

McKenzie Friends Re-United

McKenzie Friends are vital to the legal system, says **Joanna Kennedy**

In his article, (NLJ, 25 February 2011, p 269), Peter Thompson QC suggests that McKenzie Friends are in trouble. This is worrying when proposed cuts to legal advice and assistance mean that many of those on low incomes will have no access to qualified help to enable them to defend themselves against claims or to access their rights.

I am a solicitor who gave up the practice of commercial litigation to work with a charity Z2K which recruits, trains and deploys volunteers to act as McKenzie Friends for those facing claims for essential household bills including rent, council tax and utility bills and also small fines.

Most of these cases are heard in magistrates courts to which the Practice Guidance does not apply except within its family jurisdiction. In those courts magistrates welcome with open arms any kind of intervention which will help matters progress more quickly and produce a more just outcome than can be achieved when defendants are either absent or present but too terrified or inarticulate to give accounts of themselves or their circumstances.

Most of the people we work with would not attend court at all if they did not have someone to support them and there is, of course, no hope of a just outcome unless there is engagement with the system.

Process

Some of the legal processes that prevail within the civil jurisdiction of the magistrates courts bear little relationship to the principles of the rule of law. Judgments for the payment of council tax are made on the basis of a computerised printout from a local authority and on no other evidence. No individual order is made and so liability is very difficult to challenge when a bailiff calls purporting to enforce an order which does not exist in hard copy, has never been served and of which the bailiff has no evidence. This steamroller of a system is often outsourced to companies which also own bailiff

firms and so have a vested interest in procuring judgments. It is driven by computerised records which are full of errors and can only be stopped in its tracks by someone present in court requiring some kind of scrutiny of the process and the means of the defendant. There will never be any state funded assistance for this kind of issue and so McKenzie Friends in these courts are an essential bulwark against mistakes and injustices.

In the county courts, on the whole we find that judges are also welcoming. Most of our clients are in these courts facing claims for rent arrears and evictions. There is a Legal Services Commission scheme whereby there should be a duty solicitor available in all county courts on the days on which possession proceedings are heard. However, fairly often, in the London courts in which we operate there is either no one there or they cannot be found. Again, usually, our McKenzie friends are permitted to speak and very

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little reference is ever made to the Practice Guidance. All our Friends are trained and are familiar with the guidance and rely on point 21 which provides that a right of audience should be granted where “the litigant is relatively inarticulate and prompting by that person may unnecessarily prolong proceedings”.

However, judges’ practice is patchy and I fear that the current guidance may make it worse.

In Central London County Court there is one particular DJ who never allows our McKenzie Friends to speak even, for example, in a recent eviction case where there was no duty solicitor available and the client was so emotionally distressed at the thought of becoming homeless that he was literally

incapable of speech at all. The same DJ would not allow a McKenzie Friend to speak in a small claims case despite what Mr Thompson describes as the “free and easy approach to representation” intended for that process and despite it being clear that the client was not able to explain herself at all.

On the other hand when we did a training session for the judges in Bow County Court to explain what our volunteers do and how they do it they all said that they welcomed McKenzie Friends, were very happy for them to speak and wished there were more of them.

Comment

I understand that there can be a problem in family proceedings with “professional” McKenzie Friends with axes to grind but it must be possible to deal with that problem without damaging the whole concept. I fear that those who drew up the very restrictive Practice Guidance are out of touch with the needs of my kinds of clients who are terrified by court proceedings and unable to speak up for themselves but who increasingly cannot find professional help.

It may be that there should be a different emphasis in the rules for proceedings in different courts. A McKenzie Friend operating in the Court of Appeal is performing a very different role from that of one of our volunteers in the Bow County Court. However, when I discussed this issue recently with a Court of Appeal judge he told me that when he has a McKenzie Friend in his court he lets both the Friend and the litigant speak interchangeably as he believes that this is essential in order to ensure that justice is done. Unfortunately he seems not have been among the drafters of the Practice Direction. NLJ

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