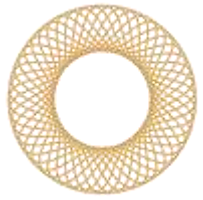


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APPROVAL OF COMPROMISES ON BEHALF OF CHILDREN AND PROTECTED PARTIES

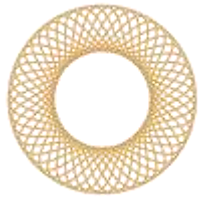
Sarah Crowther KC 3 May 2023



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Compromise: the legal framework

- Public policy requires finality and end to disputes
- General law of contract applies to agreements to compromise
- Contracts made by children or persons lacking capacity are voidable at their instance.
- **Mental Capacity Act 2005 and CPR 21**

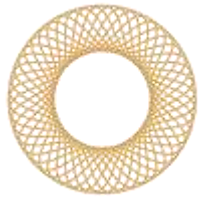


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Effect of CPR 21

- CPR 21.10
- No settlement, payment or acceptance of money in court is valid without court approval
- CPR 21.3(4)
- Any step taken in litigation requires a Litigation Friend otherwise it is without effect



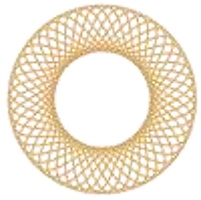


Who lacks capacity?

- Ss 1-3 Mental Capacity Act 2005
- Masterman-Lister v Jewell [2002] EWCA Civ 1889
- MacDonald J in *TB v KB and LH* [2019] EWCOP 14

- *Time specific*

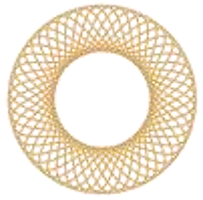
- *Issue specific*
 - *Capacity to Litigate : Re P* [2021] EWCOP 27, *Bailey v Warren* [2006] EWCA Civ 51



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CPR Part 21

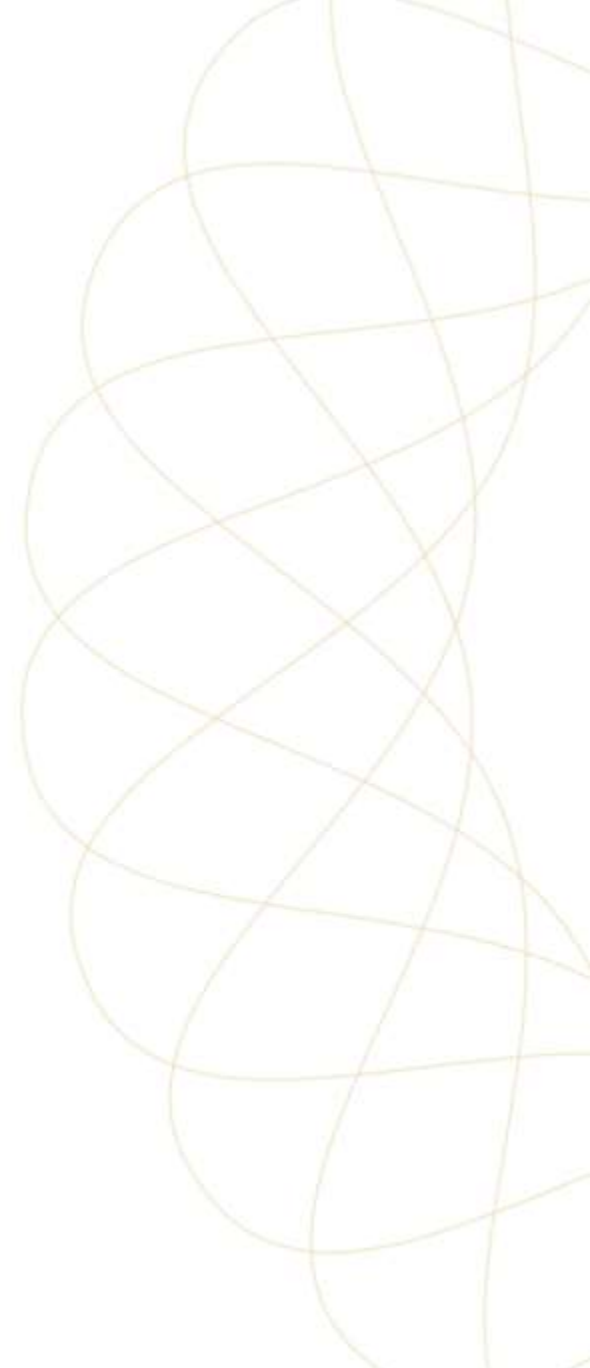
- Protected party must always have an LF; a child generally requires one
- The Deputy can be the LF
- Rules for appointment, termination of appointment and change of LF: 21.4 to 21.7
- Note the procedural provisions 21.8
- Ending the appointment when child attains majority 21.9

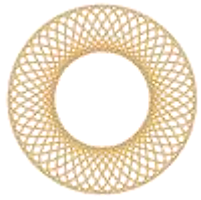


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Approval hearings

- When to think about the need for approval
- What to put in the advice
- What to put in the open bundle
- What to put in the confidential bundle

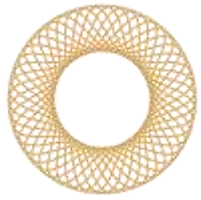




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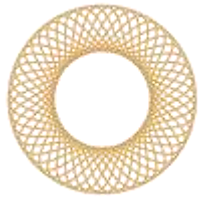
The Terms of the Order

- Form N292
- Consent order gives permission to the claimant to accept the terms of the settlement
- Apportionment in an FAA 1976 claim
- Majority direction
- Stay on proceedings with permission to restore to enforce
- Discharge
- Provision under CPR 21.11 for control of the monies



Costs deductions from damages

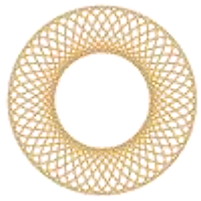
- CPR 46.4(2) must have detailed assessment unless claims for costs waived under CPR 46.4(3)
- Recovery of sums in respect of costs from damages CPR 21.12
- Success fee in claims under £25k where costs summarily assessed
- Expenses
- Costs insurance policy premium
- Interest on credit for costs insurance
- Limit of 25% of PSLA and past financial loss (net of CRU)



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Other documents for the hearing

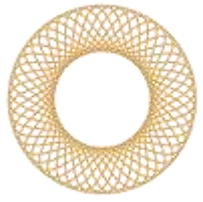
- Birth certificate
- Court Funds Forms CFO320 or CFO320PB
- Evidence of appointment of deputy
- N292 form to transfer sums to COP
- Advice of Chancery Counsel and instructions to counsel if *OH v Craven [2016] EWHC 3146* applies
- Trust terms
- Financial advice



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Advocacy at the hearing

- Remember privilege and anonymity
- Press may wish to make submissions
- Need to open the case if anonymity order has been made
- Do not assume the court will know about CFO320 or the investment guidance
- Do try to encourage the court to consider CPR 21.11 as well as CPR 21.10
- Prepare points in respect of costs deductions under CPR 21.12



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Good luck!

SARAH CROWTHER KC

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