



Ascent



Good Practice Briefing

Acting as a McKenzie Friend or Litigation Friend in the Family Court

December 2018



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Introduction

ASCENT - Support services to organisations

Ascent is a partnership within the London Violence Against Women and Girls (VAWG) Consortium, delivering a range of services for survivors of domestic and sexual violence, under six themes, funded by London Councils.

ASCENT – Support services to organisations, is delivered by a partnership led by the Women’s Resource Centre (WRC) and comprised of five further organisations: AVA, IMKAAN, RESPECT, Rights of Women, and Women and Girls Network.

This second-tier support project aims to address the long term sustainability needs of organisations providing services to those affected by sexual and domestic violence on a pan-London basis.

The project seeks to improve the quality of such services across London by providing a range of training and support, including:

- Accredited training
- Expert-led training
- Sustainability training
- Borough surgeries
- BME network
- One-to-one support
- Policy consultations
- Newsletter
- Good practice briefings

Good practice briefings

The purpose of the good practice briefings is to provide organisations supporting those affected by domestic and sexual violence with information to help them become more sustainable and contribute with making their work more effective.

Background

McKenzie friends are people who attend court with someone who does not have a lawyer to provide support and assistance.

The term “McKenzie friend” comes from a case called McKenzie v McKenzie in 1970 where the court decided that an unrepresented party should be allowed to have a friend in court who was supporting him.

Since changes to legal aid introduced in 2013, the number of unrepresented parties in the Family Court has increased significantly. For those who are not eligible for legal aid and who cannot afford a solicitor, a McKenzie friend can provide a valuable service. McKenzie friends are able to provide important emotional support to unrepresented parties and if they have experience of the Family Court, may be able to help guide them through the court process.

Traditionally, McKenzie friends were family members or friends but since cuts to legal aid, there has been a significant increase in the number of charities and other organisations offering McKenzie friend services. In particular, there has been a significant increase in McKenzie friends who charge fees for the service they provide and some concern that vulnerable individuals are being charged for services which are unregulated.

In 2016, the Lord Chief Justice of England and Wales published a consultation on the role of McKenzie friends which can be found [here](#). There has been no further change since the consultation.

The most recent practice guidance from the President of the Family Division is dated 2010 and has not been updated since. It can be found [here](#). This guidance should be read together with the President’s guidance.

The purpose of this briefing is to improve support to survivors by supporting practitioners in the following ways:

- providing information for practitioners to understand what their legal duties and responsibilities are if they chose to act as a McKenzie friend
- providing guidance on the best ways to support survivors as a McKenzie friend
- explaining what, if anything, you can do to support someone facing a McKenzie friend on the other side of the case who is acting inappropriately.

Terminology

We have used the term ‘survivor’ throughout this document to describe someone who has experienced or is at risk of experiencing domestic abuse. While we have sought to ensure that the language in this leaflet is gender-neutral, it is written in recognition of the gendered nature of domestic violence and abuse, which disproportionately impacts girls and women.

Some of the terms used by professionals within the Family Justice System are not easily understood by the public trying to access the courts and there are ongoing attempts to make language clearer. Unfortunately, the result is that there are a number of terms that are used interchangeably that mean the same thing. The definitions of various terms and alternative phrases that mean the same are set out here:

“McKenzie friend” or “litigation friend” – someone who provides support and assistance to people when they are facing legal issues.

“litigation” or “proceedings” – these words can sometimes be used interchangeably but they generally mean a court case. This is opposed to when someone has a legal problem but it does not require a court case to resolve it.

“litigant in person” or “unrepresented party” – someone who is a party to a court case and does not have legal representation.

“rights of audience” – not everyone is entitled to speak to a judge in court. If you are allowed to speak to the judge, this is called having “rights of audience”.

“advocacy” – in a legal context, this means speaking in court on behalf of your client.

What is a McKenzie friend?

When someone is involved in a legal case and they do not have a solicitor or barrister, they are entitled to have assistance from someone who is not a solicitor or barrister at court. This is called a “McKenzie friend”. or, sometimes, a “litigation friend”.

McKenzie friends do not have to be legally qualified in any way. A family member or friend can be someone’s McKenzie friend.

Alternatively, there are various charities and support organisations that provide McKenzie friends for free, like the [Personal Support Unit](#), some law centres or law schools.

Some McKenzie friends run businesses offering their services for a fee. If the survivor you are supporting is accessing this type of service, see the question below about whether this is something to be concerned about.

Can domestic violence support services provide McKenzie friends?

Yes.

If you are supporting a survivor of domestic abuse, it is very possible you will have attended Family Court with the survivor to offer emotional support. If the survivor has a solicitor, you can continue to do this.

If the survivor you are supporting does not have a solicitor, you can ask her if she would like you to support her as a McKenzie friend.

I already go to the Family Court to support survivors, why do I need to be a McKenzie friend?

Many support workers already providing support to survivors in the Family Court are fulfilling the role of McKenzie friend without realising it. By identifying your role as a McKenzie friend it makes sure that everyone involved, including the court is aware of what you can and cannot do.

It is also important because sometimes domestic violence support workers are told to wait outside the court room and are not allowed into the hearing. As a McKenzie friend, you will be able to go into court with the survivor and sit with her during the hearing.

Describing yourself as a McKenzie friend will ensure that if you are excluded from the hearing, the court provides a reason why.

What legal duties does a McKenzie friend have?

A McKenzie friend has to maintain confidentiality about a case. The survivor is allowed to show the court papers to her McKenzie friend and they are allowed to go into court with the survivor. They have a duty to keep everything they read or hear about the case confidential.

A McKenzie friend must also confirm to the court that they have no interest in the outcome of the case, for example, in a case about finances on divorce if the survivor is saying that the deposit to buy her property was a loan from her brother, it would not be appropriate for her brother to be her McKenzie friend. This is because he may financially benefit from the outcome of the case.

What can a McKenzie friend do?

McKenzie friends can:

- **Be shown the court papers by the survivor**
Normally, papers in children proceedings are confidential and are only allowed to be shown to other people who are not involved in the case in limited circumstances. A survivor is allowed to show the papers to her McKenzie friend to discuss them with her.
- **Go into court hearings with the survivor and sit next to them at the front of the court**
A McKenzie friend cannot be excluded from a hearing without good reason. See below for when this might happen.
- **Provide moral support**
- **Take notes of what is said**
This is very helpful because the survivor will find it difficult to do this while speaking to the judge. It may also be helpful if the survivor is struggling to remember what happened at court.
- **Help with case papers**
A McKenzie friend can help the survivor get her papers together and in the right order for hearings, help her with documents she needs to prepare by discussing what she wants to say in those documents or help her with finding where she has to send documents. See below in relation to what a McKenzie friend cannot do to understand the limits of this.
- **Quietly give advice on the case**
This means that during a hearing, if the McKenzie friend thinks that the survivor has forgotten to mention something important and that she is struggling to understand what the judge is asking of her, they can help her by quietly explaining or pointing out things to her during the hearing.

What can a McKenzie friend not do?

McKenzie friends cannot:

- **Act as the survivor's agent in relation to the case**
This means that they should not use the McKenzie friend's address for letters or email. It is important that McKenzie friends remember they are not performing the role of solicitor. The survivor is unrepresented and is responsible for managing her own case and making decisions about how she wants to do that. This is sometimes difficult if the McKenzie friend thinks that a survivor would be better doing something else. However, this is the survivor's decision. If it is possible for her to get some free legal advice to understand her different

options, this may help. It is best practice to let the survivor write to/email/speak to others involved in the case herself and not go through the McKenzie friend.

- **Manage the survivor's case outside court**

As above, it is important that the survivor is in charge of her own case. Helping with case papers, including helping with drafting papers is allowed, but documents must always be signed by the survivor, never the McKenzie friend. If the McKenzie friend is helping with drafting documents, it is important to make sure that the survivor is in charge of what is written and it is written in her words even though she may discuss this with the McKenzie friend and ask for help with the kind of information that is required.

- **Speak to the judge, make arguments in court or question witnesses**

This is called "advocacy" and you have to be given "rights of audience" by the court in order to speak directly to the judge.

How do I become someone's McKenzie friend?

The survivor is entitled to choose their own McKenzie friend. You can talk to her about what this means and what different options she has. If she would like you to act as her McKenzie friend, it is important to remember that she is the one with responsibility for the case. She is representing herself and you are providing support.

You should provide a short CV or letter explaining your experience for the survivor to give to the court and the other parties. In the letter, you should confirm that you understand your duty of confidentiality and that you do not have an interest in the case.

In children proceedings, the survivor should write to the court as soon as possible and all of the other parties in the case telling them that you are going to be her McKenzie friend.

When you attend court, you should take the same letter or CV with you and tell the usher at court who you are. Provide them with the letter or CV to show the judge.

Can the court refuse to let me be a McKenzie friend?

Not without good reasons.

There is a strong presumption that parties are allowed to have a McKenzie friend. If the court or the other party raises concerns about you being a McKenzie friend, they should deal with this at the start of the hearing. You are allowed to come into court for this part of the hearing and hear the reasons why you are not allowed to be a McKenzie friend.

The guidance suggests that the following should **NOT** be used as reasons to refuse a McKenzie friend:

- The case is simple or the hearing is straightforward;
- The survivor does not appear to need assistance;
- The survivor has chosen not to have legal representation;
- The other party is not represented;
- The proposed McKenzie friend belongs to an organisation that promotes a particular cause;
- The proceedings are confidential and the court papers contain sensitive information relating to a family's affairs.

None of these are good enough reasons to refuse a McKenzie friend.

A McKenzie friend can be refused because they are undermining the efficient administration of justice.

Examples of this may be:

- the assistance is being provided for an improper purpose;
- the assistance is unreasonable in nature or degree;
- the McKenzie friend is subject to a civil proceedings order or a civil restraint order (these can be made by the High Court);
- the McKenzie friend is using the party as a puppet;
- the McKenzie friend is directly or indirectly conducting the case;
- the court is not satisfied that the McKenzie friend fully understands the duty of confidentiality.

What if the survivor wants me to speak to the judge for her?

Speaking to the judge directly about the case or questioning witnesses is advocacy. You have to have "rights of audience" to be able to do this.

McKenzie friends can be granted rights of audience by the court but the court has to have a good reason to do so. Examples of when this might happen are:

- that person is a close relative of the survivor;
- health problems prevent the survivor from speaking to the court and they cannot afford a legal representative;
- the survivor is not very articulate and prompting by the McKenzie friend may unnecessarily prolong the hearing.

The guidance states that it should only be in exceptional circumstances that a fee-charging or "professional" McKenzie friend is granted rights of audience.

In a recent case¹, the Court of Appeal stated that for a McKenzie friend to question witnesses, in particular, a survivor of domestic abuse would be "highly unpalatable and this court would be very disturbed by that prospect". If the other party is asking for their McKenzie friend to question the survivor, the survivor can use this case to show that this should only happen in very unusual circumstances.

¹ [Re J \(Children\) \[2018\] EWCA Civ 115](#)

What if the Judge asks me a question during the hearing?

Because family court hearings are meant to be less formal than other court hearings, the judge may sometimes be tempted to ask you a question directly. If it is a simple question which is within your knowledge, for example, clarifying something about the services your organisation provides, then answer the question in a straightforward manner. Then go back to speaking to the survivor directly, do not take this as permission to speak on behalf of the survivor in the hearing.

If the judge is continuing to ask you questions directly, especially about the case more generally, then politely remind them that you do not have rights of audience and did not believe you were allowed to speak on behalf of the survivor. It would be unusual for you to find yourself in this position.

If this happens a lot, it may be worth considering whether you should ask the court for rights of audience. This should be the survivor's decision, not yours. The court can then give reasons why they are granting you rights of audience.

The survivor I'm supporting has agreed to pay someone to be her McKenzie friend. Should I be concerned?

There are lots of responsible McKenzie friends who do this work and provide good support to people who have to face court proceedings by themselves. However, unlike solicitors and barristers, McKenzie friends are not required to have training, comply with regulations or be insured. It is, therefore, worth questioning what exactly the survivor is spending their money on. Below is a list of questions you can consider with the survivor to decide if it is worth paying a McKenzie friend.

Are you sure the survivor is not eligible for legal aid? Assessments of legal aid are complicated and unless it is very clear that the survivor is not eligible for legal aid, it may be worth asking a legal aid solicitor to assess her financial circumstances. Having a solicitor is preferable to a McKenzie friend and provides better protection if something goes wrong.

Have you done your internet research? What is the McKenzie friend's motivation for doing the work? Have a look at their website. What is their experience and what has led them to working as a McKenzie friend? Not all McKenzie friends will have a good understanding of domestic abuse. Check to see if there are any concerning reviews about this McKenzie friend online.

Can they get the same service for free? For example, is your organisation able to provide a McKenzie friend? Do they have a friend or family member who could support them in court? Have they contacted the Personal Support Unit or are there local organisations that offer this service for free?

How much is the McKenzie friend charging and are the costs clear? Lots of solicitors are now offering 'unbundled' services. This means that they will charge smaller fees for individual pieces of work. Some McKenzie friends we come across

charge more than a junior or trainee solicitors and the prices that they state solicitors charge are not indicative of every solicitor. Having a trainee solicitor prepare documents at a lower fee may be more cost effective when you take into account that all trainee solicitors should be supervised by experienced solicitors and you have the added protection of them being regulated and insured. For some survivors, it would be more sensible to pay for 1-2 hours of comprehensive advice from a solicitor and then continue the case by themselves than to pay ongoing fees to a McKenzie friend who is not able to provide the same level of legal advice.

Exactly what service are they providing? Have they been clear about exactly what is included in the fee they are charging? Have they explained what is not included in the fee? Have they got professional indemnity insurance? Have they put this information in writing to the survivor in case anything goes wrong?

Are they a member of the [Society of Professional McKenzie Friends](#)? McKenzie friends can apply to become members of this organisation and have to sign up to their code of conduct. They have a complaints process if something goes wrong. Rights of Women are unable to comment on how effective the Society of Professional McKenzie Friends is as a self-regulatory body.

The other side in the case has a McKenzie friend who is aggressive and intimidating. What can the survivor do?

Firstly, aggressive, threatening and harassing behaviour is a criminal offence and the survivor can contact the police if they believe a criminal offence has occurred.

The survivor can make an application to the court for the McKenzie friend to be refused. The McKenzie friend is subject to the same rules set out above. If they are behaving contrary to the guidance, the court may initially decide to warn the McKenzie friend depending on the circumstances. For serious breaches of the guidance, the court can refuse to permit them to continue as the McKenzie friend.

If a McKenzie friend is emailing/writing to the survivor, especially if the other party is not included in the letters/emails, the survivor should inform the court of this. They may be considered to be acting as the other party's agent or conducting the case on their behalf.

The survivor does not have to respond to the McKenzie friend. If they are raising reasonable issues or providing information in relation to the case, then any responses that the survivor does want to send should be sent directly to the other side, not their McKenzie friend. The survivor can tell the other side to ask their McKenzie friend to stop writing to them.

Resources

Rights of Women advice line

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call the following:

Women living and working in London: call 020 7608 1137. The advice line is open Mon 11am-1pm, Tues 2pm-4pm, Wed and Thursday 10am-12noon and 2pm-4pm.

For all women: call 020 7251 6577. The advice line is open Tues to Thurs 7pm – 9pm and Friday 12noon-2pm.

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence visit www.rightsofwomen.org.uk for our advice line details.

24 hour National Domestic Violence Helpline

0808 200 0247

www.nationaldomesticviolencehelpline.org.uk

National LGBT Domestic Violence Helpline

0800 999 5428

<http://www.galop.org.uk/domesticabuse/>

The Ascent project within the London VAWG Consortium

<https://thelondonvawgconsortium.org.uk/about/the-ascent-project/>

The law is complex and may have changed since this briefing was produced. This briefing is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice. Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this briefing.

Rights of Women, December 2018