A qualitative exploration of the views and experiences of family court magistrates making decisions in care proceedings involving parents with learning disabilities

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Accessible Summary

- Some research shows that parents with learning disabilities often have their children removed from their care. When someone is worried about a person with learning disabilities caring for a child, magistrates in family courts sometimes decide who will look after the child.
- Researchers interviewed four family court magistrates. They were interested in what it has been like for the magistrates making decisions in court when the parent had a learning disability.
- This article talks about three parts of their stories:
  - their knowledge about learning disabilities and what they think others know,
  - important things when deciding if a parent can look after their child,
  - if knowing a person with a learning disability changes what they do as a magistrate.
- The findings could be used to help people with learning disabilities think about what things might be important if someone is worried about them looking after their children.

Keywords: Learning disability, parents, family court, magistrates
Summary
A small evidence base suggests that parents with learning disabilities are likely to have their children permanently removed from their care. There is no known research involving magistrates in England, despite their role in care proceedings. This study aimed to explore the experience of magistrates making decisions in care proceedings involving parents with learning disabilities. Four family court magistrates took part in a semi-structured interview. The findings suggest that the magistrates in this sample perceive a distinction between themselves and others in terms of their ability to accommodate complexity in conceptualising learning disabilities. The ability to appreciate such complexity was considered important by magistrates in them adopting a more proactive role when presented with expert opinion. Four main influences were spoken of when determining the best interests of the child: timescale and age of the child, expert opinion, parenting abilities, and support. Participants indicated how their experiences with people with learning disabilities outside of the court system have impacted on their role within care proceedings and have shaped their awareness of the limits of their own knowledge. Magistrates indicated a general need for more training about learning disabilities. Limitations and implications for practice are discussed.
Introduction
Based on a large-scale study of parents with learning disabilities and the child protection system in England, Booth and Booth (2004b) concluded that these parents were between 30 and 60 times more likely to be the focus of a care application than estimates of their numbers in the general population would predict. The picture regarding removal rates, however, is mixed. Emerson et al. (2005) found that 48% (n=97) of parents with learning disabilities interviewed in a national English survey were not living with their children, and Booth and Booth (2004a) found that 75% (n=95) of the children of parents with learning disabilities in their study had been placed outside of their family home. In contrast, Cleaver and Nicholson (2008) found that 83% of a group of 64 children of parents with learning disabilities were still living with their parents three years after a referral had been received by the local authority.

A number of reasons have been suggested for why parents with learning disabilities may be more likely to be involved in the child protection system. For example, some evidence suggests that these parents are often referred to services at crisis point, at which time appropriate support cannot be implemented (Tarleton et al., 2006). Some parents may resist engagement due to perceived threat from services arising from fear, confusion or lack of understanding (Ward & Tarleton, 2007). Once in the system, parents with learning disabilities may experience barriers to support arising from negative attitudes and stereotypes. For example, difficulties with parenting may be attributed solely to the learning disability rather than concomitant social inequalities such as poverty and social exclusion (Booth & Booth, 1993). Parents with learning disabilities may also experience discriminatory treatment in which they are judged using stricter criteria (Tarleton, 2007) or lack legal representation during the child protection process (Booth & Booth, 2004a). However, whilst some evidence indicates professionals may regard the parent’s difficulties as being ‘irremediable’ due to the learning difficulty itself (Booth & Booth, 2004a), other evidence indicates that child removal is seen as a ‘last resort’ and the learning disability is not used as the sole criterion (Cleaver and Nicholson, 2008).

In England and Wales, family cases can be heard in family proceedings courts with panels comprising magistrates, a district judge, or both. Whilst district judges are trained lawyers with experience and are paid, magistrates are lay people who take on the role voluntarily and are unpaid. Although magistrates are not trained lawyers,
they receive training for their role. There is very limited research that has explored the decision-making of magistrates in care proceedings involving parents with learning disabilities. In Australia, McConnell et al. (2002) conducted a large-scale study to examine court processes and decision-making in such cases. The findings suggested that magistrates considered it important to assess whether parents had been given a fair chance to correct their difficulties through the provision of support. Magistrates were also influenced by the willingness of parents to cooperate, accept direction, show insight into their difficulties and demonstrate they could make changes. However, McConnell et al. (2002) also found that magistrates relied on expert information regarding potential for change and IQ assessments were used regularly in this process. This implies that perceived difficulties with parenting may be attributed primarily to the learning disability rather than other factors such as living circumstances. In England, Booth and Booth (2004a) conducted interviews with nine lawyers and five judges to discuss reasons for higher removal and adoption rates of children of parents with learning disabilities observed in their sample. Pertinent factors influencing likelihood of removal were: the seriousness of the case; the view that parents with learning disabilities were either unable to learn new skills or to learn them quickly enough in time to meet the needs of the developing child; pressures placed upon participants to avoid unnecessary delays in finding permanent placements; reluctance of professionals to take risks; lack of support from the parents’ family; and, lack of commitment from statutory services to support parents either due to time and financial constraints or a perception that the parent’s needs may be too complex and difficult to resolve.

Taken together, the above studies indicate strong grounds to explore further whether parents with learning disabilities might be disadvantaged during care proceedings. Despite their central role in such proceedings, there has been no known published research involving magistrates in England. Although some research has been completed in Australia, findings cannot simply be extrapolated to magistrates in England who, unlike their Australian counterparts, are not required to be trained lawyers. Consequently, this study aimed to explore the experience of magistrates making decisions in care proceedings cases involving parents with learning disabilities. Given the lack of predefined hypotheses, an exploratory qualitative method was utilised.
Method
Semi-structured interviews were conducted with participants and were analysed using Interpretative Phenomenological Analysis (IPA). The main issues explored in the interview were: understanding, experiences and perceptions of ‘learning disability’; views and perceptions of how a learning disability might impact upon parenting; influential factors in decision-making in care proceedings involving parents with learning disabilities; and, training, guidelines or policies drawn upon when making decisions in such cases. Magistrates were not asked to specifically focus on either mothers or fathers with a learning disability but, instead, to draw on their experience and perceptions more broadly. Interestingly, in the interviews none of the magistrates mentioned the sex of the parent with a learning disability as an influential factor.

Participants
To be eligible for the study, magistrates needed to be currently acting in family court proceedings and to have experience of at least one care proceedings case involving a parent(s) with learning disabilities. Participants were approached via the Magistrates Association covering England and Wales. Four family court magistrates, from different constituencies, volunteered and participated in the study (see Table 1 for details) covering a geographic spread of southern England. Small sample sizes benefit IPA research given the primarily idiographic focus (e.g. Smith et al., 2009) but with a commitment to assess commonality.

Procedure
The study received a favourable ethical opinion from the University of Surrey Faculty of Arts and Human Sciences Ethics Committee. The Magistrates’ Association deemed additional ethical approval unnecessary. Participants were all volunteers and each chose the location for their interview. All interviews were conducted by the first author in a quiet, private room in order to minimise interruptions and maintain anonymity. Interviews lasted between 40 and 70 minutes. Participants completed a
consent form and demographic information sheet prior to the interview. All interviews were audio-recorded and transcribed verbatim.

**Analysis**

The first author conducted the initial analysis. In summary, each transcript was read a number of times. Initial notes were made on each transcript and these were used to identify emerging themes. Emerging themes were then organised into a smaller number of subthemes from which overarching super-ordinate themes were identified. The validity of this initial analysis was enhanced in two ways: firstly, the second author read the transcripts and audited the emerging themes, ensuring they were grounded in the data; and, secondly, a summary of the initial superordinate themes was sent to the participants along with a feedback questionnaire. Two of the four participants gave feedback and both agreed with the themes. Following these processes, a cross-case analysis was done in order to identify patterns across transcripts. Themes were then combined, condensed and re-worded to produce the final super-ordinate themes and subthemes.

**Statement of Position**

None of the authors has acted as a magistrate. The first and third authors have clinical experience of working with parents with learning disabilities.

**Findings**

Three super-ordinate themes emerged following analysis of the transcripts. Below, verbatim extracts from participants’ transcripts are included throughout; however, ellipses (...) have been used to ease readability and indicate where material has been omitted. Themes are not distinct components but are inter-related aspects of experience.

**Theme 1: Learning disability as a continuum**

In general, three participants presented themselves as having developed an awareness of the diversity involved in learning disabilities, whilst one participant’s account presented less awareness of this variability. This contrast between heterogeneity and homogeneity was also evident in participants’ perceptions of how others view people with learning disabilities.
**Heterogeneity**

David, Mary and Simon had personal/professional experience of people with learning disabilities but Paul had no experience outside of the court environment. The magistrates with experience talked about the term ‘learning disability’ covering a wide spectrum of abilities and difficulties and how their experience had made them more aware of the heterogeneity involved. They viewed people with learning disabilities as highly individual. For Simon and Mary it was important to look at the individuals involved in care proceedings and not make generalisations. Related to this, Simon talked about the importance of avoiding assumptions based on diagnosis alone:

‘you need to look at that individual and their particular circumstances and disability and not just say, “he’s autistic and therefore he needs this and that and the other”’.

By drawing attention to the individual context of people with learning disabilities and not relying on assumptions or generalisations, it seemed that Mary, Simon and David wanted to present themselves as fair and just magistrates.

Paul’s account placed less emphasis on a spectrum of learning disability, focussing instead on more uniform ideas based on specific diagnoses:

‘Down syndrome people tend to become adults with…an age of perhaps a child…and in those circumstances the learning disability would severely restrict their ability to look after children and indeed to lead…a normal life on their own’.

Despite this, Paul did refer to different severities of learning disabilities suggesting he had some awareness of a spectrum involved. It seemed that Paul’s lack of contact with people with learning disabilities may have affected his knowledge and awareness of the diversity involved and this may help to explain some contradictions within his account.

David and Mary expressed the view that the presence of a learning disability would not invariably result in difficulties and, by implication, that absence of disability
would not mean optimal parenting. Mary expressed the likelihood that sometimes people with a learning disability may offer better parenting:

‘parenting has to be good enough and parents who have not got learning difficulties some of their parenting is it good enough? Can seriously be debatable. And some parents with learning difficulties their standard of parenting might actually be rather better’.

All participants also talked about the abilities of parents to learn new skills being dependent on the severity of the learning disability.

**Homogeneity**

Throughout, all participants made reference to the views of others, such as social workers, guardians, other magistrates and those in society or the community. In addition, David, Simon and Mary presented a picture in which they are involved within a system where others often fail to appreciate the complexity around learning disabilities:

‘They just have an attitude of they’ve got a learning disability and that’s it’ (Simon).

Simon and Mary related this tendency to see individuals homogenously to a lack of understanding of what the term ‘learning disability’ entails, such as difficulty distinguishing between mental illness and learning disability. Simon, Mary and David suggested that only those with more specialist knowledge or more experience would have the opportunity to develop sufficient awareness. Consequently, this implied they regarded themselves to be somewhat different to others. Simon and Mary also extended this tendency to see people with learning disabilities as the same when it came to their parenting abilities, with global assumptions being made:

‘there tends to be an assumption that somebody with a learning disability isn’t able to bring up a child’ (Simon).

Simon and Mary suggested some parents had been ‘set up to fail’ due to the views of others in the care proceedings system:
‘the worry is that...because the needs of learning disabled parents...in being able to support them to bring up children is often quite sort of complex and needs an understanding of the people providing that support...the temptation is to put it into the ‘too difficult box’ and say “okay, they can’t do it”’ (Simon).

Simon implies that the tendency to put people into a category is driven by the perception that providing support is too difficult to find or too complex to determine and, in essence, categorisation becomes a simple solution to this problem. Simon explained this might lead to unnecessary removal of children from their parents.

**Theme 2: Determining the best interests of the child**

All participants spoke about the welfare of the child as being of ‘paramount’ importance. In this context, participants considered a number of factors as being influential when making decisions. These are described in the four subthemes below.

*Timescale and age of the child*

All participants spoke about the need to prevent delay in care proceedings in the interests of the child. Simon highlighted how often magistrates are reminded to consider this:

‘in the interests of the child another aspect that we have to think about is the delay that all this causes because in the meantime the child is...growing up and all the attachment aspects and everything, so you know we’re told constantly, which is quite right that we can’t delay things indefinitely’.

All magistrates also talked about the age of the child in relation to the timescales involved in care proceedings:

‘The problem with assessments is that they take a long time, we’re talking about months and for a small baby, months is a big chunk of time, not so much for an older child’ (David).
Magistrates’ accounts suggested that, with older infants, delaying a case could be better tolerated and that they might do so in order to gain further information to inform the decision-making process. However, in all of this, the primary consideration was the likelihood that infant attachments might be compromised and the consequent sense of urgency to make decisions. Adoption was more likely to be considered when a young infant was involved. Magistrates also talked about the need to consider whether or not parents could learn new skills or correct concerns regarding their parenting within the child’s timescale:

‘we would need to get an expert’s report on the extent of that disability, the prognosis as to whether it can be treated and whether that again can be within the child’s timescale’ (Paul).

**Expert opinion**

All magistrates talked about the regular involvement of experts within care proceedings with Paul implying that if a parent has a learning disability, it is more likely that experts will be involved:

‘in cases where there is a learning disability and that has been virtually established, it is almost certain that experts will be called...and rely on those experts’.

All magistrates relied on evidence provided in care proceedings and expert advice/opinion formed an influential part of their decision-making. Despite it being common for participants to rely on experts to inform their decision-making, they had mixed opinions regarding the quality and type of information experts had provided in cases with which they had been involved. Simon raised a common frustration in that the ‘right’ experts were not always appointed:

‘it was apparent that...whilst she was an expert in learning disability, she had no real knowledge or expertise of people with learning disabilities as parents’.

This quote may suggest that Simon expects experts to have sufficient knowledge about parenting if they are involved in care proceedings and that they should make reference to parenting in their evidence. It is unclear from this whether experts tend
to adopt a less individualised approach in care proceedings, by focusing on learning disability broadly, or whether those appointing the experts do not prioritise expertise on parenting. Paul thought the information received in care proceedings can at times be ‘woolly’ and not assist magistrates in their decision-making. Simon and Mary referred to times when information had been provided about the person and the nature of their learning disability but with no reference to the potential impact on parenting ability, support needs, or outlook in relation to child welfare.

**Parenting abilities**

Magistrates spoke about the importance of experts providing information regarding parents’ abilities to protect and care for their children. Magistrates referred to the need to determine if the parents were able to provide ‘good enough parenting’ (Paul), although Mary explained that this is a ‘grey area’ and ‘for each case it is different as to what constitutes “good enough parenting”’. One important focus was parents’ ability to understand and meet the child’s needs, such as weaning, changing and interacting with their children. Despite this being common in cases involving parents with learning disabilities, participants seemed keen to emphasise the unintentional nature of any difficulties:

‘they may not have wanted to feed it egg and chips, but…certainly they had no idea about how to bring up the child from the point of view of weaning and so on’ (Paul).

Participants conceptualised parenting difficulties in a number of ways. David related difficulties to a ‘lack of ability to multi-task’, a lack of ‘confidence’ and ‘that ability to reflect’, whilst Mary related it to difficulties with social skills and ‘anticipating the needs of others’. David, Simon and Mary talked about parents’ abilities to retain and use new information as being influential in their decision-making. David implied that an inability to learn new skills was a more common factor in cases involving parents with learning disabilities:

‘I’ve found in cases where there are learning disabilities...then it’s that inability...to accept and absorb help because you can’t keep on saying to somebody that’s how you sterilise bottles, you can’t keep doing that’.
Participants also spoke of the need to consider the scope for change in the future and how assessments by experts are what they use to guide decisions:

‘we get reports that say they can change and they have the capacity, we have to go with that’ (David).

The abilities of parents to learn new skills and correct issues causing harm, or risk of harm, to the child were often discussed by participants in the context of the provision of support.

**Support**

All magistrates suggested that if people with learning disabilities are able to parent adequately with support then there is no reason why they should not be given the opportunity to do so. However, this was tempered by the recognition that some levels of support are unrealistic or unreasonable, or support is inevitably limited:

‘the help…at some stage will have to be withdrawn just because it will have to and there’s a limit to how much you can put in’ (David).

Removal decisions were more likely when the level of support required was regarded as too high and, therefore, unrealistic. Although there was agreement that some levels of support were unrealistic, what constituted realistic support differed between participants. Descriptions of acceptable levels of support varied from an occasional visit to parents to see how they are managing to teaching and training parents how to learn new skills. As well as considering the support available from services, magistrates talked about the influence of the availability of support from the family. Having family support appeared to make magistrates more comfortable in deciding that the child could remain with the parent(s). Simon explained that finding the ‘right’ support can be a complex process as it is difficult to determine what that support could be, as well as who might provide it. He suggested that, as a result, children may be removed from their parents unnecessarily:
'you suspect that there are cases where children are taken into care with learning disabled parents that with the right level of support or experts could stay with their parents'.
questioning or challenging experts when she had not received the information she needed, or when she thought the parents involved had been disadvantaged. In contrast, Paul drew attention to the importance of experts in guiding magistrates’ decision-making and portrayed magistrates as adopting a more passive role, allowing the experts to provide advice and, often, to direct the outcome of cases:

‘we don’t have that expertise, we rely on those people...We can’t make decisions without being told from those that should know what the situation is’.

It is possible that this more passive role could be related to the limited knowledge and awareness that Paul regarded himself as having about the complexity involved in learning disabilities. It seems that, without more extensive or specialist knowledge, he would not be able to identify a need to take on a more active role.

**Training**

Some elements of training as a magistrate are formal and mandatory, whilst others are like extra-curricular activities arranged through local areas or by the Magistrates’ Association. Participants had not received any mandatory training regarding people and parents with learning disabilities:

‘we have on odd occasions had bits of training...to try and give us a bit of insight, but it’s not part of the formal training, it’s just something that we’ve arranged’ (Simon).

Participants’ accounts highlighted a real need for magistrates to receive more information on the spectrum of learning disabilities. However, some also acknowledged that providing magistrates with an in-depth understanding of learning disabilities would be unnecessary. David explained it would be helpful for the magistracy to receive training on being involved with people with learning disabilities:

‘what we don’t get is training on actually how to talk to people and how to cope with them, in a way that isn’t patronising and so that you’re assured that they understand what you say’.
Simon and Mary pointed out that if magistrates had more training about learning disabilities then they too might be able to adopt a more active role. They also expressed hope that training would allow some of the potential false assumptions about people with learning disabilities to be dispelled:

‘there ought to be more training so that...magistrates can actually understand how people with learning difficulties can live independently...but depending on...their disability...how that impacts on their ability to look after others’ (Mary).

Discussion
Similar to McConnell *et al.* (2002) and Booth and Booth (2004a), the current study found that a parent’s ability to understand and meet the needs of the child, their capacity to accept support and develop new skills, and to do this within appropriate developmental timescales are influential in decision-making. Availability and provision of support to parents was a key factor in magistrates’ decision-making and was judged in terms of the source of support and how realistic it was deemed to be. Some participants drew attention to experiences in which the support parents required was deemed to be too complex to identify or provide. As a result, there was a suspicion that children may have been removed from their parents unnecessarily. Participants indicated a greater sense of urgency in cases involving young infants and suggested permanent placements outside of the family home are sought more often in such cases, although none indicated specific age ranges. As found by McConnell *et al.* (2002), expert opinion was central to magistrates’ decision-making and highlights the important role experts play in care proceedings. Reliance on experts who may be inexperienced or ill-equipped to provide the necessary information was raised in this study and lends support to the suggestion that professionals involved in child protection may not always have the necessary skills or knowledge to assess or support parents with learning disabilities (Tarleton *et al.*, 2006). However, as a result of having developed more knowledge or awareness of people with learning disabilities, three of the magistrates had become enabled to adopt a more active role in terms of directing or challenging experts, drawing attention to information required about the parent involved as an individual. Training was proposed as a way of facilitating other magistrates to adopt this more active role and to reduce some of the assumptions that magistrates might make about people with learning disabilities as parents.
**Implications**

Magistrates may benefit from training about the spectrum involved in learning disabilities, concomitant situational adversity such as poverty and social exclusion, and the impact of these factors on parenting abilities and involvement in care proceedings. Such information might ameliorate any tendency to attribute parenting difficulties to purely person-specific factors. Training might also develop magistrates’ awareness of the type of information they require in order to make their decisions and when the information they receive is unhelpful, thus enabling magistrates to be more proactive in relation to experts. This would be of particular importance if magistrates are indeed being expected to take on such a role in care proceedings. Training would optimally involve people with learning disabilities as research has shown that contact is an effective intervention for expanding limited conceptualisations of social groups. The findings highlight the importance placed on the role of experts in decision-making in care proceedings. As such, experts should remain mindful of the content of their reports and how this might be used. Additionally, experts should not assume that magistrates have knowledge of learning disabilities or that they have had prior contact with this client group. It may therefore be helpful for experts to provide as much information as possible in their reports, particularly regarding the specific nature of the learning disability and the individual being reported on, even if this has not been specifically requested. Given the need to prevent delay in care proceedings, timely completion of assessments and interventions is essential, especially given the extra time that people with learning disabilities may need to learn new skills and generalise them to less familiar settings (Ward and Tarleton, 2007).

**Limitations**

The participants in this study are not representative of the English magistracy. Without further studies, caution must be exercised when considering the range of the current study’s applicability. This is especially the case since all participants were volunteers and three of the four had personal or professional experience with people with learning disabilities. The response to the study was poor and it might be speculated that the nature of the topic could have made magistrates concerned they would be called upon to defend their position. Given this, it may be that some
participants in this study saw themselves as advocates for people with learning
disabilities, as their accounts seemed to reflect awareness of injustices that may affect
this client group. Indeed, it is perhaps significant that three of the four participants
saw themselves as different to the majority of their colleagues; as lone voices trying to
change a system. Future research may consider using more indirect, top-down
methods of data collection given the emerging commonalities in findings on this
topic. Given that anyone between the ages of 18 and 70 can become a magistrate
irrespective of gender, ethnicity, religion or sexual orientation future research should
attempt to recruit more diverse samples. Magistrates make decisions in care
proceedings as part of a panel and, ultimately, the decision is shared equally. Further
studies could therefore focus upon decision-making processes by groups of
magistrates. A large-scale survey of training needs might also be undertaken.
Additionally, the sex of the parent with a learning disability did not emerge as an
influential factor in decision-making in this study. However, this might be because
magistrates were not guided to think about this. Future studies might, therefore,
consider the influence of the sex of the parent on magistrates’ decision-making.

References


and the courts. A report to The Nuffield Foundation.


needs: Family experiences and effective practice*. Department for Children, Schools
and Families: HMSO.


Table 1: Participant details

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