RE S (A CHILD) AND RE W (A CHILD) (S 20 ACCOMMODATION) [2023] - A LANDMARK RULING SET TO CHANGE THE PERSPECTIVE OF THE USE OF SECTION 20 IN PUBLIC LAW CARE PROCEEDINGS

BACKGROUND

Section 20 of the Children Act 1989 is a voluntary agreement that requires the Local Authority to provide accommodation for children who are unable to be accommodated at home, or do not have suitable accommodation. The premise of Section 20 is permission of the child (if they are of a suitable age) or someone that has Parental Responsibility of the child is needed by way of written consent before this can be implemented. As this is a voluntary agreement, Section 20 consent can be withdrawn at any time.

Within case law there has been huge scrutiny as to the use of Section 20, *"there is, I fear, far too much misuse and abuse of section 20 and this can no longer be tolerated", Sir James Munby, President of the Family Division N (Children) (Adoption: Jurisdiction) [2015]*. The main analysis of Section 20 within case law is that it should only ever be used as a short-term measure as it deprives the child of having a Guardian, an independent figure to safeguard and represent them, and the Court having the ability to control and oversee the care planning for the child. Although Section 20 is regularly used within Court proceedings and also pre-proceedings, due to the analysis within precedents that Section 20 should only be used short term, cases that conclude with a child continuing under Section 20 are very rare.

Lady Hale, in the Supreme Court case of *Williams & Another v London Borough of Hackney [2018]* concluded that Section 20 *"should have no time limit, where it facilitates partnership and where it is functioning well under an agreed plan, not only is the making of a care order not necessary but it is disproportionate".* However, Lady Hale was proportionate in her analysis of this case as she highlighted her concern for various parents entering into such agreement without having proper delegation as to its terms allowing the Local Authority's use of Section 20 to be misused.

June 2023

Author: India Driscoll
Paralegal

Editors: Jennifer Lee
Head of Service,
Children's Social Care Law

> *"I see no inhibition on a Section 20 being made in appropriate circumstances for a longer period of accommodation, provided proper and consistent consideration is given to the purpose of the accommodation and regular mandatory reviews are carried out"*
>
> *King LJ, Re S (A Child) and Re W (A Child) (s 20 Accommodation) [2023]*

LANDMARK RULING

Upon the recent, and breakthrough case of *Re S (A Child) and Re W (A Child) (s 20 Accommodation) [2023]*, King LJ concluded within his Judgement and analysis of the law that, *"I see no inhibition on a Section 20 being made in appropriate circumstances for a longer period of accommodation, provided proper and consistent consideration is given to the purpose of the accommodation and regular mandatory reviews are carried out".* As part of the framework of Childrens Services, children that are accommodated under Section 20 are considered Looked After Children (LAC), and as such are subject to regular LAC reviews throughout the year whereby professionals and parents will review the child's care plan to ensure its suitability.

Although Care Orders are necessary in certain cases, where the use of Section 20 can be used long-term, Care Orders are being regarded by the Court in *Re S and Re W* as draconian and interventionist. The case of *Re S and Re W* during its appeal found that the trial Judge had errored in believing that Section 20 accommodation could only be short-term and re-enforced the need to protect against disproportionate state interference in family life in the form of unnecessary and draconian Orders. The Judge also concluded in the appeal that the No Order Principle, found at *Section 1(5) of the Children Act 1989* should also be applied, namely that the Judge shall not make an Order 'unless it considers that doing so would be better for the child than making no order at all'.

ANALYSIS

Following the Court of Appeal decision, there is now clarity that Section 20 can be used as a long-term measure of voluntary accommodation, and we note from the case of *Re S and Re W* that the Court are open to the consideration of Section 20 being used in cases where it is suitable to avoid unnecessary interventionalist measures. However, we must ensure as a Local Authority we implement Section 20 correctly.

Section 20 must be regularly reviewed and must work on the basis of a good working relationship between professionals and the family. Families that sign Section 20 must be aware from the outset of the regular reviews and be given a breakdown of when the reviews will be as well as be reminded of their participation of the care planning for the child(ren). We must also ensure that the parents or those with Parental Responsibility are still afforded the right to seek legal advice and be comprehensively informed by a legal advisor of the details of Section 20 before the agreement is entered in to. To ensure we uphold the principles of Section 20, the parents must be aware of their rights to withdraw their consent at any time and special consideration must be given to more vulnerable parents. The Courts have made it especially clear that it is the facilitation of the partnership between parents and professionals that underpins the whole workings of a Section 20 agreement.

There will continue to be criticism as to the loss of checks and balances this long-term measure may mean however, Section 20 as a long-term measure will for many vulnerable children create stability and assurance as they are protected from the potential upheaval of the Court process and possible interference of various professionals during the assessment process. It will also afford the Local Authority great opportunity to work with families and maintain positive working relationships, strengthening effective and clear communication and parallel planning.

About Pathfinder Legal Services Ltd's Children's Social Care Law Team

We have a highly skilled team of Lawyers and Paralegals who have a wealth of both Public and Private sector experience concerning safeguarding children and children's welfare. Our Lawyers have extensive experience in conducting Advocacy in all tiers of the Courts, including undertaking the more complex cases, enabling continuity and consistency of service to be delivered. Our Team is able to use their expertise in understanding the "real" child protection landscape, including parameters of good practice, Social Work demands and Budgetary restraints. We are key contributors to the workings of the Local Family Justice Boards that our Clients serve, ensuring that we maintain regular and good dialogue with the local Judiciary and other Partner Stakeholders involved in child protection.

About Pathfinder Legal Services Ltd

As a 'social enterprise law firm', Pathfinder Legal Services Ltd is one of the first of its kind to be established in the UK and is wholly owned by Cambridgeshire County, Central Bedfordshire, North Northamptonshire, and West Northamptonshire Councils. We are experts in our field and provide a tailored legal service exclusively to the public and not-for-profit sectors, our clients are key, and our fees reflect this: our charging rates are substantially reduced and our billing system transparent. Our credibility, values and focus remain paramount to all that we do as a publicly owned legal service provider, with clients including Local Authorities, Integrated Care Boards, Foundation Trusts, Charities and Fire Services. In 2021 the firm was awarded 'Law Firm of the Year' (under its previous trading name of LGSS Law Ltd) at the prestigious Cambridgeshire Law Society's legal awards.

If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at operations@pathfinderlegal.co.uk

HUNTINGDON (Head Office)
3rd Floor – Pathfinder House
St Mary's Street
Huntingdon
PE29 3TN
dx 137872 - HUNTINGDON 8
t 01223 727927

NORTHAMPTON
One Angel Square
Angel Street
NORTHAMPTON
NN1 1ED
t 01604 363660

SHEFFORD
Priory House
Monks Walk
Chicksands
SHEFFORD
SG17 5TQ
dx 153440 - SHEFFORD
t 01223 507269