

What the Supreme Court has said about voluntary arrangements

Extracts from the Supreme Court judgment in the case of **Williams and another (Appellants) v London borough Hackney (paragraphs 38 to 49)**¹

38. **'The starting point must be parental responsibility....**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... 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.'
39. **'Secondly,** it may be confusing to talk of parent "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.'
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..... 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..... 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,....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 the power to do so. Once again, this operates as delegation of the exercise of parental responsibility for the time being...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,**..The authority cannot accommodate a child if a parent with parental responsibility who is willing and able to accommodate the child herself or 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'
43. '.....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

¹ The full judgment is available on the Supreme Court's website at:
<https://www.supremecourt.uk/cases/uksc-2017-0037.html>

to cause the child significant harm, they should apply for an emergency protection order. If the local authority considers the proposed arrangement, not merely unsuitable, but likely to cause the child significant harm, they should apply for an emergency protection order.'

44. **'Sixthly**,...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...is the right of anyone to take necessary steps to protect a person, including a child, from being physically harmed by another...
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.'
47. **'Seventhly**, the right to object ... and right to remove ... are qualified.... [if there are] court orders which have determined with whom a child is to live...[such as a child arrangements order 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. 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...there is a 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; and...to accommodate anyone who has reached 16 but is under 21 in a community home which caters for over 16-year-olds...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.
51. '...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. In some cases there may be breaches of the child's or the parents' right under article 8 of the ECHR.'