

Parents with intellectual impairment in public law proceedings:

The Need to be Alert

It is, I suspect, easy for those whose professional lives have started much more recently than mine (which I dare say includes most of this audience!) to assume that we have always understood intellectual impairment as we do now, and that we have always acted in the knowledgeable and sensitive way that we all strive to do. If that is your assumption, then you are, I am afraid, wrong as the following pair of anecdotes may demonstrate.

It must be some 30 or more years ago now, in a case in Birmingham, that I recall first becoming aware of how important it was for all professionals working with parents and children to be fully alert to the impact that the intellectual impairment of one or more of the family members may have upon the conduct of public law proceedings. The case involved a mother who was seen to be failing in the care of her baby by seemingly being unable to hold onto instructions for the basic, repetitive childcare tasks. The staff at the mother and baby unit, where the mother and child had been sent for a residential assessment, treated her as they would any other parent. They gave her instructions and then saw that, when the task was next to be undertaken, she either failed to remember or got it wrong in some way.

The mother was a very personable young woman. She was very chatty and engaging. No one who knew her, or was working with her, had given any thought that she might have a learning deficit. Indeed, I think that I am right, the idea that someone might be 'learning disabled' was seen as something as a stigma then and might, of itself, rule a parent out from future care of their child.

A psychologist, who was a specialist in learning disability, was instructed in the proceedings. Her surname was, I think, Green. She assessed the mother as having a range of highly challenging deficits in her ability to understand matters and function as a parent. The reason that I can still recall her evidence, and this case, today, when so many others have faded from memory, is the insight that she gave into there being another way of working with those who desperately want to be a good parent to their much-loved child, but who are simply not intellectually equipped to do so without support. Ms or Dr Green, if I have the name right, explained that, for the penny to drop with this mother about these day-to-day parental tasks, it was necessary to explain what was required in an out of the ordinary way. Maybe using pictures, maybe deploying different more concrete language, and getting the young woman to explain back what had just been explained to her.

This evidence turned the case round. After some months the mother, with skilled support, was seen to be succeeding, where previously she had failed. In due course, she moved out into the community with her child.

The insight gained from the evidence in that case was so striking because it was 'new'. Hitherto, a finding of significant learning disability, or simply a low IQ, would have probably spelled the end of a parent's hopes of being permitted to care for their child. From that time on, I, and, of course, many others hearing similar evidence in other cases, came to view intellectual impairment in a far more sophisticated way. A way that was to have an impact not only on the potential outcome for care cases, but also on the way in which we in the court system perform our respective roles.

Can I now scroll forward? Four months ago, I went, at short notice, to hear contested care proceedings on the Northern Circuit. It was a case in the ordinary list that needed a judge, and I was available. It was the first care case that I had heard since moving to the Court of Appeal 12 years ago. The case involved a young couple whose 12-month-old baby had sustained fractures to both arms and who had, at age 4 weeks, had a brain injury which, at the time, was accepted as possibly occurring during birth.

There was nothing known to the couples' detriment in terms of their presentation and cooperation with the authorities. Both sets of grandparents were sensible folk, who were united in their love for and interest in their grandchild. The mother's older sister

worked in the caring profession. The mother was an engaging and chatty young woman who was desperate to be a good mum to her young baby.

An expert psychological report was prepared for the court proceedings. It revealed that this young mother had very significant intellectual impairment and concluded that she simply did not have the capacity to care safely for a child. The degree of intellectual deficit described in the report came as a true surprise to the family and, I think, to the social workers. It was known that the mother had not been that good at schoolwork, and that you would have to explain things to her more than might be the case with others, but no one, not even her sister, who was not without insight into these matters, had realised just how limited she, sadly, was.

I am not going to dwell on this case, or say more about it, but I came away from it with three very clear thoughts:

The first is the point that I have really just made. Those with some form of intellectual deficit may well develop, for good and understandable reasons, strategies, for example being very talkative and engaging, which have the effect of masking their difficulties. It is really only through a professional psychological assessment that the true, underlying, situation may be understood.

Secondly, in that case, as it will often be, this young mother desperately wanted to get it right and be a good parent to the baby she loved so much. Yet, because no one had spotted that she needed extra support, and because the child's father was out at work a good deal of the time, she was left alone to care for her child. On occasions, as I found, this was just too much for her and she momentarily snapped, causing serious harm to her child. Had those around her, including the midwives and doctors who encountered her in those early months, been more aware of her intellectual difficulties and of the direct impact that such difficulties might have for the safety of the baby, things might have been very different.

Thirdly, and on a very positive note, during the court case the mother was supported throughout by an intermediary. When I last heard a full hearing of this nature, more than a decade ago, the presence of an intermediary in court was very much a 'new thing'. This was therefore my first encounter with an intermediary within the court

process, working with lawyers who, themselves, have been trained in dealing with vulnerable witnesses. I am pleased to report that this was in every respect a very positive experience. The intermediary gave the court clear and insightful advice both prior to the hearing and at one or two junctures within it. She sat next to the mother and constantly checked on her understanding of the evidence as it unfolded. Prior to the mother giving oral evidence, counsel submitted a list of questions to the intermediary, who offered advice as to content and phrasing. The court took breaks as required, and, whilst the mother was in the witness box, the intermediary sat next to her providing obviously valuable support. I am confident that the mother's ability to cope with, and engage with, the court process was very significantly enhanced by the skilled work of the intermediary. I was also impressed by the manner in which each of the leading counsel in the case was able to moderate their style of questioning appropriately.

Of course, I accept, it may be that not all intermediaries are as impressive as the one in my case, but I came away with the clear impression that we have come a long way during the past 10 or more years in developing and improving our understanding of intellectual deficits and working in a supportive manner with those who, most unfortunately, suffer from them.

Against the background of that personal, 'before and after', birds-eye view of the topic, I propose to point to one or two of the highlights on the road that has been travelled to get to the present position. I also wish, however, to stress that, impressive though the journey so far may be, there is still a long way to go and further developments that lie ahead.

Before saying more, it is important to have some precision in describing these matters. In its 2018 report 'Working with relationally with adults with an intellectual disability', the British Psychological Society advised that three conditions must be met for a person to be considered to have a learning disability:

- (1) Significant impairment of intellectual functioning;
- (2) Significant impairment of adaptive/social functioning;
- (3) Onset before the age of adulthood.

Whilst parents with intellectual impairments, including learning difficulties and disabilities, are over-represented in care proceedings, it is often additional sources of stress which may tip home circumstances over into a situation which is harmful to children, for example domestic abuse, alcohol or drug abuse.

We are concerned therefore with individuals who have a ‘significant’ and longstanding disability. A question that has been discussed since the inception of the Children Act 1989, with the introduction of its s 31 threshold criteria, is how such an individual is to be evaluated against the yardstick of ‘good enough parenting’. There has long been a concern that learning disabled parents are being held to a higher standard of parenting than their non-disabled counterparts.

‘Good enough parenting’ and the intellectually impaired parent

A core principle of the Children Act 1989 is the no order principle. This means that the court must only make an order for a child if this is better than not making an order. The principle is predicated upon the view that children are best brought up by their families, unless they are at risk of significant harm. When drafting the Children Act 1989, the legislators specifically rejected the prospect of removing children from their family whenever it would be better for them than not doing so.¹

Parenting is variable and as Hedley J famously held in *Re L (care: threshold criteria)*²:

“...society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others will flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”³

¹ See Baroness Hale’s judgment in *Re B* [2008] UKHL 35, [2009] AC 11, [2008] 4 All ER 1.

² [2007] 1 FLR 2050

³ [2007] 1 FLR 2050, para 50, this quote was endorsed by Sir James Munby PFD in *Re A (A Child)* [2015] EWFC 11 [at 14]

Essentially, the court will not take children away from their homes when the care afforded to them is ‘good enough’.

What then, is good enough care?

A 2015 report into solicitors’ experiences of representing parents with intellectual disabilities in care proceedings found that caseworkers had unrealistically high expectations of what amounted to ‘good enough’ parenting by parents with learning disabilities.⁴

The tipping point between what may be ‘good enough’ parenting, and what is not, is further clouded by the need to consider how the parent can cope with a reasonable level of support.

In a Northern Irish case concerning a parent with a learning difficulty, Gillen J wisely stated; “the concept of “parenting with support” must underpin the way in which the courts and professionals approach wherever possible parents with learning difficulties.”⁵

In keeping with the ‘nothing else will do’ approach of the Supreme Court in *Re B*, it is incumbent on the court to satisfy itself that there is no practical way of the authorities or others providing the requisite assistance and support before making an order.⁶

But there is growing jurisprudence and discourse that at some point the level of support offered goes beyond what is reasonable or appropriate, so that the professionals providing that support become substitute parents, for example where the level of support offered involves visiting all day every day.

Whilst the term ‘substituted parenting’ was not used in *Re D (A Child) (No 3)* [2016] EWFC 1, Sir James Munby PFD made a placement order in relation to a child whose parents had received extensive support from the local authority to care for him at home. In making his decision, Sir James found that the gap between what the parents

⁴ Cox, R., Stenfert Kroese, B. and Evan R. 2015. *Solicitors’ experiences of representing parents with intellectual disabilities in care proceedings: attitudes, influence and legal processes*. *Disability and Society*, 30, 2, 284–298. Reported in WTPN (2021) at pg 57

⁵ *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2006] NIFam 8 [at 5(4)]. This judgment was annexed to *Re D (No 3)* [2016] EWFC 1 by Munby PFD as he then was.

⁶ *Re B (A Child)* [2013] UKSC 33 at 105

could offer D and what he needed was “simply too large to be capable of being bridged by even the most extensive support package.” He stated:

“even if a sustainable package could be devised which was in one sense capable of bridging the gap, it would not in fact be promoting D's best interests. His parenting would, in reality, become parenting by his professional and other carers, rather than by his parents, with all the adverse consequences for his emotional development and future welfare identified by [the professional witnesses] and by the guardian” [at 155].

There is thus a line to be drawn, supported parenting will be appropriate, but substituted will not. Where to draw that the line will be determined case-by-case.

The Nuffield Foundation is currently engaged on a research project into the meaning of ‘substituted parenting’ within family courts. The project will run until April 2023⁷, and its report is likely to be of interest to all attending this conference.

Ensuring parents understand what they are consenting to in s 20 voluntary placements:

Pursuant to s 20 of the Children Act 1989, children can be looked after by a local authority under a voluntary arrangement made with a person with parental responsibility. A person with parental responsibility may remove a child at any time once a child has become looked after.

The 2020 *Care Crisis Review* analysed the use of s 20 voluntary placements in England and voluntary placements under s 76 of the Social Services and Well-being (Wales) Act 2014. The Review found voluntary placements were viewed as a “helpful provision”, ensuring stability for older children. However, the review also heard about misuse of the provision, including lack of parental consent or pressurised consent as an alternative or precursor to care proceedings. It highlighted the need for “special attention” to be

⁷ <https://www.nuffieldfoundation.org/project/substituted-parenting-family-court>

given to parents with a learning disability in s 20 arrangements and stressed the need for them to have access to independent advocates.⁸

In order for a s 20 arrangement to be truly voluntary, parents must understand what they are agreeing to, and in particular that they are able to remove the child at any time (unless this would pose a safeguarding risk to the child) *R (G) v Nottingham City Council*.⁹

The issue of consent was assessed in the Supreme Court case of *Williams v Hackney LBC* [2018] UKSC 37. The court held there was a lawful basis for the continued accommodation of 8 children under s20 where the parents had neither objected nor unequivocally requested their immediate return. However, for s 20 to operate properly a real and voluntary delegation of parental responsibility was required. The following passage of the judgment is particularly relevance:

‘40. ... In such cases, as a matter of good practice, local authorities should give parents clear information about what they have done and what the parents' rights are. This should include, not only their rights under subsections (7) and (8), but also their rights under other provisions of the 1989 Act, such as that in paragraph 15 of Schedule 2 to know the whereabouts of their child. Parents should also be informed of the local authority's own responsibilities. In appropriate cases, this may include information about the local authority's power (and duty) to bring proceedings if they have reasonable grounds to believe that the child is at risk of significant harm if they do not.’

In their 2017 report into children coming into care under voluntary arrangements¹⁰, the Family Rights Group highlighted a particular problem around the lack of easily accessible information for parents with learning difficulties, who often struggle to understand complex local authority procedures. It was suggested that information

⁸ Family Rights Group (2020) Care Crisis Review Options for Change <https://frg.org.uk/wp-content/uploads/2020/10/CCR-1.pdf> pg 31 -32 at 3.39-3.42

⁹ [2008] 1 FLR 1668; [2008] EWHC 400 (Admin)

¹⁰ Family Rights Group (2017) Cooperation or coercion: a good practice guide. Children coming into the care system under voluntary arrangements” accessed [KI Report 10.07.17 work \(final\) \(frg.org.uk\)](#) on 11.01.2023

about s 20 could be provided in visual means as well as writing, and, again, the importance of independent advocacy was stressed.¹¹

A key finding of the Family Rights Group report was that parents with learning disabilities often feel excluded from decision making and seek partnership, involvement, accessible documents and advocacy.¹²

Given what I have said about how an underlying intellectual deficit may be masked, there is a particular need to be alert to that factor in the context of s 20, where it is unlikely that a psychological report will be available.

Ensuring parents understand proceedings and the judgment, through intermediaries or otherwise

Where parents lack capacity to litigate, a litigation friend will be appointed to conduct proceedings on their behalf.¹³ But not all parents who have some intellectual impairment or difficulty with understanding information and communication will be eligible for a litigation friend. It is, however, critical that this cohort of vulnerable individuals should understand the proceedings and be able to participate fully.

Equal treatment is a fundamental human right; articles 12 and 13 of the United Nations Convention on the Rights of Persons with Disabilities require States to ensure equality before the law and effective access to justice and, by Article 6 of the European Human Rights Convention, this duty is imposed on local authorities and the courts as public bodies.

The court's duties to ensure vulnerable witnesses' participation in proceedings are now contained in Part 3A and PD3AA FPR 2010. Part 3A enables the court to make directions to encourage the participation of vulnerable witnesses and provides for the implementation of special measures for them. By r 3A.7(b)(i), the court must have

¹¹ Ibid pg 51

¹² Ibid pg 61 at 16

¹³ Please note, an identified difficulty such as an intellectual impairment should not automatically lead to an investigation into the party's litigation capacity [FPR 2010 PD 15B para 1.3].

regard to whether the party or witness suffers from a mental disorder or otherwise has a significant impairment of intelligence or social functioning.

In *Re S (vulnerable party: fairness of proceedings)* [2022] EWCA Civ 8, the Court of Appeal recently considered whether a failure to make appropriate participation directions for a parent with cognitive difficulties was unjust. Giving the lead judgment, Baker LJ stated that a failure to comply with these rules will not invariably lead to a successful appeal, the question on appeal will be (1) whether there has been a serious procedural or other irregularity and if so, (2) whether as a result the decision was unjust.¹⁴ In that case, the test had been met.

In *A Local Authority v A Mother* [2022] EWHC 2793 a failure to adhere to the ground rules and provide regular breaks for parents with low cognitive functioning, in a fact-finding hearing held in a case concerning non-accidental injuries, was deemed unfair. The parents had also not been provided with intermediaries. Here the overall combined effect of the failure to provide breaks was assessed against the medical evidence. Ordering a rehearing, Williams J's judgment stresses that ground rules, and ensuring proper adherence to them, can have important implications for the overall fairness of a hearing.

Intermediaries

Intermediaries have a critical part to play. The Equal Treatment Bench Book 2022 defines intermediaries' role as facilitating "communication between all parties and [ensuring] the vulnerable person's understanding and participation in the proceedings. This includes making an assessment and reporting, orally or in writing, to the court about the communication needs of the vulnerable person and the steps that should be taken to meet those needs."¹⁵

An intermediary's role is, therefore, critical to ensuring a vulnerable witness can engage fully in proceedings. This strikes at the heart of fairness and access to justice. The issue of whether an intermediary is required should be at the 'forefront' of the minds of practitioners and the court throughout proceedings.

¹⁴ Para 42

¹⁵ Equal Treatment Bench Book 2022 pg 92 at 96.

In practice, many Family judges are concerned about the adequacy of the provision of intermediaries by national providers. The quality of the provision of intermediary support is important and local providers, who know, and are known by, their local courts (such as Aspire) generally provide a better service. I saw good practice, and this should be the norm everywhere. Judges understand the need for engaging. The revelation from remote hearings is that it was important to see their lawyers' facial expressions rather than their backs which is difficult in person in court rooms but there are ways for court to improve.

Intermediaries require the informed consent of the witness they are appointed to assist. In *Z LBC v Mother* [2022] EWFC 63 two separate intermediary assessments were terminated on the basis of consent. In one assessment, the intermediary formed the view the mother was complying but not consenting and had considerable difficulty in understanding the purpose of the assessment. On another occasion, the intermediary was unable to secure the mother's informed consent and the assessment was terminated. As no further attempts for an intermediary assessment were sought, ground rules were established to assist the mother, including regular breaks.

Other forms of support during hearings for parties with intellectual impairment

The Equal Treatment Bench Book notes that the court can and should play a significant role in facilitating questioning regardless of whether there is an intermediary.¹⁶

Under the rules, the court can direct that a wide range of measures are implemented such as using devices to help communicate¹⁷; consider whether evidence should be oral or other physical evidence, such as through sign language or another form of direct physical communication¹⁸; and whether the person's oral evidence should be given at a point before the hearing, recorded and, if the court so directs, transcribed, or given at the hearing with, if appropriate, participation directions being made.¹⁹

¹⁶ Pp 71 at 116

¹⁷ r.3A.8 FPR 2010

¹⁸ PD3AA para 5.3

¹⁹ PD3AA para 5.4

The Advocates Gateway [‘TAG’] provides free access to practical, evidence-based guidance on communicating with vulnerable witnesses and defendants. TAG has created a series of toolkits to provide advocates with general good practice guidance when preparing for trial in cases involving a witness or defendant with communication needs.²⁰ The use of these toolkits, generally, is recommended by PD3AA para 5.8.

TAG’s 2017 toolkit on identifying vulnerability in witnesses and parties and making adjustments makes the following observations:

- (1) There is no universal definition of vulnerable in the justice system;
- (2) Vulnerability is not the same as unreliability;
- (3) Advocates and judges should be proactive in identifying/responding to views that an assessment of vulnerability is needed;
- (4) Vulnerability should be kept under review and advocates should not rely solely on self-reporting or the belief that an absence of reports of vulnerability means it does not exist;
- (5) Information-sharing is key to identifying and safeguarding vulnerable witnesses and defendants;

The 2017 toolkit sets out a non-exhaustive list of certain behaviours that may indicate vulnerability.²¹ This includes behaviours such as having a short attention span and difficulty telling the time. It also reminds advocates and the court of the importance of early identification of the witnesses’ needs and the need for expert evidence where there is any uncertainty about the existence, type or impact of the person’s vulnerability.²² A 2019 toolkit, aimed specifically at Family Court cases, advises that a parent with learning disability may need an intermediary, adult services worker or advocate to assist them.²³

Vulnerable parties may alternatively wish to have the support of a lay advocate. In *Re C (Lay Advocates) (No.2)* Keehan J clarified the role of lay advocates.²⁴ Like

²⁰ <https://www.theadvocatesgateway.org/toolkits-1-1-1>

²¹ Ibid pg 10-11 at 2.4

²² Ibid pg 15 at 4.1

²³ https://www.theadvocatesgateway.org/files/ugd/1074f0_48a0c6b6fca942fc819255e4104ac9de.pdf pg 12 at 1.24

²⁴ *Re C (Lay Advocates) (No.2)* [2020] EWHC 1762 (Fam)

intermediaries, their role is to assist parties who have an intellectual impairment or learning difficulty which compromises their ability to process and comprehend information given to them. The lay advocate is qualified or experienced in ensuring parties understand information and can participate fully and effectively in proceedings.²⁵ They do not provide legal services, nor the services of a McKenzie Friend nor act as an intermediary. A failure to provide a lay advocate may breach a parent's rights under Art 6 ECHR.²⁶ Lay advocates may be funded by the Legal Aid Agency in certain circumstances.²⁷

After the hearing

Judgments should be always be clear, when vulnerable witnesses are involved language and approach are the utmost importance.

Where appropriate judges may start their judgment with a short, clear accessibility summary. This does not form part of the judgment.²⁸ In *Z LBC v Mother* [2022] EWFC 63 a summary of the judgment was provided for a mother who did not meet the criteria for an intellectual disability, but had extremely low cognitive functioning. Just as a judge may write an age-appropriate letter to a child explaining their decision, in a way which has received much favourable media coverage this last weekend, so too may the court communicate in an appropriate way directly with an adult who suffers with impairment of intellect.

Judges should think creatively about how best to make their judgments accessible for parents with learning disabilities. In *Oxfordshire County Council v A mother (by her litigation friend, the Official Solicitor) and G* [2020] EWFC B40, which concerned the level of care provided to a three-month old baby by a mother with learning disabilities, HHJ Vincent was critical of the threshold document drawn by the local authority. The judge ordered that it be redrafted in an accessible format, and she also wrote a letter to the mother in accessible language to help her understand the decision.

²⁵ Ibid at 11

²⁶ Re C (Lay Advocates) [2019] EWHC 3738 (Fam)

²⁷The test is whether a disbursement is "justifiable and reasonable... to assist with communication between the client and their solicitors out of court" [2020] EWHC 1762 (Fam) at 17(ii).

²⁸ See, for example, *Just Digital Marketplace Limited v High Court Officers Association and others* [2021] EWHC 15 (QB).

Looking to the future

In closing there is no time to do more than glance into the future. In April 2022 the Down Syndrome Act and the Health and Care Act 2022 were passed. Both pieces of legislation seek to aid wider understanding on the needs of people with Down Syndrome, learning disabilities and autism.

The Down Syndrome Act 2022 requires the government to publish guidance on the needs of people with the condition and how to meet them.²⁹

The Health and Care Act 2022 provides for mandatory training on learning disabilities and autism for health and social care staff, including the creation of a code of practice on how training will be created and delivered.³⁰

Whether, and if so what, impact these two pieces of legislation may have to enhance the ability of the Family Court to understand and engage with parents with intellectual impairment in care proceedings remains to be seen.

Best Practice: no room for complacency – Be Alert!

As the account of two cases separated by three decades given at the start of this talk may illustrate, a great deal has taken place in the intervening years to improve our understanding of, and practice around, parents with intellectual impairment in care proceedings. But there can be no room for complacency. It must be a given that our current good practice will fall to be improved in the years to come. 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

²⁹ S1(4) Down Syndrome Act 2022

³⁰ Section 181 Health and Social Care Act 2022

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”³¹.

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.

³¹ <http://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/FINAL%202021%20WTPN%20UPDATE%20OF%20THE%20GPG.pdf> page 27

I will leave the last words to Mrs Justice Knowles in a 2022 case³² 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.

Rt Hon Sir Andrew McFarlane
President of the Family Division
7 February 2023

³² *Nottinghamshire CC v XX, YY and H* [2022] EWFC 10, para 106