Neutral Citation No: [2025] NIMaster 12	*Ref:* 2025NIMaster12
	ICOS No: 25/24130
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered*: 04/07/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

MARTIN SHEEHAN

Plaintiff

and

HERBERT LUSBY

and

First Defendant

DANIEL LUSBY

Second Defendant

The plaintiff Mr Sheehan appeared on his own behalf along with his prospective McKenzie friend, Mr McAteer.
Mr Stevenson (instructed by Dickson McNulty Solicitors) on behalf of the defendants.

MASTER HARVEY

Introduction

[1] This is an application by the plaintiff requesting that the court appoint Mr Daniel McAteer to act as his McKenzie friend at the hearing of the plaintiff's summons in which he is applying to strike out the first defendant's defence. The strike out application is listed for hearing on the 10 September 2025. The plaintiff is a person without legal representation and has also requested that Mr McAteer be given rights of audience to speak on his behalf.

[2] I convened a hearing in relation to the McKenzie friend application, in advance of which, both parties submitted affidavits. While interlocutory hearings

are conducted in person, I granted Mr Sheehan and Mr McAteer's request to appear remotely via Webex solely in relation to this McKenzie friend issue. Mr Stevenson of counsel appeared in person on behalf of the defendants.

McKenzie Friend Practice Note 3/2012

[3] In advance of the application, I directed the court office to email the parties a copy of the guidance contained in the "McKenzie Friends" Practice Note 3/2012, revised on 7 June 2024 and further reviewed and reissued by the Lady Chief Justice on 27 May 2025. In the guidance, it sets out the nature of the McKenzie friend role, mainly providing reasonable assistance to a litigant in person. At paragraph 9 of the code of conduct at Annex A to the guidance, it states:

> "with the permission of the judge … (the McKenzie friend) may provide moral support, take notes, help with case papers and quietly give advice to the person you are assisting."

The guidance note makes clear the McKenzie friend has no independent right to provide assistance, to act as advocate or to carry out the conduct the litigation. While a personal litigant ordinarily has the right to receive reasonable assistance from a McKenzie friend, the court retains the power to refuse to allow such assistance:

> "where it is satisfied that the interests of justice or fairness do not require the personal litigant to receive such assistance."

[4] The code of conduct further states that if the person applying to take on such a role has a financial interest in the outcome of the case, they should normally decline to assist. The granting of rights of audience is only in "exceptional circumstances" and where it is reasonable and in the interests of justice to do so. Further it states, the McKenzie friend may not conduct the litigation, acting as the personal litigant's agent. The right may be refused if the person is using the case to promote their own cause or interests or those of some other person or group, and not the personal litigant. A person may also be refused if they are directly or indirectly conducting the litigation.

The plaintiff's strike out summons

[5] The summons in respect of which this application relates, was issued by the plaintiff on 2 June 2025 and was listed in the normal way for review in summons court on 13 June 2025. The plaintiff is applying to strike out the first defendant's defence of 22 May 2025.

[6] There was various correspondence in advance of the above review at summons court. In short, the parties were in disagreement as the plaintiff wanted his strike out application timetabled and heard urgently, in or around the end of June 2025 or from mid-July onwards. The defendants were not in agreement and also

expressed concern that Mr McAteer would attempt to appear before the court on Mr Sheehan's behalf. They pointed out he had no rights of audience in these proceedings, and they would strongly object to him making any representations to the court. The defendants indicated if he was going to make an application to appear as a McKenzie friend, this would be objected to by the defendants. Mr Sheehan appeared at summons court with Mr McAteer.

[7] I indicated to the parties that while I would hear the strike out application expediently, I felt the suggested timetable from the plaintiff was unrealistic given the relief that was sought and the interests of justice required that the defendant should be permitted time to file a replying affidavit. I timetabled the application with the next available hearing date suitable to the parties on 10 September 2025 and indicated that I would hear from both parties at a short hearing on 23 June 2025 in relation to the McKenzie friend application.

The McKenzie friend application

[8] An application was lodged with the court in the appropriate format, requesting that Mr McAteer be permitted:

> "to act as a McKenzie friend in relation to the application made on 2 June 2025, which will be heard before the Master of the High Court."

The application confirms that Mr McAteer will be paid by Mr Sheehan for:

> "outlays, expenses and a reasonable professional fee in relation to his services."

Further, Mr Sheehan requests that rights of audience be granted to Mr McAteer on the basis this is a:

> "commercial matter involving business, planning regulation and law, and given the familiarity that Daniel McAteer has with the case, and given the earlier decision granting him audience, Mr Sheehan respectfully asks that the court exercises its discretion and grants the rights of audience. Mr Sheehan believes that the involvement of Daniel McAteer will result in a more efficient, effective and economic resolution of this longstanding dispute."

[9] The application was accompanied by Mr McAteer's curriculum vitae. He is a company director and "founder of PCI corporate partners" as well as being a director and consultant in various other companies. He states that he has "substantial experience" both in the High Court as a witness and litigant in person and in mediation. Mr McAteer and Mr Sheehan both signed the form, and Mr McAteer signed the undertaking to comply with the above practice note and would observe confidentiality. He states he has "no personal interest in the case."

[10] It clearly indicates in the form that:

> "if you do intend to enter into an agreement to be paid fees for the service you provide, then provide full disclosure of the nature of this agreement, attaching supplementary documents as required."

No such disclosure or any documents regarding the nature of the agreement are provided other than an indication that Mr McAteer will be paid an unknown amount for his services as set out above.

The previous proceedings

[11] The court proceedings involving these parties have a long history arising from a dispute between Mr Sheehan and the Lusby family. An action was brought in 2015 by Mr Herbert Lusby alleging he was deprived of a large sum of money by four defendants. Mr McAteer was one of the defendants, but the plaintiff discontinued the case against him as well as against another defendant and the action against the third defendant was struck out by the court in 2017. The action continued against the fourth defendant, Mr Sheehan (the plaintiff here) who then issued a counterclaim in February 2019 against Mr Herbert Lusby and a subsequent joinder application which I will turn to shortly. The parties attempted a mediation resulting in a signed agreement on 10 September 2021, between Mr Herbert Lusby and Mr Sheehan and a separate memorandum of understanding which was also signed by the plaintiff's son, Mr Daniel Lusby. Mr Sheehan claims that Mr Herbert Lusby has not complied with the terms of that agreement.

[12] Given the weight the plaintiff asserts I should attach to decisions by other courts in relation to Mr McAteer acting as his McKenzie friend and being afforded rights of audience, I will now set out the procedural history from previous hearings and applications on this issue.

The previous summons before this court

[13] I heard the application by Mr Sheehan to join three additional defendants to his counterclaim on 16 April 2024. On the morning of the hearing of that joinder application, I was presented with a situation where Mr McAteer appeared along with Mr Sheehan indicating he had been appointed as a McKenzie friend by the court and had been granted rights of audience. At that time, I was not aware of such rights having been granted. I sought but was not provided with, the court orders confirming this. In any event, counsel on behalf of the proposed defendants indicated they did not object to Mr McAteer having speaking rights for the purposes of that interlocutory application but would raise an objection if they were joined to the action. I proceeded with the hearing and heard from Mr McAteer but ultimately refused Mr Sheehan's application to add three defendants. While I permitted Mr McAteer to speak on behalf of the plaintiff, I stated in my written decision on 2 May

2024 that "this is no way guarantees that similar rights will be afforded to him should the matter be subject to appeal or in relation to the trial of the action or any further applications."

The appeal to McBride J

[14] This court's refusal to join the three defendants was appealed to Madam Justice McBride who similarly refused the application. At the appeal, McBride J similarly afforded Mr McAteer rights of audience as it was by that stage clarified they had been granted by Simpson J in the course of an interlocutory hearing in the same set of proceedings in 2022. At that time, Simpson J was dealing with the issue of whether the 2015 action had in fact settled. He ultimately determined it had not and that it could proceed. The learned judge issued a written judgment on 23 September 2022. The judgment confirms at paragraph 2, that Simpson J had acceded to a request for submissions to be made on Mr Sheehan's behalf by Mr McAteer. Mr Sheehan places reliance on this passage to bolster his McKenzie friend application as he quotes the judge as stating that Mr McAteer's submissions were "helpful and succinct." The full section reads "I am grateful to Mr O'Kane (the plaintiff's solicitor) and Mr McAteer for their helpful and succinct submissions."

[15] Prior to this, Humphreys J had granted leave for Mr McAteer to act as McKenzie friend for Mr Sheehan on 9 February 2022, again in relation to the same 2015 proceedings. I have sight of that order. It relates to both the substantive action and counterclaim. It does not grant Mr McAteer rights of audience.

The current proceedings

[16] The current proceedings arise from a separate writ of summons issued on 14 March 2025 against the defendants Mr Daniel Lusby and Mr Herbert Lusby. These proceedings are summarised at paras 25-27 of the judgment of McBride J ([2025] NIKB 41), arising from the unsuccessful appeal of this court's decision to refuse Mr Sheehan's joinder application.

[17] The plaintiff claims damages for breach of contract and failing to honour an agreement following a mediation on 10 September 2021, malicious falsehood and unlawful interference by the defendants with the economic interests of the plaintiff. The plaintiff further claims an injunction restraining the defendants from interfering further with the economic interests of the plaintiff together with an injunction compelling the defendants to withdraw their objections to planning permission made by the plaintiff and to compel the defendants to remove obstacles regarding access to sites for which the plaintiff is applying for planning permission. The plaintiff also seeks further relief including accounts and inquiries in relation to a transfer of lands on Springtown Road by Mr Herbert Lusby to Porthall Enterprises Ltd and in relation to the transfer of share capital to Daniel Lusby by his brother Mr Gavin Lusby on 5 August 2023.

The previous decisions to grant McKenzie friend status/rights of audience

[18] This is a new application which I have considered on its merits. Mr McAteer submits that I should "follow the direction of your more senior colleagues," a reference to the decision in 2022 to grant him McKenzie friend status and the subsequent granting of speaking rights. I do not consider I am bound by those decisions and do not accept the assertion that they are "robust authority" for the proposition that Mr Sheehan should now be entitled to appoint him as McKenzie friend. I reminded the parties on several occasions that this is a fresh application, and while I accept it may be one of a number of relevant considerations, taking into account all the circumstances of this case, it does not follow that this court should simply grant the request because a previous application had been successful. The decisions referenced by Mr McAteer may carry some weight, but they were made three years ago and related to different proceedings. Regardless of this, the McKenzie friend guidance states that a court may grant or refuse an application at the start of a hearing but can also circumscribe or remove such a right even during the course of a hearing, in certain circumstances. It is therefore clear, the court retains a discretion in these matters and when faced with a new application such as this, it must be considered giving due regard to all the circumstances of the case, including any objections from the opposing party.

[19] Such consideration includes taking into account new material information, arguments in favour or objections now brought to the court's attention which may not have been put before other courts in previous applications. I do not have sight of any written McKenzie friend application from 2022 nor the content of oral submissions in relation to the subsequent application in which speaking rights were granted. I do, however, have sufficient material before me to determine this current application in these new proceedings which have generated a new interlocutory application seeking a strike out of the first defendant's defence. I have the benefit of a written application using the court template, various affidavits, correspondence from the parties and lengthy oral submissions from Mr Sheehan, Mr McAteer and defence counsel during a hearing which ran for over one and a half hours. I also have the benefit of having dealt with the same parties in a previous hearing just over a year ago. I pause to observe that normally such relatively routine applications such as this are dealt with on the papers, but given the long standing nature of this dispute, and the disagreement between the parties on this issue, in the interests of justice and furtherance of the overriding objective and recognising Mr Sheehan is a person without a legal representative, I wanted to give the parties an opportunity to address me at an oral hearing.

The test to be applied

[20] This has been the subject of judicial debate, and I consider that as things currently stand, the best encapsulation of the overarching test to be applied by the court can be described as follows:

> "Is it necessary in the interests of justice and, more particularly, in furtherance of the unrepresented litigant's right to a fair hearing that the services of a McKenzie Friend be authorised by the court?"

Consideration

[21] Mr McAteer was initially a defendant in the 2015 proceedings involving the long standing dispute between these parties. He also previously acted as an accountant for one of the defendants in this action, Mr Daniel Lusby. The defendants contend, with some force that it is unusual for a party's former professional adviser to appear as McKenzie friend in a case against that party and arising out of the transaction in relation to which the professional adviser was engaged by that party. In addition to this, it is averred in Mr Daniel's Lusby's affidavit dated 24 April 2023 in the previous interlocutory application before me (which is again exhibited to the defendant solicitor's replying affidavit here) that Mr McAteer was the accountant for Mr Daniel Lusby's mother (over whom Daniel Lusby holds a power of attorney.) He objected to any McKenzie friend application at that time and averred at paragraph 10 that Mr McAteer had a liability of over £300,000 to them arising from money which was to be invested for his mother but Mr McAteer "has never accounted for that money or what he did with it." I cannot make findings of fact but in the context of this application, such averments and objections are relevant considerations in the overall exercise of the court's discretion.

[22] The defendant's solicitors in this case acted for Mr McAteer, by his own admission, in 1993 and that gave rise to a disagreement and litigation between them. Mr McAteer confirmed this in an email to the court of 11 June 2025, and he avers in a rejoinder affidavit sworn on 23 June 2025 that experiences with that firm and solicitors to whom he was introduced by them, "caused catastrophic damage and loss" to his family. Seven paragraphs of the affidavit are given to setting out issues with the defendant's solicitors under the heading, "the role of Dickson McNulty," and why their objection to his McKenzie friend status is "mischievous", "vexatious" and "predicated by ulterior motives." The affidavit also contains legal argument in relation to what he perceives to be malicious falsehoods against him by the defendant's solicitor. At paragraph 24 he avers the McKenzie friend application was intended to cause further delay and "kick the matter down the line." This overlooks the fact this is the plaintiff's application, not the defendants. The opposing party in any case is entitled to raise an objection if they wish. The ultimate arbiter is the court. One of the grounds for refusal of a McKenzie friend application is if the person in question is using the case to promote their own cause or interests, and not those of the personal litigant. The correspondence and affidavit lead me to question how Mr McAteer feels he can separate in his mind the acrimonious relationship with the defendant's legal advisers which purportedly almost caused his "financial and professional ruin" and the extent to which this might bleed into Mr Sheehan's litigation. A McKenzie friend may not be appointed if the service is being provided for an improper purpose and there is at the very least a risk of this in the present case.

[23] It is clear from the correspondence in the papers that Mr McAteer has both emailed the court and the defendant's solicitor directly. One such example is dated 6 June 2025 to the defendant's solicitor. It makes reference to Mr McAteer finding the objection to his status as McKenzie friend "professionally and personally upsetting." He asks for them to set out the reasons for their objection, to him, by email and gives a deadline for this. He accuses the defendants of attempting to delay matters and asks that the defendant's counsel should be encouraged to "conduct himself in a more professional and respectful manner when in court". In the correspondence, sent directly from his own email account, he accuses the defendant's counsel, Mr Stevenson, of "childish sniggering" and "infantile behaviour."

[24] In addition to the emails, the fact that Mr McAteer himself provided a rejoinder affidavit in response to the replying affidavit from the defendant's solicitor, without direction or leave of the court, is indicative of someone indirectly or directly conducting the litigation, something the code of conduct for McKenzie friends does not permit and may constitute grounds for refusal if the court considers the assistance is of an unreasonable nature or degree.

[25] During the hearing, Mr Sheehan only spoke briefly. He asked if Mr McAteer could address the court which I permitted. I carefully observed the parties, including Mr McAteer and Mr Sheehan during the application. It was clear that Mr McAteer was taking the lead. In my introductory remarks both at summons court on 13 June and at the start of this hearing, I made clear that I wished to hear from Mr Sheehan, as this was his case. He spoke respectfully, explaining he felt that as he was an electrician by trade, he modestly felt his strengths did not lie in presenting cases in court. He said that hiring a lawyer would cost a lot of money and he felt he would benefit from Mr McAteer's assistance in the case, including allowing him to speak in court on his behalf. He answered all my questions in a helpful and measured way.

[26] At the hearing, Mr McAteer spoke at great length, often drifting into irrelevant points, making accusations against the other party and at one point indicated he may not even act as McKenzie friend if appointed by the court as he may pursue the defendant's solicitor for malicious falsehood on the basis of an email the defendant solicitor sent to the court. He also avers this in his affidavit at paragraph 26 as he states he will "reserve his position" on his prospective appointment. I have read the email in question. Mr McCleery stated, wrongly and damagingly in Mr McAteer's opinion, that a company of which he is a sole director owned a particular substantial housing development site. I note the replying affidavit from Mr McCleery of 19 June 2025 states this company "holds the benefit of a very substantial planning permission" rather than ownership and the plaintiff is seeking relief relating to that development. I indicated Mr McAteer could take his own course in relation to such complaints, rather than dwell on what are effectively legal submissions in affidavit form regarding Mr McCleery's conduct.

[27] Mr McAteer was a witness to the signing of the agreement between the parties to this litigation on 10 September 2021. He accepts this is the case. As a result, I consider he could be a witness of fact in these proceedings. He indicated to me that would not be the case, but his signature is on the document, it therefore appears he was present when it was signed and arguably was present during negotiations leading to that agreement. The terms of that agreement, their meaning and the land to which it extended appear to be in dispute and are issues which may be relevant to these proceedings.

[28] Mr McAteer is the sole director of a company, Hartlands (NI) Limited, which as stated above, it is averred on behalf of the defendant, holds planning permission for a project relating to lands in respect of which the plaintiff seeks relief in these proceedings. While Mr McAteer avers to the contrary, it is plainly arguable he has a personal and financial interest in the outcome of this case.

[29] The stated reason in the application form seeking the appointment of Mr McAteer as McKenzie friend, is to "result in a more efficient, effective and economic resolution" of the case. Put bluntly, that is not the role of a McKenzie friend. This is repeated at paragraph 17 of Mr McAteer's affidavit where he claims that when he was appointed McKenzie friend in 2022 that the judge felt his "presence may actually have helped the resolution of the dispute in an effective and efficient manner." A McKenzie friend is not appointed to help resolve the case and I consider that Mr McAteer seems to misunderstand the nature of the role, something which gives me cause for concern.

[30] On a few occasions at hearing, Mr McAteer sought to interrupt or speak over the court. At one point he left the room as he said he had to be somewhere else, only to reappear just a few minutes later. He claimed there were some audio issues with a slight delay on Webex. I accept this may have explained why he was speaking over me. In order to assist the plaintiff and ensure the hearing was conducted fairly, I directed the defendant's counsel to raise his voice, speak into the microphone and at the end of the defence submissions, I summarised Mr Stevenson's points to allow Mr Sheehan and Mr McAteer to respond. Mr McAteer indicated this was very helpful and of assistance to them meaning they had a full knowledge of the defendant's objections to the McKenzie friend application.

[31] It seems to me the plaintiff in this case, and Mr McAteer, conflate the role of McKenzie friend with speaking rights in court. One does not automatically follow the other. Speaking rights are only granted in very exceptional cases and where it is reasonable and in the interests of justice to do so. On balance, this is not such a case. This is a commercial dispute in the High Court involving various disagreements between the parties. There is no evidence before me that would indicate this case falls into the very exceptional category. When I asked Mr Sheehan about this issue, the only reason of substance he sought to advance as to why I should permit Mr McAteer to act as McKenzie friend and have speaking rights was essentially that lawyers were too expensive. I pause to observe he is paying Mr McAteer for his

services. In fact, Mr McAteer submitted on his behalf that this is not an application arising from impecuniosity as Mr Sheehan is in a better financial position now than he was in during the 2015 proceedings. In his application form, the other reason advanced by Mr Sheehan is that Mr McAteer is familiar with the case, a factor I consider adds little weight to the application.

[32] There was no suggestion the plaintiff has any physical or mental health problem, disability, learning, language or communication difficulty other than a brief mention by Mr McAteer that Mr Sheehan's strengths did not lie in the spoken or written word.

[33] I do not consider that it reasonable or in the interests of justice to grant this application. Mr Sheehan has sufficient time to instruct a solicitor if he wishes to do so and I indicated I would even consider adjourning the hearing in September to allow him time to take such a step. It is not entirely clear, even if I did grant this application that Mr McAteer would take on the role in any event.

[34] I have considered the authorities in this area, including *McKenzie v McKenzie* [1970] 3 WLR 472 and the case of *McA v McA* [2006] 10 BNIL 63, in which Master Redpath addressed the issue of rights of audience for McKenzie friends, determining this should only be granted in exceptional circumstances. It is important to remember that it is Mr Sheehan, the plaintiff in this action, who is seeking to assert his right to have a McKenzie friend. Mr McAteer cannot assert such a right, and this is in line with *R v Bow Street County Court, ex parte Pelling* [1999] 1 WLR 1807.

[35] In *Re O'Connell and Others* [2005] EWCA Civ 759 [2005] 3 WLR 1191, the court held that the presumption in favour of the litigant being allowed the assistance of a McKenzie Friend is a strong one and should not be refused without good reason, albeit this was in the context of family proceedings where arguably different considerations apply.

The court's decision

[36] On balance, after careful consideration of the authorities, the relevant court guidance, the various papers, affidavits and submissions, I am not satisfied that Mr Sheehan should be permitted to have Mr McAteer appointed by the court as his McKenzie friend for several reasons. I am not persuaded he has no financial or personal interest in the outcome of the case. I have concerns, based on his correspondence, affidavit and his appearances in court, that he intends to conduct or manage the litigation, whether directly or indirectly. I am not persuaded he understands the role of McKenzie friend and am concerned about the nature and degree of the assistance he intends to provide. It is plainly arguable he could be a witness in these proceedings as he witnessed the signature of a key document at the centre of this dispute and may have been present during the mediation and negotiations where the terms of this agreement were discussed. He has been a defendant in the separate but related proceedings. He has acted as an accountant in

the past for one of the defendants in this action and has been involved in litigation with the defendant's legal advisers, therefore calling into question the purpose for which he wishes to be appointed.

[37] The plaintiff is clearly eager for Mr McAteer to speak on his behalf, as he has done in the past. While I consider this is not an exceptional case which would warrant such a step, I have considered whether, under direction from the court and in compliance with the code of conduct, Mr McAteer could act as McKenzie friend performing the more conventional role of providing moral support, taking notes, helping with case papers and quietly advising the plaintiff but not addressing the court by way of oral submissions. It is my assessment that is unlikely to be achievable given the unique factual matrix in this case. On balance, I do not envisage Mr McAteer could confine himself to such a circumscribed role. He attended summons court and the hearing of this application and on each occasion robustly presented as an advocate, not a quiet adviser.

[38] While I recognise it may be argued there is a strong presumption that a McKenzie friend application should be granted, I consider there are good reasons for refusing this request. It is not in my view, in the interests of justice or in furtherance of the unrepresented litigant's right to a fair hearing that the services of a McKenzie friend be authorised by this court. There are valid objections as to why Mr McAteer should not be appointed, and I have set out what I consider are good reasons for refusing Mr Sheehan's application. This does not in my view deny the plaintiff a fair hearing of his summons. The strike out application, affidavit and case papers have been well prepared by the plaintiff. He has ample time to engage a lawyer if he wishes to do so. Any questions which I put to him during this hearing were answered in a straightforward and measured way, and his emails to the court were clear and coherent. I do not consider, if the plaintiff chooses not to seek legal representation that in the absence of a McKenzie friend, that his article 6 right to a fair hearing will be infringed.

Conclusion

[39] I therefore refuse the application and direct that the costs arising from the hearing shall be reserved to the substantive application currently listed on the 10 September 2025. I certify for counsel on behalf of the defendant.