

Interim Practice Guidance for Working with Parents with Learning Disabilities and Learning Difficulties

For staff working in Families and Children's Services and
Adult Social Care

Purpose of this document:

Is to provide interim working together guidance regarding good practice and expectations of joint working. This is for all staff who work with this group of parents at any point in both services. This document will be replaced following full consultation with all involved agencies and parents with Learning Disabilities or Difficulties.

Summary

This guidance is for staff in Families and Children's Services and Adult Social Care who are working with parents with learning disabilities and/or learning difficulties.

This guidance outlines good practice and highlights the importance of adopting a Whole Family Approach in our work to support parents who have a learning disability or difficulty. Fear of a child being removed from their care can be an obstacle for any parent who might want to seek help to care for or support their child. Practitioners should understand this and work with the parents and families openly, building on their strengths. For those facing difficulties in cognitive functioning, who may be reluctant to involve professionals because they fear stigma, accessing support can be made harder when those professionals do not communicate effectively.

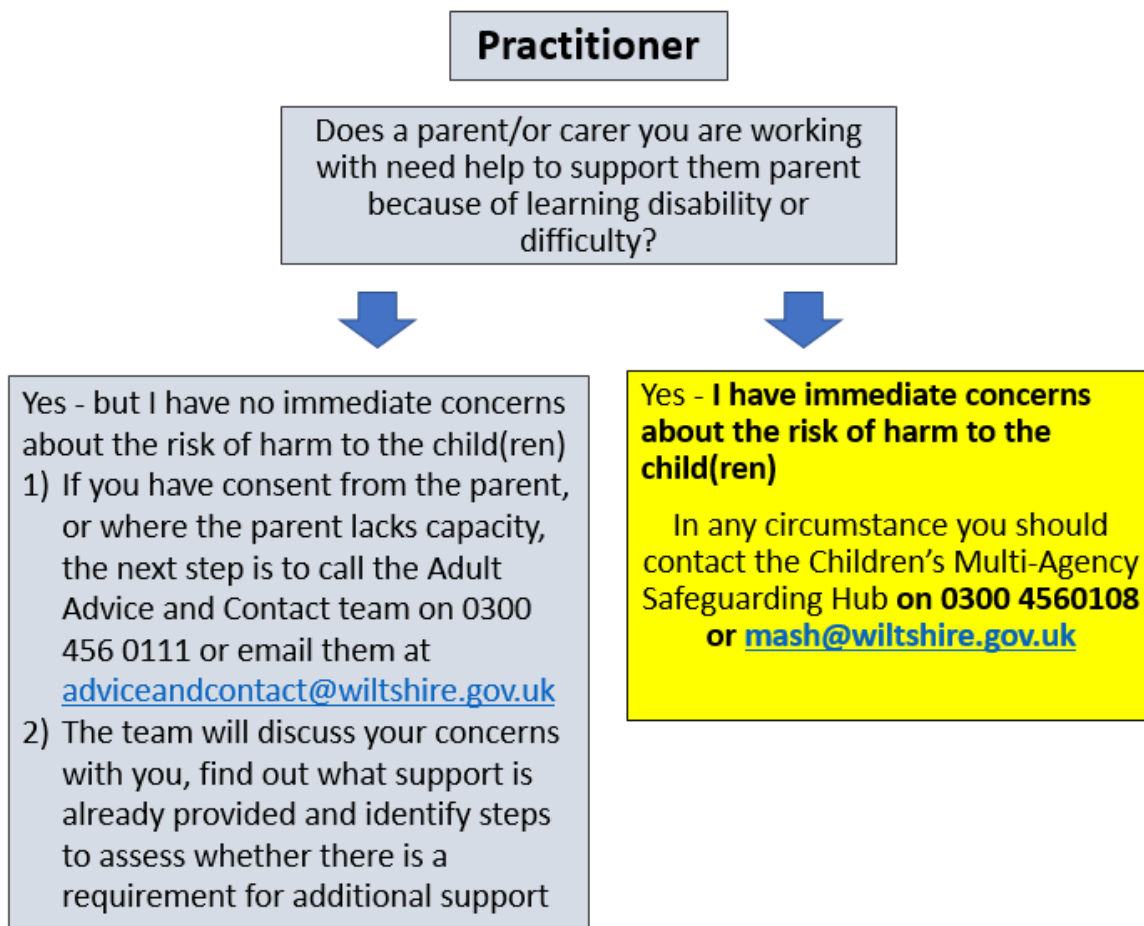
Families may struggle for a long time with a high level of stress, delaying seeking help until a crisis situation; thus leaving little opportunity for preventative intervention. Children in this situation may fear being removed or may themselves be asking for support. Balancing the rights and needs of both children and adults in families can pose difficult dilemmas that need to be understood and responded to appropriately. Legislation and statutory guidance require that we safeguard and protect the wellbeing of all children and young people through timely and appropriate support and intervention. Legislation that applies to safeguarding adults is not as broad but the principle of wellbeing is also promoted in the Care Act 2014 for adults who would struggle to meet 2 or more specified outcomes (including carrying out caring responsibilities if the individual has a child). Specifically Care Act 2014 guidance stipulates that some groups - including those with learning disabilities - may be in need of information and advice about care and support and may have particular requirements and reasonable adjustments must be made to accommodate those needs.

People with learning disability or difficulty are amongst the most socially excluded and vulnerable groups in society. Parents who have a learning disability are often subject to multiple disadvantages, experiencing very significant levels of health and social inequality compared to other families. Nationally, research suggests parents with a learning disability are at greater risk of having their children become subject to Child Protection Plans and Care Proceedings (Emerson et al 2005, Booth & Booth, 2004).

We know that people with learning disability or learning difficulty can parent their children well but many require support to do so. Services face challenges to understand and meet the needs of parents with learning disabilities and parents with a cognitive impairment/condition may need support to develop their understanding, resources, skills and experience to meet the needs of their children. This requires all services to work closely together to develop an approach based around commonly understood principles of good practice.

Accessing support for families

Essential actions:



Section 1: Principles of Good Practice

- Local authorities and all other agencies working or in contact with children have a responsibility to safeguard and promote children's welfare.
- Children's needs are usually best met by supporting their parents to look after them.
- Professionals should respect and support the private and family lives of parents who have additional support needs associated with physical or sensory impairment, learning disability/ difficulty, disability, mental health problems, long-term illness or drug or alcohol problems.
- Support needs should be addressed by enabling parents to access universal and community services wherever possible and appropriate, with reasonable adjustments made to facilitate engagement with support on offer.
- Additional support needs should be met by the timely provision of specialist assessments and services.
- Agency responses should be needs-led, aim to support family and private life and prevent unnecessary problems from arising.
- Agency responses should address the needs of parents and children in the context of the whole family and not as individuals in isolation from one another.
- Inappropriate tasks and responsibilities undertaken by a child or young person which adversely affect their emotional, physical, educational or social development should be prevented by providing adequate and appropriate support to the parent(s) and their family.
- The wellbeing principle needs to be at the core of Care Act assessments for parents who are eligible for support.
- Diversity should be valued and fully considered in agency responses.

Section 2: Definitions

The 'formal' definition of the commonly used expression 'learning disability' as set out by the Department of Health (2001) is:

'A significantly reduced ability to understand new or complex information, to learn new skills (impaired intelligence); with a reduced ability to cope independently (impaired social functioning); which started before adulthood, with a lasting effect on development'. (Department of Health, 2001, page 14)

There is also a far wider group of adults who may be described as having a learning difficulty. These adults may not have a formal diagnosis (because their impairment is milder) and may relate to difficulties in learning experienced as a result of trauma and would not generally fit the eligibility criteria for support services in their own right from learning disability services.

This protocol uses the term 'learning disabilities or difficulties' to include this far wider group of parents who often struggle with the same issues when parenting but who might not be involved with specialised services (Edgerton 2001).

Research estimates that there are 985,000 adults in England with a learning disability, equivalent to an overall prevalence rate of 2% of the adult population. Estimates of the number of adults with learning disabilities who are parents vary widely from 23,000 to 250,000. (Public Health England - Improving Health and Lives: Learning Disability Observatory).

Learning Disability or Learning Difficulty

In general, the difference between a learning disability and learning difficulty is highlighted as:

Difficulty = obstacle

Disability = something that incapacitates

Learning difficulty: Any learning or emotional problem that affects, or substantially affects, a person's ability to learn, get along with others and follow convention.

Learning disability: A lifelong condition that can range across a spectrum of ability and starts before adulthood affects development and leads to help being required to:

- Understand information
- Learn skills
- Cope independently

There may be other neuro-developmental conditions which can impact upon a person's functioning, such as Autism, which would not be classified as a Learning Disability. The principles upheld in this joint working protocol include the need for consultation and collaboration between Adult and Children's Services, alongside an appreciation of the need to jettison stereotypes and to appreciate the individual circumstances of each child and their particular family circumstances.

http://www.mindroom.org/index.php/learning_difficulties/what_are_learning_difficulties/learning_difficulty_or_learning_disability/

Section 3: Eligibility for assessment and access to services

Some parents with a learning disability or learning difficulty will become eligible for support through consideration of their family circumstances.

Those with a learning disability may not already be known to services and an assessment may need to be considered, if this is the case a referral to the Adult Social Care Advice and Contact service is vital.

Supporting those with learning difficulties is also complex. Many of this wider group will not be eligible for, need, or want support from statutory services. However their needs for services may still be significant and they may be eligible for support from Health and Adult Social Care services.

Where there is concern that an adult meets the Care Act 2014 eligibility requirements or an adult lacks capacity then advice should be sought from adult services.

Care Act 2014 - assessing the needs of an adult

“Local authorities must consider whether the adult is unable to achieve 2 or more of these outcomes when making the eligibility determination. The following section of the guidance provides examples of how local authorities should consider each outcome set out in the Eligibility Regulations (which do not constitute an exhaustive list) when determining the adult’s eligibility for care and support:

- a) Managing and maintaining nutrition - local authorities should consider whether the adult has access to food and drink to maintain nutrition, and that the adult is able to prepare and consume the food and drink.
- b) Maintaining personal hygiene - local authorities should, for example, consider the adult’s ability to wash themselves and launder their clothes.
- c) Managing toilet needs - local authorities should consider the adult’s ability to access and use a toilet and manage their toilet needs.
- d) Being appropriately clothed - local authorities should consider the adult’s ability to dress themselves and to be appropriately dressed, for instance in relation to the weather to maintain their health.
- e) Being able to make use of the home safely - local authorities should consider the adult’s ability to move around the home safely, which could for example include getting up steps, using kitchen facilities or accessing the bathroom. This should also include the immediate environment around the home such as access to the property, for example steps leading up to the home.
- f) Maintaining a habitable home environment - local authorities should consider whether the condition of the adult’s home is sufficiently clean and maintained to be safe. A habitable home is safe and has essential amenities. An adult may require support to sustain their occupancy of the home and to maintain amenities, such as water, electricity and gas.
- g) Developing and maintaining family or other personal relationships - local authorities should consider whether the adult is lonely or isolated, either because their needs prevent them from maintaining the personal relationships they have or because their needs prevent them from developing new relationships.
- h) Accessing and engaging in work, training, education or volunteering - local authorities should consider whether the adult has an opportunity to apply themselves and contribute to society through work, training, education or volunteering, subject to their own wishes in this regard. This includes the physical access to any facility and support with the participation in the relevant activity.
- i) Making use of necessary facilities or services in the local community including public transport and recreational facilities or services - local authorities should consider the adult’s ability to get around in the community safely and consider their ability to use such facilities as public transport, shops or recreational facilities when considering the impact on their wellbeing. Local authorities do not have responsibility for the provision of NHS services such as patient transport, however they should consider needs for support when the adult is attending healthcare appointments.

- j) Carrying out any caring responsibilities the adult has for a child - local authorities should consider any parenting or other caring responsibilities the person has. The adult may for example be a step-parent with caring responsibilities for their spouse's children."

Assessing the needs of the family

Where a child is in need of support at an early help/support level, a child in need or at risk of significant harm and in need of protection, the parenting capacity and the risks to the child must be assessed. This is best achieved through a planned joint assessment by agencies involved in supporting both the child and the parent.

In determining eligibility for services, we recognise the importance of the parenting role and acknowledge the need to provide additional support to families who may not have met the threshold for certain adult focussed services.

We acknowledge that parents should be assessed not only in their own right as adults but also as potentially requiring of support in order to maintain family life, as set out in the Care Act (2014). We to work across children and adults' services to offer help and support at an early stage in order to prevent crisis and prevent children from reaching the threshold for child protection intervention.

Section 4: Assessment

The assessments of parents with a learning disability or difficulty are sometimes influenced by stereotypes about the capacity of people with cognitive impairment/ condition, to parent. When making any assessment it is important to be reminded that:

'People with learning disabilities have the same rights and are entitled to the same expectations and choices as everyone else, regardless of the extent or of the nature of their disability, their gender and ethnicity' (DOH 2000) 'Parents with learning disability can in many cases be supported by family and supportive networks and professionals, enabling them to respond effectively to the needs of their children (DOH, 2000) It is the minority of children whose parents have a learning disability who experience serious developmental problems, the type of problems which can be found among this minority are not unique to children whose parents have a learning disability.

When assessing parents with a learning disability or difficulty we need to undertake the following checks and balances:

- Do we have a clear idea of the **Reasonable Adjustments** and kinds of help needed by each parent to support them to understand and respond to what is being asked of them?
- Is the support on offer **Needs Led?** The family's views about their own support needs and the way in which they want services to be provided to them is as important as collating professionals views about the family and their needs.

- Does the support on offer require **A Specialised Response**? Parents with a learning disability or complex autism require professionals who can provide specialised knowledge and response.
- Are we **Intervening Early enough**? Parents are more likely to be receptive to support during pregnancy and early infancy than as the child grows older, once difficulties have become more entrenched. Early identification and support is more effective in offering proactive services to avert crisis and future harm.
- Are we offering a **Competence Led** model of assessment? Attention needs to be paid to competence and strength, with interventions provided to reduce deficits.
- Are we allowing enough **Time**? Parents with a learning disability/difficulty or autism often need longer to assimilate knowledge and understanding of concepts. Are we providing in our interventions a range of teaching and support techniques over a period of time to enable competence to develop?
- Are we considering **the perspective of the child**? We need to consider each child individually and look at the interplay of factors in the child's unique circumstances, which may differ between siblings.

Mental Capacity

A parent's learning difficulty or disability may impact on their capacity to make decisions. The mental capacity of all adults and young people between the ages of 16-18 years must be considered in the context of an assessment of need. It is essential that:

- Every adult must be presumed to have capacity unless it is established that they lack capacity through an assessment.
- Capacity should be considered in respect of decisions that need to be made at a particular time.
- All practicable steps must be taken to assist a person lacking capacity to make a decision.
- An unwise decision does not mean that a person lacks capacity and a lack of capacity in respect of one decision does not mean that a person lacks capacity in respect of another decision
- Any decision or action taken on behalf of a person lacking capacity should aim to be the least restrictive option available in terms of their rights and freedom of action.

In the context of the Mental Capacity Act (2005) the decision maker is the person who wants to take the action. They are responsible for considering and making the decision whether there is a reason to believe the adult may lack capacity to make a particular decision. If there is a reason to believe a person may lack capacity there should be an assessment. Ultimately the decision whether a person lacks capacity is subject to a legal test set out at sections 2 and 3 Mental Capacity Act.

The legal test of capacity is in two stages. The first stage is:

1. Does the person have an impairment of, or disturbance in the functioning of their mind or brain?

If yes, and you consider that the person is unable to make the decision the next stage is the functional test of capacity. The focus of the functional test is not on establishing incapacity, but on the outcome of attempts to facilitate capacity to make the decision.

2. The functional test should establish whether the person can:
 - Understand the information relevant to the decision.
 - Retain the information (long enough to make the decision).
 - Use or weigh up the information to make the decision
 - Communicate the decision by talking, using sign language, or any other means.

If a person cannot meet each part of the functional test with appropriate support in relation to that specific decision they are deemed to lack capacity.

If the person lacks mental capacity to make the decision in question the identified decision maker should make the decision in their best interests. They may also need to consider whether to engage an Independent Mental Capacity Advocate. The decision maker should always make reference to the Mental Capacity Act (2005), Code of Practice (3).

If the capacity assessment outcome or a decision made in a person's best interests is disputed and this dispute cannot be resolved it will need to be determined by the Court of Protection. Legal advice should always be sought when considering an assessment of Mental Capacity. The MCA is the statutory framework for determining capacity to make decisions and best interests decision-making in respect of decisions the adult lacks capacity to make.

The assessment should be undertaken by the practitioner who has the greatest knowledge and expertise to undertake the assessment and in most cases this will be the child's social worker where the decision relates to decision-making about the child.

Summary

There should be an assumption of mental capacity to make such decisions until there are key indicators of impaired decision making.

The assessment is best made by the practitioner working with the adult - which in most cases will be a children's social worker. To facilitate this adult social care will support children's social workers with training and advice to enable them to carry out assessments.

Essentially the parent's individual mental capacity to consent to a section 20 voluntary agreement should be considered. Should assessment indicate that the parent does not have capacity:

- A parent should be told of their right to take legal advice
- If someone is considered not to have the capacity to appoint legal advice a referral should be made to advocacy services
- A referral to Adult Social Care should also be made if the adult has care or support needs

Further information on capacity assessments is provided at Appendix 2.

Section 5: Specialist Assessments

After ASC and FCS assessments have been completed further specialist assessment may be needed to provide more information about the family.

PAMS Assessments

PAMS (Parenting Assessment Manual Software) is a specialist parenting capacity assessment for parents with LD. The assessment should only be completed by a member of CFS staff who has completed accredited PAMS training - a social worker, contact and assessment worker or Family Key Worker.

PAMS assesses:

- child care and development
- behaviour management
- independent living skills
- safety and hygiene
- parents' health
- relationships and support
- the impact of the environment and community on parenting.

Each of these areas of parenting are assessed in terms of parental knowledge, quality of parenting skills and the frequency of parenting practice.

The assessment can be used with individuals or couples. It is not necessary to have a cognitive assessment before a PAMS assessment. PAMS can be used pre-birth or with families with children of any age. If a couple are parenting together they should be assessed jointly.

The PAMS assessment will produce a teaching programme to address deficits in parenting capacity.

To get the best out of PAMS, social workers should complete the assessment, implement the teaching programme over an agreed period of time (3 months for example), then re-assess using the PAMS Capacity Update Report to assess improvement. This will give the best evidence about parenting capacity and capacity to change. Wherever possible this should all happen before care proceedings. Once proceedings have begun there is unlikely to be enough time to assess, teach and re-assess using PAMS.

A PAMS Assessment will generally take 4 – 6 sessions to complete, plus extra time for observations. Observations don't have to be done by the assessing social worker; they could be done by contact supervisors, foster carers, other professionals etc.

In some cases, it will not be possible or helpful to complete the entire assessment. The assessor is able to choose which parts of the assessment are used for each case. An incomplete assessment is still helpful and worth doing.

Pre- and Post-Birth Assessments

Concerns about parenting capacity may begin during pregnancy and this may lead to a pre-birth assessment being completed. This offers the parent with LD the opportunity to start getting support to learn how to parent their baby at an early stage, which decreases the risk of harm to the baby. Assessments should be community based where possible.

Section 6: Children

Young Carers

*“A young carer becomes **vulnerable** when the level of care-giving and responsibility to the person in need of care becomes **excessive or inappropriate for that child**, risking impact on his or her emotional or physical wellbeing or educational achievement and life chances.”*
(ADASS/ADCS MOU 2009)

<https://www.adass.org.uk/adass-and-adcs-draft-template-for-mou/>

Carers (Recognition and Services) Act 1995 – young carers are entitled to an assessment of their needs separate from the needs of the person for whom they are caring. These assessments are undertaken within Families and Children’s Services by the Support and Safeguarding Service.

<http://www.legislation.gov.uk/ukpga/1995/12/contents>

Carers (Equal Opportunities) Act 2004 – identification of young carers can be problematic. Many children live with family members with stigmatised conditions such as mental illness or learning disability/difficulty. As stated in many cases, families fear where professional intervention may lead, if they are identified. Some families may also have concerns about stigmatisation of being assessed under children’s legislation.

<http://www.legislation.gov.uk/ukpga/2004/15/contents>

A whole family approach should be adopted when working with Young Carers. This means that children’s and adult services must have arrangements in place to ensure that no young person’s life is unnecessarily restricted, because they are providing significant care to an adult with an identifiable community care need.

For services to provide effective support for young carers and their families, it is vital that all members of staff working with them begin with an inclusive, wide-ranging and holistic approach that considers the needs of:

- the adult or child in need of care
- the child who may be caring and
- the family

Many Young Carers have stated that often services focus on the adult in front of them without thinking through the implications of the disability on the children in the family, which can lead to children taking on a caring role which proves harmful to them in the longer term.

Children with additional needs

Children with disabilities have exactly the same rights to be safe from abuse and neglect as non-disabled children. Having a disability must not mask or deter appropriate enquiry and response where concerns are identified.

Section 7: Joint Working

To achieve a co-ordinated assessment process, all professionals across partner agencies working with the children and the adults in the family need to work together.

Referrals

Joint working should begin as early as possible in the process. Therefore, there is a need to ensure that, where appropriate, teams refer families to each other. Teams are responsible for their own decision-making about whether an adult or child will be assessed - as reflected in the Care Act Statutory Guidance.

In practice, this means that at the point of MASH referral (both children's and adults) will check whether adults in the home are known and will pass this information on.

Some families will have their first contact with social care in relation to the needs of the adult rather than the child(ren). ASC or FCS social workers will ensure that children who are potentially in need or at risk of harm are referred to MASH in a timely way. ASC or FCS social workers will ask all service users if they have a dependent child during their initial assessment process, as a matter of course. In consultation with their Manager, they will decide if a referral to MASH is appropriate.

Allocation and Timescales

If the child's situation warrants an assessment they will be allocated to a children's social worker. The children's social worker will complete a Single Assessment within 45 days.

The Local Authority have a duty under the Care Act 2014 to assess any adult who appears to have needs for care and support, but assessments are subject to the adult's consent if the adult has capacity to make that decision.

Social workers from both teams should discuss a joint assessment plan within the first week of allocation. This should include consideration of whether joint visiting the family would be of benefit. Bear in mind that some families may feel overwhelmed by two social workers visiting together and there is the potential for families to misunderstand or blur roles.

Conversely, families may appreciate fewer appointments by seeing two social workers at the same time and telling their story once.

Social workers should share completed assessments and plans with family and each other in a timely way. Careful consideration must be given to ensuring assessments and plans are accessible to the family (see above re: communication).

Involvement in Safeguarding and Meetings about the family

Where there are safeguarding concerns about the child, the Children's MASH will ensure adult care services are invited to/consulted for the Strategy Discussion and Section 47 Child Protection Investigation. Furthermore, the social worker for the adult would be invited to the Initial Child Protection Conference and any subsequent reviews. The adult's social worker is expected to attend these meetings if at all possible, or at the very least provide a report in advance.

If the child became the subject of a Child in Need plan, the adult's social worker should be a key member of the network and should attend Child in Need Meetings or Looked After Child reviews.

If there are safeguarding concerns about the welfare of the parent, Adults MASH will ensure the child's social worker is consulted during the investigation, any decision-making process or strategy meetings.

When care and support packages for the adult are reviewed, the children's social worker should be kept informed of any changes.

Social workers from both teams should consult with each other prior to ending work with the family. Responsibility for decision-making about closing a case rests with individual teams.

Support from the family's network

Good support from the family's network can negate the need for ongoing involvement from FCS and ASC. Social workers should consider what support can be offered from the network when completing assessments.

Section 8: Foundations of good practice

Practice with parents with LDs should not be radically different from social work practice with other service users. However, parents with LDs may find it more difficult to access, understand and engage with social work services and processes. Therefore, practitioners are responsible for ensuring that their practice is adjusted to give parents with LDs the best possible opportunity to achieve good outcomes for themselves and their children.

The [Working Together with Parents Network](#) supports professionals working with parents with LD and their guidance identifies five features of good practice (WTPN 2016):

- accessible information and communication
- clear and co-ordinated referral and assessment processes and eligibility criteria
- support designed to meet the needs of the parents and children based on assessment of their needs and strengths.
- long-term support if necessary.
- access to independent advocacy.

Communication

Social workers often need to communicate complex information to parents with LD and our usual methods of communication may be ineffective. Wherever possible, written information for parents with LD should be provided in an Easy Read format which breaks down information and, where helpful and appropriate, is accompanied by pictures or symbols. As with any group, parents with LD will have wide ranging needs and social workers should not assume that one approach will work for every parent

In addition to written communication, social workers need to ensure all verbal communication is accessible. General tips for clear communication with people with LD are:

- Use short sentences.
- Put the key message first.
- Use pictures.
- Use apps and other internet based tools.
- Keep it simple.
- Be practical and concrete – not abstract.
- Simple, short “chunks”, with lots of breaks.

Close attention should be paid to ensure professional meetings are accessible for parents with LD. It is important to check that parents with LD have understood what has been said, but asking a closed question – ‘do you understand?’ – is likely to illicit a positive response, even if they have not understood the information. Checking understanding is more reliable when the person with LD is asked to explain what they have heard. This is a useful approach for meetings as well as in 1:1 conversations. Parents with LD say that social workers who are good at communication:-

- Are respectful
- Turn up on time
- Speak directly to parents with learning disabilities
- Don't use jargon
- Think before they talk to you
- Listen and ‘hear’ you
- Explain what is happening
- Do what they say they will do
- Are honest if they cannot help you
- Are patient
- Make enough time to communicate with you

Advocacy

If you are working with parents with a learning disability and they find it difficult to understand or communicate the relevant information even after reasonable adjustments have been made, with their consent, you should refer them to independent advocacy services. Remember if an adult has **substantial difficulty** in being involved in care and support processes and have no appropriate individual(s) – carer, family or friend – who can support their involvement then it is your duty under the Care Act 2014 to refer them for an [Independent Advocate](#).

This applies if you are working with parents with a learning disability who are involved in any of the following Adult Social Care ‘processes’:

- An adult’s needs assessment;
- A carer’s assessment;
- The preparation of an adult’s care and support plan;
- A review of an adult’s care and support plan;
- A child’s needs assessment as they transition towards adult care;
- [A young carer’s assessment](#);
- A safeguarding enquiry or safeguarding adults review – LA must help protect people from abuse and neglect/minimise restrictions and risks;
- An Appeal against a local authority decision under Part 1 of the Care Act (this is subject to further consultation).

Best Practice for Teaching and Support

Statutory processes can impede parents’ ability to learn due to tight timescales, high levels of scrutiny and anxiety from the perceived threat of a child being removed.

Social workers should be aware that creating the best environment for teaching could increase the parents’ capacity to learn and sustain positive change. The Working Together with Parents Network characterise the best conditions for teaching as:

- teaching in the parent’s home
- skills are broken down and taught in steps
- teaching materials do not rely heavily on literacy skills
- skills are demonstrated to parents
- parents are given an opportunity to practise skills
- parents receive reinforcement and feedback about their performance

Teaching for parents with LD may take longer than expected and therefore early intervention is crucial to offering the best chance for a positive outcome for families.

Parents with LD may be eligible for support under the Care Act in parenting but also in other aspects of their lives. All care packages must take into account the adult’s caring responsibilities, for example support workers helping adults to access the community should expect the parent to be doing so with their child unless specifically stated otherwise.

Common Dilemmas

Parents with learning disabilities are likely to take longer to assimilate information, understand processes and make sustainable changes. However, in relation to the assessment of children, social workers need to assess families and their capacity to change within tight statutory timescales. This creates an inherent dilemma which is difficult to resolve.

Ultimately, the needs of the child are paramount. However, social workers must make reasonable adjustments to accommodate the needs of parents with a LD. If a case is subject to care proceedings, lawyers may want to request an extension to the 26-week timetable on account of a parent's learning disability and there are examples of this being successfully argued.

Another common dilemma emerges where concerns about parenting persist after interventions and support have been offered. Social workers may feel unsure about whether a parent has not understood advice given to them or whether there is another reason for them not changing their behaviour. Social workers need to check understanding as a matter of course throughout their work with the family and need to work with parents to find ways that work for them. (See section 1. Communication, for more detail).

Over identification with parents/carers, i.e. accepting neglectful situations, which would not be accepted for other children, due to sympathy felt as result of a parent having a learning disability or as a result of a child having a disability need to be guarded against.

Making 'unwise' choices

The Mental Capacity Act is clear that people with capacity are allowed to make 'unwise choices'. You cannot decide that someone lacks capacity because you do not agree with their decision. If someone has been deemed to have capacity then they are able to make what appear to be 'unwise' decisions. Best interests decision-making only applies in respect of decisions the adult lacks capacity to make.

Best interests decision-making is also always focussed on the best interests of the incapacitated person and is subject to the checklist at section 4 MCA and the Code of Practice to the MCA.

Practitioners are to encourage 'good' choices

If someone has the capacity to make a decision, and they make what is considered an 'unwise' decision, then staff have to respect this but are still able to:

- Ensure the individual has all the relevant information, and provide any new relevant information
- Review the decision if things change
- Encourage positive choices

Sharing Assessments

Sharing the feedback, outcomes and recommendations from assessments is a crucial piece of work and needs to be done with the parent's learning disability in mind. Assessments should be written for the family, rather than for the professional network. However, in some situations social workers may need to write an Easy Read version of their assessment for the family. It is best practice to share assessments with families in person with their advocate present.

Section 9: Legal intervention

Consent to Section 20

This relates to Section 20 of the Children Act 1989 which enables parents to give consent to their child to be cared for by the Local Authority in foster care. It is widely used but can be controversial and has been the subject of abuse by Local Authorities. Using Section 20 with parents with LD can be complex as the child's social worker needs to very clearly evidence the parents' capacity and consent:

- Parents must give valid consent to section 20 accommodation; their agreement must be 'real' – but note Court of Appeal decision in Hackney where the parents were subject to bail conditions that meant they were prevented from offering a home to their children. Consent was not an issue in these circumstances. If parents are prevented from 'objecting' to section 20 accommodation this may be enough to make it lawful.
- The parents must understand what they are agreeing to: they must have 'capacity'
- The parents must have all the relevant information
- Removing a child under section 20 must be fair and proportionate
- Parents must be told they have a right to take legal advice
- Parents must be told they have a right to withdraw their consent

These principles are dealt with in more detail below.

Agreement must be real – parents must give valid consent to section 20 accommodation

- Every parent who has capacity has the right to give consent under section 20 to have their child accommodated by a LA (see above re: assessing capacity).
- Every LA has the power to accommodate a child, if to do so is consistent with the child's welfare.

The parent giving consent must have capacity – they must understand what they are agreeing to

- Every social worker obtaining a parent's consent is under a personal duty to be satisfied that the person giving consent has the capacity to do so;

- The social worker must actively consider the issue of capacity and consider the questions raised by the Mental Capacity Act 2005 at section 4 and in particular the person's capacity to use and weigh all the relevant information;
- If the social worker has doubts that the person has capacity they should stop trying to obtain consent and seek advice from their manager and the LA legal team.

The parent must have all the relevant information to be able to agree

If the social worker is satisfied the parent is able to agree, the next question is whether the consent is 'fully informed'. Does the parent:

- Understand the consequences of consent or refusal?
- Appreciate the full range of choices available?
- Know about all the relevant facts?

If the social worker is not satisfied the parent is 'fully informed' again, no further attempts should be made to obtain consent and further advice should be sought, including legal advice if necessary.

The decision regarding section 20 accommodation must be fair and proportionate

- If the consent is considered to be fully informed, the social worker must then be satisfied that the giving of such consent and subsequent removal of the child is fair and [proportionate](#).
- To answer that question, the social worker should consider the current physical and psychological state of the parent, whether or not they have a lawyer, or have been encouraged to seek legal advice, whether it is necessary for the child's safety to be removed at this time or whether it would be fairer to seek a care order from the court.

The parents must be told they have a right to legal advice and can withdraw their consent at any time.

A section 20 agreement HAS to convey that the parents have the right to withdraw their consent. It also needs sets out that the parent needs to be told of their right to take legal advice. Otherwise their apparent 'consent' to section 20 may be no consent in reality.

Social workers need to record their work and thinking in relation to Section 20 consent carefully. Social workers should use the **Easy Read Sec 20 Consent Form** along with more detailed recording in the Case Summary Record to evidence the points raised above. Recording must be completed contemporaneously.

Section 13: Parallel Planning

Sadly, some parents will be faced with permanent separation from their children when safeguarding concerns are very high. In these circumstances, social workers for the child and the adult must be alert to the parent's needs post-separation. For parents who have been living in a parent and baby foster placement with their child, separation from their baby may also leave them without accommodation.

To reduce anxiety and aid smooth transitions, social workers should parallel plan for parents in the same way as for children. This means that alternative care plans are assessed and prepared to account for other eventualities. For example, a parent living in a parent and baby foster placement should have their care and support needs assessed for the following circumstances:

- In placement with their child.
- In the community with their child.
- In the community without their child.

Parents should be aware of each assessment outcome and proposed care and support plan so they are prepared for all outcomes.

Section 10 Appendices

Appendix 1: References and legal framework

Finding the Right Support - <https://baringfoundation.org.uk/wp-content/uploads/2014/10/Findingrightsupport.pdf>

Department of Health Good Practice Guidance on Working with Parents with Learning Disabilities 2007

http://webarchive.nationalarchives.gov.uk/20080817163624/http://www.dh.gov.uk/en/Publicationandstatistics/Publications/PublicationsPolicyAndGuidance/DH_075119

Working Together with Parents Network: Update of the 2007 DoH Good Practice Guidance 2016

<https://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn/2016%20WTPN%20UPDATE%20OF%20THE%20GPG%20-%20finalised%20with%20cover.pdf>

Working Together with Parents Network: Assessing Parents with Learning Disabilities – Key Messages

https://www.bristol.ac.uk/media-library/sites/sps/documents/wtpn_assessment_key_messages.pdf

Change – Learning Disability Rights Charity

www.changepeople.org

Child Protection Resource: What Does Sec 20 Mean? And When Should It be Used?

<http://childprotectionresource.online/what-does-section-20-mean/>

Wiltshire Multi Agency Threshold Document

Booth & Booth (1993) Parenting with Learning Disability – Lessons for Practitioners. Br. J. Social Work (1993) 23, 459 - 480

Booth, P (2000) Parents with learning difficulties, child protection and the courts. Representing children 13 (3), 175-188.

Booth, T and Booth, W (2004) Parents with learning difficulties, child protection and the courts: A report to the Nuffield Foundation on Grant no CPF/00151/G

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DH Good Practice Guidance on working with a parent with learning disability, 2007.

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DOH (2000) Framework for the Assessment of Children in Need and their Families Good Practice Guidance.

Edgerton, R. B. (2001) The Hidden majority of individuals with mental retardation and developmental disabilities. In *The Forgotten Generation: The Status and Challenges of Adults with Mild Cognitive Limitations* (eds A. J. Tymchuck, C. K. Lakin and R Luckasson), p 3- 19/ Paul H Brookes, Baltimore

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Fairness Commission: Brighton and Hove (2016) <https://www.brighton-hove.gov.uk/content/council-and-democracy/fairness-commission>

McConnell, D. & Llewellyn, G. (2000) Disability and discrimination in statutory child protection proceedings, *Disability and Society*, 15 (6) 883-895.

McGaw, S et al. (1999). Parenting Assessment Manual. Trecare NHS Trust.

Public Health England - Improving Health and Lives: Learning Disability Observatory

SCIE – 2005 Helping parents with learning disabilities in their role as parents, www.scie.org.uk

SCLD: Supported Parenting: Refreshed Scottish Good Practice Guidelines for Supporting Parents with a Learning Disability. (2015)

Tymchuk, A (1992) Predicting adequacy of parenting by people with mental retardation'. *Child Abuse and Neglect*. 16. P. 165-178.

Policy Context

This guidance should be read in conjunction with:

- South West Child Protection Procedures.
- Working Together to Safeguard Children 2018
- Valuing People Now: A New Three year Strategy for People with Learning Disabilities 2009 HM Government

The legal framework for the guidance is:

- The Children Act 1989
- The Children Act 2004
- Children and Families Act 2014.
- Care Act 2014
- The Mental Capacity Act 2005
- Schedule A1 Mental Capacity Act (2005)
- Human Rights Act 1998
- Equalities Act 2010 - Public Sector Equality duty at section 149 of the EA.

The guidance is also based on:

- Finding the Right Support? A review of issues and positive practice in supporting parents with learning difficulties and their children. Norah Fry Research Centre, University of Bristol, 2006
- Good Practice Guidance on Working with Parents with learning Disabilities (DoH 2007)
- Independence Matters (2003)
- Improving the Life Chances of Disabled People 2005
- Working Together to Safeguard Children 2018
- Recent case law - notably ***A Local Authority v G (Parent with Learning Disability) [2017] EWFC B94***

Appendix 2: Assessing Mental Capacity

Mental Capacity can be methodically assessed, looking at 4 key areas. A person is able to make a decision if they can understand, retain, weigh up and communicate information relevant to the decision, as detailed in 1-4 below:

1. Can the person understand the information relevant to the decision, including the consequences or making or not making the decision?

- Are they able to understand the relevant information?
- It is not necessary that they understand every element of what is being explained to him. What is important is that they can understand the 'salient factors' of the information relevant to the decision. The level of understanding required must not be set too high.
- This means that the onus is on you not just to identify the specific decision (as discussed above) but also what the information is that is relevant to that decision, and what the options are that P is to choose between.
- Further, you must not start with a 'blank canvas.' In other words, **you must present the person you are assessing with detailed options so that their capacity to weigh up those options can be fairly assessed.** This is particularly important where a person's particular impairment may make it more difficult for them to envisage abstract concepts. But it is also important to give the person sufficient information about the options that they are being asked to choose between so that they are given the opportunity to understand (if they are capable of doing so) the reality of those options.
- The ability to understand also extends to understanding the reasonably foreseeable consequences of reaching a decision or failing to do so (s.3(4)).

2. Can the person retain the information for long enough to make the decision?

- Practitioners must highlight the need to be precise about the information in question.

- The issue is whether the person is able to retain enough information for a sufficient amount of time to make the decision. The Act specifies at s.3(3), however, that ‘the fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.’ This is an important consideration, particularly when dealing with the elderly or those with deteriorating memories. Capacity is the assessment of the ability to make a decision ‘at the material time’: at the time of assessment. If information can be retained long enough for P to be able to make the relevant decision at the material time, that is sufficient, even if P cannot then retain that information for any longer period.

3. Can the person weigh up the information as part of the process of making the decision?

- Again, it is necessary to be clear what the information is (and how it is said to be relevant to the decision). This aspect of the test has been described as ‘*the capacity actually to engage in the decision-making process itself and to be able to see the various parts of the argument and to relate the one to another.*’
- As with understanding, it is not necessary for a person to use and weigh every detail of the respective options available to them in order to demonstrate capacity, merely the salient factors. Therefore, even though a person may be unable to use and weigh some information relevant to the decision in question, they may nonetheless be able to use and weigh other elements sufficiently to be able to make a capacitated decision.
- ***It is particularly important here to be aware of the dangers of equating an unwise decision with the inability to make one – the parent may not agree with the advice of professionals, but that does not mean that they lack capacity to make a decision.***
- Further, if a person is able to use and weigh the relevant information, the weight to be attached to that information in the decision making process is a matter for that person. This means you need to be very careful when assessing a person’s capacity to make sure – as far as possible – that you are not conflating the way in which they apply their own values and outlook (which may be very different to yours) with a functional inability to use and weigh information. This means that, as much as possible, you need as part of your assessment – your conversation – with the parent, to glean an idea of their values and their life story as it relates to the decision in question.
- Another common area of difficulty is where a person with a cognitive impairment gives superficially coherent answers to questions, but it is clear from their actions that they are unable to carry into effect the intentions expressed in those answers (in other words, their

executive function is impaired). It can be very difficult in such cases to identify whether the person in fact lacks capacity within the meaning of the MCA 2005, but a key question can be **whether they are aware of their own deficits – in other words, whether they are able to use and weigh (or understand) the fact that there is a mismatch between their ability to respond to questions in the abstract and to act when faced by concrete situations**. Failing to carry out a sufficiently detailed capacity assessment in such situations can expose the person to substantial risks.

4. *Can the person communicate their decision?*

- Any residual ability to communicate is enough, so long as the person can make themselves understood. This will be an area where it is particularly important to identify (and to demonstrate you have identified) what steps you should be taking to facilitate communication: for instance, reproducing as best as possible the manner by which they usually communicate, providing all necessary tools and aids, and enlisting the support of any relevant carers or friends who may assist with communication.

What if the person does not have the mental capacity to make the decision?

Best interest's decisions should be made by the decision maker (children's social worker due to the nature of the decision) with:

- Input from the individual wherever possible
- This will be based on the relevant circumstances, person wishes, views, beliefs, values in consultation with relatives, carers, long standing friends etc.

and will include reference to:

- Less restrictive options – what other less restrictive options are available? What has been tried and failed?
- Could the person regain capacity and could the assessor wait for this?
- How the person was involved in the best interest decision making process
- The decision was not based solely on age, appearance or condition (although these may well have been considered under relevant circumstances)
- Issues of culture should be addressed here as well as emotional and physical well-being.
- This ties in with the 'proportionate response' to the harm that would otherwise occur and whether the intervention or restrictions should be time limited.