Children Australia

www.cambridge.org/cha

Family Law Court orders for supervised contact in custodial disputes – unanswered questions

Emily Schindeler

Griffith Criminology Institute, Griffith University, Mt Gravatt, Queensland 4122, Australia

Article

Cite this article: Schindeler E (2019). Family Law Court orders for supervised contact in custodial disputes – unanswered questions. *Children Australia* **44**: 194–201. https://doi.org/10.1017/cha.2019.42

Received: 29 July 2019
Revised: 3 September 2019
Accepted: 7 October 2019

Keywords:
child contact center; supervision orders; Family Law Court; custodial disputes

Author for correspondence:
Emily Schindeler,
Email: e.schindeler@griffith.edu.au

Abstract

The focus of this study was on the application of orders for supervised access made by the Australian Family Law Court in cases that involved conflicting claims by custodial and noncustodial parents. Based on accessible Court transcripts for the 28-month period ending in early 2019, 103 cases involving 172 children were identified in which orders required supervision for visitation and/or changeovers. The patterns found through thematic analysis suggest that there is a shift to increasing use of final orders involving supervision through child contact centers as either an indeterminate or permanent arrangement. This shift has significant implications for current models of supervised access/changeover, and a greater understanding in terms of the outcomes being achieved is required.

Introduction

> Children's contact services provide safe, neutral and child-focused venues for supervised visits and changeovers to occur between children and their parents and other significant persons in the child's life. They assist parents who are experiencing conflict to manage these arrangements.
>
> (Family Court of Australia, 2016, n.p.)

The focus of this study was on the issuing of orders for supervised access made by the Australian Family Law Court in cases involving conflicting claims by custodial and noncustodial parents. Notably, as cited by Carew, J in the case *Prentice & Wilfred*,

> In cases, such as the present, where a party alleges that a child will be exposed to an unacceptable risk of harm the Court is required to identify the nature of the harm and assess its magnitude and if the risk is unacceptable assess the extent to which the risk can be ameliorated by an order such as supervision.
>
> (*Prentice & Wilfred*, 2017 FamCA290, p. 6:33)

The review of recent patterns in the application of such orders, particularly but not solely in the context of final orders, highlights the need for empirical evidence with respect to the long-term outcomes for children and the relationship between parents and children. This supports the call for greater outcome-focused research as articulated by Birnbaum and Chipeur (2010), Saini, Newman and Christensen (2017) and Bala, Saini, and Spitz (2016).

About supervised contact

Supervised contact involves a third person having oversight of, and responsibility for, ensuring the safety of the child when visiting with a parent or during a changeover from one parent to the other. The Family Court of Australia (the Court) may make orders for such supervision in response to a variety of circumstances. Reasons for the making of orders for supervised contact through a children's contact center, or an approved private arrangement, may be broadly classified as one of child protection or child welfare. With decisions based on the best interest of the child, orders may consider the risk of domestic violence, parental conflict, the risk of child abuse or neglect, parental illness or substance abuse, concern for parenting skills or capacity. Supervised contact has also been used as part of a process to facilitate the reestablishment of relationships between a child and parent who have not been together for some period or when there has been interference in the relationship due to the custodial parent obstructing or denying access to the noncustodial parent (e.g. *Jamal & Akbar*, 2017; *Morton & Macky*, 2018). An order may involve establishing a safe transfer of children from one parent to the other where the animosity between parents may present a risk to the child. This is referred to supervised changeovers. Importantly, the reason for making such orders will impact on the nature and extent to which access is ordered and whether the transition to nonsupervised access or private supervision is included in orders.

Interim orders for supervision, which most frequently involved visitation within a children's contact center, may be made while awaiting an assessment involving allegations of risk behaviour or determining the capacity of a parent to carry out relevant and appropriate parenting

CAMBRIDGE UNIVERSITY PRESS

responsibilities. When the Court finds that there is an element of risk to the child from unsupervised contact, but there is recognition of the value in enabling a relationship with the noncustodial parent, the Court may provide for interim supervised contact. The nature and frequency of supervised contact is shaped by individual case circumstances. Importantly, as set out in the Family Law Court Guidelines, "Children's Contact Services aim to minimize a child's exposure to conflictual or unsafe situations," providing a neutral and supportive environment that ensures an appropriate level of supervision based upon a risk assessment and information provided by the Court[1] (*A Guideline for Family Law Court and Children's Contact Service*, 2007, p. 1).

It should be noted that the location for such supervision may be center-based or within the community, again depending on the individual case. The need for such flexibility was highlighted by Kiely, O'Sullivan, and Tobin (2019) who reported that fathers found not being able to do their normal outdoor activities with their children made visits more difficult. In such cases, supervised contact visits moving into the community provide a more satisfactory experience. A further consideration is the extent to which older children, who have a greater awareness of the issues associated with supervised contact, will find the center-based environment more challenging.[2]

When a referral is made to a contact center, the staff will be informed of any matters which impact on the management of risk as identified by the Court. The orders themselves will generally spell out the frequency of contact, days or times, whether phasing out can occur, and the responsibilities of the parents. Contact centers can refuse or withdraw services in circumstances such as when a parent exhibits aggressive behavior or fails to appear at agreed visitation times. Where supervision is to be carried out by a private supervisor (such as a grandparent or other agreed person), the Court often requires a set of specific undertakings with respect to that role. Finally, the contact service may be asked to provide a report to the Court which sets out when services were provided, a record of any observations and the compliance of parents with an agreement with the service.

About contact centers providing supervision services in Australia

Within Australia, there is a combination of federally funded and nonfunded services. The federally funded services, which are accountable to the Commonwealth Attorney General, must operate in a manner consistent with the *Children's Contact Services Guiding Principles Framework for Good Practice* (Attorney General's Department, 2014). While the guidelines provide that the decision to accept an application into the service remains with the contact center, applicants should not be refused service solely based upon the ability to pay any relevant service fees. As of 2016, there were 37 federally funded centers with 13,000 clients (KPMG, 2016). The Australian Children's Contact Services Association Inc. (ACCSA, 2009) acts as a membership-based umbrella organization for federally funded services. As members, services are required to comply with ACCSA's standards and code of ethics. This is a self-regulatory regime.

Of the nonfunded services, some are provided by nongovernment organisations, sometimes in combination with other support services, and the remainder may be privately owned services. Nonfunded services operate on a fee for service basis. It is worth noting that none of the recent studies have identified the actual cost of such services to the individual despite the potential impact on affordability. Neither of these types of contact services are eligible to become members of ACCSA and are unregulated. KPMG (2016) reported that at that time there were 28 such services with approximately 36,000 clients. This suggests that a significant proportion of those accessing supervised contact in some way are more likely to be using nonregistered, unregulated services.

The absence of a uniform regulatory regime for agencies providing such services has been a matter of some concern. ACCSA has consistently lobbied for the introduction of national regulatory arrangements which set out minimum standards for services and those who work within them, irrespective of whether they are government-funded. The recent review of the *Family Law Act* by the Australian Law Reform Commission (ALRC, 2018) gave some acknowledgement of the supervised contact service regime as part of the Court's and complementary service systems. In its submission to the ALRC, ACCSA (2018) highlighted that parents and children often have complex issues and, as a consequence, contact services operate in an environment in which there are substantial risks for both users and workers. It is for this reason that ACCSA argued that any organisation or agency purporting to offer contact services should be subject to an accreditation system supported by funding that enables the employment of suitably qualified staff.

In operational terms, the contact center is focused on processes that are designed to minimise the risk of conflict and maximise the safety of the child and parents. Subject to Court orders, this is likely to include specifying processes for dropping off and picking up children, as well as immediate oversight of the visit. While contact centers are not intended to provide therapeutic services, they may provide some guidance on parenting practices in a relevant situation. For example, it is expected that staff are trained to detect any potential risk to the child, actions that should be taken in such circumstances and the preparation of observational records.

A selection of issues identified in the relevant literature

The Court operates in a highly contentious political, legal and human environment. While the best interest of children remains the core and over-riding consideration for the Court, this does not mean that it is an easy task to determine. Cases often involve competing claims, lacking in what might be considered traditional factual evidence, and moving goalposts. At the same time, some of the issues which have been identified in relatively recent reviews (KPMG, 2016; Schindeler, 2019) are beyond the control of the Court itself.

A critical element in the making of orders for supervised contact is the way in which risk is determined. Depending on the allegations, the Court is informed by the views of family report writers and expert witnesses appointed by the Court, by child protection workers, by police, and practitioners previously involved with either of the parents. Analysis of cases found that the number of individuals and agencies involved in advising the Court on potential risk may be itself problematic. It is not unusual for there to be a lack of consensus between those involved due to different disciplinary approaches and methods of risk assessment. The Court is faced with weighing up competing judgments in the absence of any consistent or universally accepted approach to determining risk, particularly in the case of allegations of child sex abuse (Schindeler, 2019; Schultz, 2014). For example, in the recent case of *Morton and Macky* (2018), the single expert challenged the methods and findings of the Joint Investigation and Response Team interview process, and in the case of *Mayer and Myer* (2018), the judge expressed "grave concerns" about the processes adopted by those representing Child Protection services and,

particularly, the lack of transparency in decision-making. This has significant implications for the judicial assessment of risk and those who then may be subject to supervision orders.

Problems that have been identified include long delays in accessing contact center services, costliness and noncompliance with orders by the custodial parent (Commerford & Hunter, 2015; KPMG, 2016). For those living in rural areas, access to supervision services may involve having to drive considerable distances, as well as long wait times to access a service and lack of access to an ACCSA regulated service. The Allen Consulting Report (2013) found that approximately 13% of clients waited over 19 weeks for a supervised changeover session. Some 3 years later, the KPMG (2016) report to the Attorney General's Department highlighted that the excessive wait times for children's contact services has the potential to have a negative impact on the ability to "develop and maintain beneficial relationships with both parents" (p. 10) and significantly push parents into unregulated for-profit services. Supporting this statement, the report notes that wait times to access a contact service is in some cases up to 6–9 months.

Supervised access in the context of interim orders is intended to be for a limited period to enable the risk factors to be resolved, to enable final orders to be determined, and to move to unsupervised contact between children and the noncustodial parent when there is no significant risk to the child. As noted by the Full Family Law Court in the case of *Atkinson & Atkinson* (2017):

> It is worth emphasizing that there are interim orders made without the benefit of the evidence being tested. Further it is argued that as a consequence a conservative approach may be adopted by the Court which can contribute to distress (citing *Marvel & Marvel* (No 2) [2010] FamCAFC 101; (2010) 43 Fam LR 348).

However, as observed by Commerford and Hunter (2015), there have been gaps in previous studies with respect to the appropriateness of supervised contact arrangements. For example, there is often a lack of acknowledgement of the impact of custodial parents on the behaviour of children having such contact. They suggest that when a service presumes a matter or element of guilt of a noncustodial parent, there may be a failure to consider the custodial parent's influence which is expressed as a negative reaction by children (e.g., *Goldman & Goldman (No 2) [2017] FamCA531; Mayer & Mayer (no.2) [2018] FamCA910*). This is consistent with the observations of Bowen and Fry (1995, p. 13) some decades earlier when they noted that:

> Supervision of access implies some incompetence or untrustworthiness on the part of the noncustodial parent. It connotes blame and is often perceived by the access parent as stemming from the custodial parent's lack of respect for, or desire to punish, his or her former partner. As such, its use can engender hostility, resistance and humiliation in the non-custodial parent. This can entrench parental conflict and increase, rather than relieve, the pressure and distress experienced by children.

A similar view was expressed by the Lone Fathers' Association of Australia (2018) in responding to the ALRC review of the Family Law system. This can be made worse by long delays in accessing services and delays in returning to Court for final orders.

In its 2016 study, KPMG found that contact center services expressed concern that clients, including children, experience considerable stress when there are long wait times despite a court order providing for supervised access. This can involve wait times in excess of 4 weeks. To cope with the challenge of long delays due to the level of demand, Western Australian and Family Law Court judges and magistrates collaborated to implement a framework that limits access to supervised contact centre services. In this arrangement, clients are entitled to 2 hours per week for no more than 10 weeks, after which access is limited to once a month or every 3 months. The reduction has been justified and based solely on the principle that contact supervision should be temporary in nature and used only in the absence of an ability to self-manage (KPMG, 2016). A criticism can be made of this policy as it fails to consider exacerbating circumstances, such as the time it may take to get a follow-up court date, or the time it may take to have relevant assessments conducted, or the time it may take for parent and child to develop a relationship which has previously been estranged (e.g., *Merritt & Merritt [2018] FamCA 1107; Newport & Newport [2018] FamCA 472*). In any of these circumstances, a child and parent may be denied regular contact due to systemic issues outside of their control, which can, in turn, further undermine the relationship. This can be particularly concerning if the parent presents no demonstrable risk.

The duration of supervised access is a contentious issue, with some lack of clarity as to whether it is intended to be an ongoing and permanent or long-term arrangement (Birnbaum & Alaggia, 2006). Commerford and Hunter (2015) observed that there is limited research with respect to the impact of supervised contact for children, and the extent to which parents are able to transition to self-management or resolve matters of risk associated with parental conflict. While there are differences between international and Australian systems, neither require any form of systematic review once final orders are made, particularly when supervised access has been ordered for an indeterminate period. This may not only impact on the incidence of multiple hearings challenging initial final orders, but also compromise the potential to resolve any issues in a timely manner. As concluded by Commerford and Hunter (2015), the lack of evidence of the nature and quality of outcomes after the cessation of supervised time remains problematic. This applies equally for both interim and long-term or indefinite supervision orders.

The extent to which the child contact centers have a role or responsibility for assisting parents to move to self-management needs to be understood. To illustrate the problem, when parental conflict presents a risk of emotional and psychological harm to a child, the order for supervised visitation may be a consequence of such conflict rather than abuse directed at the child. In this context, contact supervisors have, as their primary responsibility, ensuring the safety of the child rather than managing any reconciliation between parents. Accordingly, the nature of orders, themselves, may be designed to limit the child's exposure to parental conflict and reflect a preference by parents not to have contact with one another as a separate issue from any demonstrated risk of violence directed toward the child. Consequently, the extent to which self-management is achievable is not a useful indicator of the effectiveness of the contact center or supervised access role. Importantly, the primary responsibility of the contact center is to protect the well-being of the child. For this reason, it is critical that no actions be taken that could be perceived as compromising the corollary responsibility for maintaining supervisory neutrality.

A complementary narrative to acknowledge is that associated with gender. The *Family Law Act* and the Guidelines underpinning it do not take a position about gender preference. In a post separation environment in which child custody is the issue in contention, the Court must prioritize the best interest of the child. At the same time, embedded in the Act is a recognition that noncustodial parents should have a role in their child's life. The nature and extent to which this plays out is then determined by the Court based upon individual situations. However, this does not mean that different narratives in the public sphere do not influence decision-making or

the perceptions of those presenting to the Court. An expression of such a narrative is what Tinder (2007) described as "the Dangerous Dad and the Malicious Mother" or Easteal, Prest and Thornton (2019) described as the "good mother." Each of these positions has been promoted by opposing interest groups. However, the examination of the cases heard by the Court and the reasons for parenting orders challenge the divisive rhetoric that may appeal to different stakeholders.

Research focus

The focus of this research has been to document current patterns in the making of interim and final orders by the Family Court of Australia involving supervised contact and the role of contact centers more specifically. Analysis of recent cases involving such orders has enabled the identification of patterns in orders being made, the underlying reasons for such orders, and the role of contact centers with respect to the duration of such orders.

Sampling method and thematic analysis

Using the AustLII database, all cases heard by the Court, including appeals considered by the Full Court, between January 2016 and April 2019 were reviewed to identify those in which supervised contact formed part of interim or final orders by the Court. Key search terms included "supervised access," "supervision" and "contact centre." This process identified 103 cases in which supervised visitation and changeovers were included in orders. This involved 172 children from as young as 2 to as old as 17 years of age. This is inclusive of cases where initial orders provided for supervision by a private person, often a grandparent or responsible family member. A thematic analysis was undertaken to identify any emerging themes with respect to orders for supervised access. Coding of transcripts of each of the 103 cases was undertaken. Initial coding included the person to be supervised, where supervision was to occur, and the duration of supervision. The second stage of coding focused on the reasons provided by the Court for such arrangements, categorising orders as interim or final orders. Finally, a search was undertaken by the Full Court of the Family Law Court to identify any subsequent appeal against the orders in these cases. It was found that there were eight appeals that were dismissed, and three in which a rehearing was allowed. None of the latter three had been reheard at the time of writing.

Within the sample, approximately, 43% of cases involved interim orders that were not resolved within the study period. Therefore, the extent to which the issues leading to the order for supervision were satisfactorily resolved cannot be known. There were also multiple cases in which there was a pattern of two or more hearings following the initial final orders for the same case, some dating back even a decade. For this reason, it is not possible to conclude that final orders will necessarily be "final." Furthermore, there were several cases involving final orders, but in which the door was left open for a review by the presiding judge if conditions, such as mental health treatment or therapy, were met. The sample is limited by the inability to access records involving consent agreements prior to an order being made by the Court, which may have involved some form of supervision. Cases in which supervised contact or supervised changeovers have been initiated by parents (say at the recommendation of a legal representative) are not able to be identified.

Review of referrals by Family Law Court 2016–2019

Over the 28-month period, orders for supervised contact were applied to fathers in 70 (68%) of cases and 33 (32%) applied to mothers. Of those orders involving fathers, 33 were incorporated in interim orders and 37 (52%) were part of final orders. Among orders involving mothers, 21 (63%) involved final orders compared with 12 (35%) involving interim orders. This pattern is considerably different from that indicated by figures cited a decade earlier in which supervised contact formed part of interim orders at twice the rate as final orders (Commerford & Hunter, 2015, p. 7).

One critical feature of the orders which has not been well documented in previous studies is the extent to which such orders include provision for moving to unsupervised contact. The inclusion of such provisions is significant in terms of reflecting the view of the Court that ultimately the need for supervision will be removed, suggesting that the nature of risk or reasoning underpinning the need for supervision can be addressed. This is particularly relevant from the perspective of the reasons given for the initial supervision requirement. A pattern analysis of orders based on gender reveals a difference in the nature of risks presented by mothers and fathers. Similarly, differences emerge when considering the issues and outcomes associated with orders made on an interim or final basis.

Theme 1: Conditions of supervised access involving fathers

Of 33 fathers subject to interim orders, 24 (72%) were required to have supervised visitation provided by a children's contact center. In eight cases, provision was made for private supervision arrangements of which four were able to transition from the contact center to private supervision. Of those with a potential for such transitions, two were subject to conditions and two provided for supervision by either a paternal grandmother or an agreed private supervisor. In one case, orders provided for transitioning directly to unsupervised access.

Of the 37 cases involving final orders, orders provided for 15 (40%) to transition to unsupervised access. Of these, four were subject to conditions associated with participation in therapy and/or evidence of clear drug tests. In three cases, the choice of unsupervised access was left to the child on reaching an age of 10 and older. Some 10 cases allowed for solely private supervision and an additional 4 provided for initial supervision in a contact center before transitioning to a private arrangement for supervision. Significantly, four cases employed child contact center supervision as part of a reunification process between the father and child when there had been a long period of no contact. Broadly, it can be inferred that unless orders specified to the contrary, that supervision is for an indeterminant period. Of those on final orders, this was some 21 of the 37 cases. This then has significant ramifications for the capacity of contact centers to meet what will ultimately be a cumulative demand.

In eight cases involving final or interim orders, the Court provided for a reapplication process and two were subject to review by a suitable expert. A second search was made to identify whether there was evidence of any follow-up or changes in the orders over the study period. It was found that there had been four attempts at having changes made to the orders, all of which were unsuccessful, with no evidence of new or additional final orders in these cases. In three cases in which subsequent hearings provided for the possibility of moving to the unsupervised visits subject to evidence that specified conditions had been met (e.g., mental health, parenting courses, drug and alcohol test), there was no evidence of follow-up hearings taking place.

Dependent upon the reason underpinning the need for supervision, the frequency of such contact was quite variable

from just four times a year to several times a week or alternative weekends. The pattern of reasons discussed below provides a basis for understanding the intensity or limitation on access, even when supervised. While the Court provides an extensive explanation of the reasons for the orders being made, the common denominator across most cases is the complexity of claims, counter claims and the nature and reliability of evidence presented.

In summary, supervised access was primarily prescribed as being at a contact center whether in final or interim orders. The duration of such orders was more difficult to determine with certainty. This is, in some part, due to the fact that in one-quarter of the cases involving interim orders the Court clearly stated that unproven allegations required testing in a trial or the need for a review by a relevant expert. Focusing solely on those cases in which there is no specific timing for future unsupervised access included in the orders, it was clear in that there was an intention that such contact would continue unless conditions changed significantly. This is inclusive of those cases in which contact was limited to between two and six access visits per annum.[3]

Reasons for supervised access involving fathers

In considering the role of the contact center supervision, it is important to appreciate the reason for applying such orders. It is not feasible to describe the reasons for decisions in some numeric or quantitative way given the complexity of circumstances that exist. For example, issues of drug and alcohol are variously identified as a single issue, in conjunction with mental health issues and in conjunction with family violence. While the broad types of risk were found in both final and interim orders, the frequency with which such risks were cited by the Court was dissimilar in many respects. Among the final orders involving supervised contact, family violence and the risk of emotional or psychological harm to children were the underpinning reasons more frequently than for those on interim orders for which mental health and unproven allegations were more prevalent reasons.

The Court identified parental conflict as a recurring consideration in both interim and final orders, but how such conflict played out and the implications for parent/child relationships were not adequately described. For example, in some cases, the expression of such conflict played out in the custodial parent blocking visits, even in the face of interim orders requiring it. The Court suggested that in some cases this was justified by the mother as being protective or anxious, despite the absence of any specific demonstrable risks. The consequence was the estrangement of the child(ren) from the father and the need for supervised reunification. In other cases, the parental conflict was expressed through exposing children to the arguments and demonstrable conflict between parents, creating a potential for emotional and psychological harm. Despite the frequency with which family violence was cited, this was not often targeted at children but rather between partners. Thus, while identified as family violence, it is not unconnected with the parental conflict context.

Finally, unless there was an evidenced-based reason for an alternative conclusion, the Court was willing to entertain the revisiting of a case in which there were risks involving mental health, drug and alcohol or parental capacity and there was expert evidence that such risk had been reduced. It was only in those cases in which there appeared to be little likelihood that such an outcome could be achieved that the Court did not explicitly recognise an opportunity for reconsideration.

Theme 2: Conditions of supervised access involving mothers

Of the total cases identified in which one parent was limited to supervised visitation with their child/ren, just under one-third (32%) were mothers. This appears counter-intuitive to the general narrative of risky fathers. Of the 12 mothers with interim orders stipulating supervised visitations, all but 2 required supervision by a contact center. The remaining two cases provided for either no contact or private supervision subject to conditions.

The interim orders for approximately one-third of mothers did not specify a specific time/day or frequency of supervised contact, but rather made this subject to a combination of recommendations of qualified mental health professionals or drug tests and the availability of the contact center. A further two provided for no contact until the trial was progressed. Given the relatively small sample, it is not reliable to draw any significant conclusions, but it was observed that only one case provided for transitioning to unsupervised visitation, albeit day time only.

For the 21 mothers with final orders requiring supervised access, the orders in many cases provided visits under supervision (whether in a center or by private agreement) once per fortnight or once a month. Five of these cases provided for the potential to transition to unsupervised access with evidence of having successfully completed relevant therapy or treatment as verified by a qualified practitioner. The orders in three cases provided for a transition to private supervision following a period of supervision by a child contact center, or in one case the Child Dispute Services. The applicable conditions were similar to those applied to fathers and related to demonstration of reduced risk associated with drug and alcohol issues or the child reaching early teen years and able to make his/her own decisions.

Because the search found 33 cases (nearly one-third of all cases) involving mothers requiring supervised access, it is important not to overstate the ability to generalize more broadly. Nonetheless, it is possible, without exaggeration, to recognise that the role of the contact centers in supervising access is made challenging by the conditions and the circumstances that individuals bring to the visits, as acknowledged by the Court.

Reasons for supervised access involving mothers

An analysis of the judges' stated reasons for such orders found that there were some consistencies across the cases. Of those mothers on final orders requiring supervised access all, but two, involved some reference to mental health issues, emotional abuse or psychological abuse of the child. Three would have an opportunity to transition to unsupervised access conditional on treatment with confirmation from a suitable specialist professional. Of the remaining, two had previously disengaged with the child. Of those on interim orders, emotional abuse, mental health and, in one case, assault were the reasons for requiring supervision. Drug and alcohol abuse were also cited in four cases overall, and each of these cases were in concert with mental health issues.

While family violence and conflict were not identified as was the case with fathers, the presence of disengagement from the child, as well as uncontested outcomes, were not found among the fathers. Generally, mental health and substance abuse which were common across genders were the most prevalent reason for requiring supervised contact. This, then, carried the implication that the Court would review decisions once there was appropriate evidence that these issues had been resolved.

Theme 3: Transitioning to from children's contact center supervision

The extent to which supervised visits are intended as a short-term, bridging or long-term arrangement has significant implications both for the parents and children as well as for the contact centers themselves, particularly with regard to demand management and issues of timely access for parents. Orders, as discussed above, provided a range of options including transition to private supervision (often by a grandparent and, in some cases, a new partner). In such cases, there was also the potential to transition to unsupervised access.

When considering the consequences for contact centers, a primary difference between the cases for fathers and mothers was the extent to which it was anticipated that a transition could be made to private supervision or unsupervised contact. Orders for mothers, whether as interim or final orders, were far less likely to provide for such transitions. Thus, while numerically less mothers than fathers were subject to supervised orders, they were also less likely to be provided with a planned transition to unsupervised access with their child. There is little data from previous studies which provide evidence of the implications for long-term supervision or service provision.

Discussion

The examination of cases in which supervised contact has been incorporated in Court orders revealed three common themes. The reasons for which supervised access is ordered highlight significant considerations with respect to the challenges for child contact centers providing supervised visitation. With mental health, substance abuse and psychological harm being identified by the Court as a primary basis for requiring supervised visits, this places the staff of contact centers (who are not licensed mental health practitioners) in the middle of what can be a highly complex relationship (Commerford & Hunter, 2015). In the absence of a mental health professional, those providing supervision are not equipped to provide a therapeutic intervention. While the contact center is able to provide a safe place for visitation, it does not have a role in resolving parental conflict or therapeutic treatment. Indeed, Court orders frequently are inclusive of recommendations or prerequisites that professional psychological or therapeutic treatment should be sought to address risks and enable the transition to unsupervised access (Betros & Betros [2016] FamCa225; Nardini & Nardini [2019] FamCA37). This suggests that the Court does not have any expectation that the contact center staff are able to provide the intervention which might enable the move to self-management or unsupervised access. This is particularly relevant when observations made by staff are used in subsequent reporting to the Court and used as an advisory tool for decision-making on final orders. However, it is notable that the Judicial Checklist which forms part of the Court's *A guideline for Family Law Courts and Children's Contact Services* specify such reports should be limited to dates and times of visits, and direct observations, including any critical incidents and compliance by parents with any service agreement. It specifically precludes any interpretation or assessment commentary.

Given the nature of risk identified and the increased incorporation of supervised visits within final orders, it is timely to examine the impact of ongoing supervised visitation where there is no apparent path to self-management. As observed by Saini et al. (2017), there is an absence of evidence as to the most effective duration for supervised visitation. The current practice of providing indeterminate or permanent orders for supervision, rather than specifying this as a transitional service, suggests there is a significant gap in knowledge. With only 25 (24%) cases with a clear transition to unsupervised access and with little documentation of successful transitions when contingent on mental health, substance use or therapeutic treatment, there will inevitably be a growing client demand for services. At the same time, there is little current evidence of the duration for which those on such indefinite permanent orders continue to pursue supervised visitation, or evidence of barriers they may experience – such as affordability or distance.

Furthermore, there is no current empirical evidence in terms of what happens when children reach their teens. Given that nearly 10% of those young people covered by such orders were in their teenage years, and over a quarter were 10 years and older, this represents a potentially significant consideration as to the most appropriate context or process for supervision involving young people. The unresolved question is whether the contact center environment remains an appropriate context for contact or relationship building, particularly where the noncustodial parent is banned from attending any significant events in the child's life.

While provision is made in some cases for the resolution of identified risk factors to enable transition to unsupervised access, it is unclear as to the extent to which this occurs based on the available documentation. The most recent data are now over a decade old. Sheehan et al. (2005) reported that one-quarter of those surveyed used a supervised service for an average of 1.5 years. Furthermore, although nearly two-thirds (63%) who had used the service for more than 2 years were solely accessing supervised changeovers, only 36% used it for supervised visits over the longer term. Again, while somewhat dated now, Sheehan et al. (2005) found that less than one-fifth of those leaving the supervised service were able to transition to self-management. A decade later, Commerford and Hunter (2015) also noted the lack of longitudinal studies limits our access to evidence of the extent to which the best interests of children and parent/child relationship building is being achieved, particularly regarding longer term service reliance.

It is imperative to acknowledge that the child contact centers are part of a broader family support and intervention service network. As noted in the KPMG report (2016), the inadequacy of client data across the Family Law Services compromises the ability to achieve a reliable picture. The ALRC review, as with previous reviews, emphasised the importance of having an integrated system in which various relevant agencies, with their differing roles, are able to provide a holistic response to individual families. However, the Allen Report (2013) indicated that the proportion of child contact centers within 20 km of a family relationship center varies from just 38% in NSW and Queensland, 33% in the Northern Territory and 57% in Victoria and South Australia; and that only 13 (8%) of child contact centers are colocated with family relationship centers. The extent to which this may impact on service integration is not known.

Implications for the future

Given the critical role that supervised visitation, supervised changeovers and the role of child contact centers have as key tools of the Court, it is timely to focus on the nature of the unanswered questions.

In the more immediate time frame, it is essential for action to be taken on the recommendations of ACCSA that minimum standards and regulatory requirements be extended to any service which provides contact supervision for those subject to Family Law Court orders. Given the high reliance on services that are not accountable to the Commonwealth Attorney General, it is imperative that parents and children are able to be confident that agencies providing supervision will have the skills and systems that provide an equivalent quality of service.

It is also suggested that the ability to capture how many and the nature of cases which are subject to consent rather than formal orders and involve supervised access would provide valuable additional understandings, particularly with respect to the context in which this occurs, and the relative success of such arrangements. While any such process will need to provide the level of confidentiality accorded in transcripts which employ only pseudonyms, it is timely to commence a discussion of how this may be achieved. In addition, there is a need for better evidence of outcomes for parents and children, particularly where supervision is for an indeterminant or permanent arrangement. This includes factors that may be conducive to, or inhibit, the success of relationships between children and noncustodial parents, as well as the effectiveness of service models when involving supervised contact with older children and teenagers.

A future research agenda will need to move toward establishing the processes that can be ongoing and provide a basis for meaningful nationally based, longitudinal studies. This will require the collaboration of child contact centers and with the provision of adequate resources to support it. Finally, this small-scale study has reflected the need to avoid the rhetoric of blaming and move toward a better understanding of the factors that will promote or inhibit the reduction of risk factors that may undermine parent/child relationships in the context of custodial disputes. This then represents a clarion cry for gathering the evidence that has, to date, been absent and compromises our understanding of what factors promote or limit access arrangements for parents and their children.

Acknowledgements. Appreciation is expressed to the Griffith Criminology Institute and Professor Janet Ransley for the ongoing support of research across disciplines and issues. Family Law Court Orders for Supervised Contact in Custodial Disputes – Unanswered Questions.

References

Allen Consulting Group. (2013). *Research on Family Support Program family law service. Report to Attorney General's Department*. Sydney/Melbourne/Canberra: Allen Consulting Group. Retrieved from https://www.ag.gov.au/Publications/Documents/ResearchOnFamilySupportProgramFamilyLawServices/research-on-family-support-program-family-law-services-may2013.pdf

Attorney General's Department. (2014). *Children's Contact Services: Guiding principles framework for good practice*. Canberra: Australian Government. Retrieved from https://www.dss.gov.au/sites/default/files/documents/06_2014/childrens_contact_services_guiding_principles_framework_for_good_practice.pdf

Australian Children's Contact Service Association. (2009). *Standards for Children's Contact Services*. Retrieved from http://accsa.org.au/wp-content/uploads/2013/02/ACCSA-Standards.pdf

Australian Children's Contact Service Association. (2018). *Submission to the Australian Law Reform Commission Review of the Family Law System Reform Discussion Paper*. Retrieved from https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law-207_accsa_family_law_review_submission_2018_13_august_a.pdf

Australian Law Reform Commission. (2018). *Submission to the Australian Law Reform Commission Review of the Family Law System Reform* (Discussion Paper 265). Retrieved from https://www.alrc.gov.au/wp-content/uploads/2019/08/family-law_265._australian_childrens_contact_service_association.pdf

Bala, N., Saini, M., & Spitz, S. (2016). *Supervised access as a stepping stone rather than a destination: A qualitative review of Ontario services & policies for assisting families transitioning from supervised access. Queen's Law Research Paper Series 2016-085*. Canada: Queen's University Faculty of Law.

Birnbaum, R., & Alaggia, R. (2006). Supervised visitation: A call for a second generation of research. *Family Court Review*, *44*(1), 119–134.

Birnbaum, R., & Chipeur, S. (2010). Supervised visitation in custody and access disputes: Finding legal solutions for complex family problems. *Canadian Family Law Quarterly*, *29*(1), 79–94.

Bowen, D., & Fry, D. (1995). Supervised access, facilitated access: What's in a Name? *Australian Family Lawyer*, *10*(4), 13–16.

Commerford, J., & Hunter, C. (2015). *Children's Contact Services Key Issues, CFCA Paper No 35 2015*. Melbourne: Australian Institute of Family Services. Retrieved from https://aifs.gov.au/cfca/publications/childrens-contact-services

Commonwealth of Australia. (2007). *A guideline for Family Law Courts and Children's Contact Services*. Barton, ACT: Commonwealth of Australia. Retrieved from http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/family+violence/a-guideline-for-family-law-courts-and-childrens-contact-services

Easteal, P., Prest, A., & Thornton, F. (2019). Discounting the mother-child relationship in parenting orders: A snapshot in time. *Australian Journal of Family Law*, *32,* 221–248.

Family Court of Australia. (2016). Children's Contact Centres and Services. Retrieved from http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/getting-help/childrens-contact-centres-services/

Kiely, E., O'Sullivan, N., & Tobin, M. (2019). Centre based supervised child parent contact in Ireland: The views and experiences of fathers, supervisors and key stakeholders. *Child and Youth Services Review 100*, 494–502. Retrieved from https://www.sciencedirect.com/science/article/pii/S0190740918311484?via%3Dihub

KPMG. (2016). *Future focus of the Family Law Services: Final report*. Retrieved from https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyRelationshipServices/Documents/AGD-Family-Law-Services-Final-Report.pdf

Lone Fathers Association. (2018). *Submission to the Australian Law Reform Commission Review of the Family Law System Reform Discussion Paper*. Retrieved from https://www.alrc.gov.au/inquiries/family-law-system/submissions

Saini, M, Newman, J., & Christensen, M. (2017). When supervision becomes the only plan: An analysis of long-term use of supervised access and exchange services after separation and divorce. *Family Court Review*, *55*(4), 604–616. doi:10.1111/fcre.12307

Schindeler, E. (2019). Assessing allegations of child sex abuse in custody disputes. *Children Australia*, *44*(1), 5–12. Retrieved from https://www.cambridge.org/core/journals/children-australia/article/assessing-allegations-of-child-sex-abuse-in-custody-disputes/F41EFAB2D107856C671D909D380A1918

Schultz, P. (2014). Are judges getting the full story through court-ordered reports and investigations? A critical analysis of the discourse of disbelief in an allegation of child sexual abuse. *Children Australia*, *39*(3), 137–146. doi:10.1017/cha.2014.16

Sheehan, G., Carson, R., Fehlberg, B., Hunter, R., Tomison, A., Ip, J., & Dewar, J. (2005). *Children's Contact Services: Expectation and experience*. Australian Institute of Family Studies, Griffith University, University of Melbourne and Attorney General's Department, Australian Government. Retrieved from http://pandora.nla.gov.au/pan/52122/20050906-0000/www.ag.gov.au/agd/WWW/rwpattach.nsf/viewasattachmentPersonal/final%20report.pdf

Tinder, L. (2007). Dangerous dads and malicious mothers. In M. Maclean (Ed.), *Parenting after partnering: Containing conflict after separation* (pp. 81–94). Oxford, UK: Hart Publishing.

Australian Family Law Court Cases

Atkinson & Atkinson [2017] FamCa 274
Betros & Betros [2016] Fa,CA 225
Goldman & Goldman (NO.2) [2017] FamCA 531
Jamal & Akbar [2017] FamCA 586
Mayer & Mayer (NO.2) [2018] FamCA 910
Merritt & Merritt [2018] FamCA 1107
Morton & Macky [2018] FamCA2
Nardini & Nardini [2019] FamCA 37
Newport & Newport [2018] FamCA 472
Prentice & Wilfred [2017] FamCA 290

■