

21 September 2015

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Dear Ms Hodge,

Review of the Guideline for Family Law Courts and Children's Contact Services

Introduction

NLA welcomes the review of the "Guideline for Family Law Courts and Children's Contact Services" ("the Guideline") as this document provides important guidance to courts and to Children's Contact Services ("CCS") about the issues that may arise during a family's use of a CCS.

Comments

The Guideline is a useful tool for clarifying the boundaries of the service of a CCS to children, clients and potential clients. It assists with risk assessment and gives direction on the information a CCS can provide on other available non-legal support services.

The model orders should be considered when preparing documents for clients.

Reference throughout the document to an Independent Children's Lawyer should always be qualified by "if any".

NLA makes the following specific comments in relation to the draft Guideline, adopting the same numbering used in the Guideline:

2.13 General matters

Consider the ability of the CCS to provide a culturally sensitive service. This should include, if a parent to be supervised at a CCS does not speak English, consideration of arrangements for an interpreter to be engaged, including whether it is the

responsibility of one of the parties or the CCS to make arrangements and pay for the interpreter.

3. Court orders referring families to a Children's Contact Service

The specificity of orders made referring families to a CCS can be problematic, with issues arising when the orders are too broad or too narrow.

Case Example

Legal Aid NSW acted for a mother who alleged significant violence and drug use by the father of the children. The matter came before the court before the mother had been given an opportunity to file any material in response to the father's application for time with the children. The Judge listed the matter for interim hearing and at the same time ordered that the parties "apply at a CCS for supervised time and do all necessary intakes and interviews as soon as possible and then the children are to spend time with the father in accordance with the directions of that centre". However, no guidance was provided in the orders in relation to the frequency and duration of this time.

Requiring the CCS to make decisions as to the frequency and extent of supervised time can create difficulties for the CCS and also result in increased conflict between the parties.

In the list of considerations which might be addressed when making an order for a supervised visit or changeover, some additional points could be incorporated:

- A significant issue for parties is the cost of the CCS. Whilst this is briefly mentioned, it is suggested that it warrants greater emphasis. The affordability of the CCS and the distinction between paid centres and subsidised centres can be very relevant to the successful implementation of the orders.
- Should the orders/notations make provision for the attendance or non-attendance of other family members at the CCS? When a parent is seeking to re-establish a relationship with a child it is often the case that members of that parent's extended family may also attend the CCS and this can become a source of further conflict.
- The practicalities associated with the use of a particular CCS should also be considered. Waiting times for particular centres can be significant and there can be a lengthy delay from the making of the orders, to the intake process and then to the occurrence of supervised time. It may be appropriate for the orders to contemplate different scenarios in the event that the nominated CCS is unable to facilitate the supervised time in the time frame, for example through the use of an alternate contact service or through a paid service.

- If a child has special needs consideration of the extent to which these needs can be taken into account when assessing suitability. Can the service provide for the needs of the child? Can accommodation be made by the service to provide for the needs of the child? What will be the response of the CCS if a child's behaviour cannot be managed by the parent being supervised?
- If a parent has special needs consideration of the extent to which these needs can be taken into account when assessing suitability. Can the service provide for the needs of a parent, for example with mental health issues or someone with an acquired brain injury?
- If a parent is travelling from interstate to use the CCS consideration of the appropriate frequency of the visits given the costs and time involved in the travel.

4. During a family's involvement with a Children's Contact Service

As indicated above, the attendance of another family member at the CCS can lead to difficulties and this should be addressed, where possible, in the orders and notations and brought to the attention of the CCS with other relevant information as outlined in 4.1.5.

10.3 Family Relationship Centres

The Child Support Agency is now referred to as the Department of Human Services in government materials.

10.5 Family Violence Orders

Reference to Family Violence Intervention Orders (FVIOs) should be made. It is suggested that the last sentence be deleted as it is potentially misleading given the laws of individual States and Territories and their interaction with orders under the *Family Law Act*.

10.8 Parenting Orders

Parenting orders are not confined to orders for a child to spend time with another person.

10.9 Parenting plans

Section 65DAB of the *Family Law Act* provides that when making a parenting order, the court is to have regard to the terms of the most recent parenting plan if doing so would be in the child's best interest. This does not apply only to contravention proceedings.

10.11 Subpoenas

Fourth dot point "should be" rather than "may be".

Schedule 1 – Model Orders

The sixth clause of the model orders refers to children’s representative rather than Independent Children’s Lawyer.

It would be useful for the model orders to incorporate the following:

- An order that <name of party/parties> must participate in <name of course> provided by <name of service provider> and provide confirmation of enrolment/certificate of completion to the other parties <and the Independent Children’s Lawyer, if any,> within 7 days of the enrolment/completion.

- To assist the CCS in its assessment intake procedure the orders could make provision for:
 - release of court memorandums and other court material to the CCS;
 - notations about any interim or final family violence orders;
 - notation in relation to the anticipated waiting time for intake;
 - notation in relation to any urinalysis orders;
 - notation in relation to the diagnosis of any mental health disorder or illness;
 - a notation that the CCS may suspend or terminate its services if a party does not comply with its agreement and/or reasonable requests, and
 - a report back to the court by way of a letter advising the court and parties that the assessment intake was unsuccessful due to the failure of a party to present to the assessment intake process.

Conclusion

The Guideline is a valuable resource for courts and for CCSs. Whilst the Guideline is intended to inform and assist the courts and CCSs it should be readily available to lawyers, who play an important role in the drafting and implementation of orders referring families to CCSs. NLA suggests that there is scope for more work to be done to improve the understanding of lawyers when referring families to CSS services.

We thank you for the opportunity to provide these comments.

Yours sincerely,



Gabrielle Z Canny
Chair