

# Code of Conduct for McKenzie Friends

## Introduction

A McKenzie Friend is someone who assists a litigant in person in a court of law by prompting, taking notes and quietly giving assistance. A McKenzie Friend need not be legally trained or have any professional legal qualifications. The term McKenzie Friend originates from the case of *McKenzie v McKenzie* [1970] 3 WLR 472 CA where the right to use a McKenzie friend was set out by the Court of Appeal.

This Code of Conduct summarises what is involved if you are asked to be a McKenzie Friend, and what the court will expect of you.

This Code of Conduct should be read in conjunction with the Practice Note 03/12 on McKenzie Friends [attached](#) at Annex B] and [A guide to proceedings in the High Court for people without legal representation](#) (available on line at [A guide to proceedings in the High Court for people without a legal representative \(ulster.ac.uk\)](#))

## Code of Conduct

1. If you follow the Practice Note and this Code of Conduct then your involvement may be of material help to the person you are assisting and to the court.
2. You must complete the application form attached to this Code of Conduct at ANNEX A entitled, "Application Form to be completed by an individual who wishes to provide assistance to a Litigant as a McKenzie Friend." Before doing so you must familiarise yourself with all available case papers and extant court orders and directions, as well as the document at ANNEX B.
3. If you have a financial interest in the outcome of the case, you should normally decline to assist.

4. If you have a personal interest in the outcome of the case, then before agreeing to assist you should think about whether someone else who does not have a personal interest might be better placed to assist.
5. You may attend the hearing of the court case unless the court indicates otherwise.
6. You may read the papers for the court case unless the court indicates otherwise. You should be mindful of the need for strict confidentiality at all times as set out in Practice Note 03/12. A breach of confidentiality can amount to contempt of court punishable by fine and/or imprisonment.
7. You should let court staff know as soon as you arrive that you have been asked to assist.
8. If you are being paid to assist or if you regularly assist a number of different people as a McKenzie Friend then you should make the court aware of that.
9. With the permission of the judge and in accordance with the guidance set out in Practice Note 3/2012 you may provide moral support, take notes, help with case papers and quietly give advice to the person you are assisting.
10. Normally the person you are assisting will be the one to speak to the judge, but if that person cannot manage, the judge may let you speak instead.
11. You may apply to the judge for rights of audience which may only be granted in exceptional circumstances; for example, on health or disability grounds relating to the person you are assisting. You should make this application at the earliest possible opportunity, providing evidence of the exceptional circumstance argued. It is a criminal offence to exercise rights of audience unless qualified and authorised to do so by an appropriate regulatory body or with leave of the court.
12. You must observe all directions and orders of the court.

13. You must seek and obtain all extant directions and orders made by the court in the case in question.
14. You must always follow any instructions given by the judge.
15. If the judge asks the person you are assisting to do something, please encourage them to do it, and remind them of any deadlines.
16. You must familiarise yourself with all relevant Practice Directions and rules of court.
17. You should be courteous and respectful at all times to everyone.
18. You must ensure that your presence and conduct in court do not cause any disruption or distract others. This is particularly important when someone else is speaking to the judge or the judge is speaking.
19. You must behave with the utmost integrity and honesty and must not do anything that might mislead the court or anyone else.
20. You should make the court aware at the earliest possible opportunity if you or the person you are assisting require any reasonable adjustments.
21. You should consider at regular points whether the person you are assisting might benefit from a support agency such as [Housing Rights](#), [Advice NI](#), or the [Law Centre \(NI\)](#) . If you conclude that they might, you should give careful consideration to encouraging the person you are assisting to seek that further help. It may be very helpful if you go with them.
22. Please remember at all times that you are there to assist someone else and are not attending court on your own behalf.
23. Finally, you must remember at all times that your paramount duty is owed to the court.

Annex A

**APPLICATION FORM TO BE COMPLETED BY AN INDIVIDUAL  
WHO WISHES  
TO PROVIDE ASSISTANCE TO A LITIGANT AS A McKENZIE  
FRIEND**

**A. IDENTIFICATION OF THE CASE IN WHICH YOU WISH TO  
PROVIDE ASSISTANCE**

**CASE REFERENCE NUMBER:**

**NAME(S) OF PLAINTIFF(S):**

**NAME(S) OF DEFENDANT(S):**

**NAME(S) OF THIRD AND SUBSEQUENT PARTIES (if any):**

**PARTY WHOM YOU ARE PROPOSING TO ASSIST**

**B. INFORMATION ABOUT THE PERSON WHO WISHES TO  
PROVIDE ASSISTANCE AS A McKENZIE FRIEND.**

**FULL NAME;**

**ADDRESS:**

**EMAIL ADDRESS:**

**TEL NO. :**

**ANY REASONABLE ADJUSTMENTS REQUIRED:**

**PLEASE ATTACH A COPY OF YOUR CV TO THIS APPLICATION**

**C. IDENTIFICATION OF THE PERSON WHOM YOU WISH TO ASSIST**

**FULL NAMES:**

**ADDRESS :**

**EMAIL ADDRESS :**

**TEL NO. :**

**ANY REASONABLE ADJUSTMENTS REQUIRED:**

**D. REASONS FOR YOUR APPLICATION**

**E. DETAILS OF ALL PREVIOUS APPLICATIONS OF THIS KIND  
[in particular name/s of case/s, name/s of court/s, whether granted or  
refused and anything else of note ... eg a ruling by the court revoking  
your McKenzie Friend status or a comparable decision by the litigant  
concerned]**

**E. REMUNERATION DETAILS [if applicable]**

**F. APPLICATION FOR RIGHTS OF AUDIENCE OR THE RIGHT TO  
CONDUCT LITIGATION**

**SHOULD YOU INTEND TO MAKE ANY APPLICATION IN RESPECT OF THE ABOVE PLEASE PROVIDE REASONS FOR THE APPLICATION AND EVIDENCE OF EXCEPTIONAL CIRCUMSTANCES BELOW:**

**G. UNDERTAKING TO THE COURT BY THE PERSON WHO WISHES TO PROVIDE ASSISTANCE AS A MCKENZIE FRIEND**

I, the undersigned, confirm that I:

- Have no personal interest in the case in which I will be providing assistance;
- Have read fully, and will comply with, Practice Note (3/2012) issued by the Lord Chief Justice on 5 September 2012 which is entitled "McKenzie Friends (Civil and Family Courts)" and the Code of Conduct issued on.....;
- Will observe strict confidentiality in relation to any documents I have sight of and in relation to any information I hear in relation to the proceedings;
- Have attached a copy of my CV to this application form
- Unless stated otherwise below, will not be seeking or receiving payment of any fees for any assistance or services provided by me;

(If you do intend to enter in to any 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)

- Have fully and honestly responded to all of the questions contained within this form and accept that any inaccurate or misleading statements may result in the removal of any permission to act as a McKenzie Friend in this case.

Signed.....(McKenzie Friend applicant)

Signed..... (Litigant in Person)

Date .....



## Annex B

**Practice Note 3/2012**  
**McKenzie Friends (Civil and Family Courts)**

1) This Practice Note applies to civil and family proceedings in the Court of Appeal (Civil Division), the High Court of Justice, the County Courts and the Family Proceedings Court in the Magistrates' Court. It does not apply in criminal cases. It is issued as guidance (**not** as a Practice Direction) by the Lord Chief Justice. It is intended to remind courts and litigants of the principles set out in the authorities<sup>[1]</sup> and does not change the law. It supersedes any previous guidance. It is issued in light of the increase in personal litigants in all levels of the civil and family courts.

**Part I - 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. 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. In McA v McA [2006] 10 BNIL 63<sup>[2]</sup>, Master Redpath held that a McKenzie Friend may be allowed a right of audience in very exceptional circumstances.

**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;
- iii) 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 by an appropriate regulatory body or with leave of the court. The very exceptional circumstances in which a McKenzie Friend can apply for rights of audience or to conduct litigation are set out in paragraphs [14-18] below.

### **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**

5) 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.

6) 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 Northern Ireland or in another jurisdiction of the United Kingdom;

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.

7) 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

8) 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.

9) 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 which 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.

10) 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.

11) 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<sup>31</sup>. 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 advocates' meeting.

## **Part II - Rights of audience and rights to conduct litigation**

13) Rights of audience and the right to conduct litigation on behalf of another are not part of the function of a McKenzie Friend but the following paragraphs apply to a McKenzie Friend, or to another individual, who wishes to apply for such a right. Unlike an application for reasonable assistance from a McKenzie Friend, there is no presumption in favour of granting these rights. Application should be made at the earliest possible opportunity and preferably before the hearing.

14) Courts should be slow to grant any application from a personal litigant for a right of audience or a right to conduct litigation to any lay person, including a McKenzie Friend. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.

15) Only very exceptional circumstances will justify the grant of a right of audience to a lay person, including a McKenzie Friend. Examples are health problems or disability issues which preclude the personal litigant from addressing the court or conducting litigation where qualified legal representation is not available to the personal litigant.

16) The grant of a right of audience or a right to conduct litigation to lay persons who hold themselves out as professional advocates or professional McKenzie Friends or who seek to exercise such rights on a regular basis, whether for reward or not, will equally **only** be granted in exceptional circumstances. To do otherwise would tend to subvert the will of Parliament.

17) Rights of audience and the right to conduct litigation are separate rights. The grant of one right to a lay person does not mean that a grant of the other right has been made. If both rights are sought their grant must be applied for individually and justified separately.

## **Remuneration**

18) Personal litigants can enter into lawful agreements to pay 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, or the provision of legal advice in connection with court proceedings. Such fees cannot be lawfully recovered from the opposing party.

19) Fees claimed to have been incurred by McKenzie Friends for carrying out the conduct of litigation, where the court has not granted such a right, cannot lawfully be recovered from either the personal litigant for whom they carry out such work or the opposing party.

20) Fees claimed to have been incurred by McKenzie Friends for carrying out the conduct of litigation after the court has granted such a right are in principle recoverable from the personal litigant for whom the work is carried out. Such fees cannot be lawfully recovered from the opposing party.

21) Fees claimed to have been incurred by McKenzie Friends for exercising a right of audience following the grant of such a right by the court are in principle recoverable from the personal litigant on whose behalf the right is exercised. Such fees are also recoverable, in principle, from the opposing party as a recoverable disbursement: Rules of the Court of Judicature 1980 Order 62 rules 18(1) and 18(2).

Signed

The Right Honourable Sir Declan Morgan  
Lord Chief Justice of Northern Ireland

5 September 2012

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<sup>[1]</sup>McA v McA [2006] 10 BNIL 63, Potter v Potter [2003] NIFam 2, R v Leicester City Justices, ex parte Barrow [1991] 260, Chauhan v Chauhan [1997] FCR 206, R v Bow

County Court, ex parte Pelling [1999] 1 WLR 1807, Attorney-General v Purvis [2003] EWHC 3190 (Admin), Clarkson v Gilbert [2000] CP Rep 58, United Building and Plumbing Contractors v Kajla [2002] EWCA Civ 628, Re O (Children) (Hearing in Private: Assistance) [2005] 3 WLR 1191, Westland Helicopters Ltd v Sheikh Salah Al-Hejailan (No 2) [2004] 2 Lloyd's Rep 535, Agassi v Robinson (Inspector of Taxes) (No 2) [2006] 1 WLR 2126, Re N (A Child) (McKenzie Friend: Rights of Audience) Practice Note [2008] 1 WLR 2743.

<sup>[2]</sup> Master Redpath stated that the principles used in English statute should be applied here. They were originally contained in sections 27 and 28 of the Courts and Legal Services Act 1990, but now see Part III and Schedule 3 of the Legal Services Act 2007, which replicates the court's general discretion to grant a right of audience or right to conduct litigation in particular proceedings. The factors set out in this Practice Note will be relevant to the exercise of this discretion.

<sup>[3]</sup> To avoid contravening s. 12 and Schedule 2 Part II of the Administration of Justice Act 1960 and, Art. 10 (2) of the Children (NI) Order 1995