



Acknowledgements

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Substituted parenting: What does this mean for parents with learning disabilities in the family court context?

Introduction

The term ‘substituted parenting’ is increasingly being used in family court judgments involving parents with learning disabilities/difficulties (parents with LD) as the reason for removing the children.¹ e.g. *A Local Authority v G (Parent with Learning Disability)* [2017]². There is no research on this issue, but the term appears to be being used by local authorities (LAs) when the support they have identified as necessary is extensive and they consider the high level of support required equates to ‘substituted parenting’ which, they say, is detrimental as it confuses children as to who the parent is.

It is not clear what the courts understand by the term ‘substituted parenting’: *“Whether the situation I have described could or indeed should be described as “substituted parenting” is a matter for others to decide... In the absence of a clear description of the dynamic that defines what substituted parenting is, ...”* (PQR - Supported Parenting For Learning Disabled Parents [2018]).³

Senior lawyers are also unclear how the use of this term developed, stating that it, “... appears to be becoming an ‘orthodoxy’” or the ‘default position’ *“I am not aware of any specific research that is cited to support this; it seems now to be an article of faith.”* (Barristers – email). 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.

When children are being removed from their families in consequence of a court agreeing that the support proposed would amount to ‘substituted parenting’, it is important to know that any arguments being raised against providing support are legitimate and are not based on cost, prejudice, or other inappropriate factors. Without such scrutiny there is a risk of removal becoming a discriminatory blanket policy, as many parents with LD are likely to need long-term, and often extensive, support.

¹ Parents with a learning disability/difficulty - We use the term ‘parents with LD’ 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.

We recognise that many cases in the family court involving parents with LD can be complex, encompassing other issues such as poor childhood/parenting experiences, substance abuse, domestic abuse, but we focus in this report on the use and application of the term/concept of ‘substituted parenting’ in the context of parents with LD in the family courts.

² [A Local Authority v G \(Parent with Learning Disability\) \(Rev 1\) \[2017\] EWFC B94 \(18 December 2017\) \(bailii.org\)](#)

³ [PQR \(Supported Parenting For Learning Disabled Parents\) \(Rev 1\) \[2018\] EWFC B72 \(30 October 2018\) \(bailii.org\)](#)

The project's overall aim

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 parents with LD understood the term, associated risks and how to mitigate them.

The aim of the research in relation to professionals

To understand what social work and legal professionals in child protection proceedings meant by the term 'substituted parenting' and how they applied it.

The objectives were to identify:

1. whether there was a common understanding of the term
2. any research evidence upon which the concept is based
3. whether options were explored to address the perceived risk (of 'substituted parenting').

The aim of the research in relation to parents with LD

To understand how to explain the term to parents and help them understand the risks related to support being seen as 'substituted parenting'.

The objectives were to:

1. develop an accessible definition of the term 'substituted parenting'
2. elicit parents' understandings regarding how support is provided
3. help parents recognise when professionals might consider the support as 'substituted parenting'
4. help parents identify steps they could take to address this perceived risk.

Methodology

The research was guided by parent and professional advisory groups who advised on the refinement of methods and the analysis of the material collected. The research gained ethical approval from the University of Bristol School for Policy Studies Research Ethics Committee and approval was given by the Judicial Office and by Cafcass (Children and Family Court Advisory and Support Service) for participation by serving members of the judiciary and Cafcass respectively.

All the participants were provided with full information about the project prior to being asked for informed consent to take part. The information for parents was provided in easy read and read out to the parents and questions answered prior to parents being asked if they were willing to sign the easy read consent form at the start of the focus group.

Four focus groups were undertaken with parents with LD from advocacy groups across England. A total of 21 parents were present, 18 mothers, three fathers. One mother identified as autistic during a focus group. We deliberately did not ask how many children the parents had, or with whom their children lived, but it became clear during the discussions that the majority had had children removed from their care.

The focus groups discussed how the parents understood the term 'substituted parenting' and how it could be more easily explained to parents, how parents should be supported and how parents could avoid the support they received

being seen as ‘substituted parenting’. During these discussions, the parents regularly told stories of poor treatment by professionals but also of positive support. The focus groups were all very different – one was a hybrid focus group with some parents in the room with us and some on screen; one was a purely online discussion with three mothers present, one of whom did not speak; the other two focus groups were in person.

As shown by the quotes presented below, some of the parents were very able to speak fluently on the topics discussed, while others answered questions concretely and succinctly. All the quotes have been anonymised and are presented by focus group number and parent number; the code R stands for researcher.

The focus groups were organised through established advocacy groups so that if parents did become upset about their previous experiences they were in a safe space where they were known and could access immediate support if needed. None of the parents actually got upset in the focus groups but two mothers declined to speak as the topic was uncomfortable for them.

Twenty-one professionals, recruited via their professional organisations, were interviewed – as shown in table A. The interviews investigated how the professionals understood the term ‘substituted parenting’, where they believed the term had come from, how the term was used in court and if the perceived risk (of support amounting to ‘substituted parenting’) was analysed and options to address that risk explored. The full interview topic guide can be found in **Appendix 4**.

Table A. Sample for professional interviews

Professional group	Number of interviews
Judges (J)	6
Barristers (B)	4
Solicitors (S)	2
Social workers (SW)	3
Cafcass Guardians (CG)	2
Advocates (A)	4 (3 in one group interview)

The individual professional interviews and the parent focus group interviews were analysed by both authors using thematic analysis and the themes shared with the advisory groups for comments.

Note regarding the labelling of quotes

In the section discussing the ‘Themes from the individual interviews with professionals’, individual participants have not been identified so as to protect their anonymity. The numbers next to the indication of professional groups indicate the number of professionals who discussed the theme, i.e. B means that the theme was discussed by one barrister and B3 means that the theme was discussed by three barristers.

In the section presenting the parents’ views, the comments from individual participants are identified by the focus group e.g. FG3 – focus group 3, and the code number given to individual participants e.g. FG3, P2 is a parent given the code number 2 in focus group 3.

Key findings

Themes from the parents focus group interviews

This section is divided into 3 sections:

Section 1: About the term 'substituted parenting'.

- What does the term 'substitute parenting' mean to parents?'
- Other ways of explaining 'substituted parenting'

Section 2: Discusses general issues related to supporting parents with LD, to provide a context before specific issues related to 'substituted parenting' are then presented.

- Parents know they need support
- Parents need positive relationships with support workers
- Parents need individualised support
- Parents should receive support in their own right
- Parents feel that they are not expected to be able to parent
- Parents are often scared and anxious while being provided with support

Section 3: Specific issues relating to 'substituted parenting'.

- Parents are 'stuck with' 'substituted parenting' with no ability to challenge workers
- Supporting parents' relationship with their child is key to reducing the risk of support being seen as 'substitute parenting'.

Section 1: About the term 'substituted parenting'

This section describes the inaccessibility of the term 'substituted parenting' to parents with LD and how the term could be explained to parents.

What does the term 'substitute parenting' mean to parents?

Discussing the parents' understanding of the term 'substituted parenting' was complicated by the fact that to gain their fully informed consent to taking part in the research we had to provide an explanation about the project on the easy read information sheet. Just prior to the focus group interview, we had read through this information sheet with them (before asking if they consented to take part). We had explained 'substituted parenting', using the wording provided by our parents' advisory group on the information sheet as:

'when professionals believe that you are not parenting your children yourself because you have too much support.'

Even though we had just given this explanation, parents in three of the focus groups remained confused regarding the meaning of the term 'substitute'.

'Don't know what 'substitute' means' (FG2 P2)

'What's substitute?' (FG3 P4)

Parents in focus group 4 felt that it was a 'hard' and 'too difficult' word. Two parents understood the term 'substitute' to be given help or sharing the parenting. Two parents saw this as positive:

'I always thought it was a... just somebody helping you in... in some ways'. (FG4 P3)

'I thought it was to do with sharing parenting, like share with your support workers, that's what I thought it was.' (FG3 P4)

Directly following this comment, another mother explained: 'But in this way, it's being seen as too much help.' (FG4 P4)

One mother, focus group 2, gave a lived example of 'substituted parenting'. She described how her own mother had 'taken over' the care of her baby. This mum also recognised that the foster carer who was now looking after her child was also a 'substitute' and her family a 'substituted family':

'Told my mum was taking over my child by feeding and changing them. They decided I wasn't being the parent and just took my child'. (FG2 P2)

Other ways of explaining 'substituted parenting'

In the first focus group, once an understanding of the word 'substitute' had been developed, fathers likened the replacement of the parent to substitution of a footballer 'when they are sent off'. (FG1 P1,2,3). They felt that this explanation would be particularly helpful for fathers. The two mothers in the second focus group concurred:

'what I had in my head is a substitute is a footballer' (FG2 P1)

This explanation of the term was used in focus groups 3 and 4 to support understanding of the term:

'Well, we've had another dad, that we talked to down in [place name], explained it like in football. When you've got a football team, and the referee says, "No, you get off." '(FG3 R1)

The concept of 'substitute teacher' was also discussed in focus group 2:

'like teachers when they have substituted teachers or TAs coming to cover someone'

'My mum was like a teacher, I was pushed to the back and just stood there watching' (FG2 P2)

This mother preferred the substitute teacher analogy as 'everyone has been to school' and had 'stand-in teachers' at some point; she felt parents might not understand the rules of football and who a referee is.

The parents suggested a wide range of, negative, terms that could be used to explain the term 'substituted parenting'. These included 'taking over', as noted in the quote above, 'pushed to the back' (FG2 P2), 'Taking charge' (FG4 P1) and 'parent alienation' (FG2 P1). One mother said:

'Isn't it like replaced?' (FG3 P8)

One mother summarised that the term was:

'Like they're saying we're not the parent. But they shouldn't be thinking that.' (FG3 P2)

Section 2: Contextual issues

This section provides an insight into the parents' understandings of general issues and risks relating to being provided with support to parent. It provides a context for the parents' suggested approach to reducing the risk that the support

they receive is seen as 'substituted parenting' - i.e. that professionals should steer their children to them (the parents) for emotional connection and support (discussed in section 3 below).

Parents know they need support

All the parents were clear that they understood that they needed support with their parenting, but also that this support needed to teach and empower them to parent. This extract from focus group 4 summarises the parents' need for support in order to be the best parents possible:

Researcher: 'So, it's not like you're saying that mums and dads with learning difficulties don't need help.

Parent 4: Because we do.

.....

Researcher: So, you'd want people to give you the skills you need?

Parents 4: Yeah.

Parent 3: Be helped...

Researcher: To be helped?

Parents 3: To understand more.

Parent 4: And caring.

Researcher: Caring. What do you mean by caring? Helped to know how to do caring?

Parent 4: Yeah.' (FG 4)

The parents said that support should be provided as early as possible:

'Straight off, yeah, so they can give them the support straight away. If you leave it too late, it will get worse.' (FG3 P1)

'Probably while you're going through the pregnancy'. (FG3 P7)

Parents need positive relationships with support workers

A good relationship with the worker/s providing the support is vital. A number of parents described having positive relationships where it 'feels good' (FG4 P4) with support workers. Parents felt respected because the worker 'spoke to me like a person'. (FG4 P1) Two mums reported:

'My support worker is wicked (great).' (FG3 P3)

'Honest. Straight to the point. And if I done anything that wasn't right, I wanted to tell her because I wanted her to be like, it's just how it is. She was never nasty, and she was just dead kind'. (FG4 P1)

Support workers should:

'Be nice. Give you support, not have a go and judge you.' (FG3 P3)

'Talking nicely instead of talking like... like dirt, muck.' (FG4 P3)

They should also be 'honest' (FG4 P4, FG4 P1) and 'trustworthy' (FG3 P1), 'not judge us' (FG P3) and 'give people a chance'. (FG4 P4) Trust was also a strong theme in the parents' discussions:

'Yeah, and you have to be able to get to know them before you can trust them. That's the most important thing because you don't trust people. When you've been through all of that, you don't trust... you can't trust anyone. So, to have someone come in, you don't trust them, you have to build that relationship outside of it for them to be able to come into your home in the first place.' (FG3 P1)

One mum clearly explaining the elements of good relationships with workers, in comparison to less positive interactions:

'Some of them are just like... I used to think, "Is it time for you to go yet?" But then, other times, I had some really, really good ones, and had good connections with them. I was sometimes, I know I shouldn't admit it, sad to see them go. Some of them. Because they were really good, and they didn't try to take over and that, and even now, when something says, "Is this right?" Because I felt like I could ask them. Other ones, I'd be worried about asking them because of the way they were. But yeah, a lot of... a lot of them were really good. And like I say, the last one, brilliant'. (FG4 P1)

One mum was concerned that parents should know that workers are 'safe' (FG2 P1) to be around their children as it is the parents' responsibility to protect their children. Other mums indicated the importance of workers showing their identification.

Parents need individualised support

Good support, in line with established good practice, involved 'as few workers as possible – three is too many' (FG2 P2) who should 'read your notes, they need to know what you've experienced' (FG2 P1) so that they can support them in an individualised way:

'Good support to me is when it's based on you and when you can tell them what you need and how to support you best.... And if they stick to these rules that you have in your house, they work fine with you. You know what support you need best because you know what you can do and what you can't do. You know your own abilities; they don't know you as much.' (FG3 P1)

Workers should 'teach us, because we've got a right to learn for ourselves' (FG4 P4) using 'pictures' (FG2 P2) and by being 'shown, speaking about it, different ways' (FG2 P1). They should 'Just guide us through, not tell us what to do' (FG3 P4). They can 'suggest and advise, but not take over' (FG3 P6). They should do this 'in a nice way, not a judgemental way'. (FG3 P6) One parent described how the support should be provided in this way:

'Just if I was doing something, and it was not in the right way, they wouldn't sort of like have jumped up, and just sort of like, "Here, I'll do it." Or "You're doing that wrong. That's not the right way". Yes, she would have spoke to us, and maybe helped us, because I always wanted to be shown. If there was something I was doing for the first time, shown, and then left to it.' (FG4 P1)

Parents should receive support in their own right

In one focus group there was a discussion regarding the need for support in their own right as a parent with LD:

'You should be attached to a disability social worker – that doesn't ever happen'. FG2 P1)

'Disability social worker would be a good one (to help them), they would have had training to work with us' (FG2 P2) 'and they would have, like, experience as well.' (FG2 P2)

These parents were not aware that support could be available to them in their own right as a parent with LD, under the Care Act.

Parents feel that they are not expected to be able to parent

Many of the parents shared examples from their own lives, when they had felt 'judged' and 'picked on' by workers:

'Parent 7: 'Judge you before they know you.

Parents 3: They make you feel small.

Parent 1: She's got to understand some of us have got learning difficulties and she's picking on them.

Researcher: You think it's picking on?

Parent 2: Yeah.

Researcher: Lots of nods.' (FG3)

Parents felt that workers 'doubt their skill' (FG4 P4) and that they only look at what they cannot do:

'They will say you need support, but they will look at stuff you can't do and forget the things you can do. They look at everything you can't do. They tell you one thing you're doing wrong, which every parent does, but if you do it, it's double standard with a learning-disabled person.' (FG3 P1)

One mother was clear that no allowances were made in relation to their learning disability:

'No, they just put you in the same line as everyone else and say, 'oh well, she's no good, chuck her off to the reject bin.' (FG2 P2)

This results in parents feeling that they are 'never given the chance to show that I could cope' (FG2 P2). This mother further explained 'sometimes they twist things around to make you look bad' (FG2 P2). The parents therefore didn't 'trust' workers, many parents making comments such as:

'After what I've been through, I wouldn't be able to trust anybody' (FG2 P2)

'Got all these questions but can't ask them as I haven't got the trust in you [professional].' (FG3 P7)

Parents are often scared and anxious while being provided with support

The parents explained that when support was not offered in a respectful, relationship-based way, they felt powerless, stressed and anxious, as was evident from this exchange with mothers, in focus group 3:

Parent 1: 'I've got autism so if I have a lot of people in there, I could have an autistic meltdown because there's too much for me to cope with and I just wouldn't cope.'

Researcher: Okay.

Parent 1: So, at the end of the day, it would... and if I've got someone looking over my shoulder, I feel more anxious about it, so I just can't cope. It makes it more pressure for me.

Researcher: So, having more people in the house makes it more anxious, so you're less likely to do the things right because you're getting all stressed?

Parent 1: Yeah, you're scared that you're going to do the wrong thing, you're scared more so you're going to make mistakes easily.

Parent 8: She's right. I have a habit with my anxiety that I'll have a go back [be angry with the support worker].

Researcher: And how does that work out?

Parent 8: Not good, obviously. But I do apologise eventually after I've cooled down. It might be a few days, but... she does know that, and she said she understands, but I still don't trust her.' (FG 3)

This negative cycle of interaction therefore impacts on the mother's perceived engagement with services.

Section 3: Specific issues relating to substituted parenting

This section describes parents' powerlessness to challenge workers when they are not happy with how support workers are engaging with their child/ren; how they feel that an advocate would help them speak up, and that workers should always steer children to their parents.

Parents are stuck with 'substituted parenting' with no ability to challenge workers

The feeling of powerlessness permeated throughout the discussions regarding the term 'substituted parenting' and how it could be avoided. Parents described being 'stuck in the middle' (FG2 P1) with workers who they felt they could not stop from taking over their parenting role, since not complying with the expectations of Children's services might be 'used against' (FG2 P2) them and contribute to them losing their children. One mother, who felt she had been in this position clearly explained how parents were stuck in a 'catch 22 situation':

'You can't say I don't want them' you've got no choice, so you just sit back and basically let them take over' 'being a professional you can't say anything... you would feel bad saying to a professional don't do that, that's my job, you don't want to say something wrong and then get in trouble for it'... 'you're in a catch 22, it might go against me or make things worse' 'you want to do the right thing but you don't want to make the situation worse than it already is' You're stuck as you don't want to upset anyone, the local authority especially social services because you think you are going to make the situation worse' (FG2 P2)

For this mother, the powerlessness extended to her being supplanted by her mother as she was living with her at the time:

'Like with my mum, at the time, I was living with her at the time and I had nowhere so I was scared that if I told her to back off, would I lose my living in the house and make it worse 'cus then I'd be on the street with a child which social services would say you are putting at risk because you are on the street, would they just take her anyway'. (FG2 P2)

While one mother felt she would have the confidence to stop a worker from engaging emotionally with their child said: 'I'd go hey – that's my child not yours' (FG2 P1), most parents agreed that it was difficult for parents to speak up:

'I wouldn't find it very easy to say give me my child back or don't take control.... It would be hard though, if you've got a social worker who you are unsure about and you don't know if they'll give you a chance.... I find it intimidating that I'm the one who's got to talk to them and get my child back' (FG2 P2)

'Maybe they'd be very scared to say excuse me that's my child ... Because they are professionals parents can't say anything' (FG2 P1)

It was also noted by parents that having an advocate would be a 'really big help' (FG2 P2) to stop workers taking over in their family life:

'you can speak to an advocate and say this is the concerns, how do I go about talking to them? Or make it known that you have a problem. But if you haven't got that help then you are literally being railroaded into whatever the social workers says.' (FG2 P2)

Supporting parents' relationship with their child is key to reducing the risk of support being seen as 'substitute parenting'

The parents were clear that workers should be 'there for me, not them... not my children' (FG3 P2) and 'not step over the mark' by developing a close relationship with the children (FG2 P1). Workers having a close relationship with their children made them 'feel like a shitty parent because you are his or her mum' (FG2 P1). Parents should be the one to provide the emotional connection and support to the child:

'Wouldn't like worker to give my child a cuddle – I'd be like what the heck' (FG2 P1)

'I wouldn't like it, but you have to do what's best for the child.... I would go up to the child and say do you want me to give you a cuddle instead' (FG2 P2)

In order to reduce the risk of the support they received being seen as 'substituted parenting' the parents needed to be the main person to interact with their children so their child 'comes to her mum first.' (FG3 P3). Parents said:

'Keep them involved, and make sure like when the people come out, that you're still connecting with the children so that they don't get the chance to take over' (FG4 P4)

'Or even explain to the child that somebody is coming to help us but if you've got a problem, come to me' (FG3 P1)

'Encourage them [the children] to go to the parents and not the support worker'. (FG3 P9)

"Say Mummy is over there' ... they are not their parents' (FG2 P1)

Workers should not share information they have about the parents with the children (FG2 P1).

One mum had this kind of positive relationship with a support worker:

'She'll come in and go, 'Hi L', L will go, 'Hello' she'll ask how she's getting on and then L will say, 'Fine, but can I go to my mum?' and she'll say, 'Go on then''. (FG3 P3)

Themes from the individual interviews with professionals

Section 1: About the term 'substituted parenting'

- Definition of term
- Other terms used
- Use of term
- Evidence for and origin of term
- Negative term
- When does support become substituted parenting?

Section 2: Discusses general issues related to supporting parents with LD, to provide a context before specific issues related to substituted parenting are then presented.

- Factors amounting to good support
- Risks related to parenting by adults with LD generally
- Distinction between physically disabled parents and learning-disabled parents
- Parents as bystanders
- Perceived risks and the provision of support for parents with LD
- Lack of long-term support
- Social engineering and human rights

Section 3: Specific issues relating to substituted parenting

- Cost of support
- Distinction between paid-for home help and/or childcare, and local authority-provided support
- Perceived risks relating to ‘substituted parenting’
 - A high level of involvement by professionals
 - Children’s attachment to professionals
 - Intrusion into family life/normal childhood
- Analysis of perceived risks relating to ‘substituted parenting’ and consideration of options to address those risks
- Training

Section 1: About the term ‘substituted parenting’

Definition of term

Two judges stated that there was no clear definition. Other participants were not aware of an actual definition but believed that they understood what the term meant:

‘I hadn’t heard the concept described in any way, but as soon as I read it, I completely understood it’. (SW)

Other terms used

A number of other terms were used as alternatives to ‘substituted parenting’, when understood as describing a high level of potential support by professionals. These included: ‘parenting by others’ (J2, B, S)⁴ ‘parenting by professionals’ (J, S, A), ‘parenting by the state’ (J, CG) or ‘corporate parenting’ (J).

Use of term

24-hour support where professionals are responsible for the children

A Cafcass guardian quoted from a family court judgment and stated:

‘The reality is twenty-four-hour supervision would be parenting by the state, it’s [developmentally] and psychologically harmful, and that would have been in a recent [judgment] but I’m afraid I don’t know [which one].’ (CG)

⁴ Quotes method reminder: J2 represents comments from two judges; B comments from one barrister; S comments from one solicitor.

Eleven participants, including three judges and barristers, two solicitors, a social worker and children's guardians, understood the term 'substituted parenting' to mean that the parent/s would need to be provided with 24-hour support because of their lack of attunement⁵ and/or ability to anticipate, see and respond to risks. One social worker described how the term was used in their area:

'This family can't manage without 24-hour intervention.' (SW)

'The conclusion is the package of support would have to be 24/7, and it wouldn't be support. It would be absolutely substituted parenting'. (B)

'The children are exposed to risks 24/7..... somebody would have to be there 24/7, and therefore that is substituted parenting'. (B)

'the support might end up being so significant that effectively the person providing the support is actually meeting the child's needs rather than the parent'. (J)

One Judge defined 'substituted parenting' as when parents were unable to make decisions for the child. Two judges, one barrister and one guardian recognised that they were very complex cases with high numbers of interconnected risk.

'Substituted parenting' was also described as relating to parents who 'can't parent' (J, B, SW). A judge noting:

'It's something where you have to acknowledge that the parent simply cannot comprehend what they need to comprehend to be able to parent a child.'

This 'extensive support' (S) would mean that 'professionals [were] responsible for risk' (CG) as the support provided would be 'anticipatory' (B).

It was also thought that if this high level of potential support were to be provided, it would have a significant and detrimental impact on the parents and the family environment. Some of the participants described this as 'too much support' which would be 'overwhelming' (A), 'intrusive' (B) or 'intolerable' (A) while some professionals felt that the parent would be 'side-lined' (J) or become a 'bystander' (CG2) because they would be 'bombarded by professionals' (SW). One judge summarised:

'if the amount of support amounts to substituted parenting, then... then it's... it's not actually support at all. It's... it's... it's gone beyond what is in the children's best interests. If they're not being parented by their parents, they're in effect being parented by professionals all the time, and... and that... the essential quality of parenting is lost... has been diluted to such a degree that they're not being parented by their parents.'

Another judge regarded 'substituted parenting' as 'unrealistic because it would involve too many professionals as opposed to actual care by the parent'. One of the independent advocates, who had been involved in a focus group with parents, quoted the parents understanding of the term as amounting to a forced and involuntary exclusion:

'One of the explanations that the parents gave was very similar to a substitute player in a football match, you know. So, it was almost as if, if I can't do it someone else will come in and do it'.

A positive form of support

Three professionals indicated that a high level of support provided by professionals could be positive (B, A, CG), also noting that this high level of support should only be provided while the parents were learning the skills they needed

⁵ Attunement – a caregiver's ability to be sensitive to a child's reactions and needs, to respond to the child's cues.

(CG, B); it was not a 'long-term solution' (B). One solicitor recognised that this concept could be seen as both positive and negative:

'It was both a protector factor, but also a risk at the same time. And it's... that's... I think that's where it's quite unique. You kind of thinking, 'Oh, that's really good' but also, that could be really bad if it... if it's, you know, the inconsistency is just really... could be really damaging. (S)

Wrap-round support

Five professionals used this term in a positive way in relation to support provided by family. This 'wrap-round' care was seen as positive and common to a range of cultural backgrounds where children are brought up in multi-generational households or with very extensive input from extended families (J, B2, S, A). One professional (B) felt that this support would be more consistent and provide emotional connection for the child (which professionals couldn't provide) while another (CG) felt that as learning disabilities were often genetic, family members might struggle to provide the support required.

'If one thinks a little laterally, if someone with a learning difficulty was in an extended family, and that extended family was loving, attuned, committed and available and they were able to live in a nice, big house together and they were offered all kinds of support so they could seek advice, they could be watched over, then there might well be a degree of substitution, but that's a different context, that's in the context of a familial environment, where you have the same people involved and family relationships that underpin the actions'. (J)

A barrister thought that 'absent genuine, real, effective family support, no parent with an IQ under 65 ever keeps their children' (B).

Wrap-around care was not thought to be a term or concept that either was or should be restricted to care provided by family members. One barrister thought that this type of support could be provided by professionals and an advocate commented

'to be able to use that term for a vulnerable family, it makes complete sense, doesn't it, than using substituted parenting?' (A3)

Evidence for and origin of the term

There was a lack of clarity or consensus regarding the origin of the term 'substituted parenting' with most professionals being unable to say where the term came from. The strongest common understanding was that the term was not based on any research or academic evidence (J2, S, B) particularly in respect to the perceived negative impact on the child (B3).

'I think the term 'substituted parenting', like many terms used in the forensic context is actually just shorthand. It just means ... somebody else is doing the parenting ... and in the context in which it arises it really means the level of support the parents require is more than can reasonably be provided ...' (J)

Professionals felt that the term tended to be first raised in cases by the local authority and then adopted by the Cafcass representative. In one case, it was the judge who first raised it:

'Very much this question came up not so much because people were starting to talk about substituted parenting but because it occurred to me, I think, in the course of the case that's what we were talking about.' (J)

Four legal professionals believed that the term was used in the 2016 case of *re D3 (A Child)*⁶ *fv*. In fact, the term was not used in that case. The expression used was 'parenting by others'. This perhaps illustrates a conflation of the general concept with a specific term and an implied acceptance of the existence and validity of the concept and the term, because of its perceived origin i.e. in a high-profile, leading, subsequently much-cited case involving parents with LD.

Others believed that it was used by Gillen J in 2006⁷ (B) or referred to in Beckett's 2007 book⁸ (S) or was 'from case law' (J, CG) or introduced to cases by the guardian (J). One independent advocate had heard the term from barristers, while a Cafcass guardian had seen the term used in PAMS⁹ reports:

'I don't know where I first came across it, but I know it's definitely been referenced more in PAMS assessments. So, it... they would... a PAMS assessment would say parent requires X, Y and Z which would equate to substitute parenting. So, they're using it as a conclusion that's being drawn about the level of support that is needed.'
(CG)

A solicitor (S) supplied their understanding of Beckett's definition:

'According to Beckett, 2007, which is obviously an academic [inaudible], there is a point after which instrumental assistance offered to parents ceases to be merely assistance and begins to become doing parenting.'
(S)

A negative term

The main understanding of 'substituted parenting', as too high a level of potential professional support, was discussed negatively by the majority of professionals: having 'negative connotations' (S) and the term being used in a 'derogatory' way (B).

'It's bad enough that no one can actually cite with clarity the source, right, that's the point. If no one can actually cite the source of a word that's now become current currency and it's acquired a value laden shortcut meaning, which means that now it's already... it's already derogative, is that the right word? Denigrated...'
(B)

One participant described it as being used as a 'trump card' and as 'short-hand with assumptions' (B) while another felt it was used without explanation (S) or challenge (CG). One judge described the term as 'gobbledegook' and a 'jargon term' (J). A barrister emphasised the importance of language '... how judgmental some terminology is. And unless you are careful it already conveys value judgements' (B).

The two judges who had said there was no clear definition (see above) did not use the term in the cases they dealt with. One said:

'But my own prejudice, to use the word in its proper sense, would be against any kind of idea that this is a concept which should be recognised as such, defined as such and should enter general usage as a term of art, for reasons I hope are fairly apparent.'
(J)

Another professional used the term positively, alluding to adults with learning disabilities right to parent:

⁶ [D \(A Child\), Re \(No 3\) \[2016\] EWFC 1 \(14 January 2016\) \(bailii.org\)](#)

⁷ Gillen J in *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2006] NIFam 8

⁸ Chris Beckett – *Child Protection: An Introduction*. 2007 2nd Ed SAGE Publications Ltd

⁹ PAMS report – Parent Assessment Manual Software authored by Dr Sue McGaw. One of several specialist assessment tools, it can be used as a screening tool or as a comprehensive specialist assessment with families where parents or children have additional and/or complex needs.

'I would support substitute parenting because I think that parents with learning disabilities can care. They may not be able to care the same as those who don't suffer from a learning disability, and it might mean they do need support, but that's not a reason why a learning-disabled person shouldn't be allowed to parent their own child'. (B)

When does support become substituted parenting?

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.

A number of the professionals felt that there was no clear understanding as to when potential support to be provided to parents amounted to high but appropriate, or when it crossed an invisible line and became 'substituted parenting' - 'a bit of a grey area' and the difference between 'substituted' and 'supported parenting' or extensive was unclear (B), 'the level of support that the parents require is more than can reasonably be provided' (J). It was thought that the real answer to this question – when does support become substituted parenting – lay in the answer to 'who should have parental responsibility?' (J)

The 'tipping point' between extensive and excessive, regarding whether the proposed support amounted to 'substituted parenting' was not fixed but felt to be related to the individual judge or case (J3).

'I think it's important to stress that these are often questions for lawyers, questions of degree rather than questions where you can draw a line and say this side of the line is one thing, that side of the line is the other and some children can be brought up with parents who end up having reasonably high levels of professional support but even parents without learning disabilities may need fairly significant levels of support from Social Services in order to bring their children up.' (J)

One judge felt the tipping point to be in the middle of the spectrum of support (J). One judge commented that the line seemed to be drawn after the decision had been made:

'They've decided that it amounts to substituted parenting and then they draw the line'.

One judge observed that

'the living examples that I have come across in my own practice have been where there's been such a sufficient degree of cooperation and positive personality traits that the support has been able to enhance and guide and isn't about stepping in to fill gaps and take the place of, metaphorically, catch the baby..... the extent to which the parents have the capacity to meet their children's needs, and so it's the extent to which support enables them to have that capacity, rather than someone else to be doing it where they can't.'

'Is there truly a capacity for the parents to meet the children's needs with the support, or is it, in fact, they would be side-lined, and the support is effectively ... something that is an unrealistic, changing corporate-style package from the outside?' (J)

Linking with the assumed attachment issues children would face when there were a number of supporters in and out of their home (see section 2 below) the 'line' appeared to be related to whether parents were engaging emotionally with their children (SW, B, J).

'I think for me, it's about the emotional needs. Like, if we're identifying that the parent's needing support in their independent skills, but they've got the ability to... to meet the child's emotional needs, that's when we'd be trying to, like, get that support in place.' (SW)

'It's almost as if... what is the type of parenting that is being substituted? Is it just the physical aspects of parenting, the mechanics of parenting, the transportation of children from A to B, the... the... the preparation of food? I think that may be separate. That... that may be seen as a... as a more acceptable place for a professional to take their role, whereas if... if... if it is more to do with interaction, stimulation, support, attunement, understanding different developmental stages, if those things can't be met, then having a... a professional who's there to do that kind of thing may be seen as substituted parenting, because there is a deeper emotional... then we're talking about the... the emotional bond... and psychological bonds of... between a parent and a child,' (B)

'Well I think most of us would regard parenting as more emotional rather than practical in terms of its importance and its consequences in terms of attachment, so I suspect that parenting really lies in that, so you know, when you're looking at a case like that, yes, it may be that practical parenting is being done by others, but you are looking to emotional ... because what you do not want is for children to necessarily form very strong attachments to others to the exclusion of potentially the immediate parent.' (J)

Extensive support in a familial environment was not considered to amount to 'substituted parenting'.

'There might well be a degree of substitution, but that a different context, that's in a familial environment where you have the same people involved and familial relationships that underpin the actions.' (J)

'I've had a few cases ... underage mothers ...who have parented with grandparent, where quite clearly the parenting, the large share of parenting, is going to be done by the grandparents. And you might call that substitute parenting, but it's acceptable substitute parenting.' (J)

Extensive support compared to excessive support was expressed from a different perspective by some professionals i.e. not in terms of support as opposed to 'substituted parenting' but as:

'if you can say extensive rather than looking at it as a negative, we're saying, actually, this is what is required, extensive parenting support, probably until the child is five and before they start school and then they can start kind of weaning, coming away because there are other outside professionals involved now. The excessive is definitely when they put too much in place in a short space of time because they've got to get an outcome in 26 weeks. (A3)

Section 2: Contextual issues

This section provides an insight into the professionals' understandings of general issues and risks relating to parenting by adults with LD. It provides a context for the risks perceived to relate to 'substituted parenting' (see section 3, below).

Factors amounting to good support

Good support was thought to be individually tailored, flexible, provided continuity and involved relevantly skilled professionals:

'First things first would be to have a proper understanding of what the nature of their learning difficulties were, what their needs were, how they present, what their particular weaknesses are, their modes of communication, the context in which they live.' (J)

'How do those learning disabilities impact on their ability to manage their day to day lives and, most importantly, on their ability to manage the life of a child both now, and throughout the rest of the child's minority and insofar as there are gaps between what the child needs and what they're able to do, the question will be whether those gaps can be filled with appropriate support.' (J)

‘Availability, continuity, flexibility, attunement to the needs of the family members.’ (J)

Being conscious of their own lack of relevant skills and knowledge for working effectively with parents with LD, undermined the confidence and ability of professionals to create a good support package. One social worker said:

‘I think that really blocks us at times putting in any form of intervention’ (SW).

Risks related to parenting by adults with LD generally

A number of the professionals discussed assumptions that were made in relation to parents with LD. Six professionals (B2, A, S, CG) indicated that it would be assumed that adults with LD who needed support would not be able to parent.

‘But if you find it really impossible to manage your family finances, then you are going to find it really difficult to parent a child, because it's the same sort of skills, isn't it? ... The bottom line is if a parent has an IQ of, say, much below 65, if there is no active and positive family support, then there is no support package that can be put in place which will allow the parents to parent’. (B)

‘Well, Mum can't meet her own needs. So how's she going to be able to meet a baby's needs on top of that as well?’ (S)

In relation to this presumed practical inability, there was an assumption by a number of professionals that parents with LD would not be, and could not be taught to be, attuned to their children.

‘But only if the longer-term problems can be dealt with, and of course cognitive challenges are lifelong. You can't magic another 10 points on somebody's IQ. They can't go to a Triple P parenting course and develop attunement that they're just not capable of ever developing.’ (B)

Professionals may fail to understand the impact of the parent's LD on their parenting (J). This could result in assumptions being made about their lack of ability.

‘there is a grave risk I think, that an assumption that you know the outcome then infects the fairness of the proceedings. And that is a real problem in care proceedings, because of course it means it's inevitable that some parents who could have parented with the right support won't get the opportunity. (B)

‘I think too often local authorities jump to the conclusion that because somebody has a learning disability... quite often, in my view, before proper assessments of that learning disability, they're simply not going to be able to do it. (B)

Professionals discussed the assumption that parents can't change (CG) or won't learn quickly enough (A) or that their children will ‘surpass their parents' ability’ (A). One professional noting that:

‘One of the difficulties was the child was very likely to outstrip the parent very quickly in terms of development, and that the parent would simply not be able to keep up with the child.’ (J)

Two social workers also believed that professionals would be ‘over-cautious’ regarding parents with LD due to ‘fear of the unknown’ (S).

Distinction between physically disabled parents and learning-disabled parents

A number of professionals (J, A4, B2) felt that physically disabled parents would be attuned to the needs of their children and able to assess risks, whereas parents with LD would not (J3, B3, A4). Exercise of parental responsibility was also considered a key issue. In contrast to a learning-disabled parent, a physically disabled parent was assumed

to be in control, able and entitled to make decisions about the support needed, which would be limited to physical interventions:

‘I think there is a distinction because a person with a physical disability is able to understand their child’s needs and perceive the areas in which their physical disability is incapacitating them, and would be able to invite, and give consent to and direct the purely physical implementation of the care that the parent has identified as needed by the child. Now if one has a learning difficulty, then it lies to some extent in a very enduring way, in an inability to perceive and then seek and implement and direct the provision of that care, for that need.’ (J)

‘I can see that it, on the face of it, appears very unfair that somebody with physical disabilities could have round the clock assistance to bring up their children but someone with learning disabilities might not be entitled to that but it may come down to whether the person with learning disabilities is actually able to even take important decisions about the care of their child, whereas a person with physical disabilities may be able to make those important decisions but simply can’t physically meet the child’s needs because of the disabilities.’ (J)

It was also noted that physically disabled parents’ needs were more obvious (B, J, SW) and more likely to get support (A).

In contrast, one advocate recognised:

‘Normally it’s not about the emotional availability that I’ve noticed through my work. Parents with learning disabilities are more than emotionally available and yet that seems to be the point that’s raised often. They’ll always admit to having a very strong bond, missing their child, loving their child, wanting to do anything for their child.’ (A)

A judge wondered:

‘supposing tragedy, the mother had been in a road traffic accident and was paralysed, would we take the child away just because, being paralysed, she would need round the clock care for herself and to look after the child? Surely you wouldn’t take the child away.’ (J)

Parents as bystanders

A judge indicated that there was a perception that parents might be happy to become a ‘bystander’, implying some sense of choice/decision-making on the part of the parent, rather than an outcome over which they have little, if any, control.

‘there’s got to be a tipping point where actually what you’re looking at is more care being given by professional carers than by the parents themselves. The parents standing back and allowing the professional carers to do the work.’ (J)

‘When are they going to start picking it up, when are they start taking responsibility, and to a point whereby that the support can be maintained at a level that isn’t, you know, them being a bystander.’ (CG)

Similarly, parents with LD are sometimes thought to be generally susceptible to authority figures.

‘people with learning disability very often ... well, will be very vulnerable people who will look to professionals as people in authority and if the people in authority are saying “look, leave that to me, we’ll deal with that” very often will not stand in the way of that. ... They will do what they’re told, and allow professionals to take over, potentially. (J)

A social worker highlighted this power imbalance and that because parents were trying to engage (and be seen to be engaging), they would find it difficult to challenge how they were being treated by workers (SW). The social worker felt it was important that parents should be told:

‘If you feel you're not getting the opportunity or, you know, there's too much support and you can't... you feel like you're not doing this yourself where you're missing out, you need to tell us, and then we can look at it.’ (SW)

An advocate concurred, saying that parents needed to be empowered when they are not being given a chance to parent (A).

The role of independent advocates was seen as important when considering the power imbalance between parents and professionals.

‘They need an ... advocate. Somebody, somebody to ... who understands them, to work with professionals as an intermediary, who can advocate on the parents’ behalf and balance up, if you like, the power within in the dynamics of the relationships that are going on ... because very often these parents will be quite unable to do that for themselves.’ (J)

Perceived risks relating to the provision of support for parents with LD

Three professionals considered how general risks to the child could be managed when parents were being provided with support. A social worker spoke of the risk of the child not being safe, while an advocate recognised that other professionals were concerned as to whether the risks could be managed at home and a judge questioned if parents would be able to engage with support.

A Cafcass guardian thought that there may not be a clear plan regarding the support to be provided to parents and there could be a lack of clarity and consistency regarding workers’ roles and responsibilities, that parents would get different advice from different workers. Professionals may also lose their focus on the child while supporting the parents (A).

Another advocate noted that there were concerns that Children’s services would not know who the carer was if they stepped away (A). A social worker believed that there was a risk of workers ‘doing’, rather than teaching parents (SW).

It was noted by the professionals that parents’ support needs are not always assessed properly (B). An advocate (A) noted that services would be more risk averse if the child was not the parents’ first child.

Lack of long-term support

Professionals are not involved in supporting parents with LD over the longer-term (B, A). Support can be provided to enable parents to learn the skills they need in order to parent independently (A2) but

‘Children’s social care, we don't seem to have long-term support. We will do with children with disabilities, but not for adults with disabilities, for parents with learning disabilities, should I say’. (SW)

‘if one is talking about learning disability in the context of younger children, one is talking about a very long haul because one is talking not about some therapeutic package to put in place for a year or two, one is looking to support running for a decade or getting on for two decades and in the nature of things, it’s not a criticism it’s a reality, Local Authorities are going to be reluctant to sign up to a [inaudible] bottom gap that they’re going to provide services over that kind of period.’ (J)

Concerns about the need for long-term support include the issue of children's changing needs – a factor that tends to be viewed negatively, as can be seen elsewhere in this report. Some professionals, however, emphasised positive aspects:

‘the fact they’ll go to school at three, they’ll go to nursery, so you’ve got other professionals involved, you’ve got someone else supporting the family from that side, you know, so naturally as the child is growing up, more and more of the community will become involved around the child, and if the parent is actively getting involved in all the resources that are available for their child, that kind of safeguarding net is wider, you see. I think what they do is they just focus on the person at home on their own and that’s not the reality of any parent. (A3)

Social engineering and human rights

One solicitor, one judge and two barristers (J, B2, S) expressed the view that removing children from parents could be seen as ‘social engineering’¹⁰ :

‘But of course, it smacks horribly of social engineering and further discrimination and telling disabled people they're worthless, you can't even have a child’. (B)

A barrister commented ‘we are removing children from people who are poor.... That is our problem as a society’. While a judge commented:

‘it’s not the function of local authorities or the courts to engage in social engineering trying to, as it were, improve the lives of children when their welfare needs can be met by their parents.’ (J)

The impact of the LD label was also noted:

‘Is it because the extent of their disability is such, their learning disability is such that they cannot parent or is it, one hopes it is not, because they are being labelled with a derogatory label?’ (J)

This judge felt that the ‘label’ should be considered a flag for further investigation, and a barrister thought:

‘once a parent has been identified as having a learning disability, certain proceeding... procedures should be put in place automatically, and... and... and the local authority should be able to demonstrate that those have been put in place. (B)

A judge confirmed that the law should not discriminate against any person with disabilities while a barrister reflected:

‘We're paying lip service to the human rights of those with disabilities. We're ticking the boxes to show we don't discriminate, but all we're doing is dragging them through a very long, drawn-out process which has an inevitable outcome, that they cannot parent their children’. (B)

Another barrister felt that this position was widely accepted:

‘It would appear to me that there is a government policy or a social policy that those with learning disabilities at the severe end simply just shouldn't be allowed to care for their children because the state, it appears to me, is not prepared to entertain substitute parenting because so far, the argument seems to be that it's not in the child's best interests. (B)

The barrister thought there was a commonly held assumption that the children of parents with LD would be removed:

¹⁰ Social engineering – in the family court context, the requirement to avoid ‘social engineering’ relates to it not being enough to show that a child could be placed in a more beneficial environment, there must be other cogent reasons that justify the removal of a child from its family.

‘When I speak to colleagues at Chambers there is almost an unwritten policy that actually learning-disabled parents with children are too much hassle so we’ll remove these children at birth.’ (B)

This issue of social engineering and human rights is, perhaps, even more acute in those cases where the concept of ‘substituted parenting’ is being raised.

Section 3 – specific issues relating to substituted parenting

This section provides an insight into the professionals’ understandings of ‘substituted parenting’, looking at the risks perceived to relate to ‘substituted parenting’ and what consideration is given to analysis as to how those identified risks might be mitigated.

Cost of support

Fourteen of the professionals, including all the judges, indicated that while not publicly acknowledged, the cost of 24-hour support, which would amount to ‘substituted parenting,’ was a ‘live issue’ (J6 S2, A4, CG, SW). Reference was made to ‘realistic resourcing’ (J). Costs were described as ‘not sustainable’ (CG), ‘too expensive’ (A) and ‘impractical’ (A) or ‘too much for any service’ (J).

‘I have no doubt in my mind it’s because of the lack of resource, simply saying we need to remove, can’t do it.’ (B)

‘It simply isn’t sustainable or fundable, and so it’s often more in the question of the resource that it’s framed.’ (J)

‘The support be so substantial that it would ... go beyond what’s reasonably achievable with the resources that can properly be made available.’ (J)

‘... Also, considering what the resources are available to meet those needs. I know we so often say resources shouldn’t be an issue, you know, they’ve got to deliver, but I’m afraid, unfortunately very often the question in moving beyond the Care Order or the end of proceedings, is what is available, what’s on the table, what can be made available to these parents? And that has to be proportionate and do-able, viable, it has to be some viable support available that’s actually going to enable them to parent.’ (J)

‘There is the delicate question of the cost of all this and if one is talking about a big support package for a dozen to 15 years, you are talking very, very, very large sums of money. If, on the other hand, the outcome is adoption you are talking about a much more time limited and much more modest outlay and one always wonders at the back of one’s mind to what extent issues of that sort, even if only subconsciously, are going through the minds of decision makers of Local Authorities.’ (J)

Advocates (A4) felt that other reasons were given rather than saying that the cost of the support was too high. One of the social workers related the use of the term to support being ‘unmanageable’ due to a ‘clear lack of services’ (SW). Two professionals (B, A) added that other forms of support including adoption, support from family or special guardianship orders were preferred/regarded as more cost-effective.

One professional (J) noted that in-home support could be more cost effective than other options. In contrast, one barrister wondered whether foster care was preferable to a family having lots of support in the home.

‘I don't think anyone is saying, you know, foster care is always brilliant and always ticks the boxes. Well, we know that's not true, but it's... is that not better for a child, to at least have an environment that is predictable

and stable, and possibly having contact with mum and dad on the weekends, rather than attempting to maintain a household which will require considerable input at considerable expense?' (B)

Distinction between paid-for home help and/or childcare, and local authority-provided support

One professional remarked that other families were not scrutinised for buying-in help which could be classified as substituted parenting:

'It's difficult, you know, in the wealthy or middle classes where substitute parenting is all too common by nannies and by full-time au pairs, it's no scrutiny on to them because they can pay for it and, you know, whilst I appreciate there are concerns in respect of, in many cases, the child's welfare, quite often in my view those welfare issues can be overcome by substituted parenting'. (B)

Professionals agreed that many families employed home help, paid for childcare, had parents who worked long hours or worked away for substantial periods of time. Two judges noted that if professionals/middle class parents paid for support, they would still be seen as the parent, alluding to different standards being applied to parents with LD.

'when you have parents with learning disabilities then different questions tend to be asked about whether it's appropriate for somebody else to be doing that sort of level of care.' (J)

Perceived risks relating to 'substituted parenting'

A high level of involvement by professionals

Professionals identified a number of areas of concern: 'uncertain funding and rigid arrangements' (J), changing faces, lack of consistency, lack of continuity, social norms, non-conventional parenting, children's confusion over professionals' roles:

'there is a lack of continuity in professional support, in any given agency... it's the uncertainty of understanding what the roles are as they grow up.' (J)

'it's not necessarily social norms to be having frequent visitors, social worker, family worker, whoever else may be in and out of the home, voluntary services as well.' (SW)

'the support may not know the children and the parents well enough to knit the care and the needs of the children together.' (J)

'Professionals change jobs. People move on in their careers. There may be different types of professionals involved. That may end up being very confusing for a child and may mean that they're not actually being provided with parenting in the conventional sense at all because of the number of people who are involved in their lives.' (J)

'So, I think children face lots of different strangers coming in to provide support, and confusion as to who is providing support, who is actually providing the care?' (J)

Some professionals felt it would be possible to mitigate concerns:

'I think the professionals can be appropriately trained. If they're going into the family home, to be able to establish healthy boundaries. You know, so if they do notice that the child is misinterpreting their role then to be able to help that child understand and say, "No, I'm only here to help your parents. This is your mum and dad."' (A)

'it all depends on the age and stage of the child. But if they're old enough to understand, you have to be open and honest with them, because otherwise, they will use their very active imagination and start coming up with all sorts of reasons why these people are coming in and out of the house, and also children can handle a lot more than I think we give them credit for. So, it's about sitting them down and... and explaining to them who the different people are and why they're coming in, why they are there, why are they involved? And involving them and... within that as much as possible, rather than just kind of keeping them in the dark. (SW)

Children's attachment to professionals

One of the main reasons 'substituted parenting' was felt by professionals to be harmful was the perceived risk that the children would have attachment issues, i.e. they might become inappropriately attached to professionals (J3, B3 A, CG2).

A high degree of professional involvement was felt to be 'toxic' (B) as children would be inappropriately familiar with professionals (CG) and boundaries would be blurred (B) and children would not know who their parent was (A) or to whom to go for emotional support (J). Discussing a particular case anonymously, a solicitor stated that a high level of support had been feared might lead to the child having an 'insecure attachment':

'This assessment has shown that the mother would need continued support to ensure that she could manage the child's care needs, including her need for adequate stimulation (24 hours, seven days a week), and further support to identify and cope with the changes as she grows. I would be additionally concerned as to how the mother would cope with unexpected situations, etc. The level of support needed to ensure that changing needs are met in a consistent and timely manner would be intrusive and could potentially cause the child to develop an insecure attachment due to her not having a consistent caregiver and lead to her being parented by professionals. Furthermore, the high level of support would be difficult for any service' (S).

A Cafcass guardian discussed the dilemma for workers when trying to respect boundaries and thereby not meeting children's needs:

'You know, children do then gravitate towards people who are meeting their emotional needs, and if that's a bystander, the professional being the bystander at that point, then I... I really struggle with how a professional can then direct it back, because that in itself is not meeting that child's needs. That's going "I'm not here to meet your needs, I'm going to send you over there to that person who I also know cannot meet your needs.'" (CG)

A social worker considered how 'the emotional side' could be assessed and managed:

'and prevent it becoming a risk. I suppose it's down to the professionals themselves as well. I think if a child was recognising a professional, whether it's social worker, family worker, or somebody who is living in the home, if they're recognising that professional as the parent, I think the professional also needs to look at themselves and their role. What are they doing to manage that? Has a line been crossed whether it's intentional or not? And kind of look at how they can... we should be teaching that child that the parent, whether it's mum, dad, carer, that is their main caregiver and we're there for support. (SW)

One of the judges summarised:

'But there comes a point when the court has to recognise that the children are not really being brought up by their parents in any conventional sense and that, having so many professionals involved in their lives, is more harmful to them than having a single parenting figure who's able to meet their needs consistently and who will remain in that role in the long term.' (J)

This risk of the children having attachment issues if too many people were involved with the family appeared to be related to cultural assumptions based on white, middle-class families (J, B2):

One professional questioned why this understanding was so narrow and monocultural (B), and one noted that many parents have multiple partners in quick succession resulting in having more than one family (B) and many families have a high level of involvement of family members etc.

‘the mores we bring to bear in our cases, are very much first world. Whereas if you look to other countries, there’s quite a different concept.’ (J)

Another judge said:

‘one of the problems is we are so attuned in this country to the concept of the nuclear family, the mum, the dad, the two point four children and we forget, we overlook the fact there are huge numbers of families in this country who don’t conform to that stereotype. We have many multigenerational families, particularly in some of the minority communities, there are many multigenerational families, families where parents are living with aunts and uncles and, without going into the kibbutz extreme itself, one has the same kind of thing. As long as the child knows who its parents are and knows why that distinction is important, not just a label, if they were to say to a child... the child knows that’s mummy, the child’s got to know that mummy is somebody different from everybody else for this reason. That’s a very important point. Again, I think it’s very easy to fall into this tendency of comparing parents in care proceedings with some unarticulated subconscious construct of what a family is or ought to be.’ (J)

Intrusion into the family life / normal childhood

Eight professionals felt that this high level of support would be ‘intrusive’ and inhibit the child/families’ right to a privacy and right to a family life (J2, B2, S, C2, A). One of the barristers said:

‘I think it’s the degree of intrusion. You know, that in the child's home habitat, which means that they don't know who's coming in, when, for what purpose. Because all of those decisions aren't made by them, they're made for them at a point where the communication with the child or the child's comprehension is unclear.’ (B)

Several professionals referred to ‘normal’ or ‘ordinary’ lives for children:

‘what then becomes too much, and it's too interventionist, and the children haven't got a normal life?’ (A)

‘a concern that the level of support which is going to be required, the level of input that is going to be required from other professionals is going to be so high, so intense, that the child doesn’t actually have an ordinary family life with parents and if what is being proposed is a package which is going to involve significant professional input on a daily basis, many hours a day, then the child is living in what might be thought of as an artificial setting.’ (J)

Analysis of perceived risks relating to ‘substituted parenting’ and consideration of options to address those risks

Six professionals clearly expressed their view that perceived risks, identified in relation to ‘substituted parenting’, were either not then analysed (J2, B, S, SW, A) or were not analysed to the extent they should have been in court (B, S). A barrister noted that the court timescale inhibited in-depth analysis (B); a solicitor thought:

'If there was a little bit of thinking outside the box, if there was maybe a better analysis, can that risk actually be managed?' (S)

A social worker said:

'I wouldn't say there's any set process to identify risks from the support that's being offered, no.' (SW)

When asked if the set analytical process for evaluating threshold/neglect and harm risks was applied to perceived risks in relation to 'substituted parenting', the social worker added

'No. No, not at all. And I think the only time that I've come across those risks being identified and kind of discussed is in supervision with the manager and that's been really helpful. (SW)

One judge (J4) noted that the risks were not analysed because high levels of support packages were not likely to be implemented:

'I have not come across that, but that is, I think, because there are very few cases which get to the point where such an intensive programme of support is even getting off the ground.' (J)

A solicitor thought it would be helpful if the support package was implemented, even if only on a trial basis:

'I think even in those substituted parenting cases, the answer might be actually putting that package of support on during the care proceedings so we can actually see, does this work? Does this make an impact? Can the parents do it? But the care proceedings... it's very rare that we can use the argument of extending the proceedings beyond the 26 weeks to allow this to happen, because the local authority have already said, it's not going to work.' (S)

Another judge thought that different questions were asked in cases involving parents with LD. One solicitor felt that the risk of an additional adult's involvement in the family was not given further consideration or analysis and could be overstated (S).

It was also felt that when assessments were undertaken by social workers, social workers had 'no head space' to analyse identified risks (B) while one solicitor recognised that there was often 'poor analysis' and 'no thinking outside the box' (S). A judge was concerned that social workers may feel obliged to do what the Local Authority wanted:

'This [issue of costs] also links in with the question which has always troubled me, when a care case comes to court and social worker X is put up in the box to explain what she thinks, is she actually expressing her own professional view or is she simply spouting the party line which has been laid down by managers? Just occasionally the mask slips and one realises that what has been given is not what the social worker actually believes professionally, but it's what she's been told she's got to say by those behind her' (J)

It was felt that cases were just 'identifying the problems' (S) or that 'generalised risks' were accepted by the court (S). It was also indicated, by one professional, that the analysis undertaken in court focused on finding reasons why parents should not be supported, there was an over-focus on the risk because of the parents' learning difficulties and a focus simply on the 'obvious' outcomes for the child (S). One barrister (B) noted that the risks of foster care in comparison to substituted parenting were not considered.

A small number of professionals felt that use of the term 'substituted parenting' was 'default justification' (B) or 'pre-determined conclusion' (A) when the impact of risks was assumed rather than analysed. This was also described as 'confirmation bias':

'It is usually... and... and I say this again, it's entirely anecdotal, ... it's almost a form of confirmation bias, where there is a... the local authority, you know, are challenged on whether they have... have been in... they have... they have worked in accordance with for example good practice guidance, or they've been challenged on the level of support, or they've been challenged on... on... on their... their methodology around teaching. And they

say, “Well, all those things being equal, even if we had done all those things, the level of support required would have been substituted parenting.” (B)

A few professionals felt that the court needed to understand the family’s full context (J, A), that the risks were not static (J) and that the risks needed to be considered over the longer term (A). One judge would also require ‘alternative routes’ to be planned and assessed (J).

Three judges explained how they assessed the perceived risks relating to substituted parenting. One judge used the framework provided by Re F¹¹ while another indicated that there should be three levels of analysis / questioning: by the parents’ representatives, the guardian and through the judge’s own questions. One judge used the welfare checklist¹² to assess risk while a barrister noted that the usual risks checklist (Re F) tended not to be applied at this stage of proceedings.

One barrister felt that because the risks appear overwhelming, and cases are dealt with by junior/inexperienced colleagues, there is no challenge:

‘the evidence appears to be overwhelming and they're simplistic, so therefore they go to the lowest level of tribunal with the lowest level of qualified advocates. And they're not challenged in a way that might expose what's going on, so therefore just goes. You know, that's... that's why I think there are so few cases, because I don't think they're picked up.’ (B).

Training

Judicial training received about parents with LD

An additional question was asked of the judges about the training judges receive regarding parents with LD. Legal professionals are familiar with the Advocate’s Gateway toolkits which provide guidance on case management and how to question a wide range of vulnerable witnesses, including those with learning disabilities. However, it is not clear what training is available specifically about parents with LD and how this may impact on parenting abilities.

‘Some, but probably not enough’ ... ‘it is an element within our training. I can’t remember the specific components of it’. (J)

‘I’m not aware of any specific training on that. Certainly, I didn’t receive any specific training on that issue and my own learning on the issues, or knowledge of the issues, come from reading case law and other published materials giving guidance about it ...’ (J)

‘I can’t bring to mind any particular lectures or trainings on this. We do feature the question of learning disability within the context of case management and so on. So, I think the answer is yes, there is training, but not specifically tailored training in terms of a lecture from somebody experienced in a learning disability.’ (J)

Conclusion

Parents feel that the term/concept of ‘substituted parenting’ is inaccessible, overwhelmingly negative and something they are powerless to address because all the power lies in the hands of professionals.

¹¹ F (A Child - Placement Order- Proportionality) [2018] EWCA Civ 2761

¹² s.1 Children Act 1989 – welfare checklist

Duration, costs, resources, sustainability, and the impact on a child's emotional welfare are the main reasons advanced by professionals for why 'substituted parenting' is not considered to be desirable, feasible, or acceptable.

If the court is being asked to weigh costs in the balance, then specific information should be made available by the local authority, detailing those costs and setting out at what point (and why) such funding stops being 'sustainable' or 'feasible'.

'Parenting by others' in a family context (and, to a degree, parenting by paid third parties) is distinguished by professionals from 'substituted parenting'.

The principal perceived risk of 'substituted parenting' is that it would be inimical to a child's welfare, in terms of the child's emotional wellbeing, rather than physical safety (although this can be of equal concern in some cases).

Identifying and raising such a concern is, of course, important. It is, however, essential that concerns are not raised as unsubstantiated assertions but are instead 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 is particularly so where the concerns are based on theoretical support packages, rather than actual evidence, and the potential consequences are so significant for the family. The family is entitled to a fair process, whatever the eventual outcome.

Assessment of implications and recommendations for policy and practice

Use of the term/concept of ‘substituted parenting’

There is currently no common understanding or definition of what is considered to amount to ‘substituted parenting’, but when the term is used (or similar terms, such as ‘parenting by others’ or ‘parenting by professionals’) the child tends to be removed from its parents. It is, perhaps, the implication of the label(s), more than the label itself that is problematic, but the term/concept has become a negative shorthand reflecting both an unhelpful, narrow lens and potential bias confirmation.

RECOMMENDATION 1: In the absence of any commonly agreed definition or understanding of the term ‘*substituted parenting*’, its use (and that of similar terms) should be avoided. Instead, reference might, for example, be made to ‘extensive support’, coupled with an explanation of the specific aspects of the support package considered to be problematic and for which no options can be found to adequately address those risks identified.

Identification of options to address the perceived risk of the proposed support amounting to ‘substituted parenting’

A principal area of interest/concern, which led to the authors seeking funding for this project in 2021, was the absence in published judgments of any analysis of the perceived risks of substituted parenting or any options explored to address those perceived risks. The authors recognised that published judgments represented only the tip of the iceberg and that, in any event, they were not verbatim transcripts; it was possible therefore, that such considerations had in fact taken place. Clarity was sought from interviewees who, on the whole, confirmed that in their experience no such analysis or exploration of options occurred.

It is clear from a number of family court judgments, and was confirmed by interviewees, that the risk of ‘substituted parenting’ tends to be raised as a theoretical concern in relation to a theoretical support package, rather than one evidenced as a fact in relation to the members of a specific family.

Furthermore, it seems that once the concern had been expressed in the broadest of terms, no further detail was either provided or sought; no further steps were taken to identify specific elements of concern; no analysis of the likelihood and impact of the perceived risk; no options explored to address or mitigate the risk; no attempt to put the support package into effect to monitor its impact.

Evaluation and consideration of all realistic possibilities is required to be carried out at the stage of looking at options of adoption, long-term foster care, Special Guardianship Order, and no order. But this stage takes place *after* a finding has already been made that the proposed support would amount to ‘substituted parenting’ and therefore the child cannot remain with its parents.

No such evaluation and consideration appears to be given at the earlier stage, when considering whether the proposed support might amount to substituted parenting – or not. This is a significant omission in the context of procedural fairness.

Since the interview stage of this project was concluded, the Court of Appeal delivered its judgment in the case of H (Parents with Learning Difficulties: Risk of Harm)¹³ which emphatically confirmed the need for such analysis and exploration of options. (See further at **Appendix 1**).

¹³ [H, Re \(Parents With Learning Difficulties: Risk of Harm\) \[2023\] EWCA Civ 59 \(02 February 2023\) \(bailii.org\)](#)

RECOMMENDATION 2: 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 particular family concerned; it should not be conducted as a generic, theoretical exercise. See **Appendix 1** for an example of an analysis template.

Professionals, particularly those who are less experienced in working with parents with LD, may need support from appropriately experienced colleagues to perform this rigorous, evidence-based analysis so that it can withstand scrutiny.

Consideration should be given to whether the risk can be managed, in the first instance, rather than immediately and principally relied upon as the rationale for removal.

Attachment theory

Children routinely form multiple attachments to adults – teachers, nurses, child minders, friends, neighbours etc. and can deal with this without compromising their long-term development. However, concerns about attachment and attunement issues are often raised by social workers and relied upon as a significant reason for removing a child.

The use of attachment theory in child protection proceedings has been the subject of a number of papers reflecting a range of views. For example, in an authoritative paper summarising the research and debates, Forsland et al. (2022)¹⁴ noted that attachment theory and research are drawn upon in many applied settings, including family courts, but misunderstandings are widespread and sometimes result in misapplications. The aim of their consensus statement was to enhance understanding, counter misinformation, and steer family-court utilisation of attachment theory in a supportive, evidence-based direction, especially with regard to child protection and child custody decision-making in individual cases. The authors concluded that although there was dissensus among them regarding the use of assessments of attachment quality to inform child custody and child-protection decisions, such assessments were currently most suitable for targeting and directing supportive interventions.

This report is not the appropriate place for an in-depth discussion on the use of attachment theory in child protection proceedings. Suffice perhaps to say that if reliance is to be placed on assertions based on attachment theory, appropriate scrutiny should be given to the expertise of the report writer, the relevance of their assertions to the particular circumstances of the specific parent/s and child/ren, and the methods they used to reach their conclusion. It will be essential, for example, to consider how the parent’s LD has been taken into account.

RECOMMENDATION 3: Where there is significant reliance on attachment/attunement to justify a child’s removal, there must be 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.

Long-term support

Some professionals take the view that support should be seen strictly as a temporary measure – until the parent can manage without it. If the parent is always likely to need some kind of support, those professionals view the situation as untenable.

¹⁴ [Full article: Attachment goes to court: child protection and custody issues \(tandfonline.com\)](#)

Children's services tend to work on a short-term, crisis intervention basis with families. This approach is often not appropriate for families where a parent has LD, but the prospect of long-term support being needed is seen as financially unsustainable, unrealistic and undesirable. In addition, the nature and level of support needed being likely to change over time as the child's needs change, is also considered problematic.

This anticipated change in need could be seen as potentially positive i.e. involving a possible reduction over time in the type and level of support needed. Instead, no detailed analysis is carried out and the potential need for long-term support is simply seen as a negative and is relied on as a reason support cannot/should not be provided.

This approach to long-term support for parents with LD is inconsistent with the principles of the Good Practice Guidance on working with parents with a learning disability (WTPN, 2021) (see further, below) and contrasts with the approach taken by both Children's services to long-term support for disabled children and by Adult services to disabled adults, where the long-term nature of the support tends to be accepted from the outset as necessary and inevitable.

RECOMMENDATION 4: The possible need for a long-term approach should be recognised and accepted from the outset, when working with parents with LD and their children.

RECOMMENDATION 5: 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 articulated, together with the options that have been taken into consideration to address those specific concerns.

RECOMMENDATION 6: A family focus and joint working strategy between Adult and Children's services should be considered essential if a 'child versus parent' ideology or budgetary approach is to be avoided.

Labels/flags as indicators of need

Currently, when a parent is identified by a professional as potentially having LD, a negative, risk-focused, red flag tends to be raised¹⁵ highlighting danger to the child. A more positive approach would be to consider the flag as alerting professionals to the possibility that a particular or different approach might be needed when working with this family. Effective, two-way communication and tailored support from the outset might result in better outcomes and fewer families having to be involved in court proceedings.

RECOMMENDATION 7: Professionals should ensure there is an appropriate balance between a focus on risk and a focus on support.

Terminology

Care needs to be given to terminology used, if value judgements, assumptions, and shorthand labels are to be avoided. For example, '*not a normal childhood*' and '*artificial environment*' and '*substituted parenting*'.

What is a 'normal childhood'? Does it include the sub-optimal experiences of the average family? Is a different standard of 'acceptably' sub-optimal being applied for parents with LD families? I.e. is a more idealised standard of childhood being applied as the threshold for those families? Does this risk straying into 'social engineering'?

¹⁵ For example the only reference to parental learning disabilities/difficulties in the 2018 statutory guidance, Working Together to Safeguard Children, is at page 66 'Children may be at greater risk of harm or be in need of additional help in families where the adults have mental health problems, misuse drugs or alcohol, are in a violent relationship, have complex needs or have learning difficulties.'

Children are often carers for their physically disabled parents, or act as interpreters in medical, educational or other official contexts for parents who do not speak English. Parents relying on their children to read letters, organise shopping, sort out money, deal with phone calls, etc. is a reality in many families.

RECOMMENDATION 8: Terms such as *'would not have a normal childhood'* / *'artificial environment'* should be avoided. Instead, the exact nature of the concern should be described, together with the options that have been explored to address those specific concerns.

Parents' understanding of the meaning and implications of 'substituted parenting'

The focus groups with parents clearly showed the lack of accessibility of the term 'substitute parenting' and that it was initially, by some parents, not understood at all. Parents regarded the term as inaccessible. While most of the parents came to view the term negatively and as they were being 'replaced', one mother believed that the support would be more akin to 'shared parenting'.

While the term and, more importantly, the concept of substituted parenting are being used and relied on by professionals in the context of legal proceedings, it is vital that parents understand what this may mean for them.

RECOMMENDATION 9: Where the concept of 'substituted parenting' or 'parenting by others' is being raised as a concern, professionals should take responsibility for ensuring that parents understand the concept and potential ramifications for their family.

Powerless parents who recognise the need for positive support

This lack of accessibility feeds into the parents' powerlessness when engaging with professionals from Children's services. As has been regularly expressed in literature which has reported parents' experiences of engaging with professionals (Franklin et al., 2021; Sigurjonsdottir and Rice, 2016; Tarleton et al., 2006) many of the parents felt that they were not respected and not seen as able to parent. Their LD and related support needs were not understood, and they were often not provided with support in a way which enabled them to trust the professionals. The stress of having professionals whom they did not trust in their home, could result in increased stress and anxiety and, on occasions, anger/resistance which could then further undermine relationships with professionals.

Many of the parents felt were not given a chance to show they could parent and because of their powerlessness could not stop the support they received being seen as 'substituted parenting'. As professionals are the 'powerful' players in this situation, professionals' understandings of, and response to, parents is of vital importance when the support the parents receive could be seen to be 'substituted parenting'.

The parents felt that they are often in a 'catch 22' situation in that they were scared to speak up when they were unhappy with how they were being supported, particularly when they were unhappy with how professionals were engaging with their children.

Parents are scared to stop workers 'taking over' their children as they feel that asserting their wishes may be used against them and result in their children being removed from their care. An independent advocate was, however, recognised (both by professionals and parents) as vital to enabling parents to speak out about the impact of the support they are provided with.

The parents wanted the best for their children and recognised their need for support if this support was provided in a positive, respectful way which allowed them to feel safe, ask questions and learn how to care for their children appropriately. This desire for positive support, from as early as possible, aligns with much of the recent literature that discusses that parents should be supported in a positive, respectful, relationship-based way with as few workers as

possible (Feldman et al. 2002; Lightfoot and DeZelar 2020, Wade et al., 2008, Tarleton et al., 2018) and with the Good Practice Guidance on working with parents with a learning Disability (WTPN, 2021)¹⁶ which clearly states that parents should be provided with support, long-term if necessary.

The Good Practice Guidance was endorsed in 2018, by the (then) President of the Family Division¹⁷ and again in 2023, by the current President, Sir Andrew McFarlane¹⁸. Application of the principles of the Guidance has been commended by the court in a number of family court judgments; recent examples include by Mrs Justice Knowles in XX, YY, and Child H (Rev1) [2022]¹⁹ and by the Court of Appeal in H (Parents with Learning Difficulties: Risk of Harm) [2023]²⁰.

RECOMMENDATION 10: Professionals working with parents should make every effort to ensure they support, rather than inadvertently supplant the parent, and that they reduce the risk of support parents receive being seen as ‘substituted parenting’. For example, supporting and encouraging the emotional connection between the parents and child, with the professionals signposting the child towards their parent (where possible and appropriate).

Training and awareness

A number of cases in the family court involved social workers saying they had no awareness of the Good Practice Guidance on working with parents with a learning disability and had received no training on working with these families, but that they had worked with such families before. An obvious question arises: if they had been familiar with and applied the principles of the Guidance, would care proceedings still have been necessary, or might outcomes have been different?

Legal professionals are familiar with the Advocate’s Gateway toolkits which provide detailed guidance on case management and how to question a wide range of vulnerable witnesses, including those with learning disabilities. It is not clear, however, what training is available specifically about parents with LD and how their disability may impact on parenting abilities.

In cases which come before the courts involving a parent with LD, professionals should, as a matter of good practice, be capable of demonstrating that the Guidance has been taken into account in any care planning or proposals being put forward by a local authority. See **Appendix 2** for the observations of Mrs Justice Knowles in XX, YY and Child H (Rev1) [2022].

Many professionals lack confidence in working effectively with parents with LD and their families. This is a specialist area of practice. This must be recognised and training provided to enable professionals to carry out their responsibilities fairly and effectively with these families.

RECOMMENDATION 11: 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.

RECOMMENDATION 12: 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 (currently 2021).

RECOMMENDATION 13: In relevant cases, template pre-proceedings letters listing local Children Law accredited legal professionals should highlight those known to have experience in working with parents with LD.

¹⁶ [FINAL 2021 WTPN UPDATE OF THE GPG.pdf \(bristol.ac.uk\)](#)

¹⁷ [Family Proceedings: Parents with a Learning Disability - Courts and Tribunals Judiciary](#)

¹⁸ [Speech by the President of the Family Division: Parents with intellectual impairment in public law proceedings - the need to be alert - Courts and Tribunals Judiciary](#)

¹⁹ [XX, YY and Child H \(Rev1\) \[2022\] EWFC 10 \(19 January 2022\) \(bailii.org\)](#)

²⁰ [Re H \(Parents with Learning Difficulties: Risk of Harm\) - Find case law \(nationalarchives.gov.uk\)](#)

RECOMMENDATION 14: The 2018 statutory guidance Working Together to safeguard children²¹ should be revised to include a prominent reference to the Good Practice Guidance on working with parents with a learning disability and the need for practitioners to be familiar with that document before starting to work with families where a parent has LD, reflecting the judgments of Mrs Justice Knowles in XX, YY, and Child H (Rev1) [2022]²² and the Court of Appeal in H (Parents with Learning Difficulties: Risk of Harm) [2023]²³.

Further research and analysis

- There needs further research to better understand what training exists for professionals working with parents with LD.
- The use of the term/concept ‘substituted parenting’ (or other terms reflecting the same concept e.g. ‘parenting by others’, ‘parenting by professionals’) should be tracked in judgments to explore whether and how they are being used and, in particular, whether rigorous analysis of risk and options to address those perceived risks is now being undertaken.

What needs to happen next

- The Report and its recommendations need widespread dissemination – particularly across the legal, social care and independent advocacy sectors.
- 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 perceived risks were properly explored.

Other outputs from the study

Executive Summary

<https://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/SP%20Exec%20Summary.pdf>

Easy Read Summary

<https://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/SP%20Easy%20Read.pdf>

Policy Briefing

<https://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/SP%20Policy%20Brief.pdf>

Film for parents and professionals

<https://youtu.be/44YfoV0nV1U>

²¹ [Working Together to Safeguard Children 2018 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728996/Working-Together-to-Safeguard-Children-2018.pdf)

²² [XX, YY and Child H \(Rev1\) \[2022\] EWFC 10 \(19 January 2022\) \(bailii.org\)](https://www.bailii.org/uk/ew/caseref/2022/0010.html)

²³ [Re H \(Parents with Learning Difficulties: Risk of Harm\) - Find case law \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk/cases/H-Parents-with-Learning-Difficulties-Risk-of-Harm/)

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Appendix 1 – The analysis of risk

[H, Re \(Parents With Learning Difficulties: Risk of Harm\) \[2023\] EWCA Civ 59 \(02 February 2023\) \(bailii.org\)](#)

Lord Justice Baker

65. As the case law makes clear, there is an obligation on a court to enquire carefully as to what support is needed to enable parents with learning difficulties to show whether or not they can become good enough parents. A local authority cannot press for a plan for adoption simply because it is unable or unwilling to support the child remaining at home. A judge must therefore be rigorous in exploring and probing the local authority's thinking in cases where it may be affected by resource issues. Support for parents with learning difficulties may have to be long-term, extending throughout the child's minority, in part because parents with cognitive difficulties, even if they understand the information they have been given, may find it difficult to retain it or to apply it as the child gets older, but also because, as the child gets older, her needs will evolve and the range and level of support and guidance required by the parents must evolve alongside. Judges need to be wary of arguments based on the concept of "substituted parenting". They should carefully scrutinise the evidence adduced by the local authority that the level of support required by the parents would be on a scale that would be adverse to the child's welfare and should look for options for ameliorating the risk of harm that might result from the high level of support. It is all encapsulated in the simple sentence in paragraph 1.4.4 of the Guidance quoted above – "every effort should be made to support not supplant the parents".

66. In my view, although the judge recited substantial passages of the evidence, he failed to subject it to the degree of rigorous scrutiny required in these circumstances. Although he quoted the full passage from Gillen J's judgment in *Re G and A*, he regrettably failed to apply the principles derived from it. He regarded it as a relevant disadvantage that the local authority would have to maintain an (undefined) "high level of support and intervention in the family for many years to come" without seemingly taking into account that the provision of support is a recognised requirement for parents with learning difficulties. He accepted the assertions that the level of support which would be required to keep H in her parents' care was "far in excess of that which would be in H's welfare best interests" and "far in excess of anything that the local authority could be reasonably expected to provide" and that the basis of the level of support would equate with "substituted parenting" without spelling out (1) what aspects of parenting would be carried out by professionals, (2) the extent of the risk that this degree of professional intervention would result in further harm to H, or (3) the steps that could be taken to mitigate the risk. He concluded that the level of support would be "unsustainable and impracticable" without explaining why.

67. In the interests of the child, the starting point should have been, first, to identify and describe the level of support needed by the family, secondly ascertain what can and should be being done under the local authority's obligations, and thirdly to determine whether, with that in place, the child's welfare needs will be met. This involves a careful assessment of what the package would look like, how practical it is and how intrusive it would be for the child. That process was simply not carried out in this case.

68. Part of the judge's reasoning was that, despite the efforts of the professionals, the parents' capacity to meet the children's needs had not improved and there was no basis for thinking that it might improve in future. But assertions that the parents had failed to benefit or respond to attempts to support them in the past had to be considered in the light of the acknowledged failure to provide the psychoeducational and other work

recommended by Mr Hutchinson in 2020. Given that omission, it cannot be said that every effort had been made to support the parents.

69. Furthermore, the judge did not sufficiently acknowledge that any assessment of the degree of support required by the parents, and the risks to H resulting from the degree of professional involvement in her life, had to be undertaken in the context of the current circumstances of the family. Many of those circumstances pointed positively to an outcome under which H could safely stay with her parents. She is now rising 2, has always lived at home, and has a close attachment to her mother. There is a professional consensus that she has been well cared for in many respects up to now. Unlike her siblings, she seems to have no cognitive impairment and is meeting her developmental milestones. F will shortly be moving to semi-independent living. After that, H will be the only child at home and thus the sole focus of her parents' care.

Example Template for analysis of Risk and options to address risk

Where a proposed support package is considered problematic and has therefore not actually been put in place – the following type of parent and child specific analysis should be considered.

Where a support package has been put in place but has proved problematic so that it is not proposed to continue with the package, the same type of analysis – duly amended to reflect the actual occurrence of events rather than likelihood – should be considered.

Where the concerns are that the proposed support package will be financially unsustainable, a detailed costs-benefit analysis should be conducted, before relying on this concern as a ground for removing the child from its parents.

Example A. What is the problematic element of the proposed support package?	<i>Too many professionals involved with the family</i>
Why is this a reason for concern?	<ol style="list-style-type: none"> 1) <i>Too many faces</i> 2) <i>Risk of [name of child] forming attachments to professionals</i> 3) <i>High turnover</i> 4) <i>Inconsistent boundaries being applied by professionals</i> 5) <i>[name of parents] will be bystanders</i>
What is the likelihood of each of these risks occurring?	<ol style="list-style-type: none"> 1) 2) 3) 4) 5)
What would be the likely impact of each of these risks, if they were to occur?	<ol style="list-style-type: none"> 1) 2) 3) 4) 5)
What options have been explored to manage, address, reduce, eliminate each of these risks?	<ol style="list-style-type: none"> 1) 2) 3) 4) 5)
Why will those options not work in respect of each of these risks?	<ol style="list-style-type: none"> 1) 2) 3) 4) 5)
Example B. What is the problematic element of the proposed support package?	<i>None of the elements of the support package will enable [name of parent] to provide the essential emotional aspect of parenting</i>
Why is this a reason for concern?	<ol style="list-style-type: none"> 1) <i>[name of parent] won't be able to stimulate [name of specific child]</i> 2) <i>[name of parent] won't be able to attune to [name of child]'s cues</i> 3) <i>[name of child] won't be able to form a secure attachment to [name of parent]</i>

	4) <i>[name of parent] will not be able to help [child] to read or do their homework or keep up with [child] intellectually as [child] matures.</i>
What is the likelihood of each of these risks occurring?	1) 2) 3) 4)
What would be the likely impact of each of these risks, if they were to occur?	1) 2) 3) 4)
What options have been explored to manage, address, reduce, eliminate each of these risks?	1) 2) 3) 4)
Why will those options not work in respect of each of these risks?	1) 2) 3) 4)

Appendix 2 – Relevance of the Good Practice Guidance on working with parents with a learning disability (2021)

[XX, YY and Child H \(Rev1\) \[2022\] EWFC 10 \(19 January 2022\) \(bailii.org\)](#)

Mrs Justice Knowles

105. The Official Solicitor asked me to give some guidance that may be helpful in cases where a parent has a learning disability. I propose to do so concisely, distilling the learning points from these proceedings.

106. It is clear to me that learning about the Good Practice Guidance on Working with Parents with a Learning Disability, first published in 2007 and then amended in 2016, and then again in 2021, should be more widely disseminated to both children and family social workers and adult social care workers. It must be an essential part of continuation training for such social workers and their managers. It was not in this case. That guidance should also be at the forefront of local authority planning. That would give intellectual focus and rigour to the evaluation of parental strengths and weaknesses in cases, whether before the courts or not. Cases which come before the courts involving a parent with learning disabilities should, as a matter of good practice, be capable of demonstrating that the guidance has been taken into account in any care planning or proposals put forward by a local authority.

107. There must be timely referrals to adult social care for a parent with learning difficulties in their own right and, when I say a timely referral, that means a referral accompanied by meaningful social work, not a referral followed by a very lengthy gap. That is blindingly obvious. It did not happen in this case.

108. Parents with learning difficulties involved with children's social care where a child is on a child protection plan should have their own advocate as a priority. A referral should be made for that service as soon as practicable. Further, the support available to a parent with learning disabilities in their own right should be distilled into a simple document identifying what is available, how often it is available, the timescales for its availability, and who is responsible for its delivery. Pending assessments should be noted and followed up on a regular basis. That document should be shared with children's social care if they are involved and, ideally, it should be discussed with a parent in the presence of their advocate. Likewise, support with the care of a child which is available and which is being delivered should also be distilled into a simple document: what; how often; the timescales; and who is responsible. That document should be shared with adult social care. Again, it should be discussed with the parent in the presence of their advocate. All of this amounts to the joined up thinking and planning advocated by the Guidance

[EXTRACT FROM] Sir Andrew McFarlane's Keynote Address: Aspire Conference Exeter 7 February 2023

[Speech by the President of the Family Division: Parents with intellectual impairment in public law proceedings - the need to be alert - Courts and Tribunals Judiciary](#)

As my second, and most recent case illustrated, a failure by family and professionals to appreciate that an individual's intellectual functioning is significantly compromised may lay a child open to future harm. If, at the time that her baby suffered a head injury, an assessment of the mother's capability had taken place, the later injuries may not have occurred. This is important stuff from that perspective, but it is equally important

from the point of view of the parent themselves. They are entitled to be reasonably supported in their role as a parent if that is required, and they have to be supported to enable them to have a fair trial if the case comes to court.

There is a risk, I believe, that some professionals may be over 'polite' and may avoid raising the issue of intellectual deficit when it is, on the facts, one that needs to be addressed. Again, the need to be alert to the potential for learning disability to be a factor requires that these issues should be approached professionally and with clarity.

Excellent work has been done by the Bristol University based 'Working Together with Parents Network' ['WTPN'] over the past decade in promulgating good practice in cases where the children of parents with learning disabilities are at risk of significant harm. The WTPN 2021 guidance advises that, in such cases, good practice will be promoted by:

- "clarity about rights, roles and responsibilities, including the legal basis for action and the entitlement of parents to support under both children's and care legislation
- in-depth assessments, including appropriate specialist input from both children's and adult services
- timely and effective information sharing between relevant agencies and professionals
- timely and effective involvement of parents and children, and the provision of independent advocacy"

The key to success must be in all agencies involved properly applying the guidance and monitoring circumstances where it either cannot be fully implemented (due to funding or other barriers) and removing those barriers. Similarly, where full and proper application of the good practice guidance is found to fall short of providing best practice in substance, updates must be made on the ground. This short paragraph does not seek to oversimplify the extent of the issue, however, for access to justice to be truly realised and the court to meet its objectives of giving effect to the best interests of children *and* supporting vulnerable adults- these steps are essential.

I will leave the last words to Mrs Justice Knowles in a 2022 case which firmly emphasise the importance of knowing and applying the WTPN guidance:

'It is clear to me that learning about the Good Practice Guidance on Working with Parents with a Learning Disability, first published in 2007 and then amended in 2016, and then again in 2021, should be more widely disseminated to both children and family social workers and adult social care workers. It must be an essential part of continuation training for such social workers and their managers. It was not in this case. That guidance should also be at the forefront of local authority planning. That would give intellectual focus and rigour to the evaluation of parental strengths and weaknesses in cases, whether before the courts or not. Cases which come before the courts involving a parent with learning disabilities should, as a matter of good practice, be capable of demonstrating that the guidance has been taken into account in any care planning or proposals put forward by a local authority.'

I fully endorse what Knowles J says there. The good news for professionals working in this field is that the guidance is clear and all in one place. None of it is 'rocket science'. It is simply sound good sense, borne of experience. Detailed knowledge of the guidance, coupled with a continuous awareness of the need to be

alert to the issue of intellectual impairment, should enable one and all, be they judges, magistrates or social work professionals to meet the needs of the children in these important cases.

Appendix 3 – Detailed methodology

This research project took an exploratory, qualitative approach which we saw as ‘participatory’ in that the professional and parents’ views were key to guiding the development of the project and to using the findings to improve professional practice and parents’ understanding of the term ‘substituted parent’, the associated risks and how to mitigate these. The research was undertaken as inclusively as possible with the parents with learning disabilities (Nind, 2014; Walmsley and Johnson 2003).

Over the 18 months prior to receiving funding, Tilbury had had numerous discussions with key professionals and organisations in the field, regarding the issue of ‘substituted parenting’; this research proposal was informed by their inability to say where the term originated and to explain how it was being used and understood. Initial discussions with the parents’ group at Rotherham SpeakUp Self Advocacy indicated that parents were unaware of the term and very concerned regarding the impact its use could have on parents’ cases.

We saw our professional advisory group and parents’ advisory group as key to the further refinement of the research and ensuring the appropriateness and utility of the outputs.

Work with professionals

After initial discussions with our advisory groups regarding the presentation and public launch of the project through blogs etc., as well as the information to be provided to participants and the content of interviews, we applied for ethics approval from the School for Policy Studies Research Ethics Committee, at the University of Bristol.

We then applied to the Judicial Office and to the Children and Family Court Advisory and Support Service (Cafcass) for permission to interview serving members of the judiciary and Children’s Guardians, respectively. This process began 14 April 2022. Permission was granted by Cafcass in July and by the Judicial Office in October. We recruited participants through the Working Together with Parents Network, Law Society, Family Law Bar Association, Local Government Association, Office of the Official Solicitor, Association of Directors of Children’s Services (ADCS), Association of Directors for Adult Services (ADASS), and the British Association of Social Workers (BASW). Some individual invitations were issued via the Judicial Office.

21 professionals took part in online interviews, see table A above. All the professionals had been involved in at least one case where the issue of ‘substituted parenting’ had been raised, either in the pre-court stage or in the course of court proceedings. For most of the professional groups, sample size was smaller than originally planned (4-5 per sector) which highlights the constraints on practitioners’ availability. Nevertheless, we believe the numbers enabled us to investigate the issues in depth.

The interviewees were provided with a detailed information sheet describing the research. It was clear that cases would be discussed anonymously, the data held securely and that a wide range of strategies would be utilised to ensure interviewees were not recognised in the report and other outputs. Willing participants were asked to complete an online consent form and all the interviews took place using a University of Bristol Zoom account. The recordings were saved securely until they were transcribed, they were then deleted.

The semi-structured interviews enabled interviewees to discuss, anonymously, cases they had been involved with and to describe their understanding of the way the term ‘substituted parenting’ had been used in court and the factors that had been considered when deciding if the support proposed might be detrimental to the child. The questions, refined with the advisory group, covered the following areas:

- What is your understanding of the term substituted parenting?
- How is the term used in court proceedings?

- What academic or research evidence has been relied on when this term has been used in court?
- What is the proposed quantity, duration, and type of support in those cases where substituted parenting is raised?
- What level of risk analysis (in relation to the risk of 'substituted parenting') is undertaken in these kinds of cases?
- How does the provision of high-level support for parents with LD differ from other types of in-home support employed by some parents such as a full-time mother's help, nanny, extended family?

The interviews were analysed inductively using thematic analysis to identify and report patterns and themes within data (Braun and Clarke, 2013). Once the material had been read thoroughly, sections of the interviews were labelled with a representative 'code'. Similar codes were then grouped together and representative theme names applied to codes discussing similar ideas/issues/concepts. The themes were reviewed and refined and discussed by the two researchers both of whom were involved in the analysis.

The professional advisory group were provided with early access to the summary of the themes and quotes selected to illustrate the themes. This served a number of purposes, including ensuring that quotes from professionals, although anonymised, were not recognisable and ensuring the way in which the findings were presented were supportive to the development of practice.

A summary of the findings, approved by the professional advisory group, was to be shared and discussed more formally with their professional organisations prior to publication of the report. We hoped that these discussions would lead to the organisations' willingness to endorse, or at least share, the research outputs, promote the webinars and any suggested improvements to practice.

The way in which 'substituted parenting' was being described/defined and examples of situations that professionals perceived as 'substituted parenting' fed into the final stages of the work with parents. Parents' views regarding 'substituted parenting' were also reported to the professional advisory group and a summary included in the outputs for professionals.

Work with parents with LD

The strand of work with parents with LD focused on:

- understanding how the term 'substituted parenting' can be explained to parents and
- how they can be helped to understand the risks related to being supported to parent and when this might be seen as 'substituted parenting'.

Our parent advisory group, made up of parents from SpeakUp Rotherham, Skills for People in Newcastle and an autistic mother with experience of film making, were fully involved in this work. They supported us to develop a definition of the term 'substituted parenting' which was used on the information sheet shared with parents as well text for the information sheet and focus group questions.

Once we gained ethical approval, we invited established parents' groups for parents with LD to take part in focus groups. There are a number of well-established groups, for example: Middlesbrough mums, Georgie mums, the parenting group at the Elfrida Society, Camden People First, Speak Up Rotherham, Plymouth Highbury Trust, Inclusion North and Greenwich People First. As discussed in the ethics section below, we believe that it is important to work with established parents' groups as many parents will have had their children removed from their care and parents often wish to discuss their experiences with researchers. Working with an established parents' group ensures that the parents are known and have access to support. The group facilitator acted as gatekeeper and initially invited the parents' group members to take part by sharing a short, easy read invitation or video (as advised by the parent advisory group).

We planned to undertake six focus group interviews with parents' groups but were only able to organise four. Advocacy groups were too pressured to be able to engage or felt that the topic would be very difficult for their parents.

The focus groups lasted up to two hours and were either in person or online, with a supporter present. Tilbury and Tarleton were both present as was the group's supporter. The parents received a £20 voucher for taking part and the advocacy group received £100 payment to recompense them for time spent facilitating the research.

The focus group recordings were transcribed and anonymised prior to a preliminary thematic analysis by Tarleton. She read all the focus group transcripts and recorded the main themes within the parents' responses regarding what support is provided to parents, how this support is provided and the parents' reactions to the term 'substituted parenting'. She selected representative quotes to share with the parent advisors so that they could provide their analysis of the parents' data.

The parent advisory group will write, with us, the briefing paper for parents which will explain the term 'substituted parenting' and give examples of when the support they are given may run the risk of this. The briefing paper will also include a list of questions which will help parents think about the risk of the support they are provided with being perceived as 'substituted parenting' and how they could remain actively parenting.

Working with the director from SpeakUp Rotherham, we (Tilbury, Tarleton, and the parent advisory group) are currently developing a short film illustrating the term 'substituted parenting' and how parents can try to avoid this concept being applied to the support they receive.

Tarleton is also working with the parent advisory group to develop a paper on parents' understanding of 'substituted parenting' and the risks associated with a high level of support. This paper will be submitted to the British Journal of Learning Disabilities.

Appendix 4 – Full interview topic guides for parents and professionals

Focus group interview for parents

- The type of support parents receive?
- How this support is provided: practically, relationship-wise?
- If parents feel in control/are able to direct the support provided? Examples of when not felt in control/when they did feel in control.
- What sort of issues/aspects of support for their parenting they would need to think about to ensure they remained in control?
- Parents' reactions to the term 'substituted parenting'
- Examples of when they have been in control
- Tools they can use to make sure they have a voice.

Topic guide for Professionals

- Factors to consider when thinking about support for parents with LD
- Elements of a good package of support
- Key issues when considering if child to remain at home/be placed elsewhere
- Risks to child of high level of professional involvement
- Understanding of term 'substituted parenting'.
 - Where it comes from
 - How it is used in court
 - Links to any judgments/academic evidence/ theories
 - Challenges to use in court / Alternatives suggested in court
 - Level or type of support seen as 'substituted parenting' - what is minimum level / what is type of support considered problematic?
 - Tipping point between support and substituted parenting?
 - Risk analyses undertaken – what is included? How analysed?
 - Consideration of supporting parents to be in control?
- Anything else we haven't asked about that you think is important to consider?