Child Medical Treatments and the Law: Where Do Co-Parents Stand?

As a parent, whether married or unmarried, few issues can be as emotive as the health and well-being of one's child. And as is the case with many areas of family life, disputes may often arise between parents. Whether these disputes arise on emotional, medical or religious grounds, we outline the legal options available to parents.

Consent & Capacity

Children under the age of 16 can neither give nor withhold consent. This means that those with parental responsibility for a child need to agree on medical treatment. If there is no agreement, a court can make decisions on the child's behalf.

If the child is under the age of 16, they may, under specific and occasional circumstances, still be able to consent on their own, and a medical practitioner will exercise their discretion in determining whether the child has enough intelligence, competence and understanding to fully appreciate the implications of the treatment.

If the child is age 16 or over, they are presumed to have capacity and can consent to a medical procedure themselves. Where individuals 16 years or over do not have capacity, a different approach is adopted, and the child may be treated without their consent provided that either an individual with parental responsibility provides their consent or a court has ordered that the procedure take place.

Remedy

In the absence of consensus, and where the parties have arrived at an impasse, the court is able to offer remedy in the form of either a Specific Issue Order or a Prohibited Steps Order. A Specific Issue Order may be sought where the parties cannot agree on a specific issue; in this instance, the court steps into the shoes of the holders of parental responsibility and makes a decision in line with the best interests of the child. A Prohibited Steps Order is a mechanism available to the courts whereby a holder of parental responsibility's rights may be curtailed or limited in order to prevent them from exercising their parental responsibility.

The regulatory and legal framework surrounding the issue of parental rights, as they relate to a child's medical

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procedure, is a complex exercise of understanding the law combined with following the best interest of the child principle. If ever you find yourself in a situation where the next steps are unclear, contact the Lester Aldridge Family Team for expert advice on all family related matters.

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