

# 'I'm not a children and families social worker'. Three mothers' experiences of their children being accommodated under s.25 of the Children (Scotland) Act 1995

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## **Abstract**

This qualitative research study used semi-structured interviews to question three mothers about their experience of the use of s.25 of the Children (Scotland) Act 1995 to place their children in care. S.25 is Scotland's non-statutory approach to accommodating children. National and international research has highlighted that the most common entry into care is without a statutory order. Whilst this is often referred to as voluntary care, research in England and other countries has highlighted that parents have not experienced this process as truly voluntary. This was reflected within the findings of the research. Participants' interviews were emotionally charged and give profound insights into the difficulties of such circumstances that would be valuable for professionals involved to consider. The research highlights the value of a rights-based approach when working in partnership with parents, promoting the use of advocacy and legal support, assessing parents' capacity to understand s.25, providing written and spoken support, and viewing s.25 as an ongoing discussion, not a single event.

## **Keywords**

S.25, Non-statutory care, objection, voluntary care, parental rights, advocacy, Scotland

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## Introduction

Removing a child from their parents is one of the most significant decisions a local authority can make (Burns et al., 2016). This act has significant human rights implications. It intervenes in the private space of families and challenges the notion of individuals' rights to freedom, privacy, and family life (Houston, 2012; Ife, 2008). Yet, removing a child has the potential to give them and their families protection and support in times of crisis (Transparency Project, 2019). This can only occur in accordance with the law, ensuring proportionality and justified reasonable action in line with Article 8 of the European Convention on Human Rights 1998.

In 2020, in Scotland nearly three quarters of the children who entered care and lived away from home did so through s.25 of the Children Scotland Act 1995 (CSA) (Scottish Government, 2021a). S.25 is a non-statutory order that allows a local authority to accommodate a child if nobody has parental responsibility for the child, they are lost or abandoned, or the person who is their carer is prevented from providing suitable accommodation or care. If a person who has parental responsibilities and rights for the child and is willing and able to provide, or arrange to provide, accommodation, objects to the plan, the child cannot be accommodated. The application of this legislation in practice will be explored in this paper.

An analysis of European and North American countries reflects the findings in Scotland that non-statutory care is the most used approach to accommodate a child (Burns et al. 2016; Cusworth et al. 2019). Despite this, there is little knowledge about its use that informs legal and administrative practice and policy (Burns et al., 2016). In Scotland there has been little research and no case law established following the use of s.25. In contrast, in England there have been concerns that the use of their equivalent legislation, s.20 of the Children Act 1989 (CA 1989), is misinterpreted and at times misused (*Williams and another v London Borough of Hackney*, 2018). Multiple authors have identified the need for research to learn from parents about their experiences of voluntary style

arrangements to accommodate their child (Burns et al., 2016; Pösö et al., 2018).

Non-statutory care is often referred to as voluntary care in practice and research. The definition of voluntary is 'proceeding from the will or from one's own choice or consent' and 'having power of one's free choice', which in legal terms includes 'acting of one's own free will without valuable consideration or legal obligation' (Mirriam & Webster, 2022). Yet, research has highlighted that parents do not describe non-statutory care as voluntary (Burns et al., 2016; Pitt 2015; Pösö et al., 2018). However, practitioners often refer to a parent 'consenting' to 'voluntary' care. There is a dissonance between the language of legislation and that of practice, given that neither of the words 'voluntary' or 'consent' appear in the legislation. Not objecting and consenting are different things and consent is not necessarily given voluntarily. The use of language and the experiences of parents will be explored in this paper.

To gain insight into parents' experiences of s.25 in Scotland, within this small-scale qualitative study three mothers were interviewed whose children were accommodated using this measure. The participants in this research each had either a physical or learning difficulty and each of their children had been in care for over a year. Each participant was accompanied by an advocacy worker and a semi-structured approach to interviewing guided the conversation. Each participant has been given a pseudonym to protect their identity. Throughout this research the term voluntary is used only to reflect research, practice, or participants' language.

## **Literature review**

In Scotland, the CSA promotes minimal intervention when engaging in a family's life and safeguarding children (Scottish Government, 2006). In practice the aim is to work in partnership with families with no statutory order. When removing a child from parental care there are four approaches available to social workers. The least restrictive intervention is s.25 of the CSA. S.25 enables a child to be removed from their home without a legal order if the person with parental responsibilities does not object and has capacity to make an informed decision.

They can later object at any point, necessitating that local authorities return their child to their care. If the child has been accommodated for at least six months, a person with parental responsibilities can give fourteen days' notice of their intention to remove the child. The second option to remove a child requires the local authority to refer the child to the Scottish Children Hearing system. This is a legal care and justice system for children who have offended or have wellbeing needs. A Children's Reporter would seek to establish grounds to place a child on a CSO. If grounds are established at a Children's Hearing or at a Sheriff Court, a panel of trained volunteers decide if a child should be subject to a statutory order and whether this should be at home or away. However, unlike a Child Protection Order (CPO) or s.25 this process is not immediate. The third option enables an application to a Sheriff or a Justice of the Peace for a CPO under s.37 of the Children's Hearings (Scotland) Act 2011. The fourth and final option, in instances where the time taken to apply for a CPO could endanger a child's safety, is where police can remove a child from parental care for up to 24 hours through an Emergency Protection Order (EPO) under the CSA 1995 s.61. Overwhelmingly, the use of non-legal orders to place children in care appears most common. In Scotland around half of the children who entered care in 2015-2017 were accommodated under s.25 (Scottish Government, 2019a). In England over half of the children who enter care between 1992 and 2011 were accommodated under s.20 (McGrath-Lone et al., 2016). In addition, research across eight countries identified that the most consistent form of entry into care was without a legal order (Burns et al., 2016). Unlike a CPO, EPO or CSO, there is no independent body overseeing the use of s.25, or any time limitations. Whilst a social worker can make an application to the Reporter for the Children's Hearing to seek a CSO, this is dependent on the social worker making the referral. There are no legal requirements or guidance that necessitate making a referral. As such there could be a risk of drift and no independent assessment of the child's need to live away from home. Within s.25 (6) (a) (ii) a parent has the right to object to plans, but within current guidance there is no discussion as to how to construct this objection - is it actions, words, or feelings? Interestingly, the language within the legislation requires a parent to actively object, leaving

no space for parents to be passive or neutral. As such, how do different local authorities interpret the legislation and assess parents' capacity to object?

To gain consent, relevant information should be shared, understood, and accepted without coercion (Holm, 2015; Scottish Government, 2019b). The individual must be able to weigh up their options and have a clear understanding of the nature, purpose, and consequences of their decisions (Kinton, 2009; Scottish Government, 2019b). Yet, for parents to make an informed objection to their child being placed in care they must assert themselves when making a decision, and communicate their thoughts. Adults' experiences of poor childhoods, and psychosocial difficulties such as unemployment, poverty, domestic violence, substance misuse, and mental health difficulties can lead to poor coping skills in times of chronic stress (Kojan, as cited by Slettebø, 2013, p.580; Tavormina and Closey, 2017; van der Kolk, 2015). Therefore, to what extent would a parent being presented with s.25 to place their child in care be stressed, with this impacting their reasoning, communication, and capacity to make an informed decision? Few (2010) questions how feasible informed consent is (or objection) from parents in such challenging or traumatic circumstances.

England's equivalent legislation to s.25 is s.20 of the CA89, the founding principal of which was to provide accommodation for a child based on clear parental agreement and 'operate as far as possible on the basis of partnership' (*Williams and another v London Borough of Hackney*, 2018, p. 10). Burns et al. (2016) highlighted the attributes of these arrangements as short term, with less adversarial processes, greater potential for partnership, and greater opportunity for family support and respite. The terms 'voluntary' and 'partnership' imply a mutually informed agreement with a shared balance of power and responsibility within the relationship. Scotland's statutory guidelines make reference to s.25 'as a service which parents may seek to take up voluntarily' (Scottish Government, 2004, p. 23). Alternatively, Child Protection guidelines classify s.25 under 'voluntary accommodation', with the aim to 'keep a child safe whilst concerns about a child's safety, or reports or suspicions of abuse or neglect, can

be assessed' (Scottish Government, 2021b, p. 103). This suggests a different ethos, as one of support as opposed to protection.

In practice non-statutory style legislation such as s.25 is, nationally and internationally, often referred to as voluntary care (Burns et al., 2016). Many have cautioned however that this is not, and should not be considered, a distinctly voluntary arrangement (Burns et al., 2016; Pitt, 2015; Pösö et al., 2018). In England these concerns date back to 1980, in *Lewisham L.B.C. v Lewisham Juvenile Court Justices*, who argued 'voluntary care is not a wholly accurate term, but in common use' (The Law Commission, 1987, p. 6). Research has highlighted that some parents experience s.20 as a helpful provision, negating the need for formal care proceedings and providing stability for older children who could not live at home, or respite for children with additional needs (Ryan & Tunnard, 2018). Yet, case law and research highlight that some parents have not experienced it as a voluntary partnership (*A Child: Use of s.20 CA 1989*, 2014; *Coventry City Council v C, B, CA, CH*, 2012; *N (Children) (Adoption: Jurisdiction)*, 2015; *Worcestershire County Council v AA*, 2019).

In England a review of s.20 noted concerns that the legislation was being misinterpreted (*Williams and another v London Borough of Hackney*, 2018).

Lady Hale noted:

At first sight section 20 might be thought not to require the active agreement of those with parental responsibility [...] positive and informed consent of a parent must be obtained. Submission in the face of asserted state authority is not the same as consent. In this context [...] nothing short of consent will suffice. (p. 18)

This highlights that the social worker's role is to assess a parent's capacity to consent and to consider the social worker's own influence on the parent's decision making. English case law highlights social workers' duty to ensure parents have capacity to make an informed decision regarding s.20 (*A Child: Use of s.20 CA 1989*, 2014; Few, 2010; Freel, 2010). Lady Hedley states that any consent given should consider the principles of section 3 of the Mental Capacity Act 2005 (*London Borough of Hackney v John Williams and Anor*, 2017). Parents' circumstances and capacity, alongside their emotional, physical, and mental

wellbeing should be taken into account. Lady Hedley further advises not doing so breaches parents' human rights and is 'compulsion in disguise' (p. 46). Yet, there are repeated incidents whereby parents did not have their right to object explained to them, or consent was obtained from parents who lack the capacity to do so (*Research in Practice*, 2016; Thomas, 2018). This resulted in parents being awarded compensation in two separate cases (*Herefordshire Council v AB*, 2018; *Re CA [A Baby]*, 2012), where children were accommodated shortly after birth without informed consent.

Research has highlighted that parents have experienced undue pressure to consent (*Research in Practice*, 2016; Thomas, 2018) and often do not understand their right to object to their child remaining accommodated (*Herefordshire Council v AB*, 2018). The perceived knowledge, authority, and position of a social worker can inadvertently influence parents (Gambrill, 2001; Miley et al., 2001), with parents often believing that social workers have the power to remove children from their care (Few, 2010). In instances of the use of non-voluntary orders, parents are often presented with the option to consent or go to court (Pitt, 2015). This challenges the notion of s.25 being truly voluntary, as parents may perceive attending court as a threat rather than an opportunity to present their perspective and have the evidence independently judged. These factors have led Burns et al. (2016, p. 3) to refer to non-legal orders as a form of 'soft coercion'.

There has been significant discussion in family courts and the media surrounding the long-term use of s.20. Whilst councils have argued this is in line with the principles of minimal intervention (*A Child: Use of s.20 CA 1989*, 2014; *Coventry City Council v C, B, CA, CH*, 2012; *LB v The London Borough of Merton*, 2013), Lady Hale identified that this has led to parents and children going without legal and advocacy support, and children's care plans drifting with no consideration of who should retain parental responsibilities (*Herefordshire Council v AB*, 2018).

A judgement by the president of the Family Division on s.20 led to recommendations for change (*Research in Practice*, 2016). Guidelines were published in April 2016 that prompted local authorities to review all s.20 arrangements. Following this there was a rise in the number of care applications.

The Care Crisis Review (Thomas, 2018) surveyed nearly 1,000 practitioners, including social workers, lawyers, and judges, and concluded that the new s.20 guidelines had resulted in an increase in care orders and a reduction in s.20 arrangements. Some practitioners raised concerns that the changes undermine the principle of minimal intervention, and as a result some judges do not distinguish between working in partnership with families and poor practice. Many practitioners advised that anticipation of court criticism has influenced practice and decision making within local authorities. However, it was not established if this was to the benefit of children and their families.

## **Research methods**

Whilst s.20 guidance has evolved to protect parents' rights, this only occurred following criticism about the misuse of s.20. Despite the similarities between s.20 and s.25, similar guidance has not been developed in Scotland. When considering s.25, it appears that whilst legislation is clear its use in practice is challenging. This research therefore sought to gain insight into Scottish practice through interviewing parents and learning about their experiences of s.25, thereby gaining insight into their understandings of and attitudes towards the legislation. It is hoped that discussing a very sensitive topic with parents could help inform and improve practice. The small-scale nature of this research means that generalisations cannot be made, but conclusions can be drawn. The research took place during September 2018 to September 2019, with parents from two neighbouring local authorities being interviewed. It was approved by the University of Stirling ethics committee.

In my practitioner role as a social worker I have used s.25 to find alternative care for children. Indeed, my experience led me to choose to research s.25. Adopting my role as researcher challenged me to consider only the perspectives of parents, unlike in practice where a child's experience is paramount (CSA 1995 s.16). Supervision and reflective logs helped me to consider the conflict and impact of my role as both researcher and practitioner on the research. This supported me to think like a researcher as well as a social worker.



To access participants I partnered with an advocacy service. An advocacy worker agreed to contact parents who used their service and who had been presented with s.25 to place their children in care. Guidelines advise that all parents whose children are accommodated should have access to advocacy support (Mellon, 2017). Parents were asked if they wanted to participate in the research. The advocacy worker's existing relationships with participants appeared to promote trust in the researcher, whilst enabling participants to have familiar and accessible emotional and practical support before, during, and after the interview. This was fundamental, as each participant's experience of s.25 evoked difficult and sometimes unresolved memories and feelings. Three women whose children were accommodated under s.25 were interviewed. Their pseudonyms are Amy, Barbara, and Carol. To enable anonymity any identifying information has been changed or removed. Unfortunately, this approach excluded participants without advocacy support, who may advocate for themselves or were not able to access support.

Each participant had at least one known learning, physical, emotional, or mental health difficulty that could impact their communication, understanding and/or memory. The three participants had four children in total, each of whom had been accommodated for over a year. There was no social work plan for any of the children to return to their parents' care. This reflects findings from Booth et al. (2006) that parents with disabilities are disproportionately represented amongst parents whose children have been accommodated and are least likely to have their children return home. Amy wanted her child to return to her care, but Barbara and Carol did not, due to their children's behaviour placing them at risk.

Disappointingly no fathers participated in this research. Whilst two fathers had parental responsibilities and rights for the children discussed neither the advocacy worker nor the mothers had contact with either father. Research has highlighted that the relationship between the mother and child is prioritised in instances of child welfare concerns (Brandon et al., 2017). Cusworth et al.'s (2019) research highlighted that of 123 children who became looked after immediately or soon after birth, nearly half had the information for their fathers

missing from case records. The lack of involvement of fathers highlighted in research, potentially through choice or due to the actions of mothers and professionals, is reflected in the advocacy service. They received significantly less referrals for fathers involved in child protection concerns, and at the time were not actively working with any fathers who had involvement in the use of s.25.

The three participants each took part in a semi-structured interview. Each participant was accompanied by an advocacy worker. One participant, Carol, was also accompanied by her friend for support. Questions were asked sequentially but were adapted in response to participants' cues, words, tone of voice, body language, and so on. All interviews were audio recorded with consent from participants. Each interview generated rich and useful information and was transcribed verbatim. A content and thematic approach was used to analyse the data. Applying a content analysis to participants' verbatim responses enabled themes to be established by counting the frequency of words and topics discussed (Gray, 2018) and documenting them in a table (see appendix 1). Used independently, content analysis can disregard the meaning, depth, and richness of what is said and the context in which it was spoken. To guard against this, an inductive approach enabled themes to emerge from the data. This helped guard against my instinct to identify findings through a social work lens.

The content analysis was carried out alongside current research, legislation and guidance, and colour coded to identify four common themes. The four themes were:

- The ethos of s.25
- Informed objection
- S.25 as an ongoing process
- Professional support

### **The ethos of s.25**

Partnership was advocated as the key principle in the use of non-mandatory orders. Yet, this research highlighted contrasting experiences. An analysis of this finding highlighted that the relevance of the language, subsection of legislation,

and circumstances are significant when considering each participant's experience of partnership.

There appeared to be no common language when discussing s.25. 'Signing the form' was the most common term used when referring to s.25. Whilst neither the legislation nor child protection guidance requires a form to be signed, in England case law for the equivalent legislation recommends a signature. Barbara showed ambivalence when discussing signing the form:

*It was good to get told you have to sign the form but on the other hand I've said it verbally why did I have to sign it? Social work explained that because I said it, they needed proof, so I signed it... It didn't bother me signing it but I would have rather just said 'Aye go ahead'.*

This suggests that other parents may find signing a form to consolidate their choice too difficult. Yet, participants' emphasis on signing a form could imply it gave them something tangible to process.

Under s.25 (1) (b), social workers asked for Amy to agree for her child to be moved to a foster family due to their concerns regarding her child's welfare in her care. Amy said it was a 'voluntary' arrangement, but her experience suggests it did not feel truly 'voluntary':

*They basically told me I had to sign [my child] over voluntary cause if I didn't sign him over voluntary they were going to take it to court and send the police to my house... I was hesitant to do it voluntary. I didn't want to sign my child over... they weren't listening to me. [My friend] forced me to sign the form. I had no choice because I didn't want the police at the door... I didn't want to do either to be honest, but I was kind of basically pushed... So I did sign it voluntary...*

Barbara and Carol each requested that their child be cared for by the local authority after experiencing multiple assaults from their children over a long period of time. The local authority's different responses to each mother appears to impact the subsection of the legislation whereby the child is legally accommodated. Their differing experience highlights contrasting experiences of partnership.

Under CSA95 s.25 (1) (c) Barbara described a partnership agreement with social work for her child to be accommodated where she felt and appeared informed of her rights:

*I knew I couldn't have [my child] here anymore. But I would still have had the control of everything. Social work explained everything to me and told me what it all meant and everything before I signed it...*

In contrast, Carol had no understanding or knowledge of the legislation, her rights or the arrangement that enabled her child to be placed in care:

*I would like it explained to me, what it is for. I'm not a children and families social worker. I do not know the legislation to follow. But I would like to know what it meant.*

For Carol, social workers were unwilling to accommodate her child:

Carol: *'I told [the social workers] I didn't feel safe anymore. I'd been abused for five years. I suppose I was hoping things would get better as you would as a parent.'*

Carol's friend: *'I had to say right, look [Carol] is a vulnerable adult... social work are not interested, so I phoned them up, I said [Carol] is going to stay with me and I will leave the child here.'*

Carol: *'If that night hadn't have happened I would be dead by now. Definitely.'*

This suggests her child was accommodated under s.25 ss.1 (b) when a child is considered 'abandoned'. Whilst both participants identified love for their children and similar experiences of violence from their child, the differing responses from local authorities lead to two strikingly different narratives, one of child abandonment and one of safeguarding. This was despite both parents requiring safeguarded.

### **Informed objection**

Two fundamental rights parents have within s.25 are, (6) (a) (ii) their right to object, and if they do not object, ss.6 (b) their right to remove their child from

accommodation. Barbara clearly understood her choices and their potential outcomes:

*I did feel good that I had that decision to make as I knew the social worker couldn't just sign those forms and that's the good thing about it. Because you know, I knew they couldn't just walk in and lift [my child], it didn't matter what [my child had] done.*

Amy did not understand what her choices were and what the outcomes could be. This was evident when she describes what she thinks would have happened if she objected:

*Amy: 'I know they would have to apply for an order to remove [my child] out of my care and obviously the court would give them that order. Social work will end up, turning up at my door with police to take [my child] away...'*

*Advocacy: 'Did you know that the judge could say yes or no?'*

*Amy: 'I thought if social work applied for an order the judge gives them that order... That's why I refused. If I knew it didn't work that way I wouldn't sign it over voluntary.'*

This raises concern that Amy could not make an informed objection as she did not understand the potential outcomes of her choices.

Both Amy and Carol were unaware if and how they could remove their child from care:

*Once you sign [your child] over you can't really change your mind.*

(Amy)

*It was never been discussed with me. Not one little bit... You know- it was awful, my mind was, will I have [my child] back, will I not da da da da...I didn't know how to get them back... I probably would have went to social work to try for social work get them back.*

(Carol)

Evidently not all participants had an understanding of their rights to make an informed objection to the use of s.25.

### **S.25 as an ongoing process**

Barbara had a clear narrative of what happened when her child was accommodated, identifying discussions surrounding s.25 as an ongoing process. After her child was accommodated her advocacy worker and social worker regularly discussed what she had agreed to, and what her parental rights were. This helped her during times of doubt or mistrust:

*Barbara's advocacy worker: 'In [her] mind for all she had signed the form she was of the understanding later, that maybe they had taken away all her rights for [her child] and she couldn't understand that for a while...'*

*Barbara: 'Yeah- I was thinking does that mean everything is taken away from me.'*

Unlike Barbara, Amy and Carol described the use of s.25 to accommodate their child as a singular event. They had no clear narrative of what happened and had little or no memory of their discussions with social workers about s.25 before or after their child was accommodated:

*[After my child was in care] they never really spoke about the voluntary or nothing, all I knew is I sent [my child] over that was it. Then it never really got discussed much.*

(Amy)

*I went and talked with the social workers... But I eh, did I sign something that night? ...I think I blanked it out. But I do remember thinking I don't know if I'm doing the right thing. But then I know I have to do this... nobody came back and talked to me and said anything about that...It was pretty much [my child] is in care and that was it.*

(Carol)

## Professional support

Barbara identified discussions with legal, advocacy and social work about s.25 as valuable in her trusting in the process:

*My social worker said call your advocacy worker to go get advice... Phone about and get advice. Phone us even to think. What I'm telling you, advocacy will tell you and they did. So I thought well she's not lying.*

Amy and Carol did not describe the social worker who discussed the use of s.25 to accommodate their children as a helpful or informative support, and neither recalls being encouraged to seek legal support. Amy and Barbara signed a form stating their agreement to s.25. None of the parents received a copy of the form or any written information regarding s.25. Amy reflected:

*I think I could have had more time. I think they could have supported me a lot better than they did... They could have explained everything in more details. They could have made me understand it more.*

Each participant's children were later placed on a CSO. Amy advised it took over a year before she attended a children's panel. During this time she had no support from advocacy or legal and was unaware that she had the right to remove her child from local authority care.

*I'm still struggling to this day because I didn't understand what was on that voluntary form. Because they never really discussed it, they just told me to sign [my child] away voluntary. I done that, I just didn't read the form... it's been difficult since and difficult to this day. They want me to meet the adopters, but how can I want [my child] home.*

All participants showed upset and pain over losing the care of their children. For Amy and Carol, the expressions on their faces, the emotion in their voice, and their unclear narrative showed visceral feelings of unresolved grief, anger and distress.

*To be honest my head was so fucked up, I didn't know what day it was, I didn't know what I was going to do, I didn't know what to do, do I go to work, do I not go to work. I couldn't think straight for a very long time.*

(Carol)

## **Discussion**

The finding that two out of the three participants' children were accommodated under s.25 due to the risks their child posed to them was unexpected. Barbara and Carol reported being assaulted and threatened by their children repeatedly over many years. This is often referred to as adolescent to parent violence (APV) and is one of the most understudied forms of family violence (Maclean, 2016; Simmons et al., 2018). In circumstances of APV parents have a right to be safe and free from harm. This could lead to the parent no longer being able to care for their child in order to keep themselves safe. Yet despite the concerns for a parent's, and potentially sibling's, right to be free from harm this would be considered as abandonment under s.25 (1) (b). This highlights an emphasis on parental responsibilities as opposed to acknowledgement of the risks to a parent's welfare.

All three participants had an additional need. They all expressed a wish to have a partnership approach with social workers, yet only one participant experienced this. Wilkins and Whittaker (2017) have identified that social workers felt disingenuous working in partnership with parents and thought it could lead to less focus on the child. They also felt parents with learning difficulties lacked the capacity to manage a participatory approach. Given that the majority of parents whose children are accommodated have a learning difficulty (Booth et al., 2005) this could decrease the likelihood of a rights-based partnership approach when using s.25.

Participants' experiences of s.25 did not fit with the concept of a voluntary partnership. Pösö et al.'s (2018) research in Finland demonstrated that parents displayed different levels of voluntarism with respect to their child's care arrangements. They identified strong voluntarism, where parents recognised a need for help. This sounded akin to Barbara and Carol's experiences. Weak



voluntarism involved a forced submissive acceptance of the plans. This reflects Amy's experience of not making an informed voluntary decision. Whilst Finland's childcare system is different, applying Pösö et al.'s (2018) levels of voluntarism theory to the participants gives a more honest account of the nature of the partnership they experienced. The complex and transient nature of s.25 suggests a need to develop a more transparent language which reflects the level of partnership or arrangement that has led to a child being accommodated.

The language in s.25 legislation and guidance is contrary to the language used in practice. Practice refers to consent, yet legislation seeks objection. Objection in itself is not defined, and at worst this could allow parents' 'submissive acceptance' to be assessed as a lack of objection to their child being accommodated. This highlights the risk of s.25 being misinterpreted or misused. Discussion with the two local authorities' training departments where this research took place highlighted that s.25 was briefly discussed in child protection training, but there was no practice guidance on the use of s.25.

Van der Kolk's (2015) research into trauma highlights that if a person is unsupported, feelings of anxiety, fear and anger can increase and impact on their capacity to reason. In order for them to respond calmly to any perceived threat they must feel genuinely safe, not just through the physical presence of others, but by being 'truly heard, seen and held in the mind of others' (p. 1369). Barbara appeared to gain security once she sought additional support from her advocate and lawyer. Without a sense of safety, a person can go into fight or flight mode, or if all else fails they may disengage from what is happening, including their awareness shutting down and disassociating from others (Levine, 1997; van der Kolk, 2015). Yet, disassociation (van der Kolk, 2015) and submissive acceptance (Pösö et al., 2018) could present as a parent who does not object. Amy and Carol both struggled to recall what happened, with their memory and reflections being at times incoherent. Therefore, to what extent did their experience impact on their capacity to reason, and on their right to choose not to make an informed objection to place their child in care under s.25? This challenges the ethics of the minimal order principle in such circumstances.

The participants' experiences of s.25 occurred over a period of approximately half a day to two days. Only one was directed towards advocacy and legal support. These services have been identified as particularly valuable by parents with learning difficulties (Booth & Booth, 2005). Parents with learning difficulties' communication needs mean that they require more time to build a positive relationship with their social worker (Booth et al., 2005). This helps the social worker learn their communication style and needs. Yet, evidence suggests social work skills are often seen as transferrable and they are given neither the time nor specialist training to help them learn specialist skills for communicating with parents who have learning difficulties (Booth & Booth, 2005; Booth et al., 2005; Guinea, 2001).

Participants highlighted that the sole form of communication about s.25 was verbal. However, for parents with learning or communication difficulties, a dependence on spoken communication is unreliable (SCLD, 2015). Parents benefit from written information and time to process the information in order to make an informed decision (Mencap, 2002; SCLD, 2015). In England recent guidelines on s.20 have not explicitly identified it as an ongoing process. Participants all noted that they would have benefited from written information alongside ongoing verbal discussions and access to legal or advocacy support to help inform them of their rights. Despite the increased likelihood that a parent being presented with s.25 is likely to have a learning difficulty the processes do not appear to be designed for their needs.

Participants highlighted the benefit of having a clear narrative of what happened, and their role within this, as well as the detrimental impact of being without one. Lawler (2008, as cited by Brandon et al., 2017, p. 62) argues that a person's identity is formed by their life narrative. Brandon et al.'s (2017) research highlighted how fathers' life narratives informed their sense of self-efficacy and their hopefulness, and shaped their own identities. A repeated telling of a story or an incident in a person's life has the potential to create meaning and prompt a turning point (McAdams, 2013). This is significant as some people can struggle to recall traumatic incidents and without a coherent narrative can struggle to recover (van der Kolk, 2015). Participants' experiences highlighted that support

from professionals who they trust also provides them with a clear and accurate narrative of their child being accommodated under s.25. Helping parents understand what happened and why is significant to the rights, and potentially the wellbeing, of both parent and child.

The sample size of this research is very small, and whilst the findings cannot be generalised it is observed that they echo concerns within English practice of their equivalent legislation. A larger population of participants across Scotland would in future be beneficial.

## **Conclusion**

When a parent is faced with the possibility that their child may be accommodated, they face the challenging prospect of their family being separated. This is a difficult situation which profoundly impacts on an individual's human rights and wellbeing. A review of literature highlighted that in Scotland there is little research regarding the use of s.25, and that the legislation and guidance does not reflect the complexities of its use. Nor were there any guidelines, targeted training, or policies within the local authorities where this research took place.

This research interviewed three mothers about their experience of the Children (Scotland) Act 1995 s.25. The absence of fathers within the research was in part due to the small proportion of fathers referred to advocacy. This highlights concerns that fathers are often not involved or included during child protection proceedings. An unexpected finding was that two out of the three participants' children were accommodated due to the risks the child posed to the parent. This highlighted a need to better understand child to parent violence and how best to support and respond to families in need.

Overall, the research highlighted a disparity between the language of the legislation, guidance, practice, and parents' experiences. Only in the guidance is the word voluntary used, yet only one parent described a voluntary experience. Parents frequently referred to the legislation as signing the s.25, yet this is not requested in legislation. No parents referenced the use of the word object, as stated in legislation. Indeed, some parents did not have all the information

needed to make an informed decision and were unaware of their ability to object at the time or later. The research findings demonstrated that the parent with the most professional support to advocate for her and inform her of her rights had a clear narrative about what happened and reported the best working relationship with her social workers. In contrast, the other two parents were not aware of their rights, had no independent support, and did not have a clear narrative of what happened. Although each parent expressed a loss and grief for what had happened, those who did not have independent support showed greater signs of distress during the interview.

The findings evidence the need to ensure a human rights approach to supporting parents whose children are accommodated under s.25. The findings highlighted the need for local authorities to develop clear and consistent training and practice that promotes a rights-based approach to ensuring parents can make an informed decision. In situations of discussing the use of s.25, consideration should be given to a parent's capacity, the influence of the social worker, the emotional impact of the circumstances, and their impact on a parent's decision making. Parents may benefit from having written information about s.25 and should always be encouraged to seek legal and advocacy support.

Fundamentally, this discussion should not be a singular event, the use of s.25 should be an ongoing rights- and welfare-based discussion that reaffirms a parent's choices and narrative of events.

Whilst the small sample size meant that the findings from the research cannot be generalised, they provide valuable insights and understanding into parents' experiences. Participants' varied experiences of the use of s.25 highlighted how their understanding of the legislation and their rights were often influenced by their social worker. This suggests it would be beneficial for future research to understand what informs social workers' knowledge, understanding and use of s.25 in practice across multiple local authorities, and how children experience the use of s.25.

## References

A Child: Use of s. 20 CA 1989. (2014). EWFC 775. *British and Irish Legal Information Institute*. <http://www.bailii.org/ew/cases/EWFC/H CJ/2014/775.html>

Adults with Incapacity (Scotland) Act 2000.  
<https://www.legislation.gov.uk/asp/2000/4/part/4>

Anderson, C., Quirnoz-Onate, D., & Gibbons-Wood, L. (2017). *Social Work Law in Scotland* (3rd ed.). Edinburgh: Thomson Reuters.

Booth, T., & Booth, W. (2005). Parents with learning difficulties in the child protection system: Experiences and perspectives. *Journal of Intellectual disabilities*, 9(2), 109-129.

Booth, T., McConnell, D., & Booth, W. (2005). Temporal discrimination and parents with learning difficulties in the child protection system. *British Journal of Social Work*, 36, 997-1015.

Brandon, M., Philip, G., & Clifton, G. (2017). 'Counting fathers in': *Understanding men's experiences of the child protection system*. University of East Anglia. <https://www.uea.ac.uk/centre-research-child-family/child-protection-and-family-support/current-projects/-counting-fathers-in->

Burns, K., Pvsv, T., & Skivenes, M. (2016). *Child welfare removals by the state: A cross-country analysis of decision-making systems*. London: Oxford Scholarship Online.

Coventry City Council v C, B, CA, CH. (2012). *British and Irish Legal Information Institute*. <http://www.bailii.org/ew/cases/EWHC/Fam/2012/2190.html>

Cusworth, L., Biehal, N., Whincup, H., Grant, M., & Hennessy, A. (2019). *Permanently progressing? Building secure futures for children in Scotland. Children looked after away from home aged five and under in Scotland: experiences, pathways and outcomes*. Outcomes Summary. Stirling: University of Stirling.

Few, C. (2010). Baby K's unlawful removal: Practice issues in the emergency protection of children. Letter to the editors. *Child Abuse Review*, 19, 169-171.

Freel, M. (2010). Baby K's unlawful removal: Practice issues in the emergency protection of children. *Child Abuse Review*, 19, 158-168.

Gambrill, E. (2001). Social work: An authority-based profession. *Research in Social Work Practice*, 11(2), 166-175.

Gray, D. (2018). *Doing research in the real world* (4th ed.). London: SAGE Publications Ltd.

Guinea, S. (2001). Parents with a learning disability and their views on support received: A preliminary study. *Journal of Learning Disabilities*, 5(1), 43-56.

Herefordshire Council v AB. (2018). *EWFC 10. Family Law Week.*

<https://www.familylawweek.co.uk/site.aspx?i=ed188876>

Holm, S. (2015). *Informed consent: Ethical and legal issues*. Chichester: John Wiley and Sons Ltd.

Houston, S. (2012). Engaging with the crooked timber of humanity: Value pluralism and social work. *British Journal of Social Work*, 42, 652-668.

Ife, J. (2008). *Human rights and social work: Towards rights-based practice* (2nd ed.). Cambridge: Cambridge University Press.

Kinton, M. (2009). *Coercion and consent monitoring the Mental Health Act 2007-2009*. London: TSO.

Levine, P. (1997). *Waking the tiger: Healing trauma the innate capacity to transform overwhelming experiences*. Berkley: North Atlantic Books.

London Borough of Hackney v John Williams and Anor. (2017). *EWCA Civ 26. Family Law Week.* <https://www.familylawweek.co.uk/site.aspx?i=ed175679>

Maclean, K. (2016). Reflections on the non-accidental death of a foster carer. *Adoption and Fostering Journal*, 40(4), 325-339.

McGrath-Lone, L., Dearden, L., Nasim, B., Harron, K., & Gilbert, R. (2016). Changes in first entry to out-of-home care from 1992 to 2012 among children in England. *Child Abuse and Neglect*, 51, 163-171.

McAdams, D. P. (2013). Life authorship: A psychological challenge for emerging adulthood, as illustrated in two notable case studies. *Emerging Adulthood*, 1(2), 151-158.

Mellon, M. (2017). *Child protection: Listening to and learning from parents*. IRISS. <https://www.iriss.org.uk/resources/insights/child-protection-listening-and-learning-parents>

Mencap. (2002). *Am I making myself clear? Mencap's guidelines for accessible writing*. London: Mencap.

Merriam-Webster. (2022). *Voluntary*. <https://www.merriam-webster.com/dictionary/voluntary>

Miley, K., O'Melia, M., & DuBois, B. (2001). *Generalist social work practice: An empowering approach* (3rd ed.). Boston: Allyn & Bacon.

N (Children) (Adoption: Jurisdiction). (2015). *EWCA Civ 1112. Family Law Week.* <https://www.familylawweek.co.uk/site.aspx?i=ed150974>

Pitt, L. (2015). *How voluntary is voluntary accommodation?* Family Law Week. <https://www.familylawweek.co.uk/site.aspx?i=ed146296>

Pösö, T., Pekkarinen, E., Helavirta, S., & Laakson, R. (2018). 'Voluntary' and 'involuntary' child welfare: Challenging the distinction. *Journal of Social Work, 18*(3), 253-272.

Re CA (A Baby). (2012). EWHC 2190. *Family Law Week*.  
<https://www.familylawweek.co.uk/site.aspx?i=ed99434>

Research in Practice. (2016). *Impact of the Family Justice Reforms: Phase 3 - exploring variation across 21 local authorities*.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/534875/Impact\\_of\\_the\\_Family\\_Justice\\_Reforms\\_Exploring\\_variation\\_across\\_LAs\\_-\\_f...pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/534875/Impact_of_the_Family_Justice_Reforms_Exploring_variation_across_LAs_-_f...pdf)

Ryan, M., & Tunnard, J. (2018). *Care Crisis Review: options for change*. London: Family Rights Group.

Sapsford, R., & Abbott, P. (1996). Ethics, politics and research. In: R. Sapsford, & V. Jupp, (Eds.), *Data collection and analysis* (pp. 317-412). London: SAGE.

Scottish Consortium of Learning Disabilities (SCLD). (2015). *Supporting parenting: Refreshed Scottish good practice guidelines for supporting parents with learning disabilities*. Glasgow: SCLD.

Scottish Government. (2004). *Scotland's children - The Children (Scotland) Act 1995 regulations and guidance: Volume 1 support and protection for children and their families*. Edinburgh: The Stationary Office Limited.

Scottish Government. (2019b). *Informed consent in healthcare settings*. Edinburgh: Scottish Parliament Information Centre.

Scottish Government (2021a). *Children's social work statistics Scotland*. [Email from R. Kanevski] Personal Communication, 20 December 2021.

Scottish Government. (2021b). *National guidance for child protection in Scotland*. <https://www.gov.scot/publications/national-guidance-child-protection-scotland/>

Simmons, M., McEwan, T., Purcell, R., & Ogloff, J. (2018). Sixty years of child to parent abuse research: What we know and where to go. *Aggression and Violent Behaviour, 38*, 31-52.

Slettebø, T. (2013). Partnership with parents of children in care: A study of collective user participation in child protection services. *The British Journal of Social Work, 43*, 579-595.

Tavormina, M., & Clossey, L. (2017). Exploring crisis and its effects on workers in child protective services work. *Child and Family Social Work, 22*, 126-136.

The Law Commission. (1987). *The Law Commission working paper no. 100 care, supervision and interim orders in custody proceedings*. <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage->

[11jsxou24uy7q/uploads/2016/08/No.100-Family-Law-Review-of-Child-Law-Care-Supervision-and-Interim-Orders-in-Custody-Proceedings.pdf](https://www.familylawreview.com/11jsxou24uy7q/uploads/2016/08/No.100-Family-Law-Review-of-Child-Law-Care-Supervision-and-Interim-Orders-in-Custody-Proceedings.pdf)

Thomas, C. (2018). *Care crisis review: Factors contributing to national increases in number of looked after children and applications for care orders*. London: Family Rights Group.

Transparency Project. (2016). *Section 20 of the Children Act 1989 – A guidance for parents and professionals*. <http://www.transparencyproject.org.uk/press/wp-content/uploads/2016/02/s20guidancefeb16.pdf>

van der Kolk, B. (2015). *The body keeps the score: Mind, brain and body in the transformation of trauma*. [Kindle ebook]. London: Penguin.

Wilkins, D., & Whittaker, C. (2017). Doing child-protection social work with parents: What are the barriers in practice? *British Journal of Social Work*, 48(7): 2003-2019. From: <https://academic.oup.com/bjsw/article-abstract/48/7/2003/4781588?redirectedFrom=fulltext&login=false>

Williams and another (Appellants) v London Borough of Hackney (Respondent). (2018). *Supreme Court*. <https://www.supremecourt.uk/cases/docs/uksc-2017-0037-judgment.pdf>

Worcestershire County Council v AA. (2019). *Family Law Week*. <https://www.familylawweek.co.uk/site.aspx?i=ed201867>

## About the author

Dawn Simpson graduated as a Social Worker at the University of Strathclyde. For five years she worked as a children and families social worker for East Ayrshire Council. Following that she worked as a Functional Family Therapist for three years in a newly formed pan Ayrshire team. During this time she completed her MSc in Applied Studies with the University of Stirling and published an article with SJRCC entitled: Beware of the big bad storyteller: An exploration of the therapeutic potential of bedtime reading from the perspectives of young people and residential workers. She started working in the newly formed Small Steps Social Work team based in secondary schools across South Ayrshire.



## Appendix 1

Theme Analysis:

Themes	Amy	Barbara	Carol	Total
Parents' understanding of s.25	0	8	0	8
Parents' misunderstanding of s.25	20	1	3	24
Parents' rights	2	10	9	21
Contact	4	3	3	10
Partnership	0	2	2	4
Trust in social work	0	8	0	8
Mistrust in social work	4	4	5	13
Parents' emotional distress	16	8	16	40

'I'm not a children and families social worker'. Three mothers' experiences of their children being accommodated under s.25 of the Children (Scotland) Act 1995

Struggling to remember the use of s.25	5	0	12	17
What happens after s.25	8	5	2	15
Parents advising on service change	7	3	9	19
Lack of support	16	0	16	32
Support - Legal, advocacy and support	0	15	2	17
Mental health	0	17	4	21