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| **Specialist Children Services** |
| S20 PRACTICE GUIDANCE |
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# Introduction

The aim of this guidance is to ensure that all social workers and their managers considering accommodation of children and young people under section 20 of the Children Act 1989 are fully aware of the practice implications if proper consideration is not given to obtaining of an informed consent from the parent or guardian with parental responsibility.

# Scope

This guidance is for all social workers and team managers discharging the local authority’s duties under section 20 of the Children Act 1989. This guidance will be regularly reviewed to take into account any new national guidance and related case law.

# The Statute (LAW)

The statutory power to provide accommodation is set out in section 20(1) CA 1989. This places a duty on the local authority to provide accommodation for a child in the following circumstances:

**(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—**

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

**(b) Her/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.**

Subsections (a) and (b) deal with cases where the child appears to be without his or her parents, or any other person who has parental responsibility. Subsection (c) should not be misinterpreted as covering cases where a parent may be struggling through physical or mental illness to provide care but where they may object to the Local Authority providing accommodation. In either situation(s), consent should never be assumed.

# Relevant clauses to practice

Section 20(4) says that the local authority may provide accommodation for any child in its area, even if the child has a parent who is able to provide accommodation, if the local authority thinks that it needs to do this to keep the child safe.

However, section 20(7) provides that the local authority cannot provide accommodation for a child if there is someone who has parental responsibility for the child and who objects to the local authority providing the accommodation.

The local authority does not share parental responsibility for the child placed under s20 even when an agreement or consent to accommodate the child has been obtained from all persons with parental responsibility.

Under section 20(8) any person who has parental responsibility can remove the child from local authority accommodation at any time and without notice. There is an exception to this if the agreement to s20 accommodation has been given by someone who has (1) a child arrangements order to say the child lives with him/her or (2) a special guardianship order or (3) has care of the child by a special order of the High Court.

# Knowing who has Parental Responsibility (PR) the social worker must:

Confirm that the parent or adult currently looking after that child can produce evidence that he/she has a PR for the child. This may include a birth certificate, a medical card, a school letter addressed to a parent or any other document that provides evidence that the person has PR.

Make enquiries as to whether anyone else has acquired PR.

ask everyone with PR if they can provide a home and if they agree to the child being accommodated

Social workers, team managers and their service managers should be aware that asking one person with PR for s20 agreement will not usually be sufficient where there are other people with PR. In these circumstances, the views of the absent parent or carer must be sought and fully recorded on Liberi. If the absent parent or carer cannot be traced, the social worker must record, with their full details, what has been done to contact them.

The social worker must also be aware of their continuous duty to trace persons with PR for the child even after there is a signed section 20 agreement and will need to contact them as soon as they are located.

# What is Section 20?

*Detailed guidance has been produced by the courts with respect to social work practice, as summarised below*

It is important to discuss the following with your team manager or service manager before submitting a s20 request to the assistant director for a decision to be made about accommodating a child or young person under s20.

* Who is asking that the child be accommodated and why?
* If the parents/those with PR are requesting that the child be accommodated because they cannot cope, what expectations do they have about the return of the child?
* If the local authority is proposing that the child be accommodated what are the views of those with PR?
* Have you agreed a timeline as part of your discussions with those with PR, including for how long the child is likely to be accommodated and the next course of action if it is not appropriate for the child to return home?
* If there is likelihood that the child will be removed from accommodation under s20 at short or no notice, thereby placing the child at risk, then you must consider seeking advice from your service manager to consider other forms of protection and the need to seek legal advice.

# Principles to obtaining s20

Before making a decision to accommodate a child under s20, the social worker must be fully aware of her/his personal duty to consider the following:

* Does the person providing consent has the necessary legal capacity to give consent in terms of the Mental Capacity Act 2005?
* If they do have capacity to consent is the consent fully informed?
* Is the decision to accommodate the child proportionate in all the circumstances?

More detailed guidance to be followed by social workers before taking a section 20 consent was set out by the court in the excerpt from the judgment in the case of *Coventry City Council v C, B, CA and CH* [2012] EWHC 2190 (Fam), [2013] 2 FLR 987 at para 46 are set out below, and should be considered in every case:

*Every parent has the right, if capacitous; to exercise their parental responsibility to consent under Section 20 to have their child accommodated by the local authority and every local authority has power under Section 20(4) so to accommodate provided that it is consistent with the welfare of the child.*

*Every social worker obtaining such a consent is under a personal duty (the outcome of which may not be dictated to them by others) to be satisfied that the person giving the consent does not lack the capacity to do so.*

*In taking any such consent the social worker must actively address the issue of capacity and take into account all the circumstances prevailing at the time and consider the questions raised by Section 3 of the 2005 Act, and in particular the mother's capacity at that time to use and weigh all the relevant information.*

*If the social worker has doubts about capacity no further attempt should be made to obtain consent on that occasion and advice should be sought from the social work team leader or management.*

*If the social worker is satisfied that the person whose consent is sought does not lack capacity, the social worker must be satisfied that the consent is fully informed:*

1. *Does the parent fully understand the consequences of giving such 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 the social work team should further consider taking legal advice if thought necessary.*

*If the social worker is satisfied that the consent is fully informed then it is necessary to be further satisfied that the giving of such consent and the subsequent removal is both fair and proportionate.*

*In considering that it may be necessary to ask:*

1. *What is the current physical and psychological state of the parent?*
2. *If they have a solicitor, have they been encouraged to seek legal advice and/or advice from family or friends?*
3. *Is it necessary for the safety of the child for 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?*

*If having done all this and, if necessary, having taken further advice (as above and including where necessary legal advice), the social worker then considers that a fully informed consent has been received from a capacitous mother in circumstances where removal is necessary and proportionate, consent may be acted upon.*

*In the light of the foregoing, local authorities may want to approach with great care the obtaining of Section 20 agreements from mothers in the aftermath of birth, especially where there is no immediate danger to the child and where probably no order would be made.*

# What is meant by the legal capacity to give consent?

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).

# S20 and Informed Consent

Informed consent must be voluntary. For this to be the case the parent/person with parental responsibility and/or young person concerned must have been given sufficient information must be in sufficient possession of the facts and understand the alternatives available to them sufficiently to enable them to make a properly informed decision. This would include information such as the nature of risk and the reasons why you are concerned and the options available to safeguard the child or young person as well as including the time frame.

If the social worker is not satisfied or cannot fully answer the questions above, he/she must not make any further attempt to obtain consent but should seek advice from the team manager and, when appropriate, legal advice on what to do next.

It is also important, that the social worker before taking section 20 consent should be satisfied that the giving of consent and the accommodation of the child is both fair and proportionate, taking into account such issues as:.

The current physical and psychological state of the parent

* Do they have a solicitor or have they been encouraged to seek legal advice and/or advice from family or friends?
* Is it necessary for the child to be accommodated at this time?
* Is it more appropriate for this matter to be considered by the court rather than? dealt with by an agreement?

# Signing the consent form/s20 agreement – general considerations

If all of the above requirements are met, it may be reasonable to take a section 20 consent. The following further principles should however also be borne in mind:

The court will expect care proceedings to be commenced without prolonged use of section 20 for young children. In cases involving unborn babies in particular, if care proceedings are to be issued, they need to be lodged with the court as soon as the baby is born. If the plan is for immediate separation or a mother and baby placement, the aim should be to bring the case before the court before the child is due to leave hospital.

Where the local authority has suggested to the parent/ person with PR that the child should be accommodated legal advice needs to be sought immediately and consideration given to issuing care proceedings

The social worker and manager/service manager must seek legal advice about whether to consider issuing care proceedings and the need for a fact finding hearing where there is evidence that the children have suffered physical, sexual or emotional harm or where a death is involved.

Where the parent is disabled or has an illness preventing her/him from looking after the child, you must consider the duty of the local authority under the Care Act (2014)

Where the section 20 placement involves restrictions on the child or young person’s liberty which may raise issues around deprivation of liberty (DOLs) the social worker and manager/service manager must seek legal advice.

# What if a parent or person with PR refuses to sign consent?

If the parent or person with PR refuses to give consent, the only way the local authority can obtain authority to remove the child is by obtaining an order (emergency protection order, interim care order or care order) through court proceedings. The police can also exercise their powers under police protection to remove a child for a maximum of 72 hours.

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.

# Recording

It is the responsibility of social workers to record all discussions regarding the s20 agreement on Liberi.

The s20 agreement/s must be uploaded on Liberi in the Document section and a copy placed in the legal section should this be required for legal purposes.

Copies of the signed agreement must be given to parent/carer or young person signing the consent.

# Review of s20 agreement/consent form

Good practice requires a regular review of the agreement based on the needs and circumstance of the child. The agreement would need to be reviewed in the LAC review; the review would need to take account of the following:

* Whether there are still concerns about the child being at significant risk and/or the child cannot return home?
* Are there any protective factors, including significant others who can accommodate the child?
* Are there any significant improvements in the parents’/carer’s capacity to care for the child that would minimise the risk previously posed to the child?
* Are there other services that can complement or support the family to improve and maintain the living conditions and behaviours in the home? (Early Help and Preventive Services, Commissioned Services)?

The parent/carers or young person must be involved in the review process. This can be done through purposeful home visits to the child and parents.

# Further reading:

Find below the link to the section 20 practice guidance issued by the ADCS.

<http://adcs.org.uk/care/article/section-20-practice-guidance>