

How qualified legal representatives operate

Family law



MANI BASI, 4PB

The Domestic Abuse Act 2021 came into force almost a year ago and made a significant change – prohibiting perpetrators or alleged perpetrators of abuse from personally cross-examining their victims or those alleged to be a victim in family proceedings. Furthermore, this had a similar effect operating in reverse – that is, to prevent a victim from having to cross-examine his or her abuser/alleged abuser.

However, given the backlog of cases relating to family proceedings and the delays in listing fact-finding hearings and final hearings, it has only been in the last few months that lawyers have started to see more cases involving a qualified legal representative (QLR). This was the role created to prevent personal cross-examination from taking place. In the coming months, this trend is likely to continue with more and more lawyers experiencing first-hand how cases involving QLRs operate. So now seems like the perfect time to think about what QLRs mean for family cases, the

effect they could have, as well as potential issues that may arise.

Voluntary scheme The first hurdle arising in cases involving QLRs is that a sufficient number of lawyers are signed up to it. It is a voluntary scheme.

As the president of the Family Division announced last July, ‘it is essential that the new scheme can deliver a qualified advocate in every case in which the court determines that one is needed. That will only occur if we have a significantly greater number of advocates signed up on the list’.

Associated with the demand to sign up to the scheme, there is also the question of fees/training with regard to undertaking the work. QLRs also need to be appointed to cases in good time.

A recent Freedom of Information request to the Ministry of Justice, for the purposes of this article, confirmed that 428 qualified legal representatives have registered for the Cross Examination Prohibition Scheme since it started in July 2022. However, these figures do not tell us how many lawyers have completed the training, or how many will actually make themselves available to volunteer.

Before a hearing, where there is likely to be oral evidence such as a fact-finding hearing, there should be a pre-trial review.

At such a hearing, the QLR will be expected to read the bundle and prepare for the case (in a situation where the prohibited person is not, however, a client). In February, Mr Justice Peel released a number of precedents relating to standard orders in cases involving a QLR, which enable the court to consider the mechanisms relating to the appointment of QLRs. For example, when the QLR should get the bundle (assuming one is appointed on time), and the general process for appointing a QLR.

Last-minute appointment It remains to be seen on the ground whether these mechanisms create practical problems and, if so, whether these can be ameliorated: for example, if there is a delay in appointing a QLR, and there is a last-minute appointment, the difficulties caused of being landed late with a hefty bundle. It is going to be important that lawyers, in cases likely to involve a QLR, ascertain this information at an early stage so that appropriate directions can be made. Even where this is done, a QLR will not always be appointed on time – for example, if there is difficulty in locating one at short notice, or due to availability issues. Moreover, it might be the case that, in some areas, there is greater availability of QLRs. The success of QLRs may therefore vary from region to region – a potential postcode lottery.

In circumstances where a QLR cannot be appointed, there are undoubtedly going to be further consequences for the court system – for example, more adjournments, delays, and wasted costs and resources.

One hopes that, after a period, relevant stakeholders can release statistics and undertake research with lawyers, court managers and other stakeholders with regard to the success of mechanisms for appointing QLRs, so that they can outline ways in which to counteract any practical issues arising.

The motive behind the introduction of QLRs was certainly a good one, especially given the state of legal aid, the rising number of litigants in person and, more importantly, greater awareness of domestic abuse. However, more needs to be done to ensure that the scheme works well.

Mani Basi is a barrister at 4PB