**SECTION 20 GUIDANCE**

**INTRODUCTION**

The following note is provided as a guidance document for the effective use of section 20, also referred to as voluntary accommodation. It does not consider the question of whether a placement is voluntary accommodation or a family arrangement.

**The Legislation**

Local authorities have a **duty** to provide accommodation for any child in need in their area who appears to them to require accommodation as a result of there being:

(a) no person who has parental responsibility for him;

(b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

**Case Law**

In recent years, the use by local authorities of section 20 has been the subject of judicial scrutiny.

The courts have identified four separate problems, often seen in combination:

* The failure to obtain the informed consent of the parent(s)
* The form in which the consent of the parent(s) is recorded.
* The arrangements continuing far too long
* The failure to return the child to the parents immediately upon withdrawal of consent.

It has been a concern of the courts that section 20 deprives the child of the benefit of having an independent children’s guardian to represent and safeguard their interests and deprives the court of the ability to control the planning for the child and to prevent and reduce unnecessary and avoidable delay.

In the case of Re N (Children)(Adoption: Jurisdiction) [2015] the President of the Family Division gave guidance in addition to best practice for local authorities on how to accommodate under section 20 and agreements in writing.

**PARENTAL CONSENT**

The consent of the parent(s) should be **informed**, **capacious** and **freely-given.** The implications of agreeing and not agreeing need to be explained to the parents. There must be genuine agreement.

Whilst written, recorded consent remains a matter of good practice and required in South Gloucestershire, more recent case law in 2017 has clarified that in some specific circumstances consent is not required for section 20 to apply. In the case of the London Borough of Hackney v Williams & Anor [2017], lead appeal judge Sir Brian Leveson, after reviewing the case, found the law “does not require” informed consent for section 20 arrangements to be lawful. Statute sets out that a local authority cannot provide section 20 accommodation if someone with parental responsibility **objects**, and can provide an alternative. The parents in this case were **unable to provide accommodation** due to bail conditions they were under, and therefore were **“not in a position legally to object whether or not they formally consented”**, the judge ruled.

* **Capacity**

A parent must have litigation capacity to consent to accommodation under s20. In obtaining such consent every social worker is under a personal duty (the outcome of which cannot be dictated to them by others) to be satisfied that the person giving the consent does not lack the capacity to do so.

Sections 2 and 3 of the Mental Capacity Act 2005 deal with a person’s capacity, or lack of capacity, to make decisions:

Section 2 says that a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. This may be permanent or temporary and cannot be assumed from someone’s age or appearance or an aspect of their behaviour that might lead others to make unjustified assumptions about their capacity’

Section 3 says that a person is unable to make a decision for himself if he is unable

(a) to understand the information relevant to the decision,

(b) to retain that information,

(c) to use or weigh that information as part of the process of making the decision (NB this requirement is regarded as particularly important by the courts), or

(d) to communicate his decision (whether by talking, using sign language or any other means).

However, a person should not be assumed to lack capacity if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

If the social worker has any doubts about the parent’s capacity to agree to accommodation then no further steps should be taken to obtain the consent and advice should be sought from their team manager.

* **Fully Informed**

The social worker must be satisfied that the consent is fully informed:

1. Does the parent fully understand the consequences of giving such a consent?
2. Does the parent fully appreciate the range of choice available and the consequences of refusal as well as giving consent?
3. Is the parent in possession of all the facts and issues material to the giving of consent?

If not satisfied that the answers to (a)-(c) above are all “yes”, no further attempt should be made to obtain consent on that occasion and advice should be sought as above and further consideration should be given to obtaining legal advice.

* **Freely Given**

**‘An arm around the waist, not an arm held up the back**’

Consent must not be compulsion in disguise; submission in the face of asserted state authority; conflate absence of objection with actual consent; [given by a parent] who believe[s], quite erroneously, that a local authority has power, without any court order; or something approaching duress.

Undoubtedly, where the parent is asking for the child to be accommodated then the consent is likely to be freely given. Where the local authority lead the discussion then there is a greater chance of pressure being perceived by the parents of having been asserted.

* **Fairness**

Is the social worker satisfied that the giving of such consent and the subsequent removal is necessary, fair and proportionate? In determining this, questions to consider may be:

1. What is the current physical and psychological state of the parent?
2. If they have a solicitor, have they been given advice to seek their advice?
3. Is it necessary for the safety of the child for him/her to be removed at this time?
4. Would it be fairer in this case for this matter to be the subject of a court order rather than an agreement?

The document to be signed by the parents in South Gloucestershire is clearly worded and the parents must understand their right to remove the child from the local authority accommodation at any time.

In cases where the parent is not fluent in English it is vital to ensure that the parent has a proper understanding of what precisely they are being asked to agree to.

Local authorities will want to approach with great care the obtaining of s20 agreement from a mother in the aftermath of birth, especially where there is no immediate danger to the child and where probably no order would be made.

**RECORD OF CONSENT**

**There is no legal requirement for the agreement to be in writing.** However, a prudent local authority will always wish to ensure that parental consent is properly recorded in writing and evidenced by the parent’s signature. This is a good practice requirement in South Gloucestershire Council.

The written consent document template should be signed by parents having due consideration to all the issues above.

Where the parent is not fluent in English, the parent should be assisted by an appropriately qualified interpreter in any discussions leading to parental consent being given. The consent document should be translated into the parent’s own language and the parent should sign the foreign language text, adding, in the parent’s language, words to the effect that “*I have read this document and I agree to its terms*”. If it is not possible for a translation of the form to be prepared as the time consent is given, the form of consent should contain a statement confirming that it has been read over to and explained to the parent in his or her own language.

**If a parent does not consent to a child being accommodated then the arrangement is not being made voluntarily under Section 20. In the event that the situation is considered to be unsafe and there is no parental agreement to accommodation then advice should be sought from the appropriate Service Manager.**

The courts have indicated that a section 20 agreement must not be “compulsion in disguise”, because persons with PR have been coerced or persuaded to agree to section 20 under the threat of care proceedings.

There are only two lawful options available to a local authority to remove a child from their care – either asking the police to exercise their powers to remove for a short period of time (up to 72 hours, see section 46 of the Children Act 1989) or by making an application to the court for an Emergency Protection Order or an Interim Care Order (these are temporary orders).

**If parents agree verbally to the accommodation, but refuse to sign the form, it must be explained that whilst it is not legally required, it is an important record to show the decision was made freely and that consent was given. Section 20 accommodation can proceed without the form being signed, but this should be in exceptional circumstances. If a parent would wish to sign but for any reason is physically unable to, this should be carefully recorded and confirmed with parents in writing.**

**CONSENT OF 16 AND 17 YEAR OLDS**

Section 20 of the Children Act places a Duty on Local Authorities to provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation. This includes homeless young people or those threatened with homelessness. The Act also requires the local Authority to ascertain the wishes and feelings of the young person, and to give due consideration to their wishes and feelings in light of age, capacity and need.

Where children over the age of 16 are deemed to have capacity to understand and make the decision, they should be asked to give their consent to be accommodated under Section 20 in the same way as parents.

There are only two circumstances that a local authority might find that a homeless young person should not be provided accommodation under Section 20, and may instead be owed duties under the Housing Act 1996. This is where a young person is

1. Not a child in need

or

1. A 16 or 17 year old child in need, who having been fully and properly advised of the implications and having capacity to reach a decision, **has decided they do not wish to be accommodated under Section 20.**

If a child over 16 is deemed to have capacity to give their informed consent and has consented to being accommodated under Section 20, they should be asked to give written consent using South Gloucestershire’s young people’s Section 20 Consent form.

If they do not wish to be accommodated, they should be offered support to find suitable accommodation under the Housing Act 1996.

When an accommodated child is 16 or over a parent has no right to object or remove the child if they are willing to be accommodated by the local authority.

For further advice, see DfE[**Guidance on the prevention of homelessness for 16 and 17 year olds**](https://www.gov.uk/government/publications/provision-of-accommodation-for-16-and-17-year-olds-who-may-be-homeless-and-or-require-accommodation)

**LENGTH OF ACCOMMODATION**

Although the law does not specify what length of time Section 20 accommodation should be limited to, good practice suggests Local authorities should not use section 20 as a prelude to care proceedings for lengthy periods. Judges have been highly critical of what they perceive to be drift before bringing cases to court due to the delay in permanence planning.

By way of guidance, the Local Authority is required to have a **plan for permanence** by the second LAC review, i.e. **before 4 months**.

Munby LJ noted in *Re N (Adoption: Jurisdiction)* that section 20 may, in an appropriate case, have a proper role to play as a *short-term* measure pending the commencement of care proceedings, but the use of section 20 as a prelude to care proceedings for a period as long as in that case **[8 months] is wholly unacceptable**.

Duration is inextricably linked to the child’s age and the circumstances and caution should be expressed around using absolute durations.

Long Term Use of Section 20

Long term use of section 20 is most is most likely to be appropriate when:

* Parents are fully in agreement with the child being accommodated and are working in partnership with the local authority. This includes constructive planning around contact, and the consent being revisited at each LAC review.
* Parents are actively exercising their parental responsibility.
* If the parents sought the child’s return you would not seek an order preventing the return, although a package of work and support may be required. (NB this should be being actively reviewed and supported in any event).
* Children are older. If the child is 16 or over and wishes to remain in care they are able to override any parental wish for them to return home.

The above presents a picture of working in partnership.

It has been suggested by HHJ Wildblood QC DFJ at Bristol that any decision around longer term approval or use of section 20 is taken by a senior manager and such decision is recorded clearly on the file.

**REMOVAL FROM ACCOMMODATION**

A local authority which fails to permit a parent to remove a child in circumstances within section 20(8) acts unlawfully, exposes itself to proceedings by the parent(s) and may even be guilty of a criminal offence.

Additional reading

A recent Community Care article on [nine principles of Section 20 practice](https://www.communitycare.co.uk/2018/07/20/supreme-court-outlines-nine-key-principles-section-20-practice/)