Domestic Abuse Act 2021 Cross- Examination Provisions in Family Proceedings

**Draft Order Templates**

**Draft Order Number 1**

Before Judge/Magistrates sitting at ………………………..(court name) on……………………….. (date)

Having reviewed  the court file/ at a hearing on ………………………(date)

The court directed that:

The applicant/respondent (delete as appropriate)  ……………………… (insert name of whichever party is the alleged victim) is to complete **Form EX740**  (Application and information needed by the court to consider whether to prevent (prohibit) questioning (cross-examination)in person);  or

The applicant/respondent (delete as appropriate)………………………….. (insert name of whichever party is the alleged perpetrator) is to complete **Form EX741** (Application and information needed by the court to consider whether to prevent (prohibit) questioning (cross-examination)in person)

by  …………….. (date).

**Draft Order Number 2**

Before Judge/Magistrates sitting at ………………………..(court name) on……………………….. (date)

The court having heard ………………….. and the court having reviewed  the court file,

1. The court has determined that an automatic prohibition on cross examination applies under the Matrimonial and Family Proceedings Act 1984 (MFPA) because: (Delete as appropriate)

**Section 31R** The vulnerable party is the victim of a specified domestic abuse offence perpetrated by the other party;

**Section 31S** the vulnerable party is protected by an on-notice protective injunction against the other party;

**Section 31T** the vulnerable party adduces specified evidence that they are a victim of domestic abuse perpetrated by the other party.

**Or**

1. **Under Section 31U of the MFPA**, it appears to the court that the quality of the party’s evidence on cross-examination is likely to be diminished if the cross-examination is conducted in person, or if the conduct of cross-examination in person would cause significant distress to a party, and it would not be contrary to the interests of justice to make the direction.

It is ordered that:

1. The applicant and respondent (delete as appropriate) must notify the court by 4pm on ……….(date) (a) whether, in their view, there are suitable alternative means of cross-examination and (b) should the court determine that there are no suitable alternative means of cross-examination, whether they intend to appoint their own qualified legal representative.

1. The file is to be referred to Judge x ………… on ………….(date following deadline for filing the response set out in 1.above)  to consider whether it is necessary for the court to appoint a qualified legal representative to conduct cross examination on behalf of either party.

1. If a party does intend to appoint their own qualified legal representative for the purpose of cross-examination, they shall provide the name and contact details of that person no later than ……………… (date)

**Draft Order Number 3 (Should a qualified legal representative be appointed by the court)**

The court has considered whether it is necessary in the interests of justice for the witness(es) to be cross-examined by a qualified legal representative(s) and concluded that it is necessary to appoint such a qualified legal representative(s) to conduct the cross-examination.

1. The court is to appoint a qualified legal representative on behalf of ………………………(name/s) for the hearings  listed on …………… (date) at …………...  (time) at ……………………… (name of court).
2. The court is authorised to share the contact details of (name) with the court-appointed qualified legal representative.

**Draft Order Number 4 (Appointment of QLR)**

1.The court appoints.……………….(name of court appointed qualified legal representative) of …………………. …………………….. (firm/chambers/email address) to conduct cross-examination on behalf of the prohibited party, namely……………………………..,of the following witness/witnesses:

…………………………………(name)

…………………………………(name)

…………………………………(name)

on ………………. (date) at ……………………(time) at ……………………….court.

Time estimate :……………………..

2.The court-appointed qualified legal representative must notify the court as soon as possible if they are subsequently unable to accept the court appointment.

3.

4. The applicant’s/respondent’s legal representative/court staff shall send the court bundle or such parts of the court bundle as the court directs to the qualified legal representative appointed to conduct the cross examination 7 days before the next hearing (if ground rules hearing) and 7 days before the hearing with cross-examination.

5. A preliminary hearing/ground rules hearing/ hearing at which contested evidence is to be heard is listed on ………….. at…… …….    (time estimate). The qualified legal representative appointed by the court to conduct cross examination shall attend.

6.The court bundle or such parts of the court bundle as the court directs will be sent by ……………(date) by…………….(party’s legal representative/court) to the court appointed qualified legal representative. If the bundle or such parts of the court bundle as the court directs has not been received by the qualified legal representative, the qualified legal representative should notify the court in good time.  HMCTS will send the bundle or such parts of the court bundle as the court directs to the court- appointed qualified legal representative.

7.  Should the contested hearing be adjourned or vacated by the court, the court will notify the court-appointed qualified legal representative of the date and time of the rescheduled contested hearing.

**Draft Order 5 (Court Bundle/Court File)**

1. The applicant’s/respondent’s legal representative/court shall send the full court bundle or such parts of the court bundle as the court directs to the court-appointed qualified legal representative by ………………………… (date).

1. Where there is no court bundle, the court HMCTS will prepare and provide the qualified legal representative with the full court bundle or such parts of the court bundle as the court directs by ………………(….date). The court will provide the **final** court bundle or such parts of the court bundle as the court directs to the qualified legal representative  7 days before the hearing with cross-examination.

**Draft Order 6 (Termination of Qualified Legal Representative)**

1. The appointment of …………( name) as qualified legal representative is terminated  on…………….(date) at …………………(time. )

**Draft  Order 7: Court order to enable Qualified Legal Representatives to claim their fees**

**Prohibition of Cross-Examination in Person Qualified Legal Representative Scheme’ Funding Recitals:**

**The court has noted the following provisions for the Cross-Examination Qualified Legal Representative Remuneration Scheme:**

**Heard before: [Judicial title/Level of judge]**

**Hearing date:**

**Name of Court-Appointed Qualified  Legal Representative:**

**Name of Court:**

**Court type:**

**Case type:**

**Type of Hearing: [Preliminary or Final/other hearing with cross-examination]**

**Pre-hearing discussions began at:**

**Start time of the hearing:**

**End time, including time to agree an order:**

**TOTAL LENGTH OF THE HEARING (DEDUCT ANY ADJOURNMENT):  [hours and minutes]**

**Bundle:  [number of pages, delete if not applicable]**