Section 20 arrangements shake-up expected for social workers following Munby guidance

Latest ruling from family courts chief could be as influential for practice with voluntary care arrangements as Re B-s has been in adoption

by **Luke Stevenson** on November 19, 2015 in **Child safeguarding**, **Children**, **Looked after children**

Photo: bahrialtay/Fotolia

A mother is in hospital, having just had her fourth child. The first three are on placement orders, and the learning disabled mother is under the influence of morphine after a difficult birth. Earlier that day she had refused a Coventry council social worker's suggestion that the child, **known as CA**, be accommodated under a section 20 arrangement. After being medicated with morphine, she agrees.

Further down the line, a judge will criticise the actions of the council in this case. As he points out, every social worker has a duty to ensure the person giving consent to section 20 arrangements, which are voluntary arrangements agreed to by the parents, has the capacity to do so.

This case is just one of several highlighted by family court chief **Justice James Munby in Re N**, a judgment made earlier this month that sets out clear guidelines for social workers who want to enter into section 20 arrangements with the parents of a child who needs support. The Coventry case from 2012 contributes to the 'misuse and abuse' of section 20 arrangements Munby is concerned about.

This is also true of the **recent judgment against Medway council**, which criticised social workers and legal teams for a 'shocking misunderstanding' of the law. Medway was fined a record £40,000 after a girl was placed in a section 20 arrangement without parental consent for more than two

years.

Munby's latest judgment and attached guidelines will be significant. The sector is **still dealing with the impact of the Re B-S judgment he gave in 2013**. This set out the essentials for practice when making an application for adoption amid "real concerns" about inadequate analysis in these cases, and has since been held as the reason for a **sharp drop in placement orders**. There is a feeling that Re N could be a similarly significant judgment, by clamping down on questionable social work practice, which will carry long-term implications for those in practice and some of those on the arrangements.

Game changing

"What Munby is saying is we have now moved into a position where it has become very confusing and misleading to families, and in turn children, about what section 20 actually means," explains John Simmonds, director of policy, research and development atCoramBAAF. "Section 20 is an enormously significant part of the Children Act and it does determine the way that local authorities engage themselves with families and with children. This has the potential to be game changing."

Munby's concerns were in four key areas:

- Councils failing to get informed consent from the parents from the outset.
- How consent is recorded by local authorities. There is no requirement, in law, for the agreement to be in or evidenced by writing, "but a prudent local authority will surely always wish to ensure that an alleged parental consent in such a case is properly recorded in writing and evidenced by the parents' signature," Munby said.
- That section 20 arrangements are allowed to continue for far too long.
- Local authorities are reluctant to return the child to the parent(s) immediately after parental consent is withdrawn.

In the same way Re B-S is said to have caused placement orders to plummet and special guardianship orders to rise, could Re N lead to a spike in care proceedings? "[That's] one direction of travel," says Simmonds.

Bridget Lindley, deputy chief executive and principal legal adviser, for the Family Rights Group, says some authorities will look at their existing section 20 arrangements "and be alarmed by their legality". She also thinks a rise in care proceedings "could well happen".

A rise in the number of care proceedings could reflect authorities looking to shore up existing section 20 arrangements by applying for formal care orders.

However, Anthony Douglas, chief executive of Cafcass, says: "The judgments are likely to lead to improved section 20 practice in local authorities rather than to a reactive spike in care applications."

An end to poor practice?

Douglas welcomes the judgment, as did other social care commentators, and sees it as an attempt to “bring to an end poor section 20 practice in which children drift aimlessly and parents are sidelined”.

Lindley agrees, adding how it’s “critical that frontline social workers in child protection, who are likely to be using or misusing this…understand”.

Likewise Jon Fayle, vice chair of the National Association of Independent Reviewing Officers, says: “I think it is likely that some cases may go into care proceedings as a result of this judgment and advice, but what I hope is that most current arrangements will be able to be put on a proper footing through the negotiation of a transparent, written agreement between the parents and the local authority.”

Andy Elvin, chief executive of TACT Fostering and Adoption, says there will “undoubtedly” be a number of children who return home following the recent Medway and Re N judgments, while there will also be a number of children who have section 20 arrangements converted into interim care orders.

However, even if a rise in care applications doesn’t happen, and in fact Re N results in more children on section 20s being returned to their families, this would reflect “that children were in care on inappropriate [arrangements],” according to Elvin.

There would also be an element of risk attached, Simmonds warns: “There may well be some situations where the local authority decides that the child needs to go back home, [because] it doesn’t have the evidence for care proceedings, and there’s a risk then of children being returned home and plans not being made which actually protect children.”

Spirit of the Children Act 1989

A section 20 arrangement requires the consent of those with parental responsibility for the child or children involved, and the original spirit of the Children Act 1989 as it was written was that the arrangement would be a partnership between parents and local authority, where a local authority took a role in helping the parents and children through a tough period.

“The original spirit of it has been lost, basically,” says Lindley, who adds: “It was a positive support service, rather

Section 20

Section 20 arrangements happen for three reasons: if a child has no person with parental responsibility for them, they are lost or have been abandoned, or the person who has been caring for them is prevented (temporarily or permanently) from providing them with suitable accommodation or care. It’s the third factor which is particularly relevant in this context.

As opposed to the numbers of looked-after children, placement orders and special

than used as an alternative to court."

It's here where some of the 'misuse' Munby talks about sits.

"I think it would be over generous to say that problems have always arisen from a misunderstanding (as happened in Medway), but I think that on some occasions local authorities are knowingly playing a bit fast and loose," explains Fayle.

guardianship orders, section 20 arrangements have not been subject to any major shifts in use over the past few years.

In fact, they were decreasing until 2013, **though numbers have begun to rise slightly since then**. In the year ending 31 March 2015, 19,300 children started to be looked after under section 20 throughout the year. More than 15,400 ceased to be looked after under section 20 in the same year.

"[Local authorities] may not want to have the trouble and expense of instituting care proceedings when they think that they can use a section 20 arrangement. So they might say to the parents 'look unless you agree to this, we will take you to court,' when actually they may not have grounds, or would not wish to do so for other reasons," Fayle says.

Elvin agrees: "As the social worker, as the local authority, you have the power if you're saying to a family 'we really think this child should come into care' and the family say 'well I don't want the child to come into care', and you say 'if you don't agree with it we're going to have to have a big law meeting and we are going to consider taking care proceedings'."

Delicate path

Simmonds says the correct action for social workers in these cases isn't always clear.

"Social workers are very often in the position of having to tread a very delicate path in securing cooperation, being open and transparent and recognising that what is at the heart of this is a very vulnerable child and that getting it wrong can have very serious consequences," he says.

What has changed, Simmonds think, is how social workers deal with risk: "When we get cases like Victoria Climbié, Baby Peter and many others…then it does make social workers and local authorities feel that you have to act."

Despite the concerns, section 20 is still a valid option for social workers if used in the right way, Elvin says: "Section 20 should be for voluntary periods of short-term care that have a purpose to them," he says." The parent going into rehab – a classic section 20 case – the parent with a physical impairment, the parent who is on a short-term section [under the Mental Health Act] – these are the section 20 type things when rehabilitation is very much a plan of action."

The judgment from Munby has been welcomed as a necessary step in an area where "there is a quite a lot of misuse", according to Lindley.

Independent advice

There are concerns that remain. Lindley worries about parents receiving no legal, or independent, advice, which hampers their ability to make an informed agreement to the arrangement, as is required.

“Given that we’re not going to be given free legal advice as an automatic right at the drop of a hat, I think the [independent reviewing officers] are the next best place where this should be channelled. There should be much stronger scrutiny by IROs,” she says.

The implications for practice in the judgments set out in recent weeks are regarded as positive steps toward clamping down on the potential misuse of section 20 arrangements. However, if the judgment does lead to a rise in care applications as some fear, its impact could be felt for some time.

Section 20 guidance for social workers

Munby’s guidance for social workers as set out in the Re N judgment:
– Where possible, the agreement of a parent to a section 20 arrangement should be properly recorded in writing and evidenced by the parent’s signature.
– The written document should be clear and precise and drafted in simple and straight-forward language that a parent can readily understand.
– The written document should spell out that the parent can “remove the child” from the local authority accommodation “at any time”.
– The written document should not seek to impose any fetters of the parent’s right to withdraw consent.
– Where the parent is not fluent in English, the written document should be translated into the parent’s own language and the parent should sign the foreign language text, adding, in the parent’s language, words to the effect that ‘I have read this document and I agree to its terms.’

4 Responses to *Section 20 arrangements shake-up expected for social workers following Munby guidance*

Moment November 19, 2015 at 9:39 pm #

This is an eye opener to all social workers and not only those dealing with section 20 of the Children Act. Due to

pressure of work and trying to meet targets, it has been seen by some as a norm not to put consent into writing or just to write that one has consented without their signature and that of an impartial witness. Workers seem to over trust their relationships with clients,families and other informal networks and assume a verbal consent always stands not realizing that people are subject to change with changing circumstances. It is always good practice to put things down into writing because without a written and signed record there is no proof that the consent was ever given. Push will only come to shove when the so called consent is challenged at Court's instance and it is at this time that as workers we normally realize lack of footing on the platform.

It should always be borne in mind that the issue of giving consent/revoking same remains an ethical issue within practice and is enshrined in the Common law, Human Rights , Mental Health and Mental Capacity acts, just to mention but a few. If consent is misused, it affects the objectivity of the decisions to be made and worse still may affect the lives the consent relates to. The issue of consent if not taken seriously would find organisations and workers alike inundated with civil suits.

I hope if Munby's guidance is followed and properly adhered to at every platform, there will be less issues/challenges against social work practice. I hope this will go a long way to restore the pride of the profession and help to regain public trust.

Kim Undy November 20, 2015 at 8:57 am #

There also needs to be acknowledgement of the growing number of adoptive parents feeling they have no other recourse but to use S20 in times of crisis due to – for example – CPV (child to parent violence) and the great difficulties arising in communications & collaboration between parents & the social workers allocated to the child at this point who are not post-adoption workers & therefore not trained in adoption & attachment issues.

Jenn November 24, 2015 at 11:26 am #

So what happens if a child is accommodated under s20 but then both parents die?

Canterbury Tales November 24, 2015 at 12:29 pm #

If both parents die, there is no-one to exercise PR and the LA will need to issue care proceedings to excercise it.

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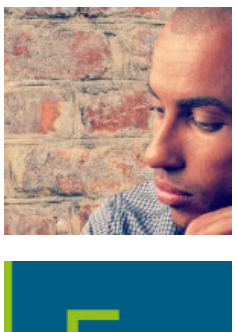

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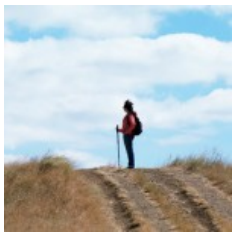

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