

QLR FEE SCHEME – STRUCTURE AND PITFALLS

FIRST DRAFT

The fee scheme for the Qualified Legal Representative (QLR) scheme are set out in The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022 [[SI 567/2022](#)]. The table of fees is set out at the foot of this document.

Guidance on claims can be found here: <https://www.gov.uk/guidance/qualified-legal-representative-claiming-guidance> .

The scheme is in essence a fixed fee scheme. Although it is administered by the Legal Aid Agency, and although the scheme is modelled to an extent on the Graduated Fee Scheme (GFS), the fees are not legal aid (they come from central funds).

As with the GFS, the structure is that different fixed fees are payable depending on the category of case, the tier of judiciary, the type of hearing and (in the case of preliminary hearings) duration of hearing. There are two types of hearing: ‘Preliminary’ (which will generally be PTR / GRH type hearings) and ‘Cross examination hearing’ (which may be a fact finding hearing or a substantive final hearing).

As with the GFS there is a relatively nominal fee payable for preliminary hearings of up to an hour, and a more substantive unit fee for hearings of between 1 hour and 2.5 hours (here, approximately 2.5 x more). As with the GFS, private law children and finance are (broadly) the most poorly remunerated category of case. To give an indication, the preliminary fees range between £62.69 (private law hearing before magistrates less than an hour) to £286.16 (care proceedings 1-12.5 hours, high court).

Fees for cross examination hearings are on a day rate with a first day fee and a refresher fee. Here it is domestic abuse cases which are the least well remunerated, and for cases in this category the day fees and refreshers are completely flat regardless of tier of judiciary. To give

an indication, the cross examination day 1 fees range between £451.46 (domestic abuse hearing any tier, £361.17 subsequent days) to £835.31 (care proceedings, High Court (£668.25 subsequent days)).

However, there are some material differences between the graduated fee scheme and the QLR fee scheme.

Unlike the legal aid graduated fee scheme, there are no separate sums payable for:

- Travel expenses
- Accommodation
- Conferences (which the Statutory Guidance seems to expect – QLRs will want to try and arrange those at court prior to hearings, and to ensure the court directs early attendance for this purpose)
- Drafting (which the Statutory Guidance seems to expect)
- Whilst a bundle payment can be claimed for a preliminary hearing, these payments are linked to the size of the bundle at the cross examination hearing. As such they cannot be claimed unless and until the QLR reaches the substantive cross examination hearing where questions are posed.
- Claims must be submitted within 3 months to be valid. Where a claim is rejected it must be resubmitted within that 3 month window unless there are evidenced exceptional circumstances.

Bundles

Bundle uplifts, where payable, are as per GFS: 350+ pages, 700+ or 1400+ pages (final hearing only).

There is no bundle payment available in domestic abuse cases at all.

There are limits on how many preliminary hearings can be the subject of a bundle uplift (one in private law, two in public law).

A QLR 'must obtain certification of the relevant number of pages of the advocate's bundle in order to claim this payment'. Certification is not defined but we suggest this is simply recorded in the order.

The inability to claim a bundle uplift until cross examination stage derives from Regulation 3, and is a significant disincentive to undertaking this work, due to the risk that it will not ultimately be claimable at all. It is clear that an advocate can claim the base separately from the uplift, and the trigger date for the bolt on claim is the cross examination hearing even if this is more than 3 months after the relevant preliminary hearing. We therefore suggest that base fee claims for preliminary hearings should not be delayed. If payable, the uplift can be claimed separately later.

It is unclear whether an advocate will be able to claim a bundle uplift where, for reasons outside their control a different advocate carries out the substantive cross examination (and if so how they will be able to obtain the necessary 'certification' of the page count).

A further point regarding bundles. The wording in the regulation which defines bundle size is difficult to interpret:

"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."

On one reading this could exclude orders, material disclosed to the court e.g. police disclosure where the parties are each in person and court has acted as recipient. It is unclear whether this was the intention of the draftsman or if so, why that would be.

It is clear that the bundle should only contain 'relevant' materials (whatever that means). In many cases, the bundle provided will be prepared by HMCTS as both parties will be in person – it is therefore unlikely to include a paginated index agreed by the parties.

The significance of these bundle issues in practice is unclear at the moment. It is suggested that a QLR should ensure that the court draws an order specifying the size of the bundle and confirming that all documents within it were relevant to the hearing attended. The existing template orders do contain a prompt for the court to specify the size of the bundle but it would be prudent to seek this additional specific wording (<https://www.judiciary.uk/guidance-and-resources/message-from-mr-justice-peel-standard-orders-cross-examination-and-qlr-provisions/>).

Particular pitfalls and disadvantages

Domestic abuse proceedings such as applications for non-molestation orders are unlikely to often generate particularly large bundles. However, other categories of case may well require an advocate to get to grips with large bundle prior to a preliminary hearing, particularly cases involving allegations of coercive and controlling behaviour and child welfare issues, care proceedings involving medical or expert evidence, and financial remedy cases involving substantial amounts of bank statement disclosure. In such cases the advocate may not be adequately remunerated unless and until the matter runs to a substantive hearing and the bundle uplift can be claimed. In cases where the advocate attends a preliminary hearing, we expect them usually to have had to read the full bundle provided, but if the substantive hearing is adjourned to a date the advocate cannot do there will be no means of effectively claiming for the frontloaded work done.

We suggest advocates should be wary of agreeing to attend a preliminary hearing without first seeking confirmation of the cross examination hearing dates to ensure they are available for both fixtures.

There is a particular risk that in cases where two QLRs are required, a hearing may be ineffective because the court has only secured a QLR for one party. We suggest advocates should check at the point of acceptance whether this is a sole or double QLR case, and

whether a second QLR has yet been identified. In double QLR cases we suggest that the court is requested to confirm whether the hearing will be effective before the advocate commences preparatory work.

The statutory guidance requires both judges and QLRs to explain to the prohibited party the limitations of the QLR scheme. This explanation is likely to take place immediately prior to the preliminary hearing. We anticipate that in a proportion of cases a litigant may at this juncture indicate that they will instruct an advocate of their own for full representation, leading to the discharge of the QLR and an inability to recover any fee for cross examination or bundle uplift. We suggest that on receipt of papers, and prior to any substantive work being undertaken, an introductory email should be sent to the prohibited party explaining these options in order that the QLR can minimise the risk of carrying out wasted work or incurring unnecessary costs. (someone in our meeting said they had some standard wording – can we append it?).

Cases in courts which are in remote locations or a long distance from an advocates' main base will in many cases be economically unviable. An advocate should estimate any travel or accommodation costs given the distance, route and start time (and factoring in the need to meet the prohibited party before the hearing), and consider whether the fee claimable would exceed those costs in the event the hearing is ineffective or the advocate cannot attend / is not required to attend the cross examination hearing.

It is particularly important that QLRs ensure that they identify if they are missing necessary papers in advance of attending any hearing, to avoid the risk of ineffective hearings and wasted (unremunerated) work.

Date of appointment

QLR's attention is drawn to this aspect of the claim guidance (4.9):

'The advocate 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 you find that the appointee order does not show the actual date of your appointment, you should approach the court to get an amended order showing the correct date of appointment'.

Drafting and conferences

The Claims guidance appears to anticipate that the QLR may prepare a skeleton argument or order and that this is incorporated in the fee for a preliminary hearing (3.22). Respectfully, we are not sure that this is consistent with the QLRs limited function and role (or the statutory guidance (<https://www.gov.uk/government/publications/qualified-legal-representative-appointed-by-the-court-statutory-guidance>), which anticipates preparation of position statements:

‘However, the qualified legal representative is expected, in most cases, to meet with the prohibited party to elicit relevant information that will form the basis of the cross-examination and inform the drafting of the position statement.’

But which states :

‘Qualified legal representatives do not have a free-ranging remit. They are not appointed to act as an ‘advocate to the court’ (also known as ‘amicus curiae’) who are most commonly appointed to assist the court on specific legal issues by furnishing information or advice regarding questions of law or fact. A qualified legal representative appointed by the court sits somewhere between these two more traditional roles, and they must remain conscious of the limited and unique purpose of their role in family and civil proceedings’.

The drafting of a skeleton argument is rarely likely to be necessary or appropriate given the QLR does not act on instructions of a client, and does not act as roving advocate on behalf of any party, and the drafting of orders is certainly not within the scope of the scheme.

See below regarding conferences – there is no separate fee payable so these will usually either need to be carried out online / by phone or whilst at court.

Hearing times

The claims guidance makes clear that for the purposes of preliminary hearings

‘the hearing is measured from the time that the hearing is listed to start at court to the time that the hearing concludes, disregarding any Guidance on Prohibition of Cross-Examination in Person QLR Scheme June 2022 7 period in which the court is adjourned, either for lunch or overnight. Where, however, the court provides a specific direction to the advocates for earlier attendance, in respect of that particular hearing, time will run from the earlier time if the advocate is able to establish that such a specific direction was made. ...Where a court directs a party to adjourn for further discussions at court then that time will be included in the calculation of the Preliminary Hearing fee.’

As with the GFS, QLRs should ensure that orders require the QLR to attend prior to the listed hearing time to ensure that proper remuneration can be claimed for the additional work of speaking to a client at court, and that orders also spell out how long the advocate was in fact at court (and whether lunch was worked through).

QLRs may wish to appraise the court of the financial implications of in person hearings given the lack of any mechanism to reimburse travel or accommodation costs, and in appropriate cases may request permission to attend remotely, at least for a preliminary hearing. In such cases, the QLR will need to ensure though that they have an alternative means of effective communication with the prohibited party so as to ensure they understand the case that they are required to put through cross examination. QLRs should note that the fee guidance indicates that “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.” (3.25) which is not consistent with our experience in respect of payments under GFS for remote hearings. If this guidance were to be adhered to rigidly this is likely to be a significant disincentive to accepting instructions under the scheme – an advocate cannot afford to attend in person due to unremunerated travel costs, and yet will be treated as having attended a much shorter hearing if they attend remotely and do the same work by video call prior to it.

Mixed cases

Note the guidance at 3.11 and 3.12 regarding mixed cases, such as private law children proceedings where the local authority have subsequently issued care proceedings:

“When the continuing proceedings fall within more than one family category, an advocate must, for the purpose of payment under the CAS, choose under which single category they would wish to be paid for all the advocacy services performed when making a claim for payment. Usually, an advocate will claim at the category that pays the highest rate. For example, in an application for a child arrangements order that subsequently involves allegations of abuse to a degree that the local authority issues care proceedings, at the point, an advocate can claim the higher Public Law Children fee for any future hearing(s).”

Where one hearing rolls up issues in two sets of proceedings (eg a joint children and money hearing) the advocate can only claim one fee and must choose which category.

Domestic abuse cases

Note that whilst the fees for domestic abuse preliminary hearings are comparatively high, they are materially lower for cross examination hearings than for any other category of case. Coupled with the fact that no bundle uplift is payable at all for these cases (claim guidance 3.32), a QLR will need to carry out some careful calculations in order to ascertain whether the matter can be carried out without the QLR incurring a net loss, and the advocate will have to form a view as to whether any potential net income amounts to a reasonable fee for the work required.

Cancelled hearings

A reduced fee is payable for a cancelled hearing where the advocate has undertaken at least 30 minutes of work prior to cancellation. That fee is a hearing unit 1 fee (i.e. as per payment for a hearing of under an hour) for a preliminary hearing or a half a day’s fee for a single day fee for a substantive hearing. The bundle uplift is not payable in respect of cancelled hearings.

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**Extract from The Prohibition of Cross-Examination in Person
(Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022 [SI 567/2022]**

Part 1 Fees Payable in Family Proceedings

Fixed fees

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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

Case type	Level of judge		
	<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 (under one hour)</i>	£62.69	£68.94	£82.76
<i>HU2 (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

Table 2

Fees for attendance at cross-examination hearing in family proceedings

Paid per day at the cross-examination hearing

Case type	Day 1			Further days		
	Level of judge			Level of judge		
	<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 (children)	£496.30	£545.91	£655.09	£397.04	£436.73	£524.07
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 is omitted because it relates to civil proceedings]

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

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