

s.20

Accommodation

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Released under FOI

Why is it
important

Human rights

Local Authority fines

Reputational risks

Overview

- Children's services has a duty to accommodate under section 20 if:
 - No-one has Parental Responsibility for the young person or
 - The young person is lost or abandoned or
 - The person who has been caring for the young person is unable to continue to provide suitable care and accommodation.
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- local authority cannot provide accommodation for a child if there is someone who has parental responsibility that objects (s.20 (7))
 - good practice for children's services to obtain written consent before placing a child under S.20 accommodation

Case law on consent

(L B Hackney v Williams & Anor [2017] EWCA Civ 26)

- 'Consent' under any of the Section 20 provisions was not a statutory requirement as such.
- The local authority has a duty to provide accommodation for children, (subject to a parent being able to legally object and / or remove) where the person who had been caring for them was 'prevented (whether or not permanently and for whatever reason) from providing them with suitable accommodation or care'.
- This supports the local authority in its duties towards children on those occasions where 'parental consent' cannot, for a variety of reasons, be obtained at the time of a child's accommodation or parents cannot effect care of the child themselves.

Who do you ask for consent?

- The local authority must consider, where possible, the wishes and feelings of the child, their parents or any person with parental responsibility, and any other person deemed relevant, before providing accommodation
- The parent/carer with Parental Responsibility can remove the child from Accommodation at any time ([Section 20\(8\)](#)) and any such request must be responded to promptly by the local authority [Herefordshire Council v AB \[2018\] EWFC 10 rtf](#)

Good Practice

- Obtaining Parental Consent as a matter of good practice remains an essential part of Accommodating a child under this part of the 1989 Act. A number of court decisions have been particularly critical of local authorities' actions with regard to consent and great care needs to be undertaken to ensure parents have the appropriate capacity to do this
- All persons with PR need to be asked for consent – even if one consents, the other(s) still need to be consulted as any objection could override the consent.
- Section 20 agreements are not valid unless the parent giving consent has capacity to do so, (in cases where the father also has Parental Responsibility, the consent of both parents should be sought). The consent needs to be properly informed and **fairly obtained**. Willingness to consent cannot be inferred from silence, submission or acquiescence - it is a positive action.

Consent

- Detailed guidance on the obtaining of parental consent was given by the High Court in the case of *Re CA (A Baby)* (2012):
- The social worker must first be satisfied that the parent giving consent does not lack the mental Capacity to do so. Under the Mental Capacity Act 2005, a person is unable to make a decision if s/he is unable:
 - To understand the information relevant to the decision;
 - To retain that information;
 - To use or weigh that information as part of the process of making the decision; or
 - To communicate their decision.

The High Court in *Re S (Child as parent: Adoption: Consent)* [2017] EWHC 2729 (Fam) set out the relevant information that a parent would need to be able to understand, retain and weigh up in order to have competency to consent to the accommodation of a child:

- That the child will be staying with someone chosen by the local authority, probably a foster carer;
 - That the parent can change their mind about the arrangements, and request the child back from accommodation at any time;
 - That the parent will be able to see the child.
- If there is doubt about Capacity, no further attempts to obtain consent should be made at that time, and advice should be sought from a manager/legal;
 - If satisfied that the parent has Capacity, the social worker must be satisfied that the consent is fully informed:
 - Does the parent fully understand the consequences of giving such consent?
 - Does the parent fully appreciate the range of choice available and the consequences of refusal as well as giving consent?
 - Is the parent in possession of all the facts and issues material to the giving of consent?

Consent

- If not satisfied that the consent is fully informed, no further attempt should be made to obtain consent on that occasion and advice should be sought from a manager and legal advice sought if thought necessary;
- If satisfied that the consent is fully informed, then it is necessary to be satisfied that the giving of such consent and the subsequent removal of the child from the parent is both fair and proportionate:
 - What is the current physical and psychological state of the parent?
 - If they have a solicitor, have they been encouraged to seek legal advice and/or advice from family or friends?
 - Is it necessary for the safety of the child for him/her to be removed at this time?
 - Would it be fairer in this case for this matter to be the subject of a court order rather than an agreement?

- Whether a person has capacity can sometimes be difficult to determine, as some individuals have a learning disability or mental health problem but can present as being more 'able' than in fact they are. Equally, within the context of 'assessing capacity', social workers should approach with great care relying on section 20 agreements from mothers after giving birth, (especially where there is no immediate danger to the child and where probably no order would be made).
- Where there is any concern about a parent / carer's capacity, the social worker should ensure they discuss this issue with their team manager, or that the parent has information from a legal adviser or professional advice (1). **Note:** In *Coventry City Council v C, B, CA and CH* (2012) EWHC2190 (Fam) it was identified that, 'every social worker obtaining consent is under a personal duty (the outcome of which may not be dictated to by others) to be satisfied that the person giving consent does not lack the capacity to do so'.
- that the High Court in *Re S (Child as parent: Adoption: Consent)* made clear that parental Capacity to consent to a child being accommodated under s.20 Children Act 1989, does not equate to their capacity to consent to an adoption order in respect of the child - the capacity to consent is decision-specific

Consent

The parents' agreement to accommodation under section 20 should be recorded in a written agreement. A copy should be given to parent(s) and kept on the SW record.

There is no time limit on section 20 but you must ensure the arrangement is reviewed regularly and that all statutory duties to the child are being met

Types of accomodation

Family and friends care

Foster care

Residential

s.20 or private family arrangement – key differences

Private family arrangement

Aside from a basic welfare check, no formal assessment of the carer(s) is required (exception is private fostering)

Any financial or practical support is at the discretion of the local authority under section 17 - the carers must first look to the parents for this support

The child(ren) will not be 'looked after' and so none of those statutory provisions apply;

s.20 arrangement

- A detailed assessment of the carer(s), initially under Regulation 24, will be required
- Financial and practical support must be provided to the carer(s) by the local authority
- Being 'looked after' may result in future support – eg: leaving care; SGO support;

Private family arrangement or s.20

Firstly consider:-

- Is/was the LA involved at the point of children going to live with family/friend carers or were the children with these carers before the LA becoming aware of the arrangement?
- If the LA was not aware or involved at that time, it is a private arrangement, even if the child(ren) have only been living with the carers for a short time. There is no requirement for section 20 consent to be obtained in respect of this kind of arrangement even if the LA subsequently becomes involved.
- If the LA is / was involved at the time, then you need to consider the following:-
 - Is the child physically present within the local authority area?
 - Has the duty to accommodate the child(ren) arisen under one of the grounds within s20?

Does the child appear to you to require accommodation as a result of:- 1. There being no-one with PR for him/her; Being lost or abandoned; The person who had been caring for him/her being prevented from doing so, whether or not permanently and for any reason.

If the circumstances fall within the duty or the discretion, then the placement will be under section 20 unless a person with parental responsibility objects and requests that the placement be a private arrangement instead. Full and frank discussions must take place with both the parents / those with PR and the proposed family carers in order to make them aware of the important differences between a private arrangement and a placement under section 20 in order that they can properly consider whether they wish to object .

Private family arrangement or s.20

- If none of those three criteria apply, then you will be exercising the discretion to provide accommodation under s20. Are you choosing / offering to accommodate the child(ren) because to do so would safeguard or promote their welfare?
- If the circumstances fall within the duty or the discretion, then the placement will be under section 20 unless a person with parental responsibility objects and requests that the placement be a private arrangement instead.
- Full and frank discussions must take place with both the parents / those with PR and the proposed family carers in order to make them aware of the important differences between a private arrangement and a placement under section 20 in order that they can properly consider whether they wish to object .

Key questions to consider

Was the arrangement to live with family/friend initiated by the LA or the parent?

What would be our response if the parent refused or withdrew their permission for the child to live with a relative/friend?

Is the child in need of an alternative living arrangement because they are at risk of significant harm or beyond parental control?

What controls have been placed on contact?

Wishes and feelings of the child/parent/prospective caregiver regarding the status of the placement