STATUTORY INSTRUMENTS

2023 No. 1319

CIVIL PROCEEDINGS, ENGLAND AND WALES

FAMILY PROCEEDINGS, ENGLAND AND WALES

SENIOR COURTS OF ENGLAND AND WALES

COUNTY COURT, ENGLAND AND WALES

FAMILY COURT, ENGLAND AND WALES

The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) (Amendment) Regulations 2023

Made - - - -	*4th December 2023*
Laid before Parliament	*7th December 2023*
Coming into force - -	*2nd January 2024*

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) (Amendment) Regulations 2023.

(2) These Regulations come into force on 2nd January 2024.

(3) These Regulations extend to England and Wales.

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

2.—(1) The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022(**c**) are amended as follows.

(2) In regulation 1(3)—

(**a**) 1984 c. 42. Section 31X was inserted by section 65 of the Domestic Abuse Act 2021 (c. 17).
(**b**) 2003 c. 39. Section 85L was inserted by section 66 of the Domestic Abuse Act 2021 (c. 17).
(**c**) S.I. 2022/567.

(a) in the definition of "advocacy services", before "travelling" insert "time spent";

(b) after the definition of "completed hearing" insert—

""costs" means travelling expenses, overnight accommodation costs, overnight subsistence allowance and any other items of expenditure properly incurred by the qualified legal representative in connection with their appointment by the court under the 1984 Act or 2003 Act.";

(c) for the definition of "fees" substitute—

""fees" means the sums payable for advocacy services, calculated in accordance with Parts 1 to 3 of the Schedule to these Regulations.".

(3) In regulation 1(4), for "fees" to the end substitute "fees and costs payable to a qualified legal representative in connection with their appointment by the court under the 1984 Act or 2003 Act.".

(4) For regulation 2 and its heading substitute—

"Remuneration

2.—(1) The Lord Chancellor must pay fees to a qualified legal representative in accordance with these Regulations.

(2) Subject to paragraphs (3) and (4), the Lord Chancellor must pay such costs to a qualified legal representative as appear to the Lord Chancellor to have been actually and properly incurred.

(3) The costs payable under paragraph (2) are to be calculated in accordance with the provisions of Part 4 of the Schedule to these Regulations.

(4) The Lord Chancellor may not pay costs in excess of the maximum cap amounts specified for the corresponding category of cost.".

(5) In regulation 5, after paragraph (3) insert—

"(4) Costs in respect of a cancelled hearing may be claimed where—

(a) a preliminary hearing or a cross-examination hearing is listed;

(b) the qualified legal representative has incurred costs in anticipation of attending the hearing;

(c) the hearing is cancelled; and

(d) the qualified legal representative has complied with paragraph (5) but is unable to recover all of the costs incurred.

(5) The qualified legal representative must attempt to recover the costs incurred within 24 hours of being notified of the hearing cancellation.".

(6) In the heading to regulation 6, after "fees" insert "and costs".

(7) At the end of regulation 6(4)(c) omit "and" and insert—

"(ca) specify any costs claimed, the circumstances in which they were incurred and the amounts claimed in respect of them; and".

(8) In regulation 6(4)(d) for "fee" substitute "fees and costs".

(9) In the heading to regulation 7 after "fees" insert "and costs".

(10) In the Schedule, after Part 3 insert—

"PART 4

Costs payable in civil and family proceedings

General provision and applicable maximum rates

3. Costs are only payable where the qualified legal representative can provide evidence of the amounts incurred.

4. Subject to paragraphs 5 to 11, the maximum amounts that the Lord Chancellor may pay in respect of each category of cost are specified in Table 6.

5. Travelling expenses are only payable where a qualified legal representative travelled to a court at least 10 miles from their office or chambers.

6. Overnight accommodation and overnight subsistence allowance are only payable where a qualified legal representative travelled to a court:

(a) at least 100 miles from their office or chambers to attend a preliminary or cross-examination hearing which was listed for one day; or

(b) at least 50 miles from their office or chambers to attend a preliminary or cross-examination hearing which was listed for more than one day.

7. In the event a hearing concludes sooner than anticipated, overnight accommodation costs incurred in reliance on the original listing may be payable where the qualified legal representative is unable to recover the cost of the unused portion of a booking.

8. The Lord Chancellor will only pay overnight subsistence allowance where the costs were incurred in connection with overnight accommodation.

9. The Lord Chancellor will not pay costs in respect of travel by air.

10. Subject to paragraph 11, the Lord Chancellor will not pay costs in respect of first-class travel.

11. The cost of first-class travel may be paid where the ticket purchased was cheaper than the equivalent standard-class ticket.

Table 6

Applicable maximum rates

Category of costs claimed	*Maximum rate payable, where evidenced*
(a) Vehicle mileage	£0.45 per mile
(b) Public transport	£180 per journey
(c) Overnight accommodation	£100 per night
(d) Overnight subsistence allowance[(1)]	£21 per night
(e) Other out of pocket expenses[(2)]	£40 per day

[(1)] Excluding the purchase of alcohol.

[(2)] Excluding the purchase of food or drink.".

Laura Farris
Parliamentary Under-Secretary of State
Ministry of Justice

4th December 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022(**a**) ("the 2022 Regulations") make provision for payment out of central funds of sums to cover the fees of court-appointed qualified legal representatives. These Regulations amend the 2022 Regulations to make provision for payments in respect of the properly incurred 'costs' of a qualified legal representative, to include certain travel, accommodation and subsistence costs incurred in connection with their appointment.

Regulation 2(2) amends existing definitions and introduces a new definition of 'costs'. Regulation 2(3) makes a minor textual amendment to widen the scope of the fee scheme so that it also applies to the payment of costs.

Regulation 2(4) substitutes existing provision to introduce a requirement to pay costs in accordance with new Part 4 of the Schedule.

Regulation 2(5) makes provision for the payment of costs incurred in respect of a hearing that is subsequently cancelled.

Regulation 2(6) makes a small textual amendment to apply the existing procedure for payment of fees to the payment of costs. Regulation 2(7) requires the qualified legal representative to provide certain details in relation to costs as part of a claim for payment. Regulation 2(8) and (9) apply existing provision to the payment of costs.

Regulation 2(10) inserts new Part 4 to the Schedule of the 2022 Regulations. The new Part makes general provision in respect of costs and specifies, in Table 6, the maximum amounts that the Lord Chancellor will pay in relation to the corresponding category of cost, subject to the amount claimed being evidenced.

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

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