

12 DEC 2017

Dr Robert Shaw
fyi.org.nz

Dear Dr Shaw

I am replying to your Official Information Act 1982 (the Act) request of 18 November 2017, for information relating to the policy and practice of the Family Dispute Resolution (FDR) service and the rights of the child.

Your questions and my responses are below.

- 1. Does the Ministry agree that whilst the statutes and the UN Declaration prioritise the interests of the child, the procedures required, or used, in FDR mediation do not ensure or guarantee this is achieved?**

This is because the decision-makers are the parents and there is no mandatory requirement for the views of children to be recorded, nor must it be stated in any report of the mediation how the views of the child were obtained, nor is there any requirement for the parents to say why they chose to deviate from the views expressed by their children.

The mediator is not obliged to report on any of this to the Ministry. Thus, parents may, if they wish, simply ignore the preferences of mature, rational children, even though it might be argued that this is against the law.

Are the reasons I suggest correct, according to the Ministry? Can you please provide me with any relevant policy or procedural guidelines about this matter?

FDR providers must adhere to the Family Dispute Resolution Act 2013 (FDR Act). Section 11(2)(c) of the FDR Act places a duty on FDR providers, to assist parties to a dispute to reach an agreement that best serves the welfare and best interests of all children involved in the dispute.

The FDR operational guidelines that contain the Ministry's instructions and rules that FDR providers must adhere to when delivering FDR services are available on the Ministry of Justice website at: www.justice.govt.nz/family.

On page 8, you will see that the Ministry requires the FDR provider to have processes in place to ensure the child's voice is represented in the mediation if appropriate. The Ministry recognises that there are different models of incorporating a child's view throughout the mediation, including interviewing the child separately on specific matters or having a child's representative present during mediation sessions. The Ministry requires FDR suppliers to agree their model with the Ministry before implementation.

- 2. Is it correct that FDR mediators may interview children for section 6 purposes? If so, is it at their discretion who is present in such interviews and what records are made?**

Section 6 of the Care of Children Act 2004 (CoCA) relates to the views of children being sought for court proceedings. FDR assists parties to a family dispute to resolve the dispute without having to pursue court proceedings. FDR is not a court proceeding, and therefore is not subject to section 6 of CoCA.

- 3. As the decision-makers in FDR mediation are the parents (usually) do you consider them to be bound by the requirements for "decision-makers" in the Care of Children Act 2004, particularly, Section 5 "Principles relating to child's welfare and best interests". If not, why not?**

If so, what requirements are there that mediators ensure that each and every item in that section is addressed by the decision-makers and how must this be recorded and reported to your Ministry?

What monitoring does the Ministry undertake to ensure there is compliance with section 5 in FDR mediations?

FDR is not a court proceeding and is not subject to the CoCA. FDR mediations must be delivered in accordance with the FDR Act 2013 and the Ministry's operational guidelines.

- 4. International research and NZ research indicates that the children involved in FDR are "at risk". What mandatory provision is there for the violence, depression and suicide assessments to be conducted by a counsellor or psychologist who see these children? If there is no mandatory provision for such assessments, why not? If there is, what are the procedures for the counsellor and the mediator in such circumstances, and do you require recording of this in the mediation documentation (as opposed to the violence registers and responsibilities of counsellors outside of the FDR role).**

If mediators interview children are they obliged to conduct violence, depression or suicide assessments with them and report in accordance with the requirements for counsellors?

Does the Ministry see any conflict with the confidentiality requirements for mediation in such situations and is there any policy guidance provided to mediators in relation to this?

There is no mandatory provision for conducting assessments with children for FDR purposes. Instead, mediators are required to deliver the FDR service in accordance with the FDR Act and the Ministry's operational guidelines, which provide a duty for providers to reach agreements that best serve the welfare and best interests of all children involved.

In regards to confidentiality, section 14 of the FDR Act provides that any statement that a party to a family dispute makes to an FDR provider to enable the provider to deal with the dispute is not admissible in any court. However, the FDR outcome or exemption form and the FDR outcome agreement are not confidential.

How the FDR service may incorporate the voice of the child is not specifically prescribed by the Ministry. As such, the Ministry has not provided policy guidance for mediators in relation to conducting assessments for children for the purposes of FDR.

5. ***The rights of the child to be heard in FDR relate to each individual child. Given the nature of family dynamics and the potential for selective reporting to parents after assessment interviews, is there a policy on the grouping of children to ascertain their views? If so, what is it, please?***

How do you provide for the resource implications that derive from each child having an individual right to be heard and a right to privacy? The five-child family could require five interviews whilst the single child family requires just one.

There is no policy relating to the grouping of children to ascertain their views for the purposes of FDR. The FDR Act establishes a duty for providers to assist the parties to reach an agreement that best serves the welfare and best interests of all children involved. The Ministry requires FDR providers to have processes in place to ensure the child's voice is represented if appropriate.

6. ***In the financial and time allocation for each mediation, how much of the resource is mandated for work with children? This refers to both the ascertaining of their views and counselling to issues.***

How much assessment time and counselling time is each child entitled to in the process? For comparison, how much counselling time is the entitlement of each parent?

Parties who are fully funded by the government to receive FDR are entitled to receive up to 12 hours of preparation for mediation and/or mediation in a 12-month period. The 12 hours can be applied in any combination agreed by the FDR supplier, mediator and parties which best meets their needs to reach an enduring agreement. None of the financial and time allocations for FDR are mandated for work with children.

If you require any clarification of the information contained in this response please contact Antony Paltridge, Team Leader, Media and External Relations, at media@justice.govt.nz or call (04) 918 8980 or 027 689 0667.

If you are not satisfied with my response to your request, you have the right to make a complaint to the Ombudsman under section 28(3) of the Act. The Ombudsman may be contacted by writing to PO Box 10-152, Wellington.

Yours sincerely



Polly O'Brien
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