



Acting for a child or patient

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The Court does not allow a child under 18 years of age (“a minor”) to bring Court proceedings in his or her own name. Therefore, the child has to sue through the name of an adult who is referred to as the “Litigation Friend”. The same provisions apply to patients under the Mental Health Act.

It is very important that you understand the responsibilities that are placed upon you if you decide to act as a Litigation Friend and so allow proceedings to be issued in your name on behalf of a child or somebody incapable of bringing proceedings themselves.

If you agree to act as the Litigation Friend in Court proceedings you will have to assume responsibility for the costs of the action. It is very important that you understand the extent of this responsibility. It is likely that the child for whom you are acting is in receipt of Public Funding. However, even if this is the case, you have to realise that if the action is unsuccessful and the Defendant gets an Order for the Claimant to pay the Defendant’s costs, you would be responsible for those costs. You can appreciate that this is an onerous liability. Therefore, it is important that you always consider this when giving instructions on behalf of the child.

The Court will regard you as being “an Officer of the Court” in conducting the child’s litigation. The meaning of this is that you are taking the place of the child in those proceedings and will be able to give instructions to the child’s solicitor. However, you must always be aware of your duty to the child. If you act in such a way, which is not in the child’s interest, it would be open to the Solicitor to apply to the Court to have you removed as the “Litigation Friend”.

The Solicitor acting will be able to advise as to whether there is any conflict between you and the child. If this is the case you will not be able to act as “Litigation Friend”. For instance, a conflict of interest can arise if you were the driver in a road traffic accident and the child was a passenger. If this was the situation you as the driver could not act as Litigation Friend and somebody independent would have to be asked to fulfil this role.

If during the proceedings an offer is made to settle the child’s case, which as “Litigation Friend” you wish to accept on behalf of the child, this will have to be approved by the Court. The Judge will want to look into the details of the case to decide whether the offer in settlement is reasonable in the circumstances.

If a settlement is approved the normal provision will be for there to be a small immediate payment to the child, if the Judge is satisfied that there is a good reason why he should receive this (for example the need to buy certain equipment or reimbursement for such expenses). However, the majority of the settlement money received will be invested in the Court Funds Office and the child will not be able to obtain this money until he/she reaches the age of 18.

If a child requires further money from the amount invested at the Court Fund’s Office prior to reaching the age of 18, it will be the Litigation Friend’s responsibility to write to the Court giving the reasons why a payment is required. The Court will then decide whether such a payment can be made. Sometimes the Court will wish to interview the Litigation Friend to discuss the reasons, and will then make their decision.

If you agree to act as the Litigation Friend you must realise that you cannot be removed or substituted from that role without making an Application to the Court and the Court making an Order.

To conclude, it is very important that you understand the responsibilities placed upon you, to agree to act as a Litigation Friend. The solicitor acting can explain this further to you to ensure you fully understand the implications.

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