

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

Next Reviewed	November 2024
Responsible Manager	Pier Pritchard

Section 1: Introduction

This joint working practice guidance is intended to encourage greater collaboration between Adult and Children's Services. It is intended for staff in Children and Families Services and Adult Social Care who are working with parents with learning disabilities and/or learning difficulties. It is underpinned by the Department of Health *Good Practice Guidance on Working with Parents with a Learning Disability*, which was updated by the Working Together with Parents Network in 2021: [FINAL 2021 WTPN UPDATE OF THE GPG.pdf \(bristol.ac.uk\)](https://www.bristol.ac.uk/gpg/)

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 and may relate to difficulties in learning experienced as a result of trauma. They would not generally fit the eligibility criteria for support services in their own right from learning disability and autism services.

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.

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 promoted in the Care Act 2014 for adults who cannot meet two or more specified outcomes (including carrying out caring responsibilities if the individual has a child). Specifically, the 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.

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 that 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). The Local Authority have a duty to advance equal opportunity for disabled people. We know that many people with a

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.

Section 2: Principles of Good Practice

Good practice is underpinned by policy, legislation, and guidance, including Working Together to Safeguard Children: A guide to multi-agency working to safeguard and promote the welfare of children (HM Government. 2018), and The Care Act 2014 Care and Support Statutory Guidance, (Department of Health) and the *Good Practice Guidance on Working with Parents with a Learning Disability*, (Department of Health, updated by the Working Together with Parents Network in 2021).

Legislation and guidance set out that:

- Children have a right to be protected from harm.
- 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.
- Support plans should enhance independence and promote wellbeing, through the lens of strength-based, person-centred practice.
- Additional support needs should be met by the timely provision of specialist assessments and services.
- Agency responses should be needs-led, proportionate, and should 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 considered and support for young carers should be expedited. This is in conjunction to providing support to the parent(s) and their family.
- The wellbeing principle is at the core of Care Act assessments for parents who are eligible for support.
- Diversity should be valued and fully considered in agency responses.

The Department of Health *Good Practice Guidance on Working with Parents with a Learning Disability* identify five key features of good practice in working with parents with learning disabilities:

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

Section 3: Eligibility for assessment and access to services

Adults

The Care Act 2014 sets out in one place, local authorities' duties in relation to assessing people's needs and their eligibility for publicly funded care and support. Under the Care Act 2014, local authorities must carry out an assessment of anyone who appears to require care and support, regardless of their likely eligibility for state-funded care. The focus of the assessment should be on the person's needs and how they impact on their wellbeing, and the outcomes they want to achieve.

The Mental Capacity Act assumes a person has the capacity to make a decision themselves, unless it's proved otherwise. Therefore, wherever possible, people should be assisted to make their own decisions and we should not treat a person as lacking the capacity to make a decision just because they make an unwise decision. 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.

Children

The Children Act 1989 places a duty on local authorities to promote and safeguard the welfare of children in need in their area. Parenting capacity and the risks to a child must be assessed, and support provided, as part of a continuum:

- Where a child is in need of support at an early help/support level
- Under section 17 as a 'Child in Need'
- Under section 47 where a child is considered to be at risk of significant harm and in need of protection.

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, the importance of the parenting role and the need to provide additional support to families who may not have met the threshold for certain adult focussed services should be recognised.

Section 4: Understanding Adults and Children's Services

In order to ensure effective joint up working, it is imperative that everyone understands the roles of each team;

An overview of Children's Services in Wiltshire

Integrated Front Door (IFD)

The IFD provides a 24-hour response for children 7 days a week, 365 days a year. The service consists of the MASH (Multi-Agency Safeguarding Hub), the Emergency Duty Service (EDS) and the Early Support Hub (ESH).

MASH is the front door for all referrals in relation to all children in Wiltshire and is co-located with police and health colleagues to ensure timely decision making occurs in response to safeguarding referrals. EDS provide emergency cover for situations that happen outside normal working hours. The ESH aims to build effective support within communities for children and families where there is not a safeguarding risk, to ensure families receive the right support at the right time for them.

Support and Safeguarding Teams (SASS)

We have five SASS teams in Wiltshire. Two based in Trowbridge, one in Chippenham, one in Devizes and another in Salisbury. Work is passed to these teams from the MASH. The teams work with level 2b early support intervention, children in need, children subject to child protection plans, children subject to pre-proceedings and legal proceedings. In addition to the social workers, each team has an establishment of family keyworkers who can provide intensive support in respect of areas of need, including parenting support.

Specialist Assessment, Intervention and Family Time Team (SAIFT)

The SAIFT Team is a county wide team with bases in Salisbury and Trowbridge. Referrals come into SAIFT from the SASS Teams. The Team has a multitude of functions including completing intensive, time-limited, community-based parenting assessments. The team also complete Parenting Assessment Manual Software (PAMS) assessments if a parent has a learning disability (see Section 6 for further details). The SAIFT Team also manage family time opportunities for children who are not looked after by their parents. The team are also responsible for a number of projects including the Pre-Birth Intervention Team, Dads Matter Too and Letting the Future In. Wiltshire's Family Drug and Alcohol Court (FDAC) and Pause also sit within the SAIFT Team.

Children and Young People with Disability Teams (CYPDT)

There is a disability service, Children and Young People's Disability Team, which has bases in Chippenham and Salisbury. The team consist of social workers and occupational therapists who provide intervention to families where the children have a disability or impairment. The team work with children aged 0 – 18.

Children in Care and Kinship and Fostering

There are two Children in Care teams in Wiltshire, based in Salisbury and Chippenham. The teams include social workers who work with children and young people in care (aged 0-18) and Personal Advisors (PAs) who work with care experienced young people (aged

If you think a child or young person is at risk of significant harm, or is injured, contact the Integrated Front Door on **0300 456108** or email **mash@wiltshire.gov.uk**.

18-25)

An overview of Adult Services in Wiltshire

Advice and Contact Team

The Advice and Contact Team (A&C) is the front door/ front line service to Adult Social Care in Wiltshire. The team works within the statutory duties of the Care Act 2014 in relation to prevention and managing risk and supports all customers and partners of Adult Social Care to make referrals, including raising Safeguarding alerts. A holistic and strengths-based approach is taken in supporting people to remain as independent as possible, through good quality conversations, the availability of reliable information and effective signposting.

Moving on Service

The Moving On Service is a new team which will start working with young adults (aged 18 – 25), who are open to CYPDT and will grow to eventually work with all adults (aged 18 -25), who have been open to social care teams and who have a long-term social care need. The service will support young people in fulfilling their pathways to adulthood. The aim of the Moving On Service is to better prepare young adults and their families for adult services and the team will work closely with other professionals to ensure a smooth journey from childhood to adulthood.

Ongoing Support Team

There are three Ongoing Support Teams (OST) in adult care, made up of social workers, occupational therapists, and social care practitioners. They support adults with issues they are facing as a result of a disability or health condition or, sometimes, as a result of their social circumstances. The teams include expertise across a range of areas, for example, people living with dementia, complex neurological conditions, substance misuse, end of life support, physical disability, mental health, homelessness and learning difficulty.

The Learning Disability and Autism Service (LDAS)

The Learning Disability and Autism Service is an adult social care service. The teams are made up of social workers and social care practitioners. They work with adults (aged 18 and over) who have a diagnosed learning disability and/or an Autistic Spectrum Condition who have social care needs. We work alongside our colleagues in Wiltshire Health and Care Community Services, Avon & Wiltshire Mental Health Partnership amongst others. They also work with our colleagues in Children social care when young people are preparing for adulthood and may transition from a Children's team to LDAS.

If a parent or carer you are working with needs help to support them to parent because of a learning disability or difficulty, if the parent consents, or where they lack capacity, you can contact the Adult Advice and Contact Team on **0300 4560111** or use the online referral portal at adults@Wiltshire.gov.uk

Section 5: 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.

In reference to best practice, links will be made between adults and children's services as early as possible to enable parents to have the support that they are entitled to, in order to support them to care for their children. However, there may be scenarios where it is not possible. It is the responsibility of the teams to liaise and work in partnership in terms of timeframes and requests for urgent responses.

Referrals

Joint working should begin as early as possible in the process. Therefore, where appropriate, teams need to refer families to each other. Teams are responsible for their own decision-making about whether an adult or child will be assessed. However, consideration should be given to sharing the rationale for declining to complete an assessment, so that partner agencies are able to understand decision making, and the impact of any decision making on their area of practice and the people that they are supporting.

At the point of a MASH referral (both children's and adults), teams should check whether adults in the home are known to either service and should pass this information on, either directly to the Adult MASH or via the [MASH inter-agency referral form](#) for children's MASH.

Some families will have their first contact with social care in relation to the needs of the adult rather than the child(ren). Adult Social Care or Children and Families social workers will ensure that children who are potentially in need or at risk of harm are referred to Children's MASH in a timely way. Adult Social Care workers will ask all service users if they have a dependent child during the 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 SASS Team and a children's social worker. The children's social worker will complete a Single Assessment within 45 days from the point of referral. Wiltshire Council's Single Assessment process incorporates consideration of a child's developmental needs, parenting capacity and family and environmental factors. The assessment will inform a plan for the family which could include case closure, step-down to ESH, support at 2B (family keyworker), child in need planning or escalation into child protection, pre-proceedings or care proceedings processes. The plan will be coordinated by the family keyworker or allocated social worker with support and interventions being provided by a multi-agency network which may include the Health Visitor, Nursery Nurse, Family Nurse Partnership, Education, Fearless (domestic abuse service) and Turning Point (substance misuse service). Regular reviews of the child's plan will be undertaken. Any specific or additional service that has cost implications will be subject to approval at the Edge of Care panel which sits every Thursday.

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. Referrals to adult services are received by the Advice and Contact Team where they are triaged. All referrals are then reviewed using an 'Allocation Referral Form'. This includes a risk assessment which is completed to determine the priority for allocation. Once allocated, adult services aim to complete assessments within 21 working days. If a person is assessed as having eligible needs, an individualised Care and Support plan will be developed in consultation with the adult to ascertain what outcomes the adult would want to achieve, with a focus on how the individual's outcomes can be achieved in a person-centred way.

The Care Act says that local authorities should consider any parenting responsibilities a person with care and support needs has. Adult social care will not provide a Parent Enabling Assessment, (which is sometimes asked for by the court within family proceedings). Instead, they will complete a Care Act Assessment, which Parent Enabling forms a part of. This considers what difficulties people may experience in reference to carrying out parent enabling/caring responsibilities. The discussion will include the following: what support network is in place, how the person is managing and any concerns they have. Within this assessment adult services should establish if the children are known to Children's Services.

Social workers from both teams should discuss a joint assessment plan within the first week of allocation. This should include consideration of whether jointly 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 the family and each other in a timely way. Careful consideration must be given to ensuring assessments and plans are accessible to the family for example, social workers should ensure that there is sufficient time to go through the assessment with the family and it may also be beneficial for easy read summaries to accompany the documents, (see appendix 4 for a good case example).

Involvement in Safeguarding and Meetings about the family

Where there are safeguarding concerns about the child, children's services will ensure adultcare 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, 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.

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 lies with individual teams.

Support from the family's network

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

Section 6: Specialist Assessments

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 of all abilities. The assessment should only be completed by a professional who has completed accredited PAMS training. There are several accredited trained practitioners within the SASS and SAIFT Teams.

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.

Pre- 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 7: 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.

Practitioners need to ensure that all communication for parents with LD is accessible.

- 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.
- Clarification and consistent reclarification to ensure understanding.

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. Access to independent advocacy is identified as a key feature of good practice in the Department of Health *Good Practice Guidance on Working with Parents with a Learning Disability (2021)*. The Department of Health identify that independent advocacy and self-advocacy support should be made available at the earliest stage to help parents access and engage with services from the outset:

“Failure to do so may make it difficult to argue that the parents have been able to participate fully in the process from the start (as is their legal right), that they have understood what the concerns are and what they needed to do to address those concerns. This procedural unfairness may amount to a breach of the family’s legal rights, particularly if it adversely affects the chances of the child(ren) remaining in the care of their parents”

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 the duty of adult services, 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. Practitioners should be aware that creating the best environment for teaching could increase the parents' capacity to learn and sustain positive change.

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 relation to parenting but also in other aspects of their lives. All care and support plans 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. Social workers must make reasonable adjustments to accommodate the needs of parents with a learning difficulty or disability. 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 needs, and there are examples of this being successfully argued.

The Department of Health *Good Practice Guidance on Working with Parents with a Learning Disability* (2021) states that whilst long-term support should be available to parents where necessary, this should not extend to support that is tantamount to substituted parenting. There is recent case law in which the Court of appeal laid out how they want Local Authorities to approach the idea of substituted parenting with parents with learning difficulties. The court needs to be able to identify the level of support needed, what the Local Authority can do and is obliged to do, and whether these measures meet the child's welfare needs: *"The court should assess what the package would look like, how practical it is and how intrusive it would be for the child. To decide whether support would become substituted parenting, the court should determine the parenting that professionals would carry out, the extent of the risk of harm to the child from the level of professional intervention and the possible steps to mitigate the risk."*

Case: [Re H \(Parents with Learning Difficulties: Risk of Harm\) \[2023\] EWCA Civ 59 \(2 February 2023\)](#)

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. Practitioners are to encourage

'good' choices. Whilst a parent with capacity is able to make an unwise choice, practitioners should always remember that the needs of a child are paramount, and take the relevant safeguarding steps where a parent's choices put children at risk of harm.

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 to 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 to the family. It is best practice to share assessments with families in person, with their advocate present if applicable.

Appendices

Appendix 1: References and legal framework

Department of Health *Good Practice Guidance on Working with Parents with a Learning Disability*, which was updated by the Working Together with Parents Network in 2021. [FINAL 2021 WTPN UPDATE OF THE GPG.pdf \(bristol.ac.uk\)](#)

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

Emerson, et al (2005) Adults with Learning Difficulties in England 2003/4. Leeds health and Social Care Information Centre.

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

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.

Appendix 2 : Checks and balances when assessing parents with a learning disability or difficulty

- 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.

Appendix 3: Assessing Mental Capacity

Mental capacity assessments must be time and decision specific. 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. 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.
- 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 (P) 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?*

- 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.
- 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 the 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.

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

In the event that P is assessed as not having capacity in relation to a specific decision, then a Best Interest's decision should be made, a decision maker will be established, this will be determined by the nature of the decision. If the decision is in relation to care and support of the parent, the decision maker may be the allocated Social Worker if P does not have a Lasting Power of Attorney (LPA) registered with the Court of Protection in relation to health and welfare. If the decision relates to childcare / a decision in relation to the scope of involvement attuned with Children's Services the allocated Children's Social Worker may be the decision maker, due to the

nature of the decision) with:








- Input from the individual wherever possible
- Input and consideration from all relevant others (this may include family members or significant others.
- This will be based on the relevant circumstances, person wishes, views, beliefs and values.

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 and religion 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

Appendix 4: Good Practice Example: making resources accessible:

Report for Initial Child Protection Conference on DATE at TIME

<p>Managers Comment</p> 	<p>We are worried that your relationship with MUM may not be safe for a baby. This is because; you have used drugs; you and MUM have or have had mental health difficulties; there may be domestic abuse in your relationship; you have been violent in the past; MUM does not have permanent accommodation; you have both needed support from social services growing up and you are both young parents-to-be.</p>
<p>Our worries</p> 	<p>I have written below why I am worried about YOUR UNBORN CHILD .</p>
<p>Your childhoods</p> 	<p>Both you and MUM were open to social services growing up, MUM due to her mum's mental health difficulties. She did not have consistent care from her mum. DAD, you struggled with your anger and were involved with the police.</p>
<p>Housing</p> 	<p>MUM was living where you are, accommodation with no running water or toilet facilities. She is now however living with her dad and step mum. Whilst this is great for now, it is not a long-term answer as there are lots of people living there. MUM needs to keep working with us so we can find her and YOUR UNBORN CHILD suitable accommodation.</p>
<p>Mental Health</p> 	<p>I am worried about your health DAD. You told me you have psychosis, ADHD, Borderline Personality disorder and high-level traits of PTSD. Your GP told me that they are worried about your mental health, including self-harm and suicide attempts. I am worried that this could mean that you could struggle to manage with an unpredictable baby and that YOUR UNBORN CHILD may not be safe. You struggled to manage your emotions in a housing appointment, which clearly made you anxious.</p>
<p>Your police history</p> 	<p>DAD , you were involved with the police a lot when you were younger and there is a recent offence on your record. I need to be able to explore the risk that this poses to YOUR UNBORN CHILD. I am aware that a lot of the offences were when you were younger, and I will take this into account.</p>
<p>Your relationship</p> 	<p>I am worried that your relationship has not always been good and that you are very dependent on each other. You both need support to understand what a healthy relationship is and what is and isn't acceptable. I need to make sure that you can ensure YOUR UNBORN CHILD is not caught up in any arguments you may have.</p>