Section 20 – Guidance Notes for Social Work Practitioners

This guidance relates only to children aged under 16, as there are different considerations whether young people aged 16 and 17 are provided an alternative home under s.20 (For example over 16's can go or stay in a local authority identified provision under s.20 against their parent's wishes and the local authority (LA) can agree their plan with them directly).

Contents:

1. What is Section 20 of the children Act 1989?

Section 20 (S.20) of the Children Act 1989, is about a local authority - LA (social services/children's services) providing an alternative home for children who do not have somewhere suitable to live. It is sometimes called 'voluntary care' or 'voluntary accommodation' because usually parents must give agreement to the child being provided an alternative home.

Children with nowhere to live include those who have no one to look after them, for example, refugees who have travelled to the UK on their own (Unaccompanied Asylum-Seeking Children). They may also include those whose parents can't look after them for a period of time, due to illness or other difficulties.

S.20 'accommodation' is not just housing. It is taking a child into the care system by agreement of a parent with parental responsibility, rather than by court order. The local authority is responsible for holistically providing for that child while they are under S.20.

This guidance note is general guidance only and must not be treated as legal advice. Parents are strongly encouraged to seek legal or other independent advice in this matter.

S.20 relates to the local authority's (LA's) duty to provide a child with somewhere to live because the child does not currently have:

- A home
- A home environment that is deemed as safe;
- There is not anyone who has parental responsibility for him/her (for e.g. an asylum-seeking child);
- The child has been lost or abandoned;
- The person who has been caring for the child cannot provide him/her with a safe and suitable home.

The LA will ask parents to sign a 'section 20 agreement'. This means that the parents are agreeing to let their child/children being cared for by the LA, usually in an alternative home of a foster parent, whilst the LA carries out further assessments and/or the parent/s get more time to resolve the concerns.

The child is therefore provided somewhere else to live in an alternative home by the LA, with the parent's consent, without the need for going to court. This is a temporary arrangement until more permanent plans are made for the child. A legal planning meeting should be arranged to determine whether to initiate pre-proceedings process or care proceedings.

2. What is the Local Authority's responsibility under S.20?

The LA should ensure that:

- All those with parental responsibility consent to S.20 agreement (see below Point 5 for exceptions)
- The form in which the parents' consent is recorded - although there is no legal requirement for the agreement to be evidenced in writing, the courts have commented that a prudent local authority will

surely always wish to ensure that the alleged parental consent is properly recorded in writing and evidenced by the parent's signature.

- The parent/s consenting has the 'capacity' to do so. *(see below 'mental capacity guidance, page 8*)
- The parent/s are clearly informed of the LA's concerns and how the LA will support through assessments and intervention
- The parent/s fully understand the contents of the S.20 agreement and are allowed sufficient time and space to ask any questions that they have.
- Consent must be given freely by a parent – that means that it must NOT be given because the LA says that if this is not provided, they will issue care proceedings. There must be no duress or pressure placed upon the parent at any point
- Appropriate arrangements are made ensuring family time/contact between the child and parent/s
- The parent/s understand that **consent to S.20 can be withdrawn at any time**. LA be clear with the parent/s that S.20 agreement does not require them to give any notice prior to the withdrawal
- If a parent does not understand English, or doesn't speak it well, you must try and use a translated S.20 agreement. If this is not possible you **must use an interpreter** and you must include confirmation of that on the agreement
- A parent is offered the opportunity to speak to a solicitor by telephone, or in person if needed, prior to signing a S.20 agreement.

Proactive Planning and involvement of parent/s

LA must ensure that:

- Parents are actively involved in all decisions for the child/ren whilst supported by the LA
- Remember LA does NOT have PR for the child under S.20 and MUST involve parents
- Appropriate arrangements are made to ensure there is family time (contact) between the child and parent/s
- The section 20 arrangement is reviewed regularly, including child centred review meetings chaired by an independent reviewing officer
- Contact details of family or friends are obtained from the family and assessments as alternative carers are conducted. This includes discussing Family group conference at an early stage
- child's birth certificate is sighted by the social worker to determine who has parental responsibility and a copy kept on mosaic/child's electronic files.
- it is not appropriate to leave a child in S.20 accommodation for a long period of time
- legal advice is sought at an early stage, through referral to a Legal Planning Meeting (LPM) as whether the pre-proceedings process should be utilised, or care proceedings should be issued.

Parental Responsibility

Social worker must ensure that the person providing consent for S.20, has the authority to do so Are they:

- A mother/married father/father whose name is on the birth certificate of the child post 1st December 2003/parental responsibility order/parental responsibility agreement/child arrangements order giving a father residence of a child
- Any other person who has a Residence Order or a Child Arrangements Order granting them residence of the child/ren or a person who has a special guardianship order in their favour
- A person caring for a child under a guardianship arrangement
- Someone who has care of the child by a special order of the High Court (wardship – this is rare)

3. What happens if the parent/s do not sign S.20 agreement?

- If the parent/s do not agree to S.20 arrangement, there are only two lawful options available to a local authority to safeguard a child – either asking the police to exercise their powers to remove the child for a short period of time (up to 72 hours, under sec.46 of the CA, 1989 – Police Protection) or by making an application to the court for an interim care order.

4. What happens if one parent agrees and other does not?

- Sometimes, one parent agrees to S.20 agreement but the other parent objects.
- S.20 (7) says that the local authority cannot provide alternative home for a child if there is someone who has parental responsibility for the child and who objects. If the LA thinks that a child needs to be looked after by them and one parent objects, they will usually need to apply to court for an order to allow that (or in an emergency the police may remove the child temporarily under sec.46 of the CA, 1989 under police protection powers)
- If a parent cannot be found, this does not prevent the S.20 being used if the other parent/anyone else with PR agrees, but as a matter of good practice, a LA 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 child/ren, but he will if he is on the birth certificate of the child/ren, registered after 1st December 2003, or was married to their mother when the child/ren was/were born. Other people who may have PR for a child include their Special Guardians, people who are named in a child arrangement order as a person that the child lives with.

5. Use of S.20 in mother and baby alternative homes

- In circumstances where the LA is working with a parent with a child, usually a new born, where opportunity is given to the parent to work with the LA under pre-proceedings process, decision may be made to support the parent in a mother and baby alternate home where a foster parent or other staff provides necessary support to the mother including a parenting assessment.
- If the parent is engaging well under the pre-proceedings process, sometimes S.20 may be used to prevent the parent leaving the alternative home with the child. This is to prevent any risk to the child in parents' sole care. A S.20 written agreement is put in place outlining the expectations from the parent to work along with the LA.
- This must be a temporary arrangement until long term care plans are put in place or until care proceedings are issued.

6. Use of S.20 with a new-born baby

The courts have said that S.20 can be used to safeguard babies, but clearly the social worker (SW) has to take extra care to ensure the parents understand what is going on and are not feeling under pressure to 'agree' to something they don't want. The courts have also made it plain that the practice of having a police officer present or nearby during discussions about s.20, with the explicit or implied threat of "if you don't agree, the police officer will remove the child" is unacceptable. Therefore, if a SW has serious concerns about the safety of a new-born baby, it is likely to be a better course of action to seek a court order rather than S.20 accommodation. The courts have also said, where a baby is being removed from parent/s at birth for the baby's immediate protection, care proceedings should be issued within five days, unless there are exceptional circumstances not to do so. (Nottingham City Council v (1) LM (2) DW (3) LW (By her Children's Guardian) (2016 EWHC 11). S.20 is not usually appropriate in these circumstances unless the protection needed is only short-term and there is no welfare or parenting capacity issue in relation to the parent with parental responsibility, who can be supported to achieve the degree of protection needed for the child on the basis of a clear safety plan.

7. Use of S.20 when a child goes to live with family/friends

- If a child or young person goes to live with a family or friends of family, this is not always Sec.20
- Such an arrangement will become S.20:

- If the LA is concerned about the child's welfare in parent/s' care and takes a central role in making arrangements for the child to live with someone else (friends/family)
- If the LA has determined that assessments need to be completed before the child can safely live with parents
- If the LA is actively involved in asking the child to live elsewhere, whilst further assessments are undertaken on parent/s
- The LA would be considered to have taken a central role or be actively involved, if:
  - a written agreement is signed in the discussions for the child to be cared by an alternative family member,
  - family time/contact is strictly regulated between child and the parents,
  - discussions are initiated with the alternative family member regarding child's long-term care.
- Such arrangements as to how and when the child came to live with family/friends must be clearly recorded on mosaic with management oversight

Such an arrangement is NOT S.20

- If, despite the family being open to social care, such arrangement is made by the parents
- If LA are not concerned about the child's welfare in parent's care (there may be concerns but not significant enough to suggest that child cannot live with the parent/s)
- If the child/young person themselves decide to live with family/friend and does not wish to return to the family home, despite the parent wanting them to return home (in such circumstances, practitioner to consider advising parent and the family where the child is living, to seek legal advice to formalise child's living arrangements)
- If there are relationship difficulties between parent and child, whilst LA may support the family to repair this, and the parent may determine an alternative family member for the child to live with temporarily or for a period of time – this is NOT ALWAYS a Sec.20 arrangement. LA needs to consider if they are so concerned that the child cannot live with the parent due to reasons attributed to parental care and therefore needs to live elsewhere

Each family's circumstances will be different and unique; decision needs to be taken based on individual circumstances. If in doubt, seek legal advice through a referral to Legal Planning Meeting.

8. When does Section 20 end?

- There is no legal time limit on S.20, but the Courts have started to criticise Local Authorities for allowing S.20 agreements to go on for too long. S.20 should only be used for the time needed to allow longer term decisions to be made about a child's care.
- If a parent with parental responsibility objects to a child remaining under S.20, then the arrangement comes to an end. The parent is not required to give any notice to withdraw S.20.
- Where a S.20 is a long-term care plan, usually for a child with disability, the S.20 agreement should specify arrangements for spending time at home for e.g. a child may spend weekends at home**. If spending time at home on weekends/holidays etc. is pre-agreed arrangement and part of the S.20 agreement, this does not end S.20.**
- However, **if there is no pre-agreed arrangement** for the child to spend time at home under the S.20 agreement, **and if the child returns home, this may end S.20 arrangement**. It is the social worker's responsibility to arrange a meeting with the parents to review the S.20 agreement, depending on the child's long-term care plan, as this would affect the child's looked after status.
- For example, if a child is to live in a 42-week residential provision, it is helpful to record in the S.20 agreement about the arrangements for the child to spend time at home, during weekends/term time holidays etc. Therefore, the S.20 will remain in place, despite the child returns home during holidays, provided that this has been agreed and clearly recorded in the S.20 agreement.

KEY POINTS

- S20 is NOT a long-term measure, and does NOT allow the LA to make decisions for a child
- Ensure that the person giving consent has the **authority (parental responsibility)** to do so
- Make sure you are satisfied as to the parent's **capacity** to give consent
- Make sure that the person has the **understanding** to consent – e.g. **language / interpreter**
- Make sure that the person has been clearly told that this is a voluntary agreement and that they **can withdraw their consent at any time**
- Make sure that the person has had an **opportunity to ask any questions and seek legal advice** if they choose to do so
- When you are issuing proceedings make sure you are clear about what has taken place since the child/ren was/were placed in S.20 i.e. as to planning/contact/consent/involvement of the parent, etc.

If you need further assistance or guidance following management consultation refer the matter to legal or to a Legal Planning Meeting (LPM).

Section 20 – Mental Capacity Guidance Notes for Social Work Practitioners

It is the responsibility of the social worker to be satisfied that the person giving consent to Section 20 agreement has the capacity to do so.

This purpose of this document is to provide for social work professionals a brief overview of the law and principles relating to the assessment of capacity.

The social worker must consider all the circumstances prevailing at the time and consider the questions raised, in relation to the decision to be made, and the parents' capacity at the time to use and weigh all the relevant information.

If the social worker has doubts about capacity, no further attempts should be made to obtain consent and advice should be sought from management and/or legal.

It may also be appropriate to seek the advice of a suitably qualified professional to help determine capacity.

A lack of mental capacity could be due to:

- a stroke or brain injury
- a mental health problem
- dementia
- a learning disability
- confusion, drowsiness or unconsciousness because of an illness of the treatment for it
- substance misuse.

Five key principles

The core principles of the Mental Capacity Act, 2005 are set out below. (Section 1, MCA)

Principle 1: A presumption of capacity – a person must be assumed to have capacity to make his or her own decisions unless it is proved otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.
Principle 2: Individuals being supported to make their own decisions – a person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you

should make every effort to support people to make the decision for themselves. If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.

Principle 3: Unwise decisions – people have the right to make decisions that others might regard as unwise or eccentric. You cannot treat someone as lacking capacity for this reason. Everyone has their own values, beliefs and preferences which may not be the same as those of other people.

Principle 4: Best interests – anything done for or on behalf of a person who lacks mental capacity must be done in their best interests.

Principle 5: Less restrictive option – someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action, or whether there is a need to decide or act at all.

What is mental capacity and when might you need to assess capacity?

Having mental capacity means that a person is able to make their own decisions. You should always start from the assumption that the person has the capacity to make the decision in question (principle 1).
You should also be able to show that you have made every effort to encourage and support the person to make the decision themselves (principle 2).

You must also remember that if a person makes a decision which you consider eccentric or unwise, this does not necessarily mean that the person lacks the capacity to make the decision (principle 3).

Under the MCA, you are required to make an assessment of capacity before carrying out any care or treatment, including the care and treatment of a parent's child/ren – the more serious the decision, the more formal the assessment of capacity needs to be.

When should capacity be assessed?

You might need to assess capacity where a parent is unable to make a particular decision about the care of their child/ren at a particular time because of any impairment or disturbance in the functioning of their mind or brain which may be affected by illness or disability.

This lack of capacity may not be a permanent condition; mental capacity can fluctuate. For example, a person is unable to take decision when they are under the influence of a substance or for a person with

dementia there may be times in a day when they can think more clearly. Where a person has fluctuating capacity, they should be assisted to make the decision at the time that they have capacity to do so.

Assessments of capacity should be time and decision specific. The statement 'P lacks capacity' is, in law, meaningless. You must ask yourself "what is the actual decision in hand"? For example, the decision to consent to a treatment or the decision to consent to their child being provided an alternative home by the local authority.

You cannot decide that someone lacks capacity based upon age, appearance, condition or behaviour alone.

Two-state functional test of capacity

In order to decide whether an individual has the capacity to make a particular decision you must answer two questions:

Stage 1. Is there an impairment of or disturbance in the functioning of a person's mind or brain? If so,
Stage 2. Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

The MCA (Section 3) says that a person is unable to make their own decision if they cannot do one or more of the following four things:

1. understand information given to them
2. retain that information long enough to be able to make the decision
3. weigh up the information available to make the decision
4. communicate their decision – this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Every effort should be made to find ways of communicating with someone before deciding that they lack capacity to make a decision based solely on their inability to communicate. Also, you will need to involve family, friends, carers or other professionals.

The assessment must be made on the balance of probabilities – is it more likely than not that the person lacks capacity? You should be able to show in your records why you have come to your conclusion that capacity is lacking for the particular decision.

If capacity is lacking, follow the checklist described in the Code of Practice to work out the best interests of the individual concerned

Best interest decision making

If a person has been assessed as lacking capacity then any action taken, or any decision made for or on behalf of that person, must be made in his or her best interests (principle 4). The person who has to make the decision is known as the 'decision-maker' and normally will be the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

What is 'best interests'?

The Act provides a non-exhaustive checklist of factors that decision-makers must work through in deciding what is in a person's best interests. A person can put his/her wishes and feelings into a written statement if they so wish, which the person determining capacity must consider. In addition, people involved in caring for the person lacking capacity have to be consulted concerning a person's best interests.

If a person has been assessed as lacking capacity then any action taken, or any decision made for or on behalf of that person, must be made in his or her best interests. For more detailed information you should refer to the Code of Practice.

Code of Practice

The Code explains how the MCA works on a day-to-day basis and provides guidance to those working with people who may lack capacity. The Code explains the key features of the MCA in more detail, as well as some of the practical steps that people using and interpreting the law need to take into consideration.

SECTION 20 – guidance notes for practitioners

All professionals have a duty to comply with the Code of Practice. It also provides support and guidance for less formal carers. If you work with people who lack capacity and you are a professional and/or you are paid for the work you do, then you have a legal duty to have regard to the Code. It is also relevant to unpaid carers who will be helped and guided by it.

Further reading: https://www.scie.org.uk/mca/practice/assessing-capacity