

CDC case law update 33 – October 2018



This update is intended to provide general information about recent decisions of the courts and Upper Tribunal which are relevant to disabled children, young people, families and professionals. It cannot and does not provide advice in relation to individual cases. Where legal issues arise specialist legal advice should be taken in relation to the particular case.

Williams and another v London Borough of Hackney [2018] UKSC 37

In this case, the Supreme Court considered 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 ('section 20'). The Supreme Court confirmed that there is no fixed time limit on the use of section 20 to accommodate children.

Case overview

This case involved a family of eight children, who were between 8 months and 14 years old at the relevant time. One of the children was caught shoplifting, and told the police that he had no money for lunch, and that his father had hit him with a belt. The police visited the family home and found it in a state unfit for children to live in.

The children were removed into police protection for 72 hours under section 46 of the Children Act 1989 ('CA'), and were provided with foster placements by the local authority. The parents were arrested and released on bail, on the condition that they did not have unsupervised contact with any of the children.

At the local authority's request, the parents signed a safeguarding agreement, agreeing that the children would stay in their foster placements for the time being. The parents were not told of their right to object to the children's continued accommodation under section 20(7) CA, or of their right to remove them at any time under section 20(8) CA.

When the 72 hours of police protection expired, the parents' request to take the children home was denied. The parents consulted solicitors, who wrote to the Council on their behalf, again seeking the return of the children.

The Council then decided that the children should be returned home as soon as possible. However, it took several weeks for the local authority to arrange with the police for the bail conditions to be varied. Once this was arranged, the children were returned home.

The parents brought proceedings against the local authority, claiming damages for (amongst other matters) a breach of their rights under Article 8 of the European Convention on Human Rights ('ECHR'). The trial judge held that the separation of the children from their parents had not been 'in accordance with the law', because they had not given their informed consent to the children being accommodated under section 20. This resulted in a breach of Article 8 ECHR and an award of damages for the parents.

The Court of Appeal allowed the local authority's appeal. They held that section 20 did not contain a requirement for informed consent, so that the accommodation of the children had been 'in accordance with the law'. The parents appealed to the Supreme Court.

The Supreme Court explained that, if a parent delegates the exercise of their parental responsibility for a child to the local authority under section 20, their delegation has to be real and voluntary. The best way to ensure that delegation is real and voluntary is by informing the parent of their rights to object, or to request the return of the child, under section 20. However, unlike the High Court, the Supreme Court held that this is not a strict legal requirement. The Supreme Court went on to explain that if a parent with parental responsibility objects to the accommodation of the child under section 20(7) CA, or makes an unequivocal request for the return of the child under section 20(8) CA, the local authority cannot accommodate the child under section 20 CA. This is regardless of the suitability of the parent or the accommodation.

Importantly, the Court noted that there is nothing in section 20 CA to place a limit on the length of time for which a child may be accommodated by a local authority. However, when accommodating a child under section 20 CA, a local authority must think of the longer term, and consider initiating care proceedings in order to fulfil its other duties under the CA, and to avoid breaching either the child's or the parents' right to family life under Article 8 ECHR.

The Court noted that, in this case, the local authority began looking after the children following the expiry of the police's protection powers, and without the children returning home at that point in time. In these circumstances, the focus for the Court was on whether the parents had made an unequivocal request for return of the children, rather than on whether they had delegated their parental responsibility.

On this question, the Court held that there had been no unequivocal request for the return of the children. Neither the parents' actions nor the solicitors' letters could be construed as an objection or as an unequivocal request for their return. The continued accommodation of the children was therefore authorised by section 20 CA, and was in accordance with the law for the purpose of Article 8 ECHR. The parents' appeals were therefore dismissed.

[What this means for children, young people and families](#)

An important point in this decision for disabled children and families is that the Supreme Court has clarified that section 20 can be used for long term placements, where this would be consistent with the local authority's other duties. The Supreme Court's decision means that, in future, if a disabled child is being accommodated by the local authority under section 20, a local authority will have no basis for threatening care proceedings because of a perceived limit on the length of time for which a child may be accommodated under section 20.

[Implications for local authorities and other public bodies](#)

In addition to the point flagged above in relation to the lack of any time limit on the use of section 20 to accommodate children, local authorities will note that it

is best practice to inform parents of their rights to object or to request the return of the child under section 20, and to inform them of the power under which the local authority is acting. By adopting this best practice, local authorities can reduce the chances of a successful challenge to their decisions to accommodate children under section 20. However the key legal issue, as explained by the Supreme Court, is for local authorities to ensure that the delegation of parental responsibility under section 20 is real and voluntary.