stage proportionality test in *Bank Mellat v Her Majesty’s Treasury (No 2)* (SC(E)) [2014] A.C. 700, [20] and allowing the state body an appropriate discretionary area of judgment. The upbringing of a child is clearly a ‘manifestation’ of religious belief. Accordingly, although ‘*the law will tolerate things that society as a whole may find undesirable*’, some aspects of the upbringing of children that are done in the name of religion are not protected by Article 9 and the state may lawfully prevent them. Some manifestations of religious practice are so egregious as to be ‘beyond the pale’, such as forced marriage, female genital mutilation and ‘honour’ based domestic violence: *Re G* [39-41]. Other manifestations may require regulation where they are ‘contrary to a child’s welfare’. That is because ‘in matters of

religion, as in all other aspects of a child's upbringing, the interests of the child are the paramount consideration': *Re G* [43]. Examples given in *Re G* include refusals of life-saving treatment and circumcision: [44-46]. In my judgment, a parent's decision to consent or refuse to have their child vaccinated on religious grounds is another 'manifestation' of religious belief that may be regulated by the state and its Courts without breaching Article 9.

20. I would add that the mother made no complaint that either her or WSP's Article 8 rights will be violated by the proposed vaccinations. However, the analytical approach in determining a breach of Article 9 described at paragraph 19 above, including the *Bank Mellat* proportionality test, is materially the same as that under Article 8. It is therefore relevant to the mother's Article 9 argument that the Grand Chamber in *Vavřička* found that the Czech system of compulsory vaccinations for infants did not breach Article 8. The Grand Chamber's reasoning at [288] and the conclusion at [289] bear setting out in full:

288. It follows that there is an obligation on States to place the best interests of the child, and also those of children as a group, at the centre of all decisions affecting their health and development. When it comes to immunisation, the objective should be that every child is protected against serious diseases (see paragraph 133 above). In the great majority of cases, this is achieved by children receiving the full schedule of vaccinations during their early years. Those to whom such treatment cannot be administered are indirectly protected against contagious diseases as long as the requisite level of vaccination coverage is maintained in their community, that is, their protection comes from herd immunity. Thus, where the view is taken that a policy of voluntary vaccination is not sufficient to achieve and maintain herd immunity, or herd immunity is not relevant due to the nature of the disease (for example, tetanus), domestic authorities may reasonably introduce a compulsory vaccination policy in order to achieve an appropriate level of protection against serious diseases. The Court understands the health policy of the respondent State to be based on such considerations, in the light of which it can be said to be consistent with the best interests of the children who are its focus (see General Comment No. 15 of the United Nations Committee on the Rights of the Child at paragraph 133 above; see also the findings of the Italian Constitutional Court and the judgment of the Court of Appeal of England and Wales in this regard, set out at paragraphs 109 and 128 above).

289. The Court therefore accepts that the choice of the Czech legislature to apply a mandatory approach to vaccination is supported by relevant and sufficient reasons.

21. The reference in [288] to the 'judgment of the Court of Appeal of England and Wales' is to *Re H*, so this passage can be taken as an endorsement of the Court of Appeal's approach by the Grand Chamber, at least so far as compatibility with Article 8 is concerned.



22. As to Article 14, the discrimination argument was not developed in any way. To establish unlawful discrimination, the mother would need to demonstrate the following: (i) a difference in treatment compared to persons in analogous, or relevantly similar, situations or a failure to treat differently persons in relevantly different situations; (ii) falling within the ambit of a Convention right; (iii) on the grounds of a prohibited ‘status’; (iv) for which there is not an objective and reasonable justification; in other words, that does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means and the aim: *Eweida v United Kingdom* (2013) 57 E.H.R.R. 8, [85-88].

## **Discussion**

23. I have set out the facts and legal framework in some detail so I can state my conclusions relatively shortly. In my judgment, the vaccination of WSP is in his best interests and is a proper and lawful exercise of the Local Authority’s parental responsibility under s 33(3)(a) and their power to override the mother’s objections under s 33(3)(b) of the 1989 Act. The mother’s application for an injunction to restrain the vaccination is accordingly dismissed.
24. First, the mother has not produced ‘cogent, objective medical and/or welfare evidence demonstrating a genuine contra-indication to the administration of one or all of the routine vaccinations’: *Re H*, [102]. The Local Authority is not obliged to produce evidence of the benefits of those vaccinations. I therefore accept that the harm that WSP will face if he is not vaccinated includes disability, serious illness and death: *Re H*, [36]. Those are real risks of the most serious nature against which vaccinations provide exceptionally good protection, particularly if the vaccination rate stays high enough that these conditions remain rare. Set against that, the ‘harm’ that the mother complains WSP will suffer if he is vaccinated is entirely speculative and is unlikely to eventuate if the process of informing him and supporting him when he is old enough to understand is carefully and sensitively handled, as would be expected from a reasonable parent. The mother accepts that WSP will not be rejected by his faith community and that ‘many’ Muslims vaccinate their children without any conflict with their faith, not least because Islam recognises exceptions to its strictures based on *darurah* or necessity. Indeed, both the mother and brother were vaccinated as children by their Muslim parents without causing her any of the harms against which the mother tells me I must protect WSP. I do not accept there is any realistic risk that WSP will suffer any of the suggested harms.
25. Second, in the absence of cogent, objective evidence of harm to his welfare, the mother’s objections on religious grounds do not otherwise outweigh WSP’s welfare interests in receiving the vaccinations. Her views must, of course, be taken into account and given proper weight, both by the Local Authority and by the Court. Her religious objections must be given respect. That is required both as a matter of common law and Article 9. I accept, in the light of the approach taken by the Local Authority and Guardian, that her objections are based on her Muslim faith and it is not for me to interrogate those beliefs to establish whether they are a ‘core’ tenet of her religion or to inquire into what proportion of Muslims hold the same beliefs. That would be to tread impermissibly on the core right protected in Article 9. The mother is not obliged to establish that she is acting ‘in fulfilment of a duty mandated by’ her religion: *Eweida*, [82]. However, those

religious views do not carry more weight the more strongly they are held or the more forcefully they are expressed. What matters is their ‘substance’: *Re H*, [101]. Given my conclusion that the welfare reasons the mother has put forward do not outweigh WSP’s interests in receiving the vaccines, the *fact* of her objection, even on well-founded religious grounds and however strongly expressed, takes the matter no further. WSP’s welfare is the paramount consideration and the mother’s objection is inconsistent with his welfare. The fact her objection is founded on her religious beliefs does not constitute a trump card that overrides what is otherwise in his best interests.

26. Third, that conclusion is consistent with the mother’s right to religion under Article 9. As I have explained, the mother’s objection to WSP receiving the vaccination on religious grounds is a ‘manifestation’ of her right to religious freedom which may be overridden where the criteria in Article 9(2) are met. In my judgment, and as *Vavříčka* demonstrates, there is a pressing social need to vaccinate infant children to achieve the legitimate objectives both of protecting the vaccinated child and of securing the health and safety of the wider population through herd immunity. Granted, the law must allow for exceptions where vaccination is contraindicated on health or welfare grounds in order to comply with Article 9, as with Article 8. The law must also meet the requirements of foreseeability and accessibility and contain adequate safeguards. Those needs are met domestically. The legal framework is established by statute. Section 33(3) of the 1989 Act gives the Local Authority a power, not a duty, to vaccinate a child against the wishes of a parent, and the authority will not exercise that power where there is objective evidence to contraindicate it. The parent’s right to apply to this Court to prevent the exercise of that power is an important safeguard.
27. Given the lack of any cogent, credible evidence of contraindication on health or welfare grounds in WSP’s case, in my judgment overriding the mother’s religious objections to those vaccinations is a necessary and proportionate interference with the mother’s right to manifest her religion. The objective – the protection of the life and health of the child and of the wider public – is sufficiently important to justify some limitation on the mother’s right to manifest her religion; vaccination is rationally connected to that objective; a less intrusive measure than vaccination would not achieve the same result; and I am satisfied a fair balance has been struck between the interests of the mother, the child and the wider public. In particular, leaving WSP unvaccinated in the hope that he does not get infected because these conditions are rare does not achieve the same result. WSP still remains at risk of devastating consequences if infected from these diseases, even if rare. He also faces the risk of being excluded from events and activities that other children are permitted to attend because of his unvaccinated status. Furthermore, leaving him unvaccinated because of his mother’s religious objection raises the prospect of others doing so and undermines the legitimate aim of protecting the wider public, which depends upon high levels of vaccination to maintain herd immunity. I am reinforced in this view by the conclusion of the Grand Chamber in *Vavříčka* which, although it concerned the compatibility of a compulsory vaccination programme with Article 8, not Article 9, the analytical approach is identical and the approach in *Re H* was endorsed. I am also comforted by the conclusion of Francis J when rejecting a similar argument based on religious belief to that of the mother in this case, albeit the objection was not

particularised in the same way as in the present case: *A Local Authority v AA and BB* [2020] EWHC 3775 (Fam).

28. Fourth, I reject the mother's argument that she has been discriminated against unlawfully in the enjoyment of her Convention rights, Article 9 and (I assume) Article 8, contrary to Article 14. As I understood this argument, the mother complains that she is treated differently compared to other parents because her child is in care. Her refusal to consent to her child's vaccination is not respected because it can be overridden by a local authority under s 33(3)(b), whereas a parent's refusal of consent to vaccination for a child who is not in care will be respected. I accept there is such a difference in treatment. I also accept that difference in treatment falls within the ambit of rights protected by Article 9 (the manifestation of religious beliefs in the upbringing of a child) as well as Article 8 (a parent's right to exercise parental responsibility in relation to their children: *Nielsen v Denmark* (1989) 11 E.H.R.R. 175, [61])). However, and leaving to one side the question of 'status', I am satisfied that the difference in treatment has an objective and reasonable justification, for the reasons given by King LJ in *Re H* at [94-95] when explaining the difference between the 'public sphere' and the 'private sphere'. In the 'private sphere' the state will generally only get involved in parents' decisions concerning the treatment of their children if the parents cannot agree. In such a case the Court may be called on to intervene, and one parent's objection may be overridden. The position is different in the 'public sphere' where a care order is in place, which justifies intervention through the exercise of state power under s 33(3)(b) because: '*... the child in question has suffered (or was likely to suffer) harm as a consequence of the care given to him or her by a person with parental responsibility. It is against that backdrop that the parent of a child in care holds parental responsibility. Parliament has specifically, and necessarily, given the local authority that holds the care order, the power under section 33(3)(b) to override the views of a parent holding parental responsibility ...*'. In the *Re H* case a full care order was in place, but much the same justification exists where, as here, an interim care order is in place under s 38 of the 1989 Act. The existence of reasonable grounds for believing a child has suffered, or is likely to suffer, harm while in the parent's care necessitating the state's involvement provides an objective, reasonable and proportionate justification for treating 'public' cases differently from 'private' cases, namely by giving a local authority power to override the parent's objections to the child's vaccination in one but not the other. Accordingly, there is no discrimination within the meaning of Article 14.
29. That is my judgment.