

FAMILY LAW UPDATE



JUNE 2023

Qualified Legal Representatives (QLRs)

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 reduced the availability of legal aid in much of family law work. This triggered a rise in litigants in person, many involved in domestic abuse allegations. This meant an increase in complainants being cross-examined by alleged perpetrators. In line with its strategy to prevent violence against women and girls, the government took steps to curb this.

The law

The Domestic Abuse Act 2021 (DAA 2021) was the statute to do so. Under s.65 of the Act, the court will appoint a Qualified Legal Representative (QLR) to cross-examine complainants in certain circumstances in family proceedings where the alleged perpetrator is a litigant in person. The DAA 2021 integrated these provisions into the Matrimonial and Family Proceedings Act 1984, Part 4B Section 31Q to 31Z.

The circumstances are as follows:

1. A person who has been convicted, cautioned or charged with a domestic abuse offence cannot cross-examine the victim¹ of that offence.
2. A person who is the subject of a protective injunction cannot directly cross-examine the person who is protected by that injunction. The protective injunction must have been on notice.

¹ It is the Act itself which uses the word 'victim', although at the point of an untested allegation they remain a 'complainant'.

3. In a case where there is evidence of domestic abuse perpetrated by a party, that party may not directly cross examine the person who is the victim of that abuse. This abuse has to be from the list contained within The Prohibition of Cross-Examination in Person (Civil and Family Proceedings) Regulations 2022 Schedule 1 ('the Regulations').

Beyond these circumstances, the court still retains a discretion to prevent cross-examination in person. The court can do so if the complainant would not be able to give their best evidence, or they would be significantly distressed if they were directly cross-examined by the alleged perpetrator. The court must be sure that it is in the interests of justice to do so.

The Matrimonial and Family Proceedings Act 1984 s.31U also gives the court discretion to extend cross-examination to other witnesses by a QLR if it appears to the court that:

- (i) The quality condition or the significant distress condition is met, and
- (ii) It would not be contrary to the interests of justice to give the direction.

Who can be a QLR?

The provisions allow for barristers, solicitors and CILEX practitioners who have cross-examination experience as well as vulnerable witness and advocacy training to be directly appointed by the court to cross-examine on behalf of prohibited parties.

New Standard Orders

Mr Justice Peel published Standard Orders for cross-examination and QLR provisions on judiciary.uk on the 15 of February 2023 on an interim basis before their inclusion in the new suite of Standard Orders published on the 17th of May 2023.

These Standard Orders are Order 24.1 through to Order 24.7. They deal with matters such as the completion of forms to apply for a QLR, appointment of a QLR, termination of the appointment of a QLR and the provision of documents to a QLR.

Issues with QLRs

These provisions came into force on **21 of July 2022**, thus applying to all family proceedings issued after that date. For proceedings issued before this date, the old rules apply. This means that the matter will likely proceed in the way of the unrepresented party providing their questions to the Judge in advance who will then ask them on that party's behalf.

This creates a difficulty in older cases where complainants may still be cross-examined by their alleged perpetrators. Women's Aid, the Centre for Women's Justice, Rights of Women and 25 other signatories sent a letter on 8 February 2023 to the then Lord Chancellor and Secretary of State for Justice Dominic Raab regarding this issue. They highlighted that due to the length of litigation (using the example that it currently takes over 11 months for private law children cases to reach a final order), many cases are not afforded protection as they started long before the implementation of the new rules.

Secondly, the letter highlighted that the fees that legal representatives can charge for work as a QLR are not competitive, having the effect of a lack of applications. In addition to this point, it is often unappealing as a different type of role, not formally having a client, and only being involved for one fragment of proceedings yet having to familiarise yourself with the matter as if conducting the overall proceedings.

With the wide range of offences that constitute abuse in Schedule 1 of the Regulations and the courts' continued discretion to bar cross-examination by a litigant in person, it is likely that the criteria apply to many cases. On average in 2023 so far, CAFCASS has received 4,049 new private children cases a month, many of which will be suitable for a QLR. There is concern that a difficulty in sourcing QLRs may lead to a delay in these cases of such a period where it is no longer in the interests of justice for a QLR to be appointed, thus landing us back at the status quo.

Conclusions

Ultimately, whilst the provisions have their critics, they can only be seen as a step in the right direction. They bring family law in line with criminal law which has had such

provisions for a number of years, such as those for complainants in sexual offences who are protected by s.34 of the Youth Justice and Criminal Evidence Act 1999.

The new regulations no doubt need time to bed in, and such issues as those aforementioned may fall away over time as QLRs become the norm. The provisions aim to protect complainants; in order to do so there must be an adequate quantity of QLRs, and the work and remuneration must be of such a quality that it prompts those suitable to apply.

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