

Schools and Covid vaccinations - the legal landscape

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06 December 2021

The beginning of a new academic year can be challenging for many but 2021 has added an additional burden on to schools in respect of the on-going debate about how best to manage the Covid Virus.

The Government has decided that healthy 12 – 15 year olds can receive the Covid-19 vaccine and this autumn the first dose is being offered as part of the school based vaccination programme. This has led to a polarisation of very strongly held views which has rather caught schools in the middle seeking to represent a responsible and reasonable position.

The issue of liability

We have seen many letters and representations written to schools, directed at the school as a corporate entity and to individual headteachers and CEO's as personal leaders. Some of these letters come from individual parents, some come from concerned members of the public, either individually or more usually as a group and some are part of organised groups.

The letters generally take two forms; a letter setting out the reasons why the vaccine should not be used and highlighting the health risks to the students within the school. They purport to be the voice of those parents otherwise unable to speak for themselves. These generally do not require a reply or acknowledgement. Then there are those entitled 'Cease and Desist' letters and demand that you stop doing what you are doing to promote and administer vaccines. A short acknowledgement is advised for these. What they have in common is the threat the school should not be administering vaccines and to do so will incur personal liability for any unfortunate consequences of any resulting reaction to it by the children.

These letters are threatening and intimidating, and it is easy to see how teachers would feel nervous about their part in the programme. But there is the key, which the authors of these letters seem to have missed. Schools do not administer vaccines. They are administered by SAIS (School Age Immunisation Service). Nor, as some parents seem to think, do schools make assessments of which children should have the vaccine.

Where a child wants to have the vaccine against the wishes of their parents a competency assessment is made – the Gillick competency test. The child has to be assessed to have an understanding of the decision they are making and also an understanding of the consequences of that decision. This assessment is made by the SAIS, not the school. So, the school does not give the vaccines or make any contribution to the assessment of competency where parental consent is not forthcoming. It is difficult therefore to see how there is any rationale for trying to apply liability to the school. Some parents may argue that the simple fact of opening its doors as a centre is implicitly supporting the programme. Many schools are used as polling stations, but it is a big leap to hold a school responsible for the colour of the MP that is returned there.

A position of neutrality

Where a school needs to be careful in the vaccine/ no vaccine debate is the language it uses to the students about the choices they are making. It is sensible to make literature available to students and to refer them to organisations that can give them more information, but it

is important that the school remains neutral and makes it clear that this is a matter for individual choice. They need to be careful that there is no opportunity for peer pressure or bullying between the students and to ensure that there is an openness and balance to any comments that are made. Where demonstrations or similar take place outside the school, do not try and stop it unless parents are being intimidated or you feel it is getting out of hand. In this instance call upon the local police force who may send out a PCSO or officer to keep an eye on things and make sure that they do not escalate.

Schools should take comfort that they do not carry any risk of incurring liability as long as they do not interfere with the process of the professionals who are on the front line and who have been tasked with the process of administering vaccines to those that want it.

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