

REPRESENTATION OF CHILDREN

This Practice Direction supplements FPR Part 16

PART 1

GENERAL

Reference in title of proceedings

- 1.1** Where a litigation friend represents a child in family proceedings in accordance with rule 16.5 and Chapter 5 of Part 16, the child should be referred to in the title of the proceedings as ‘A.B. (a child by C.D. his/her litigation friend)’.
- 1.2** Where a children’s guardian represents a child in family proceedings in accordance with rule 16.4 and Chapter 7 of Part 16, the child should be referred to in the title as ‘A.B. (a child by C.D. his/her children’s guardian)’.
- 1.3** A child who is conducting proceedings on that child’s own behalf should be referred to in the title as ‘A.B. (a child)’.

PART 2

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 the child. The litigation friend must have no interest in the proceedings adverse to that of the child and all steps and decisions the litigation friend takes in the proceedings must be taken for the benefit of the child.
- 2.2** A litigation friend who is an officer of the Service or a Welsh family proceedings officer has, in addition, the duties set out in Part 3 of this Practice Direction and must exercise those duties as set out in that Part.

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 file a certificate of suitability –
 - (a)** stating that the litigation friend consents to act;

- (b) stating that the litigation friend knows or believes that the [applicant][respondent] is a child to whom rule 16.5 and Chapter 5 of Part 16 apply;
 - (c) stating that the litigation friend can fairly and competently conduct proceedings on behalf of the child and has no interest adverse to that of the child;
 - (d) undertaking to pay any costs which the child 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 child; and
 - (e) which the litigation friend has verified by a statement of truth.
- 3.2** Paragraph 3.1 does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.
- 3.3** The court officer will send the certificate of suitability to one of the child's parents or guardians or, if there is no parent or guardian, to the person with whom the child resides or in whose care the child is.
- 3.4** The litigation friend must file the certificate of suitability at a time when the litigation friend first takes a step in the proceedings on behalf of the child.

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 on the persons referred to in paragraph 3.3.
- 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 child;
 - (c) has no interest adverse to that of the child; and
 - (d) undertakes to pay any costs which the child 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 child.
- 4.4** Paragraph 4.3(d) does not apply to the Official Solicitor, an officer of the Service of a Welsh family proceedings officer.
- 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, an officer of the Service or a Welsh family proceedings officer. Where it is sought to appoint the Official Solicitor, an officer of the Service or a Welsh family proceedings officer, provision should be made for payment of that person's 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 16.12, the application must set out the reasons for seeking it and the application 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.

PART 3

CHILDREN'S GUARDIAN APPOINTED UNDER RULE 16.3

How the children's guardian exercises duties – investigations and appointment of solicitor

- 6.1** The children's guardian must make such investigations as are necessary to carry out the children's guardian's duties and must, in particular –
- (a) contact or seek to interview such persons as the children's guardian thinks appropriate or as the court directs; and
 - (b) obtain such professional assistance as is available which the children's guardian thinks appropriate or which the court directs be obtained.
- 6.2** The children's guardian must –
- (a) appoint a solicitor for the child unless a solicitor has already been appointed;
 - (b) give such advice to the child as is appropriate having regard to that child's understanding; and
 - (c) where appropriate instruct the solicitor representing the child on all matters relevant to the interests of the child arising in the course of proceedings, including possibilities for appeal.
- 6.3** Where the children's guardian is authorised in the terms mentioned by and in accordance with section 15(1) of the Criminal Justice and Court Services Act 2000 or section 37(1) of the Children Act 2004 (right of officer of the Service or Welsh family proceedings officer to conduct litigation or exercise a right of audience), paragraph 6.2(a) will not apply if the children's guardian intends to have conduct of the proceedings on behalf of the child unless –
- (a) the child wishes to instruct a solicitor direct; and
 - (b) the children's guardian or the court considers that the child is of sufficient understanding to do so.
- 6.4** Where rule 16.21 (Where the child instructs a solicitor or conducts proceedings on the child's own behalf) applies, the duties set out in paragraph 6.2(a) and (c) do not apply.

How the children's guardian exercises duties – attendance at court, advice to the court and reports

- 6.5** The children's guardian or the solicitor appointed under section 41(3) of the 1989 Act or in accordance with paragraph 6.2(a) must attend all directions hearings unless the court directs otherwise.

6.6 The children's guardian must advise the court on the following matters –

- (a) whether the child is of sufficient understanding for any purpose including the child's refusal to submit to a medical or psychiatric examination or other assessment that the court has the power to require, direct or order;
- (b) the wishes of the child in respect of any matter relevant to the proceedings including that child's attendance at court;
- (c) the appropriate forum for the proceedings;
- (d) the appropriate timing of the proceedings or any part of them;
- (e) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application; and
- (f) any other matter on which the court seeks advice or on which the children's guardian considers that the court should be informed.

6.7 The advice given under paragraph 6.6 may, subject to any direction of the court, be given orally or in writing. If the advice is given orally, a note of it must be taken by the court or the court officer.

6.8 The children's guardian must –

- (a) unless the court directs otherwise, file a written report advising on the interests of the child in accordance with the timetable set by the court; and
- (b) in proceedings to which Part 14 applies, where practicable, notify any person the joining of whom as a party to those proceedings would be likely, in the opinion of the children's guardian, to safeguard the interests of the child, of the court's power to join that person as a party under rule 14.3 and must inform the court –
 - (i) of any notification;
 - (ii) of anyone whom the children's guardian attempted to notify under this paragraph but was unable to contact; and
 - (iii) of anyone whom the children's guardian believes may wish to be joined to the proceedings.

(Part 18 sets out the procedure for making an application to be joined as a party in proceedings.)

How the children's guardian exercises duties – service of documents and inspection of records

6.9 The children's guardian must serve and accept service of documents on behalf of the child in accordance with rule 6.31 and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

6.10 Where the children's guardian inspects records of the kinds referred to in –

- (a) section 42 of the 1989 Act (right to have access to local authority records); or
- (b) section 103 of the 2002 Act (right to have access to adoption agency records) the children's guardian must bring all records and documents which may, in the opinion of the children's guardian, assist in the proper determination of the proceedings to the attention of –
 - (i) the court; and
 - (ii) unless the court directs otherwise, the other parties to the proceedings.

How the children's guardian exercises duties – communication of a court's decision to the child

- 6.11** The children's guardian must ensure that, in relation to a decision made by the court in the proceedings –
- (a) if the children's guardian considers it appropriate to the age and understanding of the child, the child is notified of that decision; and
 - (b) if the child is notified of the decision, it is explained to the child in a manner appropriate to that child's age and understanding.

PART 4

APPOINTMENT OF CHILDREN'S GUARDIAN UNDER RULE 16.4

Section 1 – When a child should be made a party to proceedings

- 7.1** Making the child a party to the proceedings is a step that will be taken only in cases which involve an issue of significant difficulty and consequently will occur in only a minority of cases. Before taking the decision to make the child a party, consideration should be given to whether an alternative route might be preferable, such as asking an officer of the Service or a Welsh family proceedings officer to carry out further work or by making a referral to social services or, possibly, by obtaining expert evidence.
- 7.2** The decision to make the child a party will always be exclusively that of the court, made in the light of the facts and circumstances of the particular case. The following are offered, solely by way of guidance, as circumstances which may justify the making of such an order –
- (a) where an officer of the Service or Welsh family proceedings officer has notified the court that in the opinion of that officer the child should be made a party;
 - (b) where the child has a standpoint or interest which is inconsistent with or incapable of being represented by any of the adult parties;
 - (c) where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational but implacable hostility to contact or where the child may be suffering harm associated with the contact dispute;
 - (d) where the views and wishes of the child cannot be adequately met by a report to the court;
 - (e) where an older child is opposing a proposed course of action;
 - (f) where there are complex medical or mental health issues to be determined or there are other unusually complex issues that necessitate separate representation of the child;
 - (g) where there are international complications outside child abduction, in particular where it may be necessary for there to be discussions with overseas authorities or a foreign court;
 - (h) where there are serious allegations of physical, sexual or other abuse in relation to the child or there are allegations of domestic violence not capable of being resolved with the help of an officer of the Service or Welsh family proceedings officer;

- (i) where the proceedings concern more than one child and the welfare of the children is in conflict or one child is in a particularly disadvantaged position;
 - (j) where there is a contested issue about scientific testing.
- 7.3** It must be recognised that separate representation of the child may result in a delay in the resolution of the proceedings. When deciding whether to direct that a child be made a party, the court will take into account the risk of delay or other facts adverse to the welfare of the child. The court's primary consideration will be the best interests of the child.
- 7.4** When a child is made a party and a children's guardian is to be appointed –
- (a) consideration should first be given to appointing an officer of the Service or Welsh family proceedings officer. Before appointing an officer, the court will cause preliminary enquiries to be made of Cafcass or CAF/CASS CYMRU. For the relevant procedure, reference should be made to the practice note issued by Cafcass in June 2006 and any modifications of that practice note.
 - (b) If Cafcass or CAF/CASS CYMRU is unable to provide a children's guardian without delay, or if for some other reason the appointment of an officer of the Service of Welsh family proceedings officer is not appropriate, rule 16.24 makes further provision for the appointment of a children's guardian.
- 7.5** The court may, at the same time as deciding whether to join a child as a party, consider whether the proceedings should be transferred to another court taking into account the provisions of Part 3 of the Allocation and Transfer of Proceedings Order 2008.

Section 2 – Children's guardian appointed under rule 16.4

Duties of the children's guardian

- 7.6** It is the duty of a children's guardian fairly and competently to conduct proceedings on behalf of the child. The children's guardian must have no interest in the proceedings adverse to that of the child and all steps and decisions the children's guardian takes in the proceedings must be taken for the benefit of the child.
- 7.7** A children's guardian who is an officer of the Service or a Welsh family proceedings officer has, in addition, the duties set out in Part 3 of this Practice Direction and must exercise those duties as set out in that Part.

Becoming a children's guardian without a court order

- 7.8** In order to become a children's guardian without a court order the person who wishes to act as children's guardian must file a certificate of suitability –
- (a) stating that the children's guardian consents to act;
 - (b) stating that the children's guardian knows or believes that the [applicant][respondent] is a child to whom rule 16.4 and Chapter 7 of Part 16 apply;
 - (c) stating that the children's guardian can fairly and competently conduct proceedings on behalf of the child and has no interest adverse to that of the child;

- (d) undertaking to pay any costs which the child may be ordered to pay in relation to the proceedings, subject to any right the children's guardian may have to be repaid from the assets of the child; and
 - (e) which the children's guardian has verified by a statement of truth.
- 7.9** Paragraph 7.8 does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.
- 7.10** The court officer will send the certificate of suitability to one of the child's parents or guardians or, if there is no parent or guardian, to the person with whom the child resides or in whose care the child is.
- 7.11** The children's guardian must file either the certificate of suitability at a time when the children's guardian first takes a step in the proceedings on behalf of the child.

Application for a court order appointing a children's guardian

- 7.12** An application for a court order appointing a children's guardian should be made in accordance with Part 18 and must be supported by evidence.
- 7.13** The court officer must serve the application notice on the persons referred to in paragraph 7.10.
- 7.14** The evidence in support must satisfy the court that the proposed children's guardian –
- (a) consents to act;
 - (b) can fairly and competently conduct proceedings on behalf of the child;
 - (c) has no interest adverse to that of the child; and
 - (d) undertakes to pay any costs which the child may be ordered to pay in relation to the proceedings, subject to any right the children's guardian may have to be repaid from the assets of the child.
- 7.15** Paragraph 7.14 does not apply to the Official Solicitor, an officer of the Service of a Welsh family proceedings officer.
- 7.16** The proposed children's guardian may be one of the persons referred to in paragraph 7.10 where appropriate, or otherwise may be the Official Solicitor, an officer of the Service or a Welsh family proceedings officer. Where it is sought to appoint the Official Solicitor, an officer of the Service or a Welsh family proceedings officer, provision should be made for payment of that person's charges.

Change of children's guardian and prevention of person acting as children's guardian

- 7.17** Where an application is made for an order under rule 16.25, the application must set out the reasons for seeking it and must be supported by evidence.
- 7.18** Subject to paragraph 7.15, if the order sought is substitution of a new children's guardian for an existing one, the evidence must satisfy the court of the matters set out in paragraph 7.14.
- 7.19** The court officer will serve the application notice on –

- (a) the persons referred to in paragraph 7.10; and
- (b) the children's guardian or person purporting to act as children's guardian.

PART 5

REPORTING OFFICER

How the reporting officer exercises duties

- 8.1** The reporting officer must –
- (a) ensure so far as reasonably practicable that the parent or guardian is –
 - (i) giving consent unconditionally to the placing of the child for adoption or to the making of an adoption order (as defined in section 46 of the Adoption and Children Act 2002) or a section 84 order; and
 - (ii) with full understanding of what is involved;
 - (b) investigate all the circumstances relevant to a parent's or guardian's consent; and
 - (c) on completing the investigations the reporting officer must –
 - (i) make a report in writing to the court in accordance with the timetable set by the court, drawing attention to any matters which, in the opinion of the reporting officer, may be of assistance to the court in considering the application; or
 - (ii) make an interim report to the court if a parent or guardian of the child is unwilling to consent to the placing of the child for adoption or to the making of an adoption order or section 84 order.
- 8.2** On receipt of an interim report under paragraph 8.1(1)(c)(ii) a court officer must inform the applicant that a parent or guardian of the child is unwilling to consent to the placing of the child for adoption or to the making of an adoption order or section 84 order.
- 8.3** The reporting officer may at any time before the final hearing make an interim report to the court if the reporting officer considers it necessary and ask the court for directions.
- 8.4** The reporting officer must attend hearings as directed by the court.

PART 6

CHILDREN AND FAMILY REPORTER AND WELFARE OFFICER

How the children and family reporter or welfare officer exercises powers and duties

- 9.1** In this Part, the person preparing the welfare report in accordance with rule 16.33 is called 'the officer'.
- 9.2** The officer must make such investigations as may be necessary to perform the officer's powers and duties and must, in particular –
- (a) contact or seek to interview such persons as appear appropriate or as the court directs; and

- (b) obtain such professional assistance as is available which the children and family reporter thinks appropriate or which the court directs be obtained.

9.3 The officer must –

- (a) notify the child of such contents of the report (if any) as the officer considers appropriate to the age and understanding of the child, including any reference to the child's own views on the application and the recommendation; and
- (b) if the child is notified of any contents of the report, explain them to the child in a manner appropriate to the child's age and understanding.

9.4 The officer must –

- (a) attend hearings as directed by the court;
- (b) advise the court of the child's wishes and feelings;
- (c) advise the court if the officer considers that the joining of a person as a party to the proceedings would be likely to safeguard the interests of the child;
- (d) consider whether it is in the best interests of the child for the child to be made a party to the proceedings, and if so, notify the court of that opinion together with the reasons for that opinion; and
- (e) where the court has directed that a written report be made –
 - (i) file the report; and
 - (ii) serve a copy on the other parties and on any children's guardian, in accordance with the timetable set by the court.

PART 7

PARENTAL ORDER REPORTER

How the parental order reporter exercises duties – investigations and reports

- 10.1** The parental order reporter must make such investigations as are necessary to carry out the parental order reporter's duties and must, in particular –
- (a) contact or seek to interview such persons as the parental order reporter thinks appropriate or as the court directs; and
 - (b) obtain such professional assistance as is available which the parental order reporter thinks appropriate or which the court directs be obtained.

How the parental order reporter exercises duties – attendance at court, advice to the court and reports

- 10.2** The parental order reporter must attend all directions hearings unless the court directs otherwise.
- 10.3** The parental order reporter must advise the court on the following matters –
- (a) the appropriate forum for the proceedings;

- (b) the appropriate timing of the proceedings or any part of them;
- (c) the options available to it in respect of the child and the suitability of each such option including what order should be made in determining the application; and
- (d) any other matter on which the court seeks advice or on which the parental order reporter considers that the court should be informed.

10.4 The advice given under paragraph 10.3 may, subject to any direction of the court, be given orally or in writing. If the advice is given orally, a note of it must be taken by the court or the court officer.

10.5 The parental order reporter must –

- (a) unless the court directs otherwise, file a written report advising on the interests of the child in accordance with the timetable set by the court; and
- (b) where practicable, notify any person the joining of whom as a party to those proceedings would be likely, in the opinion of the parental order reporter, to safeguard the interests of the child, of the court's power to join that person as a party under rule 13.3 and must inform the court –
 - (i) of any notification;
 - (ii) of anyone whom the parental order reporter attempted to notify under this paragraph but was unable to contact; and
 - (iii) of anyone whom the parental order reporter believes may wish to be joined to the proceedings.

(Part 18 sets out the procedure for making an application to be joined as a party in proceedings.)

PART 8

OFFICERS OF THE SERVICE, WELSH FAMILY PROCEEDINGS OFFICERS AND LOCAL AUTHORITY OFFICERS: FURTHER DUTIES

How officers of the Service, Welsh family proceedings officers and local authority officers exercise certain further duties

11.1 This Part applies when an officer of the Service, a Welsh family proceedings officer or a local authority officer is acting under a duty referred to in rule 16.38(1). In this Part, the person acting under a duty referred to in rule 16.38(1) is referred to as 'the officer'.

11.2 The officer must make such investigations as may be necessary to perform the officer's duties and must, in particular –

- (a) contact or seek to interview such persons as the officer thinks appropriate or as the court directs; and
- (b) obtain such professional assistance as the officer thinks appropriate or which the court directs.

11.3 The officer must –

- (a) notify the child of such (if any) of the contents of any report or risk assessment as the officer considers appropriate to the age and understanding of the child;
 - (b) if the child is notified of any contents of a report or risk assessment, explain them to the child in a manner appropriate to the child's age and understanding;
 - (c) consider whether to recommend in any report or risk assessment that the court lists a hearing for the purposes of considering the report or risk assessment;
 - (d) consider whether it is in the best interests of the child for the child to be made a party to the proceedings, and, if so, notify the court of that opinion together with the reasons for that opinion.
- 11.4** When making a risk assessment, the officer must, if of the opinion that the court should exercise its discretion under rule 12.34(2), state in the risk assessment –
- (a) the way in which the officer considers the court should exercise its discretion (including the officer's view on the length of any suggested delay in service); and
 - (b) the officer's reasons for that reaching that view.
- 11.5** The officer must file any report or risk assessment with the court –
- (a) at or by the time directed by the court;
 - (b) in the absence of any direction, at least 14 days before a relevant hearing; or
 - (c) where there has been no direction from the court and there is no relevant hearing listed, as soon as possible following the completion of the report or risk assessment.
- 11.6** In paragraph 11.5, a hearing is relevant if the court officer has given the officer notice that a report prepared by the officer is to be considered at it.
- 11.7** A copy of any report prepared as a result of acting under a duty referred to in rule 16.38(1)(a)(i) to (vi) or (b) (but not any risk assessment) must, as soon as practicable, be served by the officer on the parties.
- (Rule 12.34 makes provision for the service of risk assessments.)

