# Protected parties in family proceedings

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## Checklist for the appointment of a litigation friend (including the Official Solicitor)

This checklist should be completed where there is reason to believe that a party or prospective party to proceedings (‘PP’) lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct the proceedings. It should be completed by PP’s legal representative or, if none, any person (including a local authority) able to provide the relevant information.

**Name of party:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |
| --- |
| Describe briefly the reasons for believing that PP lacks capacity to conduct the proceedings: |

## Evidence and finding as to capacity

Has the court made a finding that PP lacks capacity to conduct

the proceedings? Yes [ ]  No [ ]

(If so, give the date and attach a copy of the order*)* Date \_\_\_\_\_\_\_\_\_

Has an assessment of capacity been obtained? Yes [ ]  No [ ]

|  |
| --- |
| If so, give the date of the assessment, the name and occupation/professional qualification of the author and a concise summary of the conclusion. A copy should be attached if available: |

Has PP been informed of the assessment? Yes [ ]  No [ ]

Does PP accept the assessment? Yes [ ]  No [ ]

Has PP been informed of the effect and consequences of the

assessment and of being a protected party? Yes [ ]  No [ ]

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| --- |
| If there is no assessment of capacity, what, if any, evidence was relied on by the court to determine the question of capacity? |

|  |
| --- |
| If an assessment is to be carried out, who is to make the arrangements and when? |

## Litigation friend

Have enquiries been made as to whether any person other

than the Official Solicitor is suitable and willing to act

as litigation friend? Yes [ ]  No [ ]

If so, is there any such person suitable and willing to act? Yes [ ]  No [ ]

|  |
| --- |
| If yes, state name, address and relationship, if any, to PP: |

|  |
| --- |
| If no enquiries have been made, give reasons and state when and how any enquiries are to be made: |

## Funding

Has a legal aid certificate been granted to PP? Yes [ ]  No [ ]

If not, is PP eligible for legal aid?

(a) without assessment of merit or means Yes(a)[ ]  No [ ]

(b) subject to merit and/or means Yes(b)[ ]  No [ ]

|  |
| --- |
| If PP is ineligible for legal aid, how is security for costs to be provided to the Official Solicitor or other litigation friend?(eg PP’s funds, with Court of Protection authority if required, or undertaking by another party): |

## Information for the Official Solicitor (where invited to consent)

Have the following been provided to the Official Solicitor?

A copy of any court order relating to capacity and/or the

appointment of a litigation friend Yes [ ]  No [ ]

A copy of any assessment of capacity Yes [ ]  No [ ]

(including any letter of instruction)

The information set out in this form Yes [ ]  No [ ]

(to be given in writing and including any relevant attendance note)

The **Official Solicitor’s referral form** (also available on [www.gov.uk](http://www.gov.uk)) explains what information / documents must be sent to the Official Solicitor when making a referral.

|  |
| --- |
| If the Official Solicitor consents to act as litigation friend for PP, who is to provide the case papers to the Official Solicitor?  |

|  |
| --- |
| This form has been completed by:Name:Position:Address/Phone/Email:Date: |

## Further information

For further information about the appointment of the Official Solicitor, reference should be made to the Practice Note: The Official Solicitor to the Senior Courts: Appointment in Family Proceedings and Proceedings under the Inherent Jurisdiction in relation to Adults (January 2017).

For the procedure in relation to protected parties, see the Family Procedure Rules 2010, Part 15 and Practice Directions 15A and 15B

## Contacting the Official Solicitor

To discuss any question in relation to the appointment of the Official Solicitor in a particular family case, contact may be made by email at osinformation@ospt.gov.uk.