

The following is a summary of the legal issues to consider in relation to Schools administering the Covid-19 vaccines to 12 to 15 year olds.

A. NHS Guidance

You may have seen guidance, provided by the NHS¹ (**the NHS Guidance**). The NHS Guidance suggests that any child under 16 years, but over the age of 12 years can make his or her own decision about receiving the Vaccination, regardless of a parent, carer or guardian's views, wishes or consent.

This concept is known as "*Gillick Competence*"². This specific case related to a girl of 14 years, who receiving the contraceptive pill without the permission of her parent. However, there are legal nuances to Gillick Competency that the NHS Guidance fails to address and that may make such actions unlawful. In particular, you should be aware that:

- (i) The NHS Guidance contradicts the legal principle of Parental Responsibility as enshrined in s3 – 7 of the Children Act 1989³ and as such the Guidance is an attempt to undermine and usurp the obligations and responsibilities conferred upon an adult who holds Parental Responsibility in respect of a child.
- (ii) The Guidance pays little or no regard to the Welfare Principle and welfare checklist enshrined in s1 children Act 1989. The Guidance is *ultra vires* especially when such measures are supported by training programmes encouraging professionals working with children, in all capacities to report parents who are opposed to Vaccination of their children in these circumstances.
- (iii) The NHS Guidance gives no specific guidance relating to the fact that an assessment must be made on the case-by-case basis considering each child in question individually. As you will be aware, no two children are the same, each having different medical history, taking into account other factors such as the mental health of children during these unprecedented times, neurodiversity, brain maturation, developmental factors to name but a few. These are factors that neither school staff, employees or volunteers are entitled or qualified to make in reliance upon Lord Frasers' guidelines as set out in *Gillick v West Norfolk and Wisbech Health Authority [1985] 3 WLR 830*.
- (iv) The NHS Guidance doesn't mention legal advice in which Parent Responsibility was favoured above the Gillick, in particular, a more recent case of *Bell v Tavistock and Portman NHS Foundation Trust, 2020 WL 07033746 (2020)*⁴ the High Court was clear that a parent may exercise Parental Responsibility to make a decision about medical treatment in situations where a child is 'overwhelmed'.

And in these unprecedented times, when the sheer volume of medical information, statistics and contradictory and changing guidance from the JCVI relating to the cost-benefit, health risks and long-term effects of this Vaccination for children, means that it is impossible (at this time) for a child to digest, understand and critically analyse all the data relating to the Vaccination. As with most adults, it is therefore difficult make an informed decision and give valid informed consent.

B. Legal Standing

As a School or individual, you hold no legal standing to make a decision for a pupil if a parent or person with the benefit of Parental Responsibility objects to their child or children being Vaccinated.

¹ [C1384-Vaccinating-children-and-young-people-frequently-asked-questions.pdf \(england.nhs.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86484/C1384-Vaccinating-children-and-young-people-frequently-asked-questions.pdf)

² *Gillick v West Norfolk and Wisbech Health Authority [1985] 3 WLR 830*

³ [Children Act 1989 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1989/26/section-3)

⁴ *Bell v Tavistock and Portman NHS Foundation Trust, 2020 WL 07033746 (2020)*

The only forum for such issues to be appropriately determined is either (i) between parents themselves or (ii) in the Courts once a judge has had the opportunity to consider the evidence before it to allow an informed decision in respect of each individual child.

C. Cost benefit analysis

Even the Joint Committee on Vaccination and Immunisation (**JCVI**) states that there is limited impact in administering the vaccine to 12-15 year olds (February 2021).

Your School may already have received a letter from parents, written by the UK Medical Freedom Alliance (**UKMFA**) that goes further to set out the medical, scientific and legal implications of the Vaccination in children under 16 years.

The UKMFA states “the infection fatality rate in children under 16 is close to zero. The vast majority of those that catch COVID-19 remain asymptomatic or experience mild symptoms. Consequently, there is simply no emergency for children under 16 that would justify the approval. The potential benefit to an individual child from receiving the vaccine is statistically zero.”

If you have not had a chance to review the UKMFA letters they are available here: <https://bit.ly/UKMFALetters>.

D. Your Insurance

As is common to all insurance contracts, there is an implied condition that you must comply with the law. If you are breaching statutory legislation then you may render any professional indemnity, public liability or personal insurance policy ineffective. You should consult your insurance provider directly on this point.

You should also ensure that school policy does not contravene any express terms and conditions of your insurance policy and we would suggest that you check with your Insurers that any measures you are taking or planning to take does not invalidate any cover for third party liabilities.

You will need to raise very specific questions with your insurer to establish whether your insurance policy will indemnify you for any third party claim that may happen in the future around this to allow complete transparency and clarity around informed decision making on both your own and the part of parents.

E. Judicial Review

You may not be aware, but a letter before action for an application for a judicial review relating to the authorisation by the MHRA to allow the administration and supply of the vaccine to individuals aged 12 years or over was served on the Secretary of State for Health and Social Care C/O The Government Legal Department and The Medicines and Healthcare Products Regulatory Agency⁵ (**the Claim**) on 2 August 2021.

In particular, the Claim challenges the decision of the Secretary of State to:

- (i) grant temporary use authorisation for the Vaccine in children of 16 and 17 years' of age; and
- (ii) grant temporary use authorisation for the Vaccine in children aged between 12-15 years old
- (iii) not to revoke the temporary use authorisation of the Vaccine for both age groups in the light of the said advice of the JCVI.

On the basis of the Claim will be made, it would be wise to consider the implications on you and your School if the above are found by a court to be granted by the applicants.

⁵ See <https://bit.ly/MHRACase> for full details