

## CHECKLIST FOR S20 CA 1989 CONSENT

Have you considered the information below before obtaining written consent?

What is S20?

1. There being no one who has parental responsibility for the child (for e.g. an asylum seeking child who has come to the UK on his own);
2. the child has been lost or abandoned;
3. the person who has been caring for the child can not provide him with a suitable home, whatever the reason for this and regardless of whether this is short term or long term problem.
4. Under section 20(8) any person who has parental responsibility can remove the child from LA accommodation at any time unless there are objections to this by someone who has a child arrangement order to say the child lives with him/her (what used to be called a 'residence order'), a special guardianship order or has care of the child by a special order of the High Court.

You must consider the following principles from recent cases **Conventry and Hackney**

[Coventry City Council v C, B, CA and CH](#) [2012]. This should be read together with the case of [Williams and Another v London Borough of Hackney](#) [2015]. See also the case of [Medway Council v M and T](#) [2015]

1. **Is an interpreter required? Is the S20 translated?**
2. **Parents on bail: condition not to contact their children?** As the court made clear in [Williams and Another v the London Borough of Hackney](#) [2015] this does not absolve a LA of its obligation to obtain informed consent to section 20 accommodation.
3. **Parents must give valid consent to section 20 accommodation; their agreement must be 'real' and not under 'duress' (have you explained the proposed care plan?)**
4. **The parents must understand what they are agreeing to; they must have 'capacity' .Have you considered the following questions under Section 3 of the Mental Capacity Act 2005?;**

Inability to make decisions

*(1)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, or*

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

*(2)A person is not to be regarded as unable to understand the information relevant to a decision 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).*

(3) *The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.*

(4) *The information relevant to a decision includes information about the reasonably foreseeable consequences of—*

(a) *deciding one way or another, or*

(b) *failing to make the decision.*

If the social worker has doubts that the person has capacity they should stop trying to obtain consent and seek advice from Management.

#### **5. The parents must have all the relevant information**

If the social worker is satisfied the parent is able to agree, the next question is whether the consent is 'fully informed'. Does the parent:

- understand the consequences of consent or refusal?;
- appreciate the full range of choices available?
- know about all the relevant facts?

If the social worker is not satisfied the parent is 'fully informed' again, no further attempts should be made to obtain consent and further advice should be sought, including legal advice if necessary.

#### **6. Removing a child under section 20 must be fair and proportionate**

If the consent is considered to be fully informed, the social worker must then be satisfied that the giving of such consent and subsequent removal of the child is fair and [proportionate](#).

To answer that question, the social worker should consider the current physical and psychological state of the parent, whether or not they have a lawyer, or have been encouraged to seek legal advice, whether it is necessary for the child's safety to be removed at this time or whether it would be fairer to seek a care order from the court.

#### **7. Parents must be told they have a right to take legal advice**

#### **8. Parents must be told they have a right to withdraw their consent at any time**

### **NEXT STEP: Review and monitoring of section 20 accommodation.**

Under the [Review of Children's Cases Regulations](#) the LA must appoint an [Independent Reviewing Officer](#) (IRO) to carry out the functions in [section 26\(2A\)](#) of the Children Act 1989;

Every case must be reviewed within 4 weeks of the child being provided with accommodation and a second review must follow after that within 3 months. After this second review, the reviews must be at least every six months. The LA should be considering whether or not the child can go home at these review meetings.

### **A final reminder**

Whenever considering section 20, we should keep the following at the forefront of our minds: "*Section 20 may, in an appropriate case, have a proper role to play as a short-term measure pending the commencement of care proceedings*".