JUDICIARY OF
ENGLAND AND WALES

His Honour Judge Wildblood QC

Designated Family Judge for Avon, North Somerset and Gloucestershire

Misuse of accommodation under section 20 of The Children Act 1989

1. There have been several recent instances in this area where it is quite apparent that accommodation of children under Section 20 of The Children Act 1989 has continued in an unstructured way for excessive periods of time and in circumstances where proceedings are either inevitable or otherwise highly likely to be issued. I regard such accommodation in those circumstances to be unprincipled and wrong. Further, where this occurs, it leads to unjustifiable delays in the completion of arrangements for the child concerned.

2. I refer, in particular, to the decision of Hedley J in Re CA (A baby) [2012] EWHC 2190 in which guidance is given about the use of accommodation under that section. It includes guidance that the Local Authority should consider: 'Would it be fairer in this case for this matter to be the subject of a court order rather than an agreement'. That question should be read as if the word 'fairer' were to be expanded so that the question reads: 'Would it be fairer and in the better interests of the child in this case for this matter to be the subject of a court order rather than an agreement?' It is not in the interests of a child for accommodation to be used in the unstructured way that I have described in paragraph one above.

3. Therefore, in any cases before District Judges or Magistrates in this area where there is any significant suggestion that accommodation under section 20 has been misused in the manner that I have described, the case should be listed before a Circuit Judge following the Case Management Hearing. Circuit Judges are encouraged to give judgments on any such issues that arise before them on referral or on a CMH listed before them. Where possible and appropriate, the judgments should be placed on Bailii in accordance with the transparency provisions. I consider it to be in the public interest that any such misuse of accommodation under that section should be made public.

HHJ Wildblood QC – 26th November 2014.