



Practice Direction 7 of 2022 McKenzie Friends (Civil and Family Courts)

1) This Practice Direction applies to civil and family proceedings in the Grand Court and to Family Proceedings in the Summary Courts. It does not apply in criminal cases. It is issued as guidance by the Chief Justice. It is intended to remind courts and litigants of the principles set out in the case authorities and does not change the law. It is issued in light of the increase in personal litigants at all levels of the civil and family courts and in conjunction with the Guide to proceedings in the Grand Court for people without a legal representative, published on the same date. Both are available on the Courts' website at www.judicial.ky.

Reasonable assistance from a McKenzie Friend

2) There is a presumption in favour of permitting a personal litigant to have reasonable assistance from a layperson, sometimes called a McKenzie Friend, a term which has come to be associated with the case of *McKenzie v McKenzie*¹. Personal litigants assisted by McKenzie Friends remain litigants in person. McKenzie Friends have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation but may attend as a friend to lend support as explained below. A person who has legal training but has not been engaged as an attorney may serve as a McKenzie friend².

What McKenzie Friends may do

- 3) McKenzie Friends may:
- i) provide moral support for personal litigants;
 - ii) take notes with the permission of the judge;
 - iii) help with case papers;
 - iv) quietly give advice on any aspect of the conduct of the case which is being heard.

What McKenzie Friends may not do

- 4) McKenzie Friends may not:
- i) Conduct the litigation, acting as the personal litigant's agent in relation to the proceedings;
 - ii) Manage the personal litigant's cases outside court, for example by signing

court documents; or

- iii) Exercise a right of audience by addressing the court, making oral submissions or examining witnesses unless this has, in very exceptional circumstances, been authorised by the court.

It is a criminal offence to exercise rights of audience or to conduct litigation unless properly qualified and authorised to do so as an attorney or as an officer of an incorporated entity. At present there are no statutorily prescribed exceptions or circumstances in which a McKenzie Friend can apply for rights of audience or to conduct litigation for reward on behalf of another person.

Confidentiality

- 5) A McKenzie Friend must observe strict confidentiality in relation to any documents they have sight of and any information they hear in relation to the proceedings. Breach of such confidentiality will usually amount to a contempt of court, giving rise to sanctions including a fine and imprisonment.

Exercising the Right to Reasonable Assistance

- 6) While personal litigants ordinarily have a right to receive reasonable assistance from McKenzie Friends the court retains the power to refuse to permit the giving of such assistance. The refusal may occur on initial application or at any time during the hearing.

- 7) A personal litigant may be denied the assistance of a McKenzie Friend or a particular McKenzie Friend because its provision might undermine or has undermined the efficient administration of justice. Illustrations of circumstances where this might arise, which are not exhaustive, are:

- i) the assistance is being provided for an improper purpose;
- ii) the assistance is unreasonable in nature or degree;
- iii) the McKenzie Friend is subject to an order such as a civil proceedings order or a civil restraint order or has been declared to be a vexatious litigant; by a court in the Cayman Islands;
- iv) the McKenzie Friend is using the case to promote his or her own cause or interests or those of some other person, group or organisation, and not the interests of the personal litigant;
- v) the McKenzie Friend is directly or indirectly conducting the litigation;
- vi) the court is not satisfied that the McKenzie Friend fully understands and will comply with the duty of confidentiality.

8) The following factors are NOT of themselves sufficient to justify the court refusing to permit a McKenzie Friend to assist a personal litigant:

- (i) The case or application is simple or straightforward, or is, for instance, a directions or case management hearing;
- (ii) The personal litigant appears capable of conducting the case without assistance;
- (iii) The personal litigant is unrepresented through choice;
- (iv) The other party is not represented;
- (v) The proposed McKenzie Friend belongs to an organisation that promotes a particular cause;
- (vi) The proceedings are confidential and the court papers contain sensitive information relating to a family's affairs

9) A personal litigant who wishes to exercise this right should inform the judge as soon as possible indicating the identity of the proposed McKenzie Friend. The proposed McKenzie Friend should produce a short curriculum vitae or other statement setting out relevant experience, confirming that he or she has no personal interest in the case and understands the McKenzie Friend's role and the duty of confidentiality.

10) The court may refuse to allow a personal litigant to exercise the right to receive assistance at the start of a hearing. The court may also circumscribe or remove the right during the course of a hearing, where the court forms the view that a McKenzie Friend, or a particular McKenzie Friend, may give, has given, or is giving, assistance that impedes the efficient administration of justice. The court may in the first instance issue a firm and unequivocal warning to the personal litigant and/or McKenzie Friend. It is likely that the court may give reasons for refusal and the personal litigant, but not the McKenzie Friend, has a right to appeal the decision.

11) Where a personal litigant is receiving assistance from a McKenzie Friend in care proceedings, the court should consider the desirability of the McKenzie Friend's attendance at any joint consultations directed by the court and, if he or she is to attend, the most effective and appropriate way in which that person should be involved in the joint consultation, bearing in mind the limits of their role, and should give directions accordingly.

Personal litigants are in general permitted to communicate any information, including filed evidence, relating to the proceedings to McKenzie Friends for the purpose of obtaining advice or assistance in relation to the proceedings. In the case of proceedings involving children, however, this may only be done with the permission of the judge to avoid contravening provisions of the Children Act. This requires an application to the judge for permission and if the judge grants it then ordinarily conditions will be imposed giving further protection to confidentiality.

12) Legal representatives of other parties should ensure that documents are served on personal litigants in good time to enable them to seek assistance regarding their content from McKenzie Friends in advance of any hearing or case management meeting.

Remuneration

13) Personal litigants can enter into lawful agreements to pay certain fees to McKenzie Friends for the provision of reasonable assistance in court or out of court by, for instance, carrying out clerical or mechanical activities, such as photocopying documents, preparing bundles, delivering documents to opposing parties or the court.

14) Such fees are recoverable, in principle, from the opposing party as a recoverable disbursement upon taxation: Grand Court Rules Order 62 rules 19(1) and 19(2).

The Hon. Sir Anthony Smellie
Chief Justice
10 October 2022³

¹ [1970] 3 All E. R. 1034 at 1336 C.

² See *McKenzie v McKenzie* (above) and *Constable v Constable* [2018], Court of Appeal Bermuda, 10 October 2019.

³ This Practice Direction is adopted and adapted, with thanks, from similar directions issued by the High Court of Northern Ireland.