

Substituted parenting:

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

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Introduction

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

It is not clear what the courts understand by the term 'substituted parenting': "*Whether the situation I have described could or indeed should be described as "substituted parenting" is a matter for others to decide... In the absence of a clear description of the dynamic that defines what substituted parenting is, ...*" (PQR - Supported Parenting For Learning Disabled Parents [2018]).²

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

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

Learning disabilities/learning difficulties (LD)

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

Aims

The project's overall aim was to develop a common understanding of, and clarity about, the meaning and use of the term 'substituted parenting' by legal and social work professionals. It also sought to ensure that parents with LD could understand the term, associated risks and how to mitigate them.

Methods

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

Four focus groups were undertaken with parents with LD from advocacy groups across England. A total of 21 parents were present, 18 mothers, three fathers. The focus groups discussed how the parents understood the term 'substituted parenting' and how it could be more easily explained to parents, how parents should be supported and how parents could avoid the support they

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

² [PQR \(Supported Parenting For Learning Disabled Parents\) \(Rev 1\) \[2018\] EWFC B72 \(30 October 2018\) \(bailii.org\)](#)

received being seen as ‘substituted parenting’. The focus groups were undertaken online and face to face.

Twenty-one professionals, recruited via their professional organisations, were interviewed – as shown in table A. The interviews investigated how the professionals understood the term ‘substituted parenting’, where they believed the term had come from, how the term was used in court and if the perceived risks (of support amounting to ‘substituted parenting’) were analysed and options to address those risks explored.

Table A. Sample for professional interviews

Professional group	Number of interviews
Judges	6
Barristers	4
Solicitors	2
Social workers	3
Cafcass Guardians	2
Advocates	4 (3 in one group interview)

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

Findings

Themes from the parents focus group interviews

Section 1: About the term ‘substituted parenting’

Parents understanding of the term: Parents were confused by the term ‘substituted parenting’. Parents regarded the term as inaccessible; parents didn’t know what the word ‘substitute’ meant but most understood the term was ‘negative’ and related to parents being ‘replaced’.

Other ways of explaining ‘substituted parenting’: Words suggested by the parents to explain this term included ‘taking over’, ‘pushed to the back’, others ‘taking charge’ and ‘parent alienation’. Parents used the analogy of a footballer being sent off and of a substituted teacher taking over a class to explain the term.

Section 2: Contextual issues

Parents' support need: Parents know they need support to ensure the best outcomes for their children. Parents need positive relationships with support workers where they feel valued and respected and feel safe enough to trust the workers. This support should be individualised and tailored to their particular needs and circumstances. Parents should receive support in their own right from adult services and the support of an advocate.

Parents' understanding of professional expectations: Parents feel that they are not expected to be able to parent by the professionals they come into contact with. This lack of trust undermines relationships and is often due to previous negative interactions. Parents are often scared and anxious while being provided with support, due to this lack of trust in professionals.

Section 3: Specific issues relating to substituted parenting

Parents are powerless to challenge 'substituted parenting': Parents are 'stuck with' 'substituted parenting' with no ability to challenge workers because parents feel powerless in their relationship with workers from Children's services. The parents felt that they were unable to challenge how workers behaved in their home and with their children, as this may be used against them.

Professionals need to support parents' relationship with their child: Supporting parents' relationship with their child is key to reducing the risk of support being seen as 'substituted parenting'. Parents were clear that they should have the primary relationship with their children and that workers should always try to signpost the children towards them, the parent, rather than over-engage with the children themselves.

Themes from the individual interviews with professionals

Section 1: About the term 'substituted parenting'

Definition of term: No clear definition was known but the term was understood to apply in circumstances where there was a high level of potential support by professionals.

Other terms used: A number of other terms were used as alternatives to 'substituted parenting'. These included: 'parenting by others', 'parenting by professionals', and 'parenting by the state', all carrying equally negative/deficit-based connotations.

Use of term: The term was used in circumstances involving, potentially, up to 24-hour support by professionals. This was mainly considered to be undesirable and unfeasible, although some positive aspects were identified.

Evidence for and origin of the term: There was a lack of clarity or consensus regarding the origin of the term 'substituted parenting' with most professionals being unable to say where the term came from.

A negative term: ‘Trump card’, ‘gobbledegook’, and ‘jargon’ were some of the descriptions used. Concern was expressed that no one could actually cite the source of a term that had become common currency and acquired a derogatory, value-laden shortcut meaning.

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

Section 2: Contextual issues

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

Risks related to parenting by adults with learning difficulties generally: A lack of understanding the impact of parents’ learning difficulties on their parenting can result in assumptions being made about their lack of practical ability, their inability to learn about attunement, to change or to learn quickly enough.

Distinction between physically disabled parents and learning-disabled parents: Physically disabled parents were presumed to be attuned to the needs of their children and able to assess risks, whereas parents with learning difficulties were not. Exercise of parental responsibility was also considered a key issue.

Parents as bystanders: There was a perception that parents might be happy to become a ‘bystander’, implying some sense of choice/decision-making on the part of the parent, rather than an outcome over which they have little, if any, control. Similarly, parents with learning disabilities were sometimes thought to be generally susceptible to authority figures. The role of independent advocates was seen as important when considering the power imbalance between parents and professionals.

Perceived risks relating to the provision of support for parents with learning difficulties: These risks included: lack of a clear plan, lack of clarity and consistency regarding workers’ roles and responsibilities, and a risk of workers ‘doing’, rather than teaching parents. It was noted that parents’ support needs are not always assessed properly and that services would be more risk averse if the child was not the parents’ first child.

Lack of long-term support: In contrast to Adult services, Children’s services are not generally involved in the provision of long-term support (other than for disabled children). Concerns about the need for long-term support included the issue of children’s changing needs – a factor viewed mainly as negative.

Social engineering and human rights: It was acknowledged that social engineering³ was not the function of local authorities or the courts and that particular care needed to be given in cases involving the potential removal of children from parents with learning disabilities.

³ Social engineering – in the family court context, the requirement to avoid ‘social engineering’ relates to it not being enough to show that a child could be placed in a more beneficial environment, there must be other cogent reasons that justify the removal of a child from its family.

Section 3 – specific issues relating to substituted parenting

Cost of support: It was felt that, while not publicly acknowledged, the cost of 24-hour support, which would amount to ‘substituted parenting,’ was a live issue. Costs needed to be ‘proportionate’ and ‘doable’. Costs were referred to as ‘unrealistic’, ‘not sustainable’ ‘too expensive’. Actual cost-benefit analysis tended not to be carried out.

Distinction between paid-for home help and/or childcare, and local authority-provided support: Different standards were thought to be applied to parents with learning disabilities, when considering whether it was appropriate for family support to be provided by third parties.

Perceived risks relating to ‘substituted parenting’: The main risks were perceived to be a high level of involvement by professionals (inconsistency, lack of continuity, confusion for children), children’s potential attachment to professionals, and intrusion into the family life/normal childhood.

Analysis of perceived risks relating to ‘substituted parenting’ and consideration of options to address those risks: It was felt that perceived risks, identified in relation to ‘substituted parenting’, were either not analysed at all, or were not analysed to the extent they should have been in court. Reasons given for this omission included the theoretical nature of the potential support package i.e. the support had not been and would not be implemented in any event, so no further examination was needed.

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

Conclusion

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

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

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

Identifying and raising such a concern is, of course, important. It is, however, essential that concerns are not just raised, but are carefully analysed to be sure that they are based on fact, not speculation, and that options have been explored to address, manage, mitigate, or even eliminate those concerns where possible.

This is particularly so where the concerns are based on theoretical support packages, rather than actual evidence, and the potential consequences are so significant for the family. The family is entitled to a fair process, whatever the eventual outcome.

Key recommendations for policy and practice

Use of the term/concept of 'substituted parenting'

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

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

RECOMMENDATION 2: Where a concern is expressed that a proposed support package will amount to 'substituted parenting', the professional should a) identify which specific elements of the support package are potentially problematic b) assess the likelihood and impact of the risk in relation to each specific element c) identify options to address / reduce / eliminate / manage each of the identified risks and d) trial the options, where possible.

This analysis should be specific to the adults and children of the particular family concerned; it should not be conducted as a generic, theoretical exercise. See **Appendix 1** for an example of an analysis template.

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

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

Attachment theory

RECOMMENDATION 3: Where there is significant reliance on attachment/attunement to justify a child's removal, there must be robust evidence that a) the report writer has the appropriate training, qualification or expertise to make the assertion and b) options have been explored to address the concrete concerns raised, specific to that child and that parent.

Long-term support

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

RECOMMENDATION 5: Where the concept of 'long-term support' is raised as a concern, it should be broken down into child age-related stages and evidence-based, specific, concerns articulated, together with the options that have been taken into consideration to address those specific concerns.

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

Labels/flags as indicators of need

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

Terminology

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

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

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

Powerless parents who recognise the need for positive support

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

Training and awareness

RECOMMENDATION 11: Those responsible at senior level for training in the social care and legal/judicial sectors should ensure that appropriate training exists and is made available.

RECOMMENDATION 12: Professionals working with families where a parent has LD should, at a minimum, be familiar with the most recent edition of the Good Practice Guidance on working with parents with a learning disability (currently 2021).⁴

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

⁴ [FINAL 2021 WTPN UPDATE OF THE GPG.pdf \(bristol.ac.uk\)](#)

RECOMMENDATION 14: The 2018 statutory guidance Working Together to safeguard children⁵ should be revised to include a prominent reference to the Good Practice Guidance on working with parents with a learning disability and the need for practitioners to be familiar with that document before starting to work with families where a parent has LD, reflecting the judgments of Mrs Justice Knowles in XX, YY, and Child H (Rev1) [2022]⁶ and the Court of Appeal in H (Parents with Learning Difficulties: Risk of Harm) [2023]⁷.

Other outputs from the study

Full Report

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

Easy Read summary

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

Policy briefing

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

Film for parents and professionals

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

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⁵ [Working Together to Safeguard Children 2018 \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/711111/Working-Together-to-Safeguard-Children-2018.pdf)

⁶ [XX, YY and Child H \(Rev1\) \[2022\] EWFC 10 \(19 January 2022\) \(bailii.org\)](https://www.bailii.org/uk/courts/ew/cases/2022/10/XXYYandChildHRev1.html)

⁷ [H, Re \(Parents With Learning Difficulties: Risk of Harm\) \[2023\] EWCA Civ 59 \(02 February 2023\) \(bailii.org\)](https://www.bailii.org/uk/courts/ew/cases/2023/59/HReParentsWithLearningDifficultiesRiskofHarm.html)