

## PRACTICE DIRECTION

## CHILDREN AND PROTECTED PARTIES

**This Practice Direction supplements CPR Part 21**

## GENERAL

- 1.1** In proceedings where one of the parties is a protected party, the protected party should be referred to in the title to the proceedings as 'A.B. (a protected party by C.D. his litigation friend)'.
- 1.2** In proceedings where one of the parties is a child, where –
- (1) the child has a litigation friend, the child should be referred to in the title to the proceedings as 'A.B. (a child by C.D. his litigation friend)'; or
  - (2) the child is conducting the proceedings on his own behalf, the child should be referred to in the title as 'A.B. (a child)'.
- 1.3** A settlement of a claim by a child includes an agreement on a sum to be apportioned to a dependent child under the Fatal Accidents Act 1976<sup>1</sup>.

## THE LITIGATION FRIEND

- 2.1** A person may become a litigation friend –
- (a) without a court order under rule 21.5, or
  - (b) by a court order under rule 21.6.
- 2.2** A person who wishes to become a litigation friend without a court order pursuant to rule 21.5(3) must file a certificate of suitability in Practice Form N235 –
- (a) stating that he consents to act,
  - (b) stating that he knows or believes that the [claimant] [defendant] [is a child][lacks capacity to conduct the proceedings],
  - (c) in the case of a protected party, stating the grounds of his belief and, if his belief is based upon medical opinion or the opinion of another suitably qualified expert, attaching any relevant document to the certificate,
  - (d) stating that he can fairly and competently conduct proceedings on behalf of the child or protected party and has no interest adverse to that of the child or protected party, and
  - (e) where the child or protected party is a claimant, undertaking to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.
- 2.3** The certificate of suitability must be verified by a statement of truth.
- (Part 22 contains provisions about statements of truth.)
- 2.4** The litigation friend is not required to serve the document referred to in paragraph 2.2(c) when he serves a certificate of suitability on the person to be served under rule 21.5(4)(a).

<sup>1</sup> 1976 c.30.

## APPLICATION FOR A COURT ORDER APPOINTING A LITIGATION FRIEND

- 3.1** Rule 21.6 sets out who may apply for an order appointing a litigation friend.
- 3.2** An application must be made in accordance with Part 23 and must be supported by evidence.
- 3.3** The evidence in support must satisfy the court that the proposed litigation friend –
- (1) consents to act,
  - (2) can fairly and competently conduct proceedings on behalf of the child or protected party,
  - (3) has no interest adverse to that of the child or protected party, and
  - (4) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.
- 3.4** Where it is sought to appoint the Official Solicitor as the litigation friend, provision must be made for payment of his charges.

## PROCEDURE WHERE THE NEED FOR A LITIGATION FRIEND HAS COME TO AN END

- 4.1** Rule 21.9 deals with the situation where the need for a litigation friend comes to an end during the proceedings because either –
- (1) a child who is not also a protected party reaches the age of 18 (full age) during the proceedings, or
  - (2) a protected party regains or acquires capacity to conduct the proceedings.
- 4.2** A child on reaching full age must serve on the other parties to the proceedings and file with the court a notice –
- (1) stating that he has reached full age,
  - (2) stating that his litigation friend's appointment has ceased,
  - (3) giving an address for service, and
  - (4) stating whether or not he intends to carry on with or continue to defend the proceedings.
- 4.3** If the notice states that the child intends to carry on with or continue to defend the proceedings he must subsequently be described in the proceedings as 'A.B. (formerly a child but now of full age)'.
- 4.4** Whether or not a child having reached full age serves a notice in accordance with rule 21.9(4) and paragraph 4.2 above, a litigation friend may, at any time after the child has reached full age, serve a notice on the other parties that his appointment has ceased.
- 4.5** Where a protected party regains or acquires capacity to conduct the proceedings, an application under rule 21.9(3) must be made for an order under rule 21.9(2) that the litigation friend's appointment has ceased.
- 4.6** The application must be supported by the following evidence –
- (1) a medical report or other suitably qualified expert's report indicating that the protected party has regained or acquired capacity to conduct the proceedings,
  - (2) a copy of any relevant order or declaration of the Court of Protection, and

- (3) if the application is made by the protected party, a statement whether or not he intends to carry on with or continue to defend the proceedings.
- 4.7** An order under rule 21.9(2) must be served on the other parties to the proceedings. The former protected party must file with the court a notice –
- (1) stating that his litigation friend's appointment has ceased,
  - (2) giving an address for service, and
  - (3) stating whether or not he intends to carry on with or continue to defend the proceedings.

## SETTLEMENT OR COMPROMISE BY OR ON BEHALF OF A CHILD OR PROTECTED PARTY BEFORE THE ISSUE OF PROCEEDINGS

- 5.1** Where a claim by or on behalf of a child or protected party has been dealt with by agreement before the issue of proceedings and only the approval of the court to the agreement is sought, the claim must, in addition to containing the details of the claim and satisfying the requirements of rule 21.10(2), include the following –
- (1) subject to paragraph 5.3, the terms of the settlement or compromise or have attached to it a draft consent order in Practice Form N292;
  - (2) details of whether and to what extent the defendant admits liability;
  - (3) the age and occupation (if any) of the child or protected party;
  - (4) the litigation friend's approval of the proposed settlement or compromise,
  - (5) a copy of any financial advice relating to the proposed settlement; and
  - (6) in a personal injury case arising from an accident –
    - (a) details of the circumstances of the accident,
    - (b) any medical reports,
    - (c) where appropriate, a schedule of any past and future expenses and losses claimed and any other relevant information relating to the personal injury as set out in the practice direction which supplements Part 16 (statements of case), and
    - (d) where considerations of liability are raised –
      - (i) any evidence or reports in any criminal proceedings or in an inquest, and
      - (ii) details of any prosecution brought.
- 5.2**
- (1) An opinion on the merits of the settlement or compromise given by counsel or solicitor acting for the child or protected party must, except in very clear cases, be obtained.
  - (2) A copy of the opinion and, unless the instructions on which it was given are sufficiently set out in it, a copy of the instructions, must be supplied to the court.
- 5.3** Where in any personal injury case a claim for damages for future pecuniary loss is settled, the provisions in paragraphs 5.4 and 5.5 must in addition be complied with.
- 5.4** The court must be satisfied that the parties have considered whether the damages should wholly or partly take the form of periodical payments.
- 5.5** Where the settlement includes provision for periodical payments, the claim must –
- (1) set out the terms of the settlement or compromise; or
  - (2) have attached to it a draft consent order,  
which must satisfy the requirements of rules 41.8 and 41.9 as appropriate.

- 5.6** Applications for the approval of a settlement or compromise will normally be heard by –
- (1)** a Master or a district judge in proceedings involving a child; and
  - (2)** a Master, designated civil judge or his nominee in proceedings involving a protected party.

(For information about provisional damages claims see Part 41 and the practice direction which supplements it.)

## SETTLEMENT OR COMPROMISE BY OR ON BEHALF OF A CHILD OR PROTECTED PARTY AFTER PROCEEDINGS HAVE BEEN ISSUED

- 6.1** Where in any personal injury case a claim for damages for future pecuniary loss, by or on behalf of a child or protected party, is dealt with by agreement after proceedings have been issued, an application must be made for the court's approval of the agreement.
- 6.2** The court must be satisfied that the parties have considered whether the damages should wholly or partly take the form of periodical payments.
- 6.3** Where the settlement includes provision for periodical payments, an application under paragraph 6.1 must –
- (1)** set out the terms of the settlement or compromise; or
  - (2)** have attached to it a draft consent order,
- which must satisfy the requirements of rules 41.8 and 41.9 as appropriate.
- 6.4** The court must be supplied with –
- (1)** an opinion on the merits of the settlement or compromise given by counsel or solicitor acting for the child or protected party, except in very clear cases; and
  - (2)** a copy of any financial advice.
- 6.5** Applications for the approval of a settlement or compromise, except at the trial, will normally be heard by –
- (1)** a Master or a district judge in proceedings involving a child; and
  - (2)** a Master, designated civil judge or his nominee in proceedings involving a protected party.

## APPORTIONMENT UNDER THE FATAL ACCIDENTS ACT 1976

- 7.1** A judgment on or settlement in respect of a claim under the Fatal Accidents Act 1976 must be apportioned between the persons by or on whose behalf the claim has been brought.
- 7.2** Where a claim is brought on behalf of a dependent child or children, any settlement (including an agreement on a sum to be apportioned to a dependent child under the Fatal Accidents Act 1976) must be approved by the court.
- 7.3** The money apportioned to any dependent child must be invested on the child's behalf in accordance with rules 21.10 and 21.11 and paragraphs 8 and 9 below.
- 7.4** In order to approve an apportionment of money to a dependent child, the court will require the following information:
- (1)** the matters set out in paragraphs 5.1(2) and (3), and
  - (2)** in respect of the deceased –

- (a) where death was caused by an accident, the matters set out in paragraphs 5.1(6)(a), (b) and (c), and
- (b) his future loss of earnings, and
- (3) the extent and nature of the dependency.

## CONTROL OF MONEY RECOVERED BY OR ON BEHALF OF A CHILD OR PROTECTED PARTY

**8.1** When giving directions under rule 21.11, the court –

- (1) may direct the money to be paid into court for investment,
- (2) may direct that certain sums be paid direct to the child or protected beneficiary, his litigation friend or his legal representative for the immediate benefit of the child or protected beneficiary or for expenses incurred on his behalf, and
- (3) may direct that the application in respect of the investment of the money be transferred to a local district registry.

**8.2** The court will consider the general aims to be achieved for the money in court (the fund) by investment and will give directions as to the type of investment.

**8.3** Where a child also lacks capacity to manage and control any money recovered by him or on his behalf in the proceedings, and is likely to remain so on reaching full age, his fund should be administered as a protected beneficiary's fund.

**8.4** Where a child or protected beneficiary is in receipt of publicly funded legal services the fund will be subject to a first charge under section 10 of the Access to Justice Act 1999<sup>1</sup> (statutory charge) and an order for the investment of money on the child's or protected beneficiary's behalf must contain a direction to that effect.

## INVESTMENT ON BEHALF OF A CHILD

**9.1** At the hearing of an application for the approval of a settlement or compromise the litigation friend or his legal representative must provide, in addition to the information required by paragraphs 5 and 6 –

- (1) a CFO form 320 (initial application for investment of damages) for completion by the judge hearing the application; and
- (2) any evidence or information which the litigation friend wishes the court to consider in relation to the investment of the award for damages.

**9.2** Following the hearing in paragraph 9.1, the court will forward to the Court Funds Office a request for investment decision (form 212) and the Public Trustee's investment managers will make the appropriate investment.

**9.3** Where an award for damages for a child is made at trial, unless paragraph 9.7 applies, the trial judge will –

- (1) direct the money to be paid into court and placed into the special investment account until further investment directions have been given by the court;
- (2) direct the litigation friend to make an application to a Master or district judge for further investment directions; and

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<sup>1</sup> 1999 c.22.

- (3) give such other directions as the trial judge thinks fit, including a direction that the hearing of the application for further investment directions will be fixed for a date within 28 days from the date of the trial.
- 9.4** The application under paragraph 9.3(2) must be made by filing with the court –
- (1) a completed CFO form 320; and
  - (2) any evidence or information which the litigation friend wishes the court to consider in relation to the investment of the award for damages.
- 9.5** The application must be sent in proceedings in the Royal Courts of Justice to the Masters' Support Unit (Room E16) at the Royal Courts of Justice.
- 9.6** If the application required by paragraph 9.3(2) is not made to the court, the money paid into court in accordance with paragraph 9.3(1) will remain in the special investment account subject to any further order of the court or paragraph 9.8.
- 9.7** If the money to be invested is very small the court may order it to be paid direct to the litigation friend to be put into a building society account (or similar) for the child's use.
- 9.8** If the money is invested in court, it must be paid out to the child on application when he reaches full age.

## INVESTMENT ON BEHALF OF A PROTECTED BENEFICIARY

- 10.1** The Court of Protection has jurisdiction to make decisions in the best interests of a protected beneficiary. Fees may be charged for the administration of funds and these must be provided for in any settlement.
- 10.2** Where the sum to be administered for the benefit of the protected beneficiary is –
- (1) £ 30,000 or more, unless a person with authority as –
    - (a) the attorney under a registered enduring power of attorney;
    - (b) the donee of a lasting power of attorney; or
    - (c) the deputy appointed by the Court of Protection,to administer or manage the protected beneficiary's financial affairs has been appointed, the order approving the settlement will contain a direction to the litigation friend to apply to the Court of Protection for the appointment of a deputy, after which the fund will be dealt with as directed by the Court of Protection; or
  - (2) under £30,000, it may be retained in court and invested in the same way as the fund of a child.
- 10.3** A form of order transferring the fund to the Court of Protection is set out in practice form N292.
- 10.4** In order for the Court Funds Office to release a fund which is subject to the statutory charge, the litigation friend or his legal representative or the person with authority referred to in paragraph 10.2(1) must provide the appropriate regional office of the Legal Services Commission with an undertaking in respect of a sum to cover their costs, following which the regional office will advise the Court Funds Office in writing of that sum, enabling them to transfer the balance to the Court of Protection on receipt of a CFO form 200 payment schedule authorised by the court.
- 10.5** The CFO form 200 should be completed and presented to the court where the settlement or trial took place for authorisation, subject to paragraphs 10.6 and 10.7.

- 10.6** Where the settlement took place in the Royal Courts of Justice the CFO form 200 must be completed and presented for authorisation –
- (1) on behalf of a child, in the Masters' Support Unit, Room E105, and
  - (2) on behalf of a protected beneficiary, in the Judgment and Orders Section in the Action Department, Room E17.
- 10.7** Where the trial took place in the Royal Courts of Justice, the CFO form 200 is completed and authorised by the court officer.

## EXPENSES INCURRED BY A LITIGATION FRIEND

- 11.1** A litigation friend may make a claim for expenses under rule 21.12(1) –
- (1) where the court has ordered an assessment of costs under rule 48.5(2), at the detailed assessment hearing;
  - (2) where the litigation friend's expenses are not of a type which would be recoverable as costs on an assessment of costs between the parties, to the Master or district judge at the hearing to approve the settlement or compromise under Part 21 (the Master or district judge may adjourn the matter to the costs judge); or
  - (3) where an assessment of costs under Part 48.5(2) is not required, and no approval under Part 21 is necessary, by a Part 23 application supported by a witness statement to a costs judge or district judge as appropriate.
- 11.2** In all circumstances, the litigation friend must support a claim for expenses by filing a witness statement setting out –
- (1) the nature and amount of the expense; and
  - (2) the reason the expense was incurred.

## GUARDIAN'S ACCOUNT

- 12** Paragraph 8 of the practice direction supplementing Part 40 (Judgments and Orders) deals with the approval of the accounts of a guardian of assets of a child.

## PAYMENT OUT OF FUNDS IN COURT

- 13.1** Applications to a Master or district judge
- (1) for payment out of money from the fund for the benefit of the child, or
  - (2) to vary an investment strategy,
- may be dealt with without a hearing unless the court directs otherwise.
- 13.2** When the child reaches full age –
- (1) where his fund in court is a sum of money, it will be paid out to him on application; or
  - (2) where his fund is in the form of investments other than money (for example shares or unit trusts), the investments will on application be
    - (a) sold and the proceeds of sale paid out to him; or
    - (b) transferred into his name.
- 13.3** Where the fund is administered by the Court of Protection, any payment out of money from that fund must be in accordance with any decision or order of the Court of Protection.
- 13.4** If an application is required for the payment out of money from a fund administered by the Court of Protection, that application must be made to the Court of Protection.

(For further information on payments out of court, see the practice direction supplementing Part 37.)