

Children and Adoption Act 2006 and contact centres – Legal Services Commission amended family decision making guidance

Question and answer document

Where is the revised guidance and will it be included in the Legal Services Commission Manual?

The revised guidance is available on the LSC website at http://www.legalservices.gov.uk/civil/family/legal_guidance_updates.asp. It will be included in the next available update of the Manual.

Were the changes consulted upon?

The changes were consulted upon with the most significant family stakeholders including the practitioner bodies. The consultation was available on the website and practitioners were alerted to it through the LSC email alert system. 146 responses were received in total covering a wide range of views.

How were the responses considered?

The responses were acknowledged and carefully considered by the Family Policy Team. The team attended meetings with some of those involved including contact centres and providers of domestic violence perpetrator programmes, and also liaised with Cafcass and Cafcass Cymru as well as the Department for Children, Schools and Families and Welsh Assembly Government. The responses were analysed and the detailed analysis is available on the family pages of the LSC website.

How has the amended guidance been made available?

Emails were sent to the consultees and those who responded to the consultation exercise providing them with the website link to the amended guidance. On the website the amended guidance appears with changes shown (as against the previous, published guidance). Practitioners were alerted to the revised guidance through the email alert system.

What changes were made to the revised guidance as a result of the consultation and feedback received?

The revised guidance was redrafted to make it clearer but in particular the following changes were made:

- clarification of the availability of funding for mediation suitability assessments. This is not a substantive change but a clearer explanation as the consultation responses indicated that some consultees were unclear how mediation was extended in the context of contact activities.
- clarification of the extent to which public funding can be used to meet the costs of expert risk assessments in cases where that is justified.
- postponement of the changes in relation to the costs of assessments of supervised contact until April 2009. This change is intended to allow time for contact centres to consider their sources of funding more generally.

- we have also clarified the position regarding scope of certificates in relation to the new applications which can be made to the court under the Act.

What are the changes?

- Costs of or expenses in relation to risk assessments under section 16A Children Act 1989 have been added to the list of non allowable disbursements for licensed work.

- costs of or expenses in relation to contact activities directed by the court under section 11A to 11G Children Act 1989 have been added to the list of non allowable disbursements for licensed work. This includes all programmes and other work to or with a view to establishing, maintaining or improving contact with a child or to or with a view to enabling or facilitating contact with a child. Some of this work would in any event be excluded from public funding under Funding Code paragraph 1.3 which excludes therapy and rehabilitative work.

- guidance has been given on the scope of certificates in relation to the new applications which can be made to the court around warning notices, contact activities, enforcement orders and compensation orders.

Have there been any changes to the position regarding financial eligibility for mediation assessment meetings?

No, the amended guidance confirms that provided that at least one of the parties is financially eligible the costs of both parties' assessment meeting(s) will be met.

Does the exclusion of contact activities from funding affect assessments for mediation?

No, assessment meetings can still be publicly funded where the Cafcass/Welsh family proceedings officer is of the view that mediation should be considered or the court adjourns the case for mediation to be considered or makes a contact activity direction requiring information about mediation to be provided to the parties. This continued funding of assessment meetings is part of our strategy to encourage the use of mediation in family cases.

Have there been any changes regarding the funding of Family Mediation?

No, it remains the case that where one party is publicly funded then the LSC will pay a fee for that client to mediate and the mediation service will agree a separate payment with the private paying client.

Can any risk assessment be publicly funded?

The amended guidance indicates that specialist risk assessments which are not of a social work nature and require professional expertise beyond that held by Cafcass officers/Welsh family proceedings officers can still be funded. This would include assessments from psychologists or psychiatrists and may be based on some observation of contact (supervised or not). However, the purpose of the report must be to express an expert opinion on risk and/or

safety of contact in principle, rather than any assessment of supervised contact itself or suitability for a domestic violence perpetrator programme.

Are there any other restrictions on specialist risk assessments?

Contact centre costs or fees cannot be included and the work undertaken must be within the scope of funding more generally as well as being proportionate. Costs will be subject to cost assessment and the guidance makes it clear that we shall need to see an appropriate breakdown of the work done (or proposed to be done), the relevant area(s) of expertise/qualifications and the rates applied.

Can excluded work be authorised or paid for?

Where work is excluded from public funding then no payment can be made from the Community Legal Service Fund for that work. Even where the court has directed the relevant costs or expenses to be borne by the funded client the scope of funding means that the Fund cannot, legally, meet the costs or expenses.

Is there any system which allows for contact activities (which are outside the scope of public funding) to be subsidised?

There is a system of financial subsidy based on means and hardship which is not operated by the Commission and is outside its control. Holding a public funding certificate for the relevant contact proceedings acts as a passport to subsidy.

What is the position regarding contact assessments?

In relation to orders or directions made on or after 6 April 2009 the costs of an assessment of supervised contact or other professional assessment of contact will not be a recoverable disbursement. Until then, the existing, published guidance will continue to apply. This allows for such assessments to be funded on an exceptional basis, although costs are subject to the scope exclusion at Funding Code paragraph 1.3 and subject to cost assessment in the usual way.

What is the position regarding the scope of certificates?

The guidance on scope has been amended to reflect the new powers and orders available to the court. Amendments will not be needed to cover representation regarding the endorsement of an order with a warning notice and representation on contact activity directions/contact activity conditions, monitoring compliance and monitoring contact. However, a specific amendment (or application for funding) will be needed to cover representation on the making, revocation, amendment or breach of an enforcement order or an application for compensation for financial loss. Where an application for funding is made to enforce a contact order the proposed method of enforcement must be made clear – enforcement under section 63(3) Magistrates' Courts Act 1980 remains available.

What is the position regarding the Funding Code?

Applications for amendment or initial cover for the work/applications introduced into the Children Act 1989 by the 2006 Act are subject to Funding

Code Criterion 11.11 (Private Law Children Cases – paragraph 20.33, sub paragraph 22 – paragraph 3C198 LSC Manual). This includes the requirement to consider mediation.

What is the position regarding the funding of children in enforcement proceedings?

Where a competent child applies for funding to enforce an order information must be given regarding the position of the parents regarding both the order and its enforcement (sufficient to explain why the child is taking the proceedings) and an aggregation of means may be appropriate. Where a child is joined in enforcement proceedings there may also be an aggregation of means.

What is the position regarding the statutory charge?

No changes have been made in relation to compensation orders and the statutory charge therefore applies in the usual way – any recovery is not exempt.

When does the amended guidance come into force?

The amended guidance will apply from 8 December 2008. The date of the grant of funding is not relevant. The key date is the date of the making of any relevant order/direction. The exception to this is in relation to the costs of an assessment of supervised contact or other professional assessment of contact – where the amended guidance will apply to orders or directions made on or after 6 April 2009.

Where can I send any queries about the changes?

Queries on legal aid issues can be sent by email to family@legalservice.gov.uk. We cannot deal with queries regarding contact activities and the provision/funding of contact activities. These are matters for Cafcass/Cafcass Cymru or the Department for Children, Schools and Families/the Welsh Assembly Government.

Family Policy Team
Legal Services Commission