

Day-to-Day Care & Contact

August 08

Steps for proceedings under the Care of Children Act 2004

Step 1: Investigate and make/defend application

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Parenting order(s)	up to 8 hours	For <ul style="list-style-type: none">• Taking instructions, attending the client• Identifying legal and factual issues• Preparing application for legal aid• Referrals to counseling services• Conducting initial negotiations between parties• Preparing application for interim/final order(s), including:<ul style="list-style-type: none">○ Affidavit(s) in support○ Information sheets for the Court• Serving of documents• Receiving minute/orders (either following in chambers or 1st Registrar's/Judge's List call)• Reporting to client• Reporting to and invoicing LSA
Formal Proof hearing	up to 2 hours Actual hours	For preparing for hearing For attending hearing to resolve undefended application(s)
Memorandum of consent	up to 2 hours	For <ul style="list-style-type: none">• Preparing memorandum of consent if agreement reached• Seeking approval of the court

Documentation Requirements

- Application for Family Legal Aid (*LSA Form 6*) [s12 Legal Services Act 2000].
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- Additional factors
- Interpreter

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Step 2: Pre-hearing Matters and Mediation

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Pre-hearing matters	up to 8 hours	For <ul style="list-style-type: none"> • Receiving notice of defence and undertaking negotiations • Taking further instructions • Preparing amendment to grant (if expecting to exceed the guideline hours) • Filing affidavit(s) in reply • Attending Registrar's List/Judges List/Roundtable conferences • Liaising with relevant parties – CYFS, Counsel for Child, witnesses, experts • Considering specialist reports, for example <ul style="list-style-type: none"> ○ s132 report - social worker ○ s133 report - mental health, cultural specialist ○ s59 – allegations of violence ○ Lawyer for Childs report • Undertaking discovery • Preparing interlocutory application(s), pre-trial conference memorandum • Reporting to client • Reporting to and invoicing LSA
Mediation Conference (Judge-led)	up to 1.5 times anticipated conference time (hrs) Actual hours	For <ul style="list-style-type: none"> • Reviewing file • Preparing for hearing – briefing client, submissions • Reporting to client For attending mediation conference
Interlocutory hearing(s)	up to 1.5 times anticipated hearing time (hrs) Actual hours	For preparing submissions for interlocutory hearing(s) For attending interlocutory hearing(s)

Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- Additional factors
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Step 3: Hearing

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Preparation for hearing	up to 1.5 times anticipated hearing time (hrs)	For <ul style="list-style-type: none">• Reviewing file• Preparing amendment to grant (if expecting to exceed the guideline hours)• Preparing for hearing – cross examination, briefing witnesses, submissions• Undertaking research, if necessary• Reporting to client• Reporting to and invoicing LSA (If the anticipated hearing time exceeds 2 days, attach a copy of the court fixture notice to the tax invoice)
Hearing	Actual hours	For attending hearing
Review of judgement	up to 1 hour	For <ul style="list-style-type: none">• Receiving and considering judgement• Discussing with client

Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- Interpreter

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Step 4: Review as a result of Court Order or Direction

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Review hearing	up to 3 hours	For <ul style="list-style-type: none">• Reviewing parenting orders to evaluate Day-to-Day Care and Contact regime• Preparing amendment to grant (if expecting to exceed the guideline hours)• Reporting to client• Reporting and invoicing LSA

Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- Interpreter

Granting Notes**Consideration of Additional Factors - Proceedings Step 1**

Guideline hours have been allocated to each activity within the steps for a proceedings on the basis that they are a reasonable estimate of the time required to perform that activity, in at least 80% of matters.

However, the circumstances surrounding a matter may make it necessary to consider guideline hours for 'additional factors'. The 'additional factors' may arise from a variety of circumstances, for example:

- Some of the parties might not be represented, resulting in the lawyer having to explain the proceedings to, and prepare documentation for, person(s) other than the legally aided person, or perhaps having to deal with a difficult litigant in person.
- The proceedings may involve a large number of parties applying for parenting orders including extended family members - any other person who is a member of the child's family, whanau, or other culturally recognised family group or any other person granted leave to apply by the Court.
- The proceedings may involve several children. [However, if the children have different parents, as respondents - the Agency will require separate applications for grants of legal aid]
- A party who suffers from an intellectual disability or mental illness, language or reading difficulties – but not necessitating a separate interpreter - requiring more time in taking instructions or prolonging proceedings. An additional allowance for the use of interpreters is available if required.
- There are contested allegations of sexual abuse or violence.
- An application may be initiated by a child - involving the appointment of a litigation guardian.

There is no complete 'checklist' of circumstances - each matter should be considered on a case by case basis.

The guideline hours for 'additional factors' in the proceedings step(s) are:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Additional factors	up to 3 hours	For additional factors which are likely to impact the preparation and filing of the orders

The guideline hours for 'additional factors' may be applied to the grant, providing:

- the guideline hours for the activity(s) forming part of the maximum grant in this step have been exceeded; and
- the 'additional factors' can be clearly identified and justified.

Granting Notes**Consideration of Additional Factors - Proceedings Step 2: Pre-hearing matters and Mediation**

The guideline hours for Step 2 are designed to cover all attendances for pre-hearing matters including a mediation conference. This is likely to include taking further instructions, negotiations, and attendances (by correspondence where possible, in person or by an agent otherwise) at all registrars lists and judges list while awaiting a mediation conference. However, a date for the mediation conference may be unavailable for several months. As a result, it may be necessary to resolve certain matters before the conference, for example:

- Interim negotiation of day-to-day care and contact arrangements
- A short causes hearing is required where agreement cannot be reached over day-to-day care and contact arrangements
- Additional time may be needed to negotiate arrangements both before and after the mediation conference and on attending Registrars' Lists and Chambers hearings.

In the event that the guideline hours for this pre-hearing step are insufficient to address the special circumstances of the matter, an amendment to the legal aid grant will need to be prepared for consideration by the Agency.

The guideline hours for 'additional factors' in the proceedings step(s) are:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Additional factors	up to 2 hours	For additional factors which are likely to impact the pre-hearing matters and mediation.

The guideline hours for 'additional factors' may be applied to the grant, providing:

- the guideline hours for the activity(s) forming part of the maximum grant in this step have been exceeded; and
- the 'additional factors' can be clearly identified and justified.

Use of Interpreters - Proceedings Steps 1, 2, 3, 4

It may be necessary for a provider to engage an interpreter to assist in communicating with the legally aided person.

Guideline hours are available, through a 'loading on hours granted', to recognise the time incurred in informing, briefing and seeking instructions from the legally aided person through an interpreter.

Granting Notes**Use of Interpreters - Proceedings Steps 1, 2, 3, 4 continued**

The guideline hours for the 'use of interpreters' in the proceedings step(s) are:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Interpreter	30% loading on hours granted	For the additional time necessary to inform, brief and seek instructions from the client when an interpreter is engaged.

The 'loading on hours granted' may be applied to the grant at the proceedings step(s), providing:

- the 'loading on hours granted' has been applied to the activity(s) relating to the 'preparation' of a matter – as opposed to hearings;
- the guideline hours for the activity(s) relating to the 'preparation' of a matter, have been exceeded; and
- the fees for the interpreter will be claimed as a special disbursement.

