

Guidance from the President's Office- McKenzie Friends

- Where proceedings are held in open court, it is clear from the principles set out in Court of Appeal decisions¹ that a litigant who is not legally represented has the right to have reasonable assistance from a layperson, sometimes called a McKenzie Friend (“MF”).
- A litigant in person wishing to have the help of a MF should be allowed to do so unless the judge is satisfied that fairness and the interests of justice do not so require. The presumption in favour of permitting a MF is a strong one.²
- A litigant in person should inform the court at the outset of a hearing that he intends to exercise his right to a MF. He should also indicate who his MF will be.³
- The court may refuse to allow a MF to act or continue to act in that capacity where the judge forms the view that the assistance he has given, or may give, impedes the efficient administration of justice. However, the court should also consider whether a firm and unequivocal warning to the litigant and/or MF might suffice in the first instance.⁴
- If a judge decides in the exercise of his or her discretion to refuse to allow a MF to assist the litigant in person he should give the litigant reasons for his refusal. The litigant may appeal that refusal, but the MF has no standing to appeal such a refusal.⁵

*What a McKenzie Friend May Do*⁶

- Provide moral support for the litigant
- Take notes
- Help with case papers
- Quietly give advice on:
 - points of law or procedure;
 - issues that the litigant may wish to raise in court;
 - questions the litigant may wish to ask witnesses.

¹ *McKenzie v McKenzie* [1970] 3 All ER 1034, *R v Leicester City Justices ex parte Barrow & ors* [1991] 3 All ER 935, *R v Bow County Court, ex parte Pelling* [1999] 4 All ER 751. See also *Collier v Hicks* (1831) 2 B & Ad 669.

² *Re H (Minors)(Chambers Proceedings: McKenzie Friend)* [1997] 3 FCR 618 (CA),

³ *Ex Parte Barrow*

⁴ *Ex parte Barrow*.

⁵ *Ex parte Pelling*.

What a McKenzie Friend May Not Do

- A MF has no right to act on behalf of a litigant in person. It is the right of the litigant to use the assistance of a MF if he so requires.⁷
- A MF is not entitled to address the court, nor examine any witnesses. If he does so he becomes an advocate and requires the grant of a right of audience.⁸
- A MF may not attend a *closed* court unless the litigant has received permission from the court for the MF to do so at the start of a hearing.⁹
- A MF may not act as the agent of the litigant in relation to the proceedings nor manage the litigant's case outside of court, for example, by signing court documents.

Rights of Audience

- Sections 27 & 28 of the Courts and Legal Services Act 1990 govern exhaustively rights of audience and the right to conduct litigation. They provide the court with a discretionary power to grant lay individuals such rights.
- A court may grant an unqualified person a right of audience *in exceptional circumstances only* and only after careful consideration.¹⁰ The litigant must apply at the outset of a hearing if he wishes the MF to be granted a right of audience or the right to conduct the litigation.¹¹

Personal Support Unit & Citizens' Advice Bureau

- Litigants in person should also be aware of the services provided by local Personal Support Units and Citizens' Advice Bureaux. The PSU at the Royal Courts of Justice in London can be contacted on 020 7947 7701, by email at cbps@bello.co.uk or at the enquiry desk. The CAB at the Royal Courts of Justice in London can be contacted on 020 7947 6880 or at the enquiry desk.

⁶ *McKenzie v McKenzie*

⁷ *Ex parte Barrow, ex parte Pelling*.

⁸ See "Rights of Audience" below.

⁹ *Re G (A Minor) (Chambers Hearing: Assistance)* (1991) Note [1999] 1 WLR 1828, *Re H (Minors) (Chambers Proceedings: McKenzie Friend)* [1997] 3 FCR 618 (CA), *ex parte Pelling*.

¹⁰ *D v S (Rights of Audience)* [1997] 1 F.L.R. 724 (CA), *Milne v Kennedy & Others* (11 February 1999) (TLR) (CA). *Paragon Finance PLC v Noueiri (Practice Note)* [2001] 1 WLR 2357 (CA).

¹¹ *Clarkson v Gilbert* [2000] 2 FLR 839 (CA).