

POSITIVE USE OF S.20

- Allows the local authority to provide temporary care where a child's parent is unable to care for them for a short period of time or to provide respite care for parents of **children with additional needs**.
- Provides a legal framework for local authorities to find accommodation for unaccompanied **asylum seeking children**.
- Promotes **cooperation** between parents and the local authority, with parents retaining responsibility for making key decisions about the children.
- Allows the **local authority** to secure the safety of children whilst they conduct further assessments to make a full determination about whether court proceedings are necessary. In turn this prevents the **Family Courts** from being inundated with applications
- There is a **benefit to children** in need of accommodation being accommodated under section 20 rather than 17, as under section 20 they will become "looked after" and in turn will be owed additional duties by the local authority.
- There is a **benefit for parents** in agreeing to section 20 where otherwise care proceedings would be a real possibility. This is because it allows them opportunity to make improvements in the home conditions outside of the rigid 26 week time limit imposed in proceedings.

What is s.20?

- This section imposes a duty on every Local Authority to **provide accommodation to children** who:
 - Are identified as '**children in need**';
 - Are **resident in its catchment areas**; and
 - Who appear to **require accommodation**.
- If they require accommodation under this section, they become 'looked after' by a Local Authority as soon as the duty under s.20 arises.
- A Local Authority should provide accommodation under s.20 where:
 - A 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 is being **prevented from providing him with suitable accommodation** or care; or
 - The child is aged **over 16** and the Local Authority consider their **welfare would be seriously prejudiced** if they do not provide accommodation.
- However, a Local Authority also has a **discretion** to provide accommodation where it considers this would safeguard or promote the child's welfare.
- Therefore, a parent may be willing and able to care for the child, but the Local Authority may believe that the child's welfare would be harmed or at risk of harm by being placed with that person.

- Here the Local Authority will only be able to provide accommodation under s.20 **if the parent (and any person with PR) does not object**.

S.20 Children Act 1989



Co-operation, Compromise or Catastrophe? Consideration of the positives, negatives and best practice in care

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This presentation aims to explore the positives and negatives of using s.20 agreements and consider how the section can be used to best effect in practice, achieving compromise and co-operation between the parties to care proceedings.

NEGATIVE USE OF S.20

"There is, I fear, far too much misuse and abuse of section 20 and this can no longer be tolerated...steps must be taken as a matter of urgency to ensure that there is no repetition ever again"

N (Children)(Adoption: Jurisdiction) [2015] EWCA Civ 1112—Munby P

"The fact that the child has languished in s.20 accommodation with no clear plan means it is likely that he will have suffered confusion and some harm as a result" and "the local authority had disabled these parents from being able to parent their child with every day of inactivity that had passed" (discussing the circumstances in which a child had been accommodated for nearly two years before proceedings were initiated)

P(A child: use of section 20) [2014] EWFC 775—HHJ Atkinson

"I cannot conceive of circumstances where it would be appropriate to use those provisions to remove a very young baby from the care of its mother, save in the most exceptional of circumstances and where the removal is intended to be for a matter of days at most"

Northamptonshire County Council v AS and Ors [2015] EWHC 199 - Mr Justice Keehan

"submission in the face of asserted State authority is not the same as consent" (commenting on consent provided in response to a threat of police involvement or court proceedings)

Re W (Children) [2014] EWCA Civ 1065—Munby P

Best Practice

- The appeal of **London Borough of Hackney v Williams & Anor [2017] EWCA Civ 26** clarified that there is no statutory duty to obtain consent to section 20 accommodation and that parents can only actively oppose accommodation if they can provide "suitable alternative accommodation. However, best practice would still be for local authorities to set out clearly in writing the basis on which a child is being accommodated and any agreement which has been reached.
- As soon as the care plan moves away from rehabilitation within a short period of time (weeks rather than months) towards longer term planning, s.20 is unlikely to be suitable and appropriate court proceedings should be considered.
- S.20 accommodation should only be used for newborn babies in exceptional circumstances.
- Consolidated statutory guidance and an increase in training available for local authorities are needed to ensure that there is a consistent approach to section 20 in the long term, with all local authorities clear on when section 20 is and isn't appropriate.
- More legal aid at an early stage would allow parents to obtain the legal advice they require to make an informed decision about whether s.20 is suitable—this would prevent many of the criticisms raised by the Judiciary in recent case law.