

The role of a McKenzie Friend

- Where proceedings are held in open court, 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.
- 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.
- 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.
- 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.

What a McKenzie Friend May Do

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

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.
- A MF is not usually 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 – see below.
- 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.
- 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.
- 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.