
STATUTORY INSTRUMENTS

2005 No. 2795

The Family Procedure (Adoption) Rules 2005

PART 7

**LITIGATION FRIEND, CHILDREN'S GUARDIAN, REPORTING
OFFICER AND CHILDREN AND FAMILY REPORTER**

SECTION 1

LITIGATION FRIEND

Application of this Section

49.—(1) This Section—

- (a) contains special provisions which apply in proceedings involving non-subject children and patients; and
- (b) sets out how a person becomes a litigation friend.

(2) The provisions of this Section also apply to a child who does not have a children's guardian, in which case, any reference to a "non-subject child" in these Rules is to be taken as including a child.

Requirement for litigation friend in proceedings

50.—(1) Subject to rule 51, a non-subject child must have a litigation friend to conduct proceedings on his behalf.

(2) A patient must have a litigation friend to conduct proceedings on his behalf.

Circumstances in which the non-subject child does not need a litigation friend

51.—(1) A non-subject child may conduct proceedings without a litigation friend—

- (a) where he has obtained the court's permission to do so; or
- (b) where a solicitor—
 - (i) considers that the non-subject child is able, having regard to his understanding, to give instructions in relation to the proceedings; and
 - (ii) has accepted instructions from that child to act for him in the proceedings and, if the proceedings have begun, he is already acting.

(2) An application for permission under paragraph (1)(a) may be made by the non-subject child without notice.

(3) Where a non-subject child has a litigation friend in proceedings and he wishes to conduct the remaining stages of the proceedings without a litigation friend, the non-subject child may apply to the court, on notice to the litigation friend, for permission for that purpose and for the removal of the litigation friend.

- (4) Where the court is considering whether to—
 - (a) grant permission under paragraph (1)(a); or
 - (b) grant permission under paragraph (3) and remove a litigation friend

it will grant the permission sought and, as the case may be, remove the litigation friend if it considers that the non-subject child concerned has sufficient understanding to conduct the proceedings concerned or proposed without a litigation friend.

(5) In exercising its powers under paragraph (4) the court may require the litigation friend to take such part in the proceedings as the court directs.

(6) The court may revoke any permission granted under paragraph (1)(a) where it considers that the non-subject child does not have sufficient understanding to participate as a party in the proceedings concerned without a litigation friend.

(7) Where a solicitor is acting for a non-subject child in proceedings without a litigation friend by virtue of paragraph (1)(b) and either of the conditions specified in paragraph (1)(b)(i) or (ii) cease to be fulfilled, he must inform the court immediately.

- (8) Where—
 - (a) the court revokes any permission under paragraph (6); or
 - (b) either of the conditions specified in paragraph (1)(b)(i) or (ii) is no longer fulfilled

the court may, if it considers it necessary in order to protect the interests of the non-subject child concerned, appoint a person to be that child's litigation friend.

Stage of proceedings at which a litigation friend becomes necessary

52.—(1) This rule does not apply where a non-subject child is conducting proceedings without a litigation friend in accordance with rule 51.

- (2) A person may not without the permission of the court take any step in proceedings except—
 - (a) filing an application form; or
 - (b) applying for the appointment of a litigation friend under rule 55

until the non-subject child or patient has a litigation friend.

(3) If a party becomes a patient during proceedings, no party may take any step in proceedings without the permission of the court until the patient has a litigation friend.

Who may be a litigation friend for a patient without a court order

53.—(1) This rule does not apply if the court has appointed a person to be a litigation friend.

(2) A person authorised under Part VII of the Mental Health Act 1983 to conduct legal proceedings in the name of a patient or on his behalf is entitled to be the litigation friend of the patient in any proceedings to which his authority extends.

(3) If nobody has been appointed by the court or, in the case of a patient, authorised under Part VII of the Mental Health Act 1983, a person may act as a litigation friend if he—

- (a) can fairly and competently conduct proceedings on behalf of the non-subject child or patient;
- (b) has no interest adverse to that of the non-subject child or patient; and
- (c) subject to paragraph (4), undertakes to pay any costs which the non-subject child or patient 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 non-subject child or patient.

(4) Paragraph (3)(c) does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

How a person becomes a litigation friend without a court order

54.—(1) If the court has not appointed a litigation friend, a person who wishes to act as a litigation friend must follow the procedure set out in this rule.

(2) A person authorised under Part VII of the Mental Health Act 1983 must file an official copy⁽¹⁾ of the order or other document which constitutes his authorisation to act.

(3) Any other person must file a certificate of suitability stating that he satisfies the conditions specified in rule 53(3).

(4) A person who is to act as a litigation friend must file—

- (a) the authorisation; or
- (b) the certificate of suitability

at the time when he first takes a step in the proceedings on behalf of the non-subject child or patient.

(5) A court officer will send the certificate of suitability to every person on whom, in accordance with rule 37(1) (service on parent, guardian etc.), the application form should be served.

(6) This rule does not apply to the Official Solicitor, an officer of the Service or a Welsh family proceedings officer.

How a person becomes a litigation friend by court order

55.—(1) The court may make an order appointing—

- (a) the Official Solicitor;
- (b) in the case of a non-subject child, an officer of the Service or a Welsh family proceedings officer (if he consents); or
- (c) some other person (if he consents)

as a litigation friend.

(2) An order appointing a litigation friend may be made by the court of its own initiative or on the application of—

- (a) a person who wishes to be a litigation friend; or
- (b) a party to the proceedings.

(3) The court may at any time direct that a party make an application for an order under paragraph (2).

(4) An application for an order appointing a litigation friend must be supported by evidence.

(5) Unless the court directs otherwise, a person appointed under this rule to be a litigation friend for a non-subject child or patient will be treated as a party for the purpose of any provision in these Rules requiring a document to be served on, or sent to, or notice to be given to, a party to the proceedings.

(6) Subject to rule 53(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 53(3).

Court's power to change litigation friend and to prevent person acting as litigation friend

56.—(1) The court may—

(1) An official copy is a copy of an official document supplied and marked as such by the office that issued the original.

- (a) direct that a person may not act as a litigation friend;
 - (b) terminate a litigation friend's appointment; or
 - (c) appoint a new litigation friend in substitution for an existing one.
- (2) An application for an order under paragraph (1) must be supported by evidence.
- (3) Subject to rule 53(4), the court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 53(3).

Appointment of litigation friend by court order – supplementary

57.—(1) A copy of the application for an order under rule 55 or 56 must be sent by a court officer to every person on whom, in accordance with rule 37(1) (service on parent, guardian etc.), the application form should be served.

(2) Where an application for an order under rule 55 is in respect of a patient, the court officer must also send a copy of the application to the patient unless the court directs otherwise.

(3) A copy of an application for an order under rule 56 must also be sent to—

- (a) the person who is the litigation friend, or who is purporting to act as the litigation friend, when the application is made; and
- (b) the person who it is proposed should be the litigation friend, if he is not the applicant.

Procedure where appointment of litigation friend comes to an end

58.—(1) When a non-subject child who is not a patient reaches the age of 18, a litigation friend's appointment comes to an end.

(2) When a party ceases to be a patient, the litigation friend's appointment continues until it is brought to an end by a court order.

(3) An application for an order under paragraph (2) may be made by—

- (a) the former patient;
- (b) the litigation friend; or
- (c) a party.

(4) A court officer will send a notice to the other parties stating that the appointment of the non-subject child or patient's litigation friend to act has ended.

SECTION 2

CHILDREN'S GUARDIAN

Appointment of children's guardian

59.—(1) In proceedings to which Part 5 applies, the court will appoint a children's guardian where the child is a party to the proceedings unless it is satisfied that it is not necessary to do so to safeguard the interests of the child.

(2) At any stage in proceedings where the child is a party to the proceedings—

- (a) a party may apply, without notice to the other parties unless the court directs otherwise, for the appointment of a children's guardian; or
- (b) the court may of its own initiative appoint a children's guardian.

(3) The court will grant an application under paragraph (2)(a) unless it considers that such an appointment is not necessary to safeguard the interests of the child.

(4) When appointing a children’s guardian the court will consider the appointment of anyone who has previously acted as a children’s guardian of the same child.

What the court or a court officer will do once the court has made a decision about appointing a children’s guardian

60.—(1) Where the court refuses an application under rule 59(2)(a) it will give reasons for the refusal and the court or a court officer will—

- (a) record the refusal and the reasons for it; and
- (b) as soon as practicable, notify the parties and either the Service or the Assembly of a decision not to appoint a children’s guardian.

(2) Where the court appoints a children’s guardian under rule 59 a court officer will record the appointment and, as soon as practicable, will—

- (a) inform the parties and either the Service or the Assembly; and
- (b) unless it has already been sent, send the children’s guardian a copy of the application and copies of any document filed with the court in the proceedings.

(3) A court officer also has a continuing duty to send the children’s guardian a copy of any other document filed with the court during the course of the proceedings.

Termination of the appointment of the children’s guardian

61.—(1) The appointment of a children’s guardian under rule 59 continues for such time as is specified in the appointment or until terminated by the court.

(2) When terminating an appointment in accordance with paragraph (1), the court will give reasons for doing so, a note of which will be taken by the court or a court officer.

Powers and duties of the children’s guardian

62.—(1) The children’s guardian is to act on behalf of the child upon the hearing of any application in proceedings to which Part 5 applies with the duty of safeguarding the interests of the child.

(2) The children’s guardian must also provide the court with such other assistance as it may require.

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

63.—(1) The children’s guardian must make such investigations as are necessary for him to carry out his duties and must, in particular—

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

(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 his understanding; and
- (c) where appropriate instruct the solicitor representing the child on all matters relevant to the interests of the child, including possibilities for appeal, arising in the course of proceedings.

(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⁽²⁾ or section 37(1) of the Children Act 2004⁽³⁾ (right of officer of the Service or Welsh family proceedings officer to conduct litigation or exercise a right of audience), paragraph (2)(a) will not apply if he 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 he is of sufficient understanding to do so.

Where the child instructs a solicitor or conducts proceedings on his own behalf

64.—(1) Where it appears to the children’s guardian that the child—

- (a) is instructing his solicitor direct; or
- (b) intends to conduct and is capable of conducting the proceedings on his own behalf

he must inform the court of that fact.

(2) Where paragraph (1) applies, the children’s guardian—

- (a) must perform the duties set out in rules 62, 63, 65 to 67 and this rule, other than those duties in rule 63(2)(a) and (c), and such other duties as the court may direct;
- (b) must take such part in the proceedings as the court may direct; and
- (c) may, with the permission of the court, have legal representation in the conduct of those duties.

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

65.—(1) The children’s guardian or the solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must attend all directions hearings unless the court directs otherwise.

(2) 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 his 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 his advice or on which he considers that the court should be informed.

(3) The advice given under paragraph (2) may, subject to any direction of the court, be given orally or in writing.

(4) 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

(2) 2000 c. 43.

(3) 2004 c. 31.

- (b) where practicable, notify any person the joining of whom as a party to those proceedings would be likely, in his opinion, to safeguard the interests of the child, of the court's power to join that person as a party under rule 23 and must inform the court—
 - (i) of any notification;
 - (ii) of anyone whom he attempted to notify under this paragraph but was unable to contact; and
 - (iii) of anyone whom he believes may wish to be joined to the proceedings.
- (5) Any report to the court under this rule will be confidential.
(Part 9 sets out the procedure for making an application to be joined as a party in proceedings.)

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

- 66.**—(1) The children's guardian must—
- (a) serve documents on behalf of the child in accordance with rule 37(2)(b); and
 - (b) accept service of documents on behalf of the child in accordance with the table in rule 37(1),

and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.

- (2) 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 (right to have access to adoption agency records)

he must bring all records and documents which may, in his opinion, 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 his duties – communication of a court's decision to the child

67. The children's guardian must ensure that, in relation to a decision made by the court in the proceedings—

- (a) if he 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 his age and understanding.

Solicitor for child

68.—(1) A solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must represent the child—

- (a) in accordance with instructions received from the children's guardian unless the solicitor considers, having taken into account the views of the children's guardian and any direction of the court under rule 64(2)—
 - (i) that the child wishes to give instructions which conflict with those of the children's guardian; and

- (ii) that he is able, having regard to his understanding, to give such instructions on his own behalf,
in which case the solicitor must conduct the proceedings in accordance with instructions received from the child;
 - (b) where no children’s guardian has been appointed and the condition in section 41(4)(b) of the 1989 Act is satisfied, in accordance with instructions received from the child; or
 - (c) in default of instructions under sub-paragraph (a) or (b), in furtherance of the best interests of the child.
- (2) A solicitor appointed under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) must—
- (a) serve documents on behalf of the child in accordance with rule 37(2)(a); and
 - (b) accept service of documents on behalf of the child in accordance with the table in rule 37(1),
- and, where the child has not himself been served and has sufficient understanding, advise the child of the contents of any document so served.
- (3) Where the child wishes an appointment of a solicitor under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) to be terminated—
- (a) he may apply to the court for an order terminating the appointment; and
 - (b) the solicitor and the children’s guardian will be given an opportunity to make representations.
- (4) Where the children’s guardian wishes an appointment of a solicitor under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) to be terminated—
- (a) he may apply to the court for an order terminating the appointment; and
 - (b) the solicitor and, if he is of sufficient understanding, the child, will be given an opportunity to make representations.
- (5) When terminating an appointment in accordance with paragraph (3) or (4), the court will give its reasons for so doing, a note of which will be taken by the court or a court officer.
- (6) The court or a court officer will record the appointment under section 41(3) of the 1989 Act or in accordance with rule 63(2)(a) or the refusal to make the appointment.

SECTION 3

REPORTING OFFICER

When the court appoints a reporting officer

- 69.** In proceedings to which Part 5 applies, the court will appoint a reporting officer where—
- (a) it appears that a parent or guardian of the child is willing to consent to the placing of the child for adoption, to the making of an adoption order or to a section 84 order; and
 - (b) that parent or guardian is in England or Wales.

Appointment of the same reporting officer in respect of two or more parents or guardians

- 70.** The same person may be appointed as the reporting officer for two or more parents or guardians of the child.

The duties of the reporting officer

71. The reporting officer must witness the signature by a parent or guardian on the document in which consent is given to—

- (a) the placing of the child for adoption;
- (b) the making of an adoption order; or
- (c) the making of a section 84 order.

How the reporting officer exercises his duties

72.—(1) The reporting officer must—

- (a) ensure so far as reasonably practicable that the parent or guardian is—
 - (i) giving consent unconditionally; and
 - (ii) with full understanding of what is involved;
- (b) investigate all the circumstances relevant to a parent's or guardian's consent to the placing of the child for adoption or to the making of an adoption order or a section 84 order; and
- (c) on completing his 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 his opinion, 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.

(2) On receipt of an interim report under paragraph (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.

(3) The reporting officer may at any time before the final hearing make an interim report to the court if he considers necessary and ask the court for directions.

(4) The reporting officer must attend all directions hearings unless the court directs otherwise.

(5) Any report to the court under this rule will be confidential.

SECTION 4

CHILDREN AND FAMILY REPORTER

Request by court for a welfare report in respect of the child

73.—(1) In proceedings to which Part 5 applies, where the court is considering an application for an order in proceedings the court may ask a children and family reporter to prepare a report on matters relating to the welfare of the child.

(2) It is the duty of a children and family reporter to—

- (a) comply with any request for a report under this rule; and
- (b) provide the court with such other assistance as it may require.

(3) Any report to the court under this rule will be confidential.

How the children and family reporter exercises his powers and duties

74.—(1) The children and family reporter must make such investigations as may be necessary for him to perform his powers and duties and must, in particular—

- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs; and
 - (b) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.
- (2) The children and family reporter must—
- (a) notify the child of such contents of his report (if any) as he considers appropriate to the age and understanding of the child, including any reference to the child's own views on the application and his recommendation; and
 - (b) if he does notify the child of any contents of his report, explain them to the child in a manner appropriate to his age and understanding.
- (3) The children and family reporter must—
- (a) attend all directions hearings unless the court directs otherwise;
 - (b) advise the court of the child's wishes and feelings;
 - (c) advise the court if he 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 his opinion together with the reasons for that opinion; and
 - (e) where the court has directed that a written report be made, file the report in accordance with the timetable set by the court.

SECTION 5

WHO CAN ACT AS CHILDREN'S GUARDIAN, REPORTING OFFICER AND CHILDREN AND FAMILY REPORTER

Persons who may not be appointed as children's guardian, reporting officer or children and family reporter

75.—(1) In adoption proceedings or proceedings for a section 84 order or a section 89 order, a person may not be appointed as a children's guardian, reporting officer or children and family reporter if he—

- (a) is a member, officer or servant of a local authority which is a party to the proceedings;
 - (b) is, or has been, a member, officer or servant of a local authority or voluntary organisation who has been directly concerned in that capacity in arrangements relating to the care, accommodation or welfare of the child during the five years prior to the commencement of the proceedings; or
 - (c) is a serving probation officer who has, in that capacity, been previously concerned with the child or his family.
- (2) In placement proceedings, a person described in paragraph (1)(b) or (c) may not be appointed as a children's guardian, reporting officer or children and family reporter.

Appointment of the same person as children’s guardian, reporting officer and children and family reporter

76. The same person may be appointed to act as one or more of the following—
- (a) the children’s guardian;
 - (b) the reporting officer; and
 - (c) the children and family reporter.