Williams v Hackney:
Real and Voluntary Delegation of Parental Responsibility

Tom Harrill

"When I use a word,' Humpty Dumpty said in rather a scornful tone, 'it means just what I choose it to mean—neither more nor less.'

'The question is,' said Alice, 'whether you can make words mean so many different things.'

'The question is,' said Humpty Dumpty, 'which is to be master—that's all.'"

— Lewis Carroll, *Through the Looking Glass*

Introduction

1. To say that interpreting the meaning of the words of section 20 of the Children Act 1989 has been problematic is an understatement. Problematic for social workers and social services departments who want to act quickly to protect children at risk of harm. Problematic for parents who, when faced with the might of the state and threat of proceedings, volunteer, agree or acquiesce to their child being placed in local authority accommodation, often in the most difficult of circumstances. Problematic for lawyers who advise their lay and professional clients as to their rights and options. More problematic still when judges have interpreted the law in subtly different ways, adding a gloss to the black letter of the law.

2. In ***Williams and another (Appellants) v London Borough of Hackney (Respondent)* [2018] UKSC 37**, giving the judgment of the court, Lady Hale PSC clarified the correct interpretation and application of section 20 in different circumstances. There is a re-emphasis, too, on best practice guidance for social workers and a hint for those representing parents as how to best protect their clients' interests.

3. One important message I take from ***Williams v Hackney*** is that there are fundamental and important limits on local authorities' ability to remove children from a parent who is caring for them. Like the rest of Part III of the Children Act 1989, section 20 relies upon local authorities and parents working in partnership. Co-operation is key. There should be no master. However long such co-operation endures, local authorities must think about the longer term. Accommodating a child under section 20 does not excuse local authorities from complying with their statutory and public law obligations. Where it is obvious that proceedings will need to be brought, they should be. Where a child is accommodated for anything other than the shortest period of time, local authorities will need to plan carefully as to the appropriate way forward. Care proceedings and the rigorous scrutiny they bring have '*obvious advantages*' for the child and the rights of parents are safeguarded in the proceedings.

4. The balance of this article is divided into three sections: the facts of the ***Williams v Hackney*** case; a summary of the Supreme Court's authoritative nine-point interpretation of the statute and Lady Hale's concluding remarks; and possible further argument which may be seen in relation to the provisions of section 20 of the Children Act 1989 following this decision. Numbers in square brackets refer to the paragraphs of the judgment.

Key Facts

5. Mr and Mrs Williams' 12-year-old son was caught shoplifting. When caught, he told the police that he had no lunch money and that he was hit with a belt by Mr Williams. The police went to the family home and found it in '*an unhygienic and dangerous state unfit for habitation by children*'. As a result, they exercised their powers of protection and removed all eight children. All eight were provided accommodation by the London Borough of Hackney, with the eldest two (aged 14 and 12) placed separately from the youngest six children (aged 11, 9, 7, 5, 2, and 8 months) **[4]**.

6. That evening, the parents were arrested and interviewed. In the early hours of the following morning they were bailed not to have unsupervised contact with any of their children. From the police station, they went to the council offices and were asked to sign a '*safeguarding agreement*'. That agreement does not come out of the judgment particularly well, not least of all for the reason that it failed to explain its relevance to legal proceedings or the provision of the Children Act 1989 under which it was purporting to operate. Nevertheless, the parents signed the document and signed their consent to medical treatment and accommodation of their eight children. At first instance, the trial judge, Sir Robert Francis QC, found that their '*consent was not informed or fairly obtained*' **[6]**.

7. The day after the police powers expired, the parents attended the council's offices and requested the return of their children. They were told that they could not take their children home and engaged '*skilled and experienced*' solicitors. Within four days, those solicitors wrote to the council ultimately giving notice that the parents' '*consent*' or '*agreement*' remained only for a further ten days after which point details were sought as to the timescales for the children returning **[7]**.

8. Within five days of the letters, the council visited the parents' house to find it clean and improved. Five days later, their local authority panel decided that the parents' bail conditions needed to be altered or removed to permit the children to return. The day after the date given for expiry of the parents' agreement to continued accommodation of their children, the council wrote to the solicitors to say that it did not intend to bring care proceedings but could not give a date for rehabilitation of the children due to the bail conditions **[8]**.

9. The police refused to vary the bail conditions. For approximately a month-and-a-half, nothing happened. That stasis was broken when a senior officer of the council negotiated with the police for the bail conditions to be varied and, five days later, the children returned home after a little more than two months in various foster homes **[9]**.

10. The issue on appeal to the Supreme Court was whether there was (or was not) a lawful basis for the children's accommodation after the police protection had expired **[13]**. The court unanimously found that there was a lawful basis and, in so doing, upheld the Court of Appeal's decision. The reasoning for this is found in the court's interpretation of the statute.

Lady Hale's Nine Points

11. Following on from a study of the genesis of the Children Act 1989 **[14-20]**, Lady Hale neatly set out the differing approaches to the vexed issue of consent. This section runs from **[21-34]** and **[38-52]**. There are nine key points to note:

    (1) There is no express requirement for '*parental consent*' to a child being accommodated. There is good reason for this, such as a child being lost or appears to be abandoned (which the eagle-eyed will note is very similar to

the wording of the Child Care Act 1980, section 2). 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. No local authority has 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 **[38]**;

(2) It may be confusing to talk of '*consent*'. If a parent agrees to the removal or accommodation of her child, '*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*' **[39]**. Lady Hale gives a number of examples of what is not real and voluntary:

(a) It should not occur in the sort of circumstances in which '*consent*' was obtained in ***Coventry City Council v C, B, CA and CH*** (removal of a baby from her mother on the day of her birth having undergone surgery, been given morphine and first refusing to give consent);

(b) Care should be taken to avoid any impression being given to a parent that there is '*no choice in the matter*' as was the case in ***In re W (Parental Agreement with Local Authority)*** (where, in response to local authority concerns, the mother placed her three children with the paternal grandmother to avoid care proceedings only for the local authority to decide, Humpty-Dumpty style, what contact mother might have with the children and to refuse to assess her or to return the children);

(c) The best way to ensure real and voluntary delegation is '*is by informing the parent fully of her rights under section 20, but a delegation can be "real and voluntary" without being fully "informed"*'. This last point is expanded upon at **[56]**, in relation to the facts of ***Williams v Hackney***, which states: '*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*'; and

(d) There is a further distinction to be drawn between delegating parental responsibility directly from a parent's care and delegating parental responsibility after a child has been removed. Where children are already accommodated, such as when police protection expires, the situation should be viewed in terms of subsections 20(7) and 20(8) rather than it being an initial delegation of the exercise of parental responsibility **[56].** Respectively, that includes—

(i) The objection of a parent who is willing and able to provide—or arrange to be provided—accommodation for the child; and

ii) The provision that 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.

(3) Removing a child from a parent's care is '*very different*' from stepping into the breach when a parent is not looking after the child. '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).' 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' **[40]**;

(4) Parents may ask the local authority to accommodate a child as part of the services it provides for a child in need. 'Once again, this operates as a delegation of the exercise of parental responsibility for the time being'. As a matter of good practice, parents should be given clear information about their rights and the local authority's responsibilities **[41]**;

(5) Subsection 20(7) means that a local 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*.' That is all 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*' **[42-43]**;

(6) There is no need for a parent with parental responsibility to give notice—in writing or otherwise—to remove a child from accommodation provided by or for the local authority at any time. The only caveat is the right of anyone to take steps to prevent a child from being physically harmed by another (e.g. a parent turning up drunk, demanding to drive the child home). In those circumstances, the people caring for the child would have power under section 3(5) of the Children Act 1989 to '*do what is reasonable in all the circumstances for the purpose of safeguarding or promoting the child's welfare*' **[44]**. Further:

(a) If a parent unequivocally requires the return of the child, the local authority must either return the child or obtain the power to continue to look after the child either by way of police protection or an emergency protection order. Unlike ***Herefordshire Council v AB and CD***, it is better for a local authority to act upon a formal withdrawal and not advise the parent to seek legal advice **[45]**;

(b) If a parent's unequivocal request for an immediate or timed request for return of an accommodated child is reused, there are a number of steps a parent could take **[46]**:

(i) Physically to remove the child;

(ii) *Habeus corpus* proceedings, subject to orders to the contrary; but

(iii) Far preferable is for the local authority '*promptly to honour an unequivocal request from the parent for the child's immediate (or timed) return*'.

(c) In the case of the latter, paragraph **[59]** is a stark reminder of the benefits of cooperation. Lady Hale said: '*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… The result was a happy outcome for all concerned*'. That may not be the worst blueprint for dealing with similar situations in the future.

(7) The right to object in subsection (7) and the right to remove in subsection (8) are qualified by subsections (9) and (10), which cater for court orders which have determined with whom a child is to live. If there is a child arrangements (live with) order, an order of the High Court under its inherent jurisdiction, or 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'. This is be cause those orders restrict a parent's exercise of parental responsibility **[47]**;

(8) For children who are sixteen, the situation is different. There are a number of duties and important factors to note **[48]**:

(a) Under section 20(1) and (3), there is a general duty and a specific duty to provide accommodation for any child in need who has reached 16 and whose welfare will be seriously prejudiced if this is not done;

(b) Under section 20(4) and (5), there is a power to accommodate anyone who has reached 16 but is under 21 in a community home which caters for over 16-year-olds; and

(c) Under subsection (11), once an accommodated child reaches 16, a parent has no right to object or to remove the child if the child is willing to be accommodated by the local authority.

(9) Finally, there is nothing in section 20 to place a time limit on the length of accommodation **[49]**. However:

(a) 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 **[49]**;

(b) 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)) and the care plan has to record amongst other things the arrangements made to meet the child's needs and the long term plan for their upbringing (regulation 5(a) and (b) **[49]**; an

(c) 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 European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 [**52**].

12. The judgment concludes that 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 (for example when '*stepping into the breach when a parent is not looking after the child*'). Parents with parental responsibility always have a qualified right to object and an unqualified right to remove their children at will. 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. Good practice demands that in every case parents are given clear and accurate information—orally and in writing—as to their rights and the responsibilities of the local authority before the child is accommodated or as soon as practicable thereafter **[64]**.

What Next?

13. On a practical level, local authority social services departments may wish to formulate a clear, simple document which can be used to inform parents of their rights and the local authority's responsibility. Such a document, if clear, may also be translated so that parents without English as a first language can better understand the situation. If they are not known, rights are meaningless. Many practitioners will have met clients at court for the first time who say they did not know they could object to accommodation, what the local authority's obligations were, or, in some cases, why the local authority needed to share parental responsibility at all. Such a course of action might possibly be of great help to social workers who often have to make important decisions at short notice as well as deal with vulnerable or confused parents.

14. There is still a considerable gap between the best-practice requirements and the wording of the statute. Whether this gap could be satisfactorily closed by binding statutory guidance, such as *Working Together*, is probably a moot point. Following the judgment in ***Williams v Hackney*** it may be that more is expected of social work professionals—who are already subject to record levels of work—to ensure they go further than the black letter of the law requires.

15. We are, I think, yet to see a case litigated which arises from a situation where the initial delegation of responsibility is from a parent's (or parents') care, not following police protection. The Supreme Court has, quite understandably, left the door open for proportionality arguments for long-running use of section 20 arrangements of the sort recently deprecated by Mr Justice Keehan in ***Herefordshire Council v AB*** **[2018] EWFC 10**. By its very nature, arguments of proportionality will likely need to be dealt with on a case-by-case basis. Scrutiny, too, will need to be made of how the local authority has acted in terms of its regulatory and public law duties. As an indication, at **[62]**, Lady Hale suggests that had the Supreme Court been asked to consider the proportionality of Hackney's actions it may very well have been that it would have found them to be proportionate. One point worth remembering, perhaps.

16. Whichever side of the litigation one falls, sensible and measured co-operation will almost always (if not always) be in the best interests of the local authority, the parents and the children.

Tom Harrill

St Ives Chambers

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