



## McKenzie Friends

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In general we have found that if you want the best result in court then you need a good (and we stress good) solicitor and/or barrister with experience in public order law and protest cases.

There are however two situations when you may want, or have, to represent yourself in court:

- Firstly if you want to present a political (non-legal) defence and
- secondly if you can't get legal aid and can't afford to pay the lawyers (even then if you were arrested in a protest situation we may be able to get you free representation).

If you do represent yourself in court you will need to spend a lot of time researching and getting to grips with the law and procedure (if yours is a protest case LDMG may be able to help). One thing you will definitely need is a McKenzie Friend.

### What is a McKenzie Friend?

A McKenzie friend<sup>1</sup> is somebody who accompanies a defendant in a court hearing to assist them with such tasks as

- taking notes,
- helping to organise documents,
- quietly making suggestions – e.g. as to questions to put to a witness.

They need to be someone who you trust. They also need to be well organised and act in a way which won't antagonise the judge or magistrates.

There is no right to have a McKenzie friend, it is at the judge or magistrate's discretion, so permission is required: the only right is that of the defendant to have reasonable assistance. However, generally, a defendant who wishes to have a McKenzie friend should be allowed to do so unless the judge is satisfied that fairness and the interests of justice do not require it. **A McKenzie Friend has no right to address the court.**

McKenzie Friend's were widely used in anti-poll tax cases, but most of the recent examples come from family cases. In the civil courts there is a strong presumption in favor of allowing a McKenzie Friend and recent guidance has

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<sup>1</sup> The term McKenzie Friend comes from a divorce case (McKenzie v McKenzie [1970] 3 WLR 472). The judge had refused to permit Mr McKenzie to be accompanied by a friend who wished to sit beside him in court. The Court of Appeal overruled the judge relying on a case from 1831.

been issued by the Master of the Rolls, as Head of Civil Justice, and the President of the Family Division, as Head of Family Justice. Download from [judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf](http://judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf)

Although aimed at civil cases we recommend you read this guidance. In our experience most Judges in the criminal courts will allow a McKenzie Friend, although recently they have been argumentative about it.

Finally a word of caution. There are so called “professional” McKenzie Friends advertising on the web that they can “represent” you for less than the cost of a lawyer. Never pay a McKenzie Friend.

### **Requesting permission for a McKenzie Friend**

This is done in court. It is important to request that you can have your supporter as a McKenzie Friend as soon as possible when you get into court – ask the clerk or the presiding judge or magistrate.

Do this at every appearance – judges have been known recently to consider not allowing a friend, even if they were your McKenzie Friend at an earlier hearing. Some courts have a form they will request you fill in.

As an argument for why you should be able to have a McKenzie Friend, say something to the effect

No Legal Aid has been granted. I cannot afford a solicitor or barrister to represent me in court so I am forced to represent myself. I need help doing so. Article 6 of the European Convention guarantees me a right to a fair trial. The Crown is legally represented so there is already inequality of arms. A fair trial in a common law jurisdiction requires both parties to have adequate representation. Denying me a McKenzie friend would be to deny me a fair trial, unless of course you grant me a Legal Aid certificate so that I can instruct a solicitor of my choice.

An Appeal Court decision in 1991 (*Regina v Leicester City ex parte Barrow*) confirmed that unrepresented litigants, and by extension defendants in criminal cases, are entitled as of right to have a friend in court to assist them.<sup>2</sup>

### **What if this is not allowed**

Then the next step, if refused, is to inform the magistrate or judge that you will be appealing any conviction on the basis that you were not given a fair trial.

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<sup>2</sup> *Independent*, Law Report, 7/8/91. Although the case arose out of a civil action in the magistrates' courts, the rights it confirmed for litigants apply also to defendants in both magistrates' courts and Crown Court trials (*How to defend yourself in court*, P.67.M. Randle)