



ISLE OF MAN

COURTS OF JUSTICE



# **HIGH COURT PROCEEDINGS**

## **Financial Remedies Hearings A guide for self-represented parties**

**MARCH 2014**

[www.courts.im](http://www.courts.im)

## Contents

Purpose of this guide	3
Commonly used terms	4
Consent Orders	5
Mediation	6
Commencing proceedings	7
Pensions	8
Affidavits of Means	8
Questionnaires	9
Further Directions Hearings	10
Final hearing	11
<i>Annex 1 – Sample Automatic Directions Order</i>	<i>12</i>
<i>Annex 2 – How to compile a court bundle</i>	<i>14</i>
<i>Annex 3 – Specimen index for a court bundle</i>	<i>17</i>
<i>Annex 4 – McKenzie Friends</i>	<i>18</i>

## **Purpose of this guide**

This guide is intended to give practical assistance to Litigants in Person (also sometimes called “Self Represented Parties”) who are parties to proceedings for financial remedies arising from the breakdown of a marriage or civil partnership.

The guide is intended to explain the procedure for claims for financial remedies and what you should do to comply with the rules of the court, which govern such applications.

The guide is not intended to give any advice on the merits of a claim or what the likely outcome will be. Nor is it the responsibility of the Court staff to give such advice.

A Litigant in Person may obtain legal advice at any stage of the proceedings and in cases where the parties have substantial assets or income a litigant would be well advised to have legal advice. Even in cases in which the assets are less and the income is lower, some legal advice as to your entitlement and the likely outcome of the case would be beneficial even if you cannot afford to be represented at the court hearings.

## **Commonly used terms**

### **Applicant/Respondent**

The Applicant is a person who starts legal proceedings or makes an application for separation or divorce. This person then becomes "a party" to the proceedings. Once papers are sent to the other parent and their advocate, they are referred to as "the Respondent" (to the application). Once proceedings have begun, the other party can make an application which will be referred to as 'The Respondent's Application'.

### **CETV**

This stands for Cash Equivalent Transfer Value and can only be obtained from the pension provider. A CETV is a 'snapshot' of what a pension is worth on that particular day. A pension forecast may also be useful, pension providers may charge for providing these documents.

### **File and serve**

This is a term commonly used in directions orders issued by the court, if it refers to an Affidavit for example it means that the Affidavit should be filed at court by a certain date and served on the party in the case at the same time. All documents disclosed to the Court should be routinely copied to the other party, this includes letters and email communication.

### **McKenzie Friend**

You can ask the Judge for an independent friend to help and support you in court, but they cannot speak for you or represent you (see Annex 4).

### **Pension Sharing Order**

An Order separating the pension benefit in favour of both parties, known as the 'payer' (person paying into the pension) and the 'payee' (person receiving the benefit of the other party's pension). A Pension Sharing Order must include a percentage transfer rather than a figure.

## **Consent Orders**

You can reach an agreement to resolve all financial matters at any stage even before you commence a claim for financial relief.

However such agreements are not binding unless they are approved by the court, and you are strongly urged to obtain legal advice on the wording of the proposed consent order before it is sent to the court.

It is not the responsibility of either the Court staff or of the judge (known as the Deemster or Judicial Officer) to draft the order.

If you do reach agreement you should send two copies of the draft Order you wish the Court to make. You must also file at the same time a Statement of Information signed by both of you which must contain the following information:-

- (i) The duration of the marriage, the age of each party and of any minor or dependent child of the family;
- (ii) An estimate in summary form of the approximate amount or value of the capital resources and net income of each party and of any minor child of the family;
- (iii) What arrangements are intended for the accommodation of each of the parties and any minor child of the family;
- (iv) Whether either party has remarried or has any present intention to marry or to cohabit with another person;
- (v) Where an order includes provision to be made under section 31 (pension sharing) of the Act, a statement confirming that the person responsible for

the pension arrangement in question has been served with the documents required by rule 67(11) and that no objection to such an order has been made by that person within 14 days from such service;

- (vi) Where the terms of the order provide for a transfer of property, a statement confirming that any mortgagee (e.g. bank) of that property has been served with notice of the application and that no objection to such a transfer has been made by the mortgagee within 14 days from such service; and
- (vii) Any other especially significant matters.

*[Taken from the Rules of the High Court (Matrimonial Proceedings) 2004 – Rule 60]*

The documents will be reviewed by a Deemster who may require further written information or direct that there be a short hearing to make sure that both parties understand the terms of the order and that the proposals are fair applying the criteria of section 32 of the Matrimonial Proceedings Act 2003.

## **Mediation**

If you have not reached agreement with your former spouse or partner then the Court would encourage the parties to seek to resolve matters by mediation before commencement of proceedings. Information can be found at [www.mediation-network.im](http://www.mediation-network.im)

## Commencing proceedings

The proceedings have to be commenced on Form 12 (available at the public counter or on the website <http://www.courts.im/formsandguidance/divorceproceedings.xml>) on which you have set out the types of order you are seeking. The most common are:

- Periodical payments for yourself
- Transfer of property, such as the former matrimonial home, or other assets including insurance policies and investments
- A pension sharing order
- Child Maintenance Order
- Lump Sum Order

The application must be filed in triplicate, as should any supporting documentation or affidavits.

This list is not exhaustive and if in doubt you should seek legal advice as to what orders you should be seeking.

A fee is payable when such an application is lodged with the Court. If you are in receipt of State Benefits or are on a low income you may be eligible for fees remission provided you complete the appropriate forms and also supply the financial information referred to in it. **Please note that only litigants residing on the Isle of Man may apply for fee remission.**

Once the application has been filed, the Court will normally issue an Automatic Directions order which you should read carefully and comply with. A sample Automatic Directions Order is annexed to these notes.

In certain cases the Court may instead set a short directions hearing, for example if the issues appear straightforward or if an Order for child maintenance is being applied for.

## **Pensions**

If you are entitled to an occupational pension or have made your own pension provision you must, as soon as you issue proceedings ask each pension provider for a CETV i.e. a statement as to the current transfer value of each pension.

Pension providers can take some time to produce this information so it is important that you request it as soon as possible.

## **Affidavit of Means**

This is the document that contains all your financial information. A Form C5 Affidavit of Means can be found on the Court website (<http://www.courts.im/formsandguidance/divorceproceedings.xml>). It is very important that it is completed both accurately and on time. It must be sent to the Court and your former spouse or partner or their advocate in the time period specified by the Automatic Directions Order or other Court Order.

It should contain full details of your income including earnings, investments income and all state benefits that you receive.

- It should contain details of the former matrimonial home or other property that you own, either in your own name or jointly, including your estimate



of the current value of each property and the amount of the outstanding mortgage on each property.

- You must include full details of all bank and building society accounts whether in joint names or your own name and the current balance for each account.
- Similarly you should include details of assets including insurance policies with their surrender values, stocks and shares and investment such as TESSAS and ISAS.
- You must disclose full details of all credit cards including current balances and all loans or debts.
- You must disclose the current transfer value, known as CETV, for each pension.
- The Affidavit of Means also makes provision for you to set out your current monthly expenditure for yourself and any dependent children and whether there will be any change in your expenditure.
- You must attach to the Affidavit of Means, or supply in a lever arch file to accompany it, copies of statements for your bank and building society and credit card accounts in each case for the 12 months up to the date you complete it. You must also attach the CETV of any pension and letters or other documents verifying your income and the amounts outstanding on any loans.

It obviously takes finance houses several weeks to supply copies of these documents. You should therefore apply for them as soon as possible so that you can send the Affidavit to the court and the other party in time.

Once completed, the Affidavit should be sworn or affirmed (to confirm that the contents are true) before a Commissioner for Oaths. This can be done at the public counter for a small fee.

## **Questionnaires**

Once you receive the other party's Affidavit of Means you can, if you think it necessary, ask questions about it e.g. to find out the purpose of significant payments out of an account or to ask why certain information has not been disclosed.

## **Further Directions hearings**

### **What do I call a Judge or Deemster?**

You can't go wrong with Sir, Madam, Your Honour or Deemster.

Directions Hearings are procedural hearings usually conducted by a Deemster. There may be just one or several such hearings, depending on the nature of the case.

Their purpose is to find out whether the parties have disclosed all relevant information and to ascertain what else needs to be done before the claim is capable of being resolved either by negotiation or failing that judicial input.

If a party has not disclosed a properly completed Affidavit of Means the hearing will have to be adjourned and the party in default may be ordered to pay the costs which have been wasted by the adjournment.

The Deemster will decide whether any outstanding questionnaires need answering and set a timetable for the answers. Conversely the Deemster will strike out any unnecessary questions.

If the parties cannot agree the value of any substantial asset for example the former matrimonial home the Deemster will order a valuation with both parties usually paying half the cost.

The Deemster will consider what other information, if any, is required before the claim can proceed to resolution either at or before the final hearing, should one be required.

### **Final Hearing**

Should the parties be unable to agree, the court will set down a date for a final hearing. Evidence will be heard from both parties and any relevant witnesses that have filed witness statements. Usually in financial hearings just the parties themselves will give evidence.

The Applicant will usually need to file a bundle (known as a court bundle) in advance of the hearing. This bundle should be paginated (pages numbered), indexed and contained in a ring binder or lever arch file. Please refer to Annex 2 – how to compile a court bundle and Annex 3 – specimen index for a court bundle.

**ANNEX 1 – SAMPLE AUTOMATIC DIRECTIONS ORDER**

FAM2014/XXX

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CIVIL DIVISION – FAMILY BUSINESS

BETWEEN:

FULL NAME OF APPLICANT Applicant

and

FULL NAME OF RESPONDENT Respondent

ORDER FOR AUTOMATIC DIRECTIONS – ANCILLARY RELIEF

HIS/HER HONOUR DEEMSTER ..... /

HIS/HER WORSHIP THE HIGH BAILIFF .....

Upon receiving the Application of the Applicant for Ancillary Relief dated the x<sup>th</sup> day of January 2014 and upon reading the accompanying Affidavit of Means dated the x<sup>th</sup> day of January 2014 **IT IS ORDERED** that the parties comply with the following directions:-  
(PLEASE NOTE THAT 'FILE AND SERVE' MEANS A SWORN AFFIDAVIT SHOULD BE FILED AT COURT AND A PHOTOCOPY OF THE SWORN DOCUMENT AND ANY ATTACHMENTS SHOULD BE SERVED ON THE OTHER PARTY)

1. That the Respondent do serve and file an Affidavit as to Means and in response to the Application for Ancillary Relief by x<sup>th</sup> February 2014; (date approximately 3-4 weeks away from the Order having been sealed)
2. That the Applicant be at liberty to serve and file an Affidavit by way of reply by x<sup>th</sup> March 2014; (date approximately 2 weeks away from the Respondent to file and serve)

3. There shall be mutual disclosure of documents (by way of the exchange of legible photocopies) within 28 days of the time limit for filing of the Affidavit in reply. Disclosure of documents should include as applicable:-
  - Property valuations obtained in the last 6 months
  - Most recent mortgage statements
  - Last 12 months' bank statements and credit card statements
  - Latest statement or dividend counterfoil for stocks, shares and similar investments
  - Surrender value quotes of insurance policies
  - Last 2 years' business accounts
  - Any available documentation on the basis of which the value of a business is estimated
  - Last 3 months' payslips
  - Last tax assessment or if not available letter from accountant confirming tax liability from self-employed income
  - Latest management accounts where last year's self-employed income differs significantly from next year's estimate
  - Pension CETVs
4. The value of any property or assets shall, if possible, be agreed and in default of agreement the property and assets shall be valued by an independent valuer appointed by the parties jointly and in default of agreement as to value experts shall be limited to one witness for each party the contents of whose report shall have been disclosed at least 42 days before the final hearing of this Application
5. Not less than 6 weeks before the final hearing of this Application the parties (with or without their Advocates) must meet with a mediator to explore the possibility of settling the case
6. The Application to be heard on a date to be fixed on either party certifying readiness and compliance with these directions and providing an estimated length of hearing which should be accurate and agreed with the opposing party if possible
7. Not more than 42 days or less than 28 days before the final hearing each party shall file and serve an Affidavit detailing any changes in their financial circumstances since the filing of his and her last Affidavit
8. Not less than 28 days before the date fixed for the final hearing, the party bringing the Application must file and serve on the opposing party, an open

statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the Court to make.

9. Not more than 10 days after service of the statement under para 8, the opposing party must file and serve an open statement which sets out concise details, including the amounts involved, of the orders which he proposes to ask the Court to make
10. Not less than 21 days before the final hearing the party bringing the Application is to file and serve on the opposing party a concise Skeleton Argument together with any legal Authorities relied upon including a clear statement of the issues to be resolved by the Court and annexing thereto a draft of the Order which that party wishes the Court to make. Not less than 14 days before the final hearing the opposing party is to file and serve a concise Skeleton Argument in response together with any legal Authorities relied upon also setting out clearly that party's view of the issues to be resolved by the Court and annexing thereto a draft of the Order which that party wishes the Court to make
11. Not less than 10 days before the final hearing, the party bringing the Application is to file with the Court and serve upon the opposing party a Bundle containing all Pleadings, Evidence and Orders together with an Index and a separate Indexed and paginated bundle containing any other documents to which reference is likely to be made during the final hearing
12. Liberty to either party to apply for such further directions as may be required
13. Costs in the cause

Dated this x<sup>th</sup> day of January 2014

SEAL OF THE HIGH COURT

## ***ANNEX 2 – HOW TO COMPILE A COURT BUNDLE***

This is a guide to assist self-represented parties to comply with the Court's direction to file a court bundle.

A bundle is a file of all the relevant papers in the case. One file will be needed for every party in the case plus one for the Judge and, for a hearing where evidence is to be given, a spare one for the witnesses to use. The purpose is to make sure that everyone can see the same documents during the hearing.

It is usually the Applicant's duty to provide these bundles but the Court may make a different order in your case. If no such order is made the Applicant must do it.

Each page in the bundle must be numbered and care should be taken to make sure that the bundles have the same numbering.

There should be an index at the front of the bundle listing the contents and which section and page they can be found at.

Ideally the contents of the bundle should be agreed with the other party. That means you need to share the draft index well in advance so that the other side can ask you to add in any missing documents and prepare a final index.

The bundle must be divided into different sections and within each section the documents must be in date order (earliest first).

The sections are:

**A: Preliminary documents**

These are:

- A short case summary, which should be limited to a short background to the case and the issues that the Court will be asked to deal with at the next hearing. This should be one sheet of A4 paper if possible;
- A position statement from each party setting out what order they want the Court to make both at the next hearing and at the end of the case; and
- A chronology i.e. a list of dates that are significant to the case.

All of these must have on them (a) the date on which it was written and (b) the date of the hearing for which it was written.

**B: Application forms and orders of the Court**

**C: Statements**

**D: Experts reports such as property valuations or pension information**

**E: Any other documents**

The file must have the following information on the front and on the spine:

- a) The title and number of the case e.g. Smith v Jones FAM2013/
- b) The hearing date and time
- c) If known, the Judge hearing the case
- d) If you need to use more than one ring binder, number the files. The maximum number of pages that may be put in one lever arch ring binder is 350 pages so most cases will only require one file.

The bundle must be filed at Court and be given to the other side in a timescale fixed by the Judge.



***ANNEX 3 – SAMPLE COURT BUNDLE INDEX***

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN**

**CIVIL DIVISION – FAMILY BUSINESS**

File Number: FAM2014/

Between

<INSERT NAME>

and

<INSERT NAME>

Index to the trial bundle

**Section A Preliminary documents**

Page A1                      The case summary. (This should set out a brief outline of the background to the case)

Page A2                      A chronology of relevant dates

**Section B application forms and orders of the court**

Pages B1 to B12            A copy of the applicant’s application form dated XX

Pages B13 to B16        (Copy previous court orders in chronological order)

**Section C Affidavits of Means**

Page C1 to 3                Copy of the applicant’s Affidavit of Means dated XX

Page C3 to 6                Copy of the respondent’s Affidavit of Means dated XX

**Section D Experts reports**

Page D1 to D10            Property valuation dated X

Page D11 to D12          Pension CETV dated X

Page D13 to D14          GP report dated X

**Section E Any other relevant documents**

Page E1 to E30

## ***ANNEX 1 – GUIDANCE ON McKENZIE FRIENDS***

### **Code of Conduct for McKenzie Friends**

1. When someone involved in a court case asks another person to assist, not as a lawyer or a witness but as a friend, the person assisting is often called a “McKenzie Friend”.
2. A McKenzie Friend does not have a right to address the Court, they are there to morally support and possibly advise you.
3. Annexed to these notes is a document entitled ‘Guidance on McKenzie Friends’. Any person proposed as a McKenzie Friend should read this document carefully.
4. If you wish to have a McKenzie Friend with you in court you should inform the court and the other party as soon as possible. If your proposed McKenzie Friend has a financial interest in the outcome of the case they would not normally assist.
5. Your proposed McKenzie Friend may attend the hearing of the Court unless the Court says they cannot.
6. Your proposed McKenzie Friend may read the papers for the Court case unless the Court says they cannot. Any papers are strictly confidential and must not be shown to anyone else or put on any form of social media or the internet.
7. McKenzie Friends should let the staff at the Court know as soon as they arrive that they have been asked to assist.
8. Your proposed McKenzie Friend should send to the court in advance of the hearing, a short curriculum vitae (CV) and if asked by the Court staff to complete a short set of questions about themselves which should be done in advance of the hearing.
9. If a McKenzie Friend is being paid to assist or if they regularly assist a number of different people as a McKenzie Friend then the Court should be made aware of that.

10. McKenzie Friends may provide moral support, take notes, help with case papers and give advice to the person they are assisting.
11. McKenzie Friends may not address the Court, make oral submissions or examine witnesses. McKenzie Friends should be aware that the Judge has power to terminate permission to act at any stage.
12. McKenzie Friends must always follow any instructions given by the Judge.
13. McKenzie Friends should be courteous at all times to everyone else.
14. McKenzie Friends should try to ensure that the way in which they assist does not cause any disruption or distract others. This is particularly important when someone else is speaking to the Judge or the Judge is speaking.
15. McKenzie Friends must behave with honesty and not do anything that might mislead the Court or anyone else.
16. Please remember at all times that McKenzie Friends are there to assist someone else, and not on their own behalf.

**Guidance on McKenzie Friends - This is not a practice direction**

**Right to have an assistant sitting with you.** These notes explain what “McKenzie Friends” are and their legal basis.

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**Background: what are McKenzie Friends?**

If you are representing yourself in court (i.e. you are not using an advocate to represent you), you may be entitled to have someone sit next to you. He/she can take notes, offer advice to you (in whispers) and prompt you to ask particular questions etc., but cannot address the court directly or question witnesses. He/she has no independent right to provide assistance. He/she is usually called a “McKenzie Friend”.

Most people don't use McKenzie Friends, and they are not meant to be a substitute for an advocate.

It is possible that a court may refuse to allow you to have a McKenzie Friend to sit with you.

## **The legal basis of McKenzie Friends**

McKenzie Friends have no official legal status: they have no *particular* right to sit next to you in court. You have a right to such assistance that may be reasonably required, and that is the basis for allowing the McKenzie Friend. The name comes from the particular case which established this right (see below).

*McKenzie v McKenzie, 1970*, which was a divorce case. The husband had been initially legally aided, but by the time the case came to trial, he was no longer on legal aid, and had therefore decided to represent himself. At the start of the trial, a young Australian barrister (Mr Hanger) had wanted to assist Mr McKenzie for free. The judge then said that the barrister could take no part in the proceedings, so he left the court and did not reappear.

The conclusion of all three judges in the appeal court was that Mr Hanger (the McKenzie Friend) should have been allowed to remain, to "sit quietly beside the husband and give him from time to time some quiet advice or prompting" (Lord Justice Sachs, at page 477H). The judgment also quotes (approvingly) the comment made in an earlier case, *Collier v Hicks, 1831*:

*Any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions, and give advice.* (Lord Tenterden CJ, in *Collier v Hicks*, page 669).

## **The R v Leicester City Justices case**

This was a case about non-payment of poll tax. Leicester City Council had taken Mr and Mrs Barrow to court for non-payment, and wanted to get a 'liability order' against them. When their case came to court (Leicester City magistrates' court), the Barrows wanted to have the help of Robert John, to act as a McKenzie Friend. The magistrates ruled that, because it was a straightforward case, they did not require a McKenzie Friend, and they would not be allowed one. This decision was upheld on appeal to the Divisional Court, but overturned by the Court of Appeal.

The Court of Appeal established a right to have a McKenzie Friend, unless the need to maintain order and do justice dictates otherwise.

The case also contained comments on situations in which an assistant could properly be refused: if security demanded it, or if the McKenzie Friend is disorderly or is disrupting the court.

In the conjoined appeals reported as In the matter of the children of Mr. O'Connell, Mr Whelan and Mr. Watson [2005] EWCA Civ 759 the Court of Appeal in the UK took the opportunity of emphasising that the presumption in favour of permitting a McKenzie Friend is a strong one. They also pointed out that the right to a fair hearing under article 6.1 of the European Convention on Human Rights is engaged on any application by a litigant in person for the assistance of a McKenzie Friend.

The court observed in particular that –

- The purpose of allowing a litigant in person the assistance of a McKenzie Friend is to further the interests of justice by achieving a level playing field and ensuring a fair hearing. The presumption in favour of allowing a litigant in person the assistance of a McKenzie Friend is very strong. Such a request should only be refused for compelling reasons and should a judge identify such reasons, he/she must explain them carefully and fully to both the litigant in person and the would-be McKenzie Friend.
- Where a litigant in person wishes to have the assistance of a McKenzie Friend in private family law proceedings relating to children, the sooner that intention is made known to the court and the sooner the court's agreement for the use of the particular McKenzie Friend is obtained, the better. In the same way that judicial continuity is important, the McKenzie Friend, if he/she is to be involved, will be most useful to the litigant in person and to the court if he/she is in a position to advise the litigant throughout.
- It is not good practice to exclude the proposed McKenzie Friend from the courtroom or chambers whilst the application by the litigant in person for his/her assistance is being made. The litigant who needs the assistance of a McKenzie Friend is likely to need the assistance of such a friend to make the application for his/her appointment in the first place. In any event, it is helpful for the proposed McKenzie Friend to be present so that any concerns about him can be ventilated in his/her presence, and so that the judge can satisfy himself/herself that the McKenzie Friend fully understands his/her role (and in particular the fact that disclosure of confidential court documents is made to him/her for the purposes of the proceedings only) and that the McKenzie Friend will abide by the court's procedural rules.

- In this context it will always be helpful for the court if the proposed McKenzie Friend can produce either a short curriculum vitae or a statement about himself/herself, confirming that he/she has no personal interest in the case, and that he/she understands both the role of the McKenzie Friend and the court's rules as to confidentiality.
  
- The following do not, of themselves, constitute 'compelling reasons' for refusing the assistance of a McKenzie Friend:
  - (1) That the litigant in person appears to the judge to be of sufficient intelligence to be able to conduct the case on his/her own without the assistance of a McKenzie Friend;
  - (2) That the litigant in person appears to the judge to have a sufficient mastery of the facts of the case and of the documentation to enable him to conduct the case on his own without the assistance of a McKenzie Friend;
  - (3) That the hearing at which the litigant in person seeks the assistance of a McKenzie Friend is a directions appointment, or a case management appointment;
  - (4) That the proceedings are confidential and that the court papers contain sensitive information relating to the family's affairs;
  - (5) That the litigant in person has chosen not to have legal representation;
  - (6) That the case is simple or straightforward;
  - (7) That the other party is not represented;
  - (8) That the proposed McKenzie Friend belongs to an organisation that promotes a particular cause.

### **What McKenzie Friends may do**

McKenzie Friends may:

- i) Provide moral support for litigants;
- ii) Take notes;
- iii) Help with case papers;

- iv) Quietly give advice on any aspect of the conduct of the case.

### **What McKenzie Friends may not do**

McKenzie Friends may not:

- i) Act as the litigants' agent in relation to the proceedings;
- ii) Manage litigants' cases outside court, for example by signing court documents;  
or
- iii) Address the court, make oral submissions or examine witnesses.

### **What to do if a McKenzie Friend is requested**

While litigants ordinarily have a right to receive reasonable assistance from McKenzie Friends the court retains the power to refuse to permit such assistance. The court may do so where it is satisfied that, in that case, the interests of justice and fairness do not require the litigant to receive such assistance.

A litigant who wishes to exercise this right should inform the Deemster or the High Bailiff or Deputy High Bailiff or Clerk to the Magistrates (as the case may be) as soon as possible indicating who the McKenzie Friend will be. The proposed McKenzie Friend should produce a short curriculum vitae or other statement setting out relevant experience, confirming that he or she has no interest in the case and understands the McKenzie Friend's role and any relevant duty of confidentiality.

### **Potential refusals to allow a McKenzie Friend**

If the court considers that there might be grounds for circumscribing the right to receive such assistance, or a party objects to the presence of, or assistance given by a McKenzie Friend, it is not for the litigant to justify the exercise of the right. It is for the court or the objecting party to provide sufficient reasons why the litigant should not receive such assistance.

When considering whether to circumscribe the right to assistance or refuse a McKenzie Friend permission to attend, the right to a fair trial is engaged. The matter will be considered carefully. The litigant will be given a reasonable opportunity to argue the point.

The proposed McKenzie Friend will not be excluded from that hearing and will normally be allowed to help the litigant.

Where proceedings are in *closed court*, i.e. the hearing is in chambers, is in private, or the proceedings relate to a child, the litigant is required to justify the McKenzie Friend's presence in court. The presumption in favour of permitting a McKenzie Friend to attend such hearings, and thereby enable litigants to exercise the right to assistance, is a strong one.

The court may refuse to allow a litigant to exercise the right to receive assistance at the start of a hearing. The court can also circumscribe the right during the course of a hearing. It may be refused at the start of a hearing or later circumscribed where the court forms the view that a McKenzie Friend may give, has given, or is giving, assistance which impedes the efficient administration of justice. However, the court will also consider whether a firm and unequivocal warning to the litigant and/or McKenzie Friend might suffice in the first instance.

A decision by the court not to curtail assistance from a McKenzie Friend should be regarded as final, save on the ground of subsequent misconduct by the McKenzie Friend or on the ground that the McKenzie Friend's continuing presence will impede the efficient administration of justice. In such event the court will give a short judgment setting out the reasons why it has curtailed the right to assistance. Litigants may appeal such decisions. McKenzie Friends have no standing to do so.

A litigant may be denied the assistance of a McKenzie Friend because its provision might undermine or has undermined the efficient administration of justice. Examples or circumstances where this might arise 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 a civil proceedings order or a civil restraint order;
- iv) The McKenzie Friend is using the litigant as a puppet;
- v) The McKenzie Friend is directly or indirectly conducting the litigation;
- vi) The court is not satisfied that the McKenzie Friend fully understands the duty of confidentiality.



Where a litigant is receiving assistance from a McKenzie Friend in care proceedings, the court will consider the McKenzie Friend's attendance at any advocates' meetings directed by the court.

The High Court can, under its inherent jurisdiction, impose a civil restraint order on McKenzie Friends who repeatedly act in ways that undermine the efficient administration of justice.

### **Communications to the McKenzie Friend**

Litigants are 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.

Legal representatives should ensure that documents are served on litigants in good time to enable them to seek assistance regarding their content from McKenzie Friends in advance of any hearing or advocates' meeting.

### **Rights of audience and rights to conduct litigation**

McKenzie Friends do **not** have a right of audience or a right to conduct litigation. It is an offence to exercise rights of audience or to conduct litigation unless properly qualified and authorised to do so.