

Northern Circuit FDLJ Conference 2022

Practical Considerations in Domestic Abuse Cases: *FHDRA to Finding of Fact Hearing and Beyond*

BUNDLE OF RESOURCES

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Domestic Abuse Act 2021: Family Court factsheet

1. Definition of Domestic Abuse (Part 1)

The behaviour of person ('A') towards person ('B') is 'domestic abuse' if:

- (a) A and B are each **aged 16 or over** and are **personally connected to each other**, and
- (b) The **behaviour is abusive**.

Abusive behaviour

Behaviour is **abusive** if it consists of any of the following:

- (a) Physical or sexual abuse
- (b) Violent or threatening behaviour
- (c) Controlling or coercive behaviour¹
- (d) Economic abuse²
- (e) Psychological, emotional or other abuse

It does not matter whether the behaviour consists of a **single incident** or a **course of conduct**.

Personally connected

Two people are **personally connected** to each other if:

- (a) They are, or have been, married to each other
- (b) They are, or have been, civil partners of each other
- (c) They have agreed to marry one another (whether or not agreement terminated)
- (d) They have entered into a civil partnership agreement (whether or not agreement terminated)
- (e) They are, or have been, in an intimate personal relationship with each other;
- (f) They each have, or there has been a time when they have each had, a parental relationship in relation to the same child³

¹ Defined within explanatory notes as: **Controlling behaviour**: range of acts designed to make a person subordinate and / or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of means needed for independence, resistance and escape and regulating their everyday behaviour. **Coercive behaviour**: a continuing act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim.

² Defined in s1(4) as: any behaviour that has a substantial adverse effect on B's ability to (a) acquire, use or maintain money or other property, or (b) obtain goods or services

³ Parental relationship defined in s2(2) as parent of the child or having parental responsibility for the child.

(g) They are relatives⁴

Children as victims of domestic abuse

Any reference to a victim of domestic abuse includes a reference to a **child who sees or hears, or experiences the effects of, the abuse and is related to A or B.**⁵

2. Powers for dealing with domestic abuse (Part 3) (Not yet commenced)

I. Domestic Abuse Protection Notices (not yet commenced - expected early 2023)

This section creates a power for a police officer to issue a **Domestic Abuse Protection Notice ('DAPN')**. The purpose of a DAPN is to secure the immediate protection of a suspected victim of domestic abuse from further domestic abuse carried out by a suspected perpetrator. There is an exhaustive list of the provisions a DAPN may contain including prohibitions relating to contact, coming within a specified distance, entering premises and evicting / excluding a victim from a premises.

The issue of a DAPN would trigger a police-led application for a DAPO in a magistrates court.

Further detail as to DAPNs is contained within **sections 22 - 26 DAA 21**.

II. Domestic Abuse Protection Order (not yet commenced - expected early 2023)

Meaning

A Domestic Abuse Protection Order ('DAPO') is an order containing prohibitions or requirements for the purpose of preventing the perpetrator from being abusive towards his or her victim.

Application

A DAPO can be made by the family court on an application in accordance with **section 28**.

⁴ Meaning given by s63(1) of the Family Law Act 1996

⁵ Child is 'related' if (a) the person is a parent of, or has parental responsibility for, the child **or** the child and the person are relatives (within the meaning of s63(1) of the Family Law Act 1996.

In **family proceedings** the High Court or the family court may make a DAPO against a person ('P') in **any family proceedings to which P and the person for whose protection the order would be made are parties.**

DAPOs can also be made in criminal proceedings and civil proceedings in accordance with **section 31.**

Conditions for making an order

Condition A: the court is satisfied that on the balance of probabilities that P has been abusive towards a **person aged 16 or over** to whom **P is personally connected.**

Condition B: the order is **necessary and proportionate** to protect that person from domestic abuse, or the risk of domestic abuse, carried out by P.

The abuse can have taken place (a) in England and Wales or elsewhere and (b) before or after the coming in of this section.

A DAPO **may not** be made against a person who is under 18

Matters to be considered before making an order

Matters to be considered are:

- a. Welfare of any person under 18 whose interests the court considers relevant
- b. Opinion of the person for whose protection the order would be made
- c. If the proposed order relates to premises lived in by the person for whose protection the order would be made - the opinion of a relevant occupant (n.b. this **does not** include P)

Order can be made without notice if **just and convenient to do so** and with regard to all the circumstances with factors listed at **section 34(3).**

Provisions that may be made

The Court may impose **any requirements** that the court considers **necessary to protect the person** for whose protection the order is made from domestic abuse or the risk of domestic abuse.

This includes, but is not limited to, prohibiting contact, prohibiting P coming within a specified distance of the person being protected and requiring P to leave premises or prohibiting P from evicting the person to be protected.

A DAPO may also **require P to submit to electronic monitoring** in England Wales of P's compliance with other requirements ('electronic monitoring requirement'). Further detail as to the electronic monitoring requirement is contained within **section 37**.

Further information as to the provisions of a DAPO are contained within **section 36**.

Duration

There is no time limit within the DAA 2021 save for an electronic monitoring requirement as below. An order can have effect (a) for a specified period, (b) until the occurrence of a specified event or (c) until further order.

A DAPO may **not** provide for an **electronic monitoring requirement** to have effect for **more than 12 months**.

Breach of an order

A person subject to a DAPO **commits an offence** if without reasonable excuse they fail to comply with any requirement imposed.

A person guilty of an offence under this section is liable to imprisonment or a fine (or both).

3. Special measures in family proceedings: victims of domestic abuse (section 63)

Rules of court must provide that where **a person is, or is at risk of being, a victim of domestic abuse** carried out by (a) a party to the proceedings, (b) a relative of a party to the proceedings or (c) a witness to the proceedings **it is to be assumed** that the following are likely to be **diminished by reason of vulnerability**:

- (a) The **quality** of that person's **evidence**
- (b) Where they are a **party** to the proceedings their **participation** in the proceedings.

This assumption is reflected in **rule 3A.2A FPR 2010**.

4. Prohibition of cross-examination in person in family proceedings (section 65) : Amendments to Matrimonial and Family Proceedings Act 1984 (MFP 1984) - Part 4B.

It is important to note that these provisions **do not apply** to proceedings which were started **before 21 July 2022**.

A central element of the DAA 21 for the purposes of family proceedings is the **prohibition** of cross-examination in person in the defined circumstances below.

I. Victims of offences (s31R MFP 1984)

- (a) No party who has been **convicted of or given a caution for, or is charged with, a specified offence** may cross examine in person **a witness who is the victim of, or alleged victim of, that offence**
- (b) No party **who is the victim or alleged victim of a specified offence** may cross-examine in person **a witness who has been convicted of or given a caution for, or is charged with that offence.**

Caution and conviction are defined at **s31R(5)**.

Specified offences are defined in **Schedule 1 of The Prohibition of Cross-Examination in Person (Civil and Family Proceedings) Regulations 2022 - [The Prohibition of Cross-Examination in Person \(Civil and Family Proceedings\) Regulations 2022 \(legislation.gov.uk\)](#)**

The schedule (as relates to offences in England and Wales) is reproduced at **Annex 1** below.

It is important to note that **cross-examination in breach** of the above **does not affect the validity of a decision** of the court in proceedings **if** the court was **not aware** of the conviction, caution or charge when the cross-examination took place.

II. Persons protected by injunctions (s31S MFP 1984)

- (a) No party against whom an **on-notice protective injunction is in force** may cross examine in person **a witness who is the protected by the injunction**
- (b) No party **who is protected by an on-notice protective injunction** may cross-examine in person **a witness against whom the injunction is in force.**

A **protective injunction** is defined within **Schedule 2 of The Prohibition of Cross-Examination in Person (Civil and Family Proceedings) Regulations 2022 - [The Prohibition of Cross-Examination in Person \(Civil and Family Proceedings\) Regulations 2022 \(legislation.gov.uk\)](#)**

The schedule (as relates to injunctions in England and Wales) is reproduced at Annex 2 below.

A protective injunction is '**on-notice**' if:

- (a) The court is satisfied that there has been a hearing at which the person against whom the injunction has been made **asked or could have asked for the injunction to be set aside or varied**, or
- (b) The protective injunction was made at a hearing of which the court is satisfied **both the person who applied for it and the person against whom it is in force had notice**.

Again it is important to note that **cross-examination in breach** of the above **does not affect the validity of a decision** of the court in proceedings **if** the court was **not aware** of the protective injunction when the cross-examination took place.

III. Evidence of domestic abuse (s31T MFP 1984)

- (a) Where **specified evidence** is adduced that a person **who is a witness** has been the **victim of domestic abuse carried out by a party, that party** may not cross examine the witness in person
- (b) Where **specified evidence** is adduced that a person **who is a party** to the proceedings has been the **victim of domestic abuse carried out by a witness, that party** may not cross-examine the witness in person.

Specified evidence is defined in **Schedule 3 of The Prohibition of Cross-Examination in Person (Civil and Family Proceedings) Regulations 2022** - [The Prohibition of Cross-Examination in Person \(Civil and Family Proceedings\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

There is **no equivalent** provision in this section relating to the **validity of cross-examination in breach of this section**.

IV. Other cases (s31U MFP 1984)

The Court may give a direction **prohibiting** a party to the proceedings from **cross-examining or continuing to cross-examine** a witness in person if none of the above sections apply and it appears to the court that

- (a) The **quality condition or the significant distress condition is met; and**
- (b) It would **not be contrary to the interests of justice** to give the direction.

The **quality condition** is met if the quality of the evidence given by the witness on cross-examination is likely to **diminished** if the cross-examination (or continued cross-examination) is conducted by the party in person **and would likely be improved** if a direction were given under this section.

Quality refers to **completeness, coherence and accuracy**

The **significant distress condition** is met if the cross-examination (or continued cross-examination) in person would be **likely to cause significant distress** to the witness or party and that distress is likely to be **more significant** than would be the case if the witness were **cross-examined other than by the person**.

In determining the above conditions the court must have regards to factors in **section 31U(5)** which includes views expressed by the witness, the party, the nature of questions likely to be asked, the behaviour of the party and the witness and the relationship between the witness and the party.

A direction under this section may be made by the court on an **application by a party or of its own motion**.

A direction under this section can be discharged in accordance with the terms of **section 31V**.

Practice Direction 3AB addresses how applications under this section should be made, the issues and factors to be considered in granting such a direction and the appointment of QLRs.

5. **Alternatives to cross-examination in person (s65 DAA 2021 amending s31W MFP 1984)**

This applies where a party is prevented from cross-examining a witness in person by virtue of any of the sections above.

The Court must consider whether (ignoring provisions for QLRs below) there is a **satisfactory alternative means** for either:

- (a) the witness to be cross-examined
- (b) obtaining evidence that the witness might have given under cross-examination in the proceedings

It is important to note that **cross-examination by the judge on behalf of a party** would **not be a satisfactory alternative** for these purposes (paragraph 5.3 FPR PD 3AB).

If the Court decides there is not, the court must **invite the party to arrange for a qualified legal representative ('QLR')** to act for them for the purposes of cross-examining the witness and notify the court whether a QLR is to act

If at the end of a specified period the party has notified that no QLR is to act or no notification has been received the court must consider whether it is in the interests of justice for the witness to be cross-examined by a QLR appointed by the court. If so, the **court must appoint** a QLR.

A QLR so appointed by the court **is not responsible to the party**.

Qualified Legal Representatives - Further information as to the role can be found within the statutory guidance at [final-statutory-guidance-role-of-the-qualified-legal-representative.pdf](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61444/final-statutory-guidance-role-of-the-qualified-legal-representative.pdf) ([publishing.service.gov.uk](https://www.publishing.service.gov.uk)).

A separate summary factsheet has been prepared in relation to QLRs.

6. Orders under section 91(14) of the Children Act 1989 (s67 DAA 2021 amending section 91 CA 1989)

New Section 91A makes further provision about the **circumstances in which the court may make an order under s91(14) CA 1989**.

Section 91A specifies that the circumstances in which a court may make a s91(14) order **include** where the court is satisfied that the making of an application for an order under CA 1989 by any person who is to be named in the order would put **(a) the child concerned or (b) another individual ('the relevant individual') at risk of harm.**⁶

⁶ 'Harm' is to be read as reference to ill-treatment or the impairment of physical or mental health.

Where a person named in a s91(14) order **applies for leave** to make an application the court must, in considering whether to grant leave, consider whether there has been a **material change in circumstances since the order was made**.

A s91(14) order **may be made** by the court

(a) on an application by:

- i. The relevant individual
- ii. By or on behalf of the child concerned
- iii. By any other person who is a party to the application being disposed of by the court

(b) **of its own motion**

7. Other notable provisions

- I. **Part 2 – Domestic Abuse Commissioner: Appointment and functions of a Domestic Abuse Commissioner.**
- II. **Part 4 – Local Authority support: requirements for local authorities in England to assess the need for accommodation -based support, prepare and publish strategies for support and monitor and evaluate the effectiveness of the strategy**
- III. **Section 68: Offence of controlling or coercive behaviour:** The definition of personally connected has been amended to align it with section 2 of the DAA 2021 as above.
- IV. **Section 69: Offence of threats to disclose private sexual photographs and films with intent to cause distress:** Amended such that the prosecution do not need to prove the photographs or films referred to exists so long as the individual is said to feature in them.
- V. **Section 70: Offence of non-fatal strangulation or suffocation of another:** A new offence is created by section 70. A person commits this offence if they intentionally strangle another person or commit another act that affects the other person's ability to breathe (and that act constitutes a battery of the other person).
- VI. **Section 71: Consent to serious harm for sexual gratification not a defence:** this section restates in statute law the general proposition that a person cannot consent to the infliction of serious harm.

- VII. **Section 80: Prohibition on charging for the provision of medical evidence of domestic abuse**
- VIII. **Section 83** – Report on the use of contact centres: The Secretary of State must within 2 years publish a report *'about the extent to which individuals, when they are using contact centres in England, are protected from the risk of domestic abuse or, in the case of children, other harm.'*

Annex 1: Specified offences

Schedule 1 The Prohibition on Cross-examination in Person (Civil and Family Proceedings) Regulations 2022

The following table relates to Offences in England and Wales. Offences committed in Scotland or Northern Ireland are included in separate tables within Schedule 1

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Kidnapping	Common law
False imprisonment	Common law
Perverting the course of public justice	Common law
Murder/manslaughter (of a child)	Common law
Incitement (pre 1st October 2008) in relation to: (a) an indictable offence listed in this table; and (b) the offence of murder	Common law
Aiding, abetting, counselling or procuring the commission of: (a) an indictable offence listed in this table; or (b) the offence of attempted murder	Section 8 of the Accessories and Abettors Act 1861 (c. 94 (24 & 25 Vict))
Conspiring or soliciting to commit murder	Section 4 of the Offences Against the Person Act 1861 (c. 100 (24 & 25 Vict))
Threats to kill	Section 16 of the Offences against the Person Act 1861
Shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm or to resist apprehension	Section 18 of the Offences against the Person Act 1861
Inflicting bodily injury with or without weapon	Section 20 of the Offences against the Person Act 1861
Attempting to choke, etc. in order to commit or assist in the committing of any indictable offence	Section 21 of the Offences against the Person Act 1861
Using chloroform etc to commit or assist in the committing of any indictable offence	Section 22 of the Offences against the Person Act 1861
Maliciously administering poison, etc. so as to endanger life or inflict grievous bodily harm	Section 23 of the Offences against the Person Act 1861

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Maliciously administering poison, etc. with intent to injure, aggrieve, or annoy any other person	Section 24 of the Offences Against the Person Act 1861
Exposing child whereby life is endangered or health permanently injured	Section 27 of the Offences against the Person Act 1861
Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm	Section 29 of the Offences against the Person Act 1861
Assault occasioning bodily harm - common assault	Section 47 of the Offences against the Person Act 1861
Child destruction	Section 1 of the Infant Life (Preservation) Act 1929 (c. 34 (19 & 20 Geo 5))
Cruelty to persons under sixteen	Section 1 of the Children and Young Persons Act 1933 (c.12 (23 & 24 Geo 5))
Allowing persons under 16 to be in brothels	Section 3 of the Children and Young Persons Act 1933
Causing or allowing persons under 16 to be used for begging	Section 4 of the Children and Young Persons Act 1933
Giving intoxicating liquor to children under 5	Section 5 of the Children and Young Persons Act 1933
Scandalous Conduct of Officer	Section 64 of the Army Act 1955 (c. 18 (3 & 4 Eliz 2))
Disgraceful Conduct	Section 66 of the Army Act 1955
Offences of attempts and aiding and abetting in respect of an offence under sections 64, 66 or 69 Army Act 1955	Sections 68 and 68A of the Army Act 1955
Conduct to the Prejudice of Military Discipline	Section 69 of the Army Act

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
	1955
Civil offences where the corresponding offence under the law of England and Wales is listed in this table	Section 70 of the Army Act 1955
Scandalous Conduct of Officer	Section 64 of the Air Force Act 1955 (c. 19 (3 & 4 Eliz 2))
Disgraceful Conduct	Section 66 of the Air Force Act 1955
Offences of attempts and aiding and abetting in respect of an offence under sections 64, 66 or 69 Air Force Act 1955	Sections 68 and 68A of the Air Force Act 1955
Conduct to the Prejudice of Air Force Discipline	Section 69 of the Air Force Act 1955
Civil offences where the corresponding offence under the law of England and Wales is listed in this table	Section 70 of the Air Force Act 1955
Rape	Section 1 of the Sexual Offences Act 1956 (c. 69 (4 & 5 Eliz 2))
Procurement of woman by threats	Section 2 of the Sexual Offences Act 1956
Administering drugs to obtain or facilitate intercourse	Section 4 of the Sexual Offences Act 1956
Intercourse with girl under 13	Section 5 of the Sexual Offences Act 1956
Intercourse with girl between 13 and 16	Section 6 of the Sexual Offences Act 1956
Buggery	Section 12 of the Sexual Offences Act 1956

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Indecent assault on a woman	Section 14 of the Sexual Offences Act 1956
Indecent assault on a man	Section 15 of the Sexual Offences Act 1956
Fighting or Quarrelling	Section 13 of the Naval Discipline Act 1957 (c. 53 (5 & 6 Eliz 2))
Cruelty or Scandalous Conduct by Officers	Section 36 of the Naval Discipline Act 1957
Disgraceful Conduct	Section 37 of the Naval Discipline Act 1957
Conduct to the prejudice of naval discipline	Section 39 of the Naval Discipline Act 1957
Offence of attempts and aiding and abetting in respect of an offence under sections 13, 36, 37 or 39 Naval Discipline Act 1957	Sections 40 and 41 of the Naval Discipline Act 1957
Civil offences where the corresponding offence under the law of England & Wales is listed in this table	Section 42 of the Naval Discipline Act 1957
Indecent conduct towards young child	Section 1 of the Indecency with Children Act 1960 (c. 33 (8 & 9 Eliz 2))
Procuring a miscarriage	Section 5(2) of the Abortion Act <u>1967</u> (c. 87)
Theft	Section 7 of the Theft Act <u>1968</u> (c. 60)
Blackmail	Section 21 of the Theft Act 1968
Destroying or damaging property	Section 1 of the Criminal Damage Act <u>1971</u> (c. 48)

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Threats to destroy or damage property	Section 2 of the Criminal Damage Act 1971
The offence of conspiracy in relation to: (a) an indictable offence listed in this table; and (b) the offence of murder	Section 1 of the Criminal Law Act <u>1977 (c. 45)</u>
Violence for securing entry	Section 6 of the Criminal Law Act 1977
Inciting girl under 16 to have incestuous sexual intercourse (pre-2004)	Section 54 of the Criminal Law Act 1977
Indecent photos of children	Section 1 of the Protection of Children Act <u>1978 (c. 37)</u>
Attempting to commit an offence in relation to: (a) an indictable offence listed in this table; and (b) the offence of murder	Section 1 of the Criminal Attempts Act <u>1981 (c. 47)</u>
Abduction of child by parent, etc	Section 1 of the Child Abduction Act <u>1984 (c. 37)</u>
Abduction of child by other persons (not parent, etc)	Section 2 of the Child Abduction Act 1984
Affray	Section 3 of the Public Order Act <u>1986 (c. 64)</u>
Fear or provocation of violence	Section 4 of the Public Order Act 1986
Intentional harassment, alarm or distress	Section 4A of the Public Order Act 1986
Harassment, alarm or distress	Section 5 of the Public Order Act 1986

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Offence of sending letters etc. with intent to cause distress or anxiety	Section 1 of the Malicious Communications Act <u>1988 (c. 27)</u>
Common assault and battery	Section 39 of the Criminal Justice Act <u>1988 (c. 33)</u>
Possession of indecent photos of child	Section 160 of the Criminal Justice Act 1988
Intimidation etc. of witnesses, jurors and others	Section 51 of the Criminal Justice and Public Order Act <u>1994 (c. 33)</u>
Breach of non-molestation order	Section 42A of the Family Law Act <u>1996 (c. 27)</u>
Breach of forced marriage protection order	Section 63CA of the Family Law Act 1996
Harassment	Section 2 of the Protection from Harassment Act <u>1997 (c. 40)</u>
Stalking	Section 2A of the Protection from Harassment Act 1997
Putting people in fear of violence	Section 4 of the Protection from Harassment Act 1997
Stalking involving fear of violence or serious alarm or distress	Section 4A of the Protection from Harassment Act 1997
Offences committed outside the United Kingdom (putting people in fear of violence or stalking involving fear of violence etc)	Section 4B of the Protection from Harassment Act 1997
Breach of a restraining order	Section 5 of the Protection from Harassment Act 1997
Abduction of children in care etc	Section 49 of the Children Act <u>1989 (c. 41)</u>
Racially or religiously aggravated assault	Section 29 of the Crime &

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
	Disorder Act <u>1998 (c. 37)</u>
Racially or religiously aggravated criminal damage	Section 30 of the Crime & Disorder Act 1998
Racially or religiously aggravated public order offences	Section 31 of the Crime & Disorder Act 1998
Racially or religiously aggravated harassment etc	Section 32 of the Crime & Disorder Act 1998
Improper use of public electronic communications network	Section 127 of the Communications Act <u>2003 (c. 21)</u>
Rape	Section 1 of the Sexual Offences Act <u>2003 (c. 42)</u>
Assault by penetration	Section 2 of the Sexual Offences Act 2003
Sexual assault	Section 3 of the Sexual Offences Act 2003
Causing a person to engage in sexual activity without consent	Section 4 of the Sexual Offences Act 2003
Rape of a child under 13	Section 5 of the Sexual Offences Act 2003
Assault of a child under 13 by penetration	Section 6 of the Sexual Offences Act 2003
Sexual assault of a child under 13	Section 7 of the Sexual Offences Act 2003
Causing or inciting a child under 13 to engage in sexual activity	Section 8 of the Sexual Offences Act 2003
Sexual activity with a child	Section 9 of the Sexual Offences Act 2003

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Causing or inciting a child to engage in sexual activity	Section 10 of the Sexual Offences Act 2003
Engaging in sexual activity in the presence of a child	Section 11 of the Sexual Offences Act 2003
Causing a child to watch a sexual act	Section 12 of the Sexual Offences Act 2003
Child sex offences committed by children or young persons	Section 13 of the Sexual Offences Act 2003
Arranging or facilitating commission of a child sex offence	Section 14 of the Sexual Offences Act 2003
Meeting a child following sexual grooming etc	Section 15 of the Sexual Offences Act 2003
Sexual Communication with a child	Section 15A of the Sexual Offences Act 2003
Abuse of position of trust: sexual activity with child	Section 16 of the Sexual Offences Act 2003
Abuse of position of trust: causing or inciting a child to engage in sexual activity	Section 17 of the Sexual Offences Act 2003
Abuse of position of trust: sexual activity in the presence of a child	Section 18 of the Sexual Offences Act 2003
Abuse of position of trust: causing a child to watch a sexual act	Section 19 of the Sexual Offences Act 2003
Sexual activity with a child family member	Section 25 of the Sexual Offences Act 2003
Inciting a child family member to engage in sexual activity	Section 26 of the Sexual Offences Act 2003
Paying for sexual services of a child	Section 47 of the Sexual Offences Act 2003

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Causing or inciting child prostitution or pornography	Section 48 of the Sexual Offences Act 2003
Controlling a child in relation to sexual exploitation	Section 49 of the Sexual Offences Act 2003
Arranging or facilitating sexual exploitation of a child	Section 50 of the Sexual Offences Act 2003
Causing or inciting prostitution for gain	Section 52 of the Sexual Offences Act 2003
Controlling prostitution for gain	Section 53 of the Sexual Offences Act 2003
Trafficking into the UK for sexual exploitation	Section 57 of the Sexual Offences Act 2003
Trafficking within the UK for sexual exploitation	Section 58 of the Sexual Offences Act 2003
Trafficking out of the UK for sexual exploitation	Section 59 of the Sexual Offences Act 2003
Administering a substance with intent	Section 61 of the Sexual Offences Act 2003
Committing an offence with intent to commit a sexual offence	Section 62 of the Sexual Offences Act 2003
Trespass with intent to commit a sexual offence	Section 63 of the Sexual Offences Act 2003
Offence of voyeurism	Section 67 of the Sexual Offences Act 2003
Female genital mutilation	Section 1 of the Female Genital Mutilation Act <u>2003 (c. 31)</u>
Assisting girl to mutilate own genitalia	Section 2 of the Female Genital Mutilation Act 2003

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Assisting a non-UK person to mutilate overseas a girl's genitalia	Section 3 of the Female Genital Mutilation Act 2003
Failure to protect a girl from risk of female genital mutilation	Section 3A of the Female Genital Mutilation Act 2003
Breach of a Female Genital Mutilation protection order	Section 5A and paragraph 4 of Schedule 2 to the Female Genital Mutilation Act 2003
Trafficking people for exploitation	Section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act <u>2004 (c. 19)</u>
Causing or allowing child or vulnerable adult to suffer serious physical harm or death	Section 5 of the Domestic Violence, Crime and Victims Act <u>2004 (c. 28)</u>
Fighting or threatening behaviour	Section 21 of the Armed Forces Act <u>2006 (c. 52)</u>
Disgraceful conduct of a cruel or indecent kind	Section 23 of the Armed Forces Act 2006
Offence of attempt, encouraging and assisting, and aiding and abetting in respect of an offence under sections 21 or 23 Armed Forces Act 2006	Sections 39 to 41 of the Armed Forces Act 2006
Offence of criminal conduct where the corresponding offence under the law of England & Wales is listed in this table	Section 42 of the Armed Forces Act 2006
Offence of attempt, conspiring, encouraging and assisting, and aiding and abetting in respect of a relevant offence under section 42 Armed Forces Act 2006 (criminal conduct where the corresponding offence under the law of England and Wales is listed in this table)	Sections 43 to 47 of the Armed Forces Act 2006
Encouraging or assisting an offence (inchoate offences) in relation to: (a) an indictable offence listed in this table; and (b) the offence of murder	Section 44 to 46 of the Serious Crime Act <u>2007 (c. 27)</u>
Possession of extreme pornographic images	Section 63 of the Criminal Justice and Immigration

<i>Offence (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
	Act <u>2008 (c. 4)</u>
Possession of prohibited images of children	Section 62 of the Coroners and Justice Act <u>2009 (c. 25)</u>
Offence of forced marriage	Section 121 of the Anti-social Behaviour, Crime and Policing Act 2014 (c.12)
Slavery, servitude and forced or compulsory labour, or human trafficking (or committing offence with intent to commit such an offence)	Sections 1, 2 and 4 of the Modern Slavery Act <u>2015 (c. 30)</u>
Disclosing (or threatening to disclose) private sexual photographs and films with intent to cause distress	Section 33 of the Criminal Justice and Courts Act <u>2015 (c. 2)</u>
Strangulation or suffocation	Section 75A of the Serious Crime Act <u>2015 (c. 9)</u>
Strangulation or suffocation committed outside the United Kingdom	Section 75B of the Serious Crime Act 2015
Controlling or coercive behaviour in an intimate or family relationship	Section 76 of the Serious Crime Act 2015
Controlling or coercive behaviour in an intimate or family relationship committed outside the United Kingdom	Section 76A of the Serious Crime Act 2015
Breach of stalking protection order etc	Section 8 of the Stalking Protection Act <u>2019 (c. 9)</u>
Breach of domestic abuse protection order	Section 39 of the Domestic Abuse Act <u>2021 (c. 17)</u>

Annex 2: Protective Injunctions

Schedule 2 The Prohibition on Cross-examination in Person (Civil and Family Proceedings) Regulations 2022

The following table relates to protective injunctions and other orders in England and Wales. Protective injunctions in Scotland or Northern Ireland are included in separate tables within Schedule 2

<i>Protective injunctions (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Injunction	Common law

<i>Protective injunctions (England and Wales)</i>	<i>Statutory provision or other law (England and Wales)</i>
Occupation order	Sections 33, 35, 36, 37 or 38 of the Family Law Act 1996
Non-molestation order	Section 42 of the Family Law Act 1996
Forced marriage protection order or interim forced marriage protection order	Section 63A of the Family Law Act 1996
Injunction	Section 3A of the Protection from Harassment Act 1997
Restraining order	Section 5A of the Protection from Harassment Act 1997
Female genital mutilation protection order	Paragraph 1 of Schedule 2 to the Female Genital Mutilation Act 2003
Sexual harm prevention order	Section 103A of the Sexual Offences Act 2003
Service restraining order	Section 229 of the Armed Forces Act 2006
Violent offender order	Section 98 of the Criminal Justice and Immigration Act <u>2008 (c. 4)</u>
Domestic violence protection order	Section 28 of the Crime and Security Act <u>2010 (c. 17)</u>
Stalking protection order or interim stalking protection order	Section 1 or 5 of the Stalking Protection Act 2019
Criminal behaviour order	Section 330 of the Sentencing Act <u>2020 (c. 17)</u>
Sexual harm prevention order	Sections 343 and 345 of the Sentencing Act 2020
Restraining order	Sections 359 and 360 of the Sentencing Act 2020
Domestic abuse protection order	Section 28 or 31 of the Domestic Abuse Act 2021

Annex 3: Specified Evidence

Schedule 3 The Prohibition on Cross-examination in Person (Civil and Family Proceedings) Regulations 2022

Interpretation

1. For the purposes of this Schedule –

“A” means the person who committed, or was alleged to have committed, domestic abuse against B;

“appropriate health professional” means –

- (a) a medical practitioner licensed to practise by the General Medical Council;
- (b) a health professional who is registered to practise in the United Kingdom by –
 - i. the Nursing and Midwifery Council;
 - ii. the General Dental Council; or
- (c) a paramedic, practitioner psychologist, radiographer or social worker registered to practise in the United Kingdom by the Health and Care Professions Council;

“B” means the person who was the victim, or alleged victim, of domestic abuse committed by A;

“expert report” means a report by a person qualified to give expert advice on all or most of the matters that are the subject of the report;

“housing association” has the same meaning as in section 1(1) of the Housing Associations Act 1985(1);

“local authority” means –

- (a) in relation to England, a county council, district council, a London borough council, the Court of Common Council of the City of London, or the Council of the Isles of Scilly;
- (b) in relation to Wales, a county council, county borough council or community council; or
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(2); or
- (d) in relation to Northern Ireland, a district council established in accordance with section 1 of the Local Government Act (Northern Ireland) 1972(3);

“protective injunction” means an injunction, order or interdict specified in Schedule 2 to these Regulations;

“public authority” has the same meaning as in section 6 of the Human Rights Act 1998(4);

“refuge” means –

- (a) a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic abuse; or

- (b) a residential home established and maintained by a public body for any other purpose that also provides accommodation to the victims of, or those at risk of, domestic abuse.

Evidence

2. Evidence of a court order binding over A in connection with a specified offence.
3. A domestic violence protection notice issued and currently in force against A for the protection of B under section 24 of the Crime and Security Act 2010(5).
4. A domestic abuse protection notice issued and currently in force against A for the protection of B under section 22 of the Domestic Abuse 2021(6).
5. An undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996(7) (or given in Scotland or Northern Ireland in place of a protective interdict or injunction) by A for the protection of B, provided that a cross-undertaking relating to domestic abuse was not given by B.
6. A copy of a finding of fact, made in proceedings in the United Kingdom, that there has been domestic abuse between A and B.
7. An expert report produced as evidence in proceedings in the United Kingdom for the benefit of a court or tribunal confirming that B was assessed as being a victim of domestic abuse by A.
8. A letter or report from an appropriate health professional confirming that that professional, or another appropriate health professional –
 - (1) has examined B in person, following a report of domestic abuse by A; an
 - (2) in the reasonable professional judgement of the author or the examining appropriate health professional, B has, or has had, injuries or a condition consistent with being a victim of domestic abuse.
9. A letter or report from –
 - (1) the appropriate health professional who made the referral described below;
 - (2) an appropriate health professional who has access to the medical records of B; or
 - (3) the person to whom the referral described below was made;confirming that there was a referral by an appropriate health professional of B, following a report of domestic abuse by A, to a person who provides

specialist support or assistance for victims of, or those at risk of, domestic abuse.

10. A letter from any person who is a member of a multi-agency risk assessment conference (or other suitable local safeguarding forum) confirming that B has experienced domestic abuse by A.
11. A letter from an independent domestic violence advisor confirming that they are providing, or have provided, support to B, following a report of domestic abuse by A.
12. A letter from an independent sexual violence advisor confirming that they are providing, or have provided, support to B relating to domestic abuse of a sexual nature by A.
13. A letter from an officer employed by a local authority or housing association (or their equivalent in Scotland or Northern Ireland) for the purpose of supporting tenants containing—
 - (1) a statement to the effect that, in their reasonable professional judgement, B is a victim of domestic abuse by A;
 - (2) a description of the matters relied upon to support that judgement; and
 - (3) a description of the support they provided to B.
- 14.—(1) A letter from an organisation providing domestic violence or support services.
 - (2) The letter must confirm that the organisation—
 - (a) is situated in the United Kingdom;
 - (b) has been operating for an uninterrupted period of 6 months or more; and
 - (c) provided B with support in relation to their needs as a victim of domestic abuse by A.
 - (3) The letter must contain—
 - (a) a statement to the effect that, in the reasonable professional judgement of the author of the letter, B is a victim of domestic abuse by A;
 - (b) a description of the matters relied upon to support that judgement;
 - (c) a description of the support provided to B; and
 - (d) a statement of the reasons why B needed that support.

15. A letter or report from an organisation providing domestic abuse support services in the United Kingdom confirming –
 - (1) that B was refused admission to a refuge;
 - (2) the date on which B was refused admission to the refuge; and
 - (3) that B sought admission to the refuge because of allegations of abuse by A.
16. A letter from a public authority confirming that B was assessed as being a victim of domestic abuse by A (or a copy of that assessment).
17. Evidence which the court is satisfied demonstrates that B has been the victim of domestic abuse by A in the form of abuse which relates to economic matters.

Qualified Legal Representative ('QLR') fact sheet

The below is a summary of the qualified legal representative statutory guidance at [final-statutory-guidance-role-of-the-qualified-legal-representative.pdf](#) ([publishing.service.gov.uk](#)).

1. Introduction

The circumstances in which there is a prohibition on cross-examination are addressed within the Domestic Abuse Act 2021 fact sheet.

Where a person is prohibited from cross-examining a party or witness the court must consider whether is a **satisfactory alternative** means for the witness to be cross-examined, or of otherwise obtaining the evidence that the witness might have given under cross-examination. Cross-examination by the judge is **not a satisfactory alternative**.

If the Court concludes there is **no satisfactory alternative** it must **invite the prohibited party to notify the court** within a specified time whether a **qualified legal representative is to conduct the cross-examination**.

If the party does **not** appoint such a representative or notifies the court that **no such representative** is to act. The Court must consider whether it is in the interests of justice for the court to appoint a qualified legal representative ('QLR').

If so then the Court **must appoint a QLR**.

The QLR is **publicly funded from central funds**.

The guidance below only applies where the court has appointed QLR and does not apply where a party appoints their own qualified legal representative at the invitation of the court.

2. Role and purpose

The court-appointed QLR's central purpose is to **ensure the fairness of proceedings is maintained, by carrying out the cross-examination which the prohibited party is prohibited from performing**.

They are **not a representative of the court** but are accountable to the court.

They are appointed to **cross-examine in the interests of the party**

They are not **responsible to the party**. There is not the traditional lawyer-client relationship. Whilst they will advance the interests of the party during cross-examination the QLR **must not attempt to present the party's entire case** and should **not take instructions from the prohibited party** in the manner a party's own lawyer would. A QLR is however expected 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 PS.

A court-appointed QLR must have a **current practising certificate** and have **undertaken advocacy and vulnerable witness training** (or have made a commitment to attend such training within six months of having registered on the court list of QLRs).

Solicitors do **not** need to have **Higher Rights of Audience** save for when appearing in higher courts.

3. Appointment of a QLR

QLRs need to register their interests with HMCTS. Interested QLRs should write to their local courts. Local courts will maintain a list of QLRs.

HMCTS will contact the **first QLR** on the list and if that QLR is unable to accept the appointment HMCTS will contact the next QLR and so on until a QLR who is able to accept the appointment is found.

When a QLR has accepted the appointment a **court generated order** will be provided outlining the extent of his or her appointment and in particular that:

- (a) the QLR is accountable to the court not the prohibited party
- (b) the appointment of the QLR terminates at the conclusion of proceedings or when the court so orders
- (c) the appointment is personal to the QLR and not to the Chambers or solicitor's firm of that representative
- (d) the QLR may only claim for the costs of preparing for and conducting the cross-examination.
- (e) Identifying the witness or witnesses to be cross-examined.

The purpose of the appointment concluding at the conclusion of proceedings (as opposed to at the conclusion of the cross-examination) or when the court so order is aimed at ensuring that the process of prohibition and appointment is not required if further cross-examination is necessary: the court will recall the same QLR. If this is not possible the court will need to appoint a new QLR.

A QLR must not have a **conflict of interest** and must inform the court immediately if one arises and they are unable to accept the appointment or continue with the appointment.

4. Duties and Responsibilities

The QLR must put the **essence of the prohibited party's case to the witness** on those parts of the witness' case that **may have a significant impact on the outcome of proceedings.**

The prohibited party may suggest questions and the QLR may take such suggestions into consideration however ultimately questions should only be put to the witness if they relate to the essence of the prohibited party's case and, as above, may have a significant impact on the outcome of proceedings.

The QLR will need to undertake such preparatory work as is necessary to conduct the cross-examination. The QLR must ensure the cross-examination provides the court with sufficient information to reach a conclusion on the issues that arise during the case.

A QLR **is not expected to make submissions** to the court on behalf of the prohibited party for whom they are conducting the cross-examination.

The court will direct that the QLR has access to the full court bundle or such parts as directed by the court and by when access will be given. Where there is **no court bundle HMCTS will prepare and provide the QLR with a bundle.** The QLR should seek such further information as is required from the court and the prohibited party in order to properly discharge their responsibilities. This may include obtaining and considering additional papers relevant to the prohibited party's case.

The QLR will need to work with the prohibited party and the court to understand the essence of the prohibited party's case and agree with the prohibited party and the court the issues that will be covered in cross-examination.

Establishing the issues can be done at a **preliminary hearing** if the QLR is appointed sufficiently early.

It is recommended that the QLR prepare a **brief position statement** to help identify and narrow the issues that will be the focus of cross-examination.

The court will make clear to the prohibited party that the QLR is **not their lawyer** and they are appointed by the court only to cross-examine a certain witness or witnesses.

The QLR must also make clear:

- (a) the limited nature of their role.
- (b) that they **cannot give advice or represent the prohibited party throughout the case.**
- (c) that they **cannot help with preparing documents or assist in complying with directions.**
- (d) that they **cannot promise the confidentiality that usually attaches to lawyer-client relationships** and that there are obligations in family and civil proceedings to disclose material that is unhelpful to the prohibited party's case.
- (e) **at no stage can they take instructions** from the prohibited party. They can however meet to elicit information relevant to the cross-examination and may consider any suggested questions.

If a prohibited party **does not cooperate** with the QLR, the QLR may have to **confine cross-examination** to matters that the judge directs are relevant as far as can be ascertained by the court papers. The QLR should relay these matters to the prohibited party.

A QLR must bring to the court's attention any issues relating to the prohibited party's capacity. The QLR must also alert the court to the potential need for participation directions or special measures.

The QLR will plainly need to attend the hearing at which the cross-examination is to take place. It may also be necessary to attend other preliminary hearings – this will be dependent on whether the hearing would have a significant impact on the outcome of proceedings. The QLR **should use their judgment to determine the relevant hearings that require their attendance.**

5. Remuneration

QLRs are funded by the LAA with the fee rates, structures and rules set out in Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022.

Process map for the court appointed Qualified Legal Representative conducting cross-examination

