

Response to consultation on reforming the courts' approach to McKenzie Friends:

About Rights of Women

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

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Rights of Women's consultation response

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Survivors of domestic violence are some of the most vulnerable court users. Women litigants in person (LIPs) who call our advice lines consistently express their anguish about facing their perpetrator in court. Our research report, *Picking up the pieces: domestic violence and child contact*¹ looked at women's experiences through the family courts in relation to child contact cases. The research revealed the following:

- Women survivors of domestic violence lack confidence to express themselves due to the domestic violence
- Women fear that their concerns or allegations will not be believed
- Perpetrators use court proceedings as a means to continue to abuse survivors of domestic violence
- 74% of women survivors felt unsafe in the court building due to the lack of special measures

Survivors of domestic violence find being a LIP challenging and those who call our advice lines tell us how desperate they are for legal advice and representation. However, in the absence of legal support, survivors appreciate and derive benefit from the practical and emotional support that McKenzie Friends provide.

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?

¹ *Picking up the pieces: domestic violence and child contact*, Rights of Women, 2012,
http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Picking_Up_the_Pieces_Report-20121.pdf

Yes. We agree that the term 'McKenzie Friend' is confusing and unclear for LIPs.

Question 2: Do you agree that the term 'court supporter' should replace McKenzie Friend? If not, what other term would you suggest?

We are not opposed to the term 'court supporter', however, we would prefer a term such as 'court friend'. The term 'court supporter' may be interpreted by some LIPS as someone who is a legal professional, or a person who supports the court. Court friend more clearly indicates the nature of the role.

Question 3: Do you agree that the present Practice Guidance should be replaced with rules of court?

Codified rules may help ensure consistency and clarity for courts, LIPs and McKenzie Friends.

Comments on draft rules set out in Annex A to the consultation:

Assistance for LIPs where proceedings are in private

The draft rules indicate that if proceedings are in private then a LIP can only have the assistance of a McKenzie Friend with the court's permission.

The current Guidance states that all LIPs are entitled to reasonable assistance from a McKenzie Friend. The court has the power to refuse the assistance of a McKenzie Friend where it is satisfied that the interests of justice and fairness do not require a litigant to receive such assistance. It is not for the LIP to justify their right to the assistance, but for the judge or the party objecting to the McKenzie Friend to provide sufficient reasons why they should not receive the assistance.

We are not clear why a different approach has been suggested for proceedings that are held in private. Separate approaches may confuse LIPs and McKenzie Friends and as it is unclear why LIPs should not automatically be entitled to reasonable assistance from a McKenzie Friend, we disagree with the suggested departure from the current approach.

Requirement to provide CV or statement of experience

McKenzie Friends are not always 'professionals'. They can be a friend or a neighbour, or any lay person who does not have a personal interest in the case. The requirement to provide a CV or details of relevant experience implies that the McKenzie Friend should be a professional with relevant experience. It is important to ensure that non-professional McKenzie Friends are not dissuaded from providing reasonable assistance.

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

It is not clear in the consultation document why different approaches are proposed.

We are of the view that the approach taken by the court should depend upon the nature of the case and the relationship between the parties. Survivors of domestic and sexual violence struggle to address the judge in the presence of their perpetrator and to discuss the violence they have experienced. This can occur in civil proceedings as well as family proceedings, for example following an application for an injunction under the Protection from Harassment Act 1997 or an application under the Trust of Land and Appointment of Trustees Act 1996 to resolve disputes over property.

Question 5: Do you agree that a standard form notice, signed and verified by both the LIP and the McKenzie Friend, should be used to ensure that sufficient information is given regarding the McKenzie Friend?

Yes, however the process must be easy and not overly burdensome for LIPs and McKenzie Friends (see comments above regarding CVs and statements). Consideration should be given to the following:

Confidential details for domestic violence support services

Staff from refuges and other domestic violence support services sometimes provide McKenzie Friend assistance to survivors of domestic violence. Staff and service users are often under an obligation to keep details of the organisation confidential to ensure the safety of the staff and service users. In such circumstances, it should be possible for a McKenzie Friend to provide details of the nature of their work and experience whilst not disclosing identifying details.

Survivors of domestic violence are often isolated and if domestic violence support staff are prevented from assisting them at court, they are unlikely to have any other source of support.

Notice Period

It is not clear from the consultation document whether the notice will need to be filed within a minimum time period. We would oppose a minimum time period. All LIPs should be entitled to a McKenzie Friend and imposing a time period may prevent the most vulnerable LIPs with busy or chaotic lives from receiving assistance.

Question 6: Do you agree that such a notice should contain of Code of Conduct for McKenzie Friends, which the McKenzie Friend should verify that they understand and agree to abide by?

Yes. We suggest this includes a code on communications with the other party. A small number of callers to our advice lines have reported problematic behaviour by the other party's McKenzie Friend ranging from over-assertiveness to aggressive bullying, particularly in relation to child arrangements cases. We are concerned that some lay people belonging to some fathers' rights organisations use the role of McKenzie Friend to vent personal frustrations or to further their own campaigns. We suggest the code addresses the way in which McKenzie Friends should engage with the other party and further that the code provide guidance to the judiciary on how to address situations where a litigant complains that a McKenzie Friend has breached the code.

Question 7: Irrespective of whether the Practice Guidance (2010) is to be revised or replaced by rules of the court, do you agree that a Plain Language Guide for LIPs and McKenzie Friends be produced?

Yes. In relation to confidentiality and McKenzie Friends from support organisations, we propose the guide address how and in what circumstances McKenzie Friends may discuss details of cases with other members from the organisation. This is one of the most common questions we are asked by professionals who support survivors of domestic violence.

The guide should stress that a McKenzie Friend need not have a legal background, but also that they are not regulated or insured.

We propose the guide include information on special measures, which may be available to survivors of domestic violence (such as how to request separate waiting rooms, screens etc.); there is very little guidance on this at present.

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?

It seems logical that the guide should be produced by or in conjunction with a body with expertise in drafting plain language guides. We also suggest that relevant organisations, including violence against women and girls organisations, be consulted before the guide is finalised.

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?

There are a growing number of 'professional McKenzie Friends' who offer their services for a fee which goes beyond covering travel expenses. Despite what may be stated on their promotional materials, the reality of their service often goes beyond practical and emotional support and extends to legal advice and litigation support. We are of the view that this is dangerous and should be avoided. Most McKenzie Friends lack the training and experience to provide legal services. McKenzie Friends are unregulated and uninsured. Vulnerable litigants have no means of redress if the McKenzie Friend provides negligent or incompetent advice or assistance.

A remuneration ban will help ensure that the assistance LIPs receive is limited to practical and emotional support, as opposed to reserved legal services.

We are not opposed to McKenzie Friends being recompensed for travel to and from court where receipts are provided.

Question 10: Are there any other points arising from this consultation on that you would like to out forward for consideration?

For survivors of domestic violence who are also LIPs the prospect of examining and being cross-examined by their perpetrator is traumatic. Survivors of domestic violence should always be protected from cross-examination and the special measures available in the criminal justice system should be available in the family and civil courts.

The consultation document and draft rule do not address whether the courts may give McKenzie Friends permission to examine a party on behalf of a LIP. This should be addressed for the purposes of clarity. We are of the view that judges should be very cautious about allowing McKenzie Friends to examine a party, but it may sometimes be appropriate for the McKenzie Friend to read out questions which have been pre-prepared by the LIP if the judge is not able to do so.

We are happy to offer our assistance in ensuring that the specific needs of survivors of domestic violence are addressed when drafting the rules, code and plain language guides.

Rights of Women

9th June 2016