

**January 2023:** Below are the key (published) cases involving adults that lack mental capacity to consent to the COVID-19 vaccine and a brief summary of how the court made the decision in their best interests. Each case is based on individual circumstances. Whilst some facts are unique, some are not and therefore prompt legal advice should be sought in any case of doubt, conflict and/or restraint being required. To read any case in full, click on the title bar. The most recent case is listed first.

As with any injection, the Covid-19 vaccination is covered by the normal rules of consent to treatment (see DHSC guidance <https://www.nhs.uk/conditions/consent-to-treatment/>). If a person has mental capacity their consent is needed otherwise, they can refuse consent to the vaccination. If the person lacks mental capacity to consent to the vaccination, the decision maker (ie the doctor or nurse giving the injection) must assess this and make a best interests decision under the MCA (both assessments need to be recorded by professionals). If family or others consulted under the best interests assessment disagree with the vaccination and this cannot be resolved swiftly, an application to the Court of Protection should be made. Note in particular, bullet point iv in the third case below.

## [TN v An NHS ICB & Anor \[2022\] EWCOP 53](#)

This was an appeal against the judgment listed immediately below. The mother (and primary carer) of the man concerned appealed because she was against her son receiving the vaccination in his best interests. The judge hearing the appeal ruled that the previous judge was correct and the vaccination was in the man's best interests. The judge stated: *'I do not doubt that the mother will be disappointed by this and whilst I consider the Judge was entirely right to rely on the established empirical conclusions underpinning the guidance, I respect the sincerity and strengths of her beliefs...I have given very great thought to everything that she has written, which I have no doubt is sincere. Ultimately, those views cannot be reconciled, either with the national medical guidance nor the specific evidence relating to the cardiology in RN's case.'*

## [ICB v RN \[2022\] EWCOP 41](#)

A 22 year old man with severe learning disability and health issues. He lacks mental capacity to consent to the Covid-19 vaccination. He lives with his mother who is his carer and she objects to the vaccination. The case is brought by the Integrated Care Board (ICB) on behalf of the GP concerned. The judge concluded: *'I cannot escape the simple reality that the vaccine is likely to reduce RN's risk of developing a serious infection and dying of it. In the absence of any evidence that he is placed more at risk from having the vaccine than not having it- and there is none- I consider it clearly in his best interests to receive it.'*

## [North Yorkshire Clinical Commissioning Group v E \(Covid Vaccination\) \[2022\] EWCOP 15](#)

A man in his mid-60s with a learning disability living in a care home. He lacks mental capacity to consent to the Covid-19 vaccination. He has four siblings, two support the vaccination and two object to it (at the time of the hearing only one sibling continued to object). The judge concluded: *'Balancing all the circumstances I have come to the firm conclusion that it is in E's best interests to be administered the Covid-19 vaccine...'* In addition they gave the following guidance:

- i. *'The best interests assessment is not confined to evidence of the health benefits and risks of vaccination but involves a wide review encompassing all the relevant circumstances including those set out at s.4(6) and (7) of the MCA 2005;*
- ii. *In relation to the benefits and risks to the health of P from vaccination, it is not the function of the Court of Protection to "arbitrate medical controversy or to provide a forum for ventilating speculative theories." The Court of Protection will "evaluate P's situation in the light of the authorised, peer-reviewed research and public health guidelines." It will not carry out an independent review of the merits of those guidelines.*
- iii. *There may be exceptional cases where P's condition, history or other characteristics mean that vaccination would be medically contra-indicated in their case but in the great majority of cases it will be in the medical or health interests of P to be vaccinated in accordance with public health guidelines.*
- iv. *Hence, disagreements amongst family members about P being vaccinated which are at their root disagreements about the rights and wrongs of a national vaccination programme are not suitable for determination by the court. It will be in P's best interests to avoid delay and for differences to be resolved without recourse to court proceedings.'*

## [A Clinical Commissioning Group v FZ & Anor \[2022\] EWCOP 21](#)

A 40 year old woman with learning disability, Down's syndrome and suspected asthma. She lives with and is cared for by her family. She lacks mental capacity to consent to the Covid-19 vaccination and her family oppose the vaccination. The judge decided the vaccination would not be in her best interests and stated: *'When making a choice in this case I have to look not only at the outcome of the treatment, but how it will be carried out. I am satisfied that vaccination will*

*have a good outcome for FZ. However, I am not satisfied that the option I am being asked to approve will achieve that outcome. I am satisfied that it will be met with resistance and will in all likelihood have to be aborted.’ And ‘...taking all the factors I have discussed into account I am not satisfied that the option placed before this Court is in FZ’s best interests. It is likely to result in trauma for her (and her family). It is likely to have to be aborted and then, possibly tried again and again until the CCG finally removes it as an option.’*

### **[NHS Liverpool CCG v X and Y \[2022\] EWCOP 17](#)**

A 50 year old woman with severe epilepsy and mild learning difficulties living in a supported living placement. She lacked mental capacity to consent to the Covid-19 vaccination and her brothers and sisters opposed the vaccination. X had tested positive for anti-bodies to the virus. The judge decided: *‘I am clear that, on balance, it is in X’s best interests to be offered the vaccine in accordance with the 8 point care plan, appropriately modified to remove any suggestion and that she may be offered a ‘treat’ in consideration for accepting the vaccination.’*

### **[North Yorkshire Clinical Commissioning Group v E \[2022\] EWCOP 15](#)**

A man in his mid 60s with moderate to severe learning disability living in a care home. He lacked mental capacity to consent to the Covid-19 vaccination, two siblings were in support of the vaccination, one of his siblings opposed it and a fourth was initially opposed but withdrew their objection. The judge decided: *‘Balancing all the circumstances I have come to the firm conclusion that it is in E’s best interests to be administered the Covid-19 vaccine – the first, second and booster doses in accordance with the clinical judgment of Dr J. This would mean that if there is some concerning side-effect of the first does, Dr J would make a clinical judgment about whether further doses should be administered.’*

### **[GA, Re \(vaccination\) \[2021\] EWCOP 66](#)**

A woman in her late 80s with Alzheimer’s dementia living at home with 24 hour care. She lacked mental capacity to consent to the Covid-19 vaccination and most of her children opposed the vaccination. GA had a history of accepting numerous vaccinations. The judge stated: *‘I come to the clear conclusion that it is in the best interests of GA to receive Covid vaccinations.’* It was noted that this decision would lead to her having more access to the community.

### **[A Clinical Commissioning Group v DC & Ors \[2022\] EWCOP 2](#)**

A 20 year old man with a profound learning disability and multiple health conditions living in a care home. He lacked the mental capacity to consent to the Covid-19 vaccination (and booster) and both his parents opposed the vaccination. The judge decided *‘on fine balance’* that the vaccination should be given in his best interests: *‘In this case, I have found the balancing very demanding. I see a young man who could hardly be more vulnerable. His parents, who love him and have cared for him full time until relatively recently, have very strong views against him being vaccinated.’*

The judge criticised the delay by the CCG in applying to the Court of Protection to resolve the best interests dispute: *‘It seems to me this is unacceptable. If, as the CCG contends, DC is a highly vulnerable person for whom infection with COVID-19 could be extremely serious, then they have a duty to act speedily to protect him. Once it becomes clear there is a dispute between clinicians and the family on an urgent matter over important treatment of a mentally incapacitous adult, an application to the Court of Protection should be brought- and determined- with urgency.’*

### **[Royal Borough of Greenwich v IOSK & Ors \[2021\] EWCOP 65](#)**

A 17 year old boy with autism, severe learning disability and asthma. He lacks mental capacity to consent to the Covid-19 vaccination and both his parents are opposed to the vaccination. He is subject to a Care Order under the Children Act and does not live with his parents. The judge ruled it was in his best interests to have the vaccination despite the parents’ objections and the judgment includes a detailed vaccination plan to facilitate this including familiarisation visits to the vaccination centre. The plan prohibits the use of restraint to give the vaccination.

### **[Re: C \(Looked after child\) \(Covid-19 vaccination\)](#)**

A 13 year old child looked after (care order under the Children Act) by a local authority. He wished to be vaccinated, the local authority and his Guardian considered he should have it and his father supported the decision. His mother however was strongly opposed to her son being vaccinated. The judge stated that a court order was not necessary to override the mother in this case because: *‘...applying the principles articulated by the Court of Appeal in Re H, I am quite satisfied that under s.33(3)(b) of the Children Act 1989 a local authority with a care order can decide to arrange and consent to a child in its care being vaccinated for Covid-19 and/or the winter flu virus notwithstanding the objections of the child’s parents, when (i) such vaccinations are part of an ongoing national programme approved by the UK Health Security Agency, (ii) the child is either not Gillick competent or is Gillick competent and consents, and (iii) the local authority is satisfied that it is necessary to do so in order to safeguard or promote the individual child’s welfare. There is no requirement for any application to be made for the court to authorise such a decision before it is acted upon.’*

### [Re A \(Covid-19 vaccination\) \[2021\] EWCOP 47](#)

A 31 year old man with moderate learning disability, Downs Syndrome and autism, living in supported living. He is considered 'clinically extremely vulnerable'. He lacks mental capacity to the covid-19 vaccination: *'AD experiences significant health anxiety and finds health interventions distressing: he consistently refuses to engage with them. AD is unable to comply with social distancing measures or wear PPE such as a mask, and he is a sociable person.'* AD's mother disagrees with her son having the vaccination. The judge decided the vaccination was in AD's best interests including the use of covert sedative medication (Temazepam in a cold drink) in advance to give it. Note: the CCG also asked for authority to give a booster vaccination at a later date but the judge said this would require a separate application, at a later date.

### [E \(Vaccine\) \[2021\] EWCOP 7](#)

E is 80 years old and a care home resident with dementia. Her son objects to her having the Covid-19 vaccination. He is: *'...sceptical about the efficacy of the vaccine, the speed at which it was authorised, whether it has been adequately tested on the cohort to which his mother belongs'*. The judge decided the vaccination was in E's best interests against the wishes of her son. E's past wishes in consenting to both the flu and swine flu vaccinations; the real risk of contracting COVID-19 in her care home; the national risk; the increased risk due to her age and her present wishes of wanting *'whatever is best for me'* were given weight in the assessment of her best interests by the judge.

### [SD v Royal Borough of Kensington & Chelsea \[2021\] EWCOP 14](#)

V is in her early 70s and a care home resident with Korsakoff's Syndrome. Her daughter is appointed as her financial deputy and is very involved in her mother's life but now lives in New York. She is against the administration of the vaccine to her mother and considers it to still be a *'trial'*. She believes her mother would be against the vaccine but also says her mother has always been *'too deferential'* in following medical advice. V's day to day carer in the care home, Mr A, is regarded as a significant person in V's life. Mr A is concerned for V if she is left unvaccinated as care homes begin to open up. The judge was critical of the local authority waiting a month after their knowledge of the dispute before bringing the matter to a judge for resolution: *"I indicated that I consider this delay to have been unsatisfactory. When an issue arises as to whether a care home resident should receive the vaccination, the matter should be brought before the court expeditiously, if it is not capable of speedy resolution by agreement."*

### [NHS Tameside and Glossop CCG v CR \[2021\] EWCOP 19](#)

CR is 31 years old and has a severe learning disability, autism and epilepsy. He is classed as clinically vulnerable and overweight (22 stone). CR's father is not against vaccines in principle but he is against his son receiving the covid-19 vaccine at present for numerous reasons including: limited testing; unknown long term side effects on people with CR's condition; deaths following vaccine; high survival rate for those contracting covid. He also believes the MMR vaccine CR received at birth caused his autism. Several professionals (GP, care home manager, social worker and others) involved in CR's life think the COVID-19 vaccine is in his best interests. CR has never been able to express a (capacitated) decision about the vaccine. The judge notes the high death rate in the UK and 25% of deaths (at the time) had been in care homes (although none in CR's care home). Concerns about care homes opening up and the increased covid risk to CR if left unvaccinated. The judge authorised the COVID-19 vaccine in CR's best interests but did not authorise the use of restraint to administer it.

### [SS v London Borough of Richmond upon Thames \[2021\] EWCOP 31](#)

SS is 86 years old and has dementia. She is living in a care home and is under DoLS. She is resistant to medical interventions and expected to strongly resist any attempt to give her the covid vaccine. Her GP and the CCG are in favour of the vaccine for SS. Suggestions to administer it following covert administration of a sedative (Lorazepam) or tell SS that it was on the recommendation of her long deceased father (SS thought he was still alive) are rejected by the court. Twenty-seven residents of the care home (28%) died in the first wave of Covid-19. All other residents except one are now vaccinated however and SS only has one visitor about four times a year. The care home manager believes restraint would be highly unlikely to be successful unless administered by people who are *'kung fu experts'*. The judge concludes the vaccination is not in SS's best interests. The judge notes that several staff in the care home are declining to have the vaccination: *'...the greatest risk, statistically, to SS comes from unvaccinated members of staff circulating in the community away from the care home.'*