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STATUTORY INSTRUMENTS

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**1991 No. 1247**

**The Family Proceedings Rules 1991**

**PART IV**

**PROCEEDINGS UNDER THE CHILDREN ACT 1989**

**Powers and duties of guardian ad litem**

**4.11.**—(1) In carrying out his duty under section 41(2), the guardian ad litem shall have regard to the principle set out in section 1(2) and the matters set out in section 1(3)(a) to (f) as if for the word “court” in that section there were substituted the words “guardian ad litem”.

(2) The guardian ad litem shall—

- (a) appoint a solicitor to represent the child unless such a solicitor has already been appointed, and
- (b) give such advice to the child as is appropriate having regard to his understanding and, subject to rule 4.12(1)(a), 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 the proceedings.

(3) Where it appears to the guardian ad litem that the child—

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

he shall so inform the court and thereafter—

- (i) shall perform all of his duties set out in this rule, other than duties under paragraph (2)(a) and such other duties as the court may direct,
- (ii) shall take such part in the proceedings as the court may direct, and
- (iii) may, with leave of the court, have legal representation in his conduct of those duties.

(4) The guardian ad litem shall, unless excused by the court, attend all directions appointments in and hearings of the proceedings and shall 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 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;
- (f) any other matter concerning which the court seeks his advice or concerning which he considers that the court should be informed.

(5) The advice given under paragraph (4) may, subject to any order of the court, be given orally or in writing; and if the advice be given orally, a note of it shall be taken by the court or the proper officer.

(6) The guardian ad litem shall, where practicable, notify any person whose joinder as a party to those proceedings would be likely, in the guardian ad litem's opinion, to safeguard the interests of the child, of that person's right to apply to be joined under rule 4.7(2) and shall inform the court—

- (a) of any such notification given,
- (b) of anyone whom he attempted to notify under this paragraph but was unable to contact, and
- (c) of anyone whom he believes may wish to be joined to the proceedings.

(7) The guardian ad litem shall, unless the court otherwise directs, not less than 7 days before the date fixed for the final hearing of the proceedings, file a written report advising on the interests of the child; and the proper officer shall, as soon as practicable, serve a copy of the report on the parties.

(8) The guardian ad litem shall serve and accept service of documents on behalf of the child in accordance with rule 4.8(3)(b) and (4)(b) and, where the child has not himself been served, and has sufficient understanding, advise the child of the contents of any document so served.

(9) The guardian ad litem shall make such investigations as may be necessary for him to carry out his duties and shall, in particular—

- (a) contact or seek to interview such persons as he thinks appropriate or as the court directs,
- (b) if he inspects records of the kinds referred to in section 42, bring to the attention of the court and such other persons as the court may direct all such records and documents which may, in his opinion, assist in the proper determination of the proceedings, and
- (c) obtain such professional assistance as is available to him which he thinks appropriate or which the court directs him to obtain.

(10) In addition to his duties under other paragraphs of this rule, the guardian ad litem shall provide to the court such other assistance as it may require.

(11) A party may question the guardian ad litem about oral or written advice tendered by him to the court under this rule.