

BRIEFING NOTE
SECTION 20 CHILDREN ACT 1989

There is a duty on the Local Authority to provide accommodation to children identified as children in need resident in its area who appear to require accommodation. Children in need are those children who without the provision of services:

- Are unlikely to achieve or maintain or have the opportunity to do so, a reasonable standard of health or development.
- Their health or development is likely to be significantly impaired, or further impaired, or
- Is disabled.

Once they have met the criteria of being “in need” it has to be determined whether or not they require accommodation. If they do require accommodation they become “looked after” and the Local Authority’s duties to looked after children are triggered. Case law *London Borough of Southwark re D (2007) EWCA Civ 182; ChA 1989, section 22 (2)*.

Distinguishing between s.17 duties and s.20 duties

Section 17

A general duty on each local authority to:

- Safeguard and promote the welfare of children within their area who are in need, and
- So far as is consistent with that duty, to promote the upbringing of such children by their families.

This duty can be satisfied by the Local Authority providing a range and level of services that are appropriate to those children’s needs. The services can be practical or financial in nature. Section 17 services can include accommodation. Careful

analysis must take place in each case as if on the facts of the case a duty has arisen under the Children Act Section 20 to provide the accommodation then the child must be regarded as being accommodated under Section 20 and looked after. If the Section 20 duty arises factually the Local Authority cannot opt out to provide accommodation under Section 17. This is a potential area of dispute. *Case Reference R (on the application of H) v Wandsworth London Borough Council; R (on the application of Barhanu) v Hackney London Borough Council; R (on the application of B) v Islington London Borough Council [2007] EWHC 1082 (Admin)*.

Before providing services either under Section 17 or 20 the local authority must ascertain and consider as far as is reasonably practicable the wishes and feelings of the child, bearing in mind their age and understanding regarding the provision of services.

The section 20 duty refers specifically to local authorities providing accommodation to children in need in their area. The duty applies to the local authority even where another agency is or may be assisting with providing accommodation. *Case reference R (on the application of G) v London Borough of Southwark [2009] UKHL 26*.

The Section 20 Duty

This applies to children who are in the area of the local authority, note: the child needs to be physically present. *Case Reference R (on the application of Stewart) v London Borough of Wandsworth and another [2001] EWHC Admin 709*.

The local authority will have a duty to a child under section 20 if when considering the facts of the case are answered in favour of the child.

- Is the person a child?
- Is the child a child in need?
- Is the child within the local authority's area?
- Does it appear to the local authority that the child requires accommodation?

- Is that need the result of:
 - there being no person with parental responsibility for the child, for example, where parents are deceased,
 - the child having been lost or abandoned, or
 - the person who has been caring for him being prevented from providing him with suitable accommodation or care?

- what are the child's wishes and feelings regarding provision of accommodation for them?
- what considerations, in light of the child's age and understanding should be given to those wishes and feelings?
- does anyone who has parental responsibility for the child who is willing to provide accommodation object to the local authority's intervention?
- if there is an objection by someone with parental responsibility, is there agreement from an individual who has a child arrangements order setting out where the child should live to the local authority's intervention?

NB: It should be borne in mind that if there is a dispute as to the age of the person and whether or not they are a child this will need to be determined by the court.

Case References: R (on the application of G) v London Borough of Southwark; applying R (A) v Croydon London Borough Council [2008] EWCA Civ 1445

When a local authority should intervene

A local authority shall provide accommodation under s.20 where:

- the child has no one with parental responsibility for them,
- the child has been lost or abandoned,
- the person who has been caring for the child being prevented (whether temporarily or permanently and for whatever reason) from providing him with suitable accommodation or care.

The child is a child in need who is aged over 16 and whose welfare the local authority consider would be seriously prejudiced if the child is not provided with accommodation.

Under sections 20(1) and 20(3) the local authority have the discretion to provide accommodation where the local authority considers to provide accommodation would safeguard or promote the child's welfare – even where there is a person with parental responsibility willing and able to care for the child. This needs to be assessed on a case by case basis. A person with PR may be willing and able to care for the child, but the local authority's assessment may be that the child's welfare would be harmed or at risk of harm by being placed with that person even though they are willing and able to offer accommodation. Therefore, a local authority may wish to provide accommodation in any event. However the local authority will still only be able to accommodate the child if a person with parental responsibility consents. If there is no consent and the local authority continues to wish to accommodate, the local authority will need to seek a care or emergency protection order.

This also applies to any child between the ages of 16 and 21 and who the local authority could accommodate in a community home.

Children Act s.20(4) and s.20(5).

Local authorities should be mindful that they may provide accommodation to a child if any person with PR for the child objects and is willing and able to provide or arrange for the child to be provided with accommodation (unless the child is aged 16 or over and agrees to being provided with accommodation).

If there is a dispute as to whether the local authority should provide accommodation an individual should first go through the local authority complaints procedure. In the event they remain dissatisfied there is potential for them to challenge through Judicial Review. It is therefore very important that decisions are properly documented and based on sound assessments which are well evidenced and analysed.

Factors to consider when deciding whether to provide accommodation

- Consider the child's current circumstances carefully to see if there is an alternative to the child being accommodated such as being cared for by a family member or friend by way of a family arrangement or under an appropriate private law order such as child arrangements order.
- Consider whether providing practical or financial support to a child in need could negate the need for accommodation to be provided.
- Consider the resource they have available and whether the accommodation they provide would be appropriate to the needs of the child in the circumstances, for example, being in an appropriate location so the child could continue to attend the same school.
- Consider the wishes and feelings of the child concerned.
- Consider carefully in cases where a decision is being made to offer accommodation due to safeguarding concerns whether or not a person with PR will consent to accommodation. Without consent an application to court for an EPO or a Care Order may be needed.
- Consider carefully whether the holder of parental responsibility has capacity to consent to accommodation being provided by the local authority.

Consent to accommodation

Where there is more than one holder of PR for a child, one holder consents where another does not, a local authority may not provide accommodation if the objecting holder of PR is willing and able to provide or arrange accommodation. This can be overridden only if there is a person who has a child arrangements order, special guardianship order or has care of the child by virtue of an order under the court's inherent jurisdiction and they provide consent, unless the child is over 16.

If no consent is forthcoming and the local authority is of the view that accommodation is required to safeguard the child's welfare, the local authority should consider an application for a care order or emergency protection order or other emergency powers under the 1989 Act.

Capacity

This is an emerging issue in relation to local authorities providing accommodation in respect of a parent's capacity to provide consent to a local authority providing s.20 accommodation. If a local authority is in doubt about a parent's capacity to provide consent and considers that accommodation is appropriate, a local authority should make an application for a care order or emergency protection order. Local authority social workers/practitioners should take the following into consideration:

- Social workers have a personal duty (which cannot be dictated by others) to be satisfied that the person giving consent to accommodation has the capacity within the meaning of the Mental Capacity Act 2005 to do so,
- If social workers have doubts regarding a parent's capacity, no further attempts should be made to obtain consent and advice should be sought from a team manager or management,
- Social workers must ensure that consent is informed consent including ensuring that parents understand the consequences of giving consent, the range of choices available, the consequences of refusal and ensuring parents are in receipt of all facts and issues that are material to giving consent.

Social workers should also consider the following practical points:

- What is the current physical and psychological state of the parent?
- If they have a solicitor, have they been encouraged to seek legal advice and/or advice from family and friends/
- Is it necessary for the safety of the child for them to be removed at this time?
- Would it be fairer in this case for the matter to be subject of a court order rather than an agreement?

Case law emphasises that great care should be taken by local authorities in obtaining consent to accommodation from parents where there are potential issues with capacity, such as mothers who have just given birth or parents with mental

health or learning difficulties or disabilities, especially where there is no immediate danger to the child and probably no order would be made.

Case law Coventry City Council v CBCA and CH (2012) EWHC 2190 Medway v A and others (Learning Disability; Foster Placement) [2015] EWSC B66.

If a local authority does not take the appropriate and necessary steps to obtain a valid s.20 consent or relies on a consent provided in breach of the steps outlined above, the local authority will be at risk of a claim for a declaration that the parents and potentially the child's human rights have been breached and a subsequent claim for damages. *Re H (A Child: Breach of Convention Rights: Damages) [2014] EWFC 38.*

Withdrawal of consent to accommodation

A person who has parental responsibility for a child can object to a child's continued accommodation at any time without notice. In the event the local authority seeks to prevent removal, they will need to apply for a care order or emergency protection order or seek the police to invoke their police protection powers.

Alternatively, the local authority could support a holder of PR who consents to the child's continued accommodation to seek a child arrangements order as a holder of PR cannot object to a child's continued accommodation if a person who holds a child arrangements order consents. However it is not open to a local authority to use an order under s.8 to prevent a child's removal from accommodation.

A section 8 order is one of the following:

- a child arrangements order as to who a child should live and/or spend time with,
- a specific issues order which requires an individual to do something,
- a prohibited steps order which requires an individual not to do something.