

PROTECTED PARTIES

This Practice Direction supplements FPR Part 15

General

- 1.1** A protected party must have a litigation friend to conduct proceedings on the protected party's behalf.
- 1.2** In the proceedings the protected party should be referred to in the title as "A.B. (by C.D. his/her litigation friend)."

Duties of the Litigation Friend

- 2.1** It is the duty of a litigation friend fairly and competently to conduct proceedings on behalf of a protected party. The litigation friend must have no interest in the proceedings adverse to that of the protected party and all steps and decisions the litigation friend takes in the proceedings must be taken for the benefit of the protected party.

Becoming a Litigation Friend without a court order

- 3.1** In order to become a litigation friend without a court order the person who wishes to act as litigation friend must –
 - (a)** file an official copy of the order, declaration or other document which confers the litigation friend's authority as a deputy to conduct the proceedings in the name of a protected party or on his/her behalf; or
 - (b)** file a certificate of suitability –
 - (i)** stating that the litigation friend consents to act;
 - (ii)** stating that the litigation friend knows or believes that the [applicant][respondent] lacks capacity (within the meaning of the 2005 Act) to conduct proceedings;
 - (iii)** stating the grounds of that belief and if the belief is based upon medical opinion attaching any relevant document to the certificate;
 - (iv)** stating that the litigation friend can fairly and competently conduct proceedings on behalf of the protected party and has no interest adverse to that of the protected party;
 - (v)** undertaking to pay any costs which the protected party may be ordered to pay in relation to the proceedings, subject to any right the litigation friend may have to be repaid from the assets of the protected party; and
 - (vi)** which the litigation friend has verified by a statement of truth.
- 3.2** Paragraph 3.1 does not apply to the Official Solicitor.
- 3.3** The court officer will send the certificate of suitability to the person who is the attorney of a registered enduring power of attorney, donee of a lasting power of attorney or deputy or, if

there is no such person, to the person with whom the protected party resides or in whose care the protected party is.

- 3.4** The court officer is not required to send the documents referred to in paragraph 3.1(b)(iii) when sending the certificate of suitability to the person to be served under paragraph 3.3.
- 3.5** The litigation friend must file either the certificate of suitability or the authority referred to in paragraph 3.1(a) at a time when the litigation friend first takes a step in the proceedings on behalf of the protected party.

Application for a court order appointing a litigation friend

- 4.1** An application for a court order appointing a litigation friend should be made in accordance with Part 18 and must be supported by evidence.
- 4.2** The court officer must serve the application notice –
 - (a)** on the persons referred to in paragraph 3.3; and
 - (b)** on the protected party unless the court directs otherwise.
- 4.3** The evidence in support must satisfy the court that the proposed litigation friend –
 - (a)** consents to act;
 - (b)** can fairly and competently conduct proceedings on behalf of the protected party;
 - (c)** has no interest adverse to that of the protected party; and
 - (d)** undertakes to pay any costs which the protected party may be ordered to pay in relation to the proceedings, subject to any right the litigation friend may have to be repaid from the assets of the protected party.
- 4.4** Paragraph 4.3(d) does not apply to the Official Solicitor.
- 4.5** The proposed litigation friend may be one of the persons referred to in paragraph 3.3 where appropriate, or otherwise may be the Official Solicitor. Where it is sought to appoint the Official Solicitor, provision must be made for payment of his charges.

Change of litigation friend and prevention of person acting as litigation friend

- 5.1** Where an application is made for an order under rule 15.7, the application must set out the reasons for seeking it and must be supported by evidence.
- 5.2** Subject to paragraph 4.4, if the order sought is substitution of a new litigation friend for an existing one, the evidence must satisfy the court of the matters set out in paragraph 4.3.
- 5.3** The court officer will serve the application notice on –
 - (a)** the persons referred to in paragraph 3.3; and
 - (b)** the litigation friend or person purporting to act as litigation friend.

Procedure where the need for a litigation friend has come to an end

- 6.1** Where a person who was a protected party regains or acquires capacity (within the meaning of the 2005 Act) to conduct the proceedings, an application under rule 15.9(2) must be made for an order under rule 15.9(1) that the litigation friend's appointment has ceased.
- 6.2** The application must be supported by the following evidence –
- (a)** a medical report or other suitably qualified expert's report indicating that the protected party has regained or acquired capacity (within the meaning of the 2005 Act) to conduct the proceedings; and
 - (b)** a copy of any relevant order or declaration of the Court of Protection.

