



All our information sheets are available to download free of charge because we believe that money should not be a barrier to getting the information you need when you need it.

Please see the end of this information sheet for details of how to support us.

We want to make sure our resources are helpful. Please spend a few minutes giving us some feedback:

[Feedback form](#)

Making a legal challenge

This section of the Family Carer Advocacy Pack contains information about the laws which apply to your relative's and your rights (as a family carer) e.g. the Human Rights Act, the Equality Act, and the Care Act. These laws state what public authorities and organisations should do when involved in the care and support and/or treatment of your relative and you (as their family carer). However, there is plenty of evidence that this is routinely not happening. This section explains how you can take legal action if raising a concern or making a complaint does not result in an improvement.

Involving a solicitor

If providing feedback, raising a concern, or making a complaint has been unsuccessful in bringing about change or the law is not being followed, there may be a need to involve a solicitor to ensure your relative's and your (family carer) rights are met.



Instructing a solicitor

It is likely that your relative will qualify for free legal representation, which is funded by legal aid. Any solicitor you instruct who is able to offer assistance should discuss this fully with you. Talking to a lawyer does not commit you to taking legal action.

A solicitor can only represent a person if they are instructed to do so. If your relative has been assessed as lacking the mental capacity to instruct a solicitor themselves, then a 'Litigation Friend' can do this on their behalf for a specific case. If there is no one suitable to act as Litigation Friend, the Official Solicitor (a Public Officer funded by the Government) may act as a Litigation Friend.

Having a 'Litigation Friend' enables your relative to access the justice system and the legal solutions that are available, for example a court case relating to:

- A civil case, except a tribunal
- A family case
- A Court of Protection case

Who can be appointed a Litigation Friend

There are two groups of people who can be appointed as a Litigation Friend:

1. A person who has Deputyship
2. If there is no appointed Deputy, then an appropriate adult (this could be you) can put themselves forward as a Litigation Friend, if they meet certain criteria:

- Can fairly and competently represent your relative
- Have no conflict of interest and
- Agree to pay any costs your relative may be ordered to pay in relation to the proceedings subject to any repayment they might be entitled to

Finding a suitable solicitor

Before agreeing to represent your relative or you (as a family carer) any solicitor will want to be confident that there is a strong case, e.g. they are likely to win. Legal firms that have expertise in areas of the law related to health and social care often have a high demand for their services. To help them work out whether they can take on your relative's or your case:

- Try to be clear about what issue you need legal advice about and tell the solicitor the most important things. You can provide more detailed information later, if required
- Think about what you are aiming to achieve, such as:
 - a decision to be prevented or overturned
 - justice for a situation that you believe was unlawful, or
 - to have your concerns taken seriously

Legal firms have varying areas of expertise, so you need to decide which one is the right firm for you.

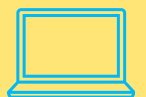
Top tips for finding an appropriate solicitor

- Use the Law Society's [Find a Solicitor service](#)
- Look at the firm's website and read any examples of the kind of work they do
- Ask what similar cases they have had experience of
- Find out what their approach to the case would be

Funding legal advice

- Legal aid, which is based on income, so if the legal representation is for you (as a family carer) then your income will be assessed
- If the legal representation is for your relative and their only source of income is from benefits, they are likely to be entitled to legal aid
- For legal aid cases, solicitors must also have the necessary authority to do so in the relevant area of law
- You can contact Civil Legal Advice (on 0345 345 4345) who have a database of solicitors who work on a legal aid basis who they can transfer you to

To find out whether you are eligible for legal aid, use [this government legal aid checker](#)



[Visit the Civil Legal Advice website](#)



- Self-fund. Ask how much the solicitor's fees will be for each stage. Costs can quickly add up and if your case goes to court a barrister's time is an additional expensive cost
- A Conditional Fee Agreement can enable you to take a negligence (damages) case to court - this is often called 'no win, no fee'
- Use Legal Expenses Insurance (which

may be part of your home or car insurance) or if you are a Union member, your union may cover the fees

Any solicitor who is willing to assist you should discuss funding options with you fully at the start and should not charge you for any work unless you have agreed this in advance. Many solicitors will offer to review your request for assistance free of charge.

Further Information



Charities who offer legal advice and support

Citizens Advice and Law Centres

To find out more about getting legal advice or representation you can go to the Citizens Advice website or find a local Law Centre
Citizens Advice website <https://www.citizensadvice.org.uk/law-and-courts/>

Law Centres Network website <https://www.lawcentres.org.uk/>

Disability Law Service

The Disability Law Service provides free legal advice about community care and support, employment, housing, and welfare benefits to family carers. and their relatives to ensure that they have accurate information about their rights.

Read about some of the ways in which they have supported family carers and their relatives <https://dls.org.uk/our-impact/success-stories/>

Watch a short video clip <https://www.youtube.com/watch?v=Wk5VfQhqQME>

CASCAIDr

If you need legal advice or representation specifically related to the Care Act contact CASCAIDr. CASCAIDr is an online specialist charity who provide advice and support about the legal principles that say how adult social services operate in England and link with rights to NHS services.

Visit CASCAIDr's website <https://cascaidr.org.uk/>

Mencap

Mencap has a range of legal toolkits covering topics such as social care, education, housing, and advocacy

Mencap website <https://www.mencap.org.uk/>

The Equality Advisory & Support Service

The Equality Advisory & Support Service has a helpline which offers advice about any issues relating to Equality and Human Rights and they also have a number of template letters which may be useful, e.g. a failure to make reasonable adjustments

Equality Advisory & Support Service Website

<http://www.equalityadvisoryservice.com/app/answers/list>



We are the charity for people with severe learning disabilities who display challenging behaviour. We make a difference to the lives of children and adults across the UK by:

- Providing information about challenging behaviour
- Organising peer support for family carers and professionals
- Giving information and support by phone or email
- Running workshops which reduce challenging behaviour

To access our information and support, call 01634 838739, email info@thecbf.org.uk, or visit our website: www.challengingbehaviour.org.uk

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www.challengingbehaviour.org.uk Tel. 01634 838739

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