

2022 No. 567

CIVIL PROCEEDINGS, ENGLAND AND WALES
FAMILY PROCEEDINGS, ENGLAND AND WALES
SENIOR COURTS OF ENGLAND AND WALES
COUNTY COURT, ENGLAND AND WALES
FAMILY COURT, ENGLAND AND WALES

The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022

Made - - - - *18th May 2022*
Laid before Parliament *23rd May 2022*
Coming into force in accordance with regulation 1(2)

The Lord Chancellor, in exercise of the powers conferred by sections 31X of the Matrimonial and Family Proceedings Act 1984(a) and section 85L of the Courts Act 2003(b), makes the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022.

(2) These Regulations come into force on the day on which and immediately after sections 65 and 66 of the Domestic Abuse Act 2021(c) come into force.

(3) In these Regulations—

“1984 Act” means the Matrimonial and Family Proceedings Act 1984;

“1989 Act” means the Children Act 1989(d);

“2003 Act” means the Courts Act 2003;

“2012 Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012(e);

(a) 1984 c. 42. Section 31X was inserted by section 65 of the Domestic Abuse Act 2021 (c. 17).
(b) 2003 c. 39. Section 85L was inserted by section 66 of the Domestic Abuse Act 2021.
(c) 2021 c. 17.
(d) 1989 c. 41.
(e) 2012 c. 10.

“advocacy services” means cross-examination carried out by a qualified legal representative pursuant to appointment under section 31W(6) of the 1984 Act(a) or section 85K(6) of the 2003 Act(b), and fees and rates for advocacy services include remuneration for preparatory work, attendances at preliminary hearings and cross-examination hearings, and travelling and waiting in relation to those services;

“authorised” means authorised by the President of the Family Division or the Lord Chief Justice to conduct particular business, under powers granted by rules made under section 31D of the 1984 Act(c);

“cancelled hearing” means a preliminary hearing, or a cross-examination hearing, which was cancelled at any time prior to the scheduled time and date;

“completed hearing” means a preliminary hearing, or a cross-examination hearing, which was held and completed;

“cross-examination hearing” means a hearing involving cross-examination of a witness by the qualified legal representative;

“fees” means the sums payable to a qualified legal representative in accordance with these Regulations;

“judge of circuit judge level” means—

- (a) a judge appointed under section 16 of the Courts Act 1971(d);
- (b) a circuit judge who is authorised, where applicable;
- (c) a Recorder who is authorised, where applicable; or
- (d) any other judge of the family court authorised to sit as a judge of circuit judge level in the family court.

“judge of district judge level” means—

- (a) a judge appointed under section 6 of the County Courts Act 1984(e);
- (b) the Senior District Judge of the Family Division;
- (c) a district judge of the Principal Registry of the Family Division;
- (d) a person appointed to act as deputy for the person holding office referred to in subparagraph (c) or to act as a temporary additional officer for any such office;
- (e) a district judge who is authorised, where applicable;
- (f) a deputy district judge appointed under section 102 of the Senior Courts Act 1981(f) or section 8 of the County Courts Act 1984(g) who is authorised, where applicable;
- (g) an authorised District Judge (Magistrates’ Courts); or
- (h) any other judge of the family court authorised to sit as judge of district judge level in the family court.

“judge of High Court judge level” means—

- (a) a deputy judge of the High Court;
- (b) a puisne judge of the High Court;
- (c) a person who has been a judge of the Court of Appeal or a puisne judge of the High Court who may act as a judge of the family court by virtue of section 9 of the Senior Courts Act 1981;

(a) Section 31W was inserted by section 65 of the Domestic Abuse Act 2021.

(b) Section 85K was inserted by section 66 of the Domestic Abuse Act 2021.

(c) Section 31D was inserted by section 17(6) of, and paragraph 1 of Schedule 10 to, the Crime and Courts Act 2013 (c. 22).

(d) 1971 c. 23

(e) 1984 c. 28; Section 6 was substituted by section 14 of, and paragraph 1(1) of Schedule 3 to, the Constitutional Reform Act 2005 (c. 4) and subject to amendments that are not relevant to these Regulations.

(f) 1981 c. 54; Section 102(1) was substituted by section 56 of, and paragraphs 1 and 3 of Schedule 11 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15) and subject to amendments that are not relevant to these Regulations.

(g) 1984 c. 28; Section 8 was substituted by paragraph 42 of Schedule 18 to the Courts and Legal Services Act 1990 (c. 41) and subject to amendments that are not relevant to these Regulations.

- (d) the Senior Presiding Judge;
- (e) the Senior President of Tribunals;
- (f) the Chancellor of the High Court;
- (g) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);
- (h) the President of the Queen’s Bench Division;
- (i) the vice-president of the Queen’s Bench Division;
- (j) the President of the Family Division;
- (k) the Master of the Rolls; or
- (l) the Lord Chief Justice.

“justices’ legal adviser” means a person authorised by the Lord Chancellor to exercise functions under section 28(1) of the 2003 Act**(a)**;

“lay justice” means an authorised justice of the peace who is not a District Judge (Magistrates’ Courts);

“preliminary hearing” means a case management hearing, or other hearing, not involving cross-examination by the qualified legal representative;

“private law (children) case” means family proceedings under—

- (a) the enactments described in paragraph 10 (unlawful removal of children) or 13 (protection of children and family matters) of Part 1 of Schedule 1 to the 2012 Act**(b)**;
- (b) Part 1 or 3 of the Family Law Act 1986**(c)**, to the extent the matter relates to a child;
- (c) Part 1 or 2 of the 1989 Act, other than section 15 of, and Schedule 1 to, that Act; or
- (d) section 51A of the Adoption and Children Act 2002**(d)**;

“private law (domestic abuse) case” means family proceedings for the protection of a person in relation to another with whom they are associated (within the meaning of section 62 of the Family Law Act 1996**(e)**), including those under—

- (a) Part 4 or 4A of the Family Law Act 1996**(f)**;
- (b) Part 1 of Schedule 2 to the Female Genital Mutilation Act 2003**(g)**; or
- (c) Part 3 of the Domestic Abuse Act 2021;

“private law (finance and other) case” means any family proceedings which are not a private law (children) case or a private law (domestic abuse) case;

“public law (other) case” means—

- (a) proceedings under the enactments described in paragraph 1 of Part 1 of Schedule 1 to the 2012 Act**(h)** (care, supervision and protection of children), to the extent the matter is not a public law (section 31 care proceedings) case;
- (b) proceedings relating to the inherent jurisdiction of the High Court to the extent that the matter relates to a child; or
- (c) proceedings under the enactments described in paragraphs 17 (transitional EU arrangements and international agreements concerning children) or 18 (transitional EU

(a) Section 28 was substituted by section 3 of, and paragraph 26 of Schedule 1 to, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).

(b) Paragraph 13(1)(g) was added by section 9(12)(b) of the Children and Families Act 2014 (c. 6).

(c) 1986 c. 55.

(d) 2002 c. 38. Section 51A was inserted by section 9(1) of the Children and Families Act 2014 (c. 6).

(e) 1996 c. 27.

(f) Part 4A was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007 (c. 20).

(g) 2003 c. 31. Schedule 2 was inserted by section 73(2) of the Serious Crime Act 2015 (c. 9).

(h) Paragraph 1(1)(k) was inserted by S.I. 2016/413.

arrangements and international agreements concerning maintenance) of Part 1 of Schedule 1 to the 2012 Act^(a);

“public law (section 31 care proceedings) case” means—

- (a) proceedings or potential proceedings under section 31 of the 1989 Act; or
- (b) proceedings under the enactments described in paragraph 1 of Part 1 of Schedule 1 to the 2012 Act where—
 - (i) the proceedings are being heard with those under section 31 of the 1989 Act;
 - (ii) applications under those enactments are made within proceedings under section 31 of the 1989 Act; or
 - (iii) orders under those enactments are being sought as an alternative to an order under section 31 of the 1989 Act.

(4) These Regulations apply to the payment out of central funds of sums in respect of fees for advocacy services provided in civil or family proceedings.

(5) These Regulations extend to England and Wales.

Remuneration rates

2. The Lord Chancellor must pay remuneration for advocacy services in accordance with the provisions of the Schedule to these Regulations.

Bolt-on fee

3.—(1) The Lord Chancellor must pay a bolt-on fee at the rate set out in Table 5 in the Schedule as applicable where the qualified legal representative’s bundle for a cross-examination hearing exceeds 350 pages.

(2) For the purposes of this regulation, the qualified legal representative’s bundle—

- (a) may only include—
 - (i) those documents relevant to the case which have been served by the parties to the proceedings to which the hearing relates; and
 - (ii) in family proceedings, notes of contact visits if included in the bundle; and
- (b) must include a paginated index agreed by the parties to those proceedings.

(3) In this regulation “bundle” means the bundle of documents prepared for the hearing in accordance with the provisions of the Civil Procedure Rules 1998^(b) or Family Procedure Rules 2010^(c), as appropriate.

Value Added Tax

4. All fees set out in the Schedule to these Regulations are exclusive of value added tax.

Cancelled hearings

5.—(1) A fee in respect of a cancelled hearing may be claimed where—

- (a) a preliminary hearing or a cross-examination hearing is listed;
- (b) the qualified legal representative subsequently undertakes at least 30 minutes of preparatory work; and
- (c) the hearing is cancelled.

(2) A cancelled hearing fee in respect of a preliminary hearing is—

(a) Paragraph 18 was amended by S.I. 2013/748.
(b) S.I. 1998/3132 (L. 17), to which there are amendments not relevant to these Regulations.
(c) S.I. 2010/2955 (L. 17), to which there are amendments not relevant to these Regulations.

- (a) in family proceedings, a Hearing Unit 1 fee as described in Table 1 in the Schedule; or
 - (b) in civil proceedings, a Hearing Unit 1 fee as described in Table 3 in the Schedule.
- (3) A cancelled hearing fee in respect of a cross-examination hearing is—
- (a) in family proceedings, half of a single day fee as described in Table 2 in the Schedule; or
 - (b) in civil proceedings, half of a single day fee as described in Table 4 in the Schedule.

Claim for payment of fees

6.—(1) A qualified legal representative must make a claim for payment of fees in accordance with these Regulations.

(2) A qualified legal representative may make a claim in respect of each completed hearing or cancelled hearing.

(3) A claim for payment must be submitted within 3 months of the date of the completed hearing or cancelled hearing.

(4) A claim must—

- (a) be submitted on a form specified by the Lord Chancellor;
- (b) summarise the items of work done by the qualified legal representative;
- (c) state, where appropriate, the dates on which items of work were done, the time taken and the sums claimed; and
- (d) include all particulars, information or documents relied on as evidence of entitlement to the fee claimed.

(5) The qualified legal representative must specify any special circumstances which they consider should be drawn to the attention of the Lord Chancellor.

Payment of fees

7.—(1) Upon receipt of a claim for payment, the Lord Chancellor must—

- (a) accept the claim; or
- (b) reject the claim.

(2) Where a claim is accepted, the Lord Chancellor must authorise payment accordingly.

(3) Where a claim is rejected, the Lord Chancellor must notify the qualified legal representative of—

- (a) the reasons for rejection; and
- (b) the ability to resubmit a claim.

(4) A qualified legal representative may resubmit the claim at any point before the expiry of the 3-month period referred to in regulation 6(3).

(5) If a claim is resubmitted, the qualified legal representative must supply with that claim any further particulars, information or documents that the Lord Chancellor requires.

18th May 2022

James Cartlidge
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE

Regulation 2, 3 and 5

Fees

PART 1

Fees payable in family proceedings

Fixed fees

1. Tables 1 and 2 set out the fixed fees payable in relation to the category of case specified in the first column of the table, by reference to the level of judge conducting the hearing as specified in the remaining columns of the table.

Table 1

Preliminary hearing fees in family proceedings

Paid for all preliminary hearings

<i>Case type</i>	<i>Level of judge</i>		
	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>
Private law (children)			
<i>HU1⁽¹⁾ (under one hour)</i>	£62.69	£68.94	£82.76
<i>HU2⁽²⁾ (1 to 2.5 hours)</i>	£156.74	£172.40	£206.87
Private law (domestic abuse)			
<i>HU1 (under one hour)</i>	£81.50	£81.50	£81.50
<i>HU2 (1 to 2.5 hours)</i>	£203.76	£203.76	£203.76
Private law (finance and other)			
<i>HU1 (under one hour)</i>	£63.18	£63.18	£75.83
<i>HU2 (1 to 2.5 hours)</i>	£157.95	£157.95	£189.54
Public law (section 31 care proceedings)			
<i>HU1 (under one hour)</i>	£86.72	£95.40	£114.48
<i>HU2 (1 to 2.5 hours)</i>	£216.81	£238.46	£286.16
Public law (other)			
<i>HU1 (under one hour)</i>	£75.83	£83.39	£100.08
<i>HU2 (1 to 2.5 hours)</i>	£189.59	£208.53	£250.20

⁽¹⁾ Hearing Unit 1 fee

⁽²⁾ Hearing Unit 2 fee

Table 2

Fees for attendance at cross-examination hearing in family proceedings

Paid per day at the cross-examination hearing

<i>Case type</i>	Day 1			Further days		
	<i>Level of judge</i>			<i>Level of judge</i>		
	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>
Private law	£496.30	£545.91	£655.09	£397.04	£436.73	£524.07

<i>Case type</i>	Day 1			Further days		
	<i>Level of judge</i>			<i>Level of judge</i>		
	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>
(children)						
Private law (domestic abuse)	£451.46	£451.46	£451.46	£361.17	£361.17	£361.17
Private law (finance and other)	£554.63	£554.63	£665.55	£443.70	£443.70	£532.44
Public law (section 31 care proceedings)	£632.81	£696.10	£835.31	£506.25	£556.88	£668.25
Public law (other)	£580.39	£638.44	£766.13	£464.31	£510.75	£612.90

PART 2

Fees payable in civil proceedings

Fixed fees

2. Tables 3 and 4 set out the fixed fees payable in relation to the category of case specified in the first column of the table, by reference to the level of judge conducting the hearing as specified in the remaining columns of the table.

Table 3

Preliminary hearing fees in civil proceedings

Paid for all preliminary hearings

<i>Case type</i>	<i>Level of judge</i>		
	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>
Civil proceedings			
<i>HU1 (under one hour)</i>	N/A	£63.18	£75.83
<i>HU2 (1 to 2.5 hours)</i>	N/A	£157.95	£189.54

Table 4

Fees for attendance at cross-examination hearing in civil proceedings

Paid per day at the cross-examination hearing

<i>Case type</i>	Day 1			Further days		
	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>	<i>Justices' legal adviser or lay justice</i>	<i>Judge of circuit or district judge level</i>	<i>Judge of High Court judge level</i>
Civil proceedings	N/A	£554.63	£665.55	N/A	£443.70	£532.44

PART 3

Bolt-on fee payable in family and civil proceedings

Table 5

Advocates' bundle bolt-on

Additional fee to be paid once per cross-examination hearing

<i>Number of bundle pages</i>		
351-700	701-1,400	over 1,400
£159.30	£239.40	£318.60

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 65 and 66 of the Domestic Abuse Act 2021 (c. 17) introduce new Part 4A into the Matrimonial and Family Proceedings Act 1984 and new Part 7A into the Courts Act 2003, respectively. Those provisions operate in family and civil proceedings to prohibit cross-examination in person between a party and a witness in defined circumstances, including where there is evidence of domestic abuse between them.

Where a party to family or civil proceedings is prohibited from cross-examining a witness in person by virtue of these provisions, the court is required to consider whether there is a satisfactory alternative means for the witness to be cross-examined, or for obtaining the evidence that the witness might have given under cross-examination. If the court concludes that there is no satisfactory alternative means that can be used, it must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a court-appointed 'qualified legal representative'. Power is conferred on the Lord Chancellor to make provision by regulations for the payment out of central funds of sums to cover the properly incurred fees, costs and expenses of a legal representative appointed under new section 31W(6) of the Matrimonial and Family Proceedings Act 1984 or new section 85K(6) of the Courts Act 2003.

Regulation 1 defines the respective case types for the purposes of calculating the fee payable to a qualified legal representative, in accordance with regulation 2 and the provisions of the Schedule.

Regulation 3 makes provision for payment of an additional bolt-on fee where the bundle of documents for a hearing exceeds 350 pages. Regulation 4 confirms the amounts specified in the Schedule are exclusive of Value Added Tax.

Regulation 5 makes provision for payment of a fee where a qualified legal representative has undertaken preparatory work for a hearing which is subsequently cancelled.

Regulations 6 and 7 make procedural provision in respect of the claims for and the payment of fees.

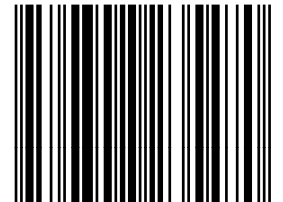
Part 1 of the Schedule prescribes the fixed fees payable in family proceedings in accordance with the case type, the type of hearing and the level of judge before whom the matter is heard. Part 2 of the Schedule makes similar provision in relation to civil proceedings. Part 3 of the Schedule prescribes the bolt-on fee payable in both family and civil proceedings pursuant to Regulation 3.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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