



## Consumer Panel Briefing – Fee-charging McKenzie Friends

### What is the issue?

A McKenzie Friend supports litigants in person by providing moral support, taking notes, helping with case papers and quietly giving advice. There are reports of increasing numbers of McKenzie Friends who charge a fee for this and related services following changes to legal aid eligibility, especially in family cases.

Such McKenzie Friends are unregulated, which has caused consumer protection concerns. The Panel decided to find out more about their services, identify the benefits and risks for consumers and make recommendations about the correct regulatory response. We did this through a website trawl, interviews with McKenzie Friends, listening to the views of stakeholders and by seeking case studies highlighting good and bad practices.

### Benefits and risks

Our analysis suggests the potential benefits of fee-charging McKenzie Friends might include:

- Access to justice – many litigants cannot afford lawyers and benefit from the encouragement and practical support provided by a McKenzie Friend
- Administration of justice – the courts are alien to litigants in person; this support might lead to fairer decisions and help the courts to progress cases more quickly
- Wider choice – some clients prefer to use a McKenzie Friend even though they could afford to use a lawyer, perhaps due to a higher degree of emotional support

The report also identifies the following potential risks to consumers:

- Agenda-driven McKenzie Friends – those who exploit litigants to promote a personal cause or who may be too emotionally attached to the issues to give objective advice
- Poor quality advice – McKenzie Friends tend not to be legally qualified or insured; this is especially a risk for those providers who advise on points of law or case tactics
- Consumers not understanding or being misled about the limits of the McKenzie Friend's role; usually they may not speak for clients in court or conduct litigation
- Costs – a series of potential risks around fees spiralling out of control, advance payment for services and the costs rules not being explained to litigants
- Breach of privacy – personal details of litigants and other parties, including children, being either inadvertently or deliberately disclosed
- Struck-off lawyers who are unsuitable to assist unsuspecting litigants in person

## What is the Consumer Panel doing about it?

Having weighed the arguments and evidence, the Panel does not think that fee-charging McKenzie Friends should be regulated. This is due to a lack of evidence of consumer harm and because regulation might drive McKenzie Friends from the market or raise prices which become unaffordable for litigants in person, many of whom are on low incomes.

The report makes 15 recommendations, including action in the following areas:

- A culture shift which recognises fee-charging McKenzie Friends as a legitimate feature of the modern legal services market. They should be viewed as providing valuable support that improves access to justice in the large majority of cases
- Fee-charging McKenzie Friends should commit to self-regulation by establishing a trade association and code of practice covering courtroom and commercial practices
- Some limited changes to the guidance issued to judges, which would give them more discretion to grant a right of audience to McKenzie Friends when this would be in the interests of justice. However, automatic rights of audience should not be granted
- Tackling the minority of bad McKenzie Friends through use of civil restraint orders, enforcement by trading standards and transparency when formal action is taken
- Widely available and objective consumer advice on using a McKenzie Friend

### For more information:

[Fee-charging McKenzie Friends, April 2014](#)

## About the Legal Services Consumer Panel

The Legal Services Consumer Panel is a central feature of a regulatory framework in England and Wales which is designed to transform the legal services market around the needs of its users. Created by the Legal Services Act 2007 we are an independent arm of the Legal Services Board. As a permanent, discrete champion for consumers we have an essential responsibility to ensure that regulators are able to consider and act on the user perspective.

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