

**Legal professionals' use and understanding of psychological expert
evidence within child care proceedings**

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Abstract

Clinical psychology and family law overlap when psychologists are instructed to provide expert opinion to aid legal decision making. Little is known about the influence of expert evidence on legal decision making processes. Decision making literature spans the social sciences and is vast and fragmented. This study aimed to gain insight into how psychological evidence in child care proceedings is used, understood and interpreted by legal professionals. This topic was addressed in the context of recent procedural changes in the instruction of experts, and to inform a growing body of literature aimed at integrating legal and psychological understandings of decision making. Interview data from thirteen legal professionals was analysed using Thematic Analysis. Four themes were identified; 'communication', 'responsibility', 'similarities and differences in identifying important information' and 'complications in weighing up the psychological evidence'. Results indicated psychological evidence informs judgements about the potential hope for children to be placed with their parents. There were indications that psychological evidence was considered necessary to inform good quality decision making, particularly in the area of cognitive assessment. Psychological information that was considered uncertain and open to interpretation was potentially vulnerable to intuitive biases in judgement. Clinical implications for psychological report writing and potential benefit of specialist training for both professional groups are highlighted.

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1.0 Chapter 1: Introduction

1.1 Overview

Child care proceedings have been subject to significant changes in recent years. These changes have focused on streamlining decision making processes with particular emphasis on reducing unnecessary delay in reaching conclusions about the welfare of children. This introduction begins by outlining key features of family law and child care proceedings before discussing the interface between clinical psychology and this area of law. The role of the psychologist as expert witness is outlined prior to considering the vast and somewhat fragmented literature on decision making. The introduction closes with a rationale for exploring the impact of expert psychological evidence on decision making processes within child care proceedings.

1.2 Family law and child care proceedings

The British justice system deals with civil and criminal matters separately. Child care proceedings fall under civil law and are heard in Family Courts. Decisions in child care cases are taken by one Judge. The Judge is likely to be either a District Judge, who has extensive legal training, or a Magistrate, who is a lay person with specialist training to sit in the Family Court. The Judge will hear and review all of the evidence presented and make a decision about what the outcome

should be based on, what is known as, the 'balance of probability'. This means that the evidence must have demonstrated to a probability of greater than fifty percent that the chosen outcome was indicated (Sendall, 2015).

Child care proceedings involve making decisions about whether children have suffered or are likely to suffer harm, where children will live and who will care for them. The key legislation underpinning these proceedings in Britain is the Children's Act (1989). All decisions made under the Children's Act (1989) and the conduct of all professionals involved in child care proceedings must be enacted "*in the best interests of the child*". Under the Children's Act (1989) an application can be made to the Court to discharge parental rights from parents and transfer those rights to the state. This means that the state assumes responsibility for the child and the parent no longer holds parental responsibility for that child. This can only happen in circumstances when the child/ children are "*suffering, or... likely to suffer, significant harm*" and where the harm, or likelihood of harm was due to; "*(i) the care given to the child, or likely to be given to him... not being what it would be reasonable to expect a parent to give him; or (ii) the child being beyond parental control*" (Children Act, 1989; s 31 (2)(a); s 31 (2)(b)). The term used to describe these criteria is 'the threshold' for state intervention. In circumstances where a Local Authority (LA) considers the threshold criteria have been met a case is brought before

the Court. The role of the Court is to decide whether the threshold has in fact been met, and if so where a child or children should reside, who should care for them and what contact they should have, if any, with their parents (Sendall, 2015; Farrington & Johnson, 2014).

In addition to the Children's Act (1989) there are a number of principles developed through case law, or previous judgements, which guide decision making within child care proceedings. Farrington and Johnson (2014) identify the key precedents set through case law as follows; "*public authorities cannot improve on nature; the child is not the child of the state; family ties may only be severed in very exceptional circumstances; adoption should only be contemplated as a last resort*" (Farrington & Johnson, 2014, pp 2-4).

In order to make decisions about the threshold, residence and care of children the Court reviews evidence from all parties and from multiple sources. The parties in this context will be the parent or parents, who are usually represented separately, the LA and the Guardian who is an experienced Social Worker by training and has the role of representing the views of the child or children. In cases where the threshold is met and parents are resisting an application to have their parental rights terminated the Court will need to review evidence relating to parenting capacity. Each party is likely to have legal representation in the form of a solicitor and or a barrister. Legal representatives have the task of taking instructions from their client and advocating on their behalf. This

takes place inside the Court but also outside of the Courtroom in advocates' meetings and professionals' meetings (Ministry of Justice, 2009). Legal representatives are also tasked with collating the evidence for the Court and on behalf of their clients. The evidence in this context is likely to involve the assessment of multiple and complex issues. These can include; neglect, sexual abuse, emotional abuse, physical abuse, domestic violence, drug and/ or alcohol addiction, learning difficulties and or learning disability, physical disability, poor educational attainment in relation to the general population, mental health difficulties, poverty, unemployment, previous involvement with the care system, involvement in crime and/ or prostitution (Farrington & Johnson, 2014; Cleaver, Unell & Aldgate, 2011; Reder, Duncan & Lucey, 2003; Reder & Lucey, 1995). Neglect was the most commonly recorded category of need for children in care in England between 2009 and 2013 (Harker & Heath, 2014). An extensive review of the existing literature regarding parenting capacity revealed that it tends to be an interaction between multiple difficulties rather than the presence of one or more problems alone that predicts the level of parenting capacity (Cleaver et al, 2011). The LA and the Guardian supply assessments of parenting capacity in relation to the issues involved in a case. The parents supply statements and relevant information regarding issues such as medical records, drug and alcohol testing results. An independent expert, such as independent social worker, medical doctor, psychiatrist or psychologist, can be jointly instructed by all parties to provide additional evidence in circumstances where the

Court deems it “*necessary*” (Sendall, 2015; Farrington & Johnson, 2014). This tends to be in circumstances where in order to make an informed decision there are issues that need to be assessed are outside of the knowledge of the Judge, the LA and the Guardian (Family Justice Review, 2011).

1.3 The interface between psychology and the law

The fields of psychology and law overlap in many areas. Research developments in the field of psychology have been said to indirectly influence written law itself. For instance, in the child care context, developments in psychological thinking about the importance of the nature of attachment between a child and parent have been reflected in principles within the Children’s Act (1989) (Reder et al, 2003). Developments in psychological thinking about child witness testimony have also been incorporated into legal practice (Reder et al, 2003). Psychology and the law also overlap in practice, and the use of psychologists as expert witnesses to assist the Court in decision making processes about children is an example of this.

There are many ways in which the fields of psychology and law differ fundamentally. Writing for practitioners who work at the interface between the disciplines, Eastman et al (2012) outline differences between the fields in the way in which each conceptualise and operationalise their purpose. The authors outline that psychology is

primarily concerned with the understanding of human behaviour and improvement of human suffering whilst the law is primarily concerned with establishing fact and pursuing justice. Legal and psychological systems also differ in the way in which they use information particularly in the emphasis they place on whether information is true or false (Eastman, Adshed, Fox, Latham & Whyte, 2012).

Fundamental differences between psychology and the law have led to ethical debates about the role of psychologists in the legal arena (Greenberg & Shuman, 1997; Gaughwin, 2004; Kaplan, 2002). Relevant to child care proceedings, issues have been raised about whether it is ethical for a psychologist to provide assessment with no means or intention of providing treatment for any difficulties identified (Shuman & Greenman, 2003; Sanders, 2007). Debates have also arisen about the ethicality of providing psychological assessments to parents under obligations to the Court and the child rather than the parent being assessed (Ferguson, 2014; BPS, 2010; Farrington & Johnson, 2014). In order to ameliorate these difficulties there are guidelines in place for psychologists working in the legal arena (BPS, 2010; Ministry of Justice & Family Justice Council, 2013). The guidelines clarify the role of the psychologist as expert witness as being distinct from the role of a psychologist in clinical practice (BPS, 2010).

The family court system and psychological science consider fact in terms of probabilities. Psychological science observes and measures phenomena and presents a level of probability that what was observed occurred by chance or was explainable by some other factor (Shaughnessy & Zechmeister, 2014). In psychological science it is never categorically stated that something is true, rather it is stated that something is significantly likely not to be false (Shaughnessy & Zechmeister, 2014). Psychological practice is guided by similar principles and tends to consider observed phenomena on continuous scales rather than by stating exact dimensional categories with certainty (Simon & Gold, 2010). In clinical practice psychologists are concerned with patterns that are present across various information sources and how these can be explained in relation to an individual's presentation (Eastman et al, 2012). This means that in clinical practice psychologists are not primarily concerned with categorising and establishing the truth of individual pieces of information. In contrast, the law is concerned with establishing the factual basis of phenomena and organises information into discrete categories in order to do this (Simon & Gold, 2010). Eastman et al (2012) suggest misunderstandings which arise through conceptual differences between the professions can be reduced with continued efforts to conduct research in areas where the professions overlap.

1.4 The role of the psychologist as independent expert witness

The British Psychological Society (BPS, 2010) guidelines for clinical psychologists undertaking expert witness duties state psychologists should be sufficiently competent to respond to instructions from the Court and they should not comment on areas outside of their expertise. It is made clear in both BPS guidelines and legal requirements for the instruction of expert witnesses that an expert has a duty to the Court and not to any of the parties individually (BPS, 2010; Ministry of Justice & Family Justice Council, 2013).

The Judge makes the decision to allow instruction of expert evidence from a clinical psychologist in child care proceedings. All of the parties agree jointly on questions to put to the expert. Legal professionals for the parties draft these questions for the Judge to agree. These questions should address issues that fall outside of the expertise of other professionals involved in the case. The answers to these questions should provide the Judge with information that is “*necessary*” to make an informed decision (Ministry of Justice & Family Justice Council, 2013; Farrington & Johnson, 2014; Sendall, 2015).

Psychologists acting as expert witnesses, in contrast to witnesses to fact, offer ‘opinion’ on the basis of their expert knowledge. The Judge will determine fact on the basis of psychological and other evidence. In

terms of parents in child care proceedings clinical psychologists are commonly asked to assist the Court with; mental health and personality assessments; cognitive assessments; assessment of the impact of mental health, personality and/ or cognitive difficulties on relationships, interpersonal functioning and/ or risk to others; prognosis, capacity and timescales for positive and sustained change; recommendations for treatment; prognosis and capacity to engage in treatment (Williams, Peart, Young and Briggs, 2015; Farrington & Johnson, 2014; Ministry of Justice & Family Justice Council, 2013).

The instruction of clinical psychologists as expert witnesses in child care proceedings has reduced significantly as a result of procedural changes in recent years (Farrington & Johnson, 2014; Children & Family Court Advisory and Support Service, 2013). These changes aimed to reduce the delay and costs caused by instructing experts in child care proceedings (Farrington & Johnson, 2014). Much of the literature regarding the use of psychologists as expert witnesses focuses on issues of quality (Brophy & Bates, 1998; Budd et al, 2001; Coles & Veiel, 2001; Faust & Ziskin, 1988; Leslie et al, 2007; Ireland, 2012). Ireland (2012) assessed the quality of 126 expert psychological assessments that had been used in family Court proceedings. Two thirds of the reports were assessed as being of poor quality. Issues raised included insufficient distinction between reported opinion and fact and inappropriate use of emotive language to describe parents

(Ireland, 2012). The literature regarding quality of reports highlights the difficulty faced by the legal profession of negotiating material which is outside of legal expertise. This literature is helpful in identifying important issues of both the volume and features of poor practice by some experts. Whilst this has implications for legal decision making processes it does not explain the impact of expert evidence in decision making.

1.5 Theories of decision making

Decision making has traditionally been considered separately by domains comprising the social sciences. Contributions to understanding decision making in the literature are heavily influenced by scholars in the fields of economics, and cognitive psychology. This is reflected in the main approaches, namely normative and descriptive approaches, to understanding decision making. In recent years psychological and legal literature reflects a more integrated approach to the study of legal decision making. Normative and descriptive approaches to decision making will be outlined before considering literature from the psychological study of legal decision making.

1.5.1 **Normative approaches to decision making**

Normative approaches developed in the field of economics and assume decision makers are rational, objective and informed actors capable of making optimal choices from a range of options (Bell & Raiffa, 1988). Normative models are therefore based on what decision makers ought to do to rationally select the best possible outcome, sometimes referred to as the rational expectations principle (Hastie, 2001). The prominent normative theory is the 'Utility Theory' proposed by Neumann and Morgenstern (1947). In this theory, 'utility' refers to anything of value and the assumption is that the decision maker acts rationally to maximise that value. The theory is most often applied in the study of economics to maximising financial wealth (Hastie, 2001). In child care proceedings, the 'best interests of the child' might represent value (or utility). Within the utility theory decision makers may aim to either maximise utility or avoid 'disutility' (Neumann & Morgenstern, 1947). In child care proceedings, disutility might therefore be significant harm to a child. Utility theory is underpinned by utilitarianism principles that rational decision makers will maximise utility for the most amount of people and for the least amount of cost (Bell & Raiffa, 1988). The main guiding assumptions of this theory are that the decision maker is a rational actor, they will prefer one option to another, they will chose a strategy that maximises utility, choices between two options should depend only on the attributes that differ between those options and finally, if option one is preferred to option two and option two is preferred to option three, the decision maker

must prefer option one to option three (Neumann & Morgenstern, 1947).

Utility theory introduced the notion of a 'gamble' between choices in decision making where the consequences of those choices are unknown (Eysenck & Keane, 2005). The theory distinguishes between risk and uncertainty by suggesting uncertainty refers to situations where the probability of potential consequences is unknown, and risk refers to situations where the probability of potential consequences is known (Eysenck & Keane, 2005). The theory posits that in reaching choices the decision makers convert uncertainty into risk by establishing the probability of unknown consequences (Hastie, 2001). In child care proceedings, decision makers might therefore instruct an expert psychologist to establish the probability of risk of significant harm to a child when a gap in available evidence raises uncertainty about the impact of mental health or cognitive functioning on a parent's ability to provide adequate care. The utility theory would suggest that in this case the expert evidence would enable the decision maker to maximise utility (the best interest of the child), and avoid disutility (significant harm to the child), by converting uncertainty (caused by a deficit in knowledge of a parent's mental health and cognitive functioning) into risk (by gaining a sense of the level of probability of parents' mental health and cognitive functioning causing significant harm from the expert evidence).

Utility theory posits that decision makers generate the expected utility (value) of each possible choice by multiplying the probability of a given outcome with the utility of that outcome (Neumann & Morgenstern, 1947). This is expressed as follows:-

Expected utility = (probability of a given outcome) X (utility of the outcome)

The decision maker is then expected to select the option that provides the maximum utility (Hastie, 2001). A key element of this theory is that the decision maker is said to consider and have control over the option that is chosen not the outcome of that option (Neumann & Morgenstern, 1947). According to this theory, if psychological evidence led the decision maker to believe there was a low probability of mental health or cognitive difficulties impeding a parent's ability to afford their child reasonable care, the option to place the child with their parent would be selected as it provides the maximum utility (the best interests of the child). Alternatively, if psychological evidence led the decision maker to believe that there was a high probability that mental health and cognitive difficulties would significantly impair parents' ability to afford reasonable care the maximum utility (best interests of the child) would be achieved by placing the child outside of their family home.

Neumann and Morgenstern (1947) suggest that if uncertainty about the potential outcome of a choice can be easily reduced by reliably

predicting the level of risk associated with each available option, rational decisions which produce maximum utility can be made. Descriptive approaches which question whether decision makers make rational judgements in uncertain circumstances will now be introduced.

1.5.2 **Descriptive approaches to decision making**

In contrast to normative approaches, descriptive approaches consider the irrationality of decision makers and study what people actually do when making decisions (Bell & Raiffa, 1988). Descriptive approaches are therefore concerned with intuitive factors which might influence decision making (Eysenck & Keane, 2005). Descriptive research in decision making has been heavily influenced by cognitive, experimental and social psychology (Hastie, 2001). There is overlap with normative approaches in the sense that experimental studies often compare normative assumptions of what people should do, if they are to make an optimal choice, with what they actually do (Eysenck & Keane, 2005).

Psychological perspectives consider that judgement and decision making are connected (Eysenck & Keane, 2005). Hastie (2001) suggests researchers of judgement and decision making ask slightly different questions in order to understand the related areas. Judgement research has tended to ask how people make sense of the information available to them in order to make decisions, whereas decision making research asks how people make choices which determine a course of

action in conditions of uncertainty (Hastie, 2001). The psychological study of judgement has revealed that people are biased in predictable and systematic ways when integrating information that informs judgements and these biases leave people prone to error when making choices (Eysenck & Keane, 2005; Kahneman, 2011). Research has shown that people rely on easily recalled information to make a judgement, this is known as the 'availability heuristic' and can lead to errors in judgement (Tversky & Kahneman, 1974; Tversky & Kahneman, 1983; Gigerenzer, 2004). Furthermore, information might be more easily accessible to memory because it carries particular emotional or personal significance to the individual (Damasio, 1994; Kahneman, 2011). It has also been found that errors in judgement can occur because people organise information categorically, so new information is considered according to how representative or typical it is of a category, this is known as 'representativeness heuristic' (Kahneman & Tversky, 1973). Another example of a predictable way in which intuition can lead to incorrect judgements is known as the 'anchoring effect' (Kahneman, 2011). This is where information, accurate or inaccurate, available to an individual provides a suggestion that influences a judgement. Research has shown that this can lead to incorrect prediction of numerical values and incorrect judgements about other people (Kahneman, 2011).

Kahneman and Tversky (1979) developed prospect theory to explain decision making in conditions of uncertainty and risk. The theory sought to explain intuitive biases in human judgement that were not explained by the assumption of rationality which underpins normative approaches and utility theory (Kahneman, 2011). According to prospect theory, people make judgements by evaluating gains and losses in relation to a reference point which represents the outcome that someone expects or feels entitled to (Kahneman, 2011). In this evaluation, people are more sensitive to potential losses than potential gains, are prone to give inordinate weight to small probabilities and can make irrational judgements by being intuitively motivated to avoid a total loss (Kahneman & Tversky, 1979; Kahneman, 2011). This is different to utility theory where people are assumed to rationally make judgements that result in outcomes which offer the highest probability of maximum utility (Neumann & Morgenstern, 1947; Kahneman, 2011).

In the absence of a unified psychological theory of decision making, Kahneman (2011) proposed that two different systems of thinking may explain intuitive biases in the related areas of judgement and decision making (Kahneman, 2011). 'System one' thinking is intuitive, irrational, unconscious and prone to bias whereas 'system two' thinking is effortful, conscious and controlled. Kahneman (2011) suggested that for efficiency the brain has evolved to execute tasks with the least effort possible and this is why humans are reliant on unconscious intuition in

many daily tasks. Humans are however capable of engaging in effortful tasks of reasoning and have potential to make rational and informed choices as a result of this (Kahneman, 2011). Decision making errors are said to occur when 'system one' intuitive processes are relied on for decision making and when they disrupt 'system two' processes during a task (Kahneman, 2011).

Studies of decision making have also been influenced by social psychology through the investigation of group processes. This has focused on identifying how groups make decisions, whether group and individual decision making processes are similar and why group decisions can be poor (Baron, Byrne & Johnson, 1998). In tasks where a group needs to reach consensus on a judgement a 'majority wins' principle is predictive of final outcome, indicating that the view initially supported by the most group members is likely to inform the final judgement (Kirchler & Davis, 1986). Another principle related to group decision making is that of 'group polarisation' which suggests that through group discussions a group, as a whole and its individual members, can adopt a more extreme version of the view initially supported by most group members (Zuber, Croft & Werner, 1992; Brauer, Judd & Gliner, 1995). Janis (1982) introduced the concept of 'groupthink' through study of poor and extreme group decision making. Groupthink describes a process of distorted reasoning which occurs in groups as a means of preserving the harmony of that group. This can

include tendencies for individual group members to censor their own doubts if they conflict with the overall view of the group, and assume a group member's silence means they are in agreement with others. Groupthink also includes the 'illusion of invulnerability', a tendency of a group to assume that they are able to succeed in overcoming a difficult problem where others may have failed (Janis, 1982).

There is no unified psychological theory or unified interdisciplinary understanding of decision making processes (Mishra, 2014). The psychological study of decision making has however revealed that decision making processes include interpretation of information (Scott, 1993). This has led psychological researchers in this field to ask questions about how decision makers interpret information and the impact of this on how that information is then used to inform the choices they make (Hogarth, 1987; Kahneman, 2011). This has revealed that human competence in interpreting information is restricted by an inability to manage large amounts of material, tendencies to simplify complex information and tendencies to inappropriately attend to aspects of that information. It has been indicated that these factors are largely unconscious and can result in the incorrect use of information in decision making processes (Carroll & Johnson, 1990).

The work of Daniel Kahneman and Amos Tversky has identified specific cognitive factors involved in the interpretation of information and investigated the subsequent impact of these factors on decision making processes (Carroll & Johnson, 1990; Kahneman, 2011). Kahneman (2011) suggests the human brain is a 'lazy controller' that has evolved with short cuts to enable some cognitive functions to be performed automatically and with minimal expenditure of energy. The availability heuristic, the representativeness heuristic and the anchoring effect, which are discussed earlier in this chapter, are examples of these cognitive short cuts. Kahneman (2011) suggests that these cognitive functions can be helpful in assisting humans in interpreting and negotiating information in straightforward tasks. In complex tasks, including decision making, reliance on these cognitive functions has been shown to bias the interpretation of information and therefore compromise the logical and rational quality of subsequent decisions (Gigerenzer, 2004; Kahneman & Tversky, 1973; Tversky & Kahneman, 1983; Tversky & Kahneman, 1974).

The study of group decision making has indicated that interactions between group members might influence how information is interpreted (Baron, Byrne & Johnson, 1998). There can be differences in group members' interpretation of available information prior to reaching a decision. In these instances it is the tendency for group members to conform to the view of the majority that predicts the choice that is

selected rather than a rational consideration of available information (Zuber, Croft & Werner, 1992). This has been used to explain how some groups make poor decisions despite high levels of expertise and information (Baron, Byrne & Johnson, 1998). It appears that in group decision making, information may not be appropriately attended to because members are distracted by their unconscious attention to social group processes (Janis, 1982). The integrated study of social, cognitive, emotional, physiological and environmental factors in interpreting information relevant to decision making appears to be lacking in the existing literature (Mishra, 2014). It is therefore difficult to comment reliably on potential interactions between these factors.

1.5.3 Integrating legal and psychological approaches to decision making

Psychological studies have applied a descriptive approach in understanding rational and intuitive processes in human decision making (Eysenck & Keane, 2005). Whilst this has provided knowledge of how humans deviate from rationality in systematic and predictable ways there is no unified psychological theory of decision making (Kahneman, 2011). The legal literature has also been dominated by a debate between rational and intuitive explanations of legal decision making, mainly in relation to Judges and juries (Drobak & North, 2008). Rational choice theory represents the view that legal decisions are

made by a rational and logical application of the facts of a case to written law (Drobak & North, 2008). The concept of 'motivated reasoning' represents the view that legal decisions are made intuitively, are prone to personal biases of the decision maker, and the facts of the case are applied to decisions after a judgement has been made (Bybee, 2012). Understanding legal decision making is further complicated by the fact that some areas of law are more open to interpretation, known in legal terms as 'discretion', of the decision maker than others areas (Gennaioli & Shleifer, 2008). Judgements of legal concepts of 'significant harm', 'reasonable' and 'good enough' care within the Children's Act (1989) are arguably open to multiple interpretations. These concepts are not easily determinable and perspectives of what makes 'good enough' parenting might be judged differently between people. In areas where the law is less certain, and open to interpretation, legal scholars suggest that decisions are more likely to be based on intuitive factors (Bybee, 2012). This is in line with psychological and descriptive approaches to decision making which suggest that decisions made in conditions of uncertainty are likely to be biased by intuitive factors (Eysenck & Keane, 2005; Kahneman, 2011).

Influences from the descriptive, psychological study of decision making have been applied to the study of legal decision making. Research to date has tended to focus on Judges and juries (Pennington & Hastie, 1992; Simon, 2004; Dhimi, 2003), and has been criticised for using

experimental approaches and focusing only on decisions relevant to trials or final hearings (Diamond, 1995). Keijser and Koppen (2007) investigated whether psychological mechanisms found to bias thinking about guilt and punishment might influence Judges' decisions to determine guilt and apply sentences in a criminal law context. The Judges decisions did not support evidence for the existence of the psychological mechanisms in biasing sentence length or a determination of guilt. The authors suggest that there is a possibility that if they had investigated real cases rather than fictional vignettes the biases may have been evident. They also considered that the existence of written legislation and the procedures enshrined in legal systems might make legal decision making immune to the same biases as decision making in other realms of human life (Keijser & Koppen, 2007). Drobak and North (2008) suggest that more research of this kind, that adopts descriptive approaches in identifying intuitive and rational processes relevant to the legal arena, would enhance understanding of legal decision making and reduce unhelpful focus on the stalemated debate of rationality versus intuition.

1.5.4 Psychological expert evidence and decision making

Little appears to be known about exactly how psychological expert evidence is used, interpreted and understood in legal decision making processes. There are indications in the literature that the expert evidence provided by psychologists in child care cases shifts the onus of responsibility for making difficult decisions onto experts (Masson,

2012; Beckett, McKeigue & Taylor, 2007), and carries great weight in terms of decision making (Beckett et al, 2007; Masson, 2012; Children & Family Court Advisory and Support Service, 2013), however, studies do not appear to have addressed thoroughly how this happens. There are some indications that expert evidence may carry weight in decision making processes because it is valued as useful by professionals. In a study by the Children & Family Court Advisory and Support Service (CAFCASS; 2013), in response to the question; *'In your opinion, what effect did the expert witness have on the quality of the Court's determination?'* 88% of Guardian's indicated this was *'overall beneficial'* where the largest number of experts (30%) being rated were adult psychologists. The Guardian's in this study responded to closed-option multiple choice questions which made it difficult to know how, or what, an expert's contribution brought to decision making. The publication included some comments made by Guardian's. These perhaps provide initial indications that expert evidence is helpful to good quality decision making by *"highlighting what changes the parent needed to make"* in order to have their children placed with them. In contrast, unhelpful expert contributions to the decision making process were *"adult centred and optimistic in the face of the evidence filed in the proceedings"*, and *"unstructured and confusing"* live evidence. (CAFCASS, 2013).

The Judge is responsible for reviewing all evidence and making final decisions about the placement of children in child care proceedings (Sendall, 2015). There appears to be little empirical scientific study of how Judges use psychological evidence to reach conclusions in this context. A chapter written by Rt Hon. Lord Justice Thorpe (2003) provides some insight into this process which includes a need for distinguishing scientific rigour and fact within the psychological evidence. Self- knowledge and professional experience were also indicated as important for reducing intuitive biases in assessing psychological matters (Thorpe, 2003).

Masson (2011) discussed results of a large qualitative study exploring legal representation of parents in care proceedings following recent changes to the Legal Aid system. Masson (2011) indicated that it is lawyers, rather than Judges, who are increasingly co-ordinating decisions around case planning in meetings outside of the courtroom. This planning included decisions around instruction of experts and the subsequent use of their evidence in informing the next steps for a case (Masson, 2011). Whilst all plans had to be agreed by a Judge it was considered that, to understand all stages of decision making processes regarding expert evidence, it was beneficial to consider what happened both outside and inside the courtroom by investigating lawyers rather than Judges if possible (Masson, 2011). This was echoed by Holt and Kelly (2014) who reviewed the impact of the Public Law Outline (PLO).

The PLO was introduced in 2008 with the aim of improving decision making processes around making an application to the Court to begin care proceedings (Ministry of Justice, 2008). Holt and Kelly (2014) identify that decisions about expert assessments may be made, with legal representatives but without the oversight of a Judge in the stage immediately prior to proceedings (pre-proceedings) under these changes.

1.6 Summary of reviewed literature

Child care proceedings involve making decisions about the welfare of children (Sendall, 2015). Legal decision makers can instruct psychologists to provide expert assessment to assist in reaching informed conclusions about psychological matters which are outside of their knowledge (BPS, 2010). There are fundamental differences in the way that psychological and legal disciplines conceptualise fact so in practice areas where the professions come together, such as when expert psychological assessments are instructed, it is beneficial for the professions to have a good understanding of one another (Eastman et al, 2012). Psychological approaches to the study of judgement and decision making are adding to knowledge about rationality and intuition in legal decision making processes (Drobak & North, 2008). To date little is known about how psychological evidence is used, interpreted and understood in terms of legal decision making. There are indications in the literature that discovering more about this would benefit from focusing on legal professionals (solicitors and barristers),

rather than Judges alone (Masson, 2011; Masson, 2012; Holt & Kelly, 2014).

1.7 Rationale for the current study

The current study was conducted to add to a growing body of literature which uses psychological approaches to increase understanding of legal decision making processes. The study selected an under-researched area of practice where psychology is intertwined with the law, namely the use of expert psychological assessment in decision making processes within child care proceedings. The hope was that practice in this area might be positively influenced through enhanced interdisciplinary understanding (Eastman et al, 2012). The study sought to understand decision making processes from the perspectives of legal professionals, as this would incorporate an overview of all aspects of decision making processes in relation to psychological evidence (Masson, 2011; Masson, 2012; Holt & Kelly, 2014). The aim was to conduct an in depth exploration of how legal professionals used, interpreted and understood psychological evidence and ascertain whether this could add to knowledge about decision making in this context.

1.7.1 **Research question and objective**

This study aimed to address the research question:

How do legal professionals use, understand and interpret the written evidence of psychologists acting as independent expert witnesses?

Within this research question, the objectives were to:

Identify themes pertinent to;

Legal decision making in child care cases

2.0 Chapter 2: Method

2.1 Research design

A qualitative study with one group of legal professionals was designed to explore the research question. Participants were asked to read a fictional psychological report for a mother and a father prior to interview (Appendix 5). Questions in the semi-structured interviews were based on the report. Thematic analysis (TA) was selected to guide the design of the semi-structured interview protocol and to analyse the data generated from this.

2.2 Rationale for a qualitative approach

The objective of the current study was to gain knowledge about the role of psychological evidence in decision making processes in the context of child care proceedings. This was explored from the perspectives of legal professionals. Qualitative methodology enables an understanding

of an individual's experience directly from the words of that individual (Forrester, 2010). It also allows a rich understanding of reality as it is experienced in a natural context (Harper & Thompson, 2011). This was considered important for the current study where the subjective experience of legal professionals in the specific context of child care proceedings was of interest. A quantitative approach was considered but not favoured due to the risk of limiting the investigation of subjective experience (Lyons & Coyle, 2007). Quantitative approaches also require reliably measureable factors that are coherent with, and grounded in, previous literature to guide investigation (Clark- Carter, 2009). To the researcher's knowledge such factors were not present in existing literature with regard to decision making processes, relevant to legal professionals, and in the context of child care proceedings.

To date, and to the researcher's knowledge, there have been no qualitative studies focused on how legal professionals use, interpret and understand psychological evidence in child care proceedings. Gaining an initial understanding of experiences using qualitative methodology can inform the direction for future research (Forester, 2010). It is also particularly helpful when researching areas that appear to have received limited focus in existing literature (Harper & Thompson, 2011). It was therefore considered appropriate to adopt a qualitative methodology, to gain an initial understanding of factors

relevant to decision making processes in child care proceedings, from the subjective view of legal professionals.

2.3 Rationale for using thematic analysis over other qualitative methods

The researcher considered a number of qualitative methods during the design phase of the current study. Thematic analysis (TA) was selected primarily because the flexibility of its application and its amenability to answering the specific research question. TA allows inductive exploration of participants' experience whilst also allowing the researcher to impose a theoretical, or 'top down' approach, by refining data collection and analysis in relation to the specific areas of interest (Boyatzis, 1998, Braun and Clarke, 2006). In this study the researcher wanted to gain knowledge about the subjective experience of legal professionals and to consider this in relation to existing theoretical principles concerning decision making.

Braun and Clarke (2006) published guidelines for conducting TA. It is an approach which allows the researcher to organise and describe data in detail by identifying, analysing and reporting patterns present within data (Boyatzis, 1998; Braun & Clarke, 2006). Braun and Clarke (2006) suggest that TA is distinct from other forms of qualitative analysis. The approach is not confined to pre-existing theoretical frameworks such as essentialism, realism or constructionism and it allows the researcher to

select and state an appropriate framework for their research question (Braun & Clarke, 2006). This flexibility was considered important for this study. It allowed exploration of participants' experience of psychological evidence directly from the words of those participants. It allowed the researcher to acknowledge that existing knowledge regarding decision making might be usefully applied to this area. It also allowed the consideration that contextual factors, for example legal rules and conventions, may impact on decision making in this context.

The researcher considered alternative qualitative approaches including Interpretive Phenomenological Analysis (IPA; Smith, Flower & Larkin, 2009), and Grounded Theory (GT; Glaser & Strauss, 1967; Charmaz, 2006).

IPA concentrates on the subjective experience of individuals and how those individuals comprehend their lived experience (Smith et al, 2009). Analysis is focused on the interpretation of an individual's experience and is inclusive of the entirety of that experience (Smith et al, 2009). The role of the researcher is to "*make sense of the participants trying to make sense of their world.*" (Smith & Osbourne, 2003: p51) It is not appropriate for the researcher to objectively impose existing personal or theoretical knowledge during the analysis (Smith et al, 2009). The focus of IPA on understanding the subjective lived

experience of participants was appealing to the researcher. Despite this, the objective of the current study (to examine data in relation to decision making rather than purely on the basis of participants' experience) meant that some objective imposition on data analysis by the researcher was inevitable. It was not therefore considered appropriate to use IPA.

Grounded theory (GT) also aims to explore the subjective experiences of individuals. GT analyses subjective experience with a view to developing a theory that could be applied to others in a similar sociological context (Glaser & Strauss, 1967). It was considered that any GT developed in relation to psychological evidence in child care proceedings was likely to be influenced by the state of the law and practice at the current time. Such a theory would therefore be limited in its practical use to this point in time whereas law and practice change substantially over time. Ideally a GT approach involves conducting a literature review after collecting data. The aim of this is to ensure an inductive approach where findings from the data shape the developed theory rather than a 'top down' approach where existing knowledge in the literature shapes the theory (Glaser & Strauss, 1967). It was not possible to conduct a literature review post data collection for the current study, as a literature review was conducted as part of the research proposal process. The objective of the current study was not suited to an inductive GT approach. It involved a 'top down' exploration

of how decision making in child care proceedings could be explained in relation to existing literature.

2.4 The personal and epistemological position of the researcher

Good quality qualitative research involves the researcher being aware and reflective of how their personal and epistemological position might influence the research process (Madill, Jordan & Shirley, 2000). The researcher in this study was a 31 year old, white, female Trainee Clinical Psychologist. She had no children and no personal experience of child care proceedings. The researcher had educational experience of the subject of law to undergraduate level and a psychological clinical interest in working with families and professional networks where child protection issues were prevalent. She had professional experience of assisting in the preparation of psychological reports for child care proceedings prior to conducting the research. Whilst conducting the research she was working with children, families and a Local Authority (LA) in a specialist 'edge of care' service. This work was aimed at reducing the risk of children entering the care system in families where this had been identified as a possibility.

The researcher had developed an interest in capacity to change and how this is viewed by individuals and systems. During clinical training this interest was considered in relation to child care proceedings and

understanding how and why parents are viewed as capable or otherwise of change. The researcher was curious about how legal professionals might view psychological ideas about capacity to change which she had found complex and unpredictable. She was also interested in the changing legal landscape in relation to family law and the use of psychologists and what this might mean for parents, children and professionals involved in child care proceedings.

The use of a reflective journal can assist the qualitative researcher in being aware and reflective of how their own personal thoughts and experiences might impact on the research process (Willig, 2001; Richardson, 1996). The researcher recorded thoughts and reflections during the data collection process (Appendix 1).

The researcher's experience was limited to professional contact with families and LA's. This may have impacted the researcher's thoughts and actions within the research process. For this reason the researcher relied on service-users to reflect and incorporate views from alternative perspectives at various stages of the research process. This included parents, psychologists and legal professionals with experience of independent expert psychological assessment as part of child care proceedings.

Braun and Clarke (2006) suggest that a researcher can hold any one of a variety of epistemological positions in the context of a TA, as long as the position is clearly stated and managed consistently throughout the research process. In this study the epistemological position of the researcher can be described as 'realist'. A realist perspective assumes that humans develop an understanding of what things mean based on their experience (Willig, 2001; Madill et al, 2000). Relevant to qualitative data analysis a further assumption is that understanding or meaning is expressed via language and is evident in spoken words (Braun & Clarke, 2006). The approach to data analysis in this study was consistent with this as the researcher looked for 'semantic' meaning rather than 'latent' meaning. Identifying latent meanings involves analysing what underlies the words people say to arrive at an understanding of what they mean and this falls more easily into a constructionist approach. Semantic meanings are evident in the words themselves and this view compliments a realist position (Braun & Clarke, 2006; Madill et al, 2000).

2.5 Service-user involvement

Traditionally research in the human sciences has recruited service-users solely as participants with the aim of investigating some aspect of their presentation. Developments in clinical and research practices have changed views regarding the involvement of service-users in their own recovery and in various stages of research, as reflected in clinical

and research policies (National Involvement Partnership, 2013; Sheldon & Harding, 2010). Service-users are now seen as able to enhance research quality by offering an enriched insight based on their lived experience (Beresford, 2007). This view is consistent with the view of the researcher.

Beresford (2007) outlines various levels of service-user involvement in research. Research which is initiated by and conducted by service-users is known as 'user research'. Research involving collaborative work by researchers and service-users at various stages of the research process is known as 'collaborative research'. 'User involvement' research refers to instances where service-users are invited by a researcher to take part in various research activities (Beresford, 2007).

This study aimed to include service-users to enhance the quality of the research. The level of involvement fell between 'collaborative' and 'user involvement'. Full involvement of service-users at the 'user research' level was not possible given that this study was initiated and managed by the researcher in partial fulfilment of a doctoral qualification. Service-users were considered to be parents, legal professionals or psychologists who had experience of expert psychological assessment in the context of child care proceedings.

Two solicitors were known personally to the researcher and accepted verbal invitations to be involved in the study. Five psychologists were known to the researcher through previous occupational contact and accepted verbal invitations to be involved. Two parents approached the researcher after hearing about the study through their connections with one of the psychologists. Both parents were active members of an established service-user group run by a charity who provide support for families involved with LA services. Neither parent was involved in child care proceedings during their involvement. Both parents had undergone psychological assessment in the context of child care proceedings in the past. Both parents were compensated for their time in accordance with established guidelines (National Institute for Health Research, 2010).

The researcher met with all service-users to provide information about the study and offer choice about the level of involvement. All service-users preferred to remain anonymous and this was agreed by the researcher. Four psychologists agreed to be involved in the production of study materials. The mother, father and one solicitor chose to be involved in initial consultation about study design and materials. The father, one psychologist and one solicitor opted to be involved in the analysis of results.

Details of the of service-user involvement are summarised in Table 1. Further details of their contributions will be reflected in relevant chapters as part of the overall narrative.

Table 1: Summary of service user involvement

Service user details	Stage of involvement	Level and details of involvement
Parent A, (Mother)	Research design	Consultation: to inform research design and study materials
Parent B, (Father)	Research design and Data analysis	Consultation: to inform research design and study materials Collaboration: to identify initial themes, and refine main themes
Solicitor A	Research design	Consultation: to inform research design, fictional letter of instruction and interview protocol
Solicitor B	Data analysis	Consultation: to review identified and refined themes
Clinical Psychologist 1	Research design	Consultation and collaboration to create study materials- fictional letter of instruction and fictional psychological report
Clinical Psychologist 2	Research design	Consultation and collaboration to create study materials- fictional letter of instruction and fictional psychological report
Clinical Psychologist 3	Research design	Consultation and collaboration to create study materials- fictional letter of instruction and fictional psychological report
Clinical Psychologist 4	Research design	Consultation and collaboration to create study materials- fictional letter of instruction and fictional psychological report
Clinical Psychologist 5	Data analysis	Consultation: to review identified and refined themes

2.6 Procedure

2.6.1 **Ethical approval**

The study was approved by the Royal Holloway University Departmental Ethics Committee prior to commencing the research (Appendix 2).

Clinical psychologists who provided contribution and consultation did so in the context of their roles as independent expert witnesses in the private sector. Parents who provided contribution and consultation were self-selecting volunteers and were familiar with undertaking tasks of a similar nature through their involvement with a separate service-user group. Parents were not currently undergoing psychological treatment within or outside of the NHS. Psychologists did not provide expert assessments as part of any role within the NHS. NHS Research and Development approval was therefore not required.

Ethical issues around voluntary basis of participation, informed consent, sensitive information and confidentiality and debriefing participants were considered and addressed as follows:

Voluntary basis of participation

All participants were initially invited to take part via email (Appendix 3). Those who responded were emailed an information sheet (Appendix 4), were given the opportunity to ask questions and were asked if they would like to take part. Those who agreed were offered choices of interview times and dates via email. The researcher then emailed participants a copy of a fictional psychological report (Appendix 5). The email asked that they read the report as they would approach it in professional practice. The researcher did not follow up those who did not respond to emails at any stage.

Informed consent

The information sheet detailed the nature of the study, what participation would involve and stated freedom over choice to participate (Appendix 4). All participants were informed about confidentiality and right to withdraw from the study via the information sheet and verbally on the day of the interview. Participants were also informed that tape recordings of their interviews would be transcribed verbatim prior to destroying the tape recording, and were asked for consent to use extracts of their transcript in written reports. All participants were given the opportunity to ask questions prior to giving their written and verbal consent (Appendix 6).

Sensitive information and confidentiality

Participants were not asked to provide sensitive personal information. They were asked to refrain from saying anything in an interview that might reveal the identity of any of their clients. Participants were informed that any information which might identify them, or any of their clients, would not be included in written transcripts.

Debriefing

All participants were given the opportunity to ask questions after the interview. They were also provided with a debrief sheet outlining details of their right to withdraw from the study at any time without having to give a reason and the means by which to do this (Appendix 7).

2.6.2 Data collection: Semi structured interviews

TA can involve analysing different types of data from different sources, including media sources, focus groups and interviews (Braun & Clarke, 2006). The researcher decided to collect data using semi-structured interviews to produce data that reflected the author's desire for a balance between inductive responses and theory led responses. The aim was that responses would sufficiently echo the experience of the legal professionals in addition to informing the research question and objective.

Interviews were conducted between February 2015 and April 2015. Eleven interviews were conducted at offices of the legal professional's and two interviews took place in private interview rooms in a County Court. The interview locations were determined by the legal professional as the intention of the author was to produce as little disruption to their working day as possible. All interviews were conducted in English and were tape recorded with the informed consent of participants. All participants were asked the same questions in the same order. The interviewer asked additional or follow-up questions where clarification was required. The audio recordings were transcribed verbatim and then destroyed.

2.7 Participants and setting

2.7.1 **Inclusion and exclusion criteria**

Participants were not excluded on the basis of age or gender in order to achieve a sample reflective of real life practice. Inclusion criteria for the study stated that legal professionals must:

- be currently practising;
- have a minimum of three years of experience of representing parents, children or LA's in child care proceedings within the British legal system;

- have provided legal representation in child care proceedings in a minimum of three cases where independent expert psychologists had been jointly instructed

Participants were screened to ensure they met the inclusion criteria prior to interview using a self-report form (Appendix 8). In order to provide context to the data, the researcher gained the following information on participant's experience:

- job title;
- number of years of experience representing parents in child care proceedings;
- number of years of experience representing children in child care proceedings;
- number of years of experience representing Local Authorities in child care proceedings;
- number of child care cases worked on in the last 12 months where a psychologist was instructed to provide expert opinion regarding parents;
- number of child care cases worked on in the last 12 months where a psychologist was instructed to provide expert opinion regarding children;
- number of child care cases worked on during career where a psychologist was instructed to provide expert opinion regarding parents and/ or children.

Participant responses to the inclusion the above are provided in Table 2 and Table 3. There were a total of eight solicitors, four barristers and one senior family executive. All participants had worked in child care proceedings in some capacity for a minimum of six to ten years. Five participants had experience of child care proceedings that exceeded 21 years. The participants reflected a range of experience in terms of the parties they represented. Two solicitors represented LA's at the time of the study. Both had previous experience of representing parents and children. Three barristers had experience of representing parents, children and LA's. One barrister had experience of representing parents and LA's. Three solicitors, and one senior family executive exclusively represented parents. Three solicitors had experience of representing parents and children.

Table 2: Participants self-reported responses to inclusion criteria screen

Participant number and description	Number of years representing parents	Number of years representing children	Number of years representing Local Authorities
1: Barrister	6- 10 years	0 years	1- 5 years
2: Solicitor	6- 10 years	0 years	0 years
3: Solicitor	21+ years	16- 20	0 years
4: Solicitor	21+ years	0 years	0 years
5: Children's Panel Solicitor	21+ years	21+ years	0 years

6: Children's Panel Solicitor	16- 20 years	11- 15 years	0 years
7: Children's Panel Solicitor	6- 10 years	1- 5 years	0 years
8: Barrister	21+ years	11- 15 years	6- 10 years
9: Local Authority Solicitor	6- 10 years	1- 5 years	1- 5 years
10: Barrister	11- 15 years	16- 20 years	6- 10 years
11: Barrister	11- 15 years	6- 10 years	6- 10 years
12: Senior Family Executive	21+ years	0 years	0 years
13: Local Authority Solicitor	6- 10 years	1- 5 years	6- 10 years

Table 3: Participants self- reported responses to inclusion criteria screen

Participant number and description	Number of psychological reports for parents in previous 12 months	Number of psychological reports for children in previous 12 months	Number of psychological reports in career
1: Barrister	9 reports	2 reports	50+ reports
2: Solicitor	6 reports	3 reports	41- 50 reports
3: Solicitor	4 reports	0 reports	50+ reports
4: Solicitor	11+ reports	0 reports	50+ reports
5: Children's Panel Solicitor	11+ reports	2 reports	50+ reports
6: Children's Panel Solicitor	6 reports	1 report	50+ reports
7: Children's Panel Solicitor	4 reports	2 reports	50+ reports
8: Barrister	11+ reports	8 reports	50+ reports
9: Local Authority Solicitor	8 reports	4 reports	50+ reports
10: Barrister	8 reports	2 reports	50+ reports
11: Barrister	11+ reports	2 reports	50+ reports

12: Senior Family Executive	11+ reports	2 reports	50+ reports
13: Local Authority Solicitor	6 reports	1 report	50+ reports

2.7.2 Participant demographics

For the purpose of this study, legal professionals were individuals who had experience of representing parties in child care proceedings. This included solicitors, barristers and legal family executives. A total of 13 legal professionals were interviewed by the researcher. Table 4 contains demographic information for all participants. There were eight female participants and five male participants. Twelve of the participants were White British and one participant was White Polish. Whilst not representative of the general population, this sample was considered to be representative of practising family lawyers (Law Society, 2015). Five participants worked in a large city in the Midlands. Three participants worked in a small town in the Midlands. Three participants worked in a small city in the south of England. One participant worked in a small town in the south of England and one participant worked in a large city in the south of England.

Table 4. Demographic information of interviewed participants

Participant number and description	Gender	Age range	Ethnicity	Area
1: Barrister	Male	31- 35 years	White, British	Small city, South
2: Solicitor	Female	41- 45 years	White, Polish	Small town, Midlands
3: Solicitor	Female	46- 50 years	White, British	Small town, Midlands
4: Solicitor	Male	51- 55 years	White, British	Small town, Midlands
5:Children's Panel Solicitor	Male	56- 60 years	White, British	Large city, Midlands
6:Children's Panel Solicitor	Female	56- 60 years	White, British	Large city, Midlands
7:Children's Panel Solicitor	Female	31- 35 years	White, British	Large city, Midlands

8: Barrister	Male	56- 60 years	White, British	Small city, South
9: Local Authority Solicitor	Female	41- 45 years	White, British	Large city, Midlands
10: Barrister	Female	41- 45 years	White, British	Small city, South
11: Barrister	Female	41- 45 years	White, British	Large city, Midlands
12: Senior Family Executive	Male	51- 55 years	White, British	Small town, South
13: Local Authority Solicitor	Female	41- 45 years	White, British	Large town, South

2.7.3 **Sampling**

The study aimed to explore the perspectives of a particular group of people in a particular context. The group needed to be homogenous in order to be able to conclude something about those people. The group also needed to be representative of the wider population of legal professionals in child care proceedings. Requirement for participants to be members of the legal profession, with recent experience of psychological reports in a confined legal context was thought to ensure reasonable homogeneity of the participant group. Including a combination of roles involved in these proceedings was thought to provide a sample representative of legal professionals involved in child care proceedings.

The aim was to interview participants until data saturation was reached. This is the point at which no new significant information is provided by new participants (Willig, 2001). Using a similarly homogenous group of participants, Guest, Bunce and Johnson (2006) suggested data saturation using thematic analysis can occur after twelve interviews.

2.7.4 ***Recruitment***

Participants were recruited from one large city and one small town in the Midlands, one small city and one small town in the south of England and one large city in the south of England. It is a recognised limitation of the study that these areas were principally chosen on the basis of convenience for the researcher. Ideally participants from a range of small and large towns and cities across England would have been recruited. Unfortunately this was not possible in the timeframe for this study. Despite this limitation, legal professionals had experienced child care work across a broad range of areas. This was either from working for different firms throughout their career or from representing clients from a broad range of areas in the role they occupied at the time of the study.

Participants in the Midlands and in the small city in the south of England were contacted via email with an initial invitation to take part in the research (Appendix 3). Email addresses were obtained via an

internet search of solicitor firms, barrister chambers and LA departments in those areas. Legal professionals who responded to the initial email were sent an information sheet outlining the study, given the opportunity to ask questions and were asked to verify if they would like to participate (Appendix 4). Those willing to participate were emailed a copy of the fictional psychological report and offered a choice of interview dates and times (Appendix 5). After interviews had been confirmed, participants were given the opportunity to ask questions before giving their informed written consent at the interview (Appendix 6). There was only one response from the LA departments contacted in these areas indicating LA solicitors were underrepresented in the sample. The researcher therefore emailed a LA department in the large city in the south of England. Following the above procedure one further LA solicitor was recruited from this department.

2.8 Measures

2.8.1 ***Fictional letter of instruction***

A fictional letter of instruction asking for a psychological assessment of a mother and a father was drafted in service-user consultation with Solicitor A (Appendix 9). The aim was to ensure as far as possible that it reflected what would generally be seen in routine professional practice.

The details of the case outlined in the letter of instruction included family composition, ages of children, issues of domestic violence, potential alcohol and drug misuse, potential learning disability, parental history of involvement with Children's and Forensic Services and neglect. These issues were compiled in consultation with five service-users, namely solicitor A and clinical psychologists 1, 2 3 and 4 (See Table 1). All service-users identified these issues as being typical of the last three cases they were professionally involved in where expert psychological opinion was provided. These issues also reflect factors prevalent in literature as being commonly seen as relevant to the assessment of parents in child care proceedings (Williams, Peart, Young & Briggs, 2015; Reder & Lucey, 1995; Reder et al, 2003; Reder, McClure & Jolley, 2000).

All psychologists rated how realistic they felt the letter of instruction was on a seven point likert scale (Appendix 10). Point one indicated that the letter of instruction was not realistic at all and point seven indicated that the letter of instruction was very realistic. All psychologists indicated that the letter of instruction was at point seven, indicating it was representative of what they see in their professional practice.

Once drafted, the fictional letter of instruction was used in service-user consultation with clinical psychologists 1, 2, 3 and 4 to provide a basis for the compilation of a fictional psychological report for the parents.

2.8.2 *Fictional psychological report*

The researcher compiled a fictional psychological report for the mother and father in the fictional letter of instruction. This report was drafted in service-user consultation and collaboration with clinical psychologists 1, 2, 3 and 4.

In order to ensure that the report reflected professional practice, the researcher imposed the following inclusion criteria with regard to the clinical psychologists:

- Male or female
- No age restriction but must be currently practising
- Must have a minimum of one year experience providing independent expert witness services in child care proceedings within the British legal system
- Must have provided independent expert witness services in a minimum of three cases
- Must not be currently employed by the NHS

All clinical psychologists met initially with the researcher and were asked how they would go about conducting an assessment of the

parents in response to the letter of instruction and what they would include in a Court report (Appendix 11).

The researcher drafted the report on the basis of the answers given and with the assistance of the study's supervising psychologists. In the event that clinical psychologists did not agree on what to include in the report the researcher followed these guidelines:

- If the suggestion to include information was in accordance with British Psychological Society (BPS, 2010) guidelines and was not contradictory of other information in the report or repeated elsewhere in the report it could be included
- In the event of any disagreement about psychometric measures to be included the measure with the best supporting evidence base would be included
- Assessment tools would be included where clear rationale for doing so was present, and where the psychological phenomena to be measured was not better measured by another suggested assessment tool
- In the case where a psychologist suggested information should be removed from the report, that information would be removed if there was a clear error (factual, theoretical, grammar and punctuation) or if that information was covered adequately in other areas of the report.

The clinical psychologists were asked to comment on the report and suggest changes, which were also treated in accordance with the guidelines detailed above.

All legal professionals were asked to rate how realistic they felt the psychological report was on a seven point likert scale (Appendix 10). Point one indicated that the psychological report was not realistic at all and point seven indicated that the psychological report was very realistic. Participant ratings are provided in Table 5. The most frequent rating was at point seven, indicating that for nine of the thirteen participants the report was very realistic in terms of what they saw in professional practice. Three participants rated the report at point seven indicating that the report was realistic. These participants commented that the reason they rated at point six was because there was no executive summary, because one of the psychometric tests was unfamiliar to them and finally because more recently parent assessments had been cognitive rather than full psychological assessments. The lowest rating was by Children's Panel Solicitor (participant number 6) who rated the report at point four indicating that the report was fairly realistic. The comment here indicated that this solicitor would have sought to instruct a psychiatrist rather than a psychologist in this case.

Table 5: Participant ratings of psychological report

Participant	Rating (1= not at all realistic, 4 = fairly realistic, 7= very realistic)	Comments
Participant 1 Barrister	7	-
Participant 2 Solicitor	7	-
Participant 3 Solicitor	7	-
Participant 4 Solicitor	7	-
Participant 5 Children's Panel Solicitor	7	-
Participant 6 Children's Panel Solicitor	4	<i>I think if this was my case I would have asked for a psychiatric report. I think a psychological report is more for a psychological disorder and a psychiatric report is more for mental health.</i>
Participant 7 Children's Panel Solicitor	7	<i>I've got one just like this right now the case is almost the same.</i>
Participant 8	7	<i>This is perhaps the low end in terms of presenting</i>

Barrister		<i>problem severity but you do see this in some cases where somewhat unfortunately people have come to the attention of the Local Authority.</i>
Participant 9 Local Authority Solicitor	6	<i>More often than not now the reports I see tend to include an executive summary but other than that the content is what I tend to get in practice.</i>
Participant 10 Barrister	6	<i>More recently the parenting assessments I've had tend to be cognitive functioning only rather than full psychological assessments with a separate psychiatric report for any substance/ mental health issue. Full psychological assessments I have seen in the past year have included children and parents.</i>
Participant 11 Barrister	7	-
Participant 12 Senior Family Executive	6	<i>I've not seen one of the assessment tests before but otherwise pretty much what I'd expect to see.</i>
Participant 13 Local Authority Solicitor	7	<i>They do vary but I wouldn't be surprised to see this it's typical of a standard assessment.</i>

2.8.3 Interview schedule

The author conducted the initial literature search for the study prior to drafting the interview schedule. The aim was for interview questions to allow spontaneous and open responses whilst also providing information about decision making. It was for this reason that broad questions were asked about how legal professional would use, understand and interpret the information in the psychological report.

The author followed the advice given in service-user consultation with Solicitor A (See Table 1) not to include questions that asked directly about decision making. In the solicitor's view asking legal professionals directly about decision making in this context was likely to return narrow and predictable responses:-

“If you ask a family lawyer direct questions about decision making in family law they are only likely to tell you that the Judge makes the decision and all decisions are made in the best interests of the child. Although to some extent that is true that’s not what you’re looking at is it? I mean you could find that out from reading the Act (Children Act, 1989). If you want to know where these reports come into those decisions ask about what they’re doing with the reports” (Solicitor A: Service-user)

It is important to state the intention was not to deceive participants. Indeed, details of the study in the information sheet outlined the purpose of conducting the research to inform knowledge of decision making processes (Appendix 4). Rather, the intention was to elicit useful information about the subtleties around the role of psychological evidence in decision making processes.

2.8.4 Piloting the interview schedule

The interview schedule was piloted with Solicitor A (See Table 1) prior to interviewing the first participant. The aim was to ensure that the questions elicited responses that could be reasonably answered in a 30 to 45 minute timeframe. This was the estimated time indicated to participants in email communication and on the information sheet. The

pilot interview lasted 33 minutes therefore questions were not adapted to take account of interview length.

The pilot interview also aimed to identify unhelpful or confusing questions. Solicitor A confirmed that it was confusing to be asked whether the report might add to their knowledge of a case when they had no way of measuring what they would have known beforehand. It was also suggested that asking someone how they would 'interpret' information was somewhat confusing. It was suggested that this question should include the explanatory phrase; 'what do you make of the information in the report, what do you think it means'. These questions were adapted in the final interview schedule (Appendix 12).

2.9 Analysis

Data analysis was guided by the following steps outlined by Braun and Clarke (2006):

- Familiarisation with the data;
- Generating initial codes: Using a theoretical coding template;
- Identifying themes;
- Refining and reviewing themes;
- Defining and naming themes;
- Interpreting themes.

The following sections describe the researcher's approach to each of the steps.

2.9.1 Familiarisation with the data

In accordance with qualitative guidelines for maximising familiarisation with the data the researcher conducted each interview in person and transcribed each interview verbatim (Oliver, Serovich & Mason, 2005; Davidson, 2009). The TA did not call for details regarding finer details of tone, volume, expression such as would have been required for a content or discourse analysis. Each recording was listened to once and each transcript was read prior to an initial coding phase. This initial coding involved paraphrasing and summarising participants' words. The aim of this was to enhance familiarisation with the data and gain practice in summarising the text. The researcher and research supervisor went through one interview to enable the researcher to gain experience in coding. Another interview was independently coded by Father A and by the research supervisor to ensure the researcher was reliably coding the data (Appendix 13).

2.9.2 Generating initial codes: Using a theoretical coding template

In order to generate initial codes relevant to the research question, a theoretical coding framework was developed. Template analytic techniques such as this allow the researcher to isolate units of text that

are relevant to theoretical elements of interest (Crabtree & Miller, 1999).

Six codes which incorporated aspects of decision making from the literature were included in the coding framework. These were as follows:

1. Legal rationality
2. Cognitive heuristics
3. Intuition
4. Systemic/ contextual factors
5. Personal/ emotional factors
6. Group processes

Similarly to Fereday & Muir Cochrane (2012) and in accordance with guidelines provided by Boyatzis (1998) each code was given a label, a definition of the theoretical theme or principle it is related to and a description of how to identify that the theme has occurred. An example of the first code, 'Legal Rationality', is provided in Table 6 and all of the theoretical codes are in Appendix 14.

Table 6: An example of 'Legal Rationality', a code developed a priori

Code 1	
Label	'Legal Rationality'
Definition	Direct application of facts of the case to relevant written or case law
Description	A judgement or decision about any aspect of the

	psychological evidence or case by directly applying facts from the psychological evidence to knowledge of written or case law
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The researcher then used the coding framework to identify all incidents of text relevant to decision making. Incidents of text considered relevant to decision making, but which did not fit any of the six theoretical codes, were allocated to a miscellaneous code and included in the next phase of analysis. This aimed to ensure that the researcher did not miss things the participants said, which were pertinent to decision making in this context, but which were not captured in the theoretical coding framework. (See Appendix 15 for examples of coded transcript).

All codes were apparent across the data set, indicating that principles from the decision making literature were evident in the reality of legal professionals. Service user collaboration was used in order to establish reliability. Five random extracts of coded text were coded by Parent B and by Solicitor B. This indicated substantial agreement between the researcher and both service-users.

2.9.3 Identifying initial themes

Initial themes were identified by the researcher in collaboration with service-user 'Parent B', by organising coded text into categories of shared meaning. Braun and Clarke (2006) suggest that a theme both captures information relevant to the research question and represents shared meaning or coherence around a central concept. The themes were constructed around similarities in semantic content and their relevance to decision making. Single comments were treated as being of equal importance to repeated comments unlike content analysis. The realist, theoretical position of the researcher indicated that information relevant to the research question could be evident in one or many participant responses in order to be considered relevant. (Initial themes are listed in Appendix 16.)

2.9.4 Refining and naming themes

The process of refining themes began, by going back to the data and re-reading the transcripts (Braun & Clarke, 2006). This allowed the researcher to ensure that codes included in each theme were consistent with their original context. It also involved managing conflicting similarities and differences within and between themes, and whether these could better be explained in alternative ways (Braun & Clarke, 2006).

After initial refinement of themes the researcher met first with Father A and then with Psychologist 5 and Solicitor B to ensure that the refined themes provided feasible explanations of the data. This process aimed to ensure that the researcher's analysis described the data accurately, rather than reflecting the researcher's perception of the data alone. Themes were then named. Braun & Clarke (2006) suggest theme names should be as succinct as possible, and should accurately describe the meaning they convey.

2.9.5 Interpreting themes

Braun and Clarke (2006) suggest that themes should provide an explanation of the data in relation to the literature. The following results and discussion chapters present and outline the interpretation of themes with this aim.

3.0 Chapter 3: Results

This chapter reports the main themes and associated subthemes that resulted from the qualitative thematic analysis of thirteen participant interviews. The research question asked how legal professionals would use, understand and interpret information in a psychological expert witness report. The research objective was to identify themes pertinent to decision making. Four main themes, each with associated subthemes were identified, as presented in Figure 1 and Table 7. These themes describe how psychological evidence was considered in relation to decision making by the legal professionals.

3.1 Confidentiality

Identifying information pertaining to participants or their clients was not included in interview transcripts. All participants were allocated a number (Table 4) and throughout the remaining sections of this chapter participants are referred to by that number. A description of their role is given to add context to the reader.

3.2 Findings

The four main themes describe features present in the accounts of legal professionals related to the role of written psychological evidence in decision making processes within child care proceedings. The themes were derived through a process of identifying and refining initial themes until they adequately described the meanings present in the data. The main themes were; ‘Communication’, ‘Responsibility’, ‘Similarities and differences in identifying important information’ and ‘Complications in weighing up the evidence’. Each main theme contained associated subthemes as presented in Table 7 and Figure 1. The remainder of this chapter will describe the main themes and associated subthemes using verbatim extracts from the accounts of legal professionals.

Table 7: Main themes and subthemes

Main theme	Sub themes
Communication	<ol style="list-style-type: none"> 1. Communication with clients 2. Communication with advocates 3. Communication with psychologist
Responsibility	<ol style="list-style-type: none"> 1. The Judge’s responsibility 2. The client’s responsibility

	3. The psychologist's responsibility
Similarities and differences in identifying important information	<ol style="list-style-type: none"> 1. Information consistently identified as important 2. Information inconsistently identified as important
Complications in weighing up the psychological evidence	<ol style="list-style-type: none"> 1. Nature of the evidence 2. Nature of the task 3. Impact of previous experience 4. Emotional impact of the material

3.3 Communication

The first main theme was communication. This theme captures participants' accounts of decision making occurring through communication with others. All legal professionals talked about using information in the psychological report to identify options for how to move forward with the case. Making a decision about which option to pursue was always preceded by communication between the legal professional and at least one other person.

Communication was identified frequently across the data set as being critical to forming judgements and confirming decisions that required action in relation to psychological evidence. Aspects relevant to the decision making process were identified as being different depending on who communication was with. For this reason, three subthemes were developed to capture these processes.

3.3.1 Communication with clients

This subtheme reflects how legal professionals communicate with clients regarding the psychological report to enable the client to make an informed decision about what to do next. Clients here include parents, the Local Authority and the Guardian. Communication with clients appeared to happen periodically as new options for ways to move forward arose out of the psychological evidence. Legal professionals identified the importance of talking through the psychological report with their clients. They aimed to do this prior to contacting other professionals. Communication with clients, whether they were parents, Guardians or the Local Authority tended to be characterised by informing clients whether the report indicated hope that the children could return to the care of the parents.

“The first thing I need to do is talk to them (client= parent) about it (the psychological report). They’re wanting to have an answer... to know yes or no is this good or bad.” (Parent Solicitor 3)

“The Social Worker (client= LA) will have their own interpretation of the report and I will be giving them legal advice based on whether the report is saying these children can return to the care of their parents or not.” (LA Solicitor 13)

Where the report indicated hope of children being returned to the care of their parents emphasis was placed on communicating to clients that this hope would be increased if they followed the recommendations of the psychologist.

“I would be advising (client= LA) that any care plan looking to return the children to the parents would need to include the recommended therapy for the parents.” (Local Authority Solicitor 13)

“As long as they (parent) would be willing to do it (therapy) I’d be telling them to get down to their GP, take the report with them and get on a waiting list for that therapy to give them the best chance.” (Children’s Panel Solicitor 6)

Legal professionals across the data set talked about difficulties in feeding back psychological assessment information to parents, particularly those with learning disabilities and mental health issues.

“I do find this (report) is inaccessible to parents. I do my best to go through it with them but when you’ve got someone who can’t read and doesn’t have a high level of understanding or if they’ve got a

personality disorder which makes them really defensive or something it really is difficult.” (Parent Solicitor 3)

“I don’t know what a lot of this means and it’s too much for parents... like here where the parents have learning needs they’re just not going to get this no matter how simple I try to make it. It’s too much really especially where they’ve been through all of this personal stuff with the psychologist it’s too much for them to go through all of that again.” (Children’s Panel Solicitor 6)

Communication with clients involved presenting various options for moving forward with the case in light of the psychological evidence. It was clear that legal professionals expected clients to make a decision about which option to follow, reflecting the process of receiving instructions from the client about how to progress. This would guide the legal professional in representing their client in further decision making negotiations.

“I need to know what my instructions are. Here I would imagine that the parents (client= parent) would want to keep going and try to get the therapy so I’d be thinking about asking the LA whether they will pay for that just to give the parents the best chance.” (Children’s Panel Solicitor 5)

“I’d be looking to see what the social worker (client= LA) makes of it because that’s going to be what goes in the care plan going forward and I’ll be speaking for that plan on their behalf.” (Local Authority Solicitor 13)

Legal professionals talked about forming a view of the best course of action after reading the report. This view tended to be unchanged regardless of the client’s response to the psychological evidence.

“You get an idea about where it’s all headed from the report... They (client= parent or Guardian) might agree or disagree but unless they’re saying the report is fatally flawed in some way talking to them about it doesn’t really change your view of the outlook.” (Children’s Panel Solicitor 6)

“We’re (Lawyers) making analysis, making some sort of judgement, presuming certain things about descriptions of things... but ultimately we have to take it and say (to the client= LA) ‘right we’ve given you our advice in respect of this report so it’s saying they (parents) are perhaps going to be capable of caring for the children and these are the options based on that’. If they (the client= LA) are still saying ‘no they’re (the children) not going back’ I’ve then got to give advice about the

likelihood of their success it doesn't change what I might think about it."

(LA Solicitor 9)

3.3.2 **Communication with other advocates**

Legal professionals across the data set indicated that communication with other advocates could inform their judgements and confirm decisions to be acted on in relation to the psychological evidence. This tended to happen in advocates' meetings after communication with the client. Here, the legal professional aimed to gain a sense of the plan for moving forward with the case.

"In terms of where I would obviously go forward (after talking to the parent)... we'd have an advocates' meeting after this and then obviously start discussing stuff like what does it all mean going forward, what assessments do we need, who needs to do what." (Parent Solicitor 2)

"I'm also waiting in the slightly longer term (after having spoken to the parents) to see what everyone else is going to make of it and use it for." (Senior Legal Executive 12)

Legal professionals frequently referred to these meetings as a way to find out about how other advocates had interpreted information in the

psychological report. A discussion would follow about plans being proposed on the basis of how advocates had interpreted information in the report.

“The thing is we’re lawyers we could all take the same sentence and read it in ten different ways. You get together and you see what the others made of it (the psychological report) and what needs to happen and you see if they’re thinking what you were thinking.” (Senior Family Executive 12)

“We’d have an advocates’ meeting as we always do. We’d discuss it. I mean some people can actually look at the same document can’t they and come out with a different conclusion. Especially when it’s like this where the conclusions about whether the therapy is going to work aren’t 100% clear. We’d discuss what each person makes of it and then come up with a plan really.” (Children’s Panel Solicitor 6)

Advocates’ meetings were referred to as a means by which to reach a shared understanding of the psychological evidence.

“We’d get together to come to some sort of conclusion, shared interpretation of it... We’ll have an advocates’ meeting and then we can all say what we think... it’s really just clarifying in everybody’s mind where we’re going on it.” (Children’s Panel Solicitor 6)

In contrast to communicating with clients about the psychological evidence, communication with other advocates was said to change a legal professional's assumptions about an appropriate course of action. It appeared that the position of the LA might inform parent representatives' opinion regarding the outlook of the case.

"I wouldn't be interpreting this on my own. I need to have some idea about what's going to happen and you find that out in the advocates' meeting. We're in the hands of the LA they draw up the plan you see. So you need to know whether they feel it's too risky or not and if they're not prepared to go for it at all and you thought it was ok you might wonder if perhaps it's more risky than you thought." (Parent Solicitor 2)

"I might go into it (advocates' meeting) thinking there's no chance because of the timescales and they (LA) might say well actually the psychological report was quite positive so then you're thinking more towards rehabilitation when before you didn't really think that could happen." (Parent Solicitor 3)

Another factor that sometimes led to changed assumptions was when another advocate was considered to have a better understanding of the psychological evidence.

“Sometimes you know you think you know what was meant by something the psychologist said and somebody else (in the advocates’ meeting) might actually have a better understanding of what’s being said, then you know what that means I can then take that back to the client.” (Children’s Panel Solicitor 5)

It seemed that the collective specialist experience of members of the advocates’ group, and the history of working together, increased confidence that the group would reach an appropriate conclusion.

“I mean we (various local advocates) work together on 2, 3 sometimes 4 cases at a time, we’re colleagues really and we know each other because in this work you tend to get the same very experienced people working on the same cases. In Court last week between five of us (local advocates) we worked it out there was nearly 250 years of experience and you know with that amount of experience on a case we tend to be able to come together then (at the advocates’ meeting) and get to a decent position for whatever case it is, whatever the issues are.” (Senior Legal Executive 12)

3.3.3 Communication with the psychologist

Communicating with the psychologist regarding written psychological evidence was consistently identified as being different to communicating with clients and other advocates. There were differences in relation to the process of communicating with a psychologist. This reflected the fundamental requirement that a psychologist's contribution to the proceedings must be independent. In order to communicate with the psychologist, all parties needed to jointly agree that supplementary questions were required in order to inform the plan for future action.

“You might need to get back to the psychologist and agree further questions to seek clarity... of course everyone has to agree you can't just talk to the psychologist yourself.” (Barrister 11)

The overall purpose of communication with the psychologist appeared to be to seek further clarity. Three areas that signalled the need for further clarification from the psychologist were identified in the responses of legal professionals. The first area was when something in the report indicated a potential course of action that had not previously been thought of. A number of legal professionals suggested this might include asking the psychologist whether opinions would be different if parents were to separate.

“We do sometimes ask the psychologist if the parents would be more able if they separated and that did cross my mind here. It’s when you have these relationship issues and you’re not really sure whether the psychologist is saying the relationship is a good thing for the children or if the same problems are going to keep coming up.” (Parent Solicitor 4)

“There is this rather worrying bit in this report about the parents saying everything is fine between them when the children aren’t around and that would be niggling I think for me. I would want to get a clear answer from the psychologist about whether their relationship is going to fail again when the children come home so I would be advising that question be asked.” (Barrister 10)

The second area that signalled the need to ask the psychologist a supplementary question was when it was agreed that an important question had initially been missed.

“It does happen that we miss questions and have to go back and ask, not very often but it can be quite rushed getting it all together... or questions get missed because something changes after the instruction has gone out to the psychologist.” (Children’s Panel Solicitor 7)

The third area was related to quality issues with the psychological report which needed addressing before a plan could be agreed.

“If the report is just not clear or it doesn’t answer what we need to know we have to go back. Sometimes it’s just a paragraph that makes no sense to anyone but something about it makes you think it’s important.”

(Senior Family Executive 12)

Legal professionals indicated that they would go back to their client and/ or other professionals to gain a shared consensus of what the added information meant in terms of deciding future action. In the event that the psychologist’s responses did not provide adequate clarification, a decision might be made to call the psychologist to give live evidence.

“Sometimes the responses come and it’s made quite clear what you need to know so you just make sure that’s agreed with everyone. If it’s not clear and everyone else still thinks it’s important you might all have to think about whether to call the psychologist for live evidence.”

(Barrister 1)

3.4 Responsibility

The second main theme was responsibility. Underlying this theme was a general assumption that the recommendations of the expert psychologist should be implemented. Psychologists were generally seen as having a responsibility for ensuring that recommendations were reliable and clear.

Across legal professionals, responsibility over selecting optimal choices from a range of options was perceived to rest with Judges, clients and psychologists. The manner in which this responsibility was perceived in relation to decision making appeared to be distinct depending on whether it was Judges, clients or psychologists being considered. Subthemes were therefore identified to capture responsibility relevant to Judges, clients and psychologists.

3.4.1 The Judge's responsibility

Legal professionals consistently identified the Judge as being responsible for selecting a course of action dependent on evidence in the case, including the psychological material. This was in relation to decisions made during the course of proceedings and the final decision for the placement of the children. They talked about how the Judge made their own interpretation of the material to guide decisions.

“The Judge or the tribunal whether its Magistrates, lay justices would have to hear all that evidence and then it’s the Court that would actually make any decision and how the Court uses this they’ll be doing their own interpretation as well.” (LA Solicitor 9)

In terms of the decision for the final outcome, it was suggested that the psychological report alone would be unlikely to determine this. One legal professional explained that the Judge’s final decision might be indirectly influenced by the way in which the psychological evidence had been used to inform a plan to move forward and the way that this plan was presented to the Court.

“It’s very rare that a Judge would make a decision based purely on the psychological report, maybe other experts like for injury yes. Psychological reports are usually more for us for the background and where can we go from here is there anything we can do. Is there any way forward? I suppose what we do with those things might then have a knock on effect on the Judge’s final decision depending on what happens and how that all gets put to the Court. Ultimately it’s the Judge who will decide.” (Parent Solicitor 2)

Legal professionals identified that Judges consider the psychological evidence based on the assumption that the optimal scenario is for

children to be placed with their parents where possible. This might mean that in some circumstances, Judges are prepared to question decisions not to implement psychological recommendations.

“Judges don’t actually like removing children from parents... If the LA are saying there’s a recommendation in the report but they can’t provide it for some financial reason the Judge might well seek the answer as to why the fund holder isn’t prepared to authorise it and if there is not a good reason for that they would be ordering that recommendation be implemented in the LA care plan”. (Barrister 11)

Some legal professionals talked about how they would approach the psychological evidence in a similar manner to the Judge. This was done by using information in the psychological report to clarify areas of uncertainty regarding parental capacity to change within timescales.

“Where there is a therapy recommendation like this the Judge will be effectively looking into a crystal ball to see whether there is a possibility that when it’s finished this work will make us suitably confident that we are in a successful place to place the children with the parent. To do that they have to consider what the report says about the chance that it won’t be successful. To some extent as lawyers this is our approach also but it’s is the Judge who will make the final decision.” (Barrister 8)

“The Judge is basically looking at all of this (psychological report) and trying to see what the psychologist is saying about the chances that these parents can change in time. They have allowed a psychologist to give a view about this because no one else in their expertise could be certain enough about that.” (Barrister 1)

Where there were issues of poor quality in a psychological report, the Judge was viewed as holding responsibility for ordering the expert to revise their written report.

“If you had a really long a report which was really meandering there’s not much we can do about it but a Judge should in this day and age take one look at it at the issues resolution hearing and say to the expert, ‘well I want a summary and you are limited to ten sides of A4 double spaced, see you when you’ve prepared it’.” (Barrister 10)

Four legal professionals talked about problems with lay Judges holding responsibility for decision making in child care proceedings. They expressed the view that Magistrates are not suitably qualified to make sound decisions in these proceedings, and that they tend to focus on irrelevant issues with regard to psychological evidence.

“Magistrates can be a problem. Sometimes they don’t know people’s names and they’re reading the papers on the day and that doesn’t instil any confidence in me and you kind of shield your client from that. I think it should be a District Judge or a Circuit Judge.” (Children’s Panel Solicitor 6)

“I would rather just have a district judge or a circuit judge who cuts through the issues. You know they’ve read the papers, and they see the same issues that we do not just about needing a psychological assessment but also what the psychological assessment means but magistrates no no no no no no.” (Senior Family Executive 12)

3.4.2 *The client’s responsibility*

Legal representatives across the data set regarded clients as holding responsibility for making choices about the psychological recommendations. Here clients could be parents, the Local Authority or the Guardian. Legal professionals talked about highlighting to clients that their responsibility was to follow psychological recommendations in order to positively influence the final outcome.

“This is not a case where you would say to Miss Davis or Mr Garfield throw in the towel, this is a case where you would say well look if you’re prepared to do what the psychologist says you have a chance here”
(Parent Solicitor 4)

“It’s just to try and say look this is some of the things the psychologist thinks you need to do and my advice is that if you do those things it might help your case.” (Parent Solicitor 3)

Where the client was a parent, their responsibility to engage with psychological recommendations was perceived in terms of motivation. Legal professionals talked about trying to encourage parents to feel motivated to follow the psychological recommendations, as this was assumed to give them the best possible chance of having their children returned to their care.

“A lot depends on motivation and what they (parents) want to do. There’s only a certain amount you can do for them, there is a limit. You know a lot of people talk about wanting their children back but in reality they’re not prepared to do the things that would enable that to happen. You have to use the recommendations to say to them well if you want them back doing this might give you a better chance.” (Parent solicitor 4)

“If they’re not prepared to accept the professional opinion then you’ve got a major problem straight away... I’m not going to be able to convince a Judge that these children should be rehabilitated to them (parents) in the event that they’re saying I’m not accepting advice that therapy is required. They’ve got to be motivated to do whatever is required... if they don’t they will fail and I would be quite firm with them about that”. (Children’s Panel Solicitor 5)

Where the client was the LA, their willingness to engage with psychological recommendations was seen in terms of how risk averse they were. Legal professionals talked about advising LA’s to incorporate recommendations from the psychological assessment into future care plans. This was particularly apparent where the psychological report indicated that placement with the parents was possible.

“In this case you might well be looking at a plan to rehabilitate the children (to the care of the parents). I’d be advising the LA to make sure that if they are on board with going in that direction they need to make sure their plan covers the psychological recommendations. It does happen that they’re (LA) just not prepared to risk it, it’s just too risky for them to think about placing the children with the parents

despite the recommendations. They're responsible for that decision even if it goes against the expert advice and even the legal advice." (LA Solicitor 13)

In circumstances where psychological assessments were conducted in the pre-proceedings phase, the LA's responsibility was viewed as making decisions about how to proceed based on the psychological evidence.

"Lots of these reports now are being done in the PLO (Public Law Outline) process which is effectively the step below court proceedings and basically the LA needs to look to inform their own views about the safety of the children and decisions about whether to issue proceedings". (Parent Solicitor 4)

Some legal professionals felt that responsibility for decision making rested unevenly on the LA where psychological reports are commissioned in the pre-proceedings phase.

"There are of course difficulties with having these reports done pre proceedings. The needs of the child aren't represented at that point and effectively the LA they carry the most influence in deciding what's

done with the reports, you know at that point they are effectively, it could be argued they are holding the responsibility for what happens with all of this (psychological report).” (Children’s Panel Solicitor 7)

Legal professionals expressed views about the responsibility for ensuring that psychological recommendations are completed not only for the benefit of the children in the current proceedings, but for the benefit of any children parents may go on to conceive. They talked about a vicious cycle where issues raised in psychological evidence in one case can be repeated in a future case, if the parents have more children. There were mixed views about whether the parent or the LA should be responsible for ensuring recommendations are followed in cases where children are placed permanently outside of the family home.

“The other difficulty is if it’s (the report) recommending X, Y and Z and actually the outcome is that the children don’t go home it’s very much down to the parents then because the children aren’t with them the support isn’t. We’re not there to support them (parents) in that sense. So essentially then if they go on to have other children and the concerns are still there and somebody drags out the report that was done a year ago, 2 years ago, 5 years ago and you look at those things that were needed to do to safely parent their children if they’ve not

been done you're immediately thinking can these children be at home? So even quite some time after the report's done they quite often get resurrected'. (LA Solicitor 9)

"Even if the therapy was going to take a year I would still insist on doing the other things because obviously the parents might go on to have more children... they still need to resolve the issues because the problem is when the proceedings end the issues are still there but the LA are just like well because that's the end of it we don't have to do the work and then they're like 'oh no she's pregnant again' you know and it's the same issues... and that's the problem because when one case ends then another one begins." (Children's Panel Solicitor 7)

3.4.3 The psychologist's responsibility

This subtheme represents how legal professionals identified a responsibility on the psychologist to ensure that correct conclusions were drawn using the appropriate assessment measures. There was an emphasis on ensuring the evidence was as certain as possible about whether parents could safely provide care to their children. It was viewed as the psychologist's responsibility to provide a clear opinion.

“Sometimes conclusions could be a bit more clear. I appreciate you can’t always give yes and no answers because it’s not that sort of subject but that really is what we would like.” (Parent solicitor 4)

“I mean basically what we want is clear answers and I appreciate sometimes that the answers have to be very hedged but even then they need to be more focused.” (Children’s Panel Solicitor 5)

Legal professionals across the data set talked about seeking certainty with regard to what therapy was offered, how long it would take and whether it would be successful. It appeared to be viewed as the psychologist’s responsibility to provide clear answers to these questions.

“We need the psychologist to tell us what therapy is needed and how long it will take. It’s critical really to know whether it’s (therapy) going to work or not really it’s helpful if the psychologist can be very clear about that.” (Barrister 11)

There were differences of opinion over the level of responsibility psychologists have in expressing an opinion about the placement of children. Some participants viewed this as the responsibility of the

psychologist, and suggested that if not expressed clearly in the report this view would be sought in further questions. Others expressed the view that placement is an issue for the psychologist to comment on and for the Court to decide.

“We all just want you (the psychologist) to nail your colours to the mast and then we know where we stand... we do just want to know what the experts decision about placement would be and to express that. That’s what we’re using the psychologist for essentially. Where that isn’t clear we’d be seeking that decision through further questions”. (Children’s Panel Solicitor 6)

“Where the psychologist has or hasn’t made a firm decision about where the children should be then essentially that will be for the court and the parties to argue about”. (LA Solicitor 13)

It was suggested that clear opinions on pertinent matters can be missed if the wrong questions were asked of the psychologist. Some viewed it as the responsibility of the psychologist to point out questions that are missed.

“When things get missed or when there is no clear judgement from the psychologist one way or the other it can be because the wrong questions were asked. An experienced psychologist should and would be able to pick up actually if a question was missed and ideally come back and say I wonder if this question was missed but it’s very rare that they do this unfortunately”. (LA Solicitor 9)

Previous experience of poor psychological assessments seemed to impact views about the psychologist’s responsibility to produce good quality reports. It was indicated by a number of legal professionals that there is no adequate system for holding poor experts responsible.

“I’ve seen some awful ones (psychological reports) really bad and all we can do is not use them again you know. That just makes you think that they really should be putting their hands up and recognising that they shouldn’t be doing this work. If they’re saying they’re an expert they should be able to produce the expertise that’s all down to the expert.” (Parent Solicitor 3)

3.5 Similarities and differences in identifying important information

This theme reflects consistencies and inconsistencies in identifying important aspects of the psychological report. It was apparent in the accounts of legal professionals that certain aspects of the report were

consistently identified as being important and other aspects were not. Both consistently and inconsistently identified factors appeared to have a role in informing judgements and or decision making processes.

3.5.1 ***Factors consistently identified***

Across legal professionals a number of issues regarding the psychological report were consistently identified as being important in terms of decision making. These issues appeared to be related to specific and tangible facts and informed a decision to pursue a course of action. They included the duration of the therapy recommended, cognitive assessment results, mental health diagnosis, and ensuring that information in the report was generally consistent with factual aspects of social work evidence and the legal professional's impression of the parent. Consistently identified factors tended to be the first things that were noticed when reading a report, even if reading it quickly.

“We might pick out a quick speed and I might flick through it pick out key elements. I'd be looking for general themes, general issues, learning disability yes or no, mental health diagnosis yes or no, time scales for therapy. So they would be the main things and also in the self- reporting I'd be skimming that to make sure it fits with the social work evidence, because you can find that a parent will be more honest with the psychologist than with the social worker. So I'd be saying to

the social worker you need to make sure this information marries up with yours.” (LA Solicitor 9)

Therapy recommendations were considered in light of the 26 week timescale for completing proceedings.

“The Court won’t wait for parents to sort themselves out unfortunately and it’s a very fine balancing act. It’s very difficult it’s not easy to decide but yeah it would all hinge primarily on the timescales for therapy and the psychologist recommends that.” (Children’s Panel Solicitor 7)

“We have to complete care proceedings in 26 weeks. This report would typically roll in at about 15 of your 26 weeks and whoever you’re representing if you have a recommendation for 6 months of therapy that’s when you really need to start seriously thinking about what the implications are.” (Barrister 8)

Timescales were viewed as critically important, and it was agreed that therapy recommendations which were unlikely to be accessible within timescales could destroy a case in terms of hope for final outcome.

“The other problem you’ve got is then waiting lists for therapy which is you know if it’s like I mean I have seen them be sometimes up to a year it can then totally destroy your case.” (Children’s Panel Solicitor 7)

The issue of timescales was explained by legal professionals in terms of the recent changes to care proceedings. This was viewed as positive in terms of not keeping children waiting, but negative in terms of some final outcomes. It was suggested that psychological recommendations rarely indicate an immediate rehabilitation of the children to the care of the parents is possible.

“The system is against parents now with the timescales. It’s very rare to get a therapy recommendation for less than six months I mean we are talking about parents with big problems. They wouldn’t be in care proceedings if they didn’t have problems. That doesn’t mean to say they can’t do it. I’ve seen people do it where they’ve had more time in the past and the children could go back in the end... but timescales now you’ll get some Judges who will look at the recommendations and say it’s too far outside the timescales.” (Children’s Panel Solicitor 7)

“We’re very bound now with this protocol of 26 weeks on cases. It’s right that children’s cases should be dealt with speedily but in the past I had cases that lasted three years you know and at the time it seemed

right because the parents were working towards a solution. I feel sometimes with this tight timescale of 26 weeks that all we're doing is a hand holding job. I mean how many of them can turn it round in 26 weeks. I can guarantee you that it takes a special parent to turn their life round in 26 weeks and these aren't special parents that's why they've got problems with the Local Authority.” (Parent Solicitor 2)

Legal professionals consistently talked about there being potential for rehabilitation of children to the care of parents in the case in the psychological report for this study. They consistently identified two sentences in the report's recommendations, indicating that therapeutic work could be undertaken whilst the children were in the care of the parents, as being crucial to this view.

“I mean this is one where you would run it... this is one that might go somewhere particularly since they can do the work while the children are with them”. (Parent Solicitor 4)

“Yeah I think they've (parents) got a chance in this one it helps immensely that the psychologist thinks they can do therapy and look after the children at the same time.” (LA Solicitor 13)

Legal professionals tended to view the optimal placement for any child as being with parents, regardless of who they represented. It was not clear whether this belief was based on personal or legal views. They consistently identified that this belief guided how they considered evidence.

“If you’re representing parents but also if you’re representing children as part of your obligations I would view the role as getting the best possible outcome which should in principle be to be with their parents and this is how I approach it.” (Barrister 8)

“Children don’t do well in foster care we know this. It’s always the ideal situation for children to be with their parents we just need to look at the evidence to know that the parents are definitely going to be able to look after them well enough or not”. (LA Solicitor 9)

Legal professionals identified the diagnosis (or otherwise) of a learning disability as being critical for informing what might happen next. This included predictable practical decisions, for example issuing a certificate of capacity, involving the Official Solicitor, requesting specialist parenting assessments and ensuring that previous assessments were adequate given the learning needs of the parents.

“It is established in the case law that parents with learning disabilities should have been given a fair assessment of their parenting based on their needs so I would be using the psychological report here to look at any parenting assessments and ensure the Local Authority had fulfilled those obligations.” (Barrister 11)

Legal professionals identified diagnosis of mental health conditions, or addictions, as being critical in terms of informing decisions to ask for further psychiatric assessment.

“The diagnosis or addiction is important because it might point the way to say there’s a need for a psychiatric assessment.” (Parent Solicitor 3)

Legal professionals explained that they may well have developed an opinion about a case prior to viewing the psychological report. It was frequently suggested that issues that were consistently identified as being crucial in psychological evidence (specifically; time scales for therapy, cognitive assessment results, mental health and addiction diagnoses, information that parents will only provide to the psychologist) were things that they could not predict.

“I would say they (psychological reports) broadly they come back saying kind of what we’d expect. It’s maybe just things like the timescale that’s a little bit different than you’d expected or we hadn’t identified all of the things that maybe a parent needed to do to be able to have the child back in their care. Or things around cognitive or mental health functioning that you need the report for and that does affect your opinion because when it comes back you’re guided by what’s in that report to determine where the case goes from there on in.” (Local Authority Solicitor 13)

“I suspect there’s a couple of lawyers locally from looking at these things could get a psychological degree without trying to hard you know we kind of know broadly what to expect. I’m fairly accurate about my clients but especially when there are capacity issues or mental health I need an expert to quantify this also there are things that they (parents) just won’t tell me but they’ll tell the psychologist so that stuff you are only going to get from the psychological evidence.” (Senior Legal Executive 12)

Reasoning given for identifying these particular areas as important (specifically; time scales for therapy, cognitive assessment results, mental health and addiction diagnoses, information that parents will

only provide to the psychologist) was that these issues were considered areas of psychological expertise.

“When there’s suspected learning difficulties it’s a psychological rather than a social work issue.” (LA Solicitor 9)

“For us lawyers it’s (cognitive and mental health assessment) very important because a huge proportion of parents you deal with have either got some degree of learning impairment some specific psychological problems which impedes their social interaction they are just plain mentally ill and this is not something we can determine or any of the other experts actually and it does effect what’s going to happen next.” (Barrister 8)

Legal professionals consistently identified that in cases where a psychological report confirmed a general view, that of little hope of returning children to the care of their parents, the psychological information would be used as part of a process for parents. In these cases the report would not necessarily be focused on as it would for cases where there is more hope of returning children to the care of parents.

“I’m always very honest with them (parents) from the beginning but for parents it’s a process so we get each piece of evidence. We go through the initial evidence, then we go through the parenting assessment, then we go through the psychological assessment and it’s a process of acceptance for them. When it is very hopeless like that I don’t go through all of the psychological recommendations in the same way as if there is some hope I’ll just tell them basically the report and all of the other evidence doesn’t leave you with much hope here.” (Children’s Panel Solicitor 5)

“It’s a horrible process for everybody. A lot of parents will say to you ‘I know I’m not going to get them back but I’ve got to fight for them’ and that’s a perfectly natural response... in those cases the psychological report might just be a part of that process for parents and it’s likely to open up a can of worms and sometimes in those cases it’s best just not to pay too much attention to it and leave well alone.” (Parent Solicitor 4)

3.5.2 Factors inconsistently identified as important

The consistently identified issues were all things with some level of certainty, including predicted time for therapy, presence of a diagnosis and whether background information contained issues that had not been previously identified in other evidence. There tended to be some predictable practical decisions that systematically followed from these

issues, for example, further assessment. In contrast, a number of inconsistently identified aspects of the psychological report appeared to be more uncertain. An example of this was with regard to parent's capacity to engage in therapy. Some legal professionals viewed this as being an uncertain, or marginal issue, without a conclusion either way. It was suggested that in this instance a reading of the report might be biased depending on what side you are representing.

"I think when it's the more marginal issues, where it could be this it could be that like whether the parents will engage in the therapy, and it's on a fine balance then you tend to find that you've got the Local Authority picking up on the more cautious parts and arguing for the cautious approach and parents arguing for the immediate return and using the bits of the report that suggest it could work". (Local Authority Solicitor 9)

Legal professionals inconsistently identified whether the report had addressed the issue of whether parents were likely to engage well in therapy.

"The report does address that quite well I thought in terms of how the parents would react to the therapy." (Barrister 8)

“For me the conclusions about whether the parents are going to be able to actually do this therapy aren’t clear enough.” (Children’s Panel Solicitor 6)

Differences in opinion about whether parents were likely to engage in therapy, and whether the psychologist had addressed this, were reflected in differences in how legal professionals viewed the case. This influenced what they might decide to do next, whether they would pursue therapy recommendations or go back to the psychologist to seek clarity.

“The report suggests some guarded optimism in terms of how well they’ll (parents) engage (in therapy) the psychologist suggests that they are reasonable candidates for therapy so really I’d be pushing for that (therapy) in terms of moving forward.” (Barrister 8)

“Really we just don’t know enough from this about whether these parents will actually be able to do this therapy so before doing anything else I’d be looking to seek further clarification from the psychologist about that.” (Children’s Panel Solicitor 6)

Another inconsistently identified aspect was opinions about severity of parents' mental health issues. Legal professionals tended to use examples from their own experience of previous cases, and their knowledge of mental health conditions, to judge the severity of mental health in relation to the parents in the psychological report in this study.

"You know there aren't any personality disorder issues here or more severe mental health problems like that so I don't get the impression that these issues are as bad as they could be based on other cases I've seen". (Barrister 11)

"I've had cases like this before with mother's depression and father's anger and you know these things can be big problems which take a lot of skilled therapy to sort out." (Parent Solicitor 2)

Identifying and clarifying how parents had come to be in child care proceedings seemed to be viewed as being a skill that was developed through experience.

"It's a skill I think it's something you get from experience but experience you gain fairly quickly particularly if you're doing this sort of work in a reasonably specialised way you will be speaking in the course of a year

to 40 or 50 parents so you're fairly rapidly building up an experience of interacting with people and making an analysis of how they've come to be here by drawing on all of the material." (Barrister 8)

Despite this there were inconsistencies between legal professionals in identifying problems and how things had gone wrong for the parents in the study's psychological report. Some identified alcohol and domestic violence as being of primary concern.

"I think there are serious issues about drinking (for the father)... I don't think you could really do a full report without acknowledging this. You need to know the nature and extent of his drinking because it's a key feature, it's anger triggers isn't it and in my experience especially recently this sort of thing is becoming quite important." (Parent Solicitor 4)

Others felt less concerned about the nature of the father's alcohol use.

"(Father in the report) may have a bit of a drink problem but I don't think it's any worse than many I've seen and probably better than many. He's got no real propensity for violence." (Children's Panel Solicitor 5)

Barrister 11 felt that the nature of the problem was that parents did not have the necessary skills to manage the children.

“Here it seems to be a key problem that the parents don’t have the necessary skills to manage these three children.” (Barrister 11)

In contrast, Children’s Panel Solicitor 7 thought the presenting problem for the family was history repeating itself.

“Typical sort of to me second generation care clients where they’ve had difficulties in their own parenting that have been unresolved and left inappropriate coping mechanisms... These are obviously unresolved issues from childhood which are carried forward into the parenting of these children it’s just a case of obviously history repeating itself. That parents are like their parents were and it’s a very common thing to see.” (Children’s Panel Solicitor 7)

Barrister 8 understood the relationship between the parents as being the key factor in understanding what had gone wrong.

“For me in this case it seems to be the relationship between the parents that is the key problem.” (Barrister 8)

Identifying what had gone wrong was viewed as useful for some in predicting how best to move forward with a case.

“When I’m doing cases like this I’m always addressing the issue of how we move forward, which way parents can move forward in the right direction and you know the classic tenet of Freudism all consequences have causes and you need to actually know what the causes are before you can predict the consequences and identify the consequences in the future.” (Barrister 11)

Others had a different approach in identifying explanations for problems. They suggested that rather than focus on specific details of case, it is better to ask broader questions in order to understand what the psychological evidence means.

“Essentially all of this is about their ability to parent and so although drugs, alcohol, domestic violence come up in these cases you know in some ways they’re interchangeable one, the other, all of them. The real question is the ability to change regardless of whether the report mentions drugs alcohol or whatever it is.” (LA Solicitor 9)

“All we need to know is the answers to the big questions, whether they can change in time and whether they can safely look after the children. So that’s what I’m looking for. We don’t need to concern ourselves in what they’re taking or whether they’re beating each other up if we know that they can or can’t stop doing those things quickly enough... Focusing on the problem doesn’t make any difference in the psychological report it’s all about whether they can turn it around.”

(Children’s Panel Solicitor 6)

3.6 Weighing up information is a complicated process

The fourth main theme describes aspects relevant to weighing up evidence to inform judgements and decision making. This theme captures the complicated nature of the process of weighing up psychological evidence. Within this theme, four subthemes were identified to explain complications in the process of weighing up psychological evidence.

3.6.1 **Nature of the evidence**

This subtheme represents complications caused by the technical and lengthy nature of psychological reports. Legal professionals consistently identified the psychometric assessments as being difficult to understand.

“It’s difficult for us to understand the technical stuff, the cognitive tests that you do, it’s quite complicated. I accept there’s got to be some technical stuff in there but it needs to be fairly understandable”. (Parent Solicitor 4)

“I suppose perhaps there should be some sort of crash course for lawyers or somebody should do some sort of explanation as to what exactly some of these terms mean. I appreciate what it means in very general terms but that might not be specific to cognitive assessment and some of this technical information gets a bit convoluted and hard to follow”. (Children’s Panel Solicitor 5)

Legal professionals expressed more confidence in managing psychometric assessments that they have seen previously. Despite this, it was indicated that there was a tendency to ignore parts of technical information that were difficult to understand, regardless of whether the assessments were familiar to them.

“The psychometrics I skim over those. To me graphs and things and maths and stuff like that I think they’re quite interesting and these ones aren’t so bad I’ve seen them all before but I just haven’t got time to take that into account. They’re not for me.” (Children’s Panel Solicitor 6)

“These are pretty standard (psychometric assessments) but still, I mean that (points to table) I don’t know what all of these numbers mean to be honest, there isn’t any point in me getting bogged down in the minutiae of that so I don’t pay so much attention to the intricate details of these things to be honest.” (Local Authority Solicitor 13)

It seemed that attempts to understand the finer details of the psychometric assessments were generally unsuccessful.

“I mean we take the information in the conclusions as read but I’ve often wondered well what’s exactly involved in these tests and you try and find you know like you do google searches and actually it’s very difficult to get that information.” (LA Solicitor 9)

“There was this one report and it was solid you know it was really really technical and I thought I’m going to get this you know I’m really going to tackle all of this technical stuff. It took hours and hours and it was just impossible.” (Parent Solicitor 2)

Where technical information was difficult to understand, it appeared that legal professionals tended to rely on the expert summary. In terms of the cognitive assessment, most legal professionals looked to the Full

Scale IQ score and used prior knowledge that scores below 70 are indicative of a learning disability.

“Well you tend to look at the overall IQ levels because we’ve got to be very conscious of capacity but I tend to just sort of skate over it to an extent. This report is helpful because it does explain what they mean, and doesn’t get too bogged down in this test or that test, and that’s all we need to know really what it all means. I appreciate you have to put it in because you’ve got to show your findings to the Court.” (Parent solicitor 4)

“I might look at the full scale IQ because if that’s lower than 70 that gives me an idea if there’s a learning disability and the higher away from 70 it is the more able they are. Then I’ll just look to what the expert’s conclusion is about them (psychometric assessments) and what the impact of that is.” (Parent Solicitor 3)

Legal professionals talked about the process of understanding psychological reports as becoming automatic with experience. Despite this, there was a general consensus that very lengthy reports are always difficult to process.

“You do sometimes get a report which is excessively long and it is very difficult to maintain a sort of focus on reading. That is really one of the most difficult things. I think it’s always very important for people who are writing these reports to realise they’re writing for intelligent, trained, experienced but lay people. They’re still lay people but having said that anyone who is doing the work is going to have read a lot of expert reports” (Barrister 8)

“It’s jolly difficult if you get a 70 odd page report I mean it’s just impossible for us to even read in one sitting because they’re just too dense. There is a limit between the terse that doesn’t say anything and the overly long that is impossible to process”. (Parent solicitor 4)

3.6.2 Nature of the task

The task of weighing up psychological information seemed to be complicated by having to simultaneously consider a number competing factors. These included dividing attention between reading and understanding the content of the report, critically appraising whether causal explanations could be inferred from the psychological evidence, considering whether the report was written on the basis of sufficiently good information and considering options for moving forward based on the psychological report. This appeared to be complicated further by completing these tasks in limited time.

Deciphering whether causal inferences could be inferred from the psychological evidence was said to be difficult because psychologists write in a scientific way. It was suggested that skill and awareness of potential to mistakenly assume the psychologist was inferring causal links between things was required when reading psychological reports.

“Perhaps because it’s written in a scientific way is I think prone to people picking it up and assuming causal links between things because it’s written in a scientific way which actually leads to that person making an incorrect conclusion. When I’m reading this I have to pay attention to what it says but also to what it infers and whether any causal inferences in the scientific language are justified”. (Local Authority Solicitor 9)

“You can’t always just read this and take it as it is. You need to evaluate it. You know the psychologist might say something in technical language that leads people to believe that a mother’s depression is because she can’t handle her children when in actual fact a mother is depressed because she hasn’t got her children and she’s going through the stress of all of this. You have to be careful about these things when you’re reading these reports.” (Barrister 1)

Legal professionals talked about having to divide attention between understanding assessment information and considering whether it was produced on the basis of sufficiently good information.

“Any report it’s only as good as the information available to write it and I do find an issue which very often arises is something being self-reported is treated in psychological reports as though it’s objective and documented history. You have to cross check the information. You have to read the report and keep in mind what were the documents from which the psychologist has documented the history.” (Barrister 10)

Legal professionals identified complications in assimilating information in the report with various options for ways to move forward with the case.

“It can be difficult because you’re not just thinking about what it says you’re thinking about what it means for what the options are. All the time you have to think of the options and they might change when you read the report. You might read something that makes you think the parents have a better chance if they separate or you might just think that you need to be looking to assess other family members if the report is very negative.” (Senior Family Executive 12)

Legal professionals talked about completing the task of considering psychological evidence within time pressures, which could make it difficult to adequately assimilate and process psychological information.

“I do feel it’s very rushed... I don’t think anybody’s reading anything properly... you know or just reading what we need to and I think that’s a shame it doesn’t sit well with me.” (Solicitor 7)

“You know this is a massive undertaking and there isn’t much time to read this (psychological report) let alone work out what it means for your case and your client.” (Parent Solicitor 4)

3.6.3 Previous experience and personal factors

The accounts of legal professionals suggested that various aspects of weighing up psychological evidence were influenced by previous experience and personal factors. This included skills in reading the evidence, applying similarities from previous cases to new cases, picking out information relevant to clients’ instructions and differences in personal approaches to using psychological information.

Cross checking information against other evidence was considered to be a skill that develops with experience.

“It’s (cross checking information) one of the things you learn from experience is reading quickly and the key words leap out and that’s the bit you read more closely but it does take it can take a long time.”
(Barrister 8)

“There’s always that thought at the back of your mind when you’re going through what’s been provided to a psychologist have they definitely read everything have they had this... there’s new information come in have they had all the updating, is that going to effect it so you get very used to thinking about that and dealing with it.” (LA Solicitor 9)

Legal professionals talked about how, when reading psychological reports, their view of a case might be influenced by similarities between the case presented in the report and other cases they have been involved with.

“The report here, it’s a report I could have seen in umpteen cases over umpteen years. The trouble is you see these reports have a certain sameness and the one thing you do learn in this job.... is that so many of these cases the same things have happened generation after generation... I’m afraid you get a bit sort of amateur psychologist yourself, you read between the lines to answer questions like well why

has she got low self- esteem, why is she not close to the stepfather, perhaps there was some beating 20 years ago that no one has ever talked about. The problem is you've been doing this job so many years and you've read so many of these reports you've met so many people in difficult circumstances and I mean the trouble is a lot of them unfortunately have the same problems". (Parent solicitor 4)

"I mean no two people or cases are the same but obviously they can be similar and your opinion of the outcome is bound to be effected by similar reports you've seen in similar circumstances in other cases. I'm sure that's the same for psychologists too, if there are similar cases it might colour their views too". (Senior Family Executive 12)

Legal professionals identified that their reading of psychological reports might be biased to attending to information which is in accordance with the argument they are presenting.

"Everything about the way I would read this depending on that conclusion would be guided towards the way I'm looking to either attack it or support it, so by admission it is a prejudice reading."
(Barrister 1)

Responses indicated that individual differences in personal style and background might affect how legal professionals used information in the report.

“I would definitely use this going forward even if the LA used this to say it’s not in the timescales. For some people that would be it. Whereas I would be, and I’m not being arrogant when I say this, but I think I probably am a bit more proactive than other solicitors you know in actually asking for these things. A lot of people would just agree and say well it’s not in the timescales.” (Children’s Panel Solicitor 7)

“I was born to a working class family and I’m very lucky obviously to have this job but I’ve always maintained my working class roots I don’t deny where I come from. I think the right results for children should be to be brought up within the family as long as it’s safe that’s my view and I’ll read this report and try to make sure that happens.” (Parent Solicitor 2)

Emotional impact of the material

Weighing up the psychological information appeared to be complicated by the emotional impact of the material. Legal professionals talked about experiencing sadness and frustration when reading the report.

“These are terribly sad cases. I’m a softie at heart. I believe in the fundamental goodness of human nature I suppose. I don’t actually I think there or I hardly ever come across parents who are bad who are doing things to their children which they know are wrong to do to their children. The problem is almost always a lack of capacity of the parents to recognise what is good and bad and that’s what’s happening here so you do feel for these people.” (Barrister 8)

“I find it quite frustrating reading these (psychological reports) sometimes because it’s just not right how some parents and children end up in these situations. That can really be quite distracting and you have to try to focus on what the report is saying about moving forwards.” (Parent Solicitor 3)

Some legal professionals talked about being reminded of particularly emotional moments when reading psychological reports. It seemed this could make the task of focusing on the report difficult.

“I’m often reminded of really awful moments or particularly sad and draining cases when I read the background information of these reports because for lots of people the issues are similar and that connects with something and you get reminded of a time like when one mother, she

had drug issues and the decision went against her and she just howled and it was gut wrenching, the pain was so obvious to everyone there and we just had tears in our eyes it was awful. Something about this woman (the mother in the psychological report for this study) reminded me of her and you know when that happens you might need to take a moment to just get back on track and focus on the case you're looking at." (Barrister 10)

"It (the psychological report for this study) does make me think of other cases. It's really tragic when you have people with these types of needs who really are at a disadvantage. I've seen so many like this and you have to remember that no two cases are the same but some of the really sad ones do come back to you when you read about people like this." (LA Solicitor 13)

There did not appear to be a consistent way of managing the emotional nature of the material across legal professionals. It was indicated that for some, talking to colleagues might help, but for others it seemed more appropriate to carry on and brush it off.

"It's very sad this work, sometimes it's just not very nice work to do. There's no manager you can debrief to. I mean obviously I've got good working relationships with other practitioners and I sometimes have to

vent my spleen, get it off my chest because otherwise I'd take it home."

(Children's Panel Solicitor 7)

"You just have to be content that you do the best you can and move on from it, there's no good in dwelling on it, if I were to dwell on every awful outcome I wouldn't be getting out of bed to come into work in the morning." (Barrister 1)

3.7 Summary of results

Four main themes were identified to describe aspects relevant to decision making processes as recognised by the legal professionals. There was emphasis on psychological evidence informing options for moving forward in cases and encouraging clients to fulfil their responsibility to engage with the recommendations. Aims of doing this were to improve hope of rehabilitation of children to the care of parents and to prevent risk of parents losing care of children they conceive in the future. Judgements about how the psychological evidence would inform future care planning appeared more likely to change after communication with other advocates than with clients. Responsibility for sound, clear and conclusive recommendations was placed on the psychologist. This appeared to be in the absence of a robust system of holding poor quality assessments to account. Despite this, legal professionals consistently identified areas relevant to psychological

expertise as being important to decision making. These included cognitive assessment results, mental health difficulties and timescales for therapy. There were inconsistencies in legal professionals' judgements of key problems for parents. The task of understanding and using psychological evidence was complicated by its technical and emotional nature. Legal professionals tended to rely on prior knowledge and their own personal style in sustaining attention and processing the material. The themes will be discussed in relation to existing literature in the discussion.

4.0 Chapter 4: Discussion

The present study explored how legal professionals used, understood and interpreted psychological expert evidence in child care proceedings. Specifically of interest was whether this could inform knowledge about decision making processes in this context. A broad hope was that this study might add knowledge to a growing body of literature aimed at integrating legal and psychological understandings of decision making. This discussion provides an overview of the findings and considers the main themes identified in the study in terms of the existing literature and implications for practice and future research. Limitations to the study are also considered.

4.1 Overview of the findings

The study identified four themes which provided some explanation of how legal professionals used, understood and interpreted written psychological expert evidence. These themes related to (1) communication with others to inform decision making, (2) responsibility related to decision making processes with regard to the psychological

evidence, (3) similarities and differences in identifying important information within the psychological evidence and (4) complications in weighing up the psychological evidence. Each main theme will now be considered in relation to existing literature and implications for practice and further research will be suggested.

4.1.1 Communication

The role of communication in decision making was identified as a main theme in this study. The findings suggest that decisions informed by the psychological evidence about how to move forward in a case were made in communications between people rather than by individuals. In this study communicating with clients was found to involve encouraging them to engage with the psychological recommendations. This was seen as a way to increase the probability of children being returned to the care of the parents. This is perhaps helpful in adding to knowledge about how psychological evidence carries weight in child care proceedings. The weight given to psychological evidence might be associated with a view that engaging with psychological recommendations increases the probability of achieving the optimal outcome, for children to be cared for by their own parents where possible. Legal professionals encouraged clients to do this regardless of the level of hope of the children being rehabilitated to the care of the

parents. Aspects of prospect theory might help to explain this. Prospect theory posits that in seeking to determine a course of action decision makers are loss averse and will act in a manner that reduces the risk of an ultimate loss (Kahneman & Tversky, 1979; Kahneman, 2011). In relation to findings in this study, advising all parents to engage in psychological recommendations might be a way in which legal professionals sought to reduce probability of a final decision to place children permanently outside of their biological family, as this would be an ultimate loss.

The study highlighted that the task of feeding back psychological information to clients fell on legal professionals. This was suggested to be problematic, particularly in instances where learning or mental health difficulties formed a barrier to parents receiving that information. A practical and clinical implication of this study would be that consideration needs to be given to how to make psychological assessment information more accessible to parents.

In psychological clinical practice the task of feeding back assessment information, including formulations of difficulties is an important and specialised therapeutic skill (Johnstone & Dallos, 2013). The legal system determines that the instruction and payment of psychologists is divided into the discrete area of assessment only (Ministry of Justice &

Family Justice Council, 2013). The majority of psychological assessments in child care proceedings are funded by Legal Aid and therapeutic work is not covered under this system (Legal Aid Agency, 2015). This means that psychologists completing psychological assessments are not obliged to feedback assessment information as they would in clinical practice. Commentators on psychologists working in the legal arena have suggested that this practice is unethical (Greenberg & Shuman, 1997; Gaughwin, 2004). There are guidelines in place which differentiate the role of clinical psychologists working in the legal arena as opposed to clinical practice (BPS, 2010). Differentiating the role protects clinical psychologists working as expert witnesses to some extent from such criticism. Despite this, the fact remains that for parents in child care proceedings psychological assessment information is fed back by legal practitioners who are untrained in sharing psychological formulation and assessment. At best, this is not in line with clinical practice, and at worst is potentially harmful (Johnstone & Dallos, 2013; BPS, 2011).

This study indicated that although legal professionals made good efforts to share psychological assessment information their actions for doing so were guided by giving a prognosis for the outlook of the case which is not in line with psychological clinical practice. This is particularly important when considering the vulnerable nature of the parents in these cases. A further practical and clinical implication of the

findings from this study is that further consideration should be given as to how psychological assessment information can be ethically shared with parents. It is likely that further research investigating how parents receive psychological assessment feedback from legal professionals would be helpful in identifying a positive solution to this issue. Further research of this nature might be usefully informed by existing literature on sharing assessment and formulation in therapeutic settings.

This study indicated that legal professional's views about how best to move forward with a case would be unlikely to change following communication with a client regarding the psychological evidence. In contrast, these views might be changed following communication with other advocates. Applying findings from social psychology group decision making literature might be helpful in considering why this might be. In groups where a shared consensus needs to be reached it has been shown that the view initially supported by the most group members is likely to be the view that informs the final judgement (Kirchler & Davis, 1986). Although it was not possible to confirm this principle in this study it is potentially relevant to advocates' meetings as these meetings form a situation where a group aims to develop a shared understanding. Elements of 'group think', a concept introduced by Janis (1982) may also be useful in giving some explanation of the finding that advocates' meetings might lead legal professionals to change their views about what a psychological report indicates for

moving forward with a case. Group think refers to a process of distorted reasoning which occurs where group members act in a manner which preserves the harmony of the group in decision making (Janis, 1982). Legal professionals suggested group harmony and confidence in the joint experience and knowledge of colleagues were present in reaching a shared understanding of the psychological evidence. This may be similar to the tendency of group members to assume they are able to succeed in overcoming difficult problems on the basis of their expertise (Janis, 1982). Whilst this study indicated that legal professionals might change their views about psychological evidence in advocates' meetings it did not reliably measure the effects of this. Neither did the study investigate advocate group dynamics in sufficient detail to form a reliable explanation of why views change in advocates' meetings. Further research into how psychological evidence is considered in this part of the decision making process would be useful as it was indicated that important agreements about what to do next are decided in these meetings.

4.1.2 Responsibility

The emphasis on responsibility for judgement and decision making processes regarding psychological evidence was considered a main theme in this study. The issue of who was responsible for making

decisions regarding the psychological evidence came up frequently across the data set. The findings of this study indicated that responsibility for decision making regarding psychological evidence is shared between the Judge, clients and the expert psychologist in conjunction with solicitors and barristers. Judges were considered to have responsibility for final decisions on plans to move forward and for final decisions about placement. Clients were viewed as having responsibility for deciding to act on psychological recommendations and psychologists were viewed as having responsibility to provide opinions that reduced questions of uncertainty about parenting capacity. It was not possible to infer causal explanations, from the results of this study, about how responsibility for decision making regarding psychological evidence was viewed by clients, parents and Judges as this was not directly investigated. Further research including other members of the decision making system such as psychologists, clients and Judges would be beneficial here.

In accordance with previous literature, the results reflected the view of legal professionals that psychologists should state conclusions with certainty (Leslie et al, 2007; Ireland, 2012). This way of looking at evidence suits the legal profession which tends to view things categorically, whereas psychological thinking tends to view dimensions or categories on continuous scales (Simon & Gold, 2010). This difference between the professions may have influenced the view of

some legal professionals that psychologists should clearly state where the child should be placed, regardless of whether this question had been asked. This is not in accordance with what expert psychologists do as a profession or with psychological or legal guidelines regarding the role of expert witnesses (BPS, 2010; Ministry of Justice & Family Justice Council, 2013). Fundamental differences between the professions may also explain the general tendency of legal professionals to consider psychological evidence in the manner that evidence of fact would typically be considered. Psychological evidence should be distinguished from evidence of fact and treated as opinion (BPS, 2010; Ministry of Justice & Family Justice Council, 2013). Legal professionals tended to seek conclusiveness on issues such as parenting capacity, capacity to change and capacity to engage in psychological therapy. It is not possible to conclusively and reliably predict such matters (Cleaver et al, 2011). Psychologists can provide educated opinions on such matters but certainty cannot be guaranteed (Williams et al, 2015). Further research aimed at increasing the reliability in making predictions on issues such as parenting capacity and ability to engage in therapy would be beneficial for moving towards a position where psychologists can state opinions with more certainty. Until that point psychologists and legal professionals ought to be clear that opinions are just that, they are not fact. This study indicated that the tendency to treat psychological evidence as evidence of fact, therefore misunderstanding the role of the psychologist, occurred despite the wealth of knowledge and experience of the participants.

There is a practical implication here for increased communication between the professions, perhaps in the form of training, to ensure that expert evidence is both written and read as opinion and not treated as fact.

A number of practical system issues arose within the theme of responsibility. These appear to be linked to wider debates in legal and psychological domains. The question of whether lay Justices should be presiding over child care proceedings was one such issue. This is a long standing and ongoing debate in legal and political domains (Sheehan, 2001). In relation to psychological evidence, this study indicated that lay Justices were not perceived as being as proficient at identifying key aspects of psychological evidence. It was suggested that they have insufficient time to read psychological reports. These results alone cannot contribute persuasive opinions either way on the much wider debate about the appropriateness of lay Judges presiding over child care proceedings. It might however be useful to investigate further how lay Justices negotiate psychological evidence in comparison to Circuit and District Judges. This may be beneficial in informing whether further training in the use of psychological evidence for Magistrates might be useful.

A second practical issue highlighted by legal professionals in this study was the question of who should be responsible for providing recommended treatment to parents where there is little hope of their children being returned to their care. Legal professionals were unsure whether parents themselves should be responsible for undergoing the recommended treatment, or whether LA's should ensure this is provided to reduce the risk of any future children entering the care system. There has been increased focus on preventing situations where child care proceedings are needed in recent years (Family Justice Review, 2011). Within this focus on prevention it might be useful to consider who should be responsible for ensuring parents can access the therapy recommended as part of proceedings in cases where children are not returned to their care.

A third practical issue arising from this theme is linked to previous literature highlighting concerns about the quality of psychological evidence (Brophy & Bates, 1998; Budd et al, 2001; Coles & Veiel, 2001; Faust & Ziskin, 1988; Leslie et al, 2007; Ireland, 2012). The findings in this study suggested that in the absence of a robust system of for holding poor psychological assessments to account, legal professionals viewed psychologists themselves as being responsible for the quality of their work. This has been echoed in previous literature (Ireland, 2012). The findings from the current study are not sufficient to suggest an appropriate structure for holding psychologists accountable

for poor quality assessments. They do however highlight the issue that poor quality psychological evidence may still be allowed in child care cases. This would benefit further attention from legal and psychological systems. Further research into what exactly the effect is on decision making of poor psychological evidence would be beneficial.

4.1.3 Similarities and differences in identifying important information

The findings of this study indicated that aspects that are consistently identified by legal professionals as being important tended to contain concrete and tangible information. This included, a diagnosis of learning disability or a diagnosable mental health condition, timescales given for psychological therapy and whether psychological assessment information was consistent with other evidence. These tangible factors appeared to be valued as providing the basis for rational decisions about what course of action should follow. This could include further assessment, verifying new or inconsistent information with clients and accessing therapy. These factors appeared to be important for legal professionals because they were considered to be things that only the psychologist could confirm. These findings might suggest that the reason these issues carry weight might simply be because they are necessary for decision making and fall within the expertise of the psychologist. This is in conjunction with the role of the expert witness as an independent person who, through training or study, is able to furnish court with information that is outside of the expertise of other

professionals involved in the case (BPS, 2010). Findings from this study therefore indicate that psychological assessment information, within the specific expertise of the psychologist, is helpful and necessary for decision making processes.

Legal professionals consistently placed importance on timescales for recommended psychological therapy. The findings in this study indicated that long timescales for therapy would inform a judgement that children may need to be permanently placed outside the home of their parents. The results highlighted concerns raised in previous literature about how the 26 week timescale to complete care proceedings might impact on decisions (Masson, 2011; Masson, 2012). Judgements that rehabilitation of children to parents is hopeless that are formed on the basis of timescales may have a negative impact on some parents. The findings of this study indicated that there were some cases where successful rehabilitation was thought to be possible, but not in a 26 week time period. Consideration should perhaps then be given to how timescales are viewed and how this affects decision making. The results of this study cannot confirm that lengthy timescales for therapy cause decisions not to seek therapy for parents and decisions to place children with alternative carers. This study did not directly measure this in real life cases. Further research aimed at clarifying to what extent therapy timescales influence decisions to support parents in accessing therapy and decisions to place children

with alternative carers would be important. This study indicated that therapy recommendations for parents in these circumstances are likely to exceed timescales, therefore further research aimed at reliably predicting parental capacity to change where timescales are longer might also be beneficial here.

Another issue that arose in relation to this theme was that of cases where there is little hope of rehabilitation. In these cases, it was consistently identified that psychological reports might be used as part of a process for parents who wish to continue with proceedings until a final hearing. The findings from this study indicated that in these situations the psychological report would not be used to actively seek therapy for the parents and look to move forward with the case as they would if there was hope for rehabilitation. This raises a question of whether it is ethical to complete psychological assessments on vulnerable parents who have little hope of having their children returned, particularly if that psychological assessment information is not going to be used to actively consider a plan for rehabilitation or to access therapy. This would be an important area to consider further. Thought should be given in practice to the value of having a psychological assessment in cases where there is little hope of rehabilitation if that assessment is not needed to determine outcome.

Inconsistently identified factors from the psychological evidence appeared to be related to areas of uncertainty, and that were open to individual interpretation. These included legal professionals using the assessment information to try to identify what the key psychological issues were and how they came to be. This was seen by some participants as a necessary process to inform their judgements about the best way to move forward with a case. Gaining a conceptualisation of a problem and how it came to be is similar to the psychological concept of formulation (Johnstone & Dallos, 2013). The difficulty with legal professionals doing this in this study was that they all had different ideas about what the key psychological factors were, and how they linked to a description of the development and continuation of problems for the parents described in the report. This is consistent with decision making literature which suggests that judgements made in conditions of uncertainty are likely to be prone to intuitive biases (Eysenck & Keane, 2005). This highlights a practical implication for psychologists writing reports. It would be beneficial for psychologists to clearly indicate the psychological formulation and key psychological concepts in reports. This would reduce the chance of legal professionals forming inconsistent judgements on the basis of their own attempts to formulate psychological matters.

Psychologists and legal professionals may benefit from training in understanding which factors of psychological evidence are consistently

and inconsistently identified by legal professionals as being important. This would enable psychologists to be as clear as possible about factors that are inconsistently identified. Similarly, legal professionals would potentially be able to avoid their judgement being influenced by factors that they are not reliably able to identify, and which might go on to impact on decision making processes.

4.1.4 Complications in weighing up the evidence

This study revealed that whilst understanding and interpreting psychological evidence legal professionals are required to use various information processing techniques simultaneously. This included critically evaluating the evidence whilst also trying to understand what it meant and what options it indicated for moving forward with the case. Legal professionals indicated that these processes required conscious effort, this type of task is therefore likely to require 'system two' thinking (Kanheman, 2011). The conscious effort that was required by legal professionals appeared to be prone to some intuitive biases which will be discussed further throughout this section. This supports findings from descriptive approaches to judgement and decision making that rationality is prone to intuitive biases when people are engaged in tasks that require sustained and conscious effort (Kahneman, 2011).

Legal professionals consistently identified that technical information reported in tables and number form for psychometric assessments was difficult to understand. This highlights the challenge faced by legal professionals of working with material that is outside of their expertise. This study indicated that legal professionals tended to ignore complicated technical information and rely on their existing knowledge and the expert summary of psychometric assessments. Legal professionals also highlighted the lack of readily available information about psychometric assessments in the public domain which complicates attempts to learn what they entail. According to descriptive approaches to decision making the difficulty with making judgements by relying on available information in the absence of knowledge is that it leaves room for error in forming judgements (Eysenck & Keane, 2005). This is because intuitive biases in thinking are more likely to occur in such situations (Kahneman, 2011). In this study the bias known as 'anchoring effect' may be relevant in relation to how cognitive assessment information was interpreted by legal professionals. The anchoring effect suggests that information used to form judgements tends to influence those judgements, even if that information is inaccurate (Kahneman, 2011). Legal professionals appeared to make judgements about cognitive assessment results on the basis of whether the full scale IQ score (FSIQ) was over or under 70. Legal professionals tended to rely on this as they had prior knowledge that a FSIQ score under 70 was indicative of a learning disability but did not know much more about the cognitive assessment. The focus of

interpreting cognitive assessment results seemed to be on the basis of how much higher or lower than 70 the FSIQ was. Their judgements were therefore 'anchored' or influenced by interpreting the results on the basis of this piece of information. The difficulty in relying on this method in interpretation of cognitive results is that it does not take into account variability between the various indices of the cognitive assessment, or whether the FSIQ score is reliable (Wechsler, 2008). This has implications for practice. Clinical psychologists should ensure that report writing makes clear what the technical psychometric information means in relation to the conclusions they reach. They could also clearly indicate important aspects of the psychometric information. Training regarding psychometric assessment for legal professionals may be helpful. This would ideally be aimed at ensuring decision making processes are influenced on the basis of correct interpretation of psychological evidence. It might also be helpful to develop an independent resource that legal professionals could use to check commonly used terms, assessments and psychological concepts.

Another intuitive bias that might be relevant to making judgements about psychological evidence indicated by the results of this study was 'representativeness heuristic'. This suggests that when making judgements people organise information on the basis of how similar it is to a typical category or stereotype (Kahneman & Tversky, 1973; Kahneman, 2011). Legal professionals applied reasoning about judging

the case in the psychological report on the basis of how similar or different it was to cases they had seen before. Applying reasoning based on stereotypes or categorising information in this way results in judgements which are based on how the information fits into those categories rather than on what the actual base rate information is. Previous research has shown that this can lead to errors in judgement (Kahneman & Tversky, 1973; Kahneman, 2011). Making judgements about the likelihood of success in a case based on how similar it is to other cases might therefore be problematic. This is particularly important in terms of decision making processes regarding psychological evidence as these judgements were important in decision making processes. A judgement about the level of hope in a case based on the psychological report was said to inform the basis of legal advice to clients and decisions about care planning. This could then go on to influence decisions about whether to plan work towards rehabilitating children to parents or not. Future research investigating the impact on decision making of forming judgements about what psychological evidence means for a case would help to establish whether this is in fact problematic.

The results relevant to this theme raised a number of practical issues relevant to report writing. It is important for clinical psychologists acting as expert witnesses to understand how their reports are received by legal professionals, and how their recommendations are used in

decision making processes. The results of this study showed that psychologists would do well to indicate clearly where information is self-reported, and where opinions have been influenced by other evidence. It would also be beneficial to clearly state what evidence forms the basis of expressed opinion and recommendations. This is likely to assist legal professionals in the complicated process of weighing up the psychological evidence in light of the other evidence. Reducing the effort of processing this information, and pointing out to legal professionals exactly what the important aspects of the evidence are from a psychological point of view, reduces the possibility of biases in legal professionals' interpretation of psychological information. This would also reduce the possibility of causal inferences inappropriately being made from the psychological evidence, and of self-reported information being accepted as objective and factual history. Reports written in this manner would be more likely to be read and acted on with the intention in which they were written.

It was clear from the accounts of legal professionals in this study that their task is difficult given the emotional nature of these cases. Processing information in the psychological evidence appeared to be somewhat distracted by the emotional memories it induced of previous cases. The 'availability heuristic' suggests that information that is easily recalled by memory can effect judgements (Tversky & Kahneman, 1974; Tversky & Kahneman, 1983; Gigerenzer, 2004). Research into

the role of emotions in decision making has shown that emotional memories are particularly accessible to memory and can influence judgement (Damasio, 1994; Kahneman, 2011). The psychological profession has a system of supervision to manage the difficulties of working with emotionally charged material. This involves reflecting on the emotional impact of therapeutic work to ensure that the psychologist's emotional reaction to material does not interfere with the therapeutic process. It was not clear that such a structure existed in the legal profession, and legal professionals in this study displayed different approaches to coping with this. This study indicated that material in psychological reports can induce emotional memories in legal professionals and that this can be distracting when processing psychological material. It was not possible to comment on the extent and impact of this on judgements as this was not directly measured. It might be useful to consider this further in relation to coping styles of legal professionals, and to establish whether the emotional nature of the material affects judgement and decision making processes in a predictable manner.

4.2 Strengths and limitations of the study

This study confined its focus to the exploration of psychological evidence from the perspectives of legal professionals in child care

proceedings. This enabled the researcher to focus on answering the specific research question and objective for this study. The difficulty with this narrowed focus of exploration is that the identified themes cannot be reliably generalised to the use of psychological evidence in other areas of law or from the perspectives of other individuals involved in child care proceedings.

The sample reflected the general demographic characteristics of family law professionals. Despite this there needs to be some caution in generalising the results to family law professionals as a whole. This was because the participants were self-selecting and were sampled from targeted geographical locations that were convenient to the researcher. Ideally participants would have been randomly sampled from geographical locations across the country to be as representative as possible of family law professionals in England.

Qualitative analysis was selected in accordance with the overall aim of the study to gain direct knowledge about the experiences of legal professionals. Qualitative analysis is useful in exploring the meanings individuals give to their experiences in good detail (Lyons & Coyle, 2007). It should be stated however that the results of qualitative analyses such as this cannot confirm causal inferences about the topic

under investigation. The results of this study should be viewed with this in mind.

Thematic analysis was selected as the method of qualitative analysis. This approach was considered to fit well with the researcher's realist, theoretical epistemological position. It also enabled the researcher to address the aim of adding to a growing body of literature targeted at integrating psychological and legal knowledge about decision making. On reflection the researcher wondered whether the results might have been enhanced by adopting some of the principles of a grounded theory approach to data analysis. A grounded theory approach allows the researcher to adapt the interview schedule as new information is analysed in construction of an interpretive theory of the results (Glaser & Strauss, 1967; Charmaz, 2006). It might have been useful, for example, to adapt the interview schedule to find out more about the nature of group decision making processes with regard to psychological evidence. As it stands the results are indicative of very broad themes and more information is required to understand the findings highlighted in this study.

The study used a fictional psychological report for a mother and a father. This provided a useful focus for the semi-structured interviews. It also enabled the participants to identify specifically which parts of the

evidence they were referring to when they talked about how they would use, understand and interpret the information. This was particularly helpful in highlighting strengths and deficits in legal professionals' accuracy in understanding a piece of psychological evidence. There were some important issues related to the use of this fictional psychological report which should be stated and considered in terms of the reliability of the results of this study. Participants were all busy practising lawyers who kindly gave time to participate in the research. They were asked to read the report as they would if they had received it as part of their professional practice. There was no procedure in place to ensure that participants had read the report as they would if it was a real case. During the interviews the researcher wondered whether some legal professionals had read the report more accurately than others. It is possible that this reflected professional practice and that there are differences in how much attention to detail is given to such evidence by different practitioners. It is equally possible that some of the participants read the report less accurately for the research than they would in their professional practice. If this was the case the results need to be treated with caution as responses to the questions about how they would use, understand and interpret the information might not reasonably reflect the reality of professional practice. Another related difficulty was that of compromised ecological validity created by the artificial situation of giving the participants the fictional psychological report without background papers for the case. In professional practice legal practitioners would never be in a position where they would

receive a psychological report without first having prior knowledge of a case from meeting with their client and having sight of other evidence. The results of the study should be considered with this limitation in mind.

4.3 Reflections

Qualitative analysis is open to the subjective interpretation of the researcher. In this study the researcher noticed previous knowledge of the area affecting interpretation at times. In addition to this the researcher noticed aspects of clinical work seeping into views about the research and vice versa. It was particularly difficult at times to remain objective and manage thoughts about the somewhat powerless position of parents in this context. Attempts were made to be as true to the data as possible, and for analysis to reflect the data rather than the researcher's beliefs. Supervision, the use of a reflective journal and service-user collaboration were important in assisting the researcher to reduce the influence of subjective interpretation. Service-user collaboration was particularly helpful in allowing the researcher insight and acknowledgement into her perspectives through a process of being presented with the perspectives of others

4.4 Conclusions

This study adds to knowledge about decision making regarding psychological evidence at a politically relevant point in time. The results provide useful insights into further avenues of research and implications for practice, but cannot reliably confirm or quantify effects on decision making. The qualitative analysis provided a detailed insight into the processes involved in decision making in this context. It was encouraging that psychological assessment information was used to aid appropriate decisions about the need for further assessment. The role of the psychologist was valued here as other evidence would not have provided the necessary expertise to inform such decisions, particularly in the area of cognitive assessment. In accordance with previous findings from descriptive approaches to decision making, rational processes in forming judgements were subject to intuitive biases where psychological evidence was unable to provide certainty (Kahneman, 2011; Eysenck & Keane, 2005; Hastie, 2001). The application of psychological literature, which includes limits to human rationality in forming legal judgements, offers useful and important insights for working towards robust and optimal legal decision making.

5.0 References

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6.0 Appendices

Appendix 1: Extracts from reflective journal

Thoughts after first 4 interviews

Are there hidden functions/ roles for the reports:-

Help parents access mental health services

Help Solicitors know how to communicate with parents as often they can be complex individuals- especially LD

To give solicitors some understanding of the details of the often seen and upsetting/ frustrating generational patterns in these cases- ie reading between the lines and educated speculating about what happened between Ms Davis and step father

Place for parents to disclose abuse where they have not done before- ethical implications for professionals involved in this

Place within proceedings where parents can feel able to share more information- adds to a Legal professional's knowledge of a parent as a parent can be hard to engage in these circumstances and may only tell you what you want to hear

Common features noticed so far:-

Difficult nature of the work- mention of 'hopeless' 'seen it time and time again' 'powerless'

Using information to inform next steps

Using information in a practical way- eg therapy suggestions

Psychometrics always hard to understand

Hard to understand information glossed over rather than make an effort to understand- focus only on parts that are understandable and expert summaries of technicalities in lay terms is helpful

Reading the conclusions first

Would read the report in a similar way whether representing parents or children?

Differences between localities in terms of how experts are used

Time pressures

Mention of recent changes to legal system with respect to instructing experts

Psychologist can add what no one else in the involved system can in terms of why people are the way they are and whether they can move forward

Implications and considerations so far-

Ethics- do legal professionals need support in their roles in the context of the emotional difficulty of doing their job? Is it ethical that parents chances of getting support are heightened if they have a report in these circumstances- shouldn't they get it anyway if it's needed? Is it ethical for legal professionals to tell people to take these reports to their GP's?- what about confidentiality? Is it ethical that parent with LD or similar difficulties do not receive a tailored version of written evidence that they can understand?

Whose responsibility should it be to feedback assessment results?

What about parents who disclose abuse for the first time? Do they understand how this information will be used and what the implications are of disclosing this?

Ethical question of independence for experts who work as independent experts when children are already in foster care but also conduct work on a paid basis for the Local Authority in the context of pre proceedings where their reports are also being used in the same way as independent experts- how independent are they?

Training in psychometrics

Executive summaries of the defining features of a report?

Thoughts after interviews 4-6

The experience of professionals

The information in the reports might be more influential on a professional's opinion of a case if that person is less psychologically minded or less experienced in general?

The system and timescales- impact on the feasibility of recommendations

The limited number of weeks, the limited amount of information allowed in court bundles means that some parents who before could have made improvements over a longer period of time and have the children returned can no longer do this.

Recommendations get read in terms of how feasible they are in the timescale- if a report is recommending 6 months therapy this is likely to be outside the timescales and so may impact negatively on decision making- particularly where children are younger and more likely to be adopted.

Using the report to help parents in the future with future children

If the recommendations are outside of timescales for these children legal professionals use the information to advise parents how to ensure that this doesn't happen with future children- does this fall under umbrella of social responsibility? So information can be used outside of the specific proceedings and even be used in future proceedings if there are concerns about children born after the proceedings.

A piece of the jigsaw, evidence with a tophat

Potentially separate themes- the report as a piece of evidence that sits alongside other evidence- but that carries extra weight in these circumstances- the information gets taken as read rather than challenged.

Lack of experience leads to the wrong questions being asked by inexperienced advocates and to an inability to know when a report is unsound

Information that is hard to understand gets ignored- also when a report is unsound it can get ignored- is this information important- should legal professionals have knowledge of these areas? Is it ethical that information gets left out because it is hard to understand? What if it is important?

Remaining optimistic in the face of hopeless scenarios

**Appendix 2: Ethical approval from Royal Holloway University of
London Ethics Committee**

Ref: 2014/164 Ethics Form Approved Subject to Amendment

Applicant
Name: **Claire Blincoe**

Application
title: **Investigating legal professionals' interpretation and understanding
of independent psychological expert witness reports in child care
proceedings**

Comments: Approved subject to amendment. This means that the following
amendments are required before the research can commence (note that
even though these changes are required, evidence of the revisions does
not have to be submitted to DEC):

- Please use the RHUL letterhead and add the contact/RHUL details
- Please remove track changes from Consent form.
- Add supervisor's name to the information sheet.
- It is necessary that the researchers retain a copy of the consent form. At present, it was not clear to reviewers how the participants will provide their consent. Will they mail back their signed forms? Please make sure that you collect and keep a record of the participants' consent forms.

Appendix 3: Email to participants

Re: Psychologist Expert Witness Research

Dear

I am currently involved in some research investigating how legal professionals use, interpret and understand written psychological expert witness evidence in child care proceedings. I have attached an information sheet.

The research is being completed in partial fulfilment of the Doctorate in clinical psychology at Royal Holloway, University of London.

I understand you are likely to be very busy so please do not feel under any pressure to participate.

Specifically, participating in the project would involve reading a psychological report for a fictional mother and father. I would then ask you to participate in a semi-structured interview (lasting approximately 30 minutes) where I would ask you open questions about how you might use, understand and interpret information in the report in your professional role.

If you do use psychologists as expert witnesses in your role representing either parents or children in care proceedings and you would like to participate please feel free to send me an email and I'll contact you to arrange a convenient time to meet.

I'm happy to provide more information and answer questions if needed. Many thanks for your time in reading this email.

Kind regards

Claire Blincoe
Trainee Clinical Psychologist
Royal Holloway, University of London
Egham
TW10 OEX



Appendix 4: Participant information sheet



Participant Information Sheet

Legal professionals' experiences of independent psychological expert witness evidence in child care proceedings: An exploratory study

Researcher: Claire Blincoe, Trainee Clinical Psychologist

Supervisors: Dr Simone Fox, Clinical Psychologist, Dr Rebecca Pons, Clinical Psychologist

I would like to invite you to take part in a research project. This information sheet gives an outline of the research. I hope that this will allow you to make an informed choice about whether you would like to be involved. If you have further questions please feel free to contact me.

Why is the research being done?

This study aims to investigate how legal professionals use, understand and interpret the written evidence of independent psychological expert witnesses.

Identifying how this evidence is perceived and used by legal professionals could help to identify areas that could be targeted to improve our professional practice.

Why have I been chosen to take part?

It is important that the people chosen to take part are representative of people who use independent psychological expert witnesses in their professional practice. This is so that the results of the research can be generalised and used to help further our knowledge of this area in a reliable manner. I am contacting you to ask whether you would like to take part because you have good knowledge of and/or use independent psychological expert witnesses whilst representing children and/ or parents in child care proceedings in your professional practice.

What will happen if I take part?

If you agree to take part, the first thing you would be asked to do is to show that you have read this information and that you agree to participate by signing a consent form. You would then be asked to read a psychological assessment report of a fictional mother and father and to imagine you have professional contact with their case. You would then be invited to an interview lasting between 30 and 45 minutes where you would be asked some questions about your thoughts about the information in the psychological report.

You are not under any obligation to participate and it is your choice whether you decide to participate. You would be free to withdraw from the study at any time without giving a reason. The interview would be recorded and transcribed. Once transcribed the voice recording of the interview would be destroyed. There would be no information on the interview transcription document that would identify you and all transcripts would be kept securely by the researcher.

What will happen after I complete the interview?

Information gained from the interview would be analysed using a technique called 'Thematic Analysis'. This involves the researcher looking at the transcripts of all of the interviews conducted and identifying patterns of responses and meanings across them. The results would be written into a thesis report which would be submitted in partial fulfilment for the Royal Holloway University of London Doctorate of Clinical Psychology. None of your personal details will be used within the report, so your views will be anonymous. The main findings may also be presented at an appropriate conference and published in an academic journal. You can have a summary of the research project findings if you wish to.

Who has reviewed this research?

All research conducted at Royal Holloway, University of London undergoes ethical consideration by the Royal Holloway Ethics Committee to protect your

interests. This study has been reviewed and given favourable opinion by this committee

Thank you for taking the time to read this. Please feel contact me if you would like to discuss anything further.

Claire Blincoe

Trainee Clinical Psychologist, Psychology Department, Royal Holloway, University of London

Claire.blincoe.2012@live.rhul.ac.uk

07817 838 057

Research Supervisor: Dr Simone Fox, Clinical Psychologist and Academic Tutor, Royal Holloway University of London

Appendix 5: Fictional Psychological Report (Formatted to fit 54 pages)

**To the Court
Psychological Report**

Ms Jane Davis
D.O.B: 02.11.1991

Mr Daniel Garfield
D.O.B: 06.03.1988

Date of Psychological report:

01.03.2015

Report prepared by:

Dr Dale (BSc Hons. ClinPsyD)
Registered Clinical Psychologist

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1.0 Professional details

1.1 I am a Registered Clinical Psychologist and Chartered Psychologist working as a Director of Expert Witness Psychology Services (a practice providing independent psychological services). I also work on a part-time basis as a Consultant Clinical Psychologist in the NHS and have twenty one years of clinical experience within the NHS. I work with a range of client groups experiencing various mental health and emotional problems.

2.0 **Instructions and sources of information**

2.1 Jane Davis (DOB: 02.11.1991), and Daniel Garfield (DOB: 06.03.1988) are the parents of Jacob Garfield (DOB: 05.06.2011) and Katie Garfield (DOB: 22.10.2013). Jane Davis has an older son, Ethan Banks (DOB: 30.04.2009) from a previous relationship. Ethan Banks' father does not have contact with Ethan and is not a party in these proceedings. All three children resided with Jane Davis and Daniel Garfield until August 2014 when they were placed with Local Authority foster carers.

2.2 The family have been known to Children's Services since January 2011 in connection with concerns about domestic violence between the parents. The case was closed in December 2011 after the parents engaged effectively with professionals in addressing the concerns. The case was re-opened to Children's Services in December 2012 following reports from Ethan Banks about heavy drinking by Daniel Garfield. It also transpired that the children had missed a number of health appointments and the family home was found by Social Workers to be unclean and cluttered. The decision was made to place all three children in foster care in August 2014 following continued concerns about domestic violence between the parents, neglect and emotional abuse of the children and deterioration of conditions within the family home.

- 2.3 Jane Davis was placed in foster care between the ages of 15 and 16 following concerns about absconding from school and spending time with older adult males. She has been involved with health care services in the past in relation to depression. Professionals have raised concerns about her level of intellectual functioning and the potential impact of this on her parenting capacity. Daniel Garfield became known to Police in 2006 when he was charged with Theft. Professionals have reported concerns regarding Daniel Garfield exhibiting aggressive behaviour in the presence of the children.
- 2.4 Daniel Garfield has attended alcohol misuse services and has undergone liver function tests which have been within the normal range. Both parents have attended parenting classes and are applying for the children to be returned to their joint care.
- 2.5 I have been asked to undertake a psychological assessment, including a cognitive assessment, of Jane Davis and Daniel Garfield and have been instructed to provide an independent opinion on the following issues:
- 2.6 **Ms Jane Davis**
- 2.7 (Q1) Does Jane Davis have – whether in her history or presentation – a mental illness/disorder (including substance abuse) or other psychological/emotional/cognitive difficulty and, if so, what is the diagnosis?
- 2.8 How do any/all of the above (and their current treatment if applicable) affect her functioning, including interpersonal relationships?
- 2.9 If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional/cognitive difficulty or personality disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?

- 2.10 What are the experiences/antecedents/aetiology which would explain her difficulties, if any (taking into account any available evidence base or other clinical experience)?
- 2.11 What treatment is indicated, what is its nature and the likely duration?
- 2.12 What is her capacity to engage in/partake of the treatment/therapy?
- 2.13 Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?
- 2.14 What other factors might indicate positive change?
- 2.15 **Mr Daniel Garfield**
- 2.16 (Q1) Does Daniel Garfield have – whether in his history or presentation – a mental illness/disorder (including substance abuse) or other psychological/emotional/cognitive difficulty and, if so, what is the diagnosis?
- 2.17 How do any/all of the above (and their current treatment if applicable) affect her functioning, including interpersonal relationships?
- 2.18 If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional/cognitive difficulty or personality disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?
- 2.19 What are the experiences/antecedents/aetiology which would explain his difficulties, if any (taking into account any available evidence base or other clinical experience)?
- 2.20 What treatment is indicated, what is its nature and the likely duration?

- 2.21 What is his capacity to engage in/partake of the treatment/therapy?
- 2.22 Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?
- 2.23 What other factors might indicate positive change?

2.24 **Background details of the case**

- 2.25 These are as detailed in the Chronology, dated 10.01.2015, and in the Statement of Mr Jack Smith, Social Worker, dated 02.02.2015. Briefly the main concerns include; domestic violence between the parents, a rapid deterioration in home conditions, the unkempt presentation of all of the children, Ms Davis's capacity to care for the children in the context of a suspected learning disability, non- engagement with Children's Service professionals including multiple missed appointments, Mr Garfield becoming aggressive in meetings with Professionals, missed healthcare appointments for the children and concerns about the behavioural presentation of Ethan Banks.

NOTE TO PARTICIPANT: Please assume Dr Dale was also provided with a bundle of papers including; Children's Services records including Chronology, GP records for each parent, PNC records for each parent, Court Orders and Statements of Evidence from the Social Worker and each parent.

2.26 **Details of sessions**

- 2.27 ***10.02.2015 and 17.02.2015: Ms Jane Davis*** – Two individual sessions at the office of her solicitor each lasting approximately two hours.

- 2.28 ***10.02.2015 and 17.02.2015: Mr Daniel Garfield*** – Two individual sessions at the office of his solicitor each lasting approximately two hours.
- 2.29 ***24.02.2015: Ms Jane Davis and Mr Daniel Garfield*** – Joint session at the parent’s home address.
- 2.30 During these sessions Ms Davis and Mr Garfield were able to give information about their present situation and previous history. They were also asked to undertake the following psychometric assessments:
- 2.31 ***The Beck Depression Inventory II***: this is a self-report questionnaire that measures the severity of a number of symptoms associated with depression.
- 2.32 ***The Beck Anxiety Inventory***: this is a self-report questionnaire that measures the severity of a number of anxiety-related symptoms.
- 2.33 The ***Millon Clinical Multiaxial Inventory III***: This is a standardised self-report questionnaire that indicates the presence of established personality difficulties and other mental health problems such as anxiety and depression. Items are included to identify any tendency to deny or minimise problems or to exaggerate difficulties.
- 2.34 The ***Novaco Anger Scale and Provocation Inventory***: This is a self- report questionnaire that measures anger and anger intensity to different situations of provocation.
- 2.35 ***The Wechsler Adult Intelligence Scale IV***: This is an assessment tool used to measure cognitive functioning. It consists of a series of subtests measuring different aspects of verbal and performance abilities. It has been standardised so that it is possible to compare the score obtained by an individual with that of the population on which it was standardised.

3.0 **Assessment information: Ms Jane Davis**

3.1 Ms Davis travelled to both individual appointments with Mr Garfield but was unaccompanied during the sessions. On both occasions she arrived punctually and was casually dressed and neatly groomed. She appeared nervous and fidgety and cried easily on all occasions despite efforts to settle her. The purpose and process of the assessment was explained including the limits to confidentiality and Ms Davis confirmed that she was willing to continue. She made good efforts to cooperate with the assessment process. Ms Davis was able to give a reasonably clear account of her history and current circumstances. She acknowledged that there are a number of details of her past history that she cannot recall or are unclear to her.

3.2 ***Ms Jane Davis – her account of the current situation with her children***

3.2.1 Ms Davis spoke about the children with affection and described them as happy and loving. She indicated that Ethan had been identified as having learning difficulties but was unable to give specific details about these. When asked about how she manages the behavioural difficulties noted by professionals in respect of Ethan she denied that this has ever been a problem. Ms Davis explained that Ethan is well behaved at home and believed his poor behaviour at school reflected his negative feelings about lessons. She described both Jacob and Katie as making good progress in achieving appropriately regarding developmental milestones. She described all of the children as being “easy” to care for. Ms Davis emphasised that difficulties in keeping them clean and taking them to appointments have arisen during times of high stress for her and Mr Garfield. She was not aware of any of the children experiencing any significant health problems.

3.2.2 When asked about the circumstances that led to the children being removed from her care Ms Davis said that there had been concerns about the arguments between herself and Mr Garfield and allegations that Mr Garfield had been drinking heavily. Ms Davis explained that her

relationship with Mr Garfield had been strained in the months leading up to the removal of the children and emphasised that this is no longer the case. She recalled having been given feedback that her general care of the children was good prior to November 2013. She stated that she did not consider the arguments between herself and Mr Garfield as being serious in nature. Although she acknowledged that the children may not have understood this and may have been frightened by the conflict. Ms Davis acknowledged that Mr Garfield would sometimes call her names but said that he was not serious when doing this. She denied feeling threatened by Mr Garfield and emphasised that their relationship was not violent. She said that they have not argued since the children were placed with foster carers. Ms Davis stated that she did not initially believe that the arguments between herself and Mr Garfield would affect the children as her own mother and step father would argue frequently. Having spoken with social workers she said she now realises that being present during arguments could cause the children to become anxious or distressed. She went on to indicate that she and Mr Garfield did not shout but acknowledged that their raised voices may have been uncomfortable for the children. Ms Davis said that when she became aware of the potential impact of exposure to arguments for the children she felt “*ashamed and guilty*”.

- 3.3.3 In terms of the allegations of Mr Garfield drinking heavily, Ms Davis stated that this had only occurred on one occasion but Ethan had told his teacher that this happened regularly. She said that both she and Mr Garfield liked to drink alcohol on nights out in the past and that there have been times when they have been “*very drunk*” but that this was never in the presence of the children. She explained further that they do not tend to buy alcohol for the home because they cannot afford it. She said that she was aware that the incident witnessed by Ethan should have been avoided and that exposing him to alcohol in this way may have frightened him and was not “*setting a good example*”.

- 3.3.4 Ms Davies became tearful when describing how the home conditions had deteriorated significantly in the weeks prior to the children being placed with foster carers. She expressed regret that Ethan had been stigmatised by peers for being “*smelly and dirty*”. She described experiencing multiple pressures during these weeks. She explained that she had felt unable to cope with the competing demands of the children and running the house because she was feeling depressed and her relationship with Mr Garfield was strained. She said she was unable to rely on him for support as she usually would because he was also struggling to cope.
- 3.3.5 Ms Davis said that Katie and Jacob appear to have settled well with their foster carers but that Ethan who was placed in a separate placement because of his educational needs was struggling and misbehaving. She thought that this was because he had been separated from all of his family members and she became distressed when expressing her concerns that he would think she has abandoned him. Ms Davis said that the current contact arrangements are working well but that she hoped that she would be able to spend more time with the children. She complained that Katie and Jacob are often dropped off late to contact sessions by their foster carers and this takes time with them away from her. She expressed some hostility towards the foster carers about this. Ms Davis said that she prefers contact sessions when she and Mr Garfield can take the children out together and also enjoys times when the children are “*cuddly*” with her. Ms Davis said that the end of contact sessions can be very difficult and she often cries when waving goodbye to the children. She said that Ethan cries too but that Katie and Jacob are “*too young to understand*” and thought they would look forward to playing with all of the toys at the foster carers’ house.
- 3.3.6 We spoke about Ms Davis’s hopes for the future and she expressed her strong desire for the children to be returned to the care of herself and Mr Garfield. She said that she and Mr Garfield have been working together to give them “*a proper family*” and that they have decorated their bedrooms. She thought that Ethan would be very happy to return to the family home

and that this would be likely to resolve his behavioural difficulties. She explained that for her going into care had a negative impact on her mood and behaviour and that this was resolved when she was able to go home to her mother and stepfather. She thought that Jacob and Katie would settle back in at home but that they might miss the toys at the foster carers' house as they have a lot there.

3.3.7 In terms of the changes that will be necessary for the children to be returned to the care of herself and Mr Garfield, she said she has done everything asked of her but that she gets frustrated because she is then asked to do more. She indicated that they have “*talked through*” their problems and have not argued since the children were removed from their care.

3.3.8 Ms Davis struggled to identify any assistance that she may require to enable her to look after three young children, one of whom has additional educational needs. She indicated that she feels confident about taking this on with Mr Garfield's support and that she is a mother and mothers just “*get on with it*”.

3.4 ***Ms Jane Davis – her account of her previous personal history***

3.4.1 Ms Davis was able to provide information about her family and assisted in the construction of a genogram. She indicated that she is the only child of her mother's relationship with a man called David. Ms Davis has one step brother from her mother's relationship with her step father, Dean and one step sister from Dean's relationship with a woman he married before he met Ms Davis's mother. Ms Davis believes that her parents separated when she was aged one. She did not have any contact with her biological father, David, following this.

3.4.2 Ms Davis described her mother Jackie as a caring woman who would “*do anything to help anybody*”. She recalled times when Jackie would become depressed when people she tried to help took advantage of her. During

these times Ms Davis said that her maternal grandmother and Dean would take control of looking after her and her siblings. Ms Davis does not recall her mother ever being employed.

- 3.4.3 Ms Davis described her biological father, David, as being a “*waste of space*” and said that she had been interested in finding out about him when she was a teenager but she no longer feels this way. Ms Davis described her stepfather, Dean, as “*always being around*”. She was unable to think of special memories of things they did together and wondered whether he preferred spending time with her siblings as they were his biological children. She said she thought this caused conflict between her and her siblings and that she did not have a close relationship with them during childhood and rarely sees them now. Ms Davis said she viewed Dean as a “*good man*” because he has stayed loyal to her mother Jackie, through good and bad times. She explained that Jackie and Dean would argue when Jackie became depressed but that she thought this was normal at the time.
- 3.4.4 At the age of fifteen Ms Davis was taken into the care of the Local Authority. She was not able to recall the full details as to why this happened but suggested that she had been poorly behaved at school and was “*hanging around with the wrong crowd*”. Ms Davis described being distressed at being separated from her family and said that her behaviour became worse until she was allowed to move back to her mother, Jackie, and stepfather, Dean.
- 3.4.5 Ms Davis indicated that her relationship with her mother is positive and that she has been supportive around the current situation with the children. She said that she speaks to her mother on the telephone on a weekly basis but rarely sees her. Ms Davis’s mother, Jackie, is currently in poor physical health and Dean has become her full time carer. Ms Davis thought that if this was not the case they would have stepped forward as carers for the children during these proceedings.

3.4.6 When asked about her education Ms Davis said she struggled with the work and found it difficult to make friends. She said she was bullied by peers throughout high school and left at the age of sixteen without sitting examinations. She expressed regret that she did not engage more fully with her studies while at school but suggested that school did not seem important at the time. After leaving school Ms Davis worked as a shop assistant in the local newsagents. She held this job until summer 2008 when she met Ethan's father, Paul, and soon became pregnant with Ethan.

3.5 ***Ms Jane Davis – her relationship history***

3.5.1 Ms Davis stated her first relationship was with Ethan's father, Paul. She said she had been charmed by his confidence and popularity but that she soon realised he was a "trouble maker". She was reluctant to talk in any detail about Paul except to say that there was physical violence in the relationship and it ended badly. Paul has not had contact with Ethan since the end of his relationship with Ms Davis and has recently stated to professionals that he does not wish to have contact with Ethan in the future.

3.5.2 When asked what attracted her to Mr Garfield, Ms Davis said that he was "soft and quiet". She said that Mr Garfield had been in trouble but that he was not nasty like Paul and he had stopped getting into trouble by the time they met. Ms Davis viewed the difficulties in her relationship with Mr Garfield as being associated with her depression, financial stress and the death of Mr Garfield's mother. She said the relationship is very important to her as she relies heavily on Mr Garfield for emotional and practical support. Ms Davis said she now feels secure in the relationship and believes Mr Garfield would never leave her.

3.6 ***Ms Jane Davis – her account of any previous emotional and psychological difficulties and forensic history***

- 3.6.1 Ms Davis said she has experienced episodes of depression. The first of these being when she was placed with foster carers when she was aged fifteen. She said she did not receive any input from healthcare professionals at this time and that the depression resolved when she moved back home. She said she became depressed when her relationship with Ethan's father, Paul, ended and that she was prescribed anti depressant medication by her GP but she did not take this as it made her feel worse. Ms Davis said that this is the only time she has ever accessed professional support with regard to her mental health and her GP records corroborate this.
- 3.6.2 Ms Davis said she began to feel depressed again when Mr Garfield stopped working because he was finding it hard to cope with the death of his mother in November 2012. Ms Davis said this caused arguments between them and they were both worried about money. She did not access support from healthcare professionals at this time as she believed she would feel better as soon as Mr Garfield was ready to go back to work. She said that this was the case and she started to feel better when working to improve conditions at home and her relationship with Mr Garfield with the support of Mrs Julie Hicks, Social Worker.
- 3.6.3 Ms Davis said she began feeling depressed again when it was difficult to work with the family's allocated Social Worker, Mr Jack Smith. She described her irritation at being "*checked up on*" and "*treated like a child*" saying this made it difficult to trust Mr Jack Smith. Ms Davis explained that the stress of Children's Services involvement put pressure on her relationship with Mr Garfield. She said this caused further arguments between her and Mr Garfield and that this continued until the children were taken into care in August 2014. Ms Davis said that she is currently feeling low but that she did not think she was depressed. She said that her relationship with Mr Garfield has improved and it was this and "*being strong for the children*" that helped her overcome this episode of depression. Ms Davis emphasised that she would engage in any psychological therapy should this be recommended as part of this

assessment. She explained that talking to someone may help her whilst she is feeling low but maintained that she would not need therapy for depression as she is not feeling depressed.

3.6.4 Ms Davis acknowledged having periods of binge drinking in her early teenage years and in the early stages of her relationship with Mr Garfield. She denied ever having any problems with alcohol misuse and said that she has rarely consumed alcohol since Jacob was born. Ms Davis said that she has never used any illegal substances.

3.6.5 Ms Davis recalled being “*told off*” but never formally sanctioned by the police when spending time outside with friends as a teenager.

4.0 **Results of psychometric assessments – Ms Jane Davis**

4.1 ***Beck Depression Inventory II-*** Ms Davis obtained a score of 26, which is indicative of a moderate level of depression. This result was broadly consistent with her presentation during this assessment and her account of her situation. When this result was discussed with Ms Davis she said she did not think she would have scored in this range if her children had not been removed from her care.

4.2 ***Beck Anxiety Inventory-*** Ms Davis obtained a score of 3 on this questionnaire which is within the range indicating a minimal level of anxiety. When this result was discussed with Ms Davis she denied experiencing any significant anxiety-related difficulties. The result was perhaps lower than would have been predicted from Ms Davis’s presentation during this assessment.

4.3 ***The Millon Clinical Multiaxial Inventory III***

4.3.1 Ms Davis completed this questionnaire during the first assessment session and the results were discussed with her during the second session. Ms Davis

listened carefully and without defensiveness to the feedback and was able to engage in a constructive discussion about the results. The results indicate that Ms Davis responded to this measure without any tendency to present herself in an unduly positive light and without any tendency to overemphasise difficulties or personal shortcomings.

- 4.3.2 In terms of the subscales assessing personality characteristics that are likely to increase vulnerability to common mental health difficulties or relationship problems the overall profile obtained by Ms Davis suggests that she has a mild to moderate level of vulnerability to difficulties of this kind.
- 4.3.3 The profile obtained by Ms Davis suggests that she experiences low self-esteem and that she attempts to compensate for this by conforming to the expectations of others and anticipating and avoiding criticism. There are also indications that Ms Davis experiences underlying feelings of insecurity which become evident in tendencies to anticipate rejection and to distance herself from others. She is likely to avoid expressing emotional responses that she regards as being unacceptable because of her fear that others will criticise or reject her. The profile suggests that Ms Davis may adopt other coping strategies to compensate for her low self-esteem and insecurity such as adopting a repetitive routine as this decreases the opportunity to make mistakes or to take risks and be ridiculed by others. Given the tendency to suppress emotional responses such as anger Ms Davis may have an increased vulnerability to the experience of psychosomatic symptoms such as headaches.
- 4.3.4 In terms of the subscales measuring the experience of symptoms associated with common mental health difficulties such as anxiety and depression Ms Davis obtained an elevated score on the anxiety subscale. Symptoms such as fatigue, insomnia, abdominal pain and general apprehensiveness are common in individuals with similar profiles.

4.3.5 These results were consistent with observations made during this assessment. When given feedback about her results Ms Davis acknowledged experiencing low self-esteem and attributed this to her experience of being bullied during childhood. Ms Davis also acknowledged a tendency to suppress her emotional responses but said she has been trying to express herself more openly to Mr Garfield over recent weeks.

4.4 ***The Novaco Anger Scale and Provocation Inventory***

4.4.1 The results for Ms Davis are detailed in the table below. She obtained low scores on the consistency subscales indicating a good level of consistency between her responses on different items with similar content. Although this inventory is used in clinical practice to assess individuals who are experiencing anger control difficulties it does not include a scale to assess any tendency for an individual to present themselves in an unduly favourable or a negative light. The results do therefore need to be viewed with slight caution.

4.4.2 The results for Ms Davis are detailed in the table below.

	Raw Score	T-score	Nature of scale	Interpretation of client score
Total NAS	88	50	Overall process of anger regulation	Average
Cognitive	29	46	Experience of anger producing thoughts	Average
Arousal	30	52	Physical experience of anger response	Average
Behavioural	29	51	Behavioural responses when angry	Average
Regulation	21	39	Endorsement of effective anger regulation skills	Low

4.4.3 The results of this assessment indicate that Ms Davis experiences average levels of anger in the form of physiological arousal and associated behavioural responses and that she invests less than average energy in using a range of effective anger regulation skills. This result is broadly consistent with the presentation of Ms Davis during this assessment.

4.4.4 *The Novaco Provocation Index*- The total score obtained by Ms Davis on this index falls within the low range indicating that she experiences a low level of provocation across a range of situations. Ms Davis indicated that she would experience her highest level of provocation from situations in which she perceives that others are being disrespectful and dismissive of her e.g. “*People who don’t really listen when you talk to them*” and “*Someone looks through your things without your permission*”. When this result was discussed with Ms Davis she acknowledged that she has experienced particular difficulties in situations of this kind. She went on to talk about her frustration towards health visitors and other professionals when she believed that they were treating her like a child.

4.5 *Wechsler Adult Intelligence Scale IV*

4.5.1 The results of the psychometric assessment with the Wechsler Adult Intelligence Scale IV are given in the table below (5.19). They indicate that Ms Davis has a Full Scale IQ score of 84 (it can be stated with 95% confidence that her Full Scale IQ level will fall between 80 and 88). This places her in the low average range of intellectual functioning such that she is more able than 14% of the population on which this assessment was standardised. There was some variation in Ms Davis’s abilities across the indices which comprise this assessment. Her score on the Verbal Comprehension Index was significantly higher than her scores on the Perceptual Reasoning Index, the Working Memory Index and the Processing Speed Index.

4.5.2 The results for Ms Davis are detailed in the table below.

	Score	Percentile	Range at 95% confidence level
Verbal Comprehension Index	100	50	94-106
Perceptual Reasoning Index	84	14	79-91
Working Memory Index	86	18	80-94
Processing Speed Index	74	4	68-85
Full Scale IQ	84	14	80-88
General Ability Index	92	30	87-97

4.5.3 The Full Scale IQ is generally considered to be the most valid measure of overall cognitive ability. When there is a significant discrepancy between performance on the Working Memory Index and performance on the Verbal Comprehension Index, as in Ms Davis's case then General Ability Index (GAI) is regarded as being a more helpful indicator of overall cognitive ability.

4.5.4 Ms Davis's GAI score is 92. (It can be stated with 95% confidence that her GAI level will fall between 87 and 97). This places her in the average range of intellectual functioning such that she is more able than 30% of the population on which this assessment was standardised. The GAI does not replace the Full Scale IQ but should be considered alongside the Full Scale IQ and scores on all indices.

4.5.6 The Verbal Comprehension Index is designed to measure verbal reasoning and concept formation. It is based on both formal and informal educational opportunities. It includes tasks which assess the understanding of words, the ability to identify conceptual similarities and knowledge of general principles and social situations. Ms Davis obtained her highest score on this index indicating that this is an area of relative strength for her. Her score of 100 on this index falls within the average range.

- 4.5.7 The Perceptual Reasoning Index is designed to measure fluid reasoning in the perceptual domain with tasks that assess nonverbal concept formation, visual perception and organisation, visual- motor coordination, learning and the ability to separate figure and ground in visual stimuli. Ms Davis obtained a score of 84 on this index which falls within the low average range.
- 4.5.8 The Working Memory Index assesses the ability to sustain attention, concentrate and to exert mental control. Ms Davis obtained a score of 86 on this index which also falls within the low average range.
- 4.5.9 The Processing Speed Index measures a range of functions including processing speed, short term visual memory, visual discrimination, attention and concentration. Ms Davis obtained her lowest composite score on this index indicating that this is an area of relative weakness for her. Her score of 74 falls within the borderline range between extremely low and low average functioning. When this result was discussed with Ms Davis she recognised that she finds it difficult to process new information, particularly if this involves a change to her normal routine.
- 4.5.10 Ms Davis cooperated well with this part of the assessment. She was initially apprehensive that dyslexia would affect her performance but appeared to relax as the assessment progressed. Ms Davis was well motivated to perform as well as possible and persisted well even with tasks that she found difficult. The pattern of results is reasonably consistent with Ms Davis's previous educational and occupational attainments.

5.0 **Assessment information: Mr Daniel Garfield**

5.1 Mr Garfield arrived early for both of his appointments. He was casually but neatly dressed and reasonably well groomed. The purpose and process of the assessment was explained including the limits to confidentiality and Mr Garfield confirmed that he was willing to continue. Mr Garfield tended to provide brief responses to questions although he was generally cooperative throughout the assessment process.

5.2 ***Mr Daniel Garfield – his account of the current situation with the children***

5.2.1 Mr Garfield spoke briefly about the children saying that they are fine and that he hopes they will be returned home soon. He spoke with particular affection about his youngest child, Katie. He did not consider that Jacob or Katie had any physical or emotional difficulties but did acknowledge that there are difficulties with Ethan, particularly in relation to his behaviour and learning. He said no one has fully explained Ethan's difficulties to himself and Ms Davis. He was unable to give specific details about this and said that Ethan is "*lovely but odd*". He considered all of the children as being rewarding and generally easy to care for. He explained that there are times when they are very noisy which can be stressful but emphasised that he feels this is normal.

5.2.2 When asked about the circumstances that led to the children being placed with foster carers Mr Garfield said that Ethan had "*made up stories*" about him being drunk. He was unable to explain why Ethan might have said these things and said that there was one occasion when Ethan saw him drunk. Mr Garfield acknowledged that he does drink alcohol and that before he met Ms Davis he drank between two and four pints of strong lager, three to four times per week. He said that he has never had a problem with alcohol and that he could "*take it or leave it*". Mr Garfield acknowledged that there had been arguments between himself and Ms

Davis and that when written down the details of these did look bad. He suggested that he and Ms Davis have been misrepresented with regard to their arguments saying that they are both “*good people and all couples argue*”. He emphasised that he would never hurt Ms Davis or any of the children. He admitted that he did push Ms Davis in an argument in December 2012 and that he had been drinking on this occasion but that this was a “*one off and I’m nothing like they’re making me out to be*”. Mr Garfield emphasised that there had been no arguments recently and that he felt Ms Davis relied on him to cope so he would make sure there were no more arguments in the future.

5.2.3 We spoke about the potential risks to the children of being present during frequent arguments. Mr Garfield emphasised that he and Ms Davis did not raise their voices around the children and that it had been unfortunate that Ethan had “*walked in*” on the argument in December 2012. He acknowledged that children growing up around domestic violence could grow up to believe that aggressive confrontations between couples are normal but insisted that Ethan, Jacob and Katie had not been the victims of domestic violence between him and Ms Davis.

5.2.4 Mr Garfield said he has noticed that Ethan has displayed poor behaviour since he has been placed with foster carers. He thought that it might be a good thing that Ethan is placed on his own so that he can get more attention and so that Jacob does not copy his behaviour. He expressed concern that Katie may become too attached to the foster carers because she is so young. He was concerned that she would begin to become confused about who her real parents are if she is separated from them for much longer. Mr Garfield spoke about contact arrangements and said that seeing the children is the best part of his week. He expressed some frustration that he and Ms Davis cannot spend longer with them and commented that he finds it difficult to see Ms Davis separated from her children because “*she needs them*”.

5.2.5 When asked about his hopes for the future Mr Garfield stated that he wants to be a good father to the children and to give them opportunities that he did not have. We spoke about the changes needed to make this possible and Mr Garfield indicated things are much better in his relationship with Ms Davis and things are much easier financially since he has gone back to work. Mr Garfield emphasised that he no longer drinks alcohol and this has been confirmed by liver function tests.

5.2.6 Mr Garfield spoke about the work he and Ms Davis have done to clean, tidy and decorate their house ready for the children to come back to them. He said he would support Ms Davis in remembering to take the children to any health appointments and that he felt confident that they could “*keep on top of everything*”.

5.2.7 Mr Garfield did not identify any support that would be helpful in the future. He explained that he and Ms Davis prefer not to be “*interfered with*” and that he looked forward to a time when professionals would not be involved.

5.3 ***Mr Daniel Garfield – his account of his previous personal history***

5.3.1 Mr Garfield was able to provide information to assist in the construction of a genogram. He indicated that he was born in the area where he currently lives and has three older brothers. His parents separated when he was thirteen years old and his father began a relationship with another woman.

5.3.2 Mr Garfield’s mother, Rachel, worked in a local pub on and off until she died in November 2011. Mr Garfield’s father, Frank, believed that she had relationships with patrons of the pub but Daniel thought this was fabricated and believed that she remained alone after her relationship with his father, Frank, ended. He described being frustrated as a child by being unable to have things that other children had and problems with money became worse when his father left. He said he was mostly left to his own devices as a child but that his older brothers tended to look out for him. Mr Garfield said

that he had frequent contact with the Police during his teenage years and that he frequently stole things that he did not have.

5.3.3 Mr Garfield described his father, Frank, as someone he did not always like. His father worked as a labourer but spent long periods of time out of employment. Whilst living in the family home his father tended to be responsible for discipline and shouted to instil this. After his parents separated Mr Garfield did not spend much time with his father and he said they have not been close since then.

5.3.4 Mr Garfield did not recall enjoying his time at school and indicated that he was frequently in trouble for bad behaviour and was permanently excluded from one high school. He believes that he remained in mainstream schools throughout his childhood. He attributed some of his behavioural difficulties at school to the separation of his parents and the bad influence of his peers.

5.3.5 Mr Garfield left school without gaining any formal qualifications. He attended a local college where he studied painting and decorating. He said he has worked as a handy man and painter and decorator since leaving college but has had periods of unemployment between contracts. He said he enjoys the work but finds the unpredictability of contracts and periods of unemployment very stressful.

5.4 ***Mr Daniel Garfield– his relationship history***

5.4.1 Mr Garfield indicated that he had girlfriends prior to Ms Davis but described these relationships as being short lived and insignificant. He indicated that his relationship with Ms Davis has been his first serious relationship and that he has matured a great deal during the time they have been together. Mr Garfield said that he initiated the relationship after meeting Ms Davis through a mutual friend. He said that he was attracted to her appearance and her because she was “*easy going*”. The relationship developed quickly and Mr Garfield moved into the house Ms Davis shared

with Ethan after four months. Ms Davis's pregnancy with Jacob was unplanned and Mr Garfield recalled feeling apprehensive about it initially. He said he was worried about money but did not share this with Ms Davis.

5.5 ***Mr Daniel Garfield –his account of any previous emotional and psychological difficulties and forensic history***

5.5.1 Mr Garfield does not recall any previous history of emotional or psychological difficulties or contact with mental health services. There are no entries in his GP records to suggest that he has accessed mental health services. There are no entries in his GP records to suggest that he has ever been suspected of or diagnosed with any disorder related to mental health difficulties.

5.5.2 In terms of alcohol consumption, Mr Garfield did not believe this had ever been problematic. He said he began drinking with his peers and older friends at the age of thirteen or fourteen as a means of “*showing off*”. He estimated that he would drink between five and ten cans of lager three to four times per week. He acknowledged that alcohol was a factor in some of his past criminal acts saying; “*I'd been drinking when I got caught thieving*”. Mr Garfield stated that he has not consumed alcohol since the children were placed in foster care in August 2014. He expressed his intention to abstain from drinking alcohol in the future as this is not compatible with the responsibility of caring for young children. Mr Garfield denied having experienced any difficulty in abstaining from drinking alcohol. He emphasised that his own personal strength allowed him to abstain from alcohol and his recent involvement with alcohol services consisted mainly of updating professionals on his progress.

5.5.3 Mr Garfield initially denied having used any illegal substances. During the second assessment session he disclosed that he has used cannabis on isolated and infrequent occasions during his teenage years. Mr Garfield's GP records do not contain entries related to the use of illegal substances.

There are however a total of five entries between 2010 and 2015 indicating that Mr Garfield has mislaid prescription painkillers and requested additional medication. On three of these occasions the GP has documented a query over whether Mr Garfield is inappropriately using this medication. In the most recent of these entries the GP requests that should Mr Garfield request additional pain medication again this request should be rejected. Mr Garfield did not voluntarily offer information about his use of painkillers. When asked about this in the second assessment session he explained that the medication was for back pain. He appeared agitated about the GP entries in his medical records and denied any dependence or misuse of this medication.

- 5.5.4 Mr Garfield's account of his forensic history matches information from his PNC records. He has one conviction for theft of property in 2006. Mr Garfield recalled multiple contacts with the Police in the years prior to this conviction however he was not formally charged with any offence until 2006. He disclosed that he had stolen a number of items of clothing and electrical equipment from shops and other children in school during his early teenage years. He attributed this to his being frustrated with his parents being unable to afford things when he was a child. He described the charge of Theft in 2006 as a "one off" and said he had stolen a bicycle. He described this as being a turning point in his life and maintained that he had not committed nor been convicted of any criminal activity since stealing the bicycle. He emphasised his intention to avoid involvement in any further offences in the future. Mr Garfield was adamant that he wanted to make sure his own children are adequately provided for so that they do not steal to obtain things they should have.

6.0 **Results of psychometric assessments – Mr Daniel Garfield**

- 6.1 ***Beck Depression Inventory II-*** Mr Garfield obtained a score of 6, which falls within the range indicative of a minimal level of depression. This

result was broadly consistent with his presentation during this assessment and his account of his situation.

6.2 ***Beck Anxiety Inventory-*** Mr Garfield obtained a score of 2 on this questionnaire which is within the range indicating a minimal level of anxiety. This result was also broadly consistent with his presentation during this assessment and his account of his situation.

6.3 ***The Millon Multiaxial Inventory III***

6.3.1 Mr Garfield completed this questionnaire during his first assessment session and the results were discussed with him in his second session. The results indicate that Mr Garfield responded to this measure with a tendency to present himself in a socially acceptable manner but without any tendency to overemphasise difficulties or personal shortcomings. This pattern of results is commonly seen in child care cases of this type but may also indicate a more general need for social approval and commendation, or lack of insight into psychological matters.

6.3.2 In terms of the subscales assessing personality characteristics that are likely to increase vulnerability to common mental health difficulties or relationship problems, the overall profile obtained by Mr Garfield suggests that he is somewhat vulnerable to difficulties of this kind.

6.3.3 The results suggest that Mr Garfield is likely to be concerned with appearing to others as being composed, virtuous and conventional in behaviour. Individuals in this category may generally attempt to downplay distressing emotions and deny troublesome relationships. The profile obtained for Mr Garfield suggests that easy conformity, sociability and denial of emotional problems are among his most prominent traits. Especially notable is a resistance to admitting psychological problems. The profile suggests that he may be unlikely to express oppositional feelings at times for fear of losing emotional control. As a consequence, his sociable

and easy going style may give way to a more grim and serious-minded underlying quality or mood. The pattern of responses indicates that Mr Garfield is likely to downplay behaviour that could evoke ridicule or contempt. Given the identified tendency to deny discordant attitudes and neutralise distressful feelings, the results may not disclose several of his psychosocial difficulties.

- 6.3.4 Mr Garfield's profile also reveals his concern with minor irrelevancies, a preoccupation that distracts his attention from his hidden feelings. This is likely to be a successful manner of repressing negative feelings; however periodic surges of resentment may break through. Ambivalence towards those on whom he depends may at times interrupt his surface composure, possibly manifesting in a modest level of psychosomatic disorders.
- 6.3.5 In terms of the subscales measuring the experience of symptoms associated with common mental health difficulties and substance misuse, Mr Garfield's responses indicate the possibility of dependence on drugs. This appears to be generally inconsistent with his overall lifestyle and may include standard medications or illicit drugs. Within Mr Garfield's medical records there are references to the over prescription of pain killers. It should be noted that Mr Garfield did not consider himself to be dependent on prescription painkillers and informed me that he is careful to use them as prescribed for back pain. Mr Garfield disclosed that he has used cannabis in the past and emphasised that this was prior to meeting Ms Davis. Mr Garfield also received an elevated score on the obsessive compulsive personality traits subscale of this assessment tool.
- 6.3.6 Mr Garfield listened calmly to feedback from this assessment. He agreed that he is generally sociable and that he cares a great deal about what others think of him. He gave the example of seeking approval from those around him in a work environment. He also acknowledged his obsessive tendencies about certain things. He described this as focussing heavily on one thing, for example the current proceedings, which can be to the detriment of other

areas of his life. He added that he is always able to redress the balance. Whilst not openly disagreeing with the feedback, Mr Garfield appeared to be dismissive of some of the outcomes.

6.4 *The Novaco Anger Scale and Provocation Inventory*

6.4.1 The results for Mr Garfield are detailed in the table below.

	Raw Score	T-Score	Nature of Scale	Interpretation of Client Score
Total NAS	74	47	Overall process of anger regulation	Average
Cognitive	29	54	Experience of anger producing thoughts	Average
Arousal	23	42	Physical experience of anger response	Low Average
Behavioural	22	47	Behavioural responses when angry	Average
Regulation	30	61	Endorsement of effective anger regulation skills	High

6.4.2 Mr Garfield obtained low scores on the consistency subscales indicating a good level of consistency between his responses on different items with similar content. Although this inventory is used in clinical practice to assess individuals who are experiencing anger control difficulties it does not include a scale to assess any tendency for an individual to present themselves in an unduly favourable or a negative light. The results do therefore need to be viewed with some caution.

6.4.3 The results of this assessment indicate that Mr Garfield experiences low average levels of anger in the form of physiological arousal, average levels of anger-producing thoughts and average levels of anger in terms of associated behavioural responses. The results suggest that he invests a high amount of energy in using a range of anger regulation skills. Mr Garfield confirmed that this is consistent with his experiences to date.

6.4.4 ***The Novaco Provocation Index*** – the total score obtained by Mr Garfield on this index falls within the low range indicating that he experiences a lower than average level of provocation across a range of situations. This result is reasonably consistent with his presentation during this assessment. In terms of his general pattern of scores, Mr Garfield endorsed items representing ‘unfair’ situations as being more likely to trigger his anger than items representing ‘disrespectful treatment’, ‘frustration’, ‘annoying traits of others’ and ‘irritations’. Examples of items representing ‘unfairness’ that Mr Garfield endorsed as being likely to make him feel ‘fairly angry’ are: ‘you see someone bully another person who is smaller or less powerful’, ‘being accused of something you didn’t do’ and ‘someone else gets credit for work that you did’.

6.5 ***Wechsler Adult Intelligence Scale IV***

6.5.1 The results of the psychometric assessment with the Wechsler Adult Intelligence Scale IV are given in the table below. They indicate that Mr Garfield has a full scale IQ score of 78 (It can be stated with 95% confidence that his level will fall between 74 and 83). This places Mr Garfield within the borderline range between the low average ability and very low levels of intellectual functioning such that he would be more able than 7 per cent of the population on which this assessment was standardised.

6.5.2 The results for Mr Garfield are detailed in the table below.

Index	Score	Percentile	Range at 95% confidence level
Verbal Comprehension Index	72	3	67-79
Perceptual Reasoning Index	88	21	82-95
Working Memory Index	92	30	86-99
Processing Speed Index	79	8	73-89
Full Scale IQ	78	7	74-83

6.5.3 The Verbal Comprehension Index is designed to measure verbal reasoning and concept formation. Mr Garfield’s score on this index falls within the borderline range between extremely low and low average intellectual functioning. Mr Garfield obtained one of his two lowest scaled scores on the Vocabulary subtest and a relatively low score on the Information subtest which form part of this index. For the Vocabulary subtest Mr Garfield was required to explain the meaning of a series of words of increasing complexity. As an example of his abilities on this subtest Mr Garfield was correctly able to describe the word “breakfast” but he could not define “terminate”.

6.5.4 The Perceptual Reasoning Index is designed to measure fluid reasoning in the perceptual domain with tasks that assess nonverbal concept formation, visual perception and organization, visual-motor coordination, learning, and the ability to separate figure and ground in visual stimuli. Mr Garfield’s score on this index falls within the low average range. He obtained one of his two highest scaled scores on the Matrix Reasoning subtest which forms part of this index. On this subtest participants are required to identify the missing pieces to complete a number of matrices of increasing complexity.

The subtest measures non-verbal reasoning and the ability to analyse and synthesise abstract visual stimuli.

- 6.5.5 The Working Memory Index assesses the ability to sustain attention, concentrate, and to exert mental control. Mr Garfield's score on this Index falls in the average range indicating that this is an area of relative strength for him. Mr Garfield obtained the second of his two highest scaled scores on the Digit Span subtest which comprises this index. This subtest requires the individual to listen to and then repeat lists of numbers of increasing length according to a series of conditions. The subtest assesses a number of functions including attention, mental manipulation and numerical reasoning ability.
- 6.5.6 The Processing Speed Index assesses the rate of processing simple or routine visual material without making errors. Mr Garfield's score on this index falls within the borderline range between extremely low and low average intellectual functioning. He obtained the second of his two lowest scaled scores on the Coding subtest that comprises this index. Symbols are allocated to the numbers 1-9 on this subtest and participants are required to correctly allocate as many symbols to randomly ordered numbers as possible within a time limit.
- 6.5.7 Mr Garfield's scores on the Perceptual Reasoning and Working Memory Indices were significantly higher than his score on the Verbal Comprehension Index. This result is likely to reflect Mr Garfield's behavioural difficulties during childhood and his disrupted history of school attendance. Performance on the subtests that comprise the Verbal Comprehension Index is known to be strongly influenced by the past educational attainments of the individual.
- 6.5.8 Mr Garfield cooperated well with this part of the assessment although he acknowledged that he struggled to understand the relevance of the tasks to the assessment of his parenting abilities. He also recognised that he felt

somewhat uncomfortable about some of the activities as they reminded him of things he found difficult while at school. Mr Garfield made good attempts to complete most of the more practical tasks but quickly became discouraged on some of the verbal tasks that he found more difficult. The results obtained by Mr Garfield are reasonably consistent with his account of his previous educational and occupational attainments.

7.0 **Information from the joint assessment session with Ms Jane Davis and Mr Daniel Garfield**

7.1 Mr Garfield and Ms Davis live in a privately rented property within a large residential estate. The house was reasonably clean and tidy with evidence of having been recently decorated and carpeted in a number of the rooms. Mr Garfield and Ms Davis appeared to be expecting my visit and were pleasant and welcoming. They both appeared to be more relaxed and forthcoming than when seen in other settings. They were keen to show me the children's bedrooms which have been recently decorated by Mr Garfield. The rooms had been decorated to good standards with child friendly wallpaper and furniture, new carpets and plenty of toys.

7.2 Throughout the session the relationship between Mr Garfield and Ms Davis remained pleasant and harmonious. Mr Garfield tended to answer questions on behalf of Ms Davis and was able to refrain from doing so after this was pointed out to him. They appeared willing to listen to one another and each waited for the other to finish speaking before talking. We spoke about the strategies that they have used to reach decisions together about important matters such as money management and the choice of property. Mr Garfield discussed using a reasonably logical and problem focussed strategy for money management based on allocating money to buy food for essential items such as food, fuel and travel and Ms Davis confirmed that this was the case. Both agreed that Mr Garfield currently takes more responsibility for the family finances than Ms Davis. Ms Davis said that she

was grateful for this and Mr Garfield commented that she would be unable to cope with the stress of managing the family finances without him whilst she was feeling low. They agreed that there have been sustained periods of time when Ms Davis has been feeling emotionally stable and able to balance and manage competing demands of household tasks. He acknowledged that he finds Ms Davis's emotional difficulties hard to understand and has been frustrated when she has been unable to "*snap out of it*" in the past. They indicated that they chose their property according to a number of criteria including the presence of features suitable for small children such as a garden and space for the children. They explained that they had needed to compromise on the area in order to get the space they needed and said that there is a high crime rate in the local area.

7.3 Within the session Ms Davis and Mr Garfield were able to take part in an exercise in which they were invited to offer feedback to each other about something they like about their partner and something they would like to change. Ms Davis was able to accept positive and negative feedback from Mr Garfield without becoming unduly embarrassed or defensive. Mr Garfield did not openly disagree but was dismissive of Ms Davis's feedback that she would like him to change the way he manages his mood when he is feeling stressed about money. Ms Davis acknowledged that she finds it difficult to accept compliments from Mr Garfield about her appearance whereas she copes more easily with positive feedback about other matters such as her ability to cook.

7.4 We spoke about previous conflict between Mr Garfield and Ms Davis and Ms Davis acknowledged that they have both found it difficult to control their tempers during arguments in the past. Mr Garfield was keen to explain that he had never physically hurt Ms Davis and that in his opinion the professional records of their disagreements were disproportionate to reality. When asked about her own insecurity in the relationship with Mr Garfield, Ms Davis indicated that she has previously been told that domestic violence and negative experiences in her relationship with Ethan's father makes it

difficult for her to feel secure in relationships. She acknowledged that there had been arguments about this in the past but emphasised that she and Mr Garfield have spoken about and resolved these difficulties. Mr Garfield went on to comment that he agreed with this and said that he had always tried to prioritise his relationship with Ms Davis.

- 7.5 During the session Mr Garfield and Ms Davis acknowledged that they tend to get on better when they spend time together without the children. Mr Garfield suggested that Ms Davis has aggravated him with comments in the past that he cares more for his biological children than Ethan. He explained that she was assuming that his relationship with Ethan was like Ms Davis's relationship with her own step father when growing up. Ms Davis agreed that she worries about Ethan feeling left out the way she did and said that she has talked about this to Mr Garfield in recent months which she has found helpful. Both agreed that spending time alone together since the children have been placed with foster carers has been helpful in allowing them to resolve issues in their relationship. When asked what made them unable to do this when the children were residing with them they both agreed that financial pressure and the daily stresses of childcare made it difficult to do this. Mr Garfield in particular reported that managing the multiple demands of the children was difficult in times of stress and their noise and mess can aggravate him. Ms Davis was reluctant to respond to this except to explain that Mr Garfield is tidier than her. She expressed regret that she had struggled to keep the house clean and tidy when Mr Garfield had been too stressed to do this after his mother died. Neither Ms Davis nor Mr Garfield were able to think of ways that they might manage if similar difficulties arise in the future in the event that the children are returned to their care. Ms Davis agreed with Mr Garfield who said that the issues between them were now resolved and neither thought that similar issues might arise in the future stating that all that is left to resolve now is for the children to return to their care.

8.0 Conclusions and Responses to the specific questions raised in the letter of instruction- Ms Jane Davis

8.1 ***Does Jane Davis have – whether in her history or presentation – a mental illness/disorder (including substance abuse) or other psychological/emotional/cognitive difficulty and, if so, what is the diagnosis?***

8.1.1 Details of Ms Davis's personality assessment are given in Section 4 above. In summary the results indicate that Ms Davis experiences insecurity and low self- esteem. Thus she may seek to compensate for her perceived underlying inadequacies by conforming to the expectations of others and suppressing emotional responses that she regards as being unacceptable such as anger. There are some positive aspects of these traits in terms of Ms Davis's role as a mother. She is likely to emphasise to her children the importance of following societal rules and conventions and to try to ensure that they attend school and keep appropriate social commitments. These traits do also unfortunately increase Ms Davis's vulnerability to the experience of common mental health difficulties such as anxiety and depression.

8.1.2 There are clear indications that Ms Davis has experienced symptoms of depression on more than one occasion during her adult life. Ms Davis self-reported three episodes of depression during this assessment. The first of these being when she was placed with foster carers as a teenager and the second followed the breakdown of her relationship with Ethan's father in 2009. The most recent episode of depression reported by Ms Davis was during winter 2012/2013 following the death of Mr Garfield's mother. There is evidence of the episode in 2009 in Ms Davis's GP records. It is my opinion that Ms Davis was experiencing symptoms of a moderate level of depression during this assessment. This opinion is based on her presentation during the assessment sessions and her score on the Beck Depression Inventory.

8.1.3 Assessment of Ms Davis's cognitive ability indicates that she is functioning within the low average range of intellectual ability. There were marked differences between different aspects of Ms Davis's cognitive functioning and she was much more able with respect to her verbal abilities than other aspects of her cognitive functioning. Ms Davis's cognitive processing speed was also relatively slow such that she was less able than 96% of the population of her age that this measure was standardised with. Ms Davis's social functioning, as assessed during clinical interviews and by review of relevant reports in the bundle of papers, does not indicate the presence of a Learning Disability. In my opinion Ms Davis does not meet diagnostic criteria for Learning Disability.

8.2 ***How do any/all of the above (and their current treatment if applicable) affect her functioning, including interpersonal relationships?***

8.2.1 It is difficult to gauge any impact of depressive symptoms on Ms Davis's relationships with her children and this was not directly assessed. Regarding this point please see 9.9. It is reliably evidenced that parents suffering with symptoms of depression are likely to find it more difficult than non-depressed parents to respond to the needs of their children. Whilst Ms Davis denied the experience of symptoms of depression during this assessment her elevated scores on the Beck Depression Inventory, indications from her presentation and information given by both Ms Davis and Mr Garfield during the assessment indicate at least a moderate level of depression. There is a possibility that Ms Davis tended to withhold information about her mood during this assessment for fear that this may have a negative impact on the decision making process about returning the children to her care. This is not uncommon in child care cases of this kind. However, it is my opinion that this is unlikely to account fully for the discrepancy between her account of her mood and the observations I made during this assessment. Ms Davis did not display any tendency to over or under report difficulties in any other areas of the assessment and her history

indicates that she has struggled to recognise and respond to symptoms of depression in the past. I believe it is more likely that Ms Davis has a limited insight into her mood and symptoms of depression. She tended to attribute these to external factors rather than viewing them as being within her control. In terms of her functioning and interpersonal relationships it is my opinion that these are negatively impacted by Ms Davis's difficulty in recognising and responding to symptoms of depression. There is an increased likelihood that these symptoms become problematic for her and those around her before she seeks help and responds to them.

8.2.2 In my opinion Ms Davis's level of intellectual functioning alone would not prevent her from providing an adequate standard of parenting. However, it does have implications for her learning style and how best to provide instruction and guidance to her. When considering the best way to give information to Ms Davis it is important to take into account both Ms Davis's pattern of cognitive abilities and of the need to overcome potential barriers to her acceptance of that information. As a consequence of Ms Davis's relatively well developed verbal abilities there is a risk that she may appear to be more able when initially meeting her than is the case. Assessment of Ms Davis's level of intellectual functioning does not indicate the presence of any learning difficulties that would prevent her from learning new information. Although Ms Davis is likely to learn most effectively from verbal instruction her slow processing speed means that information should be given to her at a slower rate. It may be necessary to repeat information several times before it is reliably assimilated by her. During this assessment there were indications that Ms Davis struggles to organise herself or to develop and follow a systematic plan for achieving practical tasks. She may therefore benefit from specific and detailed guidance as to how best to organise household routines in order to prevent any further deterioration in home conditions.

8.3 *If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional/cognitive difficulty or personality*

disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?

8.3.1 Ms Davis has experienced difficulty in regulating her emotional responses in the face of external pressures. I believe that Ms Davis does have an increased vulnerability to the symptoms of common mental health difficulties such as depression both now and in the future. In my opinion there may be a risk to the children in the future if Ms Davis does not adequately address this vulnerability. Specifically I am of the opinion that in situations of high external stressors combined with a depressive episode Ms Davis may find it difficult to adequately recognise and respond to the needs of the children.

8.3.2 There is no reason to believe, purely on the basis of her level of intellectual functioning that Ms Davis would not be able to provide an adequate and safe standard of care for her children.

8.4 ***What are the experiences/antecedents/aetiology which would explain her difficulties, if any (taking into account any available evidence base or other clinical experience)?***

8.4.1 During this assessment Ms Davis expressed her intention to provide her children with a very different set of experiences from those in her own upbringing. While this is an admirable intention Ms Davis may face the difficulty that she does not appear to have experienced positive role models of parenting herself on which to base her own conduct as a mother. Ms Davis experienced parental depression, bullying by peers and felt like an “outsider” in her family during childhood. Her mother relied heavily on Ms Davis’s stepfather who Ms Davis did not feel strongly bonded to. Ms Davis also has a negative experience of Children’s Service professionals following her own experience of being placed in foster care as a teenager. It seems likely that these factors contribute towards her current difficulties

with depression, in accessing social support, with making friends outside of her romantic relationships and in trusting some professionals.

8.5 ***What treatment is indicated, what is its nature and the likely duration?***

8.5.1 I believe that Ms Davis might benefit from a course of cognitive behavioural therapy. The available evidence base tends to suggest cognitive behavioural therapy or interpersonal therapy for depression. For Ms Davis, therapy would ideally address patterns of thinking and behaviour that have contributed to episodes of depression and to help her to develop more adaptive coping strategies. Treatment of the kind that Ms Davis might benefit from is available through the NHS in the area where she lives and she would need to be referred by her GP. Given her relatively complex emotional difficulties she is likely to benefit from seeking an experienced therapist and there is likely to be a waiting time before she can be seen. It is difficult to accurately estimate the likely duration of therapy but I believe that Ms Davis will require at least sixteen sessions over a period of six to nine months. It is possible that this work could be undertaken while she is caring for her children as the main focus of the work should be on her reactions to current circumstances rather than an in depth exploration of past difficulties. Ideally it would be possible for Ms Davis to take time to attend appointments and then to have some time after each appointment (a couple of hours) to reflect on what she has learned and to settle before resuming the care of the children. Undertaking the therapeutic work while caring for all of her children may have some advantages. Ms Davis would be able to address events arising in her daily life during the course of therapy.

8.5.2 It is possible that Ms Davis may benefit from groups for mothers run at a local children's centre but given her low self-esteem and wariness about relationships with others I have doubts as to how well she will be able to engage with work of this kind. Another option would be for a family support worker to establish a working relationship with Ms Davis and then

to visit her on a regular basis to offer guidance and support regarding her care of the children. It would be important that this work takes into account the suggestions made in 8.2.2 regarding presenting information to Ms Davis.

8.6 ***What is her capacity to engage in/partake of the treatment/therapy?***

8.6.1 Ms Davis's ability to engage in psychological therapy is likely to depend on her perception of the relevance of this. She does appear to have the capacity to form positive relationships with professionals. This is apparent in her relationship with her previous Social Worker, Mrs Julie Hicks, and in her engagement in this assessment. Ms Davis emphasised her willingness to engage in psychological therapy in the event that this was recommended as part of this assessment. My main concern would be that Ms Davis's lack of insight into symptoms of depression and her firm view that she is not currently experiencing these will make it difficult for her to engage in psychological therapy. In my opinion this may well make it difficult for her to identify suitable goals for therapy.

8.7 ***Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?***

8.7.1 As indicated in 8.5.1 it is difficult to indicate exact time scales for psychological therapy. I would suggest at least sixteen sessions over a period of six to nine months. It is likely to require a similar period of time and regular appointments for Ms Davis to form a trusting relationship with a Family Support worker.

8.7.2 Overall, I believe the prognosis for positive change is dependent on a number of factors including Ms Davis's perception of the relevance of therapy. I am aware that Ms Davis is somewhat socially isolated and I believe this may reduce the durability of positive change. It is also pertinent that Ms Davis has experienced a number of episodes of depression and this

increases her vulnerability to future episodes. Therefore, durability of change may be positively influenced by supporting Ms Davis to consider how she can better recognise and manage early signs of depression.

8.8 ***What other factors might indicate positive change?***

8.8.1 It is my opinion that an indicator of positive change would be for Ms Davis to increase her acknowledgement and awareness of emotional difficulties. A positive indicator of this may be reliable attendance and engagement with therapy sessions.

9.0 Conclusions and Responses to the specific questions raised in the letter of instruction- Mr Daniel Garfield

9.1 ***Does the Daniel Garfield have – whether in his history or presentation – a mental illness/disorder (including substance abuse) or other psychological/emotional/cognitive difficulty and, if so, what is the diagnosis?***

9.1.1 Mr Garfield does not meet diagnostic criteria for any mental health disorder. A review of his GP records indicates a potential over reliance on prescription pain killers. In my opinion Mr Garfield has a personality style that makes him vulnerable to the use of avoidance coping strategies and explosive outbursts of anger at times of high stress.

9.1.2 Details of Mr Garfield's personality assessment are given in Section 6 above. In summary this assessment indicates a tendency towards low self-disclosure, particularly in relation to issues that could present him in a negative light. Whilst this is common in child care cases of this kind it is my opinion that careful management of how others perceive him is reflective of Mr Garfield's interpersonal style more generally. It was evident during the assessment that Mr Garfield struggled to be reflective

generally but particularly about difficulties in his relationship with Ms Davis and his use of alcohol and prescribed pain medication.

9.1.3 Mr Garfield's profile on the anger scale and information from this assessment did not reveal a propensity towards violence. His profile suggested that he had a high endorsement of effective anger regulation skills. When discussed with Mr Garfield it appeared that he is able to suppress angry outbursts for the majority of situations. However, his low propensity towards effective management of emotional difficulties makes it difficult for him to adopt anger regulation skills at times of high stress. Whilst Mr Garfield does not currently meet criteria for any disorder of emotional regulation his strategies for managing stress and anger do not compliment one another. In my opinion, at times of high stress he is unlikely to be able to control angry outbursts unless he engages in more helpful ways of managing stress.

9.1.4 Assessment of Mr Garfield's cognitive ability indicates that he is functioning within the borderline range between low ability and very low intellectual functioning. There are marked differences between his abilities across different aspects of his cognitive functioning. Mr Garfield is thus much more able with respect to his perceptual reasoning and working memory abilities by comparison to his verbal comprehension abilities. This result is likely to reflect at least in part Mr Garfield's disrupted history of school attendance. Mr Garfield's social functioning, as assessed during clinical interviews and by review of relevant reports in the bundle of papers, does not indicate the presence of a Learning Disability. In my opinion Mr Garfield does not meet diagnostic criteria for Learning Disability.

9.2 ***How do any/all of the above (and their current treatment if applicable) affect his functioning, including interpersonal relationships?***

- 9.2.1 It is difficult to gage any impact of Mr Garfield's emotional regulation difficulties on his relationships with the children and this was not directly assessed. Regarding this point please see 9.9. It is reliably evidenced that children who are witness to parental aggression are more likely to adopt emotional regulation difficulties themselves. It is my opinion that Mr Garfield's tendency to present himself in a positive light applies not only to concerns about decisions being made about the residence of the children but more widely to his personality and manner of relating to others. In terms of his functioning and interpersonal relationships it is my opinion that these are negatively impacted by his tendency to deny any psychological vulnerability. There is an increased likelihood that angry outbursts in his relationships with others will remain problematic for him and those around him if he is unable to address his emotional vulnerability.
- 9.2.2 In my opinion Mr Garfield's level of intellectual functioning would not prevent him from providing an adequate standard of parenting. However, it does have implications for his learning style and how best to provide instruction and guidance to him. When considering the best way to give information to Mr Garfield it is important to take into account both his pattern of cognitive abilities and of the need to overcome potential barriers to his acceptance of that information. Assessment of Mr Garfield's level of intellectual functioning does not indicate the presence of any learning difficulties that would prevent him from learning new information. There are indications however that in contrast to Ms Davis, Mr Garfield is less able in terms of his verbal abilities and this would suggest that he is likely to learn more readily when information is presented visually in the form of modelling or demonstration rather than through verbal or written instruction.
- 9.3 *If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional/cognitive difficulty or personality disorder which could be associated with risk to others, based on the*

available evidence base (whether published studies or evidence from clinical experience)?

- 9.3.1 I believe that Mr Garfield has some difficulty in effectively solving problems but my main concern is about the strategies that Mr Garfield tends to adopt to manage his own emotional distress. In my opinion Mr Garfield's tendency to suppress his emotional responses increases the risk that he ultimately responds with high levels of aggression and rage in stressful situations.
- 9.3.2 Mr Garfield does not appear to meet diagnostic criteria for any disorder. However, a culmination of personality characteristics and strategies for managing difficult emotions indicate that there is a moderate risk of Mr Garfield experiencing angry outbursts and/ or inappropriate use of alcohol or prescription drugs in times of high stress if he is unable to gain insight into his emotional vulnerabilities. Pertinent to the issue of a potential future risk to Ms Davis or the children is that Mr Garfield becomes stressed by financial difficulties and the competing demands of caring for three children where he takes on responsibility for Ms Davis's difficulties also. It is my opinion that there is potential for future risk to the children if they were to be placed in the care of Mr Garfield and Ms Davis if Mr Garfield continues to take on the stress of finances and daily demands of child care without adopting more helpful emotional regulation strategies.
- 9.3.3 Whilst Mr Garfield's profile on the anger scale did not identify a propensity towards violence, it is his lack of ability and/ or refusal to engage in any reflective discussion around the concerns of professionals that causes me concern. As long as Mr Garfield is focusing his energy primarily on minimising difficulties and is unable to consider his own 'human' vulnerability to emotional dysregulation, I would be concerned that there is a moderate level of risk that past difficulties between himself and Ms Davis would reoccur.

9.4 ***What are the experiences/antecedents/aetiology which would explain his difficulties, if any (taking into account any available evidence base or other clinical experience)?***

9.4.1 Mr Garfield reported a long history of trying to offer support to others, particularly his mother and Ms Davis when they have experienced emotional difficulties. He indicated that he tried to offer support to his mother after his father left and that he has tried to take on a similar role with Ms Davis despite struggling to understand the nature of her difficulties. In offering support to others Mr Garfield has tended to suppress his own emotional responses and I gained the impression that he regards his own emotional needs as being less significant than those of other people around him. Mr Garfield's tendency to suppress his emotional responses may increase the risk that he ultimately responds with high levels of aggression and rage in stressful situations rather than being able to effectively address his problems.

9.5 ***What treatment is indicated, what is its nature and the likely duration?***

9.5.1 Given Mr Garfield's account of difficult experiences in childhood and his current difficulties in managing his own emotional responses and understanding Ms Davis's difficulties I believe that Mr Garfield is likely to benefit from a course of psychological therapy. As he is not currently experiencing any symptoms of anxiety or depression he is unlikely to meet access criteria for NHS psychological therapy services. Mr Garfield may be able to access some appropriate assistance through local voluntary organisations such as MIND. Ideally this would be focused on supporting Mr Garfield to be more tuned in to his emotional responses, to acknowledge his anger and then to use appropriate strategies to address the situations causing frustration. Given his difficulty in coping with anger during review meetings Mr Garfield may also benefit from attending an assertion training course perhaps run by the above organisation. It is difficult to accurately estimate the number of individual therapy sessions that Mr Garfield is

likely to require however I believe that this is likely to be twelve to sixteen sessions over a period of approximately six months. This work could be undertaken while Mr Garfield is involved in caring for the children and may also assist him on offering more appropriate support to Ms Davis.

9.6 ***What is his capacity to engage in/partake of the treatment/therapy?***

9.6.1 There is no reason to believe, purely on the basis of his level of intellectual functioning that Mr Garfield would not be able to engage in psychological therapy at an adequate level.

9.6.2 Given his strong tendency to minimise problems and appear desirable to others Mr Garfield may find it difficult to engage meaningfully in psychological therapy. Meaningful engagement would require Mr Garfield to be able to identify and address areas of emotional weakness and to address these as being relevant and problematic for him.

9.7 ***Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?***

9.7.1 During this assessment Mr Garfield was receptive to the possibility of some of the interventions detailed above. His desire to conform and gain approval is likely to be a positive indicator in terms of his likely engagement with and ability to benefit from these interventions. Mr Garfield's reluctance to talk about his own emotional responses, his sensitivity to others perceiving him as having weaknesses and his tendency to minimise his difficulties are all negative indicators of engagement and therapeutic response.

9.8 ***What other factors might indicate positive change?***

9.8.1 Positive change might be indicated by factors such as Mr Garfield openly acknowledging responsibility for previous aggressive outbursts. Change would also be indicated by Mr Garfield being more willing to acknowledge

his own vulnerabilities and problems and being more open to constructive feedback. It is positive that Mr Garfield has managed to abstain from alcohol since the children were placed in foster care. A continued abstinence, particularly from binge drinking, would also indicate positive change.

9.9 ***With regard to both parents please comment on any other matter that you see fit.***

It is outside of my area of expertise to comment specifically on the nature of the attachment and relationships between the parents and the children and on the specific emotional, behavioural and physical needs of the children. It is however my opinion that in making decisions about the future placements of the children a formal assessment of these issues would be beneficial. Although Ms Davis's experience of depression and Mr Garfield's personality vulnerabilities alone would not prevent them caring for a child there is good evidence to suggest that not all children are alike in their needs. In some cases where children have been removed from their parents, they may be so adversely affected that they need particularly sensitive and skilled parenting, and or parents/carers who can work co-operatively with professionals to help the children recover. In this case there are indications in the bundle of papers that each of the children have displayed an elevated level of need in terms of concerning behaviour/s to professionals. Neither Ms Davis nor Mr Garfield displayed good insight into potential difficulties of the children during this assessment. Both parents displayed a somewhat idealised view of the future in terms of how easy it would be to care for the specific needs of their children. It is these factors that inform my recommendation for a formal assessment of the attachment and relationships between the parents and the children and on the specific emotional, behavioural and physical needs of the children and the ability of the parents to meet these needs individually and/or together.

10.0 Declaration and Statement of Truth

1 I understand that my overriding duty is to the court, both in preparing reports and in giving oral evidence. I have complied and will continue to comply with that duty.

2 I am aware of the requirements of CPR Part 35 and practice direction 35, the protocol for instructing experts to give evidence in civil claims and the practice direction on pre-action conduct

3 I have set out in my report what I understand from those instructing me to be the questions in respect of which opinions as an expert are required.

4 I have done my best, in preparing this report, to be accurate and complete. I have mentioned all matters which I regard as relevant to the opinions I have expressed. All of the matters on which I have expressed an opinion lie within my field of expertise.

5 I have drawn to the attention of the court all matters of which I am aware, which might adversely affect my opinion.

6 Wherever I have no personal knowledge, I have indicated the source of factual information.

7 I have not included anything in this report which has been suggested to me by anyone, including the lawyers instructing me, without forming my own independent view of the matter.

8 Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report.

- 9 At the time of signing the report I consider it to be complete and accurate. I will notify those instructing me if, for any reason, I subsequently consider that the report requires any correction or qualification.
- 10 I understand that this report will be the evidence that I give under oath, subject to any correction or qualification I may make before swearing to this veracity and I may be cross examined on my report by a cross examiner assisted by an expert.
- 11 I have not entered into any agreement where the amount of payment of my fee is in any way dependent on the outcome of the case.
- 12 **Statement of Truth**
I confirm I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Dr Dale

(Dr) Dale

Registered Clinical Psychologist

Date 17.03.2015

Do you agree to take part in the study ?

yes no

Signature_____Name

NB: This consent form will be stored separately from the anonymous information you provide.

Appendix 7: Participant debrief sheet



Debrief sheet

Legal professionals' experiences of independent expert witness evidence in child care proceedings: An exploratory study

Thank you for taking part in the above named study.

The interview you have taken part in will be transcribed before destroying the audio record. The transcription will not contain any information that would identify you personally and will be treated as confidential. The only people with access to the full transcript will be myself, my Supervisor, independent research assistant and my examiner.

I will use the transcripts from all of the interviews I have conducted as part of this study to look for common themes and patterns within the responses. I will write the results of this into my doctoral thesis in partial fulfilment of the Doctorate of Clinical Psychology at Royal Holloway, University of London. The findings may also be presented at an appropriate conference and submitted for publication in a peer reviewed journal.

You are able to withdraw your consent for information from your interview to be used. If you would like to withdraw your consent please contact me by email Claire.blincoe.2012@live.rhul.ac.uk or phone 07817 838 057.

If you would like a summary of the findings from the study please contact me and I will provide you with this.

Claire Blincoe
Trainee Clinical Psychologist, Royal Holloway University of London

Supervised by Dr Simone Fox
Clinical Psychologist and Academic Tutor, Royal Holloway University of London

Appendix 8: Screening form for legal professionals



Participant screening form

Job Title:

Are you currently practising? Yes No

Number of years of experience representing parents in child care proceedings:

0-5 6-10 11-15 16-20 21+

Number of years of experience representing children in child care proceedings:

0-5 6-10 11-15 16-20 21+

Number of child care cases worked on in the last 12 months where a Psychologist was instructed to provide expert opinion regarding parents:

0 1 2 3 4 5 6 7 8 9 10 11+

Number of child care cases worked on in the last 12 months where a Psychologist was instructed to provide expert opinion regarding children:

0 1 2 3 4 5 6 7 8 9 10 11+

Number of child care cases worked on in total where a Psychologist was instructed to provide expert opinion on parents and/ or children:

0-10 11-20 21-30 31-40 41-50 50+

Appendix 9: Fictional letter of instruction

Lead Solicitor
Children and Family Solicitors
Town
Postcode

Dr Dale
Expert Witness Psychology Services
Town
Postcode

JOINT LETTER OF INSTRUCTIONS

Date: 01 February 2015

Dear Dr Dale

Re: Jane Davis and Daniel Garfield

1 We write regarding psychological assessment of the above.

2 THE REPRESENTATIVES

In this case

I act on behalf of the Guardian for the children; Ethan Banks (DOB: 30.04.2009), Jacob Garfield (DOB: 05.06.2011) and Katie Garfield (DOB: 22.10.2013). Jane Davis is the mother of all three children. Daniel Garfield is the father of; Jacob Garfield (DOB: 05.06.2011) and Katie Garfield (DOB: 22.10.2013). The father of Ethan Banks is not a party in these proceedings.

Solicitor A of Legal Services represents the mother, Jane Davis, who is pursuing the care of the children; Ethan Banks (DOB: 30.04.2009), Jacob Garfield (DOB: 05.06.2011) and Katie Garfield (DOB: 22.10.2013).

Solicitor B of Lawyers and Co represents the father, Daniel Garfield, who is pursuing the care of the children; Ethan Banks (DOB:

30.04.2009), Jacob Garfield (DOB: 05.06.2011) and Katie Garfield (DOB: 22.10.2013).

Solicitor C of the City Council represents the Local Authority who are applying for Care Orders in respect of the children; Ethan Banks (DOB: 30.04.2009), Jacob Garfield (DOB: 05.06.2011) and Katie Garfield (DOB: 22.10.2013).

3 THE NATURE OF THE INSTRUCTIONS:-

You are being jointly instructed on behalf of all parties on the basis that you will provide an entirely independent expert opinion for the Court.

4 BACKGROUND

Jane Davis (DOB: 02.11.1991), and Daniel Garfield (DOB: 06.03.1988) are the parents of Jacob Garfield (DOB: 05.06.2011) and Katie Garfield (DOB: 22.10.2013). Jane Davis has an older son, Ethan Banks (DOB: 30.04.2009) from a previous relationship. Ethan Banks' father does not have contact with Ethan and is not a party in these proceedings. All three children resided with Jane Davis and Daniel Garfield until August 2014 when they were placed with Local Authority foster carers.

The family have been known to Social Services since January 2012 in connection with concerns about domestic violence between the parents. The case was closed in December 2012 after the parents engaged effectively with professionals in addressing the concerns. The case was re-opened to Social Services in December 2013 following reports from Ethan Banks about heavy drinking by Daniel Garfield. It also transpired that the children had missed a number of health appointments and the family home was found by Social Workers to be unclean and cluttered. The decision was made to place all three children in foster care in August 2014 following continued concerns about neglect and emotional abuse within the family home.

Jane Davis was placed in foster care between the ages of 15 and 16 following concerns about absconding from school and spending time with older adult males. She has been involved with mental health services in the past in relation to depression. Professionals have raised concerns about her level of intellectual functioning and the potential impact of this on her parenting capacity. Daniel Garfield became known to Police in 2006 when he was charged with Theft. Professionals have reported concerns regarding Daniel Garfield exhibiting aggressive behaviour in the presence of the children.

Daniel Garfield has attended alcohol misuse services and has undergone liver function tests which have been within the normal range. Both parents have attended parenting classes and are applying for the children to be returned to their joint care.

5 YOUR INSTRUCTIONS

You are instructed jointly by all of the Solicitors on the basis that you will provide an independent expert opinion. You are requested to complete a full psychological assessment, including cognitive assessment, of both parents and to consider and provide your opinion on the following issues:-

Jane Davis

1. Does Jane Davis have – whether in her history or presentation – a mental illness/disorder (including substance abuse) or other psychological/emotional/cognitive difficulty and, if so, what is the diagnosis?

2. How do any/all of the above (and their current treatment if applicable) affect her functioning, including interpersonal relationships?

3. If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional/cognitive difficulty or personality disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?

4. What are the experiences/antecedents/aetiology which would explain her difficulties, if any (taking into account any available evidence base or other clinical experience)?

5. What treatment is indicated, what is its nature and the likely duration?

6. What is her capacity to engage in/partake of the treatment/therapy?
7. Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?
8. What other factors might indicate positive change?

Daniel Garfield

1. Does the Daniel Garfield have – whether in his history or presentation – a mental illness/disorder (including substance abuse) or other psychological/emotional/cognitive difficulty and, if so, what is the diagnosis?
2. How do any/all of the above (and their current treatment if applicable) affect his functioning, including interpersonal relationships?
3. If the answer to Q1 is yes, are there any features of either the mental illness or psychological/emotional/cognitive difficulty or personality disorder which could be associated with risk to others, based on the available evidence base (whether published studies or evidence from clinical experience)?
4. What are the experiences/antecedents/aetiology which would explain his difficulties, if any (taking into account any available evidence base or other clinical experience)?
5. What treatment is indicated, what is its nature and the likely duration?
6. What is his capacity to engage in/partake of the treatment/therapy?

7. Are you able to indicate the prognosis for, time scales for achieving, and likely durability of, change?

8. What other factors might indicate positive change?

6 FACTUAL ISSUES

Unless you have been specifically requested to do so, you should avoid expressing a view regarding any factual dispute as this would be determined by the Court at a Finding of Fact hearing if necessary.

7 PRACTICE DIRECTION IN RESPECT OF EXPERTS IN FAMILY PROCEEDINGS

I would respectfully remind you of the Practice Direction for expert witnesses in Family Proceedings relating to Children. Your duties are set out in section 3 of the Practice Direction.

You have an overriding duty to the court that takes precedence over any obligation to the person from whom you received instructions or by whom you are being paid. You should have regard always to the principle that in determining any question with respect to a child, the child's welfare is the Court's paramount consideration. Your particular duties are set out in paragraph 3.2 of the Practice Direction.

Paragraph 3.3 contains important requirements about the contents of your report and you are respectfully asked to ensure that you comply fully with these requirements.

You are asked to inform me immediately if:-

- (a) Any particular aspect of the case is outside your expertise.
- (b) At any time you change your opinion on a material matter.
- (c) During the course of your investigation, other issues appear to you to become relevant so that I can consult with the other legal advisors and consider whether the scope of your instructions should be amended.
- (d) You consider that a professional or expert from another discipline should be instructed to consider issues which fall outside your expertise and which seem to you to be relevant to the outcome of the case or decision which the Court has to make.
- (e) You consider that a second opinion from an expert in your own specialist field should be sought on any key issue.

Yours sincerely

Lead Solicitor
Children and Family Solicitors

Appendix 10: Likert scales for study materials

Thank you for reading the study materials.

Please circle a number from 1-7 to indicate how reflective the materials are of what you see in your own professional role in child care cases.

Letter of Instruction

<p>Not at all realistic The letter of instruction is not representative of what I have seen in my own professional practice</p>			<p>Fairly realistic The letter of instruction is reasonably representative of what I have seen in my own professional practice</p>			<p>Very realistic The letter of instruction is representative of what I have seen in my own professional practice</p>
1	2	3	4	5	6	7

For scores of 6 or less please comment on any aspects of the letter of instruction that do not reflect what you have seen in your professional role in child care cases:

Thank you for reading the study materials.

Please circle a number from 1-7 to indicate how reflective the materials are of what you see in your own professional role in child care cases.

Psychological report

Not at all realistic The psychological report is not representative of what I have seen in my own professional practice			Fairly realistic The psychological report is reasonably representative of what I have seen in my own professional practice			Very realistic The psychological report is representative of what I have seen in my own professional practice
1	2	3	4	5	6	7

For scores of 6 or less please comment on any aspects of the psychological report that do not reflect what you have seen in your professional role in child care cases:

Appendix 11: Questions asked of psychologists

Questions for clinical psychologists

Researcher: "Thank you for reading the letter of instruction. I'd like to remind you to imagine that this is a real case and you have received the letter of instruction. I'm going to ask you some questions about how you would go about conducting a psychological assessment and report for the court in this case. Does that sound ok? Do you have any questions before we begin?"

Notes for interviewer- are the following areas from the letter of instruction covered in the responses? Mental health difficulties, parents functioning and interpersonal difficulties, potential for treatment, potential for positive change within child timescales

1. How would you go about conducting an assessment of the parents in response to the letter of instruction?
2. Which assessment tools/ measures/ techniques would you include in your assessment of each parent?
3. What would you consider to be key elements to include in a psychological report regarding the parents in response to the letter of instruction?
4. Would you like to add anything you feel would be important for an assessment and/ or the preparation of a report in response to the letter of instruction that we haven't spoken about?

Appendix 12: Interview schedule

Interview questions for legal professionals

Interviewer: "Thank you for reading the letter of instruction and psychological report. I'd like to remind you that I am hoping to ask you some questions to find out how you would understand, use and interpret the information in the report if it was real case, does that sound ok? Do you have any questions before we begin?"

1. What do you feel are the key aspects of the psychological report?
2. Where does the information about (identified key aspects) appear in the report?
3. How would you interpret the information about (identified key aspects)?
4. How would you use the information about (identified key aspects) in your professional role?
5. Are there any things that are difficult to understand within the report?
6. How would you interpret (identified areas that are difficult to understand) having read the report?
7. How would you manage (identified areas that are difficult to understand) in your professional role?
8. Does the report add to your knowledge of the case? If so, how? (*Prompt: if you can imagine what you might have known prior to seeing the report*)
9. Does the report affect your professional opinion of the case? If so, how? (*Prompt: if you can imagine what you might have known prior to seeing the report*)
10. Are there things missing from the report that you expect would be helpful to your knowledge and interpretation of the case?
11. Is there anything we haven't spoken about that you would like to add about the information in the report?

Appendix 13: Example of initially coded transcript

Appendix 14: Theoretical codes

Code 1	
Label	'Legal Rationality'
Definition	Direct application of facts of the case to relevant written or case law
Description	A judgement or decision about any aspect of the psychological evidence or case by directly applying facts from the psychological evidence to knowledge of written or case law

Code 2	
Label	'Cognitive heuristics'
Definition	A rule of thumb/ mental short cut/ educated guess approach to processing psychological information
Description	Assigning information into typical classes or categories (representativeness) Judging psychological information on the basis of memories invoked when reading it (availability) In absence of understanding or clarity about psychological information the legal professional is influenced by prior knowledge to make a judgement (anchoring)

Code 3	
Label	'Intuition'
Definition	Making a judgement prior to application of facts of the case to relevant written or case law
Description	A judgement or decision about any aspect of the psychological evidence or case made on the basis of intuitive factors, with application of the facts of the case to relevant or written case law afterwards

Code 4	
Label	'Systemic/ contextual factors'
Definition	System or procedural elements of child care proceedings
Description	A judgement or decision about any aspect of the psychological evidence or case is made with reference to, or is affected by, system or procedural elements of child care proceedings

Code 5	
Label	'Personal/ emotional factors'
Definition	Personal thoughts, feelings, experience or behavioural approaches evident in decision making processes
Description	A judgement or decision is made about any aspect of the psychological evidence or case with reference to personal thoughts, feelings, experience or behavioural approaches of the legal professional

Code 6	
Label	'Group processes'
Definition	Anything relevant to decision making in groups
Description	A judgement or decision is made about any aspect of the case or psychological evidence with more than one person

Code: Miscellaneous	
Label	Miscellaneous
Definition	Anything relevant to judgement and decision making
Description	Any indication in the text that is relevant to judgement and or decision making which does not fit into any other code

Appendix 15: Examples of theoretically coded transcript

Transcript extract	Theoretical code
<p><i>“It is established in the case law that parents with learning disabilities should have been given a fair assessment of their parenting based on their needs so I would be using the psychological report here to look at any parenting assessments and ensure the Local Authority had fulfilled those obligations.”</i> (Barrister 11)</p>	<p>1: Legal rationality</p>
<p><i>“You know I’ve done one yesterday it’s exactly the same (as the case in the psychological report for this study) it’s like reading about the mirror image of that case. I still feel 50/ 50 about that one and it makes me think this one is probably 50 50 too, they’re so similar.”</i> (Children’s Panel Solicitor 7)</p>	<p>2: Cognitive heuristics</p>
<p><i>“You have got an idea of where you’re going with it and then you make sure obviously that’s all in accordance with the case law before you go forward with trying to get that plan in place.”</i> (Parent Solicitor 3)</p>	<p>3: Intuition</p>
<p><i>“We have to complete care proceedings in 26 weeks. This report would typically roll in at about 15 of your 26 weeks and whoever you’re representing if you have a recommendation for 6 months of therapy that’s when you really need to start seriously thinking about what the implications are.”</i> (Barrister 8)</p>	<p>4: Systemic/ contextual factors</p>
<p><i>“I was born to a working class family and I’m very lucky obviously to have this job but I’ve always maintained my working class roots I don’t deny where I come from. I think the right results for children should be to be brought up within the family as long as it’s safe that’s my view and I’ll read this report and try to make sure that happens.”</i> (Parent Solicitor 2)</p>	<p>5: Personal/ emotional factors</p>
<p><i>“Well we’d have an advocates’ meeting as we always do. We’d discuss it. I mean some people can actually look at the same document can’t they and come out with a different conclusion. Especially when it’s like this where the conclusions about whether the therapy is going to work aren’t 100% clear. We’d discuss what each person makes of it and then come up with a plan really.”</i> (Children’s Panel Solicitor 6)</p>	<p>6: Group processes</p>

Appendix 16: List of initial themes

Initial theme number	List of initial themes
1	Parents who follow psychological recommendations are viewed as having a better chance of rehabilitation with their children, it's their responsibility to do this
2	Cognitive assessment information is psychological expertise and is crucial in guiding practical decision making
3	Quality of reports informs decisions about whether to use them in future care planning, psychologist has responsibility for providing clear and sound conclusions
4	Decisions are made in communication with clients and other professionals, and by the Judge
5	Weighing up positive and negative aspects of psychological evidence against legal frameworks informs decisions about what to advise clients: what can make a parent 'good enough'
6	Decision making about experts is complicated by technical information, multi- tasking and the limited time at all phases
7	Psychological reports are read with conflicting key assumptions in mind: "children are better off with their parents" V "parents have deficits"
8	Assumptions about overall outcome is based on experience
9	Key information from a psychological report with regards to practical decision making is contained within conclusions and psychometric results
10	Legal and psychological practice informs decision making about acting on psychological recommendations
11	More experienced Lawyer's rely on intuition to guide decisions about instructing an expert
12	Lay assumptions and heuristics inform decisions about how to use psychological evidence
13	The 'Best interest of the child' is a red herring for decision making at the advocate level
14	Psychological reports inform practical decisions about what to do next and how to advise a client

