Section 20 of the Children Act 1989 -

A guidance note for parents & professionals

The Transparency Project

Version 4, Last amended January 2022

www.transparencyproject.org.uk

info@transparencyproject.org.uk

(Charity Registration no : 1161471)

CONTENTS

INTRODUCTION

Section 20 of the Children Act 1989 and Section 76 of the Social Services and Well-being (Wales) Act 2014 give local authorities in England and Wales (social services / children's services) a responsibility for providing accommodation for children who do not have somewhere suitable to live. It is sometimes called 'voluntary care' or 'voluntary accommodation' because it cannot usually be used where the parents object to the child being accommodated. This guide is about making decisions to use s.20 or s.76 and how it should be done.

From here on in, this note will refer to 's.20'. S.20 is the law as it applies in England. Because the Welsh Government manage children's social care in Wales, the law for Wales is found under s.76 (above). In fact, the law is identical in both places, and so the guidance and observations in this note apply equally to Wales.

S.20 is not just about physical housing; it is taking a child into the care system by agreement rather than by court order. This means that however long the s.20 agreement is in force, the local authority should treat the child as if they were in care. The law refers to this as a child being 'looked after'.

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, 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 don't object 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.

Where parent/s don't object to their child being accommodated under s.20, there is no need for a local authority to apply to court to get an order to remove the child from the parent/s care. Because s.20 can be used without the court overseeing what is going on, it is very important that it is only used when everyone understands what is happening and why. The court may still be involved later if there is a dispute or if the local authority thinks that the child should not return home.

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. In this document, when we refer to 'the PLWG guidance' we mean the Best Practice Guidance issued by the Public Law Working Group (PLWG) in March 2021; it can be found here: https://www.judiciary.uk/wp-content/uploads/2021/03/S-20-s-76-BPG-report_clickable.pdf. This note was produced following the Public Law Working Group's (PLWG) review of the processes and procedures that surround care proceedings. The group was made up of lawyers, judges, managers and directors from children's social care, CAFCASS and representatives from government bodies. This guidance and its principles will be set out later in this document.

You can find more information on how a local authority must care for a child in s.20 accommodation in the FRG 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).

You may wish also to look at the s.20 guidance issued by the Association of Directors of Children's Services (ADCS) and CAFCASS issued in April 2016 (www.adcs.org.uk).

WHAT THIS GUIDANCE APPLIES TO & WHAT IT DOESN'T COVER

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

It is not "Statutory Guidance" that social workers are required by law to follow, but is made available for professionals and families to use as they wish.

The note describes the law as we understand it based upon the Children Act itself, what judges have said in case law about s.20 and how it should be used and interpreted, and on the PLWG Guidance.

We will try and update it if there are major changes in relation to s.20, but this note is current as at the date marked 'last amended' only.

Since April 2016, s.20 of the Children Act has not applied in Wales but is replaced by s 76 of the Social Services and Well-being (Wales Act) 2014. Good practice should be the same under either section. The PLWG guidance applies to both England *and* Wales equally. This guidance, and other guidance we refer to, is therefore still relevant to the situation in Wales.

This guidance note 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 16s can go into care or stay in the care system under s.20 against their parent's wishes and the local authority can agree its care plan with them directly).

This note is not intended to cover children with long term disabilities who are accommodated in residential settings under s.20, where different considerations often apply and concerns about "child protection" issues are less likely.

SUMMARY OF KEY ISSUES

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

1. No local authority has any right or power to remove a child from a parent who wants to care for that child, without an order from the court or if the police use their powers to take a child to a place of safety.

2. 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 that includes the right to make decisions for the child).

3. The social worker has a responsibility to make sure that parents genuinely-understand what s.20 accommodation means. If the social worker is not sure that the parents understand, then they should get further advice about what to do.

4. If the parents object 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 and sometimes time limited orders).

5. If a child goes into foster care under s.20, there should be clear plans about the child's future - if the local authority is worried that the parents can't look after the child in the long term, it must consider applying to the court for a care order, rather than letting the child 'drift' in s.20 accommodation. But it can use s.20 to accommodate a child whilst social workers carry out assessments that are needed before plans for the child can be made.

6. Any agreement that the parent is asked to sign should be written clearly and should be in simple, clear terms. The PLWG template agreement can be found at G3 at the end of the Best Practice Guidance (link above).

PART 1 :

BENEFITS OF SECTION 20

This guidance is not intended to put parents off agreeing to their children being accommodated where they understand what is happening and think that it is the best option for their family at the time.

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 gives the local authority duties towards the child who is 'looked after'. 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 16th 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. The Children Act at s.22C(6) contains a hierarchy of places where a child who is to be looked after should live: first with its parents, if not, then with a family member or somebody known to them and, if not, foster care with someone unrelated.

PART 2 :

SECTION 20 ACCOMMODATION & PARENTAL RESPONSIBILITY

Parental responsibility is the legal name for the rights and duties that a parent has over and to a child. This is, in effect, the legal power to make decisions about the big questions of a child's upbringing: where should they live? Where should they go to school? Should they be vaccinated?

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 and control of a child by order of the High Court (this is called Wardship; it is very unusual).
- Before the decision of the Court of Appeal in the case of *Re N* [2015] (see below) it was common for local authorities to ask parents to agree a 'notice period' if they wanted to take their children home, for example 7 days. In *Re N*, the President of the Family Division doubted whether this was lawful or 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, and S20 doesn't allow a local authority to refuse to give a parent information about where the child is living. However, when the same case was appealed to the Supreme Court, the court did not deal with this issue of notice periods. The PLWG guidance is clear at paragraph 28 "The relevant person should be informed that he can withdraw his consent at any time without notice to the local authority."

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 emergency 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, it 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. A local authority should make sure that any person consulted is aware of the consequences of giving consent and the full range of options available.

S.20 only requires the consent of anyone who holds 'parental responsibility'. Consent is a positive act; the PLWG guidance at paragraph 30 makes clear that a social worker should not "treat silence, lack of objection or acquiescence as valid consent." (Acquiescence means a lack of objection).

Not every father will have parental responsibility for his child, but he will if he is named on the child's birth certificate , if he was married to the mother when the child was born or if he has married her since. Other people who *may* have parental responsibility for a child include their Special Guardians, people who are named in a child arrangements order, civil partners, step parents and second same-sex parents (depending on the circumstances). See FRG Advice Sheet 2: 'Parental Responsibility' (www.frg.org.uk) for more information on the many ways to obtain parental responsibility.

WHAT WEIGHT IS GIVEN TO THE CHILD'S VIEWS?

Under s.20(6), the local authority should try 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 thinks such accommodation is consistent with the child's welfare.

PART 3 :

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

There have been several 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 decisions:

- *Re CA (A Baby) [2012] EWHC 2190 (Fam)*
- *Medway Council v M and T (By her Children's Guardian) [2015] EWFC B164*
- *Re N (Children) (Adoption: Jurisdiction) [2015] EWCA Civ 1112 (Court of Appeal)*
- *Williams v London Borough of Hackney [2018] UKSC 37 (Supreme Court)*

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.

One of the most important cases about s.20 is the Supreme Court case above called Williams v LB Hackney [2018] UKSC 37.

The Supreme Court found it may be confusing to talk about parents 'consenting' to section 20 as an agreement to allow your child to be accommodated under section 20 is better described as a 'delegation' of the exercise of parental responsibility to the local authority. 'Delegation' means 'the act of giving someone else responsibility'.

However, such 'delegation' must be real and freely given, so the 'good practice' discussed in the cases set out above remained relevant.

Lady Hale commented:

> *In sum, there are circumstances in which a real and voluntary delegation of the exercise of parental responsibility is required for a local authority to accommodate a child under section 20. Parents with parental responsibility always have a qualified right to object and an unqualified right to remove their children at will (subject to any orders about where the child is to live). Section 20 gives local authorities no compulsory powers over parents or their children and must*

not be used in such a way as to give the impression that it does. It is obviously good practice in every case that parents should be given clear and accurate information both orally and in writing both as to their own rights and as to the responsibilities of the local authority, before a child is accommodated under section 20 or as soon as possible thereafter.

It is important that professionals understand what the courts have said 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.

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

Every parent with parental responsibility – the legal right to make decisions about their child's upbringing - has the right to agree to s.20 accommodation for their child. If they object, a social worker who wants to remove the child will have to take another route. To be able to make this decision, the parent must first have 'capacity'.

Being able to make decisions is described by lawyers as 'having capacity'. If a parent doesn't have capacity, there is a risk that they won't really understand what section 20 means and therefore can't properly authorise the local authority to look after their child. If the social worker is worried about the parents' understanding, it's advisable 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 decide 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 understand what is going on. 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 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.

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.
- 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 and to take their child home – they do not have to give the local authority advance warning and they should not be asked to do this.
- However, parents need also to think about whether it is a good idea to insist on immediate return of a child without some sort of transition plan, because sudden removal of a child from where they are staying may be stressful and confusing for the child, and return home without proper planning and support being in place can lead to things going wrong again once they are home.

EXAMPLES OF SITUATIONS WHICH ARE LIKELY TO BE PARTICULARLY DIFFICULT :

SECTION 20 ACCOMMODATION FOR A NEW BORN BABY

If social workers are worried about the care that may be given to an unborn baby, assessments should be carried out and plans should be discussed well in advance of the birth in a "pre birth meeting", and this should be drawn up into a plan. This is not always practical or possible, for example if the pregnancy is not known about until very late.

Talking about placement of a new-born baby away from his parents 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; are not feeling under pressure to 'agree' to something they don't want; and know of their rights to object and options for obtaining legal advice. Even if parents have agreed to accommodation *before* the birth, the social worker must still be satisfied that they are in agreement *once the baby has been born* (if the parents are not married the father will not have parental responsibility until the baby's birth has been registered but it is still good practice to seek his agreement, where possible).

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.

The PLWG report notes that separation of a new-born or a young baby from their parents is 'scarcely appropriate' under the provision of section 20. (which we take to mean rarely appropriate). There are very limited circumstances where this will be permissible, such as where parents need a very short period in a residential unit to prepare for a child to join them, or if a carer needs to undergo a short detoxification programme, or medical treatment.

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.

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, to understand they can object or to make their objection known.

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?

The PWLG report notes that it is **good practice** to record any agreement in writing, in a simple format. This is not required, but it should be done. The document:

- Should clearly state that the persons consenting to s.20 may withdraw their consent at any time and remove the child without notice to the local authority.
- Should make it clear that the person consenting understands that they are delegating their decision making powers to the local authority.
- Should be signed by both the local authority and the parent.
- Should be translated into the native language of the parent, if the parent does not speak English.
- If possible, state how long the s.20 agreement will last.

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 the end of the PLWG guidance (link above).

There may be other documents that the local authority will wish parents to sign in due course, because regulations tell them they must collect certain information. These are often in the format of 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).

This might be called a placement plan. The model s.20 agreement is not intended to replace a placement plan. These documents can be confusing and care must be taken to explain them to parents and to sensitively make sure that literacy difficulties are not affecting their ability to understand what they are signing.

PART 4 :

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 ask that their child is returned to their care at any time. They don't need to give any advance notice to the local authority.

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 s.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 (s.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.
- 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 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 to complete separation so that this 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 5 :

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'.

When a child is accommodated under s.20, the local authority should continually review and assess the needs of the child and provide for those needs – this includes educational, medical and therapeutic.

The purpose and length of the accommodation should also be reviewed regularly and planned for. If the accommodation period is for a long time, the local authority should hold reviews every 3-6 months as they do for other children in their care. If the accommodation is for a short period of time, it should review matters more regularly. The Independent Reviewing Officer within the local authority should ensure that the local authority are reviewing the situation properly and regularly.

PART 6 :

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 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 several 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 will qualify for free legal advice, and solicitors can be 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 using the Law Society search engine here: http://solicitors.lawsociety.org.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.
- s.20 doesn't allow a local authority to refuse to give a parent information about where the child is living.

PART 7 :

OTHER ISSUES

SECTION 22 OF THE ADOPTION AND CHILDREN ACT 2002

There can be serious consequences flowing from s.20 accommodation, and parents need to be aware of these. In particular, if the local authority still has concerns or an agreement not being followed, then parents should bear in mind s.22 of the Adoption and Children Act 2002 says that if a local authority is providing accommodation for a child, the local authority MUST apply for a placement order if certain circumstances are met (we've set these out below). 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 local authority are satisfied that the child has suffered or is at risk of suffering significant harm because of the parents' care / lack of care (s.31 of the Children Act), AND
- the local authority are satisfied the child ought to be placed for adoption.

A local authority must go through a strict internal process before they can say they are "satisfied" the child ought to be placed for adoption, but if they do reach that stage the local authority MUST apply for a placement order.

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.

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 AND 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 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 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
- 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 paragraph 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?

Parents who are on bail with a condition not to have unsupervised contact with their children are unlikely to be able to provide them with accommodation unless they have a friend or relative, they can send the children to stay with. If parents are unable to decide on accommodation for their children whilst on bail, the local authority will be under a duty to accommodate them. A parent who is unable to provide or arrange accommodation cannot realistically object to the use of section 20 accommodation, but it is good practice for a local authority to seek the parents' consent and to bring the matter to court promptly. See further the decision of the Supreme Court in Williams and Another v London Borough of Hackney [2018] UKSC 37.

ANNEX 1 :

TEXT OF SECTION 20 CHILDREN ACT 1989 AND SECTION 76 SOCIAL SERVICES AND WELLBEING (WALES) ACT 2014

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

SECTION 20 CHILDREN ACT 1989

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

(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 76 SOCIAL SERVICES AND WELLBEING (WALES) ACT 2014

76. Accommodation for children without parents or who are lost or abandoned etc

(1)A local authority must provide accommodation for any child within its area who appears to the authority to require accommodation as a result of—

(a)there being no person who has parental responsibility for the child,

(b)the child being lost or having been abandoned, or

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

(2)Where a local authority provides 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 specified.

(2A)Where a local authority in England provides accommodation under section 20(1) of the Children Act 1989 (provision of accommodation for children: general) for a child who is ordinarily resident in the area of a local authority in Wales, that local authority in Wales 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 specified.]

(3)A local authority must provide accommodation for any child within its area who has reached the age of 16 and whose well-being the authority considers is likely to be seriously prejudiced if it does not provide the child with accommodation.

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

(a)has parental responsibility for the child, and

(b)is willing and able to—

(i)provide accommodation for the child, or

(ii)arrange for accommodation to be provided for the child.

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

(6)Subsections (4) and (5) do not apply while any person—

(a)in whose favour a [F2child arrangements order] is in force with respect to the child,

(b)who is a special guardian of the child, or

(c)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.

(7)Where there is more than one such person as is mentioned in subsection (6), all of them must agree.

(8)Subsections (4) and (5) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.