

# **Section 20 accommodation**

**Oliver Millington**

**9 Gough Square**

**[omillington@9goughsquare.co.uk](mailto:omillington@9goughsquare.co.uk)**

**[www.9goughsquare.co.uk](http://www.9goughsquare.co.uk)**

# “Do’s, Don’t’s and damages”

- What does s.20 CA '89 provide?
- When is s.20 accommodation appropriate and when is it not?
- What form should the section 20 agreement take?
- What are the consequences of bad practice?
- Williams v LB Hackney

# What does s.20 provide?

- Section 20 provides the circumstances in which a Local Authority may or must provide accommodation to a child.
- The duty can be mandatory, ie s.20(1), or discretionary, ie s.20(4)
- Key feature of s.20 accommodation is that there must be real and voluntary delegation of PR to the LA by the parent who is in fact looking after the child at the time.

## s.20 Children Act 1989

### ***20 Provision of accommodation for children: general.***

*(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) 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*

.....

## s.20 Children Act 1989

*(4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.*

.....

## s.20 Children Act 1989: restrictions

*(7) A local authority may not provide accommodation under this section for any child if any person who—*

*(a) has parental responsibility for him; and*

*(b) is willing and able to—*

*(i) provide accommodation for him; or*

*(ii) arrange for accommodation to be provided for him,*

***objects.***

*(8) Any person who has parental responsibility for a child may **at any time** remove the child from accommodation provided by or on behalf of the local authority under this section.*

## s.20 Children Act 1989: restrictions

(9) Subsections (7) and (8) do not apply while any person—

- (a) who is named in a child arrangements order as a person with whom the child is to live;
- (aa) who is a special guardian of the child; or
- (b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the local authority.

## **s.20 Children Act 1989: restrictions**

(10) Where there is more than one such person as is mentioned in subsection (9), all of them must agree.

(11) Subsections (7) and (8) do not apply where a child who has reached the age of sixteen agrees to being provided with accommodation under this section.

# Williams v LB Hackney

- Supreme Court
- [2018] UKSC 37
- Guiding case on s.20
- 9 key principles
- NB this now supersedes Hedley J's 10-point guidance on obtaining informed consent in *Coventry City Council v C, B, CA and CH* [2012] 2 FLR 987, which was approved by the President in *Re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112

# 1: Starting point is PR

- A person with PR may arrange of their own accord for some or all of their PR to be met by others acting on their behalf and the exercise of PR may be circumscribed by court order.
- But a LA cannot interfere with a person's exercise of their PR **against their will** unless the LA have first obtained a court order.
- No LA has the right or the power to remove a child from a parent who is looking after the child and wants to go on doing so without a court order.
- Only the police can do that under section 46 of CA '89.

## 2: Confusing to talk about parental 'consent' to s.20 accommodation

- If a parent agrees to accommodation, they are simply delegating the exercise of their PR for the time being to the LA.
- Any such delegation must be “**real and voluntary**”.
- It should not occur in the sort of circumstances in which “consent” was obtained in *Coventry City Council v C, B, CA and CH* [2012] 2 FLR 987: baby removed from mother on day of birth; mother had undergone surgery and was on morphine.

## 2: Confusing to talk about parental 'consent' to s.20 accommodation

- Impression must not be given that the parent has no choice in the matter.
- The best way to avoid this is by informing the parent fully of her rights under section 20.
- **But a delegation can be “real and voluntary” without being fully “informed”.**
- NB Lady Hale does not explain how this can be!

# “Informed consent”: the old test

- *Coventry City Council v C, B, CA and CH* [2012] 2 FLR 987
- See point 5 of Hedley J’s guidance (all 3 questions have to be answered ‘yes’ for there to be informed consent):
  - a) Does the parent fully understand the consequences of giving such a consent?
  - b) Does the parent fully appreciate the range of choice available and the consequences of refusal as well as giving consent?
  - c) Is the parent in possession of all the facts and issues material to the giving of consent?

## 3: Removing from a parent is different from 'stepping into the breach'

- The active consent or delegation of a parent who is not in fact looking after or offering to look after the child is not required.
- Likewise when there is no-one with PR or the child is abandoned or lost.
- But the local authority's duty and power are subject to the later provisions of the section, in particular, to subsections (7) to (11).
- In such cases, as a matter of good practice, a LA should give parents clear information about what they have done and what the parents' rights are.

## **3: Removing from a parent is different from 'stepping into the breach'**

- This should include, not only their rights under subsections (7) and (8), but also their rights under other provisions of the 1989 Act, such as that in paragraph 15 of Schedule 2 to know the whereabouts of their child.
- Parents should also be informed of the LA's own responsibilities. In appropriate cases, this may include information about the local authority's power (and duty) to bring proceedings if they have reasonable grounds to believe that the child is at risk of significant harm if they do not.

## **4: Parents may ask the LA to accommodate a child as part of the services they provide for children in need**

- If the circumstances fall within section 20(1), there is a duty to accommodate the child.
- If they fall within section 20(4), there is power to do so.
- This operates as a delegation of the exercise of PR for the time being. The section does not expressly require that such delegation be with “informed” consent, but the duty and the power are subject to subsections (7) to (11).
- As a matter of good practice, parents should be given clear information about their rights and the LA’s responsibilities.

## 5: Parental objection, s.20(7)

- s.20(7): a LA cannot accommodate a child if a parent with PR who is willing and able either to accommodate the child herself or to arrange for someone else to do so objects to the local authority doing so.
- Ex 1: F who is separated from M and is not offering the child a home or offering to arrange an alternative, cannot object to the LA accommodating the child at M's request.
- Ex 2: M who is compulsorily detained in hospital cannot object to the LA accommodating the child unless she is able to arrange alternative accommodation.

## 5: Parental objection, s.20(7)

- NB: s.20(7) says nothing about the suitability of the parent or of the accommodation which the parent wishes to arrange.
- If the LA consider the proposed arrangements, not merely unsuitable, but likely to cause the child significant harm, they should apply for an EPO.

## 6: No restriction on return to parent

- S.20(8): a person with PR may remove the child from s.20 accommodation **at any time**.
- No need to give notice, in writing or otherwise.
- Exception: the right of anyone to take necessary steps to protect a person, including a child, from being physically harmed by another.
- Eg: a parent turned up drunk demanding to drive the child home.
- S.3(5) CA ` 89: anyone caring for the child would have the power (under section 3(5) of the 1989 Act) to do what is reasonable in all the circumstances for the purpose of safeguarding or promoting the child's welfare.

## 7: Qualification on parental right to remove

- S.20(9) & (10): if child lives with a person under a CAO, SGO or High Court inherent jurisdiction order and that person agrees to s.20 accommodation, a parent cannot object.
- NB this is the only restriction on a parent's exercise of PR for a child under 16.

## 8: Child aged 16+

- S.20(11): once a child reaches 16 and is willing to be accommodated, a parent has no right to object.

## 9: No time limit on s.20

- Nothing in s.20 places a limit on the length of time for which a child may be accommodated.
- NB: LAs have a variety of duties towards accommodated children (eg s.22 CA '89, duty to safeguard and promote their welfare; Care Planning, Placement and Case Review (England) Regulations 2010, duty to assess a child's "needs for services to achieve or maintain a reasonable standard of health or development" and prepare a care plan to be agreed with the parents if practicable).

## 9: No time limit on s.20

- Although the object of s.20 accommodation is partnership with the parents, the LA have to think of the longer term.
- The LA need to consider whether to apply for a care order.
- Eg: M has long-term mental health problems and will not be able to meet her PR.
- Advantages of care proceedings for both child and parents (see later slides).
- NB it is **not** a breach of s.20 to keep a child in accommodation for a long period without bring care proceedings (but it may be a breach of other duties under CA' 89 or other Regulations or Article 8 ECHR).

# What form should a s.20 agreement take?

- There is no statutory requirement under CA '89 to have a written agreement in place for s.20 to be valid.
- However, case law says it is good practice:
  - *Williams v LB Hackney* [2018] UKSC 37
  - *Coventry City Council v C, B, CA and CH* [2012] 2 FLR 987
  - *N (Children) (Adoption: Jurisdiction)* [2016] 1 FLR 621, CA

# Guidance: the agreement

1. Wherever possible the agreement of a parent to the accommodation of their child under section 20 should be properly recorded in writing and evidenced by the parent's signature.
2. The written document should be clear and precise as to its terms, drafted in simple and straight-forward language that the particular parent can readily understand.
3. The written document should spell out, following the language of section 20(8), that the parent can "remove the child" from the local authority accommodation "at any time".

# Guidance: the agreement

4. The written document should not seek to impose any fetters on the exercise of the parent's right under section 20(8).
5. Where the parent is not fluent in English, the written 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'.

# Judicial criticisms: misuse of s.20

- Serious abuse of power.
- Depriving a child of the benefit of having an independent Children's Guardian to safeguard its interests.
- Depriving a Court of the control the planning for the child and to reduce unnecessary and avoidable delay.
- Breach of right to a fair trial (article 6)
- In cases with a foreign element – delay in determining jurisdictional issues

# Judicial criticisms: misuse of s.20

- Child accommodated unlawfully.
- Lack of capacity to delegate PR under s.20.
- Duress – “submission in the face of asserted state authority”.
- Agreement under section 20 to avoid instigation of public law proceedings and court scrutiny.
- Use of section 20 to avoid more stringent tests required for an ICO or EPO.

# Consequences of bad practice

*N (Children) (Adoption: Jurisdiction) [2016] 1 FLR 621, CA*

*‘The misuse and abuse of section 20 in this context is not just a matter of bad practice. It is wrong; it is a denial of the fundamental rights of both the parent and the child; it will no longer be tolerated; and it must stop. Judges will and must be alert to the problem and pro-active in putting an end to it. From now on, local authorities which use section 20 as a prelude to care proceedings for lengthy periods or which fail to follow the good practice I have identified, can expect to be subjected to probing questions by the court. If the answers are not satisfactory, the local authority can expect stringent criticism and possible exposure to successful claims for damages’*

# When is s.20 appropriate?

## **s.20**

1. Purpose is to safeguard or promote the child's welfare
2. Not if PR holder objects (so not suitable if the parents do not consistently agree with plan for child)

## **ICO**

1. Can only be made where there are reasonable grounds to believe that the child is (or is likely to be) suffering significant harm (owing to parental care) or the child is beyond parental control
2. Can be imposed by court even if PR holder objects

# When is s.20 appropriate?

## **s.20**

3. PR holder can remove child at any time (so not suitable if the child would be at risk of significant harm if the parent withdrew their section 20 consent suddenly)

4. Local Authority does not have PR (so not suitable if PR holder is not able or willing to exercise PR)

## **ICO**

3. A party can apply to discharge the ICO once made but has to show change of circumstances since the original order

4. Local Authority has PR and can make decisions against the wishes of other PR holders.

# When is s.20 appropriate?

## **s.20**

5. No fixed timeline (but not suitable for long-term arrangements or where there is no clear 'exit strategy' / plan for permanence)

6. Parents have no automatic right to legal aid

## **ICO**

5. Care proceedings must conclude within 26 weeks (can be extended if necessary to resolve the proceedings justly). Final care order is for child's minority.

6. Parents automatically entitled to legally aided representation (non-means and non-merits tested)

# When is s.20 appropriate?

## **s.20**

7. Child has no independent representation

8. Only independent scrutiny is by the IRO

9. Local Authority cannot regulate contact (except by agreement)

## **ICO**

7. Child is independently represented by a Children's Guardian and a solicitor

8. Independent scrutiny is by the IRO, the Guardian, lawyers for the other parties and the Court

9. Local Authority can determine what contact a child has with others

# When is s.20 appropriate?

## **s.20**

10. No way of resolving factual matters in dispute

11. Not appropriate if there is a significant international element

## **ICO**

10. Court can make findings on factual matters in dispute

11. Court is obliged at the outset of care proceedings to consider whether the case should transfer to a different jurisdiction

# When is s.20 appropriate?

## **s.20**

12. Not appropriate if there are concerns about a parent's mental capacity

13. Any assessments have to be funded by the Local Authority alone

## **ICO**

12. Court can determine whether a parent has capacity and can appoint a litigation friend to represent his/her interests

13. Funding for expert assessments (except parenting assessments) generally split between the parties

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