



## **Working Together with Parents Network**

*Supporting professionals working with parents with learning  
disabilities/difficulties*

# ***‘Proven and proportionate necessity’ and The Good Practice Guidance 2016***

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## Proven and proportionate necessity

- *‘Nature, law and common sense require that it be recognised that the best place for a child to live is with a natural parent unless proven and proportionate necessity otherwise demands’*

[para 7] X (a child – adoption order) [2018] EWFC B8 (27 Feb 2018)

<https://www.bailii.org/ew/cases/EWFC/OJ/2018/B8.html>



*“If I was a ‘normal’ parent, people would assume I was a good parent, until I proved I wasn’t.*

*But if you have a learning disability, people assume you are a bad parent, until you can prove you’re not.”*

Scottish parent [video – SCLD]



## Re EV (A Child)(No 2)(Scotland)

- *“So far as the father is concerned, it was not for him to show that he possessed the necessary parenting skills. The onus lay on the local authority to demonstrate that he did not, and that any resulting risk to the welfare of the child could not be addressed by the provision of support.” [57]*

[2017] UKSC 15



## Parents with a learning disability or a learning difficulty?

- IQ based diagnosis of learning disability [70] triggers eligibility for some services and support
- A focus on ‘learning difficulties’, includes parents with a diagnosed learning disability and those with a milder impairment who struggle with the same issues of literacy, numeracy, abstract concepts, time, organisation and planning etc. but who are often not eligible for services and support



# Is it the learning disability/difficulty – or something else?

Multiple issues faced by parents

*'If you've got a parent whose mind is completely preoccupied with not having enough money, fear, maybe mental health issues, then it's very hard to sort of prioritise, and be thinking about your child's needs. So I would say that a percentage of the parents that we see with learning difficulties and neglect, it's actually because of those broader, social, mental health issues, that prevent all parents, actually, from being able to prioritise.'*



# Areas for cross-examination

- How you applied the principles of the government's [Good practice guidance on working with parents with a learning disability](#), in your work with this family.
- How you ensured that the family's rights under the Care Act 2014, Equality Act 2010, and Human Rights Act 1998 were respected.
- What experience/expertise you have regarding parents who have learning disabilities.
- What makes this parenting assessment appropriate for a parent with learning disabilities.
- How you evidenced the 'concerns' referred to.
- How much of your evidence is speculation.
- How you assessed and evaluated the risks you have identified.



# A Local Authority v M & Others

## [2017] EWFC B66

- The court has had to consider this very carefully and anxiously, and it has not been an easy judgment call to make, but the court was impressed by the social work evidence it has heard: SW has invested a great deal, and rightly so, in this case. As she said, she has gone above and beyond. Unusually, I have set out most of her oral evidence in the course of giving this judgment because it was **so direct in relevance, it was so focused and it was very thoughtful and reflective**, all borne of significant experience, particularly of M.
- That she was open to the Guardian's suggestion of further assessment in January is to her credit. That she tackled it with an **open-minded rigor** is greatly to be commended. She was, the court found, both **even-handed and fair**. She readily made **concessions** and there was **nothing defensive** in her approach.



# The legal context

- United Nations Conventions on
  - The Rights of Children
  - The Rights of Persons with Disabilities
- Human Rights Act 1998 – private and family life, fair trial, discrimination
- Equality Act 2010 – reasonable adjustments, public sector equality duty
- Children Act 1989 – welfare of the child, child in need, child protection
- Care Act 2014 – parenting, independent advocacy
- Children and Families Act 2014 – experts, timescales



# Key legal issues

- Recognition of the right to parent
- Working towards re-unification, where possible
- Full participation, at all stages
- Fair processes, throughout



## S.149 Equality Act 2010 - Public Sector Equality Duty

Public authorities required to have due regard to the need to eliminate / advance / foster

EHRC Technical Guidance describes “due regard” as meaning that

*“**in making decisions and in other day-to-day activities** a body subject to the duty must **consciously consider** the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations.”*



# Legal Duties - examples

## Schedule 2 (7) Children Act 1989

- Duty to take reasonable steps designed to reduce the need to bring care proceedings for care or supervision orders

## Common law

- Duty of care to prevent foreseeable harm



# Good Practice Guidance on working with parents with a learning disability (2007/2016)

- Key document. 5 main principles:
  - ❖ Accessible information and communication
  - ❖ Clear and co-ordinated referral and assessment procedures and processes, eligibility criteria and care pathways
  - ❖ Support designed to meet the needs of parents and children based on assessments of their needs and strengths
  - ❖ Long-term support where necessary
  - ❖ Access to independent advocacy



# Joint Committee on Human Rights Seventh Report

- *“We consider that if the recommendations for good practice in each of these areas were implemented effectively, this could significantly reduce the risk that parents and children would be separated, in breach of the Convention.”*

A Life Like Any Other (2008)



# London Borough of Hackney v Williams & Anor [2017]

- The existence of ‘good practice’ guidance about such issues of course does not have the force of law but can provide a useful **benchmark against which to measure if the local authority have acted proportionally.**



# GPG principles absent

- *Targeted and suitable expert assessments are required. **Re C [2014]***
- *The courts must be careful to ensure that the supposed inability of parents to change might itself be an artefact of professionals' ineffectiveness in engaging with parents in appropriate terms. **Re G and A [2006]***
- *I have to question whether [the social worker] was able to communicate orally with SH. **Derbyshire County Council and SH [2015]***
- *The Local Authority's duties under Article 8 include the duty to ensure that the processes by which decisions about children are made are fair and that the parents are sufficiently involved in that process. **A Father v SBC & Others [2014]***
- *At the heart of the problems in this case has been the division of the LA's work between adult social services and children's services ... they did not work together or form a consistent view of the case." **Re S [2013]***



# Kent County Council v A Mother [2011]

- *“All social workers and family support workers, working with children and families need to be trained to recognise and deal with parents with learning disabilities. The [Good Practice] Guidance issued by central government needs to be followed.”*



# Medway Council v A and Others [2015]

- *“It is clear that the purpose of the 2007 DoH Good Practice Guidance, namely to ensure that appropriate steps are taken to ensure services and training are in place to meet the needs of parents with disabilities, has yet to be met in Medway; and there appears to have been little if any awareness of the DoH Good Practice Guidance's recommendations shown by Medway's practice in this case.”*



# A Local Authority v G [2017]

- Good Practice Guidance had not been followed - quotes large extracts from GPG
- Emphasises parenting with support
- Confirms availability / lack of resources cannot justify LA pressing for more drastic orders
- Criticises lack of protocol for dealing with parents with LD and notes that was reflected in the approach taken within the case
- Those working with mother should have been trained in working with parents with a LD, not just working with people with a LD
- Delays in assessments created conflict with children's timescales
- Work should have continued with parents after the children had been removed, not least to assess whether necessary changes were being made
- Training was not adapted to mother's needs and trainers were not trained in learning disability
- Insufficient focus on planned support and a positive strategy to try and keep this family together
- If support is provided in a timely and efficient manner, focussing on a solution for the children within their timescales is not inconsistent with a focus on supporting the parents



# A Local Authority v G [2017]

- *To describe the Guidance as a ‘counsel of perfection’ is to give a charter to ignore it which should be robustly challenged; [para 215] HHJ Dancey*

A Local Authority v G (Parent with Learning Disability) (Rev 1) [2017]  
EWFC B94 (18 December 2017)

<https://www.bailii.org/ew/cases/EWFC/OJ/2017/B94.html>



# Re Y [2017]

## Bridging the gap

- <http://www.familylawweek.co.uk/site.aspx?i=ed180330> Public Law Clients with Learning Disabilities – Bridging the Gap. Gillian Geddes, barrister, Hind Court [*publication of judgment awaited*]
- **Disconnect** between realities on the ground (child meeting milestones, doing acceptably well) and social workers' view (mother could not meet child's future needs)
- **Ability to learn** - the psychologist, who had assessed the mother for 90 minutes some considerable time before the court hearing, gave evidence that she believed mother could not learn - yet support workers confirmed mother had learned how to cook, follow charts and lists, carry out basic risk assessment of potential partners
- **Prediction** - all the child workers predicted mother could not keep child safe from future harm – but this was speculative. Difficult to know, at this stage, what impact the (as yet unidentified) support would have on the welfare of the child.



## Re Y - Bridging the gap (cont)

- **Not child care experts** – the Judge was wrong to dismiss views of support workers on the basis that they were not child care experts
- **Targeted assistance** - obligation of the court to assess extent to which inadequacies in the standard of parenting can be overcome by targeted assistance.
- **Better environment** - avoid asking whether permanent separation from the mother provides a better environment for the child to be brought up in; instead, focus on whether parenting under such a support package would be harmful to the child's health and development.
- **Intense environment** - negative assessment followed 12 week residential, again in contrast to support workers' views. The intense environment of the residential assessment unit was recognised by the court.



# President's Guidance

## 10 April 2018

### President of the Family Division's Guidance – Family Proceedings: Parents with a Learning Disability

- *'My primary purpose in issuing this Guidance is to bring to the attention of practitioners and judges, and to commend for careful consideration and application by everyone, the very important "Good practice guidance on working with parents with a learning disability" issued by the Working Together with Parents Network and the Norah Fry Centre in September 2016.'*



## Working Together 2018

- *2010 – 6 pages of guidance about parents with learning disabilities*
- 2018:
- P.64 para 30 - 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.
  - P.65 para 32 - Adult social care services should liaise with children's social care services to ensure that there is a joined-up approach when carrying out such assessments. (parents/carers for disabled children assessment)
  - P.111 Appendix – [hyperlink to the 2016 Good Practice Guidance.](#)



# Children and Families Act 2014

- Expert reports can only be commissioned if the court deems it “necessary to resolve proceedings justly”.
- Reliance placed on social worker’s reports and assessments –
  - What is their expertise in working with parents with learning difficulties?
  - How have they applied the GPG principles?
  - Is their assessment specifically tailored for a parent with learning disabilities?



# Assessments

Re Z (A Child: Independent Social Work Assessment) [2014] EWHC 729 HHJ Bellamy sitting as a HC Judge held:

*In any case in which a local authority applies to the court for a care order, the assessment of the parent is of critical importance. That assessment will be a key piece of the evidential jigsaw, which informs the local authority's decision-making, in particular with the formulation of its care plan. If the assessment is deficient then it is likely to undermine the reliability of the decision-making process. It follows from there, that any assessment of a parent must be, and must be seen to be, fair, robust and thorough. [130]*



# WTPN Assessment guidance

[www.wtpn.co.uk](http://www.wtpn.co.uk)

## Parenting Assessments for Parents with Learning Difficulties

- Sets out basic guidelines and key messages
- Addresses erroneous assumptions e.g. IQ is a predictor of parenting ability / children will not receive adequate stimulation / parents will not be able to learn new skills
- Provides authoritative research references in support
- Suggests factors that the assessment should take into account so that appropriate supports and teaching methods are identified and provided
- See also the British Psychological Society Good Practice Guidance for Clinical Psychologists when Assessing Parents with Learning Disabilities



# Appropriate legal assistance

**Pre-proceedings list of solicitors** - Is the solicitor / barrister familiar with:

- The President of the Family Division's Guidance (April 2018) Family Proceedings: Parents with a learning disability <https://www.judiciary.gov.uk/publications/family-proceedings-parents-with-a-learning-disability/>
- The Good Practice Guidance on working with parents with a learning disability (2016) <http://www.bristol.ac.uk/sps/wtpn/resources/>
- Care Proceedings and Learning Disabled Parents - A Handbook for Family Lawyers. A.Bond
- Relevant case law since the 2016 GPG e.g. re Y, re G
- Law Society Practice Note <http://www.lawsociety.org.uk/support-services/advice/practice-notes/meeting-the-needs-of-vulnerable-clients-july-2015/>
- Advocate's Gateway Toolkits <http://www.theadvocatesgateway.org/>
- PAMs, Learning Curves, Shared Lives, other local or national projects, programmes, initiatives, support



# Areas for scrutiny / challenge

- Has the LA done what it can to avoid the threshold being reached? Or to avoid the need for removal?
- Have the processes been fair?
- Have the principles of the Good Practice Guidance been applied?

E.g.

- Has there been a reliance on numbers and diagnoses rather than the individual's strengths and needs?
- Has there been too much focus on process and not enough on outcomes?
- Was the foster placement suitable?
- Was the assessment tailored and appropriate?
- Was the parent able to participate fully?
- Are concerns speculative or evidence-based?
- Have options to address risk been identified as well as the risks?



# Speculation not facts / identifying risk but not options

- Speculation or fact? What's the evidence? E.g.
  - Yes, they've made good progress and the child is reaching all its developmental milestones, but that's with support
    - who knows if they will maintain that progress?
    - the child's needs will change and they won't be able to manage
- Risks identified – but what options have been explored to address those risks? E.g.
  - won't be able to provide stimulation
  - won't be able to help the child with its homework
  - the people providing support will be doing the parenting
  - the child will become more attached to the supporter than the parent



# Risk, reunification, evidence

## Risk

- Re S & H-S (Children) [2018] EWCA Civ 1282, at para 38  
*Simply to state that there is a 'risk', is not enough. The court has to be satisfied, by relevant and sufficient evidence, that the harm is likely.'*

## Reunification

- GM v Carmarthenshire County Council & Anor [2018] EWFC 6 (06June 2018) referring at para 7(iii) to K and T v Finland (2001) EHRR 18)  
*'A care order should in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child.'*

## Evidence

- Re A (A Child) [2015] EWFC 11  
*'This is a text book example of how not to embark upon and pursue a care case'.*



## Re A (A Child) [2015]

- (Darlington case ) President of the Family Division:  
*“This is a text book example of how not to embark upon and pursue a care case”*
- Emphasised the need to distinguish between assertion, allegation, opinion and facts supported by evidence.
- 3 fundamental principles



# Fundamental principles

1. Fact finding and proof – findings of fact must be based on evidence and not on suspicion or speculation. Clear distinction between the evidence required to prove an assertion and the assertion of a fact.
2. The need to establish the link between facts relied upon in a threshold document and the conclusion that the child has suffered, or is at risk of suffering, significant harm. Analysis needed and explicit explanation of why the conclusion indeed follows from the facts.
3. The temptation of social engineering and the need to recognise the inevitable diverse and unequal standards of parenting. See *Re L (Care: Threshold Criteria)* [2007] Hedley J



# Resources

- WTPN Website [www.wtpn.co.uk](http://www.wtpn.co.uk) – Easy Reads, Protocols, Research,
- WTPN Network – 900+ helpful members
- Shared Lives
- Medway Valuing Parents Support Services – 9% of children supported by VPSS placed in foster care; 52% children supported by Assessment Centre.
- W Sussex Special Parenting Service – health and social care
- Cornwall Special Parenting Service – health and social care – video
- Enfield Integrated Learning Disabilities centre
- Plymouth Highbury Advocacy
- Coventry Grapevine – parent mentors
- Suffolk Accord – multi-agency, joint coordination adult/children’s services
- Norfolk Learning Curves
- Mellow Parenting programmes



# Working Together with Parents Network (WTPN)

- UK wide – based at Bristol University, Norah Fry Centre for Disability Studies – Lead: Beth Tarleton (academic researcher – specialises in parents with LD)
- 900+ members from social care adults/children; health; legal; independent advocacy sectors – all professionals working with parents with LD
- WTPN starting point: child's welfare is paramount
- Aim: Fair processes – respecting families' rights under UNCRC, UNCRPD, Human Rights Act 1998, Equality Act 2010, Children Act 1989, Care Act 2014
- In 2016, the WTPN updated the Dept of Health 2007 Good Practice Guidance on working with parents with a learning disability
- <http://www.bristol.ac.uk/sps/wtpn/policyessentials/>



# WTPN

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