Trinity Term
[2018] UKSC 37
On appeal from: [2017] EWCA Civ 26

JUDGMENT

Williams and another (Appellants) *v* London Borough of Hackney (Respondent)

before

Lady Hale, President
Lord Kerr
Lord Wilson
Lord Carnwath
Lady Black

JUDGMENT GIVEN ON

18 July 2018

Heard on 14 and 15 February 2018

Appellants
Deirdre Fottrell QC
Louise MacLynn
Christine Cooper
(Instructed by Sky Solicitors)

Respondent
Nicholas Stewart QC
Ali Reza Sinai

(Instructed by London Borough of Hackney Legal Services)

Intervener (Coram Children's Legal Centre)
Charles Geekie QC
Sharon Segal
(Instructed by Coram Children's Legal Centre)

Intervener (Association of Lawyers for Children)
Mark Twomey QC
Alex Laing
(Instructed by TV Edwards LLP (Clapham))

Intervener (Family Rights Group)
Alex Verdan QC
Olivia Magennis
Michael Edwards
Indu Kumar
(Instructed by Goodman Ray LLP)

Intervener (Equality and Human Rights Commission)
Fiona Scolding QC
(Instructed by Equality and Human Rights Commission)

LADY HALE: (with whom Lord Kerr, Lord Wilson, Lord Carnwath and Lady Black agree)

1. In March 2017 local authorities in England were looking after 72,670 children, a figure which has been rising steadily for the past nine years. They do so either as part of a range of services provided for children in need or under a variety of powers to intervene compulsorily in the family to protect children from harm. 50,470 of those 72,670 children were the subject of care orders, up 10% from the previous year; 16,470 were accommodated without any court order; the balance were subject to various other compulsory powers. In practice, the distinction between these categories is not always clear cut. Some accommodated children in need may also be at risk of harm if they are left at or returned home. In law, however, the distinction is clear. Compulsory intervention in the lives of children and their families requires the sanction of a court process. Providing them with a service does not. This case is about the limits of a local authority's powers and duties to provide accommodation for children in need under section 20 of the Children Act 1989 ("the 1989 Act") without the sanction of a court order. Specifically, what is the local authority to do if the parents ask for their accommodated children to be returned to them but the local authority perceive that there are obstacles to doing so?

2. It may be helpful to set out the relevant parts of section 20, as amended, at the outset:

> "**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.

…

(3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of 16 and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.

(4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

(5) A local authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any community home which takes children who have reached the age of 16 if they consider that to do so would safeguard or promote his welfare.

…

(7) A local authority may not provide accommodation under this section for any child if any person who -

(a) has parental responsibility for him; and

(b) is willing and able to -

(i) provide accommodation for him; or

(ii) arrange for accommodation to be provided for him, objects.

(8) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.

> (9) Subsections (7) and (8) do not apply while any person -
>
> (a) who is named in a child arrangements order as a person with whom the child is to live;
>
> (aa) who is a special guardian of the child; or
>
> (b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, agrees to the child being looked after in accommodation provided by or on behalf of the local authority.
>
> (10) Where there is more than one such person as is mentioned in subsection (9), all of them must agree.
>
> (11) Subsections (7) and (8) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section."

3. Also relevant are the rights of both parents and children under article 8 of the European Convention on Human Rights ("ECHR"):

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

If the use of section 20 amounts to an interference with a parent's or a child's exercise of their right to respect for their family life, it will violate article 8 unless it is "in accordance with the law" and a proportionate means of achieving one of the legitimate aims listed in article 8(2). In that event, it will be unlawful under section

6(1) of the Human Rights Act 1998 and the parent or child may seek a remedy, which could be an award of damages, under section 7(1) of that Act.

The facts

4. The appellants are the mother and father of eight children, at the time aged 14, 12, 11, 9, 7, 5, 2 and 8 months. The eight-month-old was still being breast fed. On 5 July 2007, their 12-year-old son was caught shop-lifting. He told the police that he had no money for lunch. He also complained that his father had hit him with a belt. He was taken to a police station and a social worker was called. The police then went to the family's home and found it in an unhygienic and dangerous state unfit for habitation by children. The police exercised their powers under section 46 of the 1989 Act in respect of all eight children. Section 46 enables a police officer who has reasonable cause to believe that a child would otherwise be likely to suffer significant harm to remove the child to suitable accommodation and keep him there for a maximum of 72 hours (section 46(1) and (6)). The suitable accommodation must be either provided by a local authority or in a certificated refuge (section 46(3)(f)). These children were provided with foster placements by the respondent local authority ("the Council") - the two oldest boys together, the others in separate (and changing) foster placements.

5. Both the mother and the father were arrested and interviewed during the night of 5 July. They were released in the early hours of 6 July, on police bail to return to the police station on 30 July. The conditions of their bail were that neither was allowed to have unsupervised contact with any of their children. The reason given for the condition was to prevent interference with possible victims of crime. The parents then went to the Council offices and spoke to two social workers. They were asked to return later in the day and when they did they were asked to sign a "Safeguarding Agreement". It is worthwhile quoting this in full. After listing the eight children, it provides:

> "This Safeguarding Agreement was drawn up in relation to all of the children. Although the agreement is not legally binding, it may have significance, should there be any court procedures in the future.
>
> We, Mr & Mrs Williams parents to all the above children agree to the following:
>
> 1. That all the children will remain in their Foster placements for the present time.

> 2. When contact takes place we will encourage the children to return to their placements and ensure them that this is a safe place.
>
> 3. That we will behave appropriately whilst contact is taking place, ie assure the children that we love and care for them, show them affection.
>
> 4. That we will not discuss with any of the children what has happened.
>
> 5. To continue to comply with Hackney Children's Social Care.
>
> In conclusion Hackney Children's Social Care will seek legal advice with a view to protecting the children if it is found that parents are not complying with the contents of this Safeguarding Agreement."

6. It is apparent that this "agreement" does not inform the parents of the power under which the Council were purporting to act or of their rights under section 20 and, while stating that it is not legally binding but may have significance should there be any court procedures in future, it does not explain its potential relevance in any legal proceedings and the circumstances in which these might be brought. However, the parents also signed consents to medical treatment and to accommodation (albeit without the children being named) that same day. The trial judge found that they had not been informed of their right to object to the children's continued accommodation under section 20(7) or of their right to remove the children at any time under section 20(8) and that their consent was not informed or fairly obtained (para 65).

7. The 72 hours of police protection expired on 8 July. On 9 July the parents went to the Council's offices and requested the return of their children. They were told by a social worker that they could not take their children home. The parents consulted Sternberg Reed, a firm of solicitors who are skilled and experienced in child care cases. On 13 July the solicitors wrote two letters to the Council. The first asked for information about "the current and future plans in this matter". It stated that the parents "are very keen to have their children returned to their care as soon as that is thought possible, and indicated that they would co-operate with any further assessments … required". It raised concerns that the children were in separate foster placements and one had reverted to wearing nappies. It asked for copies of the

medical and school reports which they believed were positive. And it asked whether the Council would be initiating care proceedings. The second letter was more definite. It stated that:

> "Mr Williams wishes us to give you formal notice of his intention to withdraw consent to the accommodation of his children under section 20 of the Children Act 1989. He wishes to continue to work co-operatively with the local authority and will therefore agree to their continued accommodation for a further ten days, to Monday 23 July 2007, in order that the local authority can make any further investigations necessary to plan for the stable rehabilitation of the children to their parents' care.
>
> In the event that the local authority feel unable to arrange for all the children to return home within this time frame, then we ask for details of the proposed timescales for returning each child currently being accommodated and the basis for those timescales."

8. At a meeting of the Council's children's resources panel on 16 July, it was decided that the children should be returned home as soon as possible. The allocated social worker visited the home on 18 July and reported that it was clean and improvements had been made. Another meeting of the panel on 23 July decided that the bail conditions needed to be resolved or changed so that the children could return home. On 24 July the Council wrote to the solicitors notifying them that it had been decided not to bring care proceedings, but that they could not provide a date for the children to be returned because of the bail conditions. A child protection case conference was scheduled for 31 July.

9. The police refused to vary the bail conditions, at first because the relevant officer was on leave and then because of the impending case conference. Bail was continued until 17 August on the same conditions. The solicitors asked the Council to supply a letter supporting an application to discharge the bail conditions but this was refused. The Council took the view that it was for the parents to apply to the police to lift the bail conditions but no such application was made. Eventually, however, in a telephone conversation with the police on 6 September, a senior officer of the Council "arranged with the police for the bail conditions to be varied with a view to the children being returned [home] on Tuesday". The police agreed. All eight children were returned to their parents on 11 September 2007 after more than two months in foster homes.

10. These proceedings were not begun until July 2013. After criminal proceedings against the parents had been discontinued, they had pursued complaints (rather different from those now before this court) through the Council's internal complaints procedure and thereafter to the local government ombudsman. These were not finally resolved until April 2013. In these proceedings, the parents claimed damages for negligent breach of statutory duty, misfeasance in public office, religious discrimination and breach of their rights under article 8 of the ECHR.

11. The claims were tried by Sir Robert Francis QC, sitting as a deputy High Court Judge, in July 2015. He dismissed the claims for negligence, misfeasance in public office and religious discrimination. But he upheld the claim for breach of the parents' Convention rights on the ground that the Council's interference in the family life of the parents and their children was not "in accordance with the law" because there was no lawful basis for the accommodation of the children. He awarded each of the parents £10,000 damages: [2015] EWHC 2629 (QB); [2015] All ER (D) 99 (Sep).

12. The Council appealed, contending that there was a lawful basis for the children's accommodation; also that the judge had been wrong to extend the time limit for bringing a human rights claim; and wrong to award each parent £10,000 damages. The Court of Appeal held that there was a lawful basis for the children's accommodation and so allowed the appeal; they also observed that they would not have reached the same conclusions as the judge on the limitation and quantum of damages issues but they did not need to decide these given their finding on the main issue: [2017] EWCA Civ 26; [2017] 3 WLR 59.

13. The parents now appeal to this court on the main issue - was there or was there not a lawful basis for the children's accommodation under section 20 of the 1989 Act once the 72 hours of police protection under section 46 had expired?

The scheme of the Children Act 1989

14. The 1989 Act was the outcome of two projects - a review by the Law Commission of England and Wales of the private law relating to the guardianship and upbringing of children (culminating in Law Com No 172, *Review of Child Law: Guardianship and Custody*, 1988) and an interdepartmental review, led by the Department of Health and Social Security, into the public law relating to child care and children's services (*Review of Child Care Law: Report to ministers of an interdepartmental working party*, 1985, HMSO). The latter Review had been recommended by the House of Commons Social Services Select Committee, with the aim of replacing a complicated and incoherent system with "a simplified and coherent body of law comprehensible not only to those operating it but also to those

affected by its operation" (Second Report, Session 1983-84, *Children in Care*, HC 360). The 1985 Review pointed out that "an examination of child care law needs to go well beyond the legal framework under which courts make decisions on the care of children". Local authorities provided a "spectrum of support and care to children in need, and their families" (para 2.2). The Review saw a need for what was then called "care" to distinguish more sharply between voluntary arrangements made in partnership with parents, which might be called "shared care", and compulsory arrangements under a court order (para 2.3). Hence the various statutory powers to provide support for children living with their families should be brought together and include disabled children along with children who were in need for other reasons. And what was then called voluntary care should be differentiated more clearly from compulsory care, by removing the then power of local authorities to assume parental rights simply by passing a resolution to that effect (para 7.35) and by providing that the then power to insist on 28 days' notice before removing a child who had been in voluntary care for six months or more should only be used for the purpose of a phased return home to the family (para 7.32).

15. The Review was followed by a Government White Paper, *The Law on Child Care and Family Services* (1987) (Cm 62). This emphasised that:

> "the provision of a service by the local authority to enable a child who is not under a care order to be cared for away from home should be seen in a wider context and as part of the range of services a local authority can offer to parents and families in need of help with the care of their children. Such a service should, in appropriate circumstances, be seen as a positive response to the needs of families and not as a mark of failure either on the part of the family or those professionals and others working to support them. An essential characteristic of this service should be its voluntary character, that is it should be based clearly on continuing parental agreement and operate as far as possible on a basis of partnership and co-operation between the local authority and parents." (para 21)

16. Hence the Government went further than the Review and decided that the power to require 28 days' notice before removing a child who had been in voluntary care for six months or more should be abolished (para 22.b). If action to delay or prevent a return home was thought essential to protect the child from harm, the authority would be able to apply for an emergency protection order or ask the police to exercise their emergency protection powers (para 23). It should no longer be possible for an authority to assume parental rights and duties by administrative resolution; instead the authority would be expected to seek a court order in care proceedings (para 24). The White Paper did, however, acknowledge that it would not always be possible to enter into agreement with parents before beginning to look

after a child, for example if the child had been abandoned or the parents were incapable of making an agreement because of mental illness (para 25).

17. The Review had also considered whether to provide for formal "care agreements" where children were voluntarily admitted to local authority care. It did not recommend their introduction as a means of defining the legal powers and responsibilities of parents, children and local authorities, but did recommend that clear information on these matters should be given to parents, which might provide a useful basis on which to build informal agreements (paras 7.14-7.17). The White Paper also envisaged agreements, but emphasised that "Where a child is looked after away from home by a local authority under a voluntary arrangement the parents retain all parental powers and responsibilities except in so far as they are delegated to the local authority to enable them to look after the child" (para 27).

18. These conclusions were reflected in the 1989 Act, which brought together the two review processes in a single piece of legislation covering all aspects of the care and upbringing of children. Part 1, "Introductory", is derived from the Law Commission's proposals. The concept of "parental rights and duties", "parental powers and authority" and similar phrases used in statute and common law are replaced with "parental responsibility", defined in section 3(1) as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". Under section 2(1), "Where a child's father and mother were married to each other at the time of his birth" - a phrase which has an extended meaning by virtue of section 1 of the Family Law Reform Act 1987 - "they shall each have parental responsibility for the child". Under section 2(9), "A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf". Further, under section 3(5):

> "A person who
>
> > (a) does not have parental responsibility for a particular child; but
> >
> > (b) has care of the child,
>
> may (subject to the provisions of this Act) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare."

19. Part 2 of the 1989 Act deals with the orders which may be made in private law proceedings between parents and others about the upbringing of children. Part 3 deals with local authority "support for children and families", and includes the accommodation service provided for in section 20 (set out in para 2 above). It may be worth noting that clause 17 of the Bill, which became section 20, was amended in standing committee B in the House of Commons. As originally drafted, subsection (7) provided thus:

> "A local authority may not provide accommodation for any child if any person who has parental responsibility for the child objects."

That would have had the effect that, even if the parent with whom a child was living wished for him to be accommodated by the local authority, for example to provide a short period of respite for a disabled child, the other parent, who was not looking after the child and was not willing or able to do so, could object to the child being accommodated. Hence it was amended so that only a parent who was willing and able either to provide or arrange for the child's accommodation could object to the local authority doing so (Hansard, Standing Committee B, 18 May 1989, col 156). The relationship between subsection (7) and a parent's right to remove the child under subsection (8) is one of the issues in this appeal.

20. Parts 4 and 5 of the 1989 Act provide a range of compulsory powers designed to protect children who are suffering or at risk of suffering significant harm. Part 5 contains short term powers to make child assessment orders (section 43) and emergency protection orders (section 44) and provides for police protection (section 46). In general, these powers can only be exercised where there is a reasonable belief that the child is suffering or likely to suffer significant harm. Part 4 provides for care and supervision orders, including interim orders. An interim order requires reasonable belief that the child is suffering or likely to suffer significant harm attributable to a lack of reasonable parental care (section 38). A full care order requires that the court be satisfied that that is so (section 31(2)). A local authority does not acquire parental responsibility for a child unless and until a care order is made under section 31(1) or an interim care order is made under section 38(2): then under section 33(3) and (4) the authority acquires parental responsibility. That parental responsibility is shared with the parents, but the authority also has power, if satisfied that it is necessary in order to safeguard or promote the child's welfare, to determine the extent to which the parents may meet their responsibility.

The case law on section 20

21. Section 20 contains no express requirement of parental consent to a child being accommodated. Indeed, it envisages circumstances in which no such consent could be obtained, such as where the child is abandoned or lost or appears to have no person with parental responsibility for him. However, the judge had before him several authorities which not only held that informed consent to section 20 accommodation was required but also gave detailed guidance about how it should be obtained.

22. These began with two judgments of Munby J (as he then was) in *R (G) v Nottingham City Council* [2008] EWHC 152 (Admin); [2008] 1 FLR 1660 and [2008] EWHC 400; [2008] 1 FLR 1668. The context was the removal of a new born baby from his mother three hours after birth and their separation in the hospital. Judicial review proceedings that same day led to an order that they be reunited immediately. In his first judgment, Munby J said this (para 15):

> "The law is perfectly clear but perhaps requires re-emphasis. Whatever the impression a casual reader might gain from reading some newspaper reports, no local authority and no social worker has any power to remove a child from its parent or, without the agreement of the parent, to take a child into care, unless they have first obtained an order from a family court authorising that step: …"

He pointed out that there were two qualifications to this. First, a social worker, or indeed anyone else could intervene where necessary to protect a baby from immediate violence at the hands of a parent, not because of any special power or privilege, but because anyone was entitled to intervene in order to prevent an actual or threatened criminal assault (para 21). Second, section 3(5) of the 1989 Act (see above, para 18) allows a person actually caring for a child to do what is reasonable for the purpose of safeguarding or promoting the child's welfare, for example, when medical intervention is urgently needed (paras 23-26).

23. Mother and child were reunited but care proceedings were immediately brought before the local county court and an interim care order made within days. The care proceedings were then transferred to the High Court and came before Munby J, along with the resumed judicial review proceedings, when the baby was still less than three weeks old. In the judicial review proceedings, a declaration was made that the separation of the new born baby from his mother was a breach of the mother's rights under article 8 of the ECHR in that the local authority had neither lawful authority nor any consent from the mother for doing so ([2008] 1 FLR 1668,

para 77). In his judgment, Munby J roundly rejected the suggestion (not in fact persisted in) that the local authority had lawfully arranged to accommodate the baby under section 20, because the mother had not objected to the pre-birth plan or to the actual removal (which she denied) (paras 54-55):

> "[The local authority] seemed to be conflating absence of objection with actual consent - a doctrine which at least in this context is, in my judgment, entirely contrary to principle … To equate helpless acquiescence with consent when a parent is confronted in circumstances such as this with the misuse (or perhaps on another occasion the misrepresentation) of non-existent authority by an agent of the State is, in my judgment, both unprincipled and, indeed, fraught with potential danger."

24. The next case was *Coventry City Council v C, B, CA and CH* [2012] EWHC 2190 (Fam); [2013] 2 FLR 987. This also concerned the removal of a baby from her mother on the day of her birth, but this time the mother, having at first refused to do so, had given her consent to the baby being accommodated. The local authority accepted that they should not have sought her consent so soon after the birth, when she had not only undergone surgery but also been given morphine. They therefore conceded that they had acted in breach of her article 8 rights, in that removing the baby was not only unlawful but also not a proportionate response to the risks as they were at that time. In the course of a judgment which approved the settlement of that claim, Hedley J gave detailed guidance about the use of section 20 agreements, guidance which had been seen and presumably approved by Sir James Munby P (para 2).

25. Hedley J emphasised three points at the outset: (i) that the use of section 20 "must not be compulsion in disguise"; (ii) that "In order for such an agreement to be lawful, the parent must have the requisite capacity to make that agreement"; and (iii) "even where there is capacity, it is essential that any consent so obtained is properly informed and, at least where it results in detriment to the giver's personal interest, is fairly obtained" (paras 27 and 28). These three points were fleshed out in the detailed guidance which followed (para 46).

26. These principles were approved by the Court of Appeal, albeit *obiter*, in *In re W (Parental Agreement with Local Authority)* [2014] EWCA Civ 1065; [2015] 1 FLR 949, para 34. This was an extraordinary case in which the mother had placed her three children with their paternal grandmother in response to local authority concerns which the authority indicated might otherwise lead to care proceedings. A written "agreement" was made between the local authority, the mother and the grandmother "to ensure that [the mother] agrees for the children to remain in the care of [the paternal grandmother] whilst further assessments are completed".

Thereafter the authority decided what contact the mother might have with the children but no further assessments were completed. The mother asked for her children back and, when this was refused, applied for a residence order. The trial judge refused an adjournment in order for the mother to be properly assessed and made a residence order in favour of the grandmother. The mother's appeal was allowed on the ground that the judge should have directed an assessment. But Munby P expressed his considerable concern that the local authority had treated the "agreement" as authorising them to control the mother and her children without bringing care proceedings or undertaking the obligations entailed in section 20 accommodation - indeed nobody knew whether the authority did or (more probably) did not regard themselves as accommodating the children under section 20 (para 32). Tomlinson LJ entertained "grave reservations about the manner in which section 20 has here been used, if it has" (para 39). The "agreement", which began by proclaiming that it was not a legal agreement but then said that it might be used in court as evidence if needed, was in his view "almost comical in the manner in which it apparently proclaims that it has been entered into under something approaching duress" (para 41).

27. The same three authorities were referred to by Munby P, again in the course of *obiter* observations, in *In re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112; [2017] AC 167. The case was about the power to transfer care proceedings to another member state of the European Union under article 15 of Council Regulation (EC) No 2201/2003 (Brussels IIA). But the children in question had been accommodated under section 20 for many months before care proceedings were eventually issued. So the President took the opportunity of drawing attention to the "misuse" of section 20 by local authorities, citing a number of first instance examples, of which the decision of the judge in this case was one, where damages had been awarded against the local authority. The President clearly considered those cases to have been rightly decided. He explained (para 163) that

> "A local authority cannot use its powers under section 20 if a parent 'objects': see section 20(7). So where, as here, the child's parent is known and in contact with the local authority, the local authority requires the consent of the parent."

He also pointed out (para 169) that section 20(8):

> "means what it says. A local authority which fails to permit a parent to remove a child in circumstances within section 20(8) acts unlawfully, exposes itself to proceedings at the suit of the parent and may even be guilty of a criminal offence."

The criminal offence he presumably had in mind was that contained in section 2 of the Child Abduction Act 2004 (see para 46 below).

28. Four cases, apart from this one, in which damages were awarded under the Human Rights Act because of the misuse of section 20 accommodation, are illustrative of the situations which can arise. Chronologically, the first is *In re H (A Child: Breach of Convention Rights: Damages)* [2014] EWFC 38 (29 October 2014). This too involved the placement of a new born baby with foster carers on discharge from hospital. Both parents had learning difficulties and agreed to the baby being placed with a particular couple. At that stage the local authority considered this an informal arrangement rather than section 20 accommodation. Only five months later did they decide to seek the parents' retrospective consent to section 20 accommodation. Care proceedings were not issued until the child was nearly a year old. The local authority accepted that they had breached the rights of both parents under articles 6 and 8 of the ECHR in a variety of ways - mainly by failing to involve them properly in the decision-making process, by seeking consent in the way that they did, by placing insufficient weight on the parents' clearly expressed wish to care for the child, and by delaying both the assessment of the parents and the issue of proceedings.

29. Next came *Northamptonshire County Council v S* [2015] EWHC 199 (Fam), in which the mother agreed to the accommodation of her two-week-old baby and care proceedings were issued nearly four months later. The local authority accepted that they had acted in breach of the rights of both mother and child under article 6 and 8, largely because of the delays both before and after proceedings were issued, which were seriously prejudicial to the child's welfare and the ability of both to enjoy family life with members of the family - the child was eventually placed with the maternal grandmother in Latvia. Damages were agreed of £12,000 to the child and £4,000 to the mother and a payment of £1,000 was made to the grandmother.

30. In *In re AS, London Borough of Brent v MS, RS and AS* [2015] EWFC B150, 7 August 2015, the local authority argued that what they had done was not unlawful. The case concerned a boy aged eight at the material time, both of whose parents had severe mental health problems. Very shortly after he had been returned to his mother's care when she came out of hospital, she suffered a relapse and called an ambulance, leaving the child with a neighbour. A social worker was called and decided that neither the neighbour nor the paternal grandparents were suitable and so the child should be accommodated. The following day the mother was compulsorily admitted ("sectioned") under section 2 of the Mental Health Act 1983. There were doubts about her capacity, which fluctuated, and her consent to the accommodation was never obtained. Care proceedings were not issued until a month later. Judge Rowe QC cited the requirement in both the *G* and the *Coventry* cases that, in the absence of parental agreement, a child could only be removed under an

interim care order, emergency protection order or into police protection. She commented, at para 29:

> "Section 20(1)(c) contains no requirement for the threshold criteria under section 31(2) of the Children Act 1989 to be satisfied on any basis, even reasonable cause. If [counsel] were correct, then a local authority could, on its own assessment of whether a parent was prevented from 'providing a child with suitable care', remove that child without any reference at all to the threshold criteria. The parents would have no forum in which to contest that assessment, and there is no application open to them under the provisions of the 1989 Act to challenge the local authority and seek the return of their child. The child would have no children's guardian. There would be no parameters for the position after removal, there would be no requirement for the local authority to apply to court and there would be no time limit on the duration of the removal. In short there would be no safeguards to mirror those that are expressly included in sections 38, 44 and 46. It would seem perverse if a local authority could more easily remove children from their parents in cases where the threshold criteria were not necessarily met than in cases where there were reasonable grounds to conclude that they were met."

Damages of £3,000 were awarded to the mother on the ground, as in this case, that the removal was not "in accordance with the law".

31. The last in the series cited was *Medway Council v M and T* [2015] EWFC B164. This too concerned a child (aged five) who was placed in emergency foster care after his mother was detained in hospital under the Mental Health Act. The mother was then too unwell to discuss section 20. The local authority thought that there was no need to issue care proceedings as there was no-one to exercise parental responsibility and the mother was not requesting the child's return. Consent was eventually obtained six months later after the mother had left hospital but there were doubts about whether it had been validly obtained. Care proceedings were not issued until the child had been accommodated for more than two years. Rejecting the argument that the accommodation was lawful, Judge Lazarus commented (in similar vein to Judge Rowe QC) at para 53:

> "It cannot have been intended by Parliament that 'provision for accommodation' under section 20 would have given powers to a local authority that would avoid and subvert those careful provisions of Parts IV and V of the Children Act 1989 that

> safeguard families from unregulated unilateral actions of local authorities that interfere with their family life."

Damages of £20,000 were awarded both to the mother and to the child.

32. Also cited in *In re N* were a number of other decisions where judges had been highly critical of the use of section 20 made by local authorities, but in the context of care proceedings rather than a claim for damages under the Human Rights Act: *In re P (A Child) (Use of section 20 Children Act 1989)* [2014] EWFC 775; *Medway Council v A (Learning Disability: Foster Placement)* [2015] EWFC B66; *Gloucestershire County Council v S and C1 and C2* [2015] EWFC B149; and *In re A (Application for Care and Placement Order: Local Authority Failings)* [2015] EWFC 11; [2016] 1 FLR 1. In these, the main focus of the court's criticism was that the local authority had delayed for a long time after accommodating the child under section 20 before issuing proceedings for a care order. *In re A* is also a decision of Munby P. It concerned a little boy who was born while his mother was in prison and accommodated by the local authority. Care proceedings were not issued until he was eight months old. They were dismissed by the President, who described the local authority's case against the father as "a tottering edifice built on inadequate foundations" (para 28) and proceeded comprehensively to demolish it in a judgment which should be an object lesson to all family judges trying these difficult cases. He ordered that the child, now one year old, be returned to his father. Among his criticisms of the local authority is that they "failed adequately to address the very changed landscape" once the father's relationships with the mother, and with a later partner, had ended and he was putting himself forward as sole carer for his son (para 33). It is not clear whether or not the father had parental responsibility. If he had, there must be question marks over the legality of continued accommodation of a child under section 20 in such circumstances.

33. No doubt there have been other similar cases since then. A recent example is the judgment of Keehan J in *Herefordshire Council v AB and CD; Herefordshire Council v EF and GH* [2018] EWFC 10. His criticism was directed at delays of eight years (between the ages of eight and 16) in the case of CD and nine years (from leaving the special care baby unit at the age of five months until the age of nine) before care proceedings were issued in the case of GH. In CD's case, the mother had written to the local authority formally withdrawing her consent to his accommodation when he was about nine and had only been accommodated for five months. But instead of returning him to his mother's care, the authority advised her to seek legal advice. Nor, despite having been advised that the threshold for a care order was met, did they initiate care proceedings until it was almost too late to do so, because CD was nearing the upper age limit for making a care order.

34. These cases illustrate a number of problems with the use of section 20: separation of a baby from the mother at or shortly after birth without police protection or a court order, where she has not delegated the exercise of her parental responsibility to the local authority or been given in circumstances where it is questionable whether the delegation was truly voluntary; retention of a child in local authority accommodation after one or both parents have indicated a desire to care for the child or even formally asked for his return; and a lack of action where the perception is that the parents do not object to the accommodation, even though this means that no constructive planning for the child's future takes place. They also illustrate the dilemma posed to the local authority: something has to be done to look after the child but there are serious doubts about whether the parent can validly delegate the exercise of her responsibility. Equally, they illustrate the dangers if the local authority proceed without such delegation or obtain it in circumstances where the parents feel that they have little choice. There are none of the safeguards and protections for both the child and the parents which attend the compulsory procedures under the Act. Yet, rushing unnecessarily into compulsory procedures when there is still scope for a partnership approach may escalate matters in a way which makes reuniting the family more rather than less difficult. As Hedley J pointed out in *Coventry City Council* (para 24 above), at paras 25 and 26,

> "the emphasis in Part III is on partnership … any attempt to restrict the use of section 20 runs the risk both of undermining the partnership element in Part III and of encroaching on a parent's right to exercise parental responsibility in any way they see fit to promote the welfare of their child."

In this present case, the Council were attempting to do just that - to work in partnership with the parents in an effort to get the children home as soon as possible and to avoid escalating matters by bringing proceedings unnecessarily.

The judgments below

35. The judge pointed out that "at first sight section 20 might be thought not to require the active agreement of those with parental responsibility". However, it was common ground between counsel that "the positive and informed consent of a parent must be obtained" (para 55). He quoted at length from *G* (paras 22-23 above), *W* (para 26 above) and *Coventry City Council* (para 24 above), including Munby J's statement in the second *G* report (at para 61) that "Submission in the face of asserted State authority is not the same as consent. In this context, as in that, nothing short of consent will suffice" (para 56). He concluded that the parents were not fully informed of the matters of which they should have been informed (para 65). Hence there was no valid consent on 6 July, but had there been such consent the interference on that date would have been a proportionate response (para 66). Furthermore, the

letters of 13 July amounted to an express withdrawal of any consent that might have been signified at the time of signing the "agreement" (para 84). It followed that, "while the initial removal of the children from home was lawful and indeed a proportionate and necessary response to the need to safeguard them from harm, the actions of the defendants in retaining the children away from their parents after the expiry of the 72 hour period were unlawful, and therefore the interference with the parents' article 8 rights was also unlawful" (para 111). He did not therefore have to consider whether, if "in accordance with the law", it was nonetheless not a proportionate response to a legitimate aim.

36. The Court of Appeal reviewed the *G, Coventry City Council, W* and *N* (para 27 above) cases, pointing out that they all post-dated the events in this case, and asked "what, as a matter of law, as opposed to subsequently identified good practice, was required before the local authority were permitted to accommodate the Williams children under section 20 of the 1989 Act"? (para 62). They focussed on subsection (7), about which they made three points. First, if it applies, it operated as a bar to the local authority providing accommodation under section 20 (para 65). Second, for it to apply, the person with parental responsibility had to be willing and able to provide accommodation. In this case the bail conditions both "prevented" the parents from providing suitable accommodation to the children (section 20(1)(c)) and meant that they were not able to do so (section 20(7)) (paras 66, 67 and 76). Third, the word used was "objects": there is no express statutory requirement of consent, "let alone any requirement for such consent to be in writing and subject to any of the various refinements that have been described in the case law". This was not meant to detract from the obvious wisdom and good sense of the "good practice guidance" given principally by Munby P and Hedley J, but failure to comply did not give rise to a claim for damages for breach of statutory duty or Convention rights (para 68). The rulings were not binding on the Court (paras 69 to 70). In the cases Sir James was then considering "it may well have been appropriate for him to equate the obligation on a local authority not to use its powers under section 20 if a parent 'objects' as meaning, effectively, that when the parent is known and in contact with the authority, consent is required". But "it would be wrong to elevate the requirement of consent into a rule of law that operates in all circumstances" (para 74). In this case, "on the basis of the lawfully imposed bail conditions, the interference was in accordance with the law and necessary for the protection of the health or the rights and freedoms of others" (para 76). Nevertheless,

> "The guidance given in the family court … identifies clear, co-operative and sensible ways in which a voluntary arrangement can be made between a parent and a local authority when a child may need to be accommodated; it is, in short, good practice guidance and a description of the process that the family court expects to be followed. For reasons of good administration, the practice guidance should continue to be

> followed … but a failure to follow it does not, of itself, give rise to an actionable wrong, or found a claim for judicial review." (para 77)

37. Although section 20(8) is mentioned earlier in the judgment, it does not feature in the court's discussion of the lawfulness of the children's continued accommodation, nor is the relationship between subsections (7) and (8), or with the concept of parental responsibility, explored. Unsurprisingly, the focus is on the judge's decision that the interference with family life was not "in accordance with the law" and there is no discussion of whether, if it was lawful, it was nevertheless a disproportionate response to the situation.

Discussion: section 20 generally

38. The starting point must be parental responsibility. All mothers and (now) most fathers have it automatically. It encompasses all the rights of a parent. The most obvious and fundamental of these is the right to look after and bring up one's own children. A person with parental responsibility may arrange, of his or her own accord, for some or all of his or her parental responsibility to be met by others acting on his or her behalf (section 2(9), para 18 above) and the exercise of parental responsibility may be circumscribed by court order. But a local authority cannot interfere with a person's exercise of their parental responsibility, against their will, unless they have first obtained a court order. Accordingly, no local authority have the right or the power to remove a child from a parent who is looking after the child and wants to go on doing so without a court order. Only the police can do that under section 46 of the 1989 Act. It follows that the decision in *R (G) v Nottingham City Council* (paras 22-23 above) was absolutely right. The mother had just given birth. She wanted to look after her baby. The local authority had no power to prevent her and neither did the hospital. Helpless submission to asserted power does not amount to a delegation of parental responsibility or its exercise.

39. Secondly, it may be confusing to talk of parental "consent" to the removal (or accommodation) of her child. If a parent does agree to this, she is simply delegating the exercise of her parental responsibility for the time being to the local authority. Any such delegation must be real and voluntary. Otherwise the local authority have no power to interfere with her parental responsibility by taking the child away. At the very least, therefore, it should not occur in the sort of circumstances in which "consent" was obtained in *Coventry City Council v C, B, CA and CH* (para 24 above); nor should any impression be given that the parent has no choice in the matter, as happened in *In re W (Parental Agreement with Local Authority)* (para 26 above). Obviously, the best way to avoid this is by informing the parent fully of her rights under section 20, but a delegation can be "real and voluntary" without being fully "informed".

40. Thirdly, removing a child from the care of a parent is very different from stepping into the breach when a parent is not looking after the child. That is what happened in *In re AS, London Borough of Brent v MS, RS and AS* (para 30 above) and section 20 is designed to give the local authority the power, and indeed the duty, to do that. The active consent or delegation of a parent who is not in fact looking after or offering to look after the child is not required, any more than it is when there is no-one with parental responsibility or the child is abandoned or lost. But the local authority's duty and power are subject to the later provisions of the section, in particular, to subsections (7) to (11). In such cases, as a matter of good practice, local authorities should give parents clear information about what they have done and what the parents' rights are. This should include, not only their rights under subsections (7) and (8), but also their rights under other provisions of the 1989 Act, such as that in paragraph 15 of Schedule 2 to know the whereabouts of their child. Parents should also be informed of the local authority's own responsibilities. In appropriate cases, this may include information about the local authority's power (and duty) to bring proceedings if they have reasonable grounds to believe that the child is at risk of significant harm if they do not.

41. Fourthly, parents may ask the local authority to accommodate a child, as part of the services they provide for children in need. If the circumstances fall within section 20(1), there is a duty to accommodate the child. If they fall within section 20(4), there is power to do so. Once again, this operates as a delegation of the exercise of parental responsibility for the time being. The section does not expressly require that such delegation be with "informed" consent, but the duty and the power are subject to subsections (7) to (11). Once again, as a matter of good practice, parents should be given clear information about their rights and the local authority's responsibilities.

42. Fifthly, subsection (7) operates as a restriction on the powers and duties of the local authority under subsections (1) to (5). The authority cannot accommodate a child if a parent with parental responsibility who is willing and able either to accommodate the child herself or to arrange for someone else to do so objects to the local authority doing so. It says nothing about the suitability of the parent or of the accommodation which the parent wishes to arrange. As Black LJ explained in *In re B (Looked After Child)* [2013] EWCA Civ 964; [2014] 1 FLR 277, para 34:

> "I raised the question during the appeal hearing as to whether a parent who is inadequate is in fact 'willing and able to … provide accommodation' but it did not excite much argument. That is explained, I think, by there being a common understanding that where parents in fact object to a local authority providing accommodation, a local authority will have to have recourse to care proceedings if they seek to accommodate a child and any debate as to whether the parents

> are 'able' to provide accommodation is to be had in that context, not in the context of section 20."

43. I agree. The words interpolated by amendment into subsection (7) (see para 19 above) serve a different purpose. Thus, for example, a father who is separated from the mother and is not offering the child a home or offering to arrange an alternative, cannot object to the local authority accommodating the child at the mother's request; or, for example, the mothers in *In re AS* (para 30 above) or in *Medway Council v M and T* (para 31 above) who were compulsorily detained in hospital could not object to the local authority accommodating the child unless they were able to arrange alternative accommodation. But that is all that subsection (7) does. It means that the local authority have neither the power nor the duty to accommodate the child if a parent with parental responsibility proposes to accommodate the child herself or to arrange for someone else to do so. If the local authority consider the proposed arrangements, not merely unsuitable, but likely to cause the child significant harm, they should apply for an emergency protection order.

44. Sixthly, subsection (8) makes it absolutely clear that a parent with parental responsibility may remove the child from accommodation provided or arranged by a local authority at any time. There is no need to give notice, in writing or otherwise. The only caveat, as Munby J said in *R (G) v Nottingham City Council* (para 22 above), is the right of anyone to take necessary steps to protect a person, including a child, from being physically harmed by another: for example, if a parent turned up drunk demanding to drive the child home. In such circumstances the people caring for the child would have the power (under section 3(5) of the 1989 Act) to do what is reasonable in all the circumstances for the purpose of safeguarding or promoting the child's welfare (see para 18 above).

45. It follows that, if a parent unequivocally requires the return of the child, the local authority have neither the power nor the duty to continue to accommodate the child and must either return the child in accordance with that requirement or obtain the power to continue to look after the child, either by way of police protection or an emergency protection order. These can, of course, only be obtained if there is reasonable cause to believe that the child will otherwise suffer significant harm. Thus, in *Herefordshire Council v AB and CD* (para 33 above), the Council should have acted upon the mother's formal withdrawal of her consent to CD's being accommodated - which would be better framed in terms of a request for the immediate (or timed) return of the child - rather than advising her to seek legal advice.

46. A parent whose unequivocal request for the immediate (or timed) return of an accommodated child is refused could take a variety of steps to enforce her rights.

The simplest step would be to remove the child. At common law there were torts of depriving a parent of the services of a child and harbouring a child, but these were abolished by section 5 of the Law Reform (Miscellaneous Provisions) Act 1970 (and see *F v Wirral Metropolitan Borough Council* [1991] Fam 69). The traditional method of securing the release of a child through habeas corpus proceedings remains, subject of course to any court orders to the contrary. It is also an offence for a person, without lawful authority or excuse, to take or detain a child under the age of 16 so as to remove him from the lawful control of any person having lawful control of the child or so as to keep him out of the lawful control of any person entitled to lawful control of the child: Child Abduction Act 2004, section 2. But far preferable to any of these is for the local authority promptly to honour an unequivocal request from the parent for the child's immediate (or timed) return.

47. Seventhly, the right to object in subsection (7) and the right to remove in subsection (8) are qualified by subsections (9) and (10). These cater for court orders which have determined with whom a child is to live. Thus if there is a child arrangements order under section 8 of the 1989 Act or an order under the inherent jurisdiction of the High Court, providing for the child to live with a particular person or persons, or if there is a special guardianship order, then that parent cannot object or remove the child if the person or persons with whom the child is to live, or the special guardian or guardians, agree to the child being accommodated. These orders restrict that parents' exercise of parental responsibility; but without such an order it is not restricted.

48. Eighthly, section 20 makes special provision for children who have reached 16. In addition to the general duty in subsection (1), there is a duty in subsection (3) to provide accommodation for any child in need who has reached 16 and whose welfare will be seriously prejudiced if this is not done; and in addition to the general power in subsection (4), there is power in subsection (5) to accommodate anyone who has reached 16 but is under 21 in a community home which caters for over 16-year-olds. Subsection (11) makes it clear that once an accommodated child reaches 16, a parent has no right to object or to remove the child if she is willing to be accommodated by the local authority.

49. Finally, there is nothing in section 20 to place a limit on the length of time for which a child may be accommodated. However, local authorities have a variety of duties towards the children whom they are accommodating. Their general duties towards looked after children in section 22 of the 1989 Act include a duty to safeguard and promote their welfare, in consultation with both the children and their parents. This is reinforced by the Care Planning, Placement and Case Review (England) Regulations 2010, SI 2010/959, which require local authorities to assess a child's "needs for services to achieve or maintain a reasonable standard of health or development" and prepare a care plan for her, to be agreed with the parents if practicable (regulation 4(1), (4)). The care plan has to record, inter alia, the

arrangements made to meet the child's needs and the long term plan for her upbringing ("the plan for permanence") (regulation 5(a) and (b)).

50. Thus, although the object of section 20 accommodation is partnership with the parents, the local authority have also to be thinking of the longer term. There are bound to be cases where that should include consideration of whether or not the authority should seek to take parental responsibility for an accommodated child by applying for a care order. Good examples are *Medway Council v M and T* (para 31 above), where the mother suffered from long term mental health problems and was not meeting her parental responsibility, so it was necessary for someone to do so; and *Herefordshire Council v EF and GH* (above, para 33), where it was recognised as soon as the mother and baby foster placement of GH and his 14-year-old mother broke down that care proceedings should be brought, but this did not happen until he was nine years old.

51. Care proceedings have obvious advantages for the child. They involve a rigorous scrutiny of the risk of harm to her health and development if an order is not made, of the assessment of her needs and of the plans for her future. Her interests are safeguarded by an expert children's guardian. If an order is made, it means that the local authority have parental responsibility for her and can put their plans into effect. But, as pointed out by Judge Rowe QC in *In re AS* (para 30 above) there are also advantages for the parents and for the wider family. The parents are entitled to legal aid. Their rights are safeguarded in the proceedings. Even if a care order is made, the court may make orders about their continued contact with the child. Hence it is scarcely surprising that the President and other judges have deplored the delay in bringing care proceedings in cases where it was obvious that they should have been brought. Section 20 must not be used in a coercive way: if the state is to intervene compulsorily in family life, it must seek legal authority to do so.

52. Thus although it is not a breach of section 20 to keep a child in accommodation for a long period without bringing care proceedings, it may well be a breach of other duties under the Act and Regulations or unreasonable in public law terms to do so. In some cases there may also be breaches of the child's or the parents' rights under article 8 of ECHR.

Application in this case

53. In applying section 20 to the facts of this case, it is important to bear in mind that the local authority began looking after the children because they had been taken into police protection. This was not a case in which a local authority used their powers under section 20 to take charge of children who were then in the care of their parents. Here, the section 20 arrangements replaced the compulsory arrangements

under section 46, without the children returning home in the meantime. Whereas, where children move from the care of their parents into section 20 accommodation, the focus is upon whether there has been a truly voluntary delegation of the exercise of parental responsibility, the focus in a case such as this is upon subsections (7) and (8).

54. Here, when the police protection expired on 8 July, the circumstances clearly fell within section 20(1)(c): "prevented" has been given a wide interpretation and the parents were prevented from providing their children with suitable accommodation, not least because of the condition in which their home had been found on 5 July. The starting point, therefore, is that the Council had a duty under section 20(1) to accommodate the children. They would not have been entitled to carry out that duty, however, if the circumstances existed fell within section 20(7), or if a parent sought to remove the children pursuant to section 20(8). It is therefore necessary to look carefully to see whether either of these circumstances existed.

55. The parents had signed the "safeguarding agreement" and section 20 agreements on 6 July which were open-ended in length. It is a matter of good practice that such agreements be made, even in cases where the accommodation has begun with compulsory emergency measures, because of the rights that the parents will have when the compulsory measures expire, to object or to remove the children at will. But it is important that such agreements do not give the impression that the parents have no right to object or to remove the children. The judge held that the parents had the capacity to give a real consent on 6 July, despite their distress that day or, putting that finding in terms which reflect the analysis set out earlier in this judgment, they had the capacity to delegate to the local authority the exercise of their parental responsibility for accommodating the children. However, the judge viewed their consent as invalid because of the case law which imposed a requirement for real and "informed" parental consent. From that finding, followed his conclusion that the local authority had no lawful basis to keep the children away from the parents.

56. It is worth observing that there can be a delegation of the exercise of parental authority even without the parent being "fully informed", provided that the parent's action is voluntary (see para 39 above). But, as these children were already lawfully accommodated by the local authority when the police protection order expired, the situation at that point ought, more properly, to be viewed through the lens of section 20(7) and (8), rather than as if it were an initial delegation of the exercise of parental authority.

57. Whether the local authority had a lawful basis to continue to accommodate the children all depends, therefore, on whether the parents' actions after the expiry of the police protection order amounted to an unequivocal request for the children

to be returned. The judge did not see the bail conditions as an insuperable impediment to their making such a request (para 65.b). There could have been a number of solutions, including the parents or the Council persuading the police to vary bail to allow alternative accommodation with family and friends, if there were any to help, or with the parents themselves. Breaking police bail conditions is not a criminal offence and there was no evidence of what would have happened if the children had returned home. The bail conditions did not operate to give the Council any greater powers than they had under the 1989 Act. The ostensible reason for the conditions was not a good reason for keeping all eight of the children - particularly the baby - apart from their parents. It is not surprising that they were lifted soon after contact from a senior Council officer, even though there was still the prospect of criminal proceedings against the parents.

58. But it is difficult to know how to construe the events of 9 July, when the parents went to the Council's offices and, according to them, asked for the return of their children. The judge accepted the social worker's denial that she had told them that the children would never be returned. But he found it probable that they were told that the document they had signed authorised the children to be kept, because that is what she believed at the time. However, he went on to say that "it is difficult to determine whether, and if so on what terms, the claimants asked for their children to be returned". Given his earlier finding about the events of 6 July, he made no finding about it (para 68). It is therefore difficult for us to construe these events, either as a clear objection to the children's accommodation under section 20(7) or as an unequivocal request for their immediate return under section 20(8). There would be little point in our sending the case back to the judge for him to make findings on this matter. It is fairly clear that, on that date, he would have regarded the continued interference in the family's life as a proportionate means of protecting the children from harm. In those circumstances, even if the events of 9 July had removed the lawful basis for the local authority's actions for a matter of days, which must be doubtful, no damages would be payable.

59. Next came the solicitors' letters of 13 July. These cannot be construed as an unequivocal request for the children's immediate return. The judge construed them as the withdrawal of any consent that might have been signified at the time of the "agreement" (para 84). However, they do not read as an objection or as a request for immediate return. In fact, the parents were fortunate enough to have the advice and assistance of some experienced and very sensible solicitors and wise enough to offer their complete co-operation to improve matters in the home and allay the Council's concerns. The solicitors were obviously trying to achieve the return of all eight children as quickly as possible on a collaborative basis, rather than to push the Council into issuing care proceedings which would probably have delayed matters much longer. As part of that collaborative approach, it is clear from the letters that the parents were prepared, albeit no doubt with some reluctance, to delegate the exercise of their parental responsibility for accommodating the children to the local

authority until the Council felt able to return them, and that delegation was never unequivocally withdrawn. The result was a happy outcome for all concerned.

60. I was for a while concerned at the delay in assuring the police that in the Council's view the bail conditions could safely be lifted so that the children could return home. It was not the Council's job to apply for the conditions to be varied or lifted but they could have provided earlier support for an application by the parents. However, as the judge found, the police had their own concerns, independent of those of the Council, which later led to multiple charges being preferred against the parents, so that it was not possible to say what effect an earlier positive report from the Council would have had (para 91).

61. It follows that, the parents not having objected or unequivocally requested the children's immediate return, there was a lawful basis for the children's continued accommodation under section 20. This means that the ground on which the judge held their accommodation to have been in breach of the parents' article 8 rights is not made out.

62. There would remain the questions (a) whether the Council's actions, albeit in accordance with the law, amounted to an interference in the right to respect for family life and (b) if so, whether this was a proportionate means of achieving a legitimate aim - the aim of protecting the children from harm or preventing crime. This issue was not fully explored, either by the judge or by the Court of Appeal, nor has it been raised before this court. I would accept that keeping children away from their parents in circumstances where the parents feel that they have no choice in the matter or have indicated that they want their children back is an interference by a public authority in their family life. The judge found that the interference was proportionate at the outset of the children's accommodation (para 66). It is also implicit in the judge's finding that the Council might have sought Emergency Protection Orders in response to the solicitors' letters in July (para 86) that the interference continued to be a proportionate response at that stage. The persistence of the bail conditions was clearly relevant to the proportionality of the continued interference. It may very well be that, had the issue been explored, the court would have found that the interference was proportionate. In any event, as the issue has not been raised before us, it is not for this court to say that it was not.

63. It follows that the parents' Human Rights Act claims should have been dismissed, albeit for reasons which are rather different from those of the Court of Appeal.

64. In sum, there are circumstances in which a real and voluntary delegation of the exercise of parental responsibility is required for a local authority to

accommodate a child under section 20, albeit not in every case (see para 40 above). Parents with parental responsibility always have a qualified right to object and an unqualified right to remove their children at will (subject to any court orders about where the child is to live). Section 20 gives local authorities no compulsory powers over parents or their children and must not be used in such a way as to give the impression that it does. It is obviously good practice in every case that parents should be given clear and accurate information, both orally and in writing, both as to their own rights and as to the responsibilities of the local authority, before a child is accommodated under section 20 or as soon as practicable thereafter.