**GUIDANCE NOTE**

**SECTION 20 OF THE CHILDREN ACT 1989**

**CAPACITY TO AGREE TO SECTION 20 ACCOMMODATION**

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

Every parent or person with parental responsibility who is able to make decisions has the right to agree to S20 accommodation for their child. Being able to make decisions is described as “having capacity.” If a parent or person with parental responsibiluty does not have “capacity”, they cannot give genuine consent to S20 accommodation.

The issue of “capacity” is explained in sections 2 and 3 of the Mental Capacity Act 2005. <https://www.legislation.gov.uk/ukpga/2005/9/section/2>

If an adult has either a permanent or temporary problem with their mental functioning, they will be said to “lack capacity” to make a decision if they:

* Cannot understand the information which is relevant to the decision, or
* Cannot retain the information about the decision, or
* Cannot use or weigh up that information as part of the decision making process, or
* Cannot communicate their decision, by speech, sign language or any other means

Social Workers are required to be satisfied that the parents or person with parental responsibility have capacity to give their consent.

“Capacity” can change over time and may depend on what kind of decision a parent or person with parental responsibility is being asked to make. If there is doubt about whether or not someone has capacity, then an expert assessment will be needed and the Social Worker should take urgent advice.

A person’s “capacity” can fluctuate. For example, somebody who has mental health problems but who normally has capacity to make decisions may lose that capacity in moments of very high stress. If there is any doubt about the ability of a person to provide ongoing consent, then legal advice should be sought urgently.