

APPENDIX 3

Practice Note (The Official Solicitor: Appointment in Family Proceedings)

[April 2001]

Practice directions and notes – Official Solicitor – Appointment as guardian ad litem – Appointment as next friend – Terms of appointment

1. This Practice Note supersedes the Practice Note dated 4 December 1998 issued by the Official Solicitor in relation to his appointment in family proceedings. It is issued in conjunction with a Practice Note dealing with the appointment of officers of CAFCASS Legal Services and Special Casework in family proceedings. This Practice Note is intended to be helpful guidance, but always subject to Practice Directions, decisions of the court and other legal guidance.
2. The Children and Family Court Advisory and Support Service (CAF-CASS) has responsibilities in relation to children in family proceedings in which their welfare is or may be in question (Criminal Justice and Court Services Act 2000, section 12). From 1 April 2001 the Official Solicitor will no longer represent children who are the subject of family proceedings (other than in very exceptional circumstances and after liaison with CAFCASS).
3. This Practice Note summarises the continuing role of the Official Solicitor in family proceedings. Since there are no provisions for parties under disability in the Family Proceedings Courts (Children Act 1989) Rules 1991, the Official Solicitor can only act in the High Court or in a county court, pursuant to Part IX of Family Proceedings Rules 1991. The Official Solicitor will shortly issue an updated Practice Note about his role for adults under disability who are the subject of declaratory proceedings in relation to their medical treatment or welfare.

Adults under disability

4. The Official Solicitor will, in the absence of any other willing and suitable person, act as next friend or guardian ad litem of an adult party under disability, a 'patient'. 'Patient' means someone who is incapable by reason of mental disorder of managing and administering his property and affairs (Family Proceedings Rules 1991, rule 9.1). Medical evidence will usually be

required before the Official Solicitor can consent to act and his staff can provide a standard form of medical certificate. Where there are practical difficulties in obtaining such medical evidence, the Official Solicitor should be consulted.

Non-subject children

5. Again in the absence of any other willing and suitable person, the Official Solicitor will act as next friend or guardian ad litem of a child party whose own welfare is not the subject of family proceedings (Family Proceedings Rules 1991, rule 2.57, rule 9.2 and rule 9.5). The most common examples will be:
 - (a) a child who is also the parent of a child, and who is a respondent to a Children Act or Adoption Act application. If a child respondent is already represented by a CAFCASS officer in pending proceedings of which he or she is the subject, then the Official Solicitor will liaise with CAFCASS to agree the most appropriate arrangements;
 - (b) a child who wishes to make an application for a Children Act order naming another child (typically a contact order naming a sibling). The Official Solicitor will need to satisfy himself that the proposed proceedings would benefit the child applicant before proceeding;
 - (c) a child witness to some disputed factual issue in a children case and who may require intervener status. In such circumstances the need for party status and legal representation should be weighed in the light of *Re H (Care Proceedings: Intervener)* [2000] 1 FLR 775;
 - (d) a child party to a petition for a declaration of status under Part III of the Family Law Act 1986;
 - (e) a child intervener in divorce or ancillary relief proceedings (rule 2.57 or rule 9.5);
 - (f) a child applicant for, or respondent to, an application for an order under Part IV of the Family Law Act 1996. In the case of a child applicant, the Official Solicitor will need to satisfy himself that the proposed proceedings would benefit the child before pursuing them, with leave under Family Law Act 1996, section 43 if required.
6. Any children who are parties to Children Act or inherent jurisdiction proceedings may rely on the provisions of Family Proceedings Rules 1991 rule 9.2A if they wish to instruct a solicitor without the intervention of a next friend or guardian ad litem. Rule 9.2A does not apply to Adoption Act 1976, Family Law Act 1996 or Matrimonial Causes Act 1973 proceedings.

Older children who are also patients

7. Officers of CAFCASS will not be able to represent anyone who is over the age of 18. The Official Solicitor may therefore be the more appropriate next friend or guardian ad litem of a child who is also a patient and whose disability will persist beyond his or her 18th birthday, especially in non-emergency cases where the substantive hearing is unlikely to take place before the child's 18th birthday. The Official Solicitor may also be the more appropriate next friend or guardian ad litem in medical treatment cases

such as sterilisation or vegetative state cases, in which his staff have particular expertise deriving from their continuing role for adult patients.

Advising the court

8. The Official Solicitor may be invited to act or instruct counsel as a friend of the court (*amicus*) if it appears to the court that such an invitation is more appropriately addressed to him rather than (or in addition to) CAF/CASS Legal Services and Special Casework.

Liaison with CAF/CASS

9. In cases of doubt or difficulty, staff of the Official Solicitor's office will liaise with staff of CAF/CASS Legal Services and Special Casework to avoid duplication and ensure the most suitable arrangements are made.

Invitations to act in new cases

10. Solicitors who have been consulted by a child or an adult under disability (or by someone acting on their behalf, or concerned about their interests) should write to the Official Solicitor setting out the background to the proposed case and explaining why there is no other willing and suitable person to act as next friend or guardian *ad litem*. Where the person concerned is an adult, medical evidence in the standard form of the Official Solicitor's medical certificate should be provided.

Invitations to act in pending proceedings

11. Where a case is already before the court, an order appointing the Official Solicitor should be expressed as being made subject to his consent. The Official Solicitor aims to provide a response to any invitation within 10 working days. He will be unable to consent to act for an adult until satisfied that the party is a 'patient'. A further directions appointment after 28 days may therefore be helpful. If he accepts appointment the Official Solicitor will need time to prepare the case on behalf of the child or patient and may wish to make submissions about any substantive hearing date. The following documents should be forwarded to the Official Solicitor without delay:
 - (a) a copy of the order inviting him to act (with a note of the reasons approved by the judge if appropriate);
 - (b) the court file;
 - (c) if available, a bundle with summary, statement of issues and chronology (as required by President's Direction of 10 March 2000).

Contacting the Official Solicitor

12. It is often helpful to discuss the question of appointment with the Official Solicitor or one of his staff by telephoning 020 7911 7127. Inquiries about family proceedings should be addressed to the Team Manager, Family Litigation.

The Official Solicitor's address is:

81 Chancery Lane,
London WC2A 1DD.
DX 0012 London Chancery Lane
Tel: 020 7911 7127
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2 April 2001

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