



Section 20 of the Children Act 1989 -

*A guidance note for
parents &
professionals*

The Transparency Project

February 2016

www.transparencyproject.org.uk

info@transparencyproject.org.uk

(Charity Registration no : 1161471)

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

CONTENTS

GENERAL EXPLANATION	4
WHAT THIS GUIDANCE APPLIES TO	5
SUMMARY OF KEY ISSUES	6
PART 1 : SECTION 20 ACCOMMODATION AND PARENTAL RESPONSIBILITY	7
WHAT HAPPENS IF ONE PARENT AGREES BUT THE OTHER DOES NOT?	8
WHAT WEIGHT IS GIVEN TO THE CHILD'S VIEWS?	9
PART 2 : THE RESPONSIBILITIES OF THE SOCIAL WORKER WHEN ASKING PARENTS TO AGREE TO SECTION 20 ACCOMMODATION	10
ONLY PEOPLE WITH 'CAPACITY' CAN AGREE TO SECTION 20 ACCOMMODATION	11
PARENTS MUST HAVE THE RELEVANT INFORMATION	12
OTHER IMPORTANT CONSIDERATIONS FOR THE SOCIAL WORKER	12
EXAMPLES OF SITUATIONS WHICH ARE LIKELY TO BE PARTICULARLY DIFFICULT :	13
SECTION 20 ACCOMMODATION FOR A NEW BORN BABY	13
PARENTS WHO DO NOT HAVE ENGLISH AS THEIR FIRST LANGUAGE	14
SHOULD THE PARENTS' AGREEMENT BE RECORDED IN WRITING?	14
PART 3 : LAWFUL OPTIONS FOR REMOVAL OF A CHILD: WHAT HAPPENS IF THE PARENTS HAVE AGREED TO SECTION 20 ACCOMMODATION BUT THEN CHANGE THEIR MINDS?	16
SOME CONSIDERATIONS ABOUT USING POLICE POWERS TO REMOVE A CHILD	17
PART 4 : PLANNING FOR THE CHILD'S FUTURE	18
PART 5 : SECTION 20 ACCOMMODATION AND 'SCHEDULES OF EXPECTATIONS'	19
PART 6 : OTHER ISSUES	21
SECTION 22 OF THE ADOPTION AND CHILDREN ACT 2002	21
FOSTERING FOR ADOPTION PLACEMENTS	21

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

REVIEW AND MONITORING OF A CHILD'S CARE PLAN	22
MAKING PARENTS PAY FOR SECTION 20 ACCOMMODATION?	23
PARENTS ON BAIL WITH A CONDITION NOT TO CONTACT THEIR CHILDREN?	23
PART 7 : POSSIBLE BENEFITS OF SECTION 20	24
ANNEX 1 : TEXT OF SECTION 20 CHILDREN ACT 1989	25
ANNEX 2 : MODEL AGREEMENT	27

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

GENERAL EXPLANATION

We've put the wording of Section 20 of the Children Act 1989 at the end of this Guidance, at Annex 1. We're going to use the abbreviation 's.20' to refer to section 20 in this document.

In brief, s.20 is about a local authority (social services / childrens' services) providing accommodation for children who do not have somewhere suitable to live. It is sometimes called 'voluntary care' or 'voluntary accommodation' because usually parents must agree to the child being accommodated.

S.20 'accommodation' is not just housing. It is taking a child into the care system by agreement rather than by court order. The local authority is responsible for taking care of the child while they are in s.20 accommodation.

This guide is about making decisions to use s.20 and how it should be done.

The guidance note is general guidance only and must not be treated as legal advice.

You can find more information on how a local authority must care for a child in s.20 accommodation in the Family Rights Group Advice Sheet 11: 'Duties on Children's Services when children are in the care system', available on the Family Rights Group (FRG) website (www.frg.org.uk).

Children with nowhere to live include those who have no-one to look after them, for example, if they are refugees who have travelled to the UK on their own. They may also include those whose parents can't look after them for a period of time, due to illness or other difficulties.

A local authority may also offer to provide s.20 accommodation for a child when that local authority has made an application to court for a care or supervision order, or is thinking about making an application. If the parents consent (agree) to s.20 accommodation, their child will then move to foster care while the local authority carries out further investigations or the court case starts.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

Where parents agree their child should be accommodated under s.20, there is no need for a local authority to apply to court to get an order before the child is accommodated: the decision to accommodate the child is made by the local authority after obtaining the parents' consent. Because s.20 can be used without a judge first being involved, it is very important that it is only used when everyone understands what is happening and why. The court may still be involved later on if there is a dispute or if the local authority decide that the child really can't return home.

There have been a number of recent cases where judges have been critical of the use of s.20; for example, where children were accommodated for many months without a clear plan about their future. There have also been examples of parents who have complained that they did not understand what was involved in s.20 accommodation and it was not explained to them properly at the time.

We hope this guidance will be useful to parents, foster carers and professionals (e.g. social workers) in understanding when s.20 accommodation can be used and the implications of using or misusing it.

WHAT THIS GUIDANCE APPLIES TO

This guidance relates only to children aged under 16, as there are different considerations where young people aged 16 and 17 are accommodated under s.20 (For example over 16's can go or stay in the care system under s.20 against their parent's wishes and the local authority can agree their care plan with them directly).

At the date of writing, this guidance applies to England and Wales (not Scotland), but **from April 2016, this part of the Children Act will no longer apply in Wales.**

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

SUMMARY OF KEY ISSUES

We set out the key points here and explain them in more detail below:

1. S.20 does NOT allow the local authority to share parental responsibility with the parents, who can remove their children from s.20 accommodation at any time. ('Parental responsibility' is a legal term which includes the right to make decisions for the child).
2. The social worker has a responsibility to make sure that parents are genuinely agreeing to s.20 accommodation. If the social worker is worried that the parents do not understand, the social worker should get further advice about what to do.
3. If the parents do not agree to s.20 accommodation, 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).
4. If a child goes into foster care under s.20, there should be clear plans about the child's future - if the local authority are worried that the parents can't look after the child in the long term, they must think about applying to the court for a care order, rather than letting the child 'drift' in s.20 accommodation. But they can use s.20 to accommodate a child whilst they carry out assessments that are needed before good decisions can be made for the child.
5. Any agreement that the parent is asked to sign should be written clearly and should be in simple, unambiguous terms. We have attached an example of a 'model written agreement' at Annex 2 to this Guidance, which has been kindly made available by Brighton & Hove City Council.

PART 1

SECTION 20 ACCOMMODATION & PARENTAL RESPONSIBILITY

The local authority does NOT share parental responsibility with the parents if a child is accommodated under s.20. This is very different to the situation when a child lives away from home under a care order – then a local authority DOES share parental responsibility and is in charge of making most important decisions about a child's life; for example where he or she lives or who he or she has contact with.

These differences are very important. As long as it is practical, the local authority must agree the plans they make for the child with parents (and anyone else who has parental responsibility for the child); and since the local authority does not share parental responsibility under s.20, the parents can take their child home at any time UNLESS one of the following disagrees :

- Someone who has a child arrangements order which says that the child lives with him/her,
- Someone who has a special guardianship order, or
- Someone who has care of the child by a special order of the High Court (wardship – this is rare).
- Before the decision of the court in the case of *Re N* [2015] (see below) it used to be common for local authorities to ask parents to agree a 'notice period' if they wanted to take their children home, for example 7 days. It is now clear that the courts are unlikely to consider this good practice, as the local authority has no power to require such a restriction on the parents' right to exercise their parental responsibility for their child. S20 doesn't allow a local authority to refuse to give a parent information about where the child is living.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

If the parents won't agree to s.20 accommodation, their child can only be removed by court order or temporarily by the intervention of the police using their powers under section 46 of the Children Act 1989. We explain this in more detail below.

WHAT HAPPENS IF ONE PARENT AGREES BUT THE OTHER DOES NOT?

Sometimes, one parent agrees to s.20 accommodation but the other parent objects.

S.20(7) says that the local authority cannot provide accommodation for a child if there is someone who has parental responsibility for the child and who objects. If a local authority thinks that a child needs to be looked after by them and one parent objects they will usually need to apply to court for an order to allow that (or in emergency the police may remove the child temporarily – see below).

If a parent cannot be found, this does not prevent s.20 being used if the other parent / anyone else with parental responsibility agrees, but as a matter of good practice, a local authority should always try to get the consent of everyone who has parental responsibility.

S.20 only requires the consent of anyone who holds 'parental responsibility'. Not every father will have parental responsibility for his children, but he will if he is on the birth certificate of his child, registered after 1 December 2003, or was married to their mother when the child was born. Other people who *may* have parental responsibility for a child include their Special Guardians, people who are named in a child arrangements order as a person that the child lives with, civil partners, step parents and second same-sex parents (depending on the circumstances). See FRG Advice Sheet 2: 'Parental Responsibility' for more information on the many ways to obtain parental responsibility.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

WHAT WEIGHT IS GIVEN TO THE CHILD'S VIEWS?

Under s.20(6), the local authority should make an effort to find out what the child thinks about s.20 accommodation and give 'due consideration' to the wishes and feelings of the child.

Obviously, for a very young child, this is not going to be possible. Older children (under 16) should be listened to but will not be able to veto a decision about s.20 accommodation if their parents agree to it and the local authority think such accommodation is consistent with the child's welfare.

PART 2

THE RESPONSIBILITIES OF THE SOCIAL WORKER WHEN ASKING PARENTS TO AGREE TO SECTION 20 ACCOMMODATION

There have been a number of important legal cases which dealt with s.20 accommodation which went wrong because the parents did not understand what was going on, felt pressured into agreeing, or where matters were left to drift for many months without clear plans about their child's future.

These are some important recent decisions:

- *Re CA (A Baby) [2012] EWHC 2190 (Fam)*
- *Williams and Another v London Borough of Hackney [2015] EWHC 2629 QB*
- *Medway Council v M and T (By her Children's Guardian) [2015] EWFC B164*
- *Re N (Children) (Adoption: Jurisdiction) [2015] EWCA Civ 1112*

These cases set out useful guidance that we think it would be useful for social workers to read. They can be found at www.BAILII.org. This guidance note is based on what those cases say.

It is important that professionals understand what the court has said is important about the use of s.20 accommodation. A local authority that places a child in s.20 accommodation without meeting the necessary legal requirements, is not only separating parents and children unlawfully and causing emotional harm to the family, but also running a risk that at some later stage a court may find them to have acted unlawfully. The court could then order the local authority to pay compensation to the parents and / or the child for breach of their Article 8 right to respect for their private and family life under the European Convention of Human Rights.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

ONLY PEOPLE WITH 'CAPACITY' CAN AGREE TO SECTION 20 ACCOMMODATION

Every parent who is able to make decisions has the right to agree to s.20 accommodation for their child. Being able to make decisions is described by lawyers as 'having capacity'. If they don't have capacity, parents cannot give genuine consent to s.20 accommodation and the social worker will have to get further advice about what to do next.

The issue of 'capacity' is explained in sections 2 and 3 of the Mental Capacity Act 2005. If an adult has either a permanent or temporary problem with their mental functioning, they will be said to 'lack capacity' to make a decision if they:

- Can't understand the information which is relevant to the decision; OR
- Can't retain the information about the decision; OR
- Can't use or weigh up that information as part of the decision making process; OR
- Can't communicate their decision, by speech, sign language or any other means;

The social worker is under a personal duty to be satisfied that the parents have capacity to give their consent. Obviously, someone who is unconscious in hospital does not have capacity to make decisions, but other examples are not so clear-cut. Capacity can change over time and may depend on what kind of decision a parent is being asked to make. For example, a parent may have capacity to decide what they want to eat that day but NOT have capacity to make decisions about more complicated issues. If there is doubt about whether or not someone has capacity, then an expert assessment will be needed and the social worker should take urgent advice.

A person's capacity can fluctuate (change) – for example somebody who has mental health problems but who normally has capacity to make decisions may lose that capacity in moments of very high stress.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

PARENTS MUST HAVE THE RELEVANT INFORMATION

Once a social worker is satisfied that a parent has the legal capacity to decide about s.20 accommodation, the next important issue is to ensure that the parents have the relevant information in order to make the best choice for their child.

Some useful questions for the social worker to ask are whether or not the parents:

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

There could be particular problems when dealing with parents who do not speak English as their first language or who are unfamiliar with the child protection system in this country. Care will have to be taken to ensure that they understand what is being discussed, by using interpreters if necessary. We discuss this further below.

OTHER IMPORTANT CONSIDERATIONS FOR THE SOCIAL WORKER

Once a social worker is satisfied that the parents have both capacity and the relevant information to make a decision, the case law identifies further important principles which 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. If the situation appears to be particularly urgent and serious, it is usually better to seek a court order. Courts are able to make orders at short notice in cases of emergency, even out of normal office hours.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

- Removing a child to live with unrelated foster carers under s.20 must be a necessary and proportionate response to the local authority's concerns about a child's welfare – if there is some other safe alternative that allows a child to remain at home or with family members, removal is unlikely to be necessary and proportionate.
- Parents must be told they have a right to take legal advice.
- Parents must be told they have a right to withdraw their consent to s.20 accommodation at any time – they do not have to give the local authority advance warning and they should not be asked to do this.

EXAMPLES OF SITUATIONS WHICH ARE LIKELY TO BE PARTICULARLY DIFFICULT :

SECTION 20 ACCOMMODATION FOR A NEW BORN BABY

This is likely to be a very high-pressure and stressful situation. The courts have said that s.20 can be used to accommodate babies, but clearly the social worker is going to have to take extra care to make sure the parents understand what is going on and are not feeling under pressure to 'agree' to something they don't want.

The courts have also made it plain that the practice of having a police officer present or nearby during discussions about s.20, with the explicit or implied threat of "if you don't agree, the police officer will remove the child" is completely unacceptable.

Therefore, if a social worker has serious concerns about the safety of a new-born baby, it is likely to be a better course of action to seek a court order rather than the parents' consent to s.20 accommodation.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

PARENTS WHO DO NOT HAVE ENGLISH AS THEIR FIRST LANGUAGE

If the social worker thinks the parents are having difficulties communicating in English, this has obvious implications for their ability to give real consent under s.20.

The social worker will need to consider getting help from a qualified interpreter and thinking about how relevant documents can be translated. If it is not possible to translate the documents before asking the parents to sign any written consent, it is sensible to record in the document that it has been read to the parent and explained in their first language.

SHOULD THE PARENTS' AGREEMENT BE RECORDED IN WRITING?

There is no legal requirement for this to happen but it is always a good idea to get the parents to sign a document saying that they consent to their child being accommodated under s.20. Local guidance from His Honour Judge Bellamy, published by the Leicester Family Justice Board in January 2016, suggested that, as a minimum, such a document should contain:

- The names of the parents
- The names and dates of birth of the relevant children
- The name and status of the professional who is getting the parents' agreement
- The date, time and place where the document is signed
- Some details about what contact there is going to be between the parents and the child(ren).

We agree that is sensible and good practice.

Whether or not the parents' consent is obtained in writing, it is sensible for the social worker to make their own written notes as soon as possible about what happened.

A 'model written agreement' is set out at Annex 2 at the end of this guidance. Many Local Authorities have long tick box forms setting out what sorts of decisions a parent does and does not agree can be taken by a foster carer or local authority on their behalf (from medical treatment to school trips). These can be confusing and care must be taken to

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

explain them to parents and to sensitively make sure that literacy difficulties are not affecting their ability to understand what they are signing.

PART 3 :

LAWFUL OPTIONS FOR REMOVAL OF A CHILD: WHAT HAPPENS IF THE PARENTS HAVE AGREED TO SECTION 20 ACCOMMODATION BUT THEN CHANGE THEIR MINDS?

If the parents do not want their child to remain in s.20 accommodation, they can withdraw their consent at any time and ask that their child is returned to their care.

If the local authority thinks that returning the child to the parents would not be the best thing for the child, they have only two lawful options to prevent the child returning:

- Request that the police exercise their powers to take a child to a place of safety for up to 72 hours under section 46 of the Children Act 1989. This is sometimes (wrongly) called a Police Protection Order but it is NOT an order as the court is not involved; the Children Act 1989 allows the Police to act without a court order for this short period only. OR
- Apply to the court for an Emergency Protection Order or Interim Care Order.

In some situations, parents might be better off if there was an application for a care order. Some of the benefits of being 'in court' are:

- The court will be in charge of checking over the local authority's plans for the child and will make sure that a strict timetable of 26 weeks applies by which time a final decision must normally be made.
- The court can make orders about contact between the parents and child (section 34 of the Children Act 1989) if the children are removed.
- The child will have an independent Children's Guardian appointed by the court to represent their interests. The child will qualify for legal aid and will be represented at court by a lawyer.
- The parents have an automatic entitlement to legal aid in care proceedings and will therefore have the benefit of free legal representation and advice.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

- The court might not authorise the removal of the children. A judge can refuse to make an interim care order or emergency protection order if they think the local authority has got things wrong.

SOME CONSIDERATIONS ABOUT USING POLICE POWERS TO REMOVE A CHILD

As a general rule, the separation of a parent and child should usually be a decision for a court. If it is possible to seek a court hearing, that should be done. The police should not be asked to use their powers of protection to bypass the court and the parent having a fair hearing about removal. Police protection should not be used because it is considered quicker or easier at the end of a working day. Courts are able to make orders at short notice in cases of emergency, even out of normal office hours.

If a decision is taken to remove a child under police protection rather than go to court, there must be *wholly exceptional* reasons for this. Those involved would need to show not only that there was a need for separation, but that this need has arisen because no other reasonable steps could be taken to keep the child safe WHILST a court hearing was arranged. The local authority has to try very hard to make alternative arrangements so that the decision can be made by the court. For example, if for some reason a child cannot safely remain at home – can they stay with a friend or grandparent overnight until a hearing at court can be arranged to decide what should happen next?

It is vital that full and detailed records of the decision-making process are kept, and that those involved set out clearly what efforts were made to obtain a court hearing and why the risk could not be managed until that hearing.

Misuse of police protection to remove a child can result in unfairness and human rights breaches, and the court may hold detailed enquiries as to why this has happened and may award compensation.

PART 4 :

PLANNING FOR THE CHILD'S FUTURE

The cases set out above have highlighted the courts' serious concerns about s.20 accommodation which goes on for too long, particularly if the child is just 'drifting' in that time and there are no clear plans about whether or not the child should return to the parents or be looked after permanently by someone else. Delays in decision making for children are generally considered to have a very negative impact on children unless such delay is 'planned and purposeful'.

His Honour Judge Bellamy (the Designated Family Judge for Leicester) issued guidance in January 2016 which states that s.20 is NOT intended to be a long term alternative to care proceedings but is rather a '*short term measure pending the commencement of care proceedings*' (paragraph 18). The Guidance suggests that any child who is accommodated for more than 3 months should have their case reviewed by senior management. That is just the view of one judge but others are likely to hold similar views in light of the case of Re N.

PART 5 :

SECTION 20 ACCOMMODATION AND 'SCHEDULES OF EXPECTATIONS'

Often, s.20 agreements go hand in hand with other written documents, often called 'schedules of expectations' or a 'written agreement', which set out what the local authority would like the parents to do or stop doing, while their child is in foster care. These documents are not legally binding or enforceable, but they are often relied on in evidence in later care proceedings to show that parents were given the opportunity to make changes and whether or not they have been able or willing to do so.

Any document which sets out expectations about people's behaviour needs to be as clear as possible, otherwise it can cause problems later if parents and professionals disagree about what the rules were and why.

If parents are asked to sign any document by the local authority, they may have a number of questions or concerns. Asking these questions or being reluctant to sign should not in itself make professionals consider that the parent is either hostile or unreasonable. The following issues may be relevant for parents:

- If you don't want to sign, you don't have to.
- Don't sign unless you understand every single bit, and you've been told clearly what will happen if you don't stick to it.
- If you have a lawyer, you should ask for legal advice BEFORE you sign it. If you don't have a lawyer but you want one, you could say that you want the local authority to hold a 'pre-proceedings' meeting, so that you can have free legal advice about the agreement.

NB: Unless there are care proceedings (a court case begun by social services) only parents who are receiving state benefits or have a very low income AND who can show they are the victim of domestic abuse OR who can show they are taking steps to protect a child from abuse will qualify for free legal advice, and solicitors can be

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

hard to find locally. At the point where the local authority issue a formal letter saying that they are considering care proceedings and are calling a 'pre-proceedings' or 'Public Law Outline' (PLO) meeting to see if care proceedings can be avoided, all parents qualify for free advice and representation at meetings regardless of finances. If you get a letter like this you should take it to a local legal aid lawyer (you can find one by searching www.gov.uk).

- If you think that something isn't fair, say so.
- If you're willing to do what is being asked, but you want help, ask for that help to be identified and put in the agreement.
- Never ever sign a schedule of expectations if you don't intend to stick to it – your position is made worse by signing it and not doing it than by not signing it in the first place.
- S20 doesn't allow a local authority to refuse to give a parent information about where the child is living.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

PART 6 :

OTHER ISSUES

SECTION 22 OF THE ADOPTION & CHILDREN ACT 2002

There can be serious consequences flowing from s.20 accommodation, and parents need to be aware of these. In particular, parents will need to bear in mind that if a local authority is providing accommodation for a child, s.22 of the Adoption & Children Act 2002 says that the local authority MUST apply for a placement order if certain circumstances are met. A 'placement order' is the order which allows the local authority to look for adoptive parents for a child and place the child with them.

The relevant circumstances are

- The child is being accommodated by the local authority, and
- The child has suffered or is at risk of suffering significant harm because of the parents care / lack of care (section 31 of the Children Act), and
- the local authority are satisfied the child ought to be placed for adoption.

For further discussion of this issue see :

LB v London Borough of Merton [2013] EWCA Civ 476.

FOSTERING FOR ADOPTION PLACEMENTS

A further serious potential consequence of a child becoming a 'looked after child' through being accommodated under s.20 is that there is a (relatively) new duty upon local authorities in England to 'consider' a 'fostering for adoption placement'. This means that if the local authority is considering adoption for the child, it must also consider placing the child with foster carers who are also approved as potential adopters. (s.22C(9A) Children Act 1989). This does not apply in Wales.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

If a local authority thinks they need to make plans for adoption or place a child in fostering for adoption against the wishes of their parents, they should apply for a care order. Parents who are not in agreement with adoption should seek immediate legal advice including about whether or not they should consent to s.20 accommodation.

REVIEW & MONITORING OF A CHILD'S CARE PLAN

Under the Review of Children's Cases Regulations, the local authority must appoint an Independent Reviewing Officer (IRO) to:

- participate in the reviews of the child in question's care plan.
- monitor the performance of the local authority's functions in respect of the child's case
- refer the case to CAFCASS, if the IRO thinks it is appropriate. (CAFCASS is the Children & Families Court Advisory and Support Service).

Every child's care plan must be reviewed within 4 weeks of the child being provided with accommodation and a second review must follow after that within 3 months. At the second review, the child's needs for permanence must be considered. After this second review, the reviews must be at least every 6 months. The local authority should be considering whether or not the child can go home at these review meetings.

The IRO must:

- make sure that the child's views are understood and taken into account.
- identify who is responsible for making sure decisions taken in the review get acted upon.
- inform senior management at the local authority if reviews are not properly carried out.
- assist the child to obtain legal advice, or

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

- find out whether an appropriate adult is able and willing to provide such assistance or bring the proceedings on the child's behalf.

MAKING PARENTS PAY FOR SECTION 20 ACCOMMODATION?

Schedule 2 para 21 (1) of the Children Act 1989 says *“Where a local authority are looking after a child ... they shall consider whether they should recover contributions towards the child's maintenance from any person liable to contribute ('a contributor').”*

However, charges can't be imposed on any parent who is receiving state benefits and they don't apply to any child subject to a care order.

PARENTS ON BAIL WITH A CONDITION NOT TO CONTACT THEIR CHILDREN?

As the court made clear in *Williams and Another v London Borough of Hackney [2015] EWHC 2629 (QB)*, a parent being on bail does NOT mean a local authority no longer has to obtain genuine and informed consent to s.20 accommodation (See paragraph 60 of the judgment for further discussion).

PART 7 :

POSSIBLE BENEFITS OF SECTION 20

There can be real benefits for children and families of s.20 when used properly. Parents can ask for their children to be looked after by the local authority under s.20 while they sort out a temporary difficulty such as a short prison sentence, leaving a violent partner, or during temporary physical or mental illness. 'Short breaks' (respite care) for families with disabled children can be agreed under s.20(4). Parents can work in close partnership with the local authority retaining their legal rights to agree the plans made, and end the arrangement if necessary. They may be able to avoid being taken to court.

Children who are accommodated by a local authority either under s.20 or under a care order are described in the Children Act 1989 as being 'looked after' by the local authority. This 'looked after' status means that planning for children is kept under review and that the child may be entitled to long-term support after reaching the age of 18 (usually when a child has been looked after for some time up to and including their sixteenth birthday).

Sometimes a child is accommodated under s.20 with a member of their extended family who is a foster carer and can get financial support. A local authority might arrange for a child to go and live with a relative for child welfare or child protection reasons, with the parent's consent, but then say this is not s.20 accommodation but a 'private arrangement'. Unless it has been genuinely agreed by the carer, advice should be sought on the implications for support for the relative and care planning, including the duty to consider whether the child can go home.

ANNEX 1 :

TEXT OF SECTION 20 CHILDREN ACT 1989

The text below was correct at the date of publication of this guidance.

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.

(2) Where a local authority provide accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation; or

(b) such other longer period as may be prescribed.

(3) Every local authority shall 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.

(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.

(5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.

(6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a) ascertain the child's wishes and feelings regarding the provision of accommodation; and

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

(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.

(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.

(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.

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

ANNEX 2 :
MODEL AGREEMENT

An example of a 'model written agreement' from Brighton & Hove City Council. Our thanks to Brighton & Hove, for letting us reproduce this.



Section 20 Agreement

It has been explained to me/us that a section 20 agreement involves me/us agreeing that our child/ren being placed in foster care and staying in foster care. It has been explained that I/we have the following rights:-

- (a) To say no to this proposal
- (b) To change our mind at a later date and bring the agreement to an end AT ANY TIME
- (c) To obtain legal advice about this agreement
- (d) For the agreement to be kept under review and specifically to be considered by an Independent Reviewing Officer at each Looked After Child Review

I have read the document and I agree to its terms

I/We agree to my/our son/daughter

being accommodated by Brighton and Hove City Council

Signature	Name	Date

Section 20 of the Children Act 1989 - A guidance note for parents & professionals

The social worker should sign below to confirm the following :-

1. That they are satisfied that the parent signing this document has the capacity to do so.
2. That having that capacity, the consent is informed consent, considering
 - (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. Even where the parent is consenting, the social worker must consider whether it is necessary and proportionate for the child to be in foster care and should have considered particularly:
 - (a) What is the current physical and psychological state of the parent?
 - (b) If they have a solicitor, have they been encouraged to seek legal advice and/or advice from family or friends?
 - (c) Is it necessary for the safety of the child for her to be removed at this time?
 - (d) Would it be fairer in this case for this matter to be the subject of a court order rather than an agreement?

And that considering all of these matters, they consider that the voluntary accommodation of the child is necessary [Their analysis of these matters should be recorded on the child's file]

4. If the parent is not fluent in English, this 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.'

Signed
Dated