JUDICIARY OF
ENGLAND AND WALES

**HIS HONOUR JUDGE CLIFFORD BELLAMY**
DESIGNATED FAMILY JUDGE FOR LEICESTER

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

1. This Practice Guide has been agreed between the Designated Family Judge for Leicester, Leicester City Council and Leicestershire County Council. It sets out best practice to be followed in the use of section 20 of the Children Act 1989 as a child protection measure for the safeguarding of children in Leicester and Leicestershire. It should be read alongside the Leicester and Leicestershire Pre-Proceedings Protocol.

**Preamble**

2. It is acknowledged that when a child is accommodated before care proceedings are issued:
   (a) the court has no jurisdiction to scrutinise the local authority's interim care plan for the child[1] or to control the planning for the child and prevent or reduce unnecessary and avoidable delay;
   (b) the court has no power under section 34 of the Children Act to determine issues relating to parental contact with the child;
   (c) the child will not have the benefit of the appointment of an independent Children's Guardian to represent and safeguard his interests;
   (d) the child is not entitled to legal aid and is therefore unlikely to have legal representation[2]; and

[1] Regulation 4(2) of the *Care Planning, Placement and Care Review (England) Regulations 2010* requires that where a child is accommodated under section 20 a care plan must be prepared by the local authority 'before C is first placed by the responsible authority or, if it is not practicable to do so, within ten working days of the start of the first placement'.
[2] The local authority will be required to appoint an Independent Reviewing Officer for the child – section 25A of the Children Act 1989.

(e) unless a pre-proceedings meeting has been convened, the parents have no entitlement to legal aid and are, therefore, unlikely to have legal representation.

These factors clearly give rise to scope for unfairness in the use of section 20.

3. In the last three years the use of section 20 has been the subject of judicial scrutiny and criticism in a number of cases. This has led to judicial guidance on the proper use of section 20.[3] This Practice Guide reflects on that judicial guidance.
4. The misuse of section 20 has in the recent past led to awards of damages under section 7 of the Human Rights Act 1998. A key objective of this Practice Guide is to ensure that in their use of section 20 local authorities treat children and families fairly and act in accordance with the law.

**Guidance**

5. Accommodation of a child under section 20 is frequently referred to as 'voluntary accommodation'. This description highlights the absolute importance of recognising that a child can only be accommodated under section 20 if a parent with parental responsibility consents to his or her child being accommodated.
6. In this context, 'consent' means informed consent. This requires the social worker obtaining the parent's consent to satisfy herself that the parent has a clear understanding of what she is being asked to consent to and that she is capable of giving consent. It has been said that consent 'must not be compulsion in disguise'.[4]
7. Particular issues arise when seeking to obtain parental consent to the accommodation of a newborn baby immediately after birth. Where the local authority's interim plan for such a child is to remove the child from her mother immediately following birth and it seeks to do so with parental consent under section 20, it is of the utmost importance that the guidance given by Hedley J in *Coventry City Council v C, B, CA and CH [2013] 2 FLR 987* is complied with. That guidance provides that,

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[3] Particular regard should be had to the decision of the Court of Appeal in *Re N (Children)(Adoption: Jurisdiction)* [2015] EWCA Civ 1112 and in particular the review of the use of section 20 set out in the judgment of Sir James Munby P at paras 157 to – 171. It is particularly appropriate to highlight the warning given at para 171 that: 'The misuse and abuse of section 20 in this context is not just a matter of bad practice. It is wrong; it is a denial of the fundamental rights of both the parent and the child; it will no longer be tolerated; and it must stop. Judges will and must be alert to the problem and pro-active in putting an end to it. From now on, local authorities which use section 20 as a prelude to care proceedings for lengthy periods or which fail to follow the good practice I have identified, can expect to be subjected to probing questioning by the court. If the answers are not satisfactory, the local authority can expect stringent criticism and possible exposure to successful claims for damages.'

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

‘i) Every parent has the right, if capacitous, to exercise their parental responsibility to consent under Section 20 to have their child accommodated by the local authority and every local authority has power under Section 20(4) so to accommodate provided that it is consistent with the welfare of the child.

ii) Every social worker obtaining such a consent is under a personal duty (the outcome of which may not be dictated to them by others) to be satisfied that the person giving the consent does not lack the capacity to do so.

iii) In taking any such consent the social worker must actively address the issue of capacity and take into account all the circumstances prevailing at the time and consider the questions raised by Section 3 of the 2005 Act, and in particular the mother's capacity at that time to use and weigh all the relevant information.

iv) If the social worker has doubts about capacity no further attempt should be made to obtain consent on that occasion and advice should be sought from the social work team leader or management.

v) If the social worker is satisfied that the person whose consent is sought does not lack capacity, the social worker must be satisfied that the consent is fully informed:

a) Does the parent fully understand the consequences of giving such a consent?

b) Does the parent fully appreciate the range of choice available and the consequences of refusal as well as giving consent?

c) Is the parent in possession of all the facts and issues material to the giving of consent?

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

vii) If the social worker is satisfied that the consent is fully informed then it is necessary to be further satisfied that the giving of such consent and the subsequent removal is both fair and proportionate.

viii) 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?

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

x) In the light of the foregoing, local authorities may want to approach with great care the obtaining of Section 20 agreements from mothers in the aftermath of birth, especially where there is no immediate danger to the child and where probably no order would be made.

8. As a matter of good practice, unless it is not practicable to do so legal advice should normally be obtained before inviting a parent to consent to his or her child being accommodated under section 20.
9. If a parent objects to his or her child being accommodated under section 20 the local authority may only lawfully remove the child from parental care with the authorisation of a court. Such authorisation may take the form of an Emergency Protection Order or an Interim Care Order.
10. There is in law no requirement for consent under section 20 to be obtained in or evidenced by writing.[5] However, it has been said that 'a prudent local authority will surely always wish to ensure that an alleged parental consent in such a case is properly recorded in writing and evidenced by the parent's signature'.[6] In future, obtaining written consent should be regarded as standard practice.
11. There is no prescribed form to be used for recording consent under section 20. As a minimum, written consent should contain the following information:
    (a) the name or names of the parent(s) giving consent;
    (b) the name(s) and date(s) of birth of the child(ren) in respect of whom consent is being given;
    (c) the name and status of the professional obtaining parental consent;
    (d) the date, time and place at which the consent form is completed and signed;

[5] See *R (G) v Nottingham City Council and Nottingham University Hospital* [2008] 1 FLR 1668, para 53
[6] See *Re N (Children)(Adoption: Jurisdiction)* [2015] EWCA Civ 1112, para 166

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

12. If written consent is recorded in a handwritten document it is important that the document is legible.
13. Section 20(8) provides that 'Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.' A written form of consent must make it clear that the parent can 'remove the child' from the local authority accommodation 'at any time' and should not seek to impose any fetters on the parent's right under section 20(8).
14. Whether handwritten or typed the document must be clear and precise as to its terms and drafted in simple and straight-forward language which the parent can readily understand.
15. In any case in which the first language of the parent is not English it is important that:
    (a) a parent is assisted by an appropriately qualified interpreter in any discussions leading to parental consent being given;
    (b) a translation of the form of consent is provided to the parent concerned at the time it is signed or, if that is not possible, within three working days thereafter;
    (c) if it is not possible for a translation of the form of consent to be prepared at the time consent is given, the original form of consent should contain a statement confirming that the form of consent has been read over to and explained to the parent in his or her first language;
    (d) when available, the parent should sign the translated version of the form of consent, adding, in the parent's language, words to the effect that 'I have read this document and I agree to its terms.'
16. When consent is obtained orally and is not evidenced in writing the social worker must ensure that she makes a note in the child's records of the circumstances in which consent was obtained and the reasons why consent was not obtained in writing. In such circumstances the fact that the parent has consented, an explanation of the effect of that consent and confirmation of the parent's rights under section 20(8) should be communicated to the parent concerned (translated into the parent's first language if necessary) within five working days.

17. Whether a child is accommodated under section 20 prior to or during the course of care proceedings there is no power to require that a parent must give a period of notice if she wishes to withdraw his or her consent. Nothing should be said to the parent to suggest the contrary and no statement to the contrary should be contained in the written form of consent.
18. The ability to accommodate a child under section 20, with parental consent, is not intended to be a long-term alternative to care proceedings. It is intended as a short-term measure pending the commencement of care proceedings. The point has been made that 'Section 1 (2) Children Act 1989 makes clear the general principle that any delay in determining any proceedings in which any question with respect to the upbringing of a child arises is likely to prejudice their welfare. That principle applies as well in the context of any delay in issuing proceedings in circumstances such as this case.'[7]
19. If it is likely to be necessary for the Family Court to make findings concerning the causation of injuries sustained by an accommodated child, 'short-term' means no longer than is necessary to enable the local authority to prepare and issue an application for a care order. In such circumstances it is imperative that care proceedings are issued promptly, particularly if there are complex medical issues as a result of which the court is likely to give permission for the instruction of independent medical evidence.
20. In any case in which a child has been accommodated under section 20 for more than three months the case should be reviewed by senior management. Processes should be put in place to ensure that this occurs in a timely way.

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[7] Theis J in *Medway Council v Mother & Ors* [2014] EWHC 308 (Fam), para 14.