JUDICIARY OF
ENGLAND AND WALES

HER HONOUR JUDGE CARR QC

DESIGNATED FAMILY JUDGE FOR SHEFFIELD

LOCAL PRACTICE GUIDE: THE USE OF SECTION 20 OF THE CHILDREN ACT 1989 IN THE CONTEXT OF CHILD PROTECTION

1. This Practice Guide has been agreed between the Designated Family Judge for Sheffield, Sheffield City Council, Barnsley MBC, Doncaster MBC and Rotherham MBC. It sets out best practice to be followed in the use of section 20 of the Children Act 1989 as a child protection measure for the safeguarding of children in South Yorkshire. It incorporates the recent joint guidance published by the ADCS and CAFCASS.

Preamble

2. It is acknowledged that on occasion a parent or other carer may become unable to continue to care for a child and in those circumstances the Local Authority need to step in. There is statutory provision for this under section 20 of the Children Act.
3. There has however been recent judicial concern about instances where section 20 has been misused by Local Authorities in circumstances which have led to delay for children or for uncertainty about a parent's agreement to the accommodation or their understanding of the situation. There is the potential for unfairness if things are not done properly as the parents or carers may not have had the benefit of legal advice, and the Court will not normally be involved at this stage.

However, it should also be noted that when a child is accommodated and becomes a looked after child, an Independent Reviewing Officer is appointed to safeguard the child's interests. In addition there are sometimes other occasions where a framework is in place which will provide external scrutiny of the arrangements, e.g. with a child relinquished for adoption where CAFCASS will verify parental agreement. Not all

occasions where a child becomes looked after under section 20 will result in a need for care proceedings to follow on.

4. To quote the ADCS / CAFCASS guidance "Used correctly, s20 has much to offer children and families though not at the expense of a child's long-term health and well-being." This Practice Guide is designed to clarify what good practice should look like in the light of the judicial and professional guidance.

Guidance

5. Accommodation of a child under section 20 must be by way of informed consent on the part of those with parental responsibility.

6. This requires the social worker obtaining the parent's consent to satisfy herself that the parent has a clear understanding of what she is being asked to consent to, and that she has the capacity to give consent. Consent 'must not be compulsion in disguise'.[1]

7. Where the local authority's interim plan for a child is to remove them from their parents it important that the guidance given by Hedley J in *Coventry City Council v C, B, CA and CH* [2013] 2 FLR 987 is complied with, i.e. the social worker in question is under a personal obligation to address each of these questions:

   i) Does the parent have the capacity to agree to accommodation, taking into account all the circumstances prevailing at the time and considering the questions raised by Section 3 of the Mental Capacity Act 2005 , and in particular the parent's capacity at that time to use and weigh all the relevant information?

   ii) Are there doubts about capacity? If so no further attempt should be made to obtain consent on that occasion and advice should be sought from the social work team leader or management.

   v) If you are satisfied that the person whose consent is sought does not lack capacity, you need to be satisfied that the consent is fully informed:

[1] Per Hedley J in *Coventry City Council v C, B, CA and CH* [2013] 2 FLR 987, para. 27

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?

vi) If you are not satisfied that the answers to a, b and c above) above are all 'yes', no further attempt should be made to obtain consent on that occasion and advice should be sought as above and the social work team should further consider taking legal advice if thought necessary.

vii) If satisfied that the consent is fully informed then you then need to be satisfied that the giving of such consent and the subsequent removal is both fair and proportionate.

viii) In considering that the social worker may need to ask:

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?

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

8. If a parent objects to his or her child being accommodated under section 20 the local authority may only lawfully remove the child from parental care with the authorisation of a court. Such authorisation may take the form of an Emergency Protection Order or an Interim Care Order.

9. A parent may agree to accommodation without the consent being put in writing but it should nevertheless be standard practice to seek to record consent in this manner.

10. There is no prescribed form to be used for recording consent under section 20. As a minimum, written consent should contain the following information:

(a) the name or names of the parent(s) giving consent;

(b) the name(s) and date(s) of birth of the child(ren) in respect of whom consent is being given;

(c) the name and status of the professional obtaining parental consent;

(d) the date, time and place at which the consent form is completed and signed;

(e) details of the arrangements for parental contact with the children (or a reference to the local authority's care plan if one has been prepared).

11. If written consent is recorded in a handwritten document it is important that the document is legible.

12. Section 20(8) provides that '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.' A written form of consent must make it clear that the parent can 'remove the child' from the local authority accommodation 'at any time' and should not seek to impose any fetters on the parent's right under section 20(8).

13. Whether handwritten or typed the document must be clear and precise as to its terms and drafted in simple and straight-forward language which the parent can readily understand.

14. In any case in which the first language of the parent is not English it is important that:

(a) a parent is assisted by an appropriately qualified interpreter in any discussions leading to parental consent being given;

(b) a translation of the form of consent is provided to the parent concerned at the time it is signed or, if that is not possible, within five working days thereafter;

(c) if it is not possible for a translation of the form of consent to be prepared at the time consent is given, the original form of consent should contain a statement confirming that the form of consent has been read over to and explained to the parent in his or her first language;

(d) when available, the parent should sign the translated version of the form of consent, adding, in the parent's language, words to the effect that 'I have read this document and I agree to its terms.'

15. When consent is obtained orally and is not evidenced in writing the social worker must ensure that she makes a note in the child's records of the circumstances in which consent was obtained and the reasons why consent was not obtained in writing.

In such circumstances the fact that the parent has consented, an explanation of the effect of that consent and confirmation of the parent's rights under section 20(8) should be communicated to the parent concerned (translated into the parent's first language if necessary) within five working days.

16. Whether a child is accommodated under section 20 prior to or during the course of care proceedings there is no power to require that a parent must give a period of notice if she wishes to withdraw his or her consent. Nothing should be said to the parent to suggest the contrary and no statement to the contrary should be contained in the written form of consent.

17. Whilst not every case of section 20 accommodation will lead to care proceedings, there are certain situations where proceedings are likely to be required sooner rather than later. If it is likely to be necessary for the Family Court to make findings concerning the causation of injuries sustained by an accommodated child, 'short-term' means no longer than is necessary to enable the local authority to prepare and issue an application for a care order. In such circumstances it is imperative that care proceedings are issued promptly, particularly if there are complex medical issues as a result of which the court is likely to give permission for the instruction of independent medical evidence.

18. It is noted that when a child becomes looked after an Independent Reviewing Officer will be appointed and there shall be a review within twenty days, then within the next three months, and then every six months. Whenever a review takes place consideration should be given to the appropriateness of the legal arrangements for the child and the current status of the parents' consent to continuing accommodation should form part of the review. Legal advice should be sought in the event of any doubt as to the continued use of section 20.

19. It is anticipated that many Local Authorities may be reviewing its cases of section 20 accommodation in the light of the recent cases. Where current s20 cases are being reviewed or re-reviewed in the light of the recent judgments, local authorities should discuss any proposed large-scale conversions of s20 legal status to s31 applications with Paul Hobson or Paul Benns at the Court and Sue Symcox at CAFCASS so that any special arrangements necessary as a result of a large number of applications can be timetabled and facilitated. When scheduling applications, a distinction should be made between those children who are stably placed but where the legal framework could be improved and children for whom a change in legal

status is a pre-requisite for better outcomes in care. Applications in respect of the latter group of children warrant a top priority. All such applications must comply with the PLO and the relevant Practice Directions.

20. Careful consideration is likely to be needed in the case of older children for whom additional or different requirements will apply. For example, if a child aged 16 years or more is accommodated it should be borne in mind that the child can remain in accommodation if they wish, even if the parents would like to remove them from Local Authority accommodation. In the circumstances the child may not wish to be the subject of proceedings and a Local Authority should pay close attention to their wishes and feelings. Indeed it not be possible to start care proceedings on an accommodated seventeen year old.

Dated xxxxx