

**IN THE HIGH COURT OF JUSTICE IN THE FAMILY DIVISION**




**IN THE MATTER OF SECTION 8 OF THE CHILDREN ACT 1989**

**WRITTEN SUBMISSIONS  
ON BEHALF OF 'RIGHT TO EQUALITY'**

*For the hearing on 30<sup>th</sup> June 2025*

**Introduction: Who is Right to Equality?**

1. These submissions are made on behalf of Right to Equality pursuant to  of the order<sup>1</sup>.
2. Right to Equality is a non-profit organisation that campaigns for gender equality under the law through legal reform and advocacy which furthers the rights of women and children. We seek to change legal systems that fail to protect survivors of domestic and sexual abuse and their children, particularly through policy reform, public education, and legal advocacy. Our primary campaign, championed by Dr Marie Tidball MP and Claire Throssell<sup>2</sup>, is to repeal the harmful presumption of parental involvement in cases of domestic abuse in private family law proceedings pursuant to S1(2A) of the Children Act 1989. This legal principle presumes a relationship between a child and a rapist and/or abusive parent will further the child's welfare, resulting in the victim parents having to argue that the presumption has been rebutted.
3. In 2024, we published a landmark report on the presumption of contact<sup>3</sup>, authored by Dr Adrienne Barnett (co-director of Right to Equality), which was launched with Kate

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<sup>1</sup> Right to Equality was provided with a redacted order. As such, it does not identify the date of the order nor the judge who made the order.

<sup>2</sup> Claire Throssell's two sons were killed by their father after a family court judge (who is still sitting) ordered that her two boys have unsupervised contact with their father, a man who Ms Throssell described as abusive. She has campaigned tirelessly to stop unsafe child contact with dangerous perpetrator parents.

<sup>3</sup><http://righttoequality.org/wp-content/uploads/2024/05/Presumption-of-Contact-Report-14-May-2024-.pdf>

Kniveton (former MP and survivor of domestic abuse) and Dr Charlotte Proudman (co-director of Right to Equality) in Parliament. We support MPs with briefings, policy analysis, and proposed legislation. We are currently working on the removal of parental responsibility for rapists and the removal of unregulated experts from family courts.

4. Our continuing research and campaigning include our upcoming Breaking Bias report, which is due out in December 2025. It examines gender bias in family court judgments. In partnership with herEthicalAI, we are applying innovative technology to identify patterns of victim-blaming language and decision-making in legal texts. These insights will be used to support legal challenges and inform judicial training and guidance.
5. We are due to launch our next campaign about the family law's approach to allegations of child sexual abuse (CSA) in private law cases. In our experience<sup>4</sup>, family Courts *very rarely if ever* find CSA allegations proved and instead often find the mothers responsible for parental alienation-type behaviours and/or coaching the children who made CSA disclosures, often resulting in children being torn from their mother and transferred to the father, his wider family or even foster care.
6. We are also undertaking research on the impact of the last decade of 'father's for justice' and 'father's need families' campaigning on family courts that has, we believe, resulted in the pseudo-science of 'parental alienation' becoming embedded in family courts and a significant number of transfers of residence of children whom are now young adults and therefore able and willing to speak about the traumatic impact of orders made by the state, often supported often by Cafcass and local authorities.
7. Our work reaches thousands of survivors. Increased awareness enables survivors to identify abuse, seek help, and understand their rights, and our signposting and partnerships ensure they are connected to the right support. We are finalising a survivor resource guide, co-developed with those who have navigated the family court system, such as our ambassador Rose, a survivor whose rape allegation was initially dismissed in error<sup>5</sup>. This guide will help survivors raise concerns and seek redress more safely and effectively, particularly those without legal representation. Our communications team, supported by sector collaborators and podcast interviews, is also growing a body of accessible content for survivors and the public.

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<sup>4</sup> We have an advisory panel comprising of full-time barristers and fee paid judges.

<sup>5</sup> See, <https://www.thebureauinvestigates.com/stories/2025-04-03/mother-wins-legal-bid-to-speak-out-about-her-family-court-ordeal>

8. Our media efforts have played a key role in encouraging transparency in the family courts, supporting journalists in attending hearings under the transparency pilot, and demystifying the process for the public. We received a grant which allows Right to Equality to fund legal bloggers and accredited journalists to attend family court hearings and write blogs which are freely available on our website<sup>6</sup>. At the same time, we support strategic litigation to further the rights of survivors in precedent-setting cases, which have strengthened the case for reform and built legal pathways for others.
9. Through ongoing collaboration with Women's Aid, Rights of Women, and other family court reform leaders, we coordinate strategy, share information, and act collectively to hold systems accountable. We also meet quarterly with our advisory group and parliamentary figures to align on goals and draft responses to Government proposals.
10. We have successfully led and/or collaborated on a range of campaigns that have become law including: decriminalising abortion, criminalising spiking, criminalising public sexual harassment, criminalising child marriage, virginity testing and hymenoplasty and increasing the age of marriage in England and Wales from 16 to 18 years old and making the former all-male Garrick Club open its doors to equality and allow female members.

### **The Issue: The Role and Scope of OLRs**

11. These submissions address the issue of **whether a solicitor or barrister representing a defendant in criminal proceedings should also be able to act as a Qualified Legal Representative ('QLR') in Family Court proceedings for that defendant as a prohibited party in the family proceedings.**
12. These submissions are focused on cases where there are allegations against the prohibited party of domestic abuse, sexual violence, rape and/or coercive and controlling behaviour in family court proceedings *and* that party has been charged in the criminal proceedings with offences arising from the same events. For the reasons set out in these submissions, Right to Equality does not consider that a solicitor or barrister should be permitted to take on this dual role.
13. These submissions are not specific to the facts of this case, they are made in respect of the wider issues.

### **The Relevant Facts**

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<sup>6</sup> <https://righttoequality.org/updates-resources/family-court-blog/>

14. The father is a litigant in person in these proceedings. The QLR in this case, [REDACTED] was appointed by the family court for the purposes of cross-examining the mother on behalf of the father, pursuant to Section 31T of the Matrimonial and Family Proceedings Act 1984 (see Paragraph 10 below).
15. After the QLR was appointed, the father was charged with one count of coercive and controlling behaviour and five counts of sexual assault by penetration, with the mother being the complainant in relation to all these alleged offences.
16. The father subsequently instructed [REDACTED] to represent him as his solicitor in the criminal proceedings.

### **Background to the QLR Scheme**

17. In criminal proceedings, the Youth Justice and Criminal Evidence Act 1999 has prohibited people charged with certain offences from in-person cross-examination of the complainant or witness to the offence for over 20 years. Section 38 of the 1999 Act also enables the court to appoint an advocate to conduct the cross-examination, who is not responsible to the accused person.
18. Legal aid reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013 removed most private family law cases from the scope of legal aid and substantially increased the proportion of litigants in person (LIPs) in the Family Court. Until changes made by the Domestic Abuse Act 2021, LIPs were able to directly cross-examine other parties in the case, including victim/survivors of domestic abuse. Research revealed that victim/survivors of domestic abuse found the experience of being cross-examined by their abuser or alleged abuser distressing, leaving them feeling traumatised and degraded.<sup>7</sup> Women experienced such cross-examination as a continuation of the abuse, and perpetrators representing themselves could use cross-examination as another opportunity to perpetuate the abuse.<sup>8</sup> The All-Party Parliamentary Group on Domestic

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<sup>7</sup> Birchall, J. and Choudhry, S. (2018) *What About My Right Not To Be Abused: Domestic Abuse, Human Rights and the Family Courts*. Bristol: Women's Aid; Coy, M., Scott, E., Tweedale R. and Perks K. (2015) "It's like going through the abuse again": domestic violence and women and children's (un)safety in private law contact proceedings'. *Journal of Social Welfare and Family Law*, 37(1), 53–69.

<sup>8</sup> Coy et al. (ibid); Coy, M., Perks, K., Scott, E. and Tweedale, R. (2012) *Picking up the pieces: domestic violence and child contact*. London: Rights of Women; Trinder, L., Hunter, R., Hitchings, E., Miles, J., Moorhead, R., Smith, L., Sefton, M., Hinchly, V., Bader, K., and Pearce, J. (2014) *Litigants in person in private family law cases*. London: Ministry of Justice; Women's Aid. (2016) *Nineteen Child Homicides: What must change so children are put first in child contact arrangements and the family courts*. Bristol: Women's Aid.

Violence heard evidence that this can amount to coercive control being “played out in the court arena”.<sup>9</sup> Sir James Munby, former President of the Family Division said that this could “sometimes amount, and on occasion quite deliberately, to a continuation of the abuse.”<sup>10</sup>

19. One of the key themes of the Ministry of Justice’s ‘Harm Panel’ Report, dated June 2020, was that the adversarial system presented a barrier to domestic abuse being responded to appropriately in family court proceedings, “with parents placed in opposition on what is often not a level playing field in cases involving domestic abuse, child sexual abuse and self-representation...”.<sup>11</sup> This imbalance was exacerbated by cross-examination in person by perpetrators or alleged perpetrators, which “can serve to re-traumatise victims and prevent them giving their best evidence in court.”<sup>12</sup>
20. Prior to the Domestic Abuse Act 2021, a range of powers were available to avoid situations where victims and alleged victims of domestic abuse, as vulnerable parties, could be directly cross-examined by perpetrators or alleged perpetrators, for example, by a judge putting questions to a witness directly. These powers, however, were limited and discretionary. A study carried out by Corbett and Summerfield found that cross-examination of vulnerable witnesses was generally carried out through direct questioning by the alleged abuser or the judge relaying questions.<sup>13</sup> Some judges preferred to allow direct cross-examination of the vulnerable witness by the LIP wherever possible, perceiving this to be the ‘right’ of the LIP to cross-examine if they so wish, but also because of a reluctance to do so themselves. There was “growing recognition amongst the judiciary, practitioners, domestic abuse specialists and Government that existing court procedures did not adequately protect victims of abuse in the family and civil courts”.<sup>14</sup>
21. There has been a range of successful appeals in cases where victims had been cross-examined by their perpetrators. HHJ Ahmed allowed an appeal where the father, a senior

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<sup>9</sup> All-Party Parliamentary Group on Domestic Violence (2016) *Domestic Abuse, Child Contact and the Family Courts*. London: All-Party Parliamentary Group on Domestic Violence and Women’s Aid, p.14.

<sup>10</sup> Munby, J. (2015) ‘Unheard voices: the involvement of children and vulnerable people in the family justice system’, Swansea University.

<sup>11</sup> Home Office. (2022) Domestic Abuse Statutory Guidance. Crown Copyright, Para 391.

<sup>12</sup> Ibid, Para 394.

<sup>13</sup> Corbett, N.E. and Summerfield, A. (2017) *Alleged perpetrators of abuse as litigants in person in private family law: The cross-examination of vulnerable and intimidated witnesses*. London: Ministry of Justice.

<sup>14</sup> Ministry of Justice (2022) ‘Statutory Guidance Qualified Legal Representative Appointed by the Court’, p.7

social worker, was permitted to cross-examine the mother, a lawyer and call her a liar in respect of the abuse, which was later found proved at a re-trial<sup>15</sup>. *A (Domestic abuse: incorrect principles applied)* [2021] EWFC B30 (08 June 2021)<sup>16</sup>:

*25. None of this was done by the Deputy District Judge, nor by any party. Ultimately, it was the duty of the judge to have considered this issue. However, nothing was done. I find that the Deputy District Judge was wrong in failing to recognise and identify the mother as a vulnerable witness. He was aware that she was a complainant of domestic abuse and thus a potentially vulnerable witness. He failed to provide special measures to ensure that she was able to give her best evidence. There would have been no prejudice to the father from any such measures. He allowed the father as a litigant in person and alleged abuser of the mother to cross examine her. The judge failed to address Practice Direction 3AA, paragraph 3.1, which imposes a duty to ensure that the witness can attend the hearing without significant distress. The mother cried during the father's cross examination of her. There was no screen put in place. No special measures were considered. There was no ground rules hearing. Whilst mother was legally represented, there was a duty on the judge to have considered whether and what special measures were necessary.*

22. Section 65 of the Domestic Abuse Act 2021 was enacted to remedy these problems. As this background shows, the prohibition on direct cross-examination by perpetrators/alleged perpetrators and the QLR scheme were aimed at protecting victims of domestic abuse by ensuring they could give their best evidence in court, and reducing the likelihood of them suffering significant distress when giving evidence, thus providing a mechanism for them to give evidence on a level playing field, with equality of arms.

### **Relevant Statutory Law**

23. Section 63 of the Domestic Abuse Act 2021 provides that, in relation to special measures for victims of domestic abuse in family proceedings, rules of court must provide that where a party or witness in the proceedings “is, or is at risk of being, a victim of domestic abuse carried out by a person listed in subsection (3), it is to be assumed that” the quality of the party or witness’s evidence, and the party’s participation in the proceedings “are likely to be diminished by reason of vulnerability”.

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<sup>15</sup> *Re Z (Disclosure to Social Work England: Findings of Domestic Abuse)* [2023] EWHC 447 (Fam), <https://www.judiciary.uk/wp-content/uploads/2023/03/Re-Z-Disclosure-to-Social-Work-England-Findings-of-Domestic-Abuse.pdf>

<sup>16</sup> <https://www.bailii.org/ew/cases/EWFC/OJ/2021/B30.html>

24. Part 4B of the Matrimonial and Family Proceedings Act 1984 ('MFPA 1984'), as amended by Section 65 of the Domestic Abuse Act 2021, establishes the statutory scheme for the appointment of QLRs in proceedings in the Family Court, which is contained in Section 31Q – 31Z of the MFPA 1984. These provisions are supported by Part 3A of the Family Procedure Rules 2010, Practice Direction 3AB and Statutory Guidance issued by the Lord Chancellor pursuant to Section 31Y of the MFPA 1984.
25. In summary, Sections 31R-T of the MFPA prohibits a party to family proceedings who has been convicted of, given a caution for or is charged with a specified offence, or against whom an on-notice protective injunction is in force from cross-examining in person the victim or alleged victim, or the witness or party who is protected by the injunction. Additionally, a party to the proceedings cannot cross-examine in person a witness or party to the proceedings where specified evidence is adduced that the witness or party has been the victim of domestic abuse carried out by the party to the proceedings.
26. Section 31U provides that in cases where Sections 31R – T do not apply, the court can prohibit a party to the proceedings from cross-examining a witness in person if the court considers that the 'quality condition' or the 'significant distress' condition are met and the prohibition would not be contrary to the interests of justice.
27. Section 31U(2) provides that the 'quality condition' is met if the quality of the witness's evidence on cross-examination is likely to be diminished if the cross-examination is conducted by the party in person and would be likely to be improved if the party is prohibited from cross-examining the witness in person. Section 31U(3) provides that the 'significant distress' condition is met if the cross-examination of the witness by the party in person would be likely to cause significant distress to the witness or the party and that distress is likely to be more significant than if the cross-examination was carried out by someone other than the party in person.
28. Section 31U(5) provides a list of factors to which the court must have regard in determining whether the quality condition or the significant distress condition are met, including any views expressed by the witness about being cross-examined by the party in person; the nature of the questions likely to be asked; any behaviour by the party in relation to the witness if findings of fact have been made in the proceedings or in any other proceedings; any behaviour by the party at any stage of the proceedings; any relationship between the witness and the party. Sections 31U(6) and (7) provide that the 'quality' of a witness's evidence refers to its completeness, accuracy and 'coherence' (defined as a witness's ability to give answers which address the questions put to them and can be understood, individually and collectively).

29. If a party to family proceedings is prevented from cross-examining a witness in person by virtue of Sections 31R – U, and the court decides that there is no satisfactory alternative to cross-examination in person, the court must invite the party to arrange for a QLR to act for them for the purpose of cross-examining the witness and notify the court by a specified time limit whether a QLR has been appointed (Section 31W(3)). If no QLR will be acting for the prohibited party, then the court must “consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.” (Section 31W(5)). If the court decides that it is necessary, “the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.” (Section 31W(6)).
30. Section 31W(7) provides that: “A qualified legal representative appointed by the court under subsection (6) is not responsible to the party.”
31. QLRs are publicly funded from central funds with the costs being borne by the Legal Aid Agency pursuant to the Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022 as amended, which were made under Section 31X of the MFPA 1984.

**Practice Direction 3AB – Prohibition of Cross-Examination in Person in Family Proceedings under Part 4B of the Matrimonial and Family Proceedings Act 1984**

32. Practice Direction 3AB applies where a party is prohibited from cross-examining in person a witness under Sections 31R – 31U of the MFPA 1984.
33. Paragraph 7.1 provides that the court must give directions for the court-appointed QLR to be given access to the full court bundle or such parts of the bundle as the court directs, unless the court directs otherwise. The court can also specify which hearing(s) or which part or parts of any hearing the QLR is required to attend (Paragraph 7.2).

**Statutory Guidance**

34. The court, parties and QLRs are required to have regard to the [Statutory Guidance Qualified Legal Representative Appointed by the Court](#)<sup>17</sup> issued pursuant to Section 31Y of the MFPA 1984.

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<sup>17</sup> <https://www.gov.uk/government/publications/qualified-legal-representative-appointed-by-the-court-statutory-guidance>

35. The statutory guidance provides that: “The role of the qualified legal representative, as set out in the 1984 Act and 2003 Act, is substantially different from that of a lawyer instructed by a party and operates subject to specific limitations. ... Whilst the qualified legal representative appointed by the court must have regard to this guidance, the guidance does not seek to restrict the exercise of the qualified legal representative’s professional judgment. However, it does set out principles and limitations which are distinctive to this statutory role and which must be reflected in the qualified legal representative’s actions and decisions.”
36. Paragraph 2.1 provides that where the court decides to make an appointment, it is important for the QLR to remember that: “they are not a representative of the court which appoints them but they are accountable to the court; they are appointed to cross-examine in the interests of the party ... and they are not responsible to the party ... As qualified legal representatives are not appointed to act for the prohibited party in the way that ordinary legal advocates do, they do not have the traditional ‘lawyer-client’ relationship with the prohibited party and therefore are not responsible to the prohibited party. Although they will advance the interests of the prohibited party during the cross-examination, the qualified legal representative must not attempt to present the prohibited party’s entire case and should not take instructions from the prohibited party in the manner that a party’s own lawyer ordinarily would. ... Qualified legal representatives do not have a free-ranging remit. ... A qualified legal representative appointed by the court sits somewhere between these two more traditional roles [of a party’s own lawyer and an ‘advocate to the court’], and they must remain conscious of the limited and unique purpose of their role in family and civil proceedings.”
37. Paragraph 2.2 provides that QLRs should be aware that they are “accountable to the court and not to the prohibited party; ... the appointment is personal to the qualified legal representative appointed by the court and not to the Chambers or solicitor’s firm of that representative...”.
38. Paragraph 2.3.1 provides that the QLR’s role “will be limited to the cross-examination of the witness or witnesses whom the prohibited party is prevented from questioning in person.” The QLR’s appointment will conclude at the end of the proceedings, rather than at the conclusion of individual hearings.
39. Paragraph 3.1 provides that, to effectively protect the prohibited party’s Article 6 and 8 ECHR rights, 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 the proceedings.” The prohibited party may suggest questions for the witness to the QLR which the QLR can take into consideration, but “ultimately questions should only be put to the

witness if they relate to the essence of the prohibited party's case, and they are on those parts of the witness' case which may have a significant impact on the outcome of the proceedings." The QLR will need to undertake such preparatory work as is necessary to conduct the cross-examination, such as reading court papers, and has obtained sufficient information about the prohibited party's case to be able to cross-examine and test the evidence effectively.

40. Paragraph 3.2 provides that both the court and the QLR must make the limited nature of the QLR's role clear to the prohibited party, including that the QLR is not their lawyer, that they are appointed by the court only to cross-examine a certain witness or witnesses, that they do not have a contractual relationship with the prohibited party and that they cannot help with preparing documentation and cannot give advice or represent the prohibited party throughout the case but are appointed by the court to carry out a very limited role. The QLR should ascertain details of the case that the prohibited party wishes to advance, but should not take instructions from the prohibited party. If the QLR has to deal directly with the other party, they should take particular care when the other party is not legally represented or is the witness to be cross-examined and they should "clearly communicate the limited nature of their role and their relationship to the prohibited party and the court."
41. Paragraph 3.5 provides that the QLR "should prepare questions which put the 'essence' of the prohibited party's case to the witness, on those parts of the witness' case which may have a significant impact on the outcome of the proceedings. Questions put in cross-examination must be for the purpose of testing the evidence of the witness or witnesses, of putting the prohibited party's case to the witness and enabling the court to be provided with evidence to enable it to make a properly informed decision on the issues that it has to determine." The QLR "must always keep in mind the limited nature of their role and avoid the instinct to act as advocate for the prohibited party's wider case."

### **'The Role of the Qualified Legal Representative in Family Court Proceedings' An FLBA Guide**<sup>18</sup>

42. This Guide has been adopted by the Family Law Bar Association (FLBA) and the Association of Lawyers for Children (ALC). It notes that: "The role of the QLR is different to the usual legal representation role that FLBA members will be used to as part of their everyday practice. There are, in our view, clear tasks that are the function of a QLR appointed by the court and those that are not."

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<sup>18</sup> [https://www.alc.org.uk/uploads/images/QLR\\_doc\\_v3.pdf](https://www.alc.org.uk/uploads/images/QLR_doc_v3.pdf)

43. The Guide suggests that the ethical and professional conduct advice provided by a [document](#) issued by the Bar Council<sup>19</sup> to assist barristers appointed in criminal proceedings under Section 38(4) of the Youth Justice and Criminal Evidence Act 1999 is applicable to the family court QLR scheme, but notes that the “breadth of the role in family proceedings is wider given the need for a QLR in the Family Court to ask questions about welfare matters rather than cross-examine solely on matters of fact.”
44. Paragraph 24 of the Guide summarises the responsibilities of Counsel appointed as a QLR, including: Counsel will be appointed by the court, not by a client and may have more limited information about the case than they would if representing a client; the role of a court appointed QLR is limited to their duty as a cross-examiner of a particular witness, not to conduct the trial on the prohibited party’s behalf; QLRs do not have a contractual relationship with a client, rather, their duties are to the court “to act with honesty and integrity and to maintain your independence ... in certain circumstances the principle of client confidentiality may also be engaged”. The QLR “should seek such further information as is required (from the court, the other party and the prohibited party you are appointed to assist) in order to be able to properly fulfil your role. This will include obtaining and familiarising yourself with the relevant papers in the case. This may include obtaining and considering additional papers relevant to the prohibited party’s case. ... The QLR must make clear that they cannot give advice or represent the prohibited party throughout the case but are appointed by the court to carry out a very limited role.” The QLR will also need to “explain to the prohibited party that they cannot promise the confidentiality that usually attaches to lawyer-client relationships (legal professional privilege) and that there are obligations in family proceedings to disclose material that is unhelpful to the prohibited party’s case.”
45. Paragraph 28 of the Guide notes that there are ‘grey areas’ in what tasks are considered preparatory to conducting cross-examination, and gives an example of further necessary witnesses who have not yet been warned emerging from discussions with the prohibited party. “Our view is that the prohibited party should be told it is his or her responsibility to raise such matters with the court and you should endeavour to restrict your role to the preparation and conduct of the cross-examination of the witnesses named in the court order appointing you as QLR.”

**Why a Solicitor or Barrister Representing a Defendant in Criminal Proceedings Should Not Act as a QLR in Family Proceedings Where Both Proceedings Involve the Allegations of Domestic Abuse Including Sexual Abuse Against the Defendant/Prohibited Party**

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<sup>19</sup>[https://www.alc.org.uk/uploads/images/QLR\\_doc\\_v3.pdf](https://www.alc.org.uk/uploads/images/QLR_doc_v3.pdf)

## **A. The boundaries between the two overlapping roles can become blurred**

46. It is accepted that there will be no conflict of interest pursuant to Paragraphs 6.1 and 6.2 of the SRA Code of Conduct for Solicitors<sup>20</sup>, if a solicitor who acts as a QLR in family proceedings for the purposes of cross-examining a victim or alleged victim of domestic abuse on behalf of a prohibited party also represents the prohibited party in criminal proceedings. However, they may potentially be in breach of Paragraph 1 of the Code of Conduct (maintaining trust and acting fairly) which prevents a solicitor from abusing their position by taking unfair advantage of clients or others. The knowledge and information that the solicitor has in the criminal proceedings may lead them, as QLR in the family proceedings, to take an unfair advantage of the vulnerable party/witness even if they do not intend to do so.
47. It is accepted that there will be no conflict of interest under Part 2 of the BSB Handbook<sup>21</sup> if a barrister who acts as a QLR in family proceedings for the purposes of cross-examining a victim or alleged victim of domestic abuse on behalf of a prohibited party also represents the prohibited party in criminal proceedings. However, they may potentially be in breach of their duty to the court under Rule C1.5 to ensure that their ability to act independently is not compromised (see Paragraphs 37 – 42 below). Additionally, the duty of a barrister under Rule C15 to “promote fearlessly and by all proper and lawful means the client’s best interests ... without regard to the consequences to any other person (whether to your professional client, employer or any other person)” when the barrister represents the prohibited party in criminal proceedings may have adverse consequences for a vulnerable party or witness in the family proceedings, where that barrister, as QLR, does not represent the prohibited party as their ‘client’.
48. The appointment of a QLR should be “in the interests of justice” which is the reason for this unique role (Section 31W(5) MFPA 1984; see Paragraph 19 above). A QLR’s role is “substantively different from that of a lawyer instructed by a party” (see Paragraph 25 above). A solicitor’s or barrister’s contractual lawyer/client relationship with their client is hard to reconcile with the independent role of a QLR, who is responsible to the court, not the prohibited party (see Paragraph 20 above; see also the FLBA Guide at Para 34 above). It is also hard to reconcile with the limited role of a QLR.

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<sup>20</sup> <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>

<sup>21</sup> <https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=E3FF76D3-9538-4B97-94C02111664E5709&audience=&csrfToken=&q=>

49. The information provided to the QLR differs from that available to a solicitor acting for a defendant in criminal proceedings. Paragraph 3.2 of the QLR Statutory Guidance provides for the court to direct that the QLR has access to the full court bundle or such parts of the bundle as directed by the court. The QLR “should seek such further information as is required from the court and the prohibited party in order to be able to properly discharge his or her responsibilities. This may include obtaining and considering additional papers relevant to the prohibited party’s case prior to the hearing with the cross-examination.” However, a QLR only has knowledge and documentation that the Family Court has, whereas a solicitor or barrister representing a defendant in criminal proceedings is likely to have further or other knowledge and documentation.
50. The prohibited party in Family Court proceedings cannot give instructions to a QLR (see QLR Statutory Guidance Para 3.2 at Para 30 above) but can do so in the QLR’s role as his or her solicitor or barrister in criminal proceedings. It is difficult to see how a wall between these roles could be erected in practice.
51. The QLR Statutory Guidance circumscribes the preparation and advancing of questions by a QLR for the cross-examination of witnesses, and cautions that a QLR “must always keep in mind the limited nature of their role and avoid the instinct to act as advocate for the prohibited party’s wider case” (Paragraph 3.5; see further Paragraph 31 above). It will be considerably more difficult for a QLR to avoid advocating for the prohibited party if they also act as that party’s solicitor or barrister in the criminal proceedings.
52. Paragraph 24 of the FLBA Guide notes that there may also be situations “where questions asked without the benefit of detailed instructions from the party may receive answers which may either harm his or her case or open-up previously unexplored and unhelpful areas of evidence. Given the limitations upon your role and the more restricted input that you receive from the Prohibited Party, this situation may, in some cases, be unavoidable. However, if you make the prohibited party aware of the nature of the questions you intend to ask, the danger of this arising will be mitigated. Where it does then occur, you are less likely to be at fault.” This advice clearly does not envisage a QLR also acting as the prohibited party’s barrister or solicitor in criminal proceedings, which could give a barrister or solicitor conducting this dual role an advantage over other QLRs who do not perform the dual role, and provide a benefit to the prohibited party that they would not receive from a barrister or solicitor who was not performing the dual role.
53. Paragraph 24 of the FLBA Guide states that the QLR should “ask the prohibited party to confirm whether he or she stands by the account given in a police interview or in a statement made to the court. If the prohibited party has provided a police interview and a

statement, you should consider whether there are any significant differences between the content of the interview and the statement, and if so, ask the party what case he or she is to run at the trial.” This raises the issue of how a QLR who is also the prohibited party’s barrister or solicitor should manage this situation, which may require a different strategy and response than that provided for in the Guide. Paragraph 24 also states that: “Information sought from the prohibited party should be limited to such matters as will be relied upon in evidence during their case. You should not seek instructions from the party as to the conduct of the case more generally.” Again, a QLR’s dual role as the prohibited party’s solicitor or barrister in criminal proceedings will mean that it may be hard to ignore instructions given by their client in the criminal proceedings which may inevitably slide over into the family proceedings. The Guide advises that QLRs should “bear in mind the limitations of your role and be alert not to stray into acting as the prohibited party’s legal representative generally. The two roles are different and latter falls outwith the scope of your appointment.” It will be considerably harder for a QLR to avoid straying into acting as the prohibited party’s legal representative if they have taken on that very role in the criminal proceedings.

54. The dual roles may conflict when it comes to admissions or evidence of abuse. For example, Paragraph 17 of Practice Direction 12J sets out the factors the court should consider in determining whether it is necessary to conduct a fact-finding hearing, including whether there are admissions by a party or other evidence available to the court which provide a sufficient factual basis on which to proceed. A QLR, in their capacity as solicitor or barrister for their client in criminal proceedings, may be aware of admissions made by their client other evidence within the criminal proceedings but be instructed by their client not to disclose these admissions or the evidence in their role as QLR in the family proceedings. Similarly, Paragraph 19 of Practice Direction 12J requires the court to consider, inter alia, what evidence is required in order to determine the existence of domestic abuse, including coercive and controlling behaviour, whether documents are required from third parties such as the police, health services or domestic abuse support services, and whether oral evidence may be required from third parties. A QLR, in their capacity as solicitor or barrister for their client in criminal proceedings, may be aware of such evidence that is favourable to their client in the criminal proceedings and feel duty bound to request its disclosure into the family proceedings. Conversely, they may be aware of such evidence that is adverse to their client in criminal proceedings and be instructed by that client not to request its disclosure in the family proceedings.
55. Para 3.2 of the QLR Statutory Guidance states that the QLR must explain to the prohibited party “that they cannot promise the confidentiality that usually attaches to lawyer-client relationships (legal professional privilege) and that there are obligations in family and civil proceedings to disclose material that is unhelpful to the prohibited party’s case.” This is

reinforced by Paragraph 24 of the FLBA Guide. It is difficult to see how a solicitor or barrister representing the prohibited party in criminal proceedings can maintain confidentiality attaching to the lawyer-client relationship when they cannot do so in family proceedings relating to the same events.

56. These contradictory aspects of the two roles undermine a central aspect of the QLR system, namely, the independence of the QLR role.
57. Paragraph 8 of Practice Direction 3AB provides that the appointment of a QLR terminates at the conclusion of the proceedings (not at the conclusion of the cross-examination in a hearing during ongoing proceedings) or when the court so orders. This means that a QLR could continue in their dual role throughout concurrent family and criminal proceedings, which increases the possibility for the lines between the two roles to become blurred.
58. An example of the blurring of these roles can be found in the Position Statement filed on behalf of the mother, which notes at Paragraph (B)(2) that the position statement drafted by the QLR on behalf of the father for the case management hearing opposed any fact-finding taking place in the family proceedings. This is outside the role and remit of a QLR, as the QLR Statutory guidance (Para 3.32) makes clear that the QLR can prepare a brief position statement “to help identify and narrow the issues that will be the focus of the cross-examination”. Preparing a position statement for the prohibited party that opposes the fact-finding exercise goes beyond the role of a QLR and advances the prohibited party’s case. This is an example of the way in which a QLR can stray into the role of legal representative.
59. As long as the contractual lawyer/client relationship in criminal proceedings exists between a QLR and a prohibited party to family proceedings, it will be difficult to know at any given time in which role the QLR/legal representative was acting. In practice, it is submitted that it would be impossible to separate these roles.

**B. The ‘dual role’ undermines the protection of vulnerable witnesses which the QLR scheme aims to address**

60. Part 3A of the Family Procedure Rules, together with Practice Direction 3AA, provide for protections for vulnerable witnesses in terms of the quality of their evidence and their participation in the proceedings. Rule 3A.2A raises an assumption that a party or witness who is or is at risk of being a victim of domestic abuse is a vulnerable witness, that is, that the quality their evidence and their participation in the proceedings are diminished. Practice Direction 3AA sets out the procedure and practice to be followed to achieve a fair hearing by providing for appropriate measures to be put in place to ensure that the participation of

parties and the quality of the evidence of the parties and other witnesses is not diminished by reason of their vulnerability. Sections 31U of the MFPA 1984 is aimed at ensuring that the quality of a vulnerable party or witness's evidence is improved and at reducing the likelihood of a vulnerable party or witness suffering significant distress (see Paragraphs 16 – 18 above).

61. Paragraph 1.4.1 of the QLR Statutory Guidance states that “the primary purpose of [the role of a QLR] is to ensure that no victim of abuse should endure being cross-examined in person by their abuser or have to endure cross-examining their abuser themselves in a courtroom setting. Such cross-examination can cause severe distress, retraumatise the victim and has the potential to form a continuation of abuse including controlling behaviours. ... It can affect the quality of the evidence given, thereby impacting on both parties' ability to put their case forward and, in turn, the court's ability to effectively render justice. The purpose of the provisions is to ensure that every victim has confidence that the court will be able to offer them every protection needed to allow them to give their best evidence and participate in proceedings safely.” Paragraph 2.1 similarly states that the role of a QLR is “to ensure that no victim or alleged victim will be directly cross-examined by their abuser or alleged abuser or have to cross-examine their abuser or alleged abuser themselves.”
62. Paragraph 2.1 of the QLR Statutory Guidance goes on to state that: “The parameters of the role of a qualified legal representative appointed by the court in criminal proceedings were examined in the case of *ABBAS v Crown Prosecution Service* [2015] EWHC 579 (Admin) at [44] where Lady Justice Hallet stated: ‘The role of a section 38 advocate is, undoubtedly, limited to the proper performance of their duty as a cross-examiner of a particular witness. Sections 36 and 38 of the 1999 Act are all about protecting vulnerable witnesses from cross-examination by the accused. Therefore, it should not be thought that an advocate appointed under section 38 has a free-ranging remit to conduct the trial on the accused's behalf. Their professional duty and their statutory duty would be to ensure that they are in a position properly to conduct the cross-examination.’”
63. When a QLR is appointed by the court the focus is on whether it is 'necessary in the interests of justice' to do so [s 31W(5)].’ (*Re Z (Prohibition on Cross-examination: No QLR)* [2024] EWFC 22). The appointment of the same solicitor as QLR in the family court proceedings and legal representative of the defendant in the criminal proceedings does not serve the interests of justice but rather the interests of the prohibited party/defendant, which was never the intention of the Domestic Abuse Act 2021.

64. The protections afforded to vulnerable witnesses to prevent the quality of their evidence and their participation in the proceedings being diminished may be undermined by the dual role. The witness may justifiably feel that she will be cross-examined not by an independent advocate appointed by and responsible to the court but by the prohibited party's representative whose role in the criminal proceedings is to discredit her and secure an acquittal for his or her client.
65. The dual role of a QLR and legal representative will disadvantage the victim will never be in a similar situation of having dual representation as a complainant/main witness in criminal proceedings. Furthermore, when a QLR undertakes this dual role the state is funding this disadvantage on the purported basis of protecting victims. (see Paragraph 21 above).

**C. The 'dual role' can lead to a breach of the vulnerable witness's/complainant's Article 6 and 8 ECHR Rights**

66. Paragraph 1.4.2 of the QLR Statutory Guidance notes that Article 6(1) of the ECHR guarantees the right to a hearing which is procedurally fair, which includes affording each party a reasonable opportunity to present their case and evidence under conditions which do not place them at a substantial disadvantage as compared to the other party (*Regner v. the Czech Republic* App No 35289/11 at [146]). In the context of family court matters, the parties' Article 8 rights "can only be vindicated by their having an effective and correct determination" of the factual issues before the court (*Re K and H (Children)* [2015] EWCA Civ 543 per Lord Dyson MR at [47]). The Guidance concludes that a party's Article 6 and 8 rights "are more likely to be protected if a qualified legal representative is appointed in cases, for example ... where questioning of a witness is required that may be distressing or potentially challenging."
67. The QLA Statutory Guidance makes it clear that "the central purpose" of a QLR "is to ensure that the fairness of the proceedings is maintained, by carrying out the cross-examination which the prohibited party is prohibited from performing." (Paragraph 2.1)
68. Article 6 rights include equality of arms in that any measures "do not place him at a substantial disadvantage vis-à-vis the other party" (*Dombo Beheer B.V. v The Netherlands*, Para 33). Annex A to Practice Direction 3AB specifically notes that the court and parties must have regard to all relevant rules and Practice Directions including, in particular, the overriding objective in Part 1 of the Family Procedure Rules. The appointment of a QLR for a prohibited party in family proceedings who is also the solicitor or barrister representing that party in criminal proceedings undermines the overriding objective in Rule 1 of the

Family Procedure Rules for courts to “deal with cases justly” which includes “(c) ensuring that the parties are on an equal footing”. The overriding objective is specifically referred to in Annex A to Practice Direction 3AA way of example, in the current case before the court the dual role affords the QLR access to highly sensitive personal information regarding the mother disclosed as part of the criminal proceedings. The mother, as complainant and main witness for the Crown in the criminal proceedings, cannot instruct a solicitor to obtain access to the same information in both sets of proceedings. This gives the father a distinct and unfair litigation advantage and undermines the principle of the FPR procedural code in ensuring the parties are on an equal footing.

69. The instruction of a solicitor as a QLR for a prohibited party and as that party’s legal representative in criminal proceedings undermines the basis for the protection of the vulnerable witness’s Article 6 and 8 rights envisaged by statute and statutory guidance and detracts from equality of arms by placing the vulnerable witness/complainant at a substantial disadvantage in relation to the prohibited party/defendant. In *Yvon v France* a ‘significant advantage’ was considered to include access to relevant information. This could increase the likelihood of victim's being unwilling to give evidence in criminal proceedings, given the distinct advantage of the defendant and the distressing nature of giving evidence in criminal proceedings. 7.9% of criminal offence rape trials currently collapse due to victims withdrawing after charge<sup>22</sup>.
70. The QLR could utilise information from the Family Court proceedings, for example, how the vulnerable witness gave evidence, in the criminal proceedings. The QLR and the prohibited party will have a preview of the vulnerable witness’s testimony in the Family Court proceedings which will give them a litigation advantage in the criminal proceedings.
71. The QLR will have access to and knowledge of evidence in the criminal proceedings which has not been disclosed in the family proceedings. This could be used strategically by a QLR to request disclosure of material from the criminal proceedings into the family proceedings or to oppose such disclosure if the QLR considers that it would adversely affect the prohibited party in the family proceedings.
72. Respect for private life under Article 8 ECHR includes respect for a person’s dignity and psychological integrity. Criminal sexual offences trials may require disclosure of the victim's highly sensitive personal information, considered special category data under UK General Data Protection Regulation, such as health data and data on sex life or sexual orientation. Allowing the same person to operate as a QLR in family proceedings and as

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<sup>22</sup> <https://victimscommissioner.org.uk/news/victim-attribution-falls-but-progress-is-fragile-amid-uncertainty-over-support-services-funding/>

legal representative in criminal proceedings may result in direct or indirect interference with a vulnerable party/s/complainant's Article 8 rights<sup>23</sup>.

### **Conclusion**

73. The dual role of a solicitor or barrister acting both as a Qualified Legal Representative (QLR) in family proceedings and as legal representative for the same individual in concurrent criminal proceedings involving allegations of domestic or sexual abuse or coercive and controlling behaviour is fundamentally incompatible with the statutory framework, and the central purpose of the QLR scheme. The two roles are legally and functionally distinct. The role of a QLR requires independence, objectivity, and a duty to the court, whereas the role of a defence lawyer in criminal proceedings involves a duty to the court *and* a duty to their client, legal professional privilege, and the advancement of the client's best interests.
74. This dual representation gives rise to a real risk of conflict of interest and undermines the independence of the QLR. It blurs the boundaries between roles, creates confusion as to which role the legal representative is occupying, and risks the inappropriate use of information obtained in one set of proceedings to influence the outcome of the other. It affords the prohibited party a litigation advantage not available to other parties and places the vulnerable witness, the complainant in criminal proceedings, at a significant disadvantage, both procedurally and psychologically, rendering them even more vulnerable and likely preventing them from giving their best evidence. This is contrary to the purpose of the Domestic Abuse Act 2021 and the QLR scheme, which seek to protect vulnerable witnesses from further harm.
75. Furthermore, the dual role is incompatible with Article 6 and Article 8. It risks undermining the fairness of the proceedings, the equality of arms between parties, and the dignity and psychological integrity of vulnerable witnesses. For these reasons, a solicitor or barrister acting for a defendant in criminal proceedings involving allegations of abuse should not be permitted to act as a QLR in related family proceedings.

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<sup>23</sup> Whilst not the same issue as in this case, the Court has the power to prevent a barrister from acting for a party by the Court, *Ahmed v Iqbal (Order Preventing Counsel from Acting)* [2020] EWHC 2666 (Fam) (13 October 2020).