



Task & Finish Group Report

**Review of Section 20 processes
and procedures following High
Court judgement of historic
failings**

October 2018

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judgement of historic problems**



Chairperson's Foreword

The Children and Young People Scrutiny Committee agreed the formation of a task and finish group to undertake a review of the processes and procedures in place to regulate the use of section 20 of the Children Act 1989.

The group met on three occasions and with the expert input of officers was able to produce recommendations around the council's response to the high court judgement concerning the historic use of section 20.

We would like to place on record our thanks to all who contributed. The manner in which officers presented a complex and technical subject with clarity and conciseness was a great assistance in facilitating the understanding of the task and finish group.

I would like to offer my own personal thanks to all who contributed to and supported the work of the group for their professionalism, dedication and hard work.

I must also thank my fellow group members: Cllr Polly Andrews, Cllr Chris Chappell, Cllr Felicity Norman and Cllr Alan Seldon, for their informed and insightful input.

Councillor Carole Gandy, October 2018
Chairperson of the section 20 Task and Finish Group

1 Executive Summary

1.1 The establishment of a task and finish group to focus on the Council's use of section 20 of the Childrens Act 1989, following the High Court judgement of Justice Keehan, was agreed by the children and young people scrutiny committee on 16 April 2018. The High Court judgement was critical of the Council's use of section 20 of the children act 1989 to admit children to care. The judgement attracted significant interest and publicity both locally and nationally.

1.2 The task and finish group was established to assess the response of the Council to address those concerns raised by the judgement. The scope of the task and finish group, as agreed by the committee at the meeting above, is attached as appendix 1.

1.3 There is agreement in the group that the summary of our findings are a true reflection of the discussions undertaken which can be condensed into 8 topics. The recommendations focus on:

1. Support for the response of the Council
2. Compliance and internal audit
3. Business continuity and risk management
4. Case law and training
5. Informed consent
6. Indeterminate age and section 20 application
7. All-member seminar
8. Best practice guidance

2. Composition of the Task and Finish Group

2.1 Members of the task and finish group were:

Councillor Carole Gandy (chairperson)
Councillor Polly Andrews
Councillor Chris Chappell
Councillor Felicity Norman
Councillor Alan Seldon

2.2 Lead directorate officers – Vicki Lawson and Tim Marks

3 Context

Why did we set up the group?

3.1 A judgement by the High Court on 1 February 2018 found that there had been historic failures in Herefordshire Councils use of section 20 of the Children Act 1989. The judgement identified specific cases where section 20 had been incorrectly applied.

3.2 The review undertaken by the task and finish group was commissioned to look at the use of section 20 orders, the processes in place to ensure their appropriate use and to conduct analysis on case samples.

What were we looking at?

3.3 The focus of the review was to enable the task and finish group to:

- develop an understanding of section 20 orders, including what are section 20 orders and when they are used;
- understand the judgement of the high court and how it has been addressed;
- learn what processes are in place to ensure the appropriate use of section 20 orders; and

- look at cases including studies and audit findings to ensure processes are being observed and section 20 orders appropriately applied.

.Who did we speak to?

3.4 Between May – October 2018, the group convened three meetings and engaged the following officers:

- Vicki Lawson, interim Assistant Director Safeguarding and Family Support
- Tim Marks, Senior Children’s Solicitor
- Chris Baird, Director Children and Families
- Liz Elgar, Assistant Director Safeguarding and Family Support
- Jacqui Gooding, Assistant Director, SWAP internal audit services

What did we read?

3.5 The group looked at the information below to undertake this review:

- Briefing on critical judicial judgement for children’s scrutiny committee – March 2018
- Section 20 presentation 11 May 2018
- Herefordshire Council’s What is children’s social work advice pamphlet – March 2018
- Section 20 guidance issued to social workers
- Presentation 2 – the seven point plan – 19 July
- Presentation – meeting 3 – 4 October

What did we ask?

3.6 In order to undertake the review the task and finish group agreed the lines of questioning below:

- What is section 20 and when should it be used;
- What processes manage the appropriate use of section 20; and
- Are the processes being observed and is section 20 being used appropriately?

What did we find from our research?

3.7 The task and finish group developed an understanding of the high court judgement concerning the historic failures in the Council’s application of section 20. The judgement referred specifically to two children and their parents but also made comment on another 42 cases that the council has reviewed and supplied information to the High Court. Justice Keehan expressed concern about the status of 14 of them being subject to section 20.

3.8 The Children Act 1989, from which section 20 powers derives, allocates duties to local authorities, courts, parents, and other agencies in the United Kingdom, to ensure children are safeguarded and their welfare is promoted. It centres on the idea that children are best cared for within their own families; however, it also makes provisions for instances when parents and families do not co-operate with statutory bodies.

3.9 What is Child Protection? The task and finish group learned about child protection arrangements and processes, including the use of section 20 care:

- Child protection means acting to reduce the risk of harm to a child. The changes required are usually to be undertaken by the parent(s), supported by advice from professionals across agencies.

- When doing their assessment, or when providing a service, it may become clear that the child is being harmed while in the care of their parent(s). This can be direct harm, for instance physical assault, or indirect harm resulting from poor care, which is known as neglect.
- At any stage during the investigation, professionals can decide that their concerns have reduced following new information. The child / young person and their family may still need some advice and support from a social worker, which is provided under a 'child in need' plan.
- When a child is at risk of harm, professionals have to follow detailed guidance laid down by government. This involves meetings between all professionals and the family, as well as the creation of a 'child protection' plan, which is then closely monitored to check it is being effective.
- The types of abuse are laid down in law: neglect, emotional harm, physical harm and sexual harm.
- The intention of the plan is to reduce the risk faced by the child.
- If the risk cannot be reduced after a substantial effort, the decision will be made to remove the child from the care of their parent(s).
- This can be done with the agreement of the parent(s); known as a voluntary accommodation or section 20 care (this refers to section 20 of The Children Act 1989, which describes this arrangement) or a court will be asked to make a care order to transfer parental responsibility to the local authority.
- In both instances, the child then becomes 'looked after'.
- Following a judicial ruling in 2015, section 20 care can only be used for a short period of time, which in most circumstances, is a maximum of three months. If the child is not to return home within this period, the local authority must apply to the court for a care order.

3.10 The task and finish group developed an understanding of the relevant legislation. Section 20 of the Children Act 1989 provides: *the Provision of accommodation for children: general:*

- (1)Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—
- (a)there being no person who has parental responsibility for him;
- (b)his being lost or having been abandoned; or
- (c)the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care

It comes within Part III SUPPORT FOR CHILDREN AND FAMILIES PROVIDED BY LOCAL AUTHORITIES IN ENGLAND. The section is a duty not a power. It does not allow the authority to impose accommodation on a family.

3.11 The legislation in summary:

- Section 20 is the voluntary agreement of a parent for the child to come into care.
- Every parent has the right, if they have capacity 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.
- 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.

What did we find from talking to Officers?

3.12 The task and finish group received a number of scenarios devised by offices looking at the different circumstances for the application of section 20.

3.13 Officers presented those reasons why the judiciary may be critical of the use of section 20. Those reasons are contained in the bullet points below:

- It can result in delay in making plans for a child
- The authority can become involved in a process of negotiating decisions about other aspects of parental responsibility when one person needs to be able to make final decisions.
- The child has a limited voice when accommodated whereas in proceedings they have a children's guardian and are legally represented.
- The collection of evidence may be delayed and this may make factual issues more difficult to determine.
- It can be unfair, a local authority will have the benefit of legal advice and representation a parent may not. (The work a solicitor can undertake is limited before proceedings are issued)
- It can defeat the Public Law Outline guidance on cases taking 26 weeks if a child is accommodated prior to proceedings being issued.

3.14 Officers presented the learning points arising following the judgement. Details of action taken in response and progress made with those actions was also presented, as set out below:

- 1) All requests for admission to the looked after system must be presented to a legal gateway meeting or our threshold of care panel.
- 2) Every agreement to voluntary care must be reviewed by a member of the legal team within 28 days.

Progress Made

- i. This is now embedded with a Legal Tracker on SharePoint*
- ii. As soon as a child enters care on section 20 an invite is generated and a date booked for a Legal Gateway meeting*

- 3) Social workers must consider the capacity of those persons with parental responsibility when seeking informed consent for an action. If in doubt, consult with a manager.

Progress Made

- i. Vicki Lawson facilitated a training event for team managers and Independent Reviewing Officers*
- ii. This does need to be repeated*
- iii. Legal are designing capacity check lists for workers*
- iv. The consent form for signing is being redesigned*

- 4) Independent Reviewing Officers must be satisfied that parents of children looked after under section 20 of The Children Act 1989 understand what they have agreed to and continue to agree. They must be reminded of their ability to withdraw consent.
- 5) Independent Reviewing Officers must use the escalation process to challenge any instances of case drift.

Progress Made

- i. A more robust dispute resolution process has been introduced*
- ii. Eradicating drift is intrinsic to all elements of care planning, a principle which is being embedded in all social care work*

- 6) All decisions made within legal gateway meetings should be followed up within a month by the relevant head of service.

Progress Made

- i. A review step has been added into the Legal Gateway process and the tracker is monitored by the Head of Service for Safeguarding*

- 7) The Placement Panel should review all looked after children who have been in our care for more than six months. This will take place until permanence is secured.

Progress Made

- i. With the assistance of a project manager a strand entitled Permanency Planning is being developed under a wider improvement plan which will consider all children in care and link to budget monitoring*

3.15 Officers provided detail of the progress of those section 20 cases currently on hand and progress made with those cited in Justice Keehan's judgement. Statistics were also presented concerning the percentage of children looked after by section 20 in comparison to national and regional figures. The number of children looked after, in care through application of section 20 in Herefordshire was below the West Midland and All England average. The latest figures concerning children in care under section 20 for 2018 by number and percentage were presented to the last meeting of the task and finish group; by the end of September 2018 there had been a steady reduction of section 20 cases with 27 remaining on hand.

3.16 The task and finish group received detail from officers regarding compliance with the new arrangements and processes:

- All section 20 cases have gone on a legal tracker since initiation
- Business support process is established to update this tracker
- Initial legal advice is working well (within 28 days)
- Review of legal advice is less consistent. The review process is now being tightened with a new panel
- As of 25 September 2018 a Case Progression Officer has been appointed to work specifically with Legal and ensure all court work is not delayed

3.17 The Group heard about a role for Internal Audit to assess compliance with the new arrangements through audits and the potential focus of those audits:

- Compliance with timescales (becoming section 20 and receiving legal advice within 28 days)
- Not about quality of practice
- Aim of eliminating drift in decision making
- Ensuring that all cases have been considered by legal and had a recorded legal decision
- That the legal advice is acted upon in a timely way
- Suggestion of six months (March 2019 & October 2019)

3.18 The task and finish group received a case law update and it was explained that the legal landscape is ever changing and that it was important that the Council retained a focus on researching new judgments which impacted upon the application of section 20.

4. Summary of our findings

4.1 Response of the Council

The group considered the response of the Council to the judgement including new arrangements for: legal gateway meetings and threshold of care panels; review of voluntary care agreements; consideration of the capacity of those with parental responsibility to express informed consent; independent reviewing officers (IROs) to review consent provided and remind of ability to withdraw consent; and IROs use of the

escalation process to challenge any instances of case drift. The group was supportive of the action taken and the new arrangements introduced.

4.2 Compliance and Internal Audit

The group was informed that a review and audit of the procedures to manage the use of section 20 would take place in March 2019 and it was suggested that this would be followed up with an audit in October 2019. South West Audit Partnership (SWAP) explained that this scheduled was timely as it would allow for new processes to be embedded and new cases to work through the system. The audit would be built into the internal audit plan for 2019/20. The audit and governance committee would consider the outcomes of any audits and it was confirmed that a briefing note to the scrutiny committee would be provided. The committee supported the suggestion of audits in March and October 2019 and felt annual audits of the new arrangements should continue for the foreseeable future.

4.3 Business continuity and risk management

During consideration of the reasons for the problems involved in the historic application of section 20 there was concern that organisational change may have been a contributory factor. The Group considered that it was important that any potential future restructures or redeployment of staff would not undermine or interfere with the operation of new arrangements for the use of section 20. To mitigate this risk the group recommended comprehensive training relating to section 20 processes for new members of staff working within relevant teams.

4.4 Case Law and training

The group heard that case law concerning the application of section 20 is continually evolving. In particular the task and finish group was informed of a recent case which established the principle that, despite the assumption that parental consent is needed before a child can be accommodated under section 20, this is not always the case. To ensure solicitors and social workers at the Council were kept apprised of common law developments it was proposed that provision was made available for training and research relating to relevant case law.

4.5 Informed Consent

The group was provided with detail of the nature of consent in section 20 cases. Every parent has the right, if they have capacity 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. 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. The group felt that due to the complexity of informed consent a definitive protocol should exist, in conjunction with the check list being developed, to assist social workers to make a judgement on when informed consent could be deemed to have been provided.

4.6 Indeterminate Age

The group was informed that section 20 could be used for children up to the age of 18 and it queried how section 20 was applied when the age of the child was in doubt. This was thought to be a particular concern for children who were unaccompanied asylum seekers. The group stated that clarification on how to apply section 20 in such circumstances should be requested from central government or the Council should develop a process for social workers to use.

4.7 All-member seminar

The group felt that due to the significance of the section 20 judgement and the interest of elected councillors in the issue an all-member seminar should be arranged. It was felt that the seminar should provide detail of the progress made by the council to respond to the judgement and inform members of the current situation.

4.8 Best practice guidance

The group felt that the progress made in responding to the judgement and the strength of the arrangements established provided an example to other local authorities encountering problems with the historic application of section 20. Where approached by such local authorities it was felt that details of the arrangements put in place at the Council should be shared.

5 Summary of Recommendations

From our findings, the task and finish group would like to make the following **8 recommendations** to the executive and ask that they are given appropriate consideration:

5.1 Response of the Council

That the children and young people scrutiny committee:

- **Supports and commends the course of action by the Council to admit to past errors around the application of section 20 and the extent of the issue;**
- **Recognises the significant progress made since Judge Keehan's judgement to introduce new arrangements and procedures;**
- **Considers processes put in place since the judgement to be robust, fit for purpose and assure that the use of section 20 is legitimate and lawful;**
- **Acknowledges the positive attitude at the Council to embrace the need for a response to the judgement and a review of the safeguarding service and processes around care proceedings;**

5.2 Compliance and Internal Audit

The children and young people scrutiny committee supports the proposed audits in 2019 and recommends to the executive an annual audit (for the foreseeable future) of compliance, by SWAP, on section 20 arrangements and a regular in-house audit/review of the legal tracker.

5.3 Business continuity and risk management

That the executive considers comprehensive training for all new members of staff (within relevant social care and legal roles) should be provided to ensure a strong emphasis on business continuity and risk management, in respect of section 20 processes, during times of change.

5.4 Case Law and training

That the executive makes provision for adequate levels of resource to be committed to training and research around relevant case law to ensure professional development of solicitors and social workers at the council. To ensure

an understanding of topical judgements with a bearing upon the application of section 20.

5.5 Informed Consent

That the executive considers the introduction of a precise protocol to provide a framework for social workers to follow when attempting to secure informed consent from parents for the application of section 20.

5.6 Indeterminate Age

That the executive seeks clarification from central government regarding the application of section 20 for people whose age is in doubt or develops a process for use by social workers in such circumstances.

5.7 All-member seminar

That executive arranges an all-member seminar to raise awareness of progress made, with the implementation of new processes, since the judgement.

5.8 Best practice guidance

That the executive should offer details of the processes put in place and the response to the judgement, as an exemplar of best practice, to other local authorities facing historical issues concerning the application of section 20.

Appendix 1

Children and Young People Scrutiny Committee

Section 20 Task and Finish Group – Scoping Document

Title of review	Section 20 Orders Task and Finish Group
Scope	
Reason for enquiry	A judgement by the High Court on 1 February 2018 found that there had been historic failures in Herefordshire Councils use of section 20 orders. The judgement identified specific cases where section 20 of the Children Act 1989 had been incorrectly applied.
Links to the corporate plan	<p>The review contributes to the following objectives contained in the Herefordshire corporate plan and other key plans and strategies:</p> <ul style="list-style-type: none"> • Keep children and young people safe and give them a great start in life; and • Secure better services, quality of life and value for money.
Summary of the review and terms of reference	<p>Summary:</p> <p>The review will look at the use of Section 20 orders, the processes in place to ensure their appropriate use and analyse case samples.</p>
	<p>Terms of Reference:</p> <p>The task and finish group will conduct three meetings. Meetings 1 and 2 will be held in quick succession and meeting 3 will be held three months after the commencement of the task and finish group. The three meetings will be scheduled to enable the task and finish group to:</p> <ul style="list-style-type: none"> • develop an understanding of section 20 orders, including what are section 20 orders and when they are used (Meeting 1); • understand the judgement of the high court and how it has been addressed (Meeting 1); • learn what processes are in place to ensure the appropriate use of section 20 orders (Meeting 2); and • look at case including studies and audit findings to ensure processes are being observed and section 20 orders appropriately applied (Meeting 3). <p>Membership:</p> <p>The task and finish group will consist of a representative of each political group at the Council. Membership of the group will initially be sought from members on the Children and Young People Scrutiny Committee. Group leaders will be contacted to fill any remaining vacancies following this initial recruitment.</p>
What will NOT be included	<ul style="list-style-type: none"> • Evaluation of the actions of any individual officer at the council under historic admission to care arrangements.

Potential outcomes	<ul style="list-style-type: none"> To gain assurance that effective processes are in place to ensure the appropriate use of section 20 orders.
Key Questions	<p>To consider:</p> <ul style="list-style-type: none"> What are section 20 orders and when should they be used; What processes manage the appropriate use of section 20 orders; and Are the processes being observed and are section 20 orders being appropriately used?
Cabinet Member	Cabinet member young people and children's wellbeing
Key stakeholders / Consultees	Internal - Children's Wellbeing officers concerned with care arrangements for looked after children and legal officers.
Potential witnesses	None
Research Required	<ul style="list-style-type: none"> Potential scenarios to assess the appropriateness of section 20 orders Outcomes of audits and case studies to present to the task and finish group.
Potential Visits	None
Publicity Requirements	Following the conclusion of the task Report back to the children and young people scrutiny committee.
Outline Timetable (following decision by the children and young people scrutiny committee to commission the Review)	
<i>Activity</i>	<i>Timescale</i>
Confirm approach, Terms of Reference, programme of consultation/research/provisional witnesses/meeting dates	Committee meeting – 16 April 2018
Collect detail regarding section 20 orders and develop hypothetical scenarios for circulation to the task and finish group – meeting 1.	By May 2018
Compile information regarding current processes in place at the Council to ensure the appropriate use of section 20 orders – meeting 2.	Mid May 2018
Present outcomes of audit reports concerning the use of section 20 orders – meeting 3.	July 2018
Prepare recommendations – meeting 3.	July 2018
Present final report to Children and Young People Scrutiny Committee	17 September 2018

Group Members	
Chair	
Support Members	
Support Officers	J Coleman M Evans