

## Student Practice in England & Wales

### A brief explanation

The basic provision is that there are no student practice rules in England and Wales. However:

### Tribunals

Certain categories of tribunal permit anyone to act as a representative. For example, my own live-client clinic option works in the employment tribunals, where decisions on unfair dismissal (which you would call ‘wrongful dismissal’) and discrimination cases. The statutory authority for this is the Employment Tribunals Act 1996 s. 6(1)(c), which states:

#### 6 Conduct of hearings

- (1) A person may appear before an [employment tribunal] in person or be represented by—
  - (a) counsel or a solicitor,
  - (b) a representative of a trade union or an employers' association, or
  - (c) any other person whom he desires to represent him.

On this basis my students provide a full advice and representation service. One of them has just completed a two-day hearing involving cross-examination of three employer’s witnesses, and making the necessary submissions to the judge.

Other tribunals (of which there are many) may have equivalent provisions, but I am not familiar with them.

### Courts

In the courts, there is no equivalent of this provision. However, the courts do permit a lay party to be accompanied by a ‘McKenzie Friend’. This was established by the case *McKenzie v McKenzie* [1971] P 33; [1970] 3 WLR 472; [1970] 3 All ER 1034, CA, where the Court of Appeal ruled that a litigant in person could have the advice of a friend. This, however, does not permit representation. It is widely used in the Family Courts and in cases of domestic violence where a victim is seeking an ouster order or an order preventing the perpetrator from contacting them. The Practice Note that controls this is at [2010] 1 WLR 1881, and I attach a pdf of it. You will see that it clearly says that MFs do not have a right of audience but sets out circumstances in which judges may exercise their discretion to permit a MF to speak on behalf of the litigant.

We run a live client domestic violence option where students advise victims and draft court documents and witness statements for them. They may have the opportunity to accompany clients to court as McKenzie Friends and advise, although they may not, without permission, address the court. However, the judge has a degree of discretion over the procedure in her/his court (see Practice Note) and it is not unknown for a judge to permit a McKenzie Friend to, in effect, act in a representative capacity if it seems to be in the interests of justice so to do.

There is a debate about the value of fee-paying MFs (which is allowed in England & Wales, but not in Scotland). The Legal Services Consumer Panel has concluded that they are more beneficial than if they were not allowed to charge fees. Our students, of course, act *pro bono*.

## Student Practice in Scotland

McKenzie Friends are a more recent introduction and are permitted by **Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) (No. 2) 2010**, No. 416:

### Lay support for party litigants

2.—(1) The Ordinary Cause Rules are amended in accordance with the following subparagraph.

(2) After rule 1.3 (representation)(1) insert—

**“Lay support**

**1.3A.**—(1) At any time during proceedings the sheriff may, on the request of a party litigant, permit a named individual to assist the litigant in the conduct of the proceedings by sitting beside or behind (as the litigant chooses) the litigant at hearings in court or in chambers and doing such of the following for the litigant as he or she requires—

- (a) providing moral support;
- (b) helping to manage the court documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—
  - (i) points of law and procedure;
  - (ii) issues which the litigant might wish to raise with the sheriff;
  - (iii) questions which the litigant might wish to ask witnesses.

(2) It is a condition of such permission that the named individual does not receive from the litigant, whether directly or indirectly, any remuneration for his or her assistance.

(3) The sheriff may refuse a request under paragraph (1) only if—

- (a) the sheriff is of the opinion that the named individual is an unsuitable person to act in that capacity (whether generally or in the proceedings concerned); or
- (b) the sheriff is of the opinion that it would be contrary to the efficient administration of justice to grant it.

(4) Permission granted under paragraph (1) endures until the proceedings finish or it is withdrawn under paragraph (5); but it is not effective during any period when the litigant is represented.

(5) The sheriff may, of his or her own accord or on the motion of a party to the proceedings, withdraw permission granted under paragraph (1); but the sheriff must first be of the opinion that it would be contrary to the efficient administration of justice for the permission to continue.

(6) Where permission has been granted under paragraph (1), the litigant may—

- (a) show the named individual any document (including a court document); or
- (b) impart to the named individual any information,

which is in his or her possession in connection with the proceedings without being taken to contravene any prohibition or restriction on the disclosure of the document or the information; but the named individual is then to be taken to be subject to any such prohibition or restriction as if he or she were the litigant.

(7) Any expenses incurred by the litigant as a result of the support of an individual under paragraph (1) are not recoverable expenses in the proceedings.”.

**Nigel Duncan**  
**City Law School, London,**  
**6 June 2016**