

Practice Guidance: Independent Domestic Violence Advisers and Independent Sexual Violence Advisers (Family Courts)

1. This guidance applies to family proceedings in the Court of Appeal (Civil Division), the High Court of Justice and the Family Court. It is issued as guidance (**not** as a practice direction) by the President of the Family Division, as Head of Family Justice. It is issued in light of the coming into force on 6 April 2023 of new rules and a practice direction relating to the attendance at any court hearing of independent domestic violence advisers/independent sexual violence advisers as support to litigants at all levels of the Family Court.
2. An independent domestic violence adviser (IDVA) or independent sexual violence adviser (ISVA) is an independent adviser, however described, who works with people (whether adults or children) who have experienced or are said to have experienced domestic abuse (in the case of an IDVA) or rape and/or sexual assault (in the case of an ISVA) by providing them with support, advice and help.

The Right to Reasonable Assistance

3. A litigant may have support, advice and help from an IDVA or ISVA but an IDVA or ISVA is not a legal representative or McKenzie Friend. An IDVA or ISVA has no right to act as an advocate or to carry out the conduct of litigation.

What IDVAs or ISVAs may do

4. An IDVA or ISVA may: i) provide practical, emotional or moral support for a litigant; ii) provide assistance and support to engage with the court process as well as with out of court discussions; and iii) help in dealing with authorities or other support services.

What IDVAs or ISVAs may not do

5. IDVAs or ISVAs may not: i) act as the litigant's agent in relation to the proceedings; ii) manage a litigant's case outside court, for example by signing court documents; iii) address the court, make oral submissions or examine witnesses.
6. An IDVA or ISVA does not have a right of audience or a right to conduct litigation. It is a criminal offence to exercise a right of audience or to conduct litigation unless properly qualified and authorised to do so by an appropriate regulatory body or, in the case of an otherwise unqualified or unauthorised individual (i.e., a lay individual including a McKenzie Friend), the court grants such a right on a case-by-case basis.¹

Support from an IDVA or ISVA at Court

7. Any party to family proceedings who is receiving support from an IDVA or ISVA has the right to receive that support at any hearing, subject to the court's power to direct otherwise. The court retains the power to refuse to permit attendance at a hearing and may do so where it is satisfied that it is not in the interests of justice for the IDVA or ISVA to be present or continue to be present at a hearing.

¹ Legal Services Act 2007 s12 – 19 and Schedule 3.

8. For the avoidance of doubt, any party to family proceedings who is receiving support from an IDVA or ISVA has the right to receive support from the IDVA or ISVA at court, both before or after a hearing.
9. A litigant who wishes to receive support from an IDVA or ISVA should inform the judge as soon as possible indicating who the IDVA or ISVA will be. The proposed IDVA or ISVA must provide their name and details of the organisation for which they work, together with an assurance that they understand the confidential nature of the proceedings.
10. If the court considers that there might be grounds for circumscribing the right to receive support from an IDVA or ISVA at a hearing or a party objects to the presence of an IDVA or ISVA at a hearing, it is not for the person receiving IDVA or ISVA support to justify the exercise of their right to receive such support. It is for the court or the objecting party to provide sufficient reasons why the litigant should not receive such support during a hearing.
11. When considering whether to refuse an IDVA or ISVA permission to be present at a hearing, the right to a fair trial is engaged. The matter should be considered carefully by the court. The person opposed to the presence of the IDVA or ISVA should explain clearly what their objections are. The person receiving IDVA or ISVA support should be given a reasonable opportunity to explain why the IDVA or ISVA should continue to be present. The proposed IDVA or ISVA should not be excluded from the hearing at which permission to attend is determined.
12. The court may refuse to allow a litigant to exercise the right to receive support from an IDVA or ISVA at the start of a hearing if the court is satisfied that it is not in the interests of justice for the IDVA or ISVA to be present, or continue to be present, at the hearing.
13. A decision by the court not to curtail support at a hearing from an IDVA or ISVA should be adhered to, unless there is subsequent misconduct during a hearing by the IDVA or ISVA.
14. If the court does restrict a litigant's right to an IDVA or ISVA during a hearing, it should give a short judgment setting out the reasons why it has curtailed the right to support during a hearing. A litigant may seek permission to appeal such a decision. IDVAs or ISVAs have no standing to do so.
15. The following factors should not be taken to justify the court refusing to permit a litigant receiving such support during a hearing:
 - a. The case or application is simple or straightforward (for example, it is simply listed as a directions or case management hearing);
 - b. The litigant appears capable of conducting the case without support;
 - c. The litigant is unrepresented through choice;
 - d. The other party is not represented;
 - e. The proposed IDVA or ISVA belongs to an organisation that promotes a particular cause;
 - f. The proceedings are confidential and the court papers contain sensitive information relating to a family's affairs.

16. A litigant may be denied the support of an IDVA or ISVA during a hearing because that support might undermine, or has undermined, the interests of justice. Examples of circumstances where this might arise include, but are not limited to: i) the support in the court room is being provided for an improper purpose; ii) the support in the court room is unreasonable in nature or degree; iv) the IDVA or ISVA is directly or indirectly conducting the litigation; or v) the court is not satisfied that the IDVA or ISVA fully understands the duty of confidentiality.
17. A litigant is permitted to communicate any information, including filed evidence, relating to the proceedings to an IDVA or ISVA for the purpose of obtaining support or assistance in relation to the proceedings.
18. The High Court can, under its inherent jurisdiction, impose a civil restraint order on an IDVA or ISVA who repeatedly acts in a way that undermines the efficient administration of justice.

Sir Andrew McFarlane, President of the Family Division

6 April 2023