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Response to	Reforming the courts' approach to McKenzie Friends: Consultation
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Link to consultation	https://www.judiciary.gov.uk/wp-content/uploads/2016/02/mf-consultation-paper-feb2016-1.pdf

Question 1: Do you agree that the term 'McKenzie Friend' should be replaced by a term that is more readily understandable and properly reflects the role in question? Please give your reasons for your answer.

Yes, the term McKenzie Friend (MF) may be confusing to a litigant in person (LiP). They may not know what it refers to as it is a very technical term which does not describe the role or function of a MF. As the main reason for a MF is to support the LiP it shouldn't have an obscure name. Anything that can be done to be clear, transparent and helpful to LiPs, including a more readily understood name for MFs would be beneficial.

Question 2: Do you agree that the term 'court supporter' should replace McKenzie Friend? If not, what other term would you suggest? Please give your reasons for your answer.

As explained in response to question one, the MA would welcome a clearer and more understandable term to replace MF. However there are a few potential concerns about the terms 'court supporter'. The first of these is that it could be interpreted as somebody who supports the court, rather than supporting the LiP, which might be misleading. The second concern is that 'court supporter' could be interpreted as meaning they are involved in an official capacity and being provided by the court. Again this may be misleading to LiPs. A possible suggestion might be the term 'court user supporter'. The MA asks whether it might be helpful to seek the views of court users on how possible terms are understood.

Question 3: Do you agree that the present Practice Guidance should be replaced with rules of court? Please give your reasons for your answer. Please also give any specific comments on the draft rules in Annex A.

The MA does not think it is necessary for the Practice Guidance to be replaced by rules but believes the guidance is adequate to assist the court without infringing on necessary discretion for a bench to respond flexibly to specific circumstances.

An MA survey¹ of family magistrates found:

¹ Family Panel Chairmen attending the MA's Family Panel Chairmen's' Conference in March 2015 indicated they would welcome clarity and further information on MFs. Accordingly, the MA surveyed family magistrates between July and September 2015. 276 respondents replied. Further information on this survey is available on request.

- There is good awareness (75%) of the 2010 Practice Guidance on MFs which is thought to be adequate by the majority (71%) with very few (only 5%) thinking it was inadequate.
- To complement the Practice Guidance magistrates made good use of advice from their legal advisors on MFs with 84% receiving such advice. Magistrates highlighted that it was helpful when they were reminded beforehand by the legal adviser of the rights of MFs.
- Respondents did say it would be helpful to have clarification on:
 - Ensuring the court has sufficient information about the MF.
 - Rights of audience.
 - What to do when a MF has a vested interest or is legally trained.

It would therefore be helpful if the Practice Guidance was updated to clarify these issues.

LiPs are likely to find rules, which would be written in legal language even more difficult to navigate than the Practice Guidance.

It is important to recognise rules may also be more restrictive and can never cover all eventualities, therefore an updated Practice Guidance would be preferred.

Question 4: Should different approaches to the grant of a right of audience apply in family proceedings and civil proceedings? Please give your reasons for your answer and outline the test that you believe should be applicable. Please also give any specific comments on the draft rules.

It is not for the MA to comment on civil proceedings other than family proceedings.

One problem identified with MFs in the MA survey was when they attempted to go beyond their role, with specific reference to the right of audience. Respondents suggested that additional information relating to rights of audience would be welcomed. The MA is therefore concerned that the proposed rules do not give as much detail on issues that should be considered when a court is deciding whether to grant a right of audience.

The existing guidance states that a court may consider granting right of audience in the following circumstances:

eg 'i) that person is a close relative of the litigant; ii) health problems preclude the litigant from addressing the court, or conducting litigation, and the litigant cannot afford to pay for a qualified legal representative; iii) the litigant is relatively inarticulate and prompting by that person may unnecessarily prolong the proceedings.'

If the current Practice Guidance is replaced by rules it is important that the helpful information referenced above is not lost.

Question 5: Do you agree that a standard form notice, signed and verified by both the LiP and McKenzie Friend, should be used to ensure that sufficient information is given to the court regarding a McKenzie Friend? Please give your reasons for your answer.

Yes, it is important that the court is given sufficient information about a MF. A standard form should ensure clarity and that MFs know what information they need to present to the court.

It is also important that the form is simple and clear, so as to be accessible to the LiP and the MF.

Areas to cover in the form include:

- Basic details of the LiP and MF.

- The relationship of the MF to the LiP, e.g. family, friend, professional.
- Whether the MF is paid.
- If MFs are connected to an organisation, whether paid for or not, information on that organisation should be provided to the court.

The form should make it clear that the court retains discretion as to whether reasonable assistance can be provided by the MF in court.

Information about the role of a MF is very important – if this is not covered in a Code of Conduct (see next question) it should be included in the form.

Question 6: Do you agree that such a notice should contain a Code of Conduct for McKenzie Friend's, which the McKenzie Friend should verify that they understand and agree to abide by? Please give your reasons for your answer.

Yes. The MA believes it would be necessary for any notice to contain of a Code of Conduct to set out the role of a MF and ensure someone putting themselves forward as a MF agrees to comply with the guidance or rules.

A code of conduct should include:

- A summary of what a MF can and can't do.
- Clear direction that a MF is not automatically granted right of audience or the right to conduct litigation.
- An explanation that any breach of the Code may result in them being excluded from the hearing.
- A declaration that they have understood the role of a MF, including the importance of confidentiality.

It is important that MFs understand that signing the code of conduct does not imply that s/he will automatically be allowed by the court to attend hearings and provide support, but that the court retains the discretion on this. It should also be clear that if the court allows a MF to provide support for a LiP, anything other than reasonable assistance (such as rights of audience) will again be dependent on the discretion of the court and the criteria set out in the Practice Guidance/Rules.

If it is stipulated in the code of conduct that MFs should not have an interest in the case, in order to prevent campaigners using the role of MFs to further their objectives, the repercussions of this will have to be thought through. For instance friends or family acting as MFs may have a legitimate interest in the case, for instance to maintain contact with a child who is also their relative, and this interest should not prevent them supporting the LiP. The restriction would need to be carefully worded.

Question 7: Irrespective of whether the Practice Guidance (2010) is to be revised or replaced by rules of court, do you agree that a Plain Language Guide for LiPs and McKenzie Friend's be produced? Please give your reasons for your answer.

Yes, it is important that information for LiPs and MFs is clear and accessible.

A Plain Language guide will ensure court users understand the role of a MF, the discretion the court has over allowing reasonable assistance and possible repercussions if a MF does not comply with the Code of Conduct. The guide should also clarify the difference between what constitutes reasonable assistance and rights of audience or litigation.

The guide should either be in Easy Read, or an alternative version in Easy Read should be available.

Question 8: If a Plain Language Guide is produced, do you agree that a non-judicial body with expertise in drafting such Guides should produce it? Please give reasons for your answer.

No comment.

Question 9: Do you agree that codified rules should contain a prohibition on fee recovery, either by way of disbursement or other form of remuneration? Please give your reasons for your answer.

No comment.

Question 10: Are there any other points arising from this consultation on that you would like to put forward for consideration? Please give your reasons for your answer.

LiPs have a right to reasonable assistance and that may be provided by family or friends. The MA would be very concerned if genuine attempts to regulate MFs such as signing a code of conduct or filling out a form put off friends or family who were just there for moral support. It might be useful to have distinction between reasonable assistance offered by family or friends and that offered by a MF who is experienced at providing support (whether they are professional or not). Family or friends are unlikely to have any more experience of the court process than a LiP, so may not be expected to understand rules or guidance.