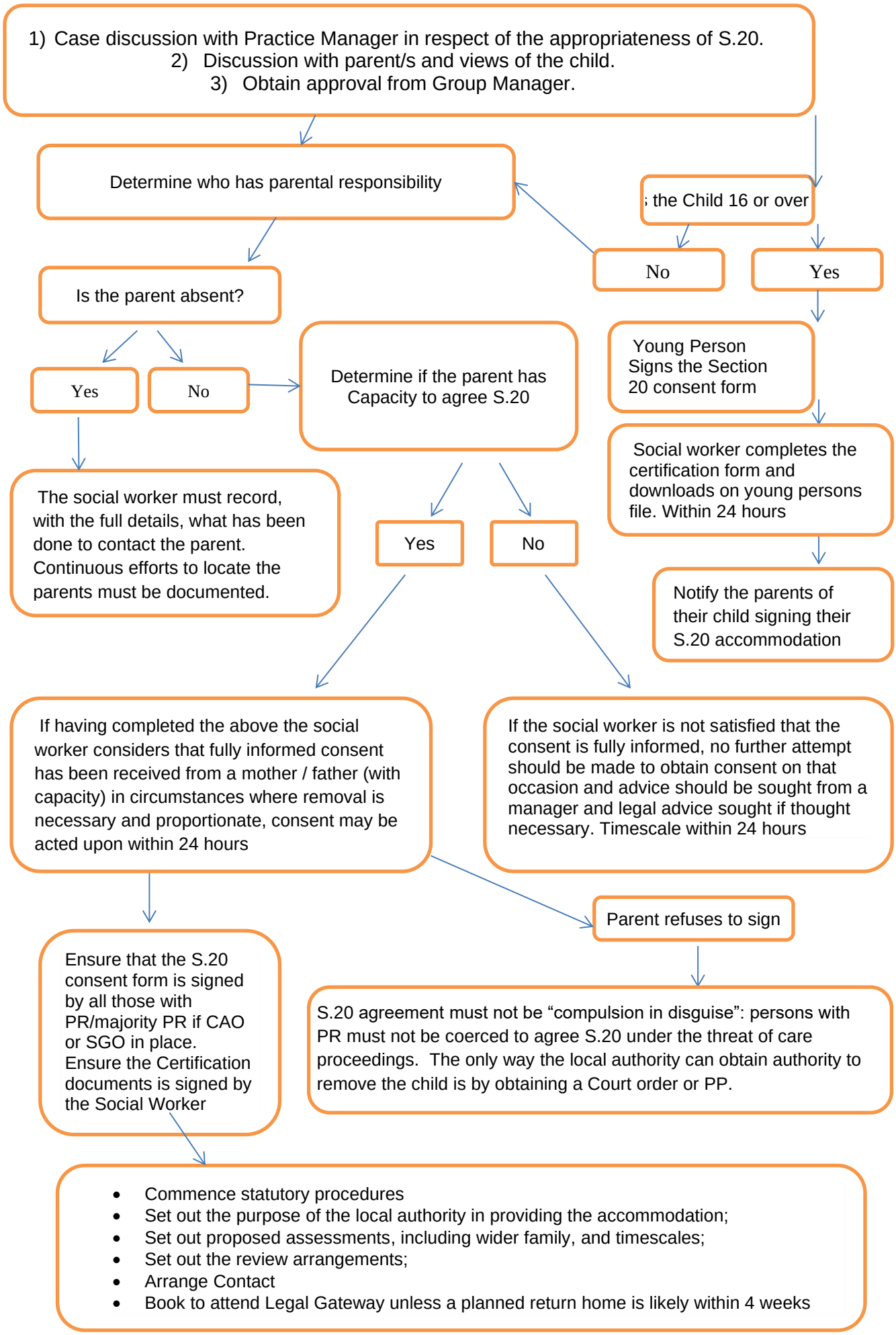
S20 CA 1989 – Practice Expectations and guidance


1) Case discussion with Practice Manager in respect of the appropriateness of S.20.
2) Discussion with parent/s and views of the child.
3) Obtain approval from Group Manager.
Determine who has parental responsibility
the Child 16 or over
No
Yes
Is the parent absent?
Yes
No
Determine if the parent has Capacity to agree S.20
Young Person Signs the Section 20 consent form
Social worker completes the certification form and downloads on young persons file. Within 24 hours
Notify the parents of their child signing their S.20 accommodation
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
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 S.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
S.20 agreement must not be "compulsion in disguise": persons with PR must not be coerced to agree S.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

1 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 s20 of the Children Act 1989 (CA89), for all children and young people up to the age of 18 and children with disabilities up to the age of 25 years. The details of s20 and the law are explained further within this practice guidance.

'Short breaks' (respite care) for families with disabled children can be agreed under s20(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.

s20 can be an effective means of supporting parents where there are no safeguarding concerns and proceedings are not necessary.

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.

Case law makes it clear that the local authority must also ensure that the parent/s have sufficient capacity to understand what they are agreeing to. Consent must be informed consent. It must never be 'compulsion in disguise'. An inability to evidence a fair consent process may ultimately result in a damage claim under s.7 of the Human Rights Act 1998. Particular care should be exercised when either or both of the parent/s has a learning disability or where there are language or communication difficulties.

s20 is most obviously appropriate in circumstances where the child or young person parent is unable to care for them for a short period. This may be due to a hospital admission or for short breaks for a child with additional needs, for example, where there are no family or friends able to provide temporary care. s20 may be appropriate for a child with disabilities where her/his parent/s are not able to manage the level of need but can share parenting successfully, sometimes over a longer period of time.

s20 is appropriate to use with unaccompanied children from abroad, including those seeking asylum. s20 may be the best legal framework to use in conjunction with family and friends' placements or semi-independent living arrangements.

Local authorities should satisfy themselves that voluntary agreements with parents for care away from home under either a child protection plan or a child in need plan, comply with the duties that flow from s20 such as regulating the placement and providing the support that a looked after child is entitled to under the relevant statute.

More commonly, s20 is used in circumstances where the relationship between the child and their parent(s) has broken down, and one or both of them feel unable to live together. In cases such as these, s20 can be used as part of a package of mutually agreed strategies to support repair to the relationship in order to enable the family to live together successfully.

s20 can also be properly used when the parent/s has always intended that their child/ren should be placed for Adoption and where the parent/s have consistently expressed their consent to accommodation, and where it is clear they have the capacity to do so. In such cases, consents under

s19 and s20 of the Adoption and Children Act 2002 should be obtained. There is a period of six weeks between the birth of a child and the minimum date a child can be relinquished, if the parent/s change their mind, a request for the child to return home must be responded to. However, an evaluation should be undertaken and include any factors that require a child protection risk assessment.

s20 continues to be an important legal option if a child's parent/s cannot identify suitable family friends or relatives to support them at a time of need.

Best practice in the use of s20 hinges on a relationship of trust between the family and local children's services, well planned care episodes, and continuity of the child's carer/s e.g., if the child is in regular respite care. Where needed, intervention and support should be put in place to enable a parent/s to resume safe care of their child/ren as soon as possible.

2 Care Planning for s20 children

Every child and young person subject to s20 will have a Care Plan which sets out what services and other help will be provided to them and their family.

The Care Plan will say what the Local Authority and other agencies will do to meet the child's needs including health, education, identity, family relationships and hobbies and sets out the plan for the child's future. It will describe the child's contact arrangements with family and friends and, where appropriate, how parents or guardians will help to look after the child.

Looked After Children should be able to participate in decisions about their care plan and healthcare and all relevant agencies should seek to promote a culture that promotes children being listened to and which takes account of their age.

The Care Plan (and Placement Agreement) should be written either before the child becomes looked after or within ten days if the placement is an emergency. The child, their parents or guardians and anyone caring for the child should be consulted in the writing of the Care Plan and receive a copy. Care Plans should be clear and easy to understand. The social worker should make sure that everyone knows what it means for the child and their family and what the plan for the child is going forward. The planning will include plans for education, contained in the child's personal education plan (PEP).

When a young person is 16 or over their Care Plan ceases and they have a 'Pathway Plan'. The pathway plan supports a young person as they transition from being looked after to leaving care. The pathway plan considers the health and development, education and training, employment, arrangements with family and money management. s20 ceases when a young person is 18, however a Pathway Plan can continue up until the young person is 25 if the young person requests continued leaving care support.

Best practice in s20 requires a local authority to promote effective contact between the child and her/his parents. This is also covered in the Fostering Services Minimum Standards (England) 2011, Standard 9. Part 4, Duty to promote contact (14) The fostering service provider must, subject to the provisions of the care plan and any court order relating to contact, promote contact between a child placed with a foster parent and the child's parents, relatives and friends unless such contact is not reasonably practicable or consistent with the child's welfare

Social workers are required to have complex and courageous conversations with parents about concerns they might have about the care of their children. In the main, we believe that they do this with skill, honesty, integrity and compassion. In this way, they establish relationships where difficult

messages are shared and heard. If conversations s20 accommodation take place in the right way, parents should feel that they have a painful decision to make, but that the decision is theirs.

3 Good Planning

The Role of the Social Worker in promoting Health and Education:

There are key statutory documents to support and inform the planning of health and education. **Please note** refer to the Health Assessment and the Personal Education Plan (PEP).

- It is important that at the point of accommodating a child, as much information as possible is understood about the child's health and education arrangements, especially where the child has health or behavioural needs that potentially pose a risk to themselves, their carers and others. Any such issues should be fully shared with the carers, together with an understanding as to what support they will receive as a result
- Ensure that any actions identified is progressed in a timely way by liaising with health and education relevant professionals
- In recognising that a child's experiences can impact upon their learning, the Social Worker should ensure they liaise with the Virtual School to ensure as far as possible this is minimised for the child.
- To support the Looked After Child's carers in meeting the child's health and education needs in a holistic way; this includes sharing with them any health/ education needs that have been identified and what additional support they should receive, as well as ensuring they have a copy of the Care Plan;
- Ensuring the child has a copy of their health and education plan.
- Where a Looked After Child is undergoing health treatment, to monitor with the carers how this is being progressed and ensure that any treatment regime is being followed
- To communicate with the carer's and child's health practitioners, including dentists, those issues which have been properly delegated to the carers
- Social workers and health practitioners should ensure the carers have specific contact details and information on how to access relevant services, including CAMHS.

4 The voice of the child and young person during s.20

- MOMO is a tool for children and young people that are in care, care leavers, involved in child protection or are a child in need. It is a way for young people to influence their Care Plan, express their views, share good news or make a complaint (Please refer to the Voice of the Child, MOMO and language guidance)
- Social Workers should encourage young people to use it specially to start or respond to a discussion or issue. The information provided can be download and this information input straight onto Mosaic.

5 Direct Work tools to support with communicating with the child or young person.

- Social Workers can access a variety of resources online. It is their responsibility and part of their ongoing personal development to keep themselves up to date in this area. Each Social Worker should also have access to a bag of tools. The Social Worker should be as creative as possible in order to create an environment where the child is able to connect with them in a meaningful way and enables them to feel safe and emotionally able to express themselves freely.

6 Scope

- This guidance is for all social workers and managers discharging the Local Authority's duties under s20 of the Children Act 1989. This guidance will be regularly reviewed to take into account any new national guidance and related case law.

7 The Statute (LAW)

- The statutory power to provide accommodation is set out in s20(1) CA 1989. This places a duty on the local authority to provide accommodation for a child in the following circumstances:

- 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.

8 What is s.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:

(a) Who is asking that the child be accommodated and why?
(b) 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)?
(c) If the local authority is proposing that the child be accommodated what are the views of those with PR?
(d) Has a Family Network Meeting taken place? (If not, the social worker needs to ensure one is arranged and should also take active steps to contact family members directly in agreement with parents to explore any alternative options).
(e) 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?
(f) 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 Practice Manager and /or Group Manager to consider other forms of protection and the need to seek legal advice.

9 Who can object to s20?

- s20(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, s20(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 s20(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.

10. Determining who has Parental Responsibility (PR)

The Social Worker must:

(a) 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.
(b) Make enquiries as to whether anyone else has acquired PR.
(c) 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.
(d) 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.
(e) 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 Mosaic.

11. Absent parent

If the absent parent or carer cannot be traced, the social worker must record, with their full details, what has been undertaken 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. *If Facebook searches are undertaken these should be recorded on the child's file for transparency.*

12. Assessing the parents' capacity in giving s20 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 behavior 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:

  (a) To understand the information relevant to the decision
  (b) To retain that information
  (c) 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.

13. 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 S.20 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 s20 (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:

(a) 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.

(b) 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.

(c) 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). We cannot be certain that we will be able to effect that. Under s20 the parent can remove their child or request their return home at any time.

(d) We are/will be providing a Letter Before Proceedings and strongly recommend that the parent/ carer seeks 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. Under s20 the parent can remove their child or request their return home at any time.

(e) 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 Interim Care Order, then that would change and the child would be in our care during court proceedings.

(f) **In some circumstances**: we give the parent 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 the family to sufficiently reduce the risk in a short time period, in which case we could avoid the parent 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.

(g) 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 s20 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.

14. Working with parents to support their right to withdraw s20 at any time:

(a) 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.

(b) 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 S.20 in law and the agreement, that consent can be withdrawn **at any time**.

15. 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 s20, 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.

16 Proportionate interim family arrangements, that do not amount to s20

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 s20. ***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. There must be clear expectations and understandings around s20, *for example if there is a family arrangement the social worker can not put conditions of parenting around the family agreement or set down specific expectations usually called 'contact'. These types of expectations cross over into the children being placed under s20. Another example is 'Grandparents can step in and offer support' that is different to a social worker requesting 'that the Grandparents care for the baby' – discussing a situation is different from suggesting that is what has to happen.*

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. On one occasion 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. You advise the friend or relative that if mother attended really still under the influence of alcohol, 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 out of hours for advice and possible welfare check). Follow up visits should take place within 24 hours to ensure that the children are safely back in their mother's care and a clear safety plan put in place. A family network meeting should also be called if one has not taken place already.

This is not removal under s20 but supporting the parent to make a decision and seek wider support that is in the children's interests.

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 s20. In cases of domestic violence, you may ask the protective parent to agree that they will not allow contact/unsupervised contact with the abusive parent, and this is also not s20. However, if concerns were such that <u>neither</u> parent could provide unsupervised care, this is s20 care, requiring all the necessary approvals and consent, as well as both Regulation 24, and Placement with Parents assessment (Regulation 19).

17 Review of the S.20 agreement and requirement for 'no delay'

The agreement is not a long-term agreement (unless exceptional circumstances for example the young person is aged 16 or over, and /or the young person is an unaccompanied asylum young person.

Children and Young People subject to s20 will be reviewed at Permanence Panel, where the decision to provide care under s20 has not already formed part of the **<u>Legal Gateway decision</u>** a recommendation of Permanence Panel may be to attend Legal Gateway.

A discussion should take place between the Senior Leader and the Group Manager in respect of the appropriateness of s20, if there is a clear plan to return home the child or young person should be presented to permanence panel within a maximum of 4 weeks, if there is a concern that s20 may be withdrawn and the child or young person is at risk a referral to Legal Gateway should take priority. .

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.

18. Review of the s20 agreement for longer-term care plans

Only in exceptional cases is it likely that the care plan would remain S.20 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 that cannot be effected at home, and the parent remains very involved in care planning and positive exercising of their parental responsibility. Unaccompanied Asylum Children 16 or older would remain s20.

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
- West Sussex Permanence Tracking Panel 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 s20 Agreement should be re-signed annually prior to the review to inform the care plan and recommendations of permanence.

19 S20 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 S20 Agreement
2) The Certification by the social worker upon obtaining S20 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 S.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 arrangement order or is a special guardian);

20 Provision of accommodation under S20 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 persons s20 Agreement
2) The Certification by the social worker upon obtaining s20 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 the Looked After Review 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.

21 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 s20, including s20(1) there being no person who has parental responsibility for him, or there 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 s20 accommodation unless the assessment shows otherwise.

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, 20.3.

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, 20.4.

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 s20. Whether or not the assessment indicates that a young person requires s20 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 s20 where it is offered, or are aware of their rights to complain or seek review of the assessment or decision if s20 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

22 Decision to cease to provide accommodation to children and young people who have been accommodated under s.20 of the 1989 Act.

Children may be removed from accommodation under s.20 by their parents as is their right. In these circumstances Practice Manager and Group 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 Service Lead in West Sussex (Regulation 39.4)[1]. *Senior Leaders should be consulted within 24 hours of any plan that considers ceasing providing s20 accommodation, this must be clearly recorded on Mosaic.*

Where the local authority is considering ceasing to look after a young person aged 16-17 years who has been accommodated under s20, the decision must not be put into effect until it has been approved by the Director of Children's Services (Regulation 39.5). *Whilst the young person can convey that they wish for their s20 to be withdrawn, the agreement by the Director to cease s20 services must be clearly recorded on the child's file. Senior Leaders should be alerted to the considered plan within 24 hours of the decision being considered and the Senior Leader must endorse / consider the decision prior to the Director's involvement.*

In both cases the 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).

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

23. s20 and a Newborn 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
- 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 s20 accommodation, Group 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 s20 consent for separation is obtained without proceedings being issued, the court will expect that proceedings should be issued within five working days.

24. Recording

It is the responsibility of social workers to record all discussions regarding the s20 agreement on Mosaic. The s20 agreement and certification consent must be uploaded on Mosaic 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.

25. s20 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[2]. 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 [3] in advance of the placement being made, or in exceptional cases on the same day as the placement.

The child's social worker will initially visit the home and assess the suitability of a connected person, speak to the child and understand their views. The assessment must consider (not limited to):

- The capacity to care for the child, to protect the child from harm, that the home is stable and suitable in relation to the child's age, carers can promote attachments and positive contact with parents, if appropriate. Their health, including mental health, medical history, family relationships, family history and upbringing is considered along with any difficulties and disabilities.

- PNC checks, local authority checks, employment and source of income

In these circumstances a S.20 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.

Where the social worker is in doubt about the carers ability to meet the child's needs, they must consult with their line manager before submitting the assessment for approval.

26. 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 s20 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.

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

27. 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 s20 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".*

28. 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 are 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 s.20 of the Children Act 1989.

See also:

- Homeless Young People 16/17 year old
- Homeless Young People leaflet
- The Voice of the Child Practice Guidance
- Child and Family Assessment Practice Guidance
- Child and Family Assessment checklist
- Scheme of Delegation
- IRO Practice Guidance
- IRO Dispute Resolution
- Management oversight checklist
- Missing guidance
- Young People remanded in Care

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