

This Practice Direction is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor and comes into force on xxx 2012

PRACTICE DIRECTION 15B – ADULTS WHO MAY BE PROTECTED PARTIES AND CHILDREN WHO MAY BECOME PROTECTED PARTIES IN FAMILY PROCEEDINGS

This Practice Direction supplements FPR Part 15

What the court will do where an adult may be a protected party

1.1 The court will investigate as soon as possible any issue as to whether an adult party or intended party to family proceedings lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct the proceedings. An adult who lacks capacity to act as a party to the proceedings is a protected party and must have a litigation friend to conduct the proceedings on their behalf. The expectation of the Official Solicitor is that the Official Solicitor will only be invited to act for the protected party as litigation friend if there is no other person suitable or willing to act.

1.2 Any issue as to the capacity of an adult to conduct the proceedings must be determined before the court gives any directions relevant to that adult's role in the proceedings.

1.3 If at any time during the proceedings there is reason to believe that a party may lack capacity to conduct the proceedings, then the court must be notified and directions sought to ensure that this issue is investigated without delay.

(paragraphs 2.6, 2.7 and 2.9 of PD25A)

Instruction of an expert where an adult is a protected party

2.1 Where the adult is a protected party, that party's representative shall be involved in any instruction of an expert, including the instruction of an expert to assess whether the adult, although a protected party, is competent to give evidence. The instruction of an expert is a significant step in the proceedings. The representative will wish to consider (and ask the expert to consider), if the protected party is competent to give evidence, their best interests in this regard. The representative may wish to seek advice about "special measures". The representative may put forward an argument on behalf of the protected party that the protected party should not give evidence.

(paragraph 2.8 of PD25A)

2.2 The definition of "expert" in FPR 25.2(b) applies to paragraph 2.1 and the explanation of an expert team in Practice Direction 25B also applies.

(part paragraph 1.3 of PD25A)

Child likely to lack capacity to conduct the proceedings when he or she reaches 18

2.3 Where it appears that a child is—

- (a) a party to the proceedings and not the subject of them;
 - (b) nearing age 18; and
 - (c) considered likely to lack capacity to conduct the proceedings when 18,
- the court will consider giving directions for the child's capacity in this respect to be investigated.

(paragraph 2.10 of PD25A)

The Right Honourable
Sir Nicholas Wall
The President of the Family Division

Signed by authority of the Lord Chancellor:

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Parliamentary Under Secretary of State
Ministry of Justice

