

‘Substituted parenting’ in the family courts: “too much” support for parents with learning disabilities considered harmful for children.

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About the research

Parents with learning disabilities/difficulties (LD) are overrepresented in the family courts and are more than twice as likely to have their children removed, rather than supported to remain at home.

The term ‘substituted parenting’ appears in family court judgments involving parents with LD as the reason for removing the children e.g. [A Local Authority v G \(Parent with Learning Disability\)](#) [2017].

Local authorities seem to use the term when:

- the potential support they have identified as necessary is extensive, and
- they consider the high level of support required equates to a risk of ‘substituted parenting’,
- which, they say, is detrimental because it confuses children as to who the parent is.

Published court judgments show no definition of the term or evidence of analysis of the perceived risk, or exploration of options to address that risk. This lack of clarity raises concerns regarding the fairness and transparency of the family court system in relation to cases involving parents with LD.

The project’s overall aim was to develop a common understanding of, and clarity about, the meaning and use of the term ‘substituted parenting’ by legal and social work professionals. It also sought to ensure that parents with LD could understand the term, associated risks and how to mitigate them. Further information about how we carried out the research is available on page 4.

This research is timely, given the recent judgment of the Court of Appeal in [Re H \(Parents with Learning Difficulties: Risk of Harm\)](#) [2023]:

‘Judges need to be wary of arguments based on the concept of “substituted parenting”.’ [para 65]



Learning disabilities/learning difficulties (LD)

We use the term ‘parents with learning difficulties’ to include parents with a diagnosed learning disability and the wider group of parents who have a milder impairment but still struggle with their day-to-day life and role as a parent and have less access to services because they do not have a diagnosed learning disability.

Research findings

Parents recognised the need for support but found the term unhelpful

Parents were confused by the term 'substituted parenting'. They didn't know what the word 'substitute' meant but most understood the term was negative: 'taking over', 'pushed to the back', others 'taking charge', being 'replaced'. Parents also used the analogy of a footballer being sent off.

Parents were clear that they should have the primary relationship with their children and that workers should not over-engage with the children themselves.

Parents knew they needed support to ensure the best outcomes for their children, but needed positive relationships with support workers, individualised, tailored support in their own right from adult services and the support of an advocate. Professionals' expectations that parents would not be able to parent, undermined working relationships in which parents already felt powerless.

Professionals saw the term as value laden and lacking clear definition

Professionals interviewed (family court lawyers, judges, social workers, independent advocates, guardians) were not clear where the term originated or how the use of the term developed. They felt the term had become common currency and acquired a derogatory, value-laden, shortcut meaning.

It was not clear whether it was the *level* of support that was considered problematic i.e. the length of time the support would be needed, the numbers of support workers, the frequency/duration of their visits, or the *nature* of the support needed i.e. practical tasks or other tasks. The 'tipping point' between extensive and excessive support was felt not to be fixed but instead related to the individual judge or case.

Duration, costs, resources, sustainability, and the impact on a child's emotional welfare were the main reasons given for why 'substituted parenting' was not considered to be desirable, feasible, or acceptable. 'Parenting by others' in a family context (and, to a degree, parenting by paid professionals) was distinguished.

Professional concerns were about theoretical support packages

Concerns were not based on factual, evidenced, family-specific details but, instead, on theoretical support packages, resulting in significant, negative, consequences for the family.

Identifying and raising concerns is obviously important but even more important is that those concerns are then carefully analysed to be sure that they are based on fact, not speculation, and that options have been explored to address, manage, mitigate, or even eliminate those concerns where possible. This analysis was absent. Professionals attributed this to the theoretical nature of the support packages which were not intended to be implemented.

Cost-benefit analysis of support options was absent

Costs were often raised as a reason for not providing support identified as necessary, but no cost-benefit analysis was undertaken.

When considering a need for long-term, costly support, professionals agreed that there appeared to be a difference in approach towards physically disabled parents and learning-disabled parents. Learning-disabled parents were less likely to receive the support.



'There is a grave risk, I think, that an assumption that you know the outcome then infects the fairness of the proceedings'

(Barrister)

Policy implications

Supporting not supplanting

- Professionals working with parents should make every effort to ensure that the emotional connection between the parents and the child is supported, to reduce the risk of support parents receive being seen as 'substituted parenting'. Professionals should steer the child towards their parent (where possible and appropriate); supporting rather than inadvertently supplanting the parent.
- Professionals should take responsibility for ensuring that parents understand the concept and potential ramifications for their family where the concept of 'substituted parenting' is being raised as a concern.

Risk analysis

- Where a concern is expressed that a proposed support package will amount to 'substituted parenting', the professional should a) identify which specific elements of the support package are potentially problematic b) assess the likelihood and impact of the risk in relation to each specific element c) identify options to address / reduce / eliminate / manage each of the identified risks and d) trial the options, where possible.
- This analysis should be specific to the adults and children of the family concerned; it should not be conducted as a generic, theoretical exercise. See Appendix 1 of the Report: analysis template example.
- Professionals should consider whether the risk can be managed, in the first instance, rather than immediately and principally relied upon as the rationale for removal.
- Published judgments now need to refer (even if only by way of simple recital, rather than fully detailed) to the analysis of risk and confirm that options to address those risks were explored.

Attachment / Attunement

- Professionals should ensure that where there is significant reliance on attachment or attunement to justify a child's removal, there is robust evidence that a) the report writer has the appropriate training, qualification, or expertise to make the assertion and b) options have been explored to address the concrete concerns raised, specific to that child and that parent.

The need for a long-term approach

- Professionals should recognise and accept from the outset the possible need for a long-term approach, when working with parents with LD and their children.
- Where the concept of 'long-term support' is raised as a concern, it should be broken down into child age-related stages and evidence-based, specific concerns should be articulated, together with the options that have been taken into consideration to address those specific concerns.
- Adult and Children's services should develop a joint working strategy and family focus to avoid a 'child versus parent' ideology or budgetary approach.

Terminology

- In the absence of any commonly agreed definition or understanding of the term 'substituted parenting', its use should be avoided.
- Professionals should avoid using terms such as 'would not have a normal childhood' / 'artificial environment'. Instead, they should describe the exact nature of the concern, together with the options that have been explored to address those specific concerns.

Good Practice Guidance

- Professionals working with families where a parent has LD should, at a minimum, be familiar with the most recent edition of the [Good Practice Guidance on working with parents with a learning disability](#) (GPG) (currently 2021).
- The Department for Education's planned 2023 review of the statutory guidance Working Together to Safeguard Children 2018 should include reinstatement of essential content about parents with LD and a prominent reference to the GPG, reflecting the observations of Mrs Justice Knowles in [XX, YY, and Child H \(Rev1\)](#) [2022] and the Court of Appeal in [H \(Parents with Learning Difficulties: Risk of Harm\)](#) [2023].

Training & Experience

- Those responsible at senior level for training in the social care and legal/judicial sectors should ensure that appropriate training exists and is made available.
- Local authorities should ensure their template pre-proceedings letters listing local Children Law accredited legal professionals highlight those known to have experience in working with parents with LD.

A balance of focus

- Professionals should ensure there is an appropriate balance between a focus on risk and a focus on support.

Methodology

The research, carried out from November 2022, was guided by parent and professional advisory groups who advised on the refinement of methods and analysis of material collected. It received approval from the School for Policy Studies Research Ethics Committee, the Judicial Office and by Cafcass (Children and Family Court Advisory and Support Service).

Four focus groups, involving 21 parents with LD (including three fathers) from advocacy groups across England, discussed the term 'substituted parenting' and how parents could avoid support being seen as 'substituted parenting'.

21 professionals (solicitors, barristers, judges, social workers, children's guardians and independent advocates) were interviewed to investigate how they understood the term, how it was used in court and if the perceived risks (of support amounting to 'substituted parenting') were analysed and options to address those risks explored.

The interviews were analysed by both authors using thematic analysis. This was the first study to explore this issue.

Further information

The Working Together with Parents Network has a project website which includes useful resources: <http://www.bristol.ac.uk/sps/wtpn/>

Further information about this research is available at the links below:

- [Full report](#)
- [Executive summary](#)
- [Easy read](#)
- [Policy briefing](#)
- [Film \(opens in YouTube\)](#)

[Good practice guidance on working with parents with a learning disability](#) (July 2021)

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