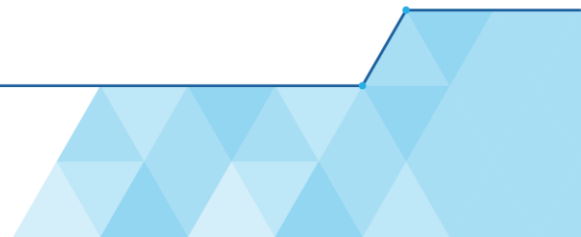




Ministry
of Justice

Guidance on claiming fees for work under the Qualified Legal Representative Scheme



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1. Introduction

- 1.1. This guidance is published as explanatory material to the Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022¹, as amended (“the Fee Scheme Regulations”).
- 1.2. A Qualified Legal Representative (“QLR”) is a person appointed by the court in civil or family proceedings to conduct cross-examination of a witness in place of a party who is prohibited from doing so. Section 2 of this Guidance explains the legislative background, including when a person might be prohibited from asking questions of a witness themselves.
- 1.3. A QLR appointed by the court is paid from central funds. The Fee Scheme Regulations prescribe the fixed fees and other costs payable to QLRs in civil and family proceedings.
- 1.4. The Regulations were amended on 2 January 2024 to make new provision relating to the payment of certain expenses incurred by a QLR in relation to their appointment by the court.
- 1.5. This Guidance has been updated to reflect those changes, and to correct inaccurate statements in the previous version relating to the payment of bundle bolt-on fees. The corrections have been identified in a footnote in the relevant section (at sub-paragraph 3.26).
- 1.6. This Guidance replaces the version published in June 2022.

The role of a QLR

- 1.7. Separate statutory guidance is published in accordance with the Lord Chancellor’s powers under section 31Y of the MFPA and section 85M of the CA, which provides further detail on the role of a QLR appointed by the court (“the Statutory Guidance”). It can be found here:
<https://www.gov.uk/government/publications/qualified-legal-representative-appointed-by-the-court-statutory-guidance>

¹ SI 2022/567, as amended by the Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) (Amendment) Regulations 2023 (SI 2023/1319), available at <https://www.legislation.gov.uk/uksi/2023/1319/contents/made>

2. The Legislative Framework

- 2.1. Section 65 of the Domestic Abuse Act 2021 introduced a new Part 4B into the Matrimonial and Family Proceedings Act 1984 (“the MFPA”) which contains provision that prohibits a party to family proceedings from personally cross-examining a witness in certain circumstances. Section 66 of the Domestic Abuse Act 2021 introduced new Part 7A into the Courts Act 2003 (“the CA”) which makes similar provision in civil proceedings.
- 2.2. The prohibition of cross-examination in person by an unrepresented party automatically applies in three situations:
 - (a) where a party has been cautioned for, convicted of, or is charged with a specified offence against the witness, and vice versa (that is, if the victim is also a party, they may not personally cross-examine the perpetrator);
 - (b) where the witness is protected by an on-notice protective injunction and the party is the person against whom the injunction is in force, and vice versa;
or
 - (c) where “specified evidence” is adduced that a person who is a party has carried out domestic abuse towards a witness to whom they are personally connected, and vice versa.
- 2.3. Where none of the automatic prohibitions apply, the court has the discretion to direct that a party be prohibited where (a) it appears to the court that allowing cross-examination in person would diminish the quality of the witness’ evidence or is likely to cause either the party or the witness significant distress; and (b) it would not be contrary to the interests of justice to give the direction.
- 2.4. Where a person is prohibited from cross-examining another in person, the court can appoint a qualified legal representative (‘QLR’) under section 31W (6) of the MFPA or section 85K (6) of the CA to conduct the cross-examination with the fees paid from central funds.
- 2.5. The role and responsibilities of a QLR appointed under these provisions are different from those of legal representatives who have been instructed by a party to act for them in the proceedings generally. A QLR is:
 - (a) appointed by the court in a narrow set of circumstances and is accountable to the court; and
 - (b) not responsible to the prohibited party but does represent their interests in a specific, limited way.

3. The Qualified Legal Representative Fee Scheme

- 3.1. The QLR fee scheme applies to work undertaken by court-appointed QLRs in both family and civil proceedings. Fixed fees and other costs are payable to QLRs irrespective of their professional status.

Scope of the fee scheme

- 3.2. The fee scheme only covers the work required to ensure that cross-examination is conducted for the prohibited party, as explained further in the Statutory Guidance.
- 3.3. The fee scheme makes provision for the payment of:
- (a) Fixed fees in respect of the 'advocacy services'² (e.g., the cross-examination) provided by a QLR;
 - (b) A bolt-on fee for large bundles; and
 - (c) Costs relating to expenses properly incurred by a QLR in connection with their appointment.
- 3.4. The Schedule to the Fee Scheme Regulations prescribe these fixed fees and costs and any applicable restrictions or eligibility criteria.
- 3.5. The fee payable in respect of the cross-examination also includes remuneration for ancillary tasks such as:
- (a) Preparatory work;
 - (b) Attendances at preliminary hearings and cross-examination hearings; and
 - (c) Time spent travelling and waiting.
- 3.6. QLRs can also claim costs, to include travel and overnight expenses, subject to eligibility criteria, where evidenced by receipt and up to maximum caps. These caps are specified in Table 6 in Part 4 of the Schedule to the Regulations and set out in sub-paragraph 3.48 below.

Case types

- 3.7. The scheme is divided into seven different types of case. Categories are important because different fixed fees are prescribed for each case type. The seven case types are:
- (a) Family - Private law (children)
 - (b) Family - Private law (domestic abuse)
 - (c) Family - Private law (finance and other)
 - (d) Family - Public law (finance and other)
 - (e) Family - Public law (section 31 care proceedings)
 - (f) Public law (other)
 - (g) Civil

² Defined in regulation 1(3) of the Fee Scheme Regulations.

A definition of the types of proceedings which fall into each case type is provided in regulation 1(3) of the Fee Scheme Regulations.

Mixed case types

- 3.8. When proceedings fall within more than one family case type, a QLR must (for the purpose of completing the CAS1 form and for payment) select a single case type under which they wish to be paid.
- 3.9. We expect that an advocate will select the case type that pays the highest rate, though the case management order which details the QLR's appointment will be checked to verify the nature of the proceedings. For example, an application for a child arrangements order (private law (children)) may subsequently involve or reveal allegations of abuse which necessitate the issue of care proceedings by a local authority. A QLR would be permitted to claim the higher public law (section 31 care proceedings) fee for any future hearing(s).
- 3.10. Where an advocacy service includes work from two case types, but the work is carried out within a single set of proceedings, fees from only one case type are payable. For example, if a hearing involves evidence relating to both private law children and financial issues then only one fee will be payable under a single case type, but the QLR may select which hearing fee to claim.

Case types – what is a single set of proceedings?

- 3.11. Applications to the court constitute a single set of proceedings, irrespective of whether they are made separately or together, whether they are heard together or consecutively or are treated by the court as a single set of proceedings.
- 3.12. Generally, work undertaken in each of the seven case types constitutes a single set of proceedings. For example, family injunctions (such as applications for a non-molestation order) usually proceed with a timetable of applications and hearings separate from other family work. The process starts generally with an urgent application for an ex parte order, leading up to a hearing to make a final injunction order. This would generally constitute a single set of proceedings.
- 3.13. Similarly, it is usual for the court to deal with issues as to where the child will live and who a child will spend time with separately from financial issues in a divorce. Both aspects may be treated as a separate set of proceedings unless or until the court orders them to be heard together.
- 3.14. Sometimes simultaneous separate proceedings within a single case type might become a single set of proceedings. For example, if there are contact issues relating to more than one child of the family the court is likely to deal with both children within the same timetable for the proceedings. If applications for multiple children are heard together than this would be treated as a single set of proceedings for remuneration purposes, regardless of whether there were different arguments in respect of each child.
- 3.15. A public law care case which hears, in the alternative, an application for a child arrangements order will be treated as a single set of proceedings if heard together or consecutively by the court.

- 3.16. For the purposes of payment under the QLR scheme, all work undertaken within a single set of proceedings is broken down into 'preliminary hearings' and 'cross-examination hearings', within which there are 'cancelled hearings' and 'completed hearings'. Only one fixed fee may be claimed per activity although there is no limit on the total number of fixed fees that may be claimed per case.

Preliminary hearings

- 3.17. Under the QLR scheme, all hearings will be considered as 'preliminary hearings' except those hearings which involve cross-examination. As set out in the Statutory Guidance³, QLRs should apply the 'essence and significant impact' test to determine whether their attendance at a preliminary hearing is necessary.
- 3.18. A fixed fee is payable for attendance at a preliminary hearing. This fee covers all work relevant to such hearings including incidental and preparatory work, travel and waiting time, as well as any advocacy at the hearing.
- 3.19. There are different fees paid for preliminary hearings depending on the case type, the length of the hearing and the tier of judiciary hearing the case. Table 1 in the Schedule to the Fee Scheme Regulations prescribes the relevant fixed fees.
- 3.20. The length of the hearing is measured from the time the hearing is listed to start at court to the time the hearing concludes, disregarding any period in which the court is ordinarily adjourned, either for lunch or overnight. Where, however, the court provides a specific direction to the parties for earlier attendance then, in respect of that particular hearing only, time will run from the earlier time if the QLR is able to establish that such a specific direction was made.
- 3.21. Where a court directs a party to adjourn for further discussions at court then the length of that adjournment will be included in the calculation of the preliminary hearing fee.
- 3.22. A hearing may take place by any method directed by the court e.g., by video or telephone conference without attendance at court. If the court directs an alternative method of hearing, then the QLR will receive the appropriate fee as if the hearing had taken place at court. However, in these cases the hearing time will start from the time that the telephone call/video conference is first attempted rather than the time that the hearing was listed.

Cross-examination hearings

- 3.23. Cross-examination hearings are hearings in which the QLR undertakes cross-examination of a witness on behalf of the prohibited party, in accordance with their appointment by the court.
- 3.24. The units of time for cross-examination hearings are days, not hours. There is a daily rate payment for each day of the listing, regardless of the length of time spent at court.
- 3.25. The fee payable for advocacy services provided at a cross-examination hearing

³ See sections 3.1 and 3.4 of the Statutory Guidance.

covers all work carried out by the QLR, including any preparatory work, attendances, travel and waiting time, and preparation of attendance notes in relation to the advocacy.

Bolt-on fee

3.26. A bundle bolt-on fee is payable once per cross-examination hearing⁴, and is based on the size of the QLR's bundle as shown in Table 1 below.

3.27. Table 1

Number of bundle pages		
351 - 700	701 – 1,400	Over 1,400
£159.30	£239.40	£318.60

3.28. A QLR must obtain certification of the relevant number of pages of the bundle in order to claim this fee.

Payment of fees and costs

The calculation of the fee

3.29. As explained above, different fixed fees are paid in respect of each advocacy service provided in different case types. These standard fees may be increased by payment of a bundle bolt-on fee where appropriate.

The starting point

3.30. Each advocacy service has a base fee or hearing unit, which is the primary fee that a QLR will be paid. In respect of hearings this base fee may be multiplied to reflect the total time spent in court. The fees for each service are set out by case type in Tables 1 to 4 in the Schedule to the Fee Scheme Regulations.

Preliminary hearings

3.31. The total fee payable for a preliminary hearing depends on its length. Fees are classified as either Hearing Unit 1 or 2. As explained in sub-paragraph 3.20, the length of the hearing is measured from the time that the hearing is listed at court to start to the time the hearing concludes.

3.32. The fee payable for Hearing Unit 1 will apply if time spent at court (as defined in sub-paragraph 3.20 above) is 60 minutes or less. Where the length of the hearing is greater than 60 minutes and up to 2.5 hours then Hearing Unit 2 will apply. For hearings over 2.5 hours multiples of Hearing Unit 2 will apply.

3.33. The Court Order must accurately reflect the timings of the hearing, so that the QLR can claim the correct fee payable.

⁴ The June 2022 version of this Guidance incorrectly stated that a bolt-on fee was payable in respect of preliminary hearings. It also stated that the fee was not payable in domestic abuse proceedings. These statements did not reflect the law contained in the Fee Scheme Regulations and have been removed from this version of the Guidance. Please contact the Ministry of Justice for further information.

- 3.34. Where a hearing lasts more than one day the court order should record the start time on the first day and the time which the hearing ends on the final day. The Court Order will also need to state the day on which the hearing started and the day on which it completed and the total number of days over which the hearing took place.
- 3.35. For Preliminary hearings payment will be referenced to the number of hours and this should be recorded on the claim form.

Cross-examination hearings

- 3.36. The hearing unit is based on a daily fee rather than smaller periods of time. One hearing unit is paid from the time the main hearing begins to the time that it finishes on that day regardless of what time this may be.
- 3.37. It is possible in certain circumstances for more than one cross-examination hearing fee to be paid in a case if for any reason the QLR has undertaken cross-examination at more than one hearing.

Cancelled hearings

- 3.38. A cancelled hearing fee can be claimed where a preliminary hearing or a cross-examination hearing is listed, the QLR has undertaken at least 30 minutes of preparatory work and the hearing is cancelled.
- 3.39. For preliminary hearings in family proceedings, a Hearing Unit 1 fee is payable as described in Table 1 in the Schedule.
- 3.40. For preliminary hearings in civil proceedings, a Hearing Unit 1 fee is payable as described in Table 3 in the Schedule.
- 3.41. For cross-examination hearings in family proceedings, half of a single day fee is payable as described in Table 2 in the Schedule.
- 3.42. For cross-examination hearings in civil proceedings, half of a single day fee is payable as described in Table 4 in the Schedule.
- 3.43. The evidence required for this will be based on court listings, and evidence of 30 minutes preparation work.

Costs

- 3.44. QLRs can claim reimbursement of certain costs as set out in Table 1 below, subject to certain eligibility criteria and restrictions as specified in the Fee Scheme Regulations. Costs are payable up to a maximum cap. Claims for costs must be properly evidenced by receipt.
- 3.45. Eligibility criteria:
- (a) QLRs can claim travel costs when required to travel to a court that is not local to them (defined as being at least 10 miles from their usual office or chambers).
 - (b) QLRs will also be able to claim reimbursement of incurred accommodation costs when required to travel to a court at least 100 miles from their usual office or chambers for a one-day hearing, or at least 50 miles for a multiple day hearing.

3.46. Restrictions:

- (a) Air travel is not payable.
- (b) First class travel will only be paid if the ticket purchased was cheaper than the equivalent standard class ticket.
- (c) An overnight subsistence allowance may only be paid in conjunction with overnight accommodation costs.
- (d) The purchase of alcohol is excluded from an overnight subsistence allowance.
- (e) The purchase of food and drink is excluded from other out of pocket expenses.

3.47. Other out of pocket expenses should also be evidenced by receipt and noted on the CAS1 form. These costs should be directly related to the QLR appointment and adequately evidenced. For example, car parking charges, road tolls, congestion charge.

3.48. Table 2

<i>Category of costs claimed</i>	<i>Maximum rate payable</i>
(a) Vehicle mileage	£0.45 per mile
(b) Public transport	£180 per journey
(c) Overnight accommodation	£100 per night
(d) Overnight subsistence allowance	£21 per night
(e) Other out of pocket expenses	£40 per day

Payment to replacement advocate

3.49. Where, for any reason, a QLR is unable to continue with the appointment, then the Court should be informed so that it may appoint a replacement QLR. In those circumstances, we expect each QLR to make separate claims for payment for the work they have personally undertaken, including where each have undertaken cross-examination in a single hearing (for example, where the new appointment was necessary part-way through a hearing).

4. Claims for payment

When must claims be submitted?

- 4.1. A claim for payment in respect of a completed or a cancelled hearing must be made to the Legal Aid Agency (“LAA”) within 3 months of the date of the hearing.
- 4.2. A bundle bolt-on fee may be claimed alongside the claim in respect of a cross-examination hearing.

How are claims submitted?

- 4.3. Claims are submitted digitally on the CAS1 form, available at <https://www.gov.uk/guidance/qualified-legal-representative-claiming-guidance>. The claim must include the following:
 - (a) a copy of the Court Order appointing a QLR in the proceedings;
 - (b) details of any special circumstances that the Lord Chancellor’s attention should be drawn to.
- 4.4. The LAA may ask for any additional information or documents which will assist to properly determine the claim.
- 4.5. It is the QLR’s duty to accurately claim the relevant fees and costs. If any fees are incorrectly claimed or evidence is not provided, the LAA will reject the claim. A QLR may resubmit a claim provided this is submitted before the expiry of the original 3-month window.
- 4.6. The relevant information required to populate the CAS1 form will be in the Court Order. The advocate should check that the information in the Order is a correct reflection of the work undertaken. They should check that the case type is accurately described and the time the hearing started and concluded is correct.
- 4.7. The QLR should ensure that the appointment date shown on the appointment order is the actual date they were appointed in this matter. No work done before this date will be allowed. If the QLR finds that the order does not show the actual date of their appointment, the QLR should approach the court to get an amended order showing the correct date of appointment.

VAT

- 4.8. All fees set out in the Schedule to the fee scheme regulations are exclusive of value added tax.

Appeals and Reviews

- 4.9. Upon receipt of the claim, the LAA will either accept the claim for payment or it will be rejected, with an explanation of the reasons. Where more information is needed by the LAA, this will be requested on rejection.

- 4.10. QLRs have the right to resubmit their claim within the original 3-month limit for claiming, either amending the correct fee or providing any further information requested by the LAA.

- 4.11. There is no provision for an internal review or appeal to a costs judge.

5. Examples

The examples below illustrate what a QLR may receive on a case under the QLR scheme:

Example 1

A private law (children) case, before a circuit judge, which has a single case management hearing lasting 30 mins (£68.94) and a hearing with cross-examination lasting one day (£545.91) would be paid a total of £614.85. We expect this to be the situation most frequently claimed.

The same case where it is required for the QLR to spend two days at the hearing with cross-examination will be paid £1,051.58 (as above plus £436.73 for day 2).

Example 2

For a private law (domestic abuse) case where the QLR spends a part day at court to undertake cross-examination, and there were no relevant preliminary hearings, then a fee of £451.46 could be claimed.

Example 3

For a complex private law (finance and other) or any civil case, before a district judge, where the QLR is required to attend a cross-examination hearing for three days (first day fee of £554.63 and two subsequent days of £443.70 per day), and had previously attended a 3 hour case management hearing (two units of £157.95) and a 30 mins ground rules hearing (£63.18), and where the bundle is 900 pages long (£239.40), then £2,060.51 would be paid in total.