



# Empowering the Vulnerable - legal strategies across jurisdictions – England and Wales

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# Legal capacity and representation framework – bringing proceedings

## Mental Capacity Act 2005



Presumption  
of capacity

Supported to  
make own  
decisions

Unwise  
decisions

Best  
interests

Less  
restrictive  
option

Claimant who lacks capacity is a protected party

Litigation friend is appointed

Litigation friend makes decisions and gives instructions

Compromise has to be approved by a Judge

Often contentious issue—costs of Deputyship for finances recoverable head of loss

# Legal capacity and representation framework

## Recent developments and improvements to protect the vulnerable

- February 2020, Civil Justice Council report on 'Vulnerable Witnesses and Parties within Civil Proceedings'
- Led to new provisions- Practice Direction 1A of the CPR

AXX (A protected party by his litigation friend XRE) v. Zajac [2022] EWHC 2463

CXC (a protected party by her litigation friend BXB) v (1) David Clarke, (2) EUI Limited [2024] EWHC 3138 (KB)

# Special provisions for witness evidence

## Practice Direction 1A of the CPR



### Special measures

Screens

Remote evidence

Hearing evidence in private

Dispensing of wigs and gowns

Using an intermediary

Pre recorded witness evidence

# Provisions for minors

## CPR 21

- Litigation Friend appointed to give instructions (usually but not always a parent)
- Any compromise approved by Judge
- Official Solicitor as last resort



# Managing settlement monies

## Court of Protection

- Specialist court with own procedural rules for those who lack capacity
- Order for management of finances and/or welfare issues
- Deputy appointed to manage financial affairs
- Other options –
- Money can be paid into Court Funds, default for a child and if £100,000
- Can be permitted to be invested
- Personal Injury Trust