

Section 20 Guidance

SCOPE OF THIS CHAPTER

This procedure outlines guidance in respect of the effective use of section 20, also referred to as voluntary accommodation.

This guidance relates only to children under 16, as there are different considerations where young people aged 16 and 17 are accommodated under S20 (for example over 16's can go or stay in care under S20 against their parent's wishes and the L.A. can agree their care plan with them directly)

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1. Introduction

The purpose of this document is to provide guidance to social workers on the use of Section 20 (S.20) of the Children Act 1989

This guidance reflects recent case law following judicial concern regarding the use of S.20 agreements by local authorities and there has been a host of recent cases in which local authorities have been criticised for the following:

- accommodating children under S.20 agreements for unacceptably long periods of time before issuing proceedings;
- failing to obtain informed consent from the parent(s)
- obtaining consent to S.20 accommodation from parents who lack capacity;
- placing parents under undue pressure to consent to S.20 accommodation;
- failing to explain clearly to parents the meaning of S.20 and their rights under this provision;
- misunderstanding what S.20 requires by way of parental consent;
- exceeding and abusing the limitations of their powers under S.20

If the Local Authority places a child in S20 accommodation without meeting these necessary legal requirements, not only is the child/ren and parents separated unlawfully with the potential to cause emotional harm to the family but there is also the risk that at a later date the court may find the Local authority to have acted unlawfully resulting in a finding against the local authority for breaching of the Article 8 right to respect for t private and family life in respect of both the child/ren and their birth family.

2. What is accommodation under S.20

S.20 of the Children Act 1989 places a duty on the local authority to provide a child with somewhere to live because the child doesn't have a home, or a safe home when:

- there is no person who has parental responsibility for the child (e.g. an unaccompanied asylum seeking child);
- the child has been lost or having been abandoned; or
- 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.

3. Consent and Capacity

When considering S.20 it is the professional duty of the social worker at the time to be satisfied that the parent has the capacity to make an informed and freely given agreement. This means the social worker needs to consider, and evidence, the following:

3.1 Capacity

A parent must have capacity to agree to accommodation under S.20. When obtaining consent, every social worker is under a **personal** duty to be satisfied that the person giving the consent does not lack the capacity to do so; this cannot be dictated to then by another person. When considering whether a parent has capacity to consent, the social worker must consider whether the parent has the ability to:

- understand the information relevant to the decision
- retain that information
- use or weigh that information as part of the process of making the decision i.e. whether the child should be accommodated and
- communicate their decision

If the social worker has any doubts about the parent's capacity to agree to accommodation then no further steps should be taken to obtain the consent and advice should be sought from their team manager.

It is also not good practice to seek agreement to accommodate from mothers in the immediate aftermath of birth, especially where there is no immediate danger to the child and where there has been no pre-birth planning and in all probability the threshold is not met for any order. When a mother has just given birth to a child, her capacity to give any consent to accommodation should always be given additional scrutiny.

3.2 Fully Informed

The social worker must be satisfied that the consent is fully informed which means considering:

- does the parent fully understand the consequences of giving consent?
- 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?

- do they know that they can withdraw their consent at any time if they change their mind?

Social workers have a duty to clearly explain to parents what actions the local authority will take if consent to a S.20 is refused. This may include police protection, application for an Emergency Protection Order (EPO) or an Interim Care Order (ICO), depending on the urgency of the situation. If a social worker has explained this position to parents and they understand this and still do not consent to a S.20 arrangement, then legal orders should be sought, as described above. However the potential use of these powers must not be used as a threat if parents do not agree to S.20; to do so would mean that the parent(s) consent is not freely given.

If the social worker is not satisfied that the answer is yes to **all** of these questions, no further attempt should be made to obtain consent on that occasion, advice should be sought and further consideration should be given to obtaining legal advice.

3.3 Freely Given

Consent must be freely given. Unquestionably when a parent is asking for their child to be accommodated then consent is likely to be freely given. However, in other circumstances, the parent may wrongly assume that the local authority has power to accommodate a child and the social work. In these circumstances, consent is not freely given.

Unless absolutely necessary to ensure the safety of the child, workers or other family members, the police should not be present during discussions relating to agreeing to a period of S.20 accommodation. The presence of police during these discussions may lead the parent(s) to feel that their consent is not freely given.

3.4 Withdrawal of Consent

The parent(s) can withdraw their consent to S.20 at any time. Refusal to act upon this or to restrict the ability of the parent(s) to withdraw their consent in any way is unlawful. If there are concerns about the safety and welfare of any child being returned to their birth parent(s), a discussion with the Team Manager should take place and consideration given to seeking alternative legal orders.

4 Use of S.20 of the Children Act 1989

4.1 Accommodating a child under S.20 of the 1989 Children Act is very different from a child being removed from the care of their parent(s) against their will by way of a legal order. Under S.20 the local authority does not share parental responsibility for the child because the parent(s) have agreed to their child living elsewhere under S.20 agreement.

4.2 Sometimes a parent may refuse to allow the child home, but also refuses to agree to S.20 voluntary accommodation by the local authority. S.20 (5) of the Children Act 1989 states that a local authority “may provide accommodation for any child within their area (even though a person who has parental responsibility is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child’s welfare.” At sub-section (7) the Act goes on to say that “a local authority may not provide accommodation under this section for any child if any person who:

- a) has parental responsibility for the child and

- b) is willing and able to either provide accommodation for him/her **or** to arrange for accommodation to be provided for their child

Therefore, if a parent of a child refuses to have them home, but also won't agree for them to be accommodated, the local authority can provide the child/ren with accommodation under S.20 due to the parent not being willing or able to provide accommodation or to make other arrangements, provided they are not putting any other person forward.

4.3 Sometimes one parent with consent to S.20 accommodation and the other parent objects. Under these circumstances the local authority cannot provide accommodation for a child under S.20 if there is someone who has parental responsibility (PR) and who objects. If the authority believes that the child needs to be looked after and one parent objects, advice will need to be sought for an application to be made to Court.

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

S.20 only requires the consent of anyone who holds PR. Not every father will have PR for his children, however, he will if he is on the birth certificate of his child, registered after December 1st 2003, or was married to their mother when the child was born. Other people who MAY have PR for a child include their Special Guardians, people named in Child Arrangements Orders as a person that child lives with, civil partners, step parents and second same-sex parents (depending on circumstances).

4.4 The Voice of the Child

As in all aspects of our work, understanding the child's lived experience and ensuring that their voice is actively and pro-actively sought, considered and acted upon where practical and commensurate with the plan for the child is central to our work.

It follows therefore that every effort should be made to find out what the child thinks about S.20 accommodation and that due consideration is given to their wishes and feelings.

5 Record of Consent

There is no legal requirement for any S.20 agreement to be in writing; however, best practice is to ensure that parental consent is properly recorded and has a parental signature.

Please see Chpt. 2.1.9 for further guidance on the use of written agreements

