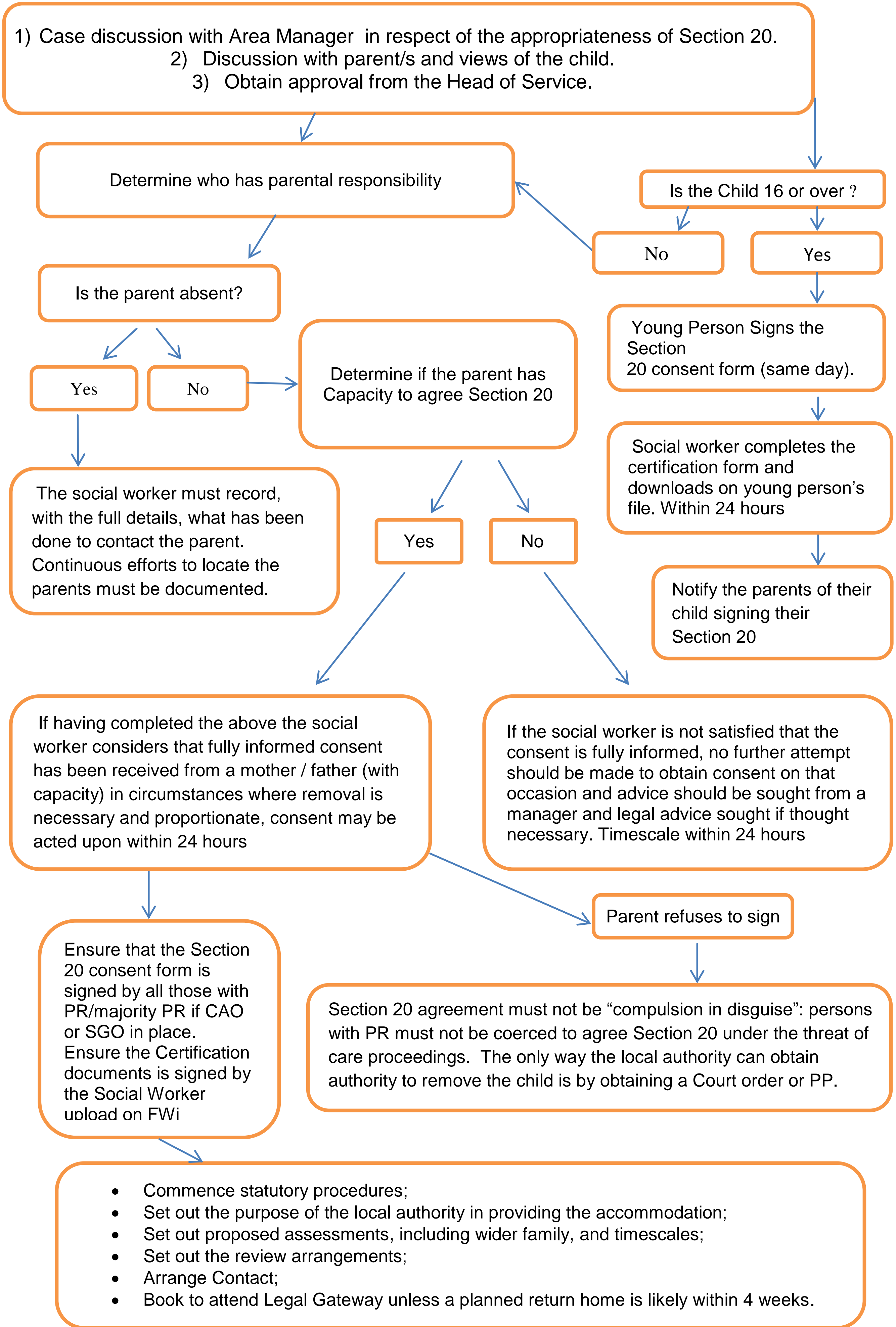
Medway Children's Service

Practice Guidance re Section 20 (CA 1989)

Contents	2
Flow Chart	3
Introduction	4
Scope	4
The Statute (LAW)	4
What is Section 20	4
Who can object to Section 20	5
Determining who has Parental Responsibility (PR)	5
Absent parent	6
Assessing the parent/s capacity in giving s20 consent	6
Assessing validity of consent and ensuring consent is fully informed	7
Working with parents to support their right to withdraw s20 at any time	9
Ensuring our actions are necessary and proportionate	10
Proportionate interim family arrangements, that do not amount to s20	10
Review of the s20 agreement and requirement for no delay	11
Review of the Section 20 agreement for longer-term care plans	11
Section 20 Agreement - Documents to be signed by parents	12
Provision of accommodation under s20 – aged 16 and over	12
Decision not to provide accommodation to young people aged 16 and 17	13
Decision to cease to provide accommodation	14
Section 20 and a new born child	14
Recording of Section 20	15
Section 20 accommodation with family and friends	15
Parents subject to detention under Mental Health Act 1983 (Section 2 and Section 3)	16
Parents who are not fluent in English	16
Unaccompanied refugee/asylum seeking children / young people	16


1) Case discussion with Area Manager in respect of the appropriateness of Section 20.
2) Discussion with parent/s and views of the child.
3) Obtain approval from the Head of Service.
Determine who has parental responsibility
Is the Child 16 or over ?
No
Yes
Is the parent absent?
Yes
No
Determine if the parent has Capacity to agree Section 20
Young Person Signs the Section 20 consent form (same day).
Social worker completes the certification form and downloads on young person's file. Within 24 hours
The social worker must record, with the full details, what has been done to contact the parent. Continuous efforts to locate the parents must be documented.
Yes
No
Notify the parents of their child signing their Section 20
If having completed the above the social worker considers that fully informed consent has been received from a mother / father (with capacity) in circumstances where removal is necessary and proportionate, consent may be acted upon within 24 hours
If the social worker is not satisfied that the consent is fully informed, no further attempt should be made to obtain consent on that occasion and advice should be sought from a manager and legal advice sought if thought necessary. Timescale within 24 hours
Parent refuses to sign
Ensure that the Section 20 consent form is signed by all those with PR/majority PR if CAO or SGO in place. Ensure the Certification documents is signed by the Social Worker upload on FWi
Section 20 agreement must not be "compulsion in disguise": persons with PR must not be coerced to agree Section 20 under the threat of care proceedings. The only way the local authority can obtain authority to remove the child is by obtaining a Court order or PP.
Commence statutory procedures;
Set out the purpose of the local authority in providing the accommodation;
Set out proposed assessments, including wider family, and timescales;
Set out the review arrangements;
Arrange Contact;
Book to attend Legal Gateway unless a planned return home is likely within 4 weeks.

Introduction
The aim of this guidance is to ensure that all social workers and their managers consider the Legal Framework and relevant case law to provide Accommodation under Section 20 (s20) of the Children Act 1989, for children and young people up to the age of 18.

Social Workers need to be fully aware of the practice and legal implications if proper consideration is not given to obtaining informed consent from the parent or guardian with parental responsibility, or a young person themselves if they are 16 and over.

Scope
This guidance is for all social workers and managers discharging the Local Authority's duties under Section 20 of the Children Act 1989. This guidance will be regularly reviewed to take into account any new national guidance and related case law.

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

(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—
(a) There being no person who has parental responsibility for him;
(b) Her/his being lost or having been abandoned; or
(c) The person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

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

What is Section 20?
Detailed guidance has been produced by the courts with respect to social work practice, as summarised below:

It is important to discuss the following with your Practice manager or Area manager before submitting a s20 request to the Head of Service for a decision to be made to accommodate a child or young person under s20.

- Who is asking that the child be accommodated and why?
- If the parents/those with PR are requesting that the child be accommodated because they feel that they cannot care for their child, what expectations do they have about the return of the child? What strategies / services have been put in place to support them, have family members / friends been identified and / or ruled out. Has additional support under s17 been considered? What

else could be done by whom to prevent a child needing to live away from their parent(s)?
- If the local authority is proposing that the child be accommodated what are the views of those with PR?
- Has a Family Group Conference taken place? (If not the social worker needs to ensure an urgent referral is made to arrange one, and should also take active steps to contact family members directly in agreement with parents to explore any alternative options).
- Has a timeline been agreed as part of your discussions with those with PR, including for how long the child is likely to be accommodated and the next course of action if it is not appropriate for the child to return home?
- If there is likelihood that the child will be removed from accommodation under s20 at short or no notice, thereby placing the child at risk, then you must ensure this is clearly conveyed in your discussion with the Area manager and/or Head of Service to consider other forms of protection and the need to seek legal advice.

Who can object to Section 20

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

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

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

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

Determining who has Parental Responsibility (PR)

The Social Worker must:

- Confirm that the parent or adult currently looking after that child can produce evidence that he/she has PR for the child. This may include a birth certificate, any other document that provides evidence that the person has PR.
- Make enquiries as to whether anyone else has acquired PR.
- Ask everyone with PR if they can provide a home for the child/ren, or make alternative family arrangements, and if they agree to the child being accommodated.
- Even if a parent does not have formal PR, if they are involved in the child's life and not an immediate risk to the child, good practice is that they would be consulted with consent from the parent with PR.

Social Workers should be aware that asking one person with PR for s20 agreement will not be sufficient where there are other people with PR. In these circumstances, the views of the other parent or carer must be sought and fully recorded on FWi.

Absent parent
If the absent parent or carer cannot be traced, the social worker must record, with their full details, what has been done to contact them. The social worker must also be aware of their continuous duty to trace persons with PR for the child even after there is a signed s20 agreement, and that they will need to contact them as soon as they are located. Where appropriate, the child/ren themselves should be asked, as they may know where their parents are or how to contact them. Facebook searches should also be made.

Assessing the parents' capacity in giving Section 20 consent
Every parent has the right, (if they have capacity – see below) to exercise their parental responsibility to consent under s20 to have their child accommodated by the local authority and every local authority has power under s20(4) to accommodate the child provided that it is consistent with the welfare of the child.

Every social worker obtaining such consent is under an individual professional duty to be satisfied that the person giving the consent has sufficient capacity to do so. Once the social worker is satisfied this is recorded on the Social Work Certification document.

In taking any such consent, under the Mental Capacity Act 2005 the social worker must actively address the issue of capacity and take into account all the circumstances prevailing and the parent's capacity at that time to use and weigh all the relevant information. If a parent is known to have significant cognitive difficulties or mental health difficulties, support should be sought from our colleagues in Adult Services, who can attend with us to support the assessment of the adult's capacity in relation to the question being asked.

Section 2 of the Act says that a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. This may be permanent or temporary and cannot be assumed from someone's age or appearance or an aspect of their behaviour that might lead others to make unjustified assumptions about their capacity. If the disturbance is temporary (for example due to medication or intoxication), consent will have to be sought at a later time.

Section 3 says a person is unable to make a decision is she/he is unable:

- To understand the information relevant to the decision;
- To retain that information;
- To use or weigh that information as part of the process of making the decision; (NB this requirement is regarded as particularly important by the courts), or
- To communicate his/her decision (whether by talking, using sign language or any other means).

However, a person should not be assumed to lack capacity if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means). In order to properly assess understanding as outlined above, it is necessary to ask the parent to explain the key information, and their reasoning, back to us. An adults' decision can be made with capacity and sustained reasoning, even if we do not agree with their decision making or rationale.

If there is doubt about capacity, no further attempts to obtain consent should be made at that time, and advice should be sought from a manager. If one parent with parental responsibility lacks capacity then legal advice should be sought in relation to issuing care proceedings, however it may still be appropriate to take protective action if you have consent from the other parent. Again, management advice must be sought.

Assessing validity of consent and ensuring consent is fully informed:
If satisfied that the parent has capacity, the social worker must also be satisfied that the consent is fully informed:

- Does the parent fully understand the consequences of giving s20 consent, including their ongoing rights?
- Does the parent fully appreciate the range of choice available and the consequences of refusal as well as giving consent?
- Is the parent in possession of all the facts and issues material to the giving of consent?

If consent is not fully informed, the social worker will need to ensure that all necessary information is provided, discussions held, and questions answered to ensure that the consent is fully informed.

This needs to be an honest discussion and one that is not coercive. Recent judgements have been clear that it is a misuse of Section 20 (and oppressive practice), to advise parents that 'they need to sign s20 agreement or we will go to court'. Situations will vary, and management advice will be helpful, however are likely to fall under five main categories:

- The parents are actively requesting s20, due to specific circumstances, such as being in hospital for an operation. Accommodation is provided as a purely supportive service, led by the parent/s wishes. Should the situation change they have full prerogative to change the request and plan and court is clearly not likely or planned, and the children will clearly be returning home.

- The parents are actively requesting s20 due to being unable to manage their child's behaviour, or acknowledging that they are not currently able to meet their child's needs. We will either be seeking to return the child to parents or a family member as soon as possible, or after time-limited planned intervention. We advise that we hope that we will be able to support a return to parents or family, which either would not need to go to court, or may be a private court matter. The parent can change their mind at any time, however

if they took the child back today, we would be concerned, and may have to think about going to court. However the parent themselves accepts the concerns, and we hope that we can continue to work together. However if the concerns increased, or if we can't resolve the difficulties within a few months and support a return home, we will ultimately need to go to court to share parental responsibility and make long-term plans. We will talk to them first about any worries and make sure they know what we are thinking and any plans. We very much hope that we are able to support the child to return home or to family (parents may or may not currently be wanting this), however cannot be certain that we will be able to effect that. However under s20 the parent can remove their child or request their return home at any time.

- We are/will be providing a Letter Before Proceedings and strongly recommend that you seek legal advice. We are suggesting s20 care either in foster care or with a family member, as we are worried about the day to day care of the children, and want to work with the parents while they resolve that, and are clear in our assessment that this would be better for the children than continuing to be exposed to the difficulties and concerns. We are honest about the fact that although we have clear reason to be concerned, and will be seeking legal advice, we are unlikely to have enough evidence for the court to grant an order. Therefore neither we or the court can 'make them' do this, however if they choose to, we can put this agreement in place to make things better for the children while we support the parents. If concerns increased, or we are not able to support the parents, we will need to review the situation, which may lead to issuing public proceedings or recommending private proceedings, we will keep them informed. If they do agree, we hope that we can actively support the children to return home, however in reality that is far from certain, and we may seek alternative care via court. However under s20 the parent can remove their child or request their return home at any time.

- We are requesting s20 care as we are very worried about the children, and have not been able to find a way to make things safe for them. We have/will be seeking legal advice, and we **will be** issuing proceedings (whether s20 is agreed or not), and we believe that the court is likely to grant us an order. Because we are so worried about the children, and getting to court takes some time, we are asking the parents if they will agree to us taking the children into care today. We strongly recommend that they seek legal advice. Their legal advice might on the one hand suggest that they agree as this will show that they understand the concerns and can work with the local authority, or their legal advice might say that we are not right to ask for the children to be accommodated and recommend that the parents do not agree. No matter what their lawyer recommends, if the parents want to 'fight' this, to have a fair trial in court first, rather than agreeing to s20, they have every right to do so. If they do agree to s20, while we will continue to try to support them, at present we do not see how we could recommend that the children safely return home at this time, and it is a very likely possibility that we would recommend alternative care. Before we get to court however, under s20, the parents have the right to remove their child or request their return home at any time, although we would recommend that they talk to their lawyer first. If the court grants a care order, then that would change and the child would be in our care during court proceedings.

- *In some circumstances*: we are giving you a Letter Before Proceedings outlining our concerns and also requesting s20 as we are very worried about the children. We have sought legal advice, and believe that the court would agree with us and grant an order. However, we have fully assessed the situation and really think that we can work with you and your family to sufficiently reduce the risk in a short time period, in which case we could avoid for you and the children the process of going to court. We propose that we/you do x/y/z and we will review the situation in x weeks, at which time we think the risk is likely to have reduced and the children can return home, although we cannot promise that at all. We strongly recommend that they seek legal advice. Their legal advice might on the one hand suggest that they agree, or their legal advice might say that we are not right to ask for the children to be accommodated and recommend that the parents do not agree. No matter what their lawyer recommends, if the parents want to 'fight' this, to have a fair trial in court, rather than agreeing to s20, they have every right to do so, and we would issue proceedings to make that happen. We need to be clear with parents that if our concerns increase, or we are not able to resolve the difficulties, we will need to issue proceedings in any event, or alternatively may recommend that a family member makes a private application. Under s20, the parents have the right to remove their child or request their return home at any time, although we would recommend that they talk to their lawyer first. *In these cases we need to be especially clear about parental rights, and make sure that they have the benefit of legal advice, as recent judgements have been very critical of parents being faced with a decision of needing to sign section 20 to avoid going to court. We need to make sure that we have a clear plan which looks to return the children, and which is reviewed in a Legal Planning Meeting as soon as is appropriate and no more than three months time.*

Working with parents to support their right to withdraw s20 at any time:
The wording of the Children Act is very clear that parents can withdraw their consent to s20 **at any time**, and recent judgements have been clear that this is their absolute right, and critical of any additional wording requesting the parents to provide notice in advance, therefore this wording is not included in the agreements.

However, we can still talk to parents about how we could best work with them about this, in the best interests of their children. Where we have expressed concerns, we would recommend that it would be of benefit to the parents to seek legal advice, although need to be clear that it is not in any way a requirement. We also can explain to them that in terms of practicalities, it would be best that we have some notice so that we can work with parents to support return, for example the children knowing what is happening and being supported to pack, and indeed we would want the foster carers to support transport. Again this is not however a requirement. If we have not yet issued proceedings but where we have high concerns, we can also explain that while we would begin to make arrangements to return the children to support their legal rights, we would also make an urgent application to the court, and it would be less confusing and potentially distressing for the children if the parents were able to wait until the court decides if the children can return home, rather than the children being returned, only to then be removed again if the court were to grant a care order, which we think is likely. But we must also clearly explain, and point out

the wording of s20 in law and the agreement, that consent can be withdrawn **at any time**.

Ensuring our actions are necessary and proportionate:
If the social worker is satisfied that the consent is fully informed, recent judgements have provided further advice in ensuring s20 is properly applied, by ensuring that the step taken is both fair and proportionate.

In considering that it may be necessary 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?

Essentially, if we are placing a child into foster care under Section 20, we need to be clear that in doing so we are either acting in the express wishes of the parent (they are requesting this as support, rather than we are requesting this due to concern), or we need to be clear that the concerns are such that an order would be granted by the court.

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 / father (with capacity – refer below) in circumstances where removal is necessary and proportionate, consent may be acted upon.

Proportionate interim family arrangements, that do not amount to Section 20
Sometimes we can support parents to make decisions that ensure that protective steps are taken that are proportionate, that do not amount to the children entering care under Section 20. ***These can be grey areas and management advice should always be sought.*** Such steps **must** be actioned in a way that are supportive, not coercive, and do not require child protection agreements to be signed that amount to a written agreement that the parent cannot care for the child.

Case examples:
A mother has some day-to-day difficulties with her emotional wellbeing and use of alcohol, and while there are some concerns for neglect and emotional impact on the children, she is overall able to provide sufficiently safe care and is engaging in planned services. However when you visit, the mother has had a very bad day and is very distressed and severely intoxicated. You are concerned for the welfare of her children. The mother is clearly acknowledging to you that she is upset and not coping, and the children are also distressed and not having their needs met. You discuss what might be helpful to her, and then support her to call her friend or relative, or agree to you calling them with her, so that they can have the children overnight or for the weekend, while the mother has a break and tries to see her GP. It is very clear in your interactions and advice to mother and the friend that you are not removing the children (and indeed cannot), but helping mother seek support, and the mother can change her mind and collect the children, indeed you think she will probably feel better when she has had a

good sleep and sobered up. You advise the friend or relative that if mother attended really drunk, they would have to make a judgement call about calling the police, or ideally be able to talk themselves to the mother to help her, but that ultimately she can take her children home (although if they were concerned you would request that they call EDT for advice and possible welfare check). You will call on Monday and possibly visit, and assume that mother will feel better by then and the children will be back with her. This is not removal under Section 20, but supporting the parent to make a decision and seek wider support that is in the children's interests.

If the circumstances were such that you felt a written agreement was necessary restricting the mother's care of the children, this is Section 20, and requires all the above approval and consent processes (and a Regulation 24 assessment[1]). In doing so we should bear in mind that Section 20 agreements also have to include that the parent has the right to change their mind and remove the children at any time. However the mother would in reality clearly not have sufficient capacity to consent, and if the mother is not able to be supported to make protective arrangements, and is so intoxicated that there is real immediate risk to the children, a social worker should seek management advice however would likely be advised to call the police for a decision in relation to police protection.

Alternatively, there are many case examples where we support a safe and supportive relative or friend to come to stay in the family home, or alternatively the parent and the children go to stay at the relative's home, but one parent is still caring for the children, without written agreements that restrict their care. This is also not Section 20. In cases of domestic violence, you may ask the protective parent to sign that they will not allow contact/unsupervised contact with the violent parent, and this is also not Section 20. However if concerns were such that written agreements were necessary stipulating that neither parent could provide unsupervised care, this is Section 20 care, requiring all the necessary approvals and consent, as well as both Regulation 24, and also Placement with Parents assessment (Regulation 19).

Review of the Section 20 agreement and requirement for 'no delay'
The agreement is not a long term agreement and will be reviewed at Legal Gateway Panel or in a review Legal Planning Meeting as appropriate. Where the decision to provide care under s20 has not already formed part of the Legal Gateway decision, the case should be presented within a maximum of 4 weeks (where there is a clear plan to return the children home quickly), or in many cases much more quickly than that (where we would be very concerned if s20 agreement was withdrawn and/or do not have a clear plan that is likely to be effective in returning the children home in a short time-frame)

Recent judgements have confirmed what is existing good practice, that there should not be delay in achieving permanency of care for children, and that the concept of no delay applies to pre-proceedings as well as proceedings.

Review of the Section 20 agreement for longer-term care plans
Only in exceptional cases is it likely that the care plan would remain s20 for more than a 3 month period – such cases are likely to include a child who wishes to remain in care who is nearing the age of 16 and where the parent is working well with us, or where a child has a level of disability that requires specialist 24 hour care

[1] [1] The Care Planning, Placement and Case Review (England) Regulations 2010. See also The Children Act 1989 Guidance and Regulations, Volume 2, 2015.

that cannot be effected at home, and the parent remains very involved in care planning and positive exercising of their parental responsibility. If the care plan remains s20 the child's plan will be regularly reviewed through

- Looked After Statutory Review - The Looked After Review will take into consideration the legal status of the child and whether it remains appropriate
- Medway's Permanence Tracking for Looked After Children.

In such cases social workers should:
- Ensure that there continues to be consultation with all those who hold PR regarding the care planning for the child / young person
- Ensure that the child / young person's views continue to be sought on a regular basis
- The Section 20 Agreement and Social Work Certification should be re-signed at the second LAC review and thereafter on an annual basis as part of the LAC Review process.

Section 20 Agreement - Documents to be signed by parents/carers with parental responsibility
The provision of accommodation through the voluntary agreement must be based on a written agreement between the local authority and the parents or the young person himself where s/he is over 16.

There are two documents to be signed;

1) The parental Section 20 Agreement
2) The Certification by the social worker upon obtaining Section 20 consent

This Agreement clarifies that this is a voluntary arrangement and that those parent/carers with parental responsibility who have signed the agreement can withdraw their consent and remove the child or young person from the local authority accommodation at any time (CA 1989 Section 20(8)).
This Agreement does not alter the legal status of the child/ren. This agreement does not give the local authority parental responsibility which remains with the current holders. Any person with parental responsibility can request that this agreement comes to an end at any time (unless opposed by a person who has a child arrangements order or is a special guardian);

Provision of accommodation under Section 20 - aged 16 and over
The Local Authority **may** provide accommodation for a young person aged 16 or over at their own request, and under their own signed consent, even where a parent or person with parental responsibility objects. The LA can agree the care plan with the Young Person directly, and the parent cannot remove the young person against their will. This decision would still obviously need to be based on an assessment that they were at risk at home and care was therefore in their best interests, as our duties to support safe parental care wherever possible, and/or to support children to remain in the care of their wider family, both remain.

There are two documents to be signed when aged 16 and over

1) The young person's Section 20 Agreement
2) The Certification by the social worker upon obtaining Section 20 consent

Although we do not require parental consent, it is still very important that parent's views are sought, and that they are clearly informed of the young person's request and/or the decision to accommodate the young person. Indeed this is likely to be necessary as before we accommodate a young person we need to be satisfied that they cannot stay with someone in their family. This may be by telephone initially but should be followed up in writing.

At 16 a young person gains certain rights and abilities that enable them to obtain things themselves (such as apply for a passport), or be assessed as Gillick competent to make certain decisions (such as some medical decisions), however ultimately it remains that without any other order from the court, only their parent/s have formal parental responsibility, which lasts until age 18. Unless the young person is very clear about their wishes not to share any information with their parent, with good reasons, we should continue to share information and invite parents to reviews as with any other young person. Any decision to limit parental involvement due to immediate risks or the young person's expressed wishes should be made in consultation with a manager, and the IRO.

Decision not to provide accommodation to young people aged 16 and 17

Young people aged 16 and 17 who approach either social care or housing services advising that they are homeless will need an assessment of their needs. Young people who are homeless, or at risk of homelessness due to family breakdown, are very likely to be Children in Need, and may need a multi-agency plan in order to ensure that their needs are met.

However Children's Social Care will also need to ensure that assessments undertaken carefully consider any duties under Section 20, including 20(1) there being no person who has parental responsibility for him, or their having been abandoned by their parent, and also 20(3) and 20(4). The 'Southwark Judgement' makes clear that the assumption should be that a young person's needs may necessitate Section 20 accommodation unless the assessment shows otherwise.

20.3 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.

2.04 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.

The views of young people are however also a key part of decision making, as young people would need to consent to being accommodated under Section 20. Whether or not the assessment indicates that a young person requires Section 20 accommodation, it is important that the rights of the young person and the implications of the decision are clearly explained to them, so that they are able to make an informed decision about agreeing to Section 20 where it is offered, or are

aware of their rights to complain or seek review of the assessment or decision if Section 20 accommodation is not provided.

Further guidance is available here:
https://www.gov.uk/government/publications/provision-of-accommodation-for-16-and-17-year-olds-who-may-be-homeless-and-or-require-accommodation

Decision to cease to provide accommodation to children and young people who have been accommodated under section 20 of the 1989 Act.
Children may be removed from accommodation under Section 20 by their parents as is their right. In these circumstances Practice Manager and Area Manager advice should be sought, and consideration given to seeking urgent legal advice or holding a Review Legal Planning Meeting to consider whether orders should be sought to safeguard the child's welfare. Child protection plans may also need to be put in place, and in all cases there will need to be a review of the multi-agency plan to safeguard the child.

Where the child is returned home as part of an agreed plan, this should be following robust assessment and a clear decision making process. The assessment and planning will need to include the services that will be provided to support the child and parents following the return home. Where a child has been looked-after for at least 20 working days, the decision should be approved by a Head of Service (Regulation 39.4)[2].

Where the local authority is considering ceasing to look after a young person aged 16-17 years, who has been accommodated under Section 20, the decision must not be put into effect until it has been approved by the Director of Children's Services (Regulation 39.5)

In both cases he officer must be satisfied that the child's wishes and feelings have been ascertained and considered, that the decision to cease to look after the child will safeguard and promote their welfare, that the IRO has been informed, and that where the child remains an eligible child, that appropriate requirements have been met (Regulations 40-44).

Section 20 and a New Born Child
For a new born baby to be accommodated under s20 of the Children Act 1989, the mother must give informed consent following the birth, if placed together, and prior to the separation (if placed apart). The risk factors that lead to s20 accommodation of a new born baby must be of sufficient weight for professionals to conclude a baby would be at imminent risk of significant harm if left unsupervised in mother's care including:

• Risk of physical harm
• Risk of significant neglect through inappropriate handling, inappropriate feeding, inadequate and poor supervision to the extent that the baby would suffer harm.

---

[2] [2] The Care Planning, Placement and Case Review (England) Regulations 2010. See also The Children Act 1989 Guidance and Regulations, Volume 2, 2015.

• Concerns that parent(s) will attempt to leave the hospital with the baby, placing the baby at risk of significant harm And
• Professional judgment, based on a pre-birth assessment, that it is not possible to manage these risks in any other way.

A mother with parental responsibility may give consent to the accommodation of her baby following the birth or upon discharge from hospital under s20. Usually, this is on the basis that the mother accepts that they are unable at that time, but not necessarily permanently, to provide the baby with suitable accommodation or care.

Legally, where parents are unmarried and prior to the registration of the birth only the mother has legal parental responsibility, therefore it is not strictly speaking essential to have both the parents' consent to the accommodation of a baby under s20, particularly relevant where the mother is clear that she would not agree to the father caring for their baby. However unless there are disputes between the parents about paternity, the views and ideally signed consent of the purported father should always be obtained, and if he were not to agree to Section 20 accommodation, Area Manager and legal advice should be sought.

If the baby is being removed into separate foster care, in most cases pre-birth assessments will have been undertaken including Pre-Proceedings meetings, and the Local Authority should in most cases be ready to issue for a short notice ICO, or in extreme cases an EPO, following the birth of the baby, with the plan to be in court before the baby needs to leave hospital. In exceptional cases where Section 20 consent for separation is obtained without proceedings being issued, the court will expect that proceedings should be issued within five working days.

Recording

It is the responsibility of social workers to record all discussions regarding the s20 agreement on FWi . The s20 agreement and certification consent must be uploaded on FWi in the Document Section and copies sent to the legal department if a legal advisor is appointed to the case. Copies of the signed agreement must also be given to parent/carer or young person signing the consent and the carers.

Good practice would include that scans should also be uploaded of birth certificates provided by the parent/s, or where no birth certificate was able to be shown, this should be obtained.

Section 20 Accommodation Agreement with family and friends

Where we are requesting or recommending that a family member or connected person provides care to the child or children without the parents, or with the care being provided by the parent/s being heavily supervised, this requires an assessment under Regulation 24[3]. Such assessment must be undertaken and temporary approval of the connected person as a local authority foster carer must be sought from the nominated officer [4] in advance of the placement being made, or in exceptional cases on the same day as the placement.

[3] The Care Planning, Placement and Case Review (England) Regulations 2010. See also The Children Act 1989 Guidance and Regulations, Volume 2, 2015.

[4] Head of Service for Provider Services

In these circumstances a s20 Accommodation Agreement must still be completed, and an urgent referral will need to be made for the person with whom the child is placed to be fully assessed as a foster carer, and subsequently approved by fostering panel within 16 weeks of the placement being made..

Parents subject to detention under Mental Health Act 1983 (Section 2 and Section 3) - When a parent is detained under the Mental Health Act 1983, they are unlikely to be able to give valid consent to Section 20 accommodation agreement. The parent should also not be treated as either having abandoned the child or being prevented for whatever reason from providing the child with suitable accommodation or care. The local authority should wait a short period without taking care proceedings in order to review the parents' progress in hospital in the event that their ability to care for their child might return. The social worker needs to discuss this with the parents' "responsible clinician". The courts have indicated that a reasonable amount of time maybe seventy-two hours equating this time period with that of the police using their police powers of protection.

Parents who are not fluent in English –
Where the parent is not fluent in English it is important that the parent has a proper understanding of what precisely they are being asked to agree to.

In exceptional cases it may be necessary for an interpreter to read the document to the parent in their own language. Where this happens they should also be requested to sign the form.

The Section 20 Agreement should then be translated into the parents' own language and the parents should re-sign the foreign language text, adding in the parents' language words to the effect that "I have read this document and agree to its terms".

Unaccompanied refugee/ asylum seeking child
An unaccompanied asylum-seeking child (UASC) is outside his or her country of origin, under 18 years of age, and has not been accompanied by a close relative when travelling to the UK. International law and guidance is clear that children can apply for asylum in their own right and should receive special protection in the process.

Children who arrive in the UK on their own should be supported by the Local Authority's children's services. Many of the pressures on asylum seekers are magnified for young people who arrive in the United Kingdom alone. Local authorities have a duty to provide additional support for asylum seeking and refugee children who are 'looked after' under section 20 of the Children Act 1989.

The corporate parent, either the Area Manager, Mash Manager or Head of Service signs the s20 if the young person is under the age of 16, if over the age of 16 the young person will sign their own consent form.

See Medway Children's Services Procedures Manual, Section 20 Guidance to view forms.