

## Legal advice and representation for children and adults unable to instruct lawyers themselves

*All solicitors need instructions from their client to be able to act on their behalf, so what happens if you are seeking advice and representation for someone unable to give instructions?*

The law provides that children (defined as anyone under the age of 18) and adults without the mental capacity to conduct legal proceedings<sup>1</sup> must have a **Litigation Friend** to act on their behalf in Court proceedings. In exceptional cases, the Court can allow a child to act without a Litigation Friend, however for adults without the relevant capacity, a Litigation Friend is always required.

A Litigation Friend is usually a family member, but can also be a friend, a professional advocate, someone with a power of attorney etc. The key requirement is to be able to act fairly and competently for the individual.

If there is no one suitable and willing to be a Litigation Friend, the **Official Solicitor** (a public office holder appointed by the Lord Chancellor & funded by the Government) will act as a last resort.

### Being a Litigation Friend

Being a Litigation Friend does **not** make you a party to the legal proceedings and it is not the same as being a formal advocate for an individual.

Being a Litigation Friend means you instruct the solicitor on behalf of the child or adult without the relevant capacity. You stand in their shoes and make decisions based on the legal advice your solicitor gives you. You must act in their best interests and sign a form to confirm that you have no conflicting interest in the legal matter.

You may also have an obligation to ensure any legal costs are paid and the solicitor will discuss this fully with you. This does not mean that you must always pay the legal fees personally on behalf of the person you are assisting and often these costs will be covered by legal aid if the child or adult is eligible. This should not put you off contacting lawyers as you will not be required to pay anything that your solicitor has not fully discussed with you and that you have in advance agreed to pay. Do remember that if you are using the individual's money to pay privately for a Solicitor, you may need to have the Court's authority to do so.

**Litigation Friends are a crucial part of ensuring children and adults without the relevant capacity have their voices heard and can access justice.** Do contact us to discuss whether we can help you to help someone else.

**To discuss your case with us, please telephone or email:**

T: 020 7650 1200

E: [postbox@leighday.co.uk](mailto:postbox@leighday.co.uk)

[www.leighday.co.uk](http://www.leighday.co.uk)

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<sup>1</sup> This means being able to understand and complete paperwork, understand the legal advice provided and make & communicate decisions about pursuing a legal action.