



## Chronological Age, Capacity and Capability

This paper should be read in conjunction with the joint independent briefing that has recently been published by the Department of Health and Social Care setting out the importance of transitional safeguarding within adult support services. A link to the briefing can be found at the end of this paper.

We welcome the briefing from the DoHSC as Transitional Safeguarding encourages a shift away from age-determined boundaries that can be overly rigid and can mean for some young people cases being closed as they turn 18 despite the need for services continuing.

The purpose of this paper is to encourage agencies to have discussions and dialogue to think differently about how we support children and adults whose needs have not yet been identified, how many children and adults have become involved with the Police and the criminal justice system, yet their unmet needs have not been fully understood and what has been the outcome? Are we delivering the right level of support at the right time and in a manner that is compatible with the cognitive ability of those needing support? Are we focussing on chronological age rather than ability and do we regularly consult with those agencies who have the necessary skill set within their teams to help?

Too often in the children's services environment we use a child's chronological age as a basis for assessment and expect children to reach developmental milestones based specifically on their age rather than their individual circumstances.

However, the United Nations and the WHO both understand that the definition of adolescents to include persons aged 10-19 years and youth as those between 15-24 years. The latest neuroscience research into the adolescent brain has indicated that brain development continues until around the age of 24, yet conversely in the UK we still regard children as reaching adulthood at 18 with expectations of adult behaviour occurring at this moment as well. In many areas services for children who are suffering from various forms of trauma in relation to abuse, exploitation and neglect simply seem to cease at this crucial time in their lives and many children's services simply "close the case" especially if there is no identified learning disability, in these instances agencies can be seen to be

blindly conditionally compliant with local procedures whereby in reality “bridging the gap” between children and adult services is what is really required. This change happens overnight, being a 17-year-old child one day to expectations as an adult the next day.

For more context about how age had been used to define children and their capabilities we need to look at how legislation and regulation has been used to define age milestones.

In the UK, The Children and Young Peoples Act (1963) determined that when a child reached the chronological age of 10, they would be deemed to be responsible for any criminal activity that they may have committed.

Once a child is 13, they can become employed to do part time work in certain circumstances and they can have an account on social media networks.

When a child reaches 16, the child can consent to lawful sexual intercourse, leave home without parents/guardians consent and enter a civil partnership albeit with parents/guardian’s consent.

At 17 a child can hold a driving licence, be interviewed by the Police without an appropriate adult being present and professional football clubs can offer a 17-year-old a professional football contract.

At 18 the adult world beckons, you can vote in elections, view adult sex materials, and purchase alcohol in licensed premises as well as place bets in a Bookmakers shop.

All these age-related activities are enshrined into British law and are purely based on chronological age.

However, this sole focus on chronological age can guide and influence professionals to make some decisions based purely on age rather than look and investigate other factors which could influence a child’s responses, actions and needs.

Many Serious Case Reviews (when a child is seriously injured or dies) have highlighted that the capacity of adolescents to protect themselves is often overestimated by professionals. The NSPCC Child Safeguarding Practice Review panel paper (2018-2019) identified that “optimism bias” was a significant issue and in 32% of the rapid review cases it has been evidenced that over optimistic practice decisions were made. A question we should ask is “are these decisions being guided by the child’s age and expectation of that age rather than their actual capabilities and capacity to make decisions and understand the implications of such choices”.

Therefore, should all professionals working with vulnerable children or adults start assessing their abilities not on a chronological basis but take more of a “curious enquiry” approach into their current capacity to understand, their ability to process and retain information and the professionals must also fully understand what cognitive and emotional age the children/adults are operating and functioning at.

Do we really feel that children transitioning to adulthood really consent to their own abuse, freely without coercion and control? remembering that “children cannot consent to their own abuse”. Conversely in the adult world The Care Act does make allowances for unwise decisions to be made based on an individual’s choice, however having the “capacity” to make unwise decisions is not consenting to be abused and refusing to consent to access services and the seemingly “willingness” to participate in exploitation requires robust assessment and investigation.

As part of these assessments’ professionals should also be curious about a child/adult’s sensory experiences, how do they process information especially if they are displaying stressed behaviours. In many instances stressed behaviours are seen as negative reactions or over reactions and can easily be dismissed without real understanding of their needs and poor assessment/judgements can take place. Care should also be given to the surroundings and environments that children are being assessed in, warm or bright rooms may seem comfortable for some but to others they can be sensory overwhelming and debilitating.

Communicating with vulnerable children and adults also requires close attention, if they are displaying stressed behaviours be mindful that they may not be able to process information that is being given to them verbally or in written form and consider if they can provide information as well, trauma can close down parts of the brain, and this can sometimes be interpreted as not co-operating or being difficult.

During times of distress the muscles in the middle ear can contract and the focus can be on very low pitch or high pitch sounds which can lead to miscommunication and a lack of understanding which can often result in poor judgments and assessments being made. Communicating and assessing those with vulnerabilities requires patience and understanding, reaffirming with a person to ensure the question or statement is fully understood is required and time is needed for them to be able to fully process the information that is being either asked about or given, we cannot underestimate the importance of time and active listening, the word “listen” is a verb so it’s vital that we listen to the spoken word but also listen to the subtle nonverbal cues and behaviours that can often be missed.

When we consider capacity issues along with sensory and communication needs, we should not forget about the impact of trauma on a child or adults' ability to function, make decisions and how they present.

Sometimes the symptoms of trauma can be mistaken for a host of medical and developmental conditions such as Autism, ADHD, ODD, conduct disorders, substance abuse disorders and other similar impairments.

In order to help those assessing children/adults, information from a variety of sources must be obtained, when assessing children how many practitioners contact educational psychologist about a child's learning abilities or to enquire about what age they are functioning/operating at in school, occupational therapists should be consulted with regard to sensory and communications needs, so many children may present as having difficulty learning but has their auditory processing ability been fully recognised or assessed, how many children have been assessed by a speech and language therapist? So much is not understood about this form of therapy, as it covers a wide range of communication difficulties that are often not recognised, gaps need to be filled in before assessments and judgments are formed.

### Learning Difficulties or Learning Disabilities.

Children and adults with a learning disability have legal status and protections from the Equality Act (2010) and the Human Rights Act (1988) and a right to services as legislated within the Children and Families Act 2014 and The Care Act 2014.

A question we pose to all professionals is "who supports those with a learning difficulty"? This question has recently been asked at an Education Select Committee meeting in Parliament with the MP for Ipswich, Tom Hunt, saying "we must end the learning difficulties to prison pipeline".

Sadly, quite often these children and adults labelled as having a learning difficulty can go "under the radar" as their needs may not be fully understood and in many cases not identified. We feel that the term "learning difficulty" is unhelpful when describing a child's or adults needs, at any point in our lives and especially during the coronavirus pandemic we may all have had trouble in learning, retaining information and functioning at a certain level, however we will not all be labelled as having a learning difficulty which often has a negative connotation and stigma associated with such a label.

Therefore, we need to be more focussed on those who may not be learning at an expected level or at the same standard as their peers, if we do not know or understand what level they operate and function at how can we develop appropriate interventions and support programmes for those perceived to be “lagging” behind. The threshold to request an assessment for an Education Health and Care plan is very low but access to services, resources and support can be very difficult to access, especially without any formal diagnosis, this is the area that requires more investment in funding but also training and access to specialist assessments.

Age is simply a time constraint, and a more in-depth and insightful approach is required when working with children and adults who present as learning at different levels, particularly during times of transition. We need to be curious about a child’s cognitive and emotional age, their communication, and sensory needs as all these characteristics are important in trying to ascertain and understand their capacity and capability to make informed decisions on a range of subjects that will ultimately influence their wellbeing.

### In Summary.

Let us not always focus on age, although we do recognise that some agencies are compelled to by law but let us be more curious about the three C’s.

- Cognitive functionality.
- Capacity to understand and make decisions.
- Communication needs.

Are we considering the sensory environment and the sensory needs of the individual and are we listening with our eyes and our ears, do we consult with those services with the skill set and knowledge to help with our assessments?

Do you consult with local authority SEND teams to utilise their expertise and experience?

And finally, we need to think differently about labelling children and adults as having a learning difficulty, we all need to exercise our curiosity to help identify their unmet needs so support and services can be developed to effectively deliver interventions at the appropriate stage and when required.

The Department of Health and Social Care briefing **Bridging the Gap** can be downloaded free from NWG resources (search Bridging the Gap 2021)

As always, the team at NWG Network are happy to talk to any of our members or colleagues about the contents of this paper or the new transitional safeguarding briefing.

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