

# Brethertons BIG FAQs Series

## Litigation Friends

A Litigation Friend is the Court's term for someone who acts on behalf of another person in Court proceedings, where they are not able to act on their own behalf for some reason.

### Who may need a Litigation Friend?

Someone may need a Litigation Friend if for some reason they need to start (or defend) court proceedings and they are not legally able to represent themselves. There are two main reasons why a Litigation Friend may be needed, and that is if either the Claimant in Court proceedings is a child, which for these purposes is under the age of 18, or if they are an adult who for some reason does not have mental capacity to act on their own behalf. This may apply for example to someone who has suffered a brain injury in an accident, someone who has an underlying learning disability, or someone who has a significant mental health problem which means they cannot understand and retain sufficient information to allow them to conduct the Court proceedings themselves.

### What is a Litigation Friend?

A Litigation Friend is the person who is appointed by the Court to act as the formal representative of the Claimant (or Defendant) in a Court case.

### Why is it necessary to have a Litigation Friend?

It is necessary to have a Litigation Friend to make sure that someone who is unable to act on their own behalf in bringing Court proceedings can take a case to Court, and to ensure that their best interests are represented.

### Where can I read more?

You can find more information about Litigation Friends and how it works at the Government website Litigation friends - GOV.UK ([www.gov.uk](http://www.gov.uk)) or for more details about the Court process on the Ministry of Justice website PRACTICE DIRECTION 15A - PROTECTED PARTIES ([justice.gov.uk](http://justice.gov.uk))

### When are the duties of a Litigation Friend discharged?

It is the Litigation Friend's responsibility to make sure that the Court proceedings are 'directed' on behalf of the Claimant. They must make decisions in the best interests of the Claimant, keep them up to date about what is happening in the case, and make sure that they talk to the Claimant about what they would like to happen, and how they feel about the case. Litigation Friends must also communicate with the solicitors who are acting, take advice from the solicitors and give instructions to them to progress the case in the best interests of the Claimant. The Litigation Friend must pay any costs of the case as if they were the Claimant themselves if ordered by the Court to do so. This is rarely an issue as the case will normally be dealt with on a 'no win no fee' basis with an insurance policy in place, but the risks would be explained in more detail to any potential litigation friend before they were appointed.

## How is a Litigation Friend appointed?

A Litigation Friend is appointed by the Court. They can be a parent or guardian or another relative or family friend. On occasion they may be a solicitor or other professional. It is important that the proposed Litigation Friend is someone who's interests do not conflict with the child or protected party. For example, if a child was injured when they were a passenger in a road traffic collision when their father was driving the car, it would be inappropriate for the father to be appointed as the litigation friend. To appoint a Litigation Friend a Certificate of Suitability will have to be completed and filed with the Court.

If the Litigation Friend is acting for an adult, the Certificate must explain why the adult needs to be represented. If there isn't anyone available to act as a Litigation Friend, then the solicitors acting for the Claimant can ask the Court to appoint someone to be the Litigation Friend. You would normally stop being the Litigation Friend at the end of the case, or if acting for a child, when that child turns 18. It is also possible to be replaced during a case if the Litigation Friend cannot continue for some reason, or if the Court is not satisfied that the Litigation Friend is acting in the best interests of the Claimant.

If you would like any more information or have any questions, please contact:

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