



Nagalro response to Reforming the courts' approach to McKenzie Friends - A Consultation

Preamble

Nagalro is the professional association for children's guardians, family court advisors and independent social workers. All our full members are registered social workers and currently working with children and families.

This response is solely concerned with McKenzie Friends in the Family Court, and in particular in Private Family Law proceedings. As far as we are aware McKenzie Friends do not often work in Public Law cases.

Nagalro was established in 1990, at which time, members were guardians *ad litem* and reporting officers appointed in public law and adoption proceedings. The membership has diversified since this time but the vast majority of our members still work within the family justice system in public and private law proceedings as independent social workers, children's guardians and family court advisors, both on an employed and self-employed basis. In light of our members' experiences, we believe we are in good position to comment on the positive role McKenzie Friends can play in the family courts.

Question 1: Do you agree that the term 'McKenzie Friend' should be replaced by a term that is more readily understandable and properly reflects the role in question? Please give your reasons for your answer.

AND

Question 2: Do you agree that the term 'court supporter' should replace McKenzie Friend? If not, what other term would you suggest? Please give your reasons for your answer.

Nagalro agrees that the term McKenzie Friend should be replaced for this is a confusing term which provides no information about what the role is about, nor the three potential roles it may cover as outlined in the consultation paper. We believe it is important for LIPs to be clear what their supporter can and cannot do. The suggested term Court Supporter is a generic term which can cover all three roles and, in our view, is an appropriate choice.

Question 3: Do you agree that the present Practice Guidance should be replaced with rules of court? Please give your reasons for your answer. Please also give any specific comments on the draft rules set out at Annex A.

AND

Question 4: Should different approaches to the grant of a right of audience apply in family proceedings and civil proceedings? Please give your reasons for your answer and outline the test that you believe should be applicable. Please also give any specific comments on the draft rules.

Nagalro agrees that having rules of the Court is a better approach for the reasons set out in the consultation paper. They may have relevance to Civil Proceedings but, as stated above, our experience relates solely to family proceedings and, therefore, Nagalro is not competent to comment upon these.

With regard to the proposed rules set out in Appendix A of the Consultation Paper we agree with those set out in 3.22 with the exception of (7) and (12). We have outlined our views on remuneration in our answer to question 10.

We agree with the rules set out in 3.23 with the exception of (6) for the same reason we have set out for 3.22 (7) and (12) above.

We agree with the Amendment to Practice Direction 3C – Civil Restraint Orders.

Question 5: Do you agree that a standard form notice, signed and verified by both the LiP and McKenzie Friend, should be used to ensure that sufficient information is given to the court regarding a McKenzie Friend? Please give your reasons for your answer.

AND

Question 6: Do you agree that such a notice should contain a Code of Conduct for McKenzie Friends, which the McKenzie Friend should verify that they understand and agree to abide by? Please give your reasons for your answer.

Nagalro agrees with a standard form of notice as described in the consultation and that this should contain a code of conduct.

Question 7: Irrespective of whether the Practice Guidance (2010) is to be revised or replaced by rules of court, do you agree that a Plain Language Guide for LiPs and McKenzie Friends be produced? Please give your reasons for your answer.

AND

Question 8: If a Plain Language Guide is produced, do you agree that a non-

judicial body with expertise in drafting such Guides should produce it? Please give your reasons for your answer.

Nagalro strongly agrees there needs to be a Plain Language Guide for LIPs and McKenzie Friends and that a non-judicial body with expertise in drafting such guides should produce it for the reasons set out in the consultation document. Nagalro members have considerable experience of explaining legal procedures and the principles of family law to parents, children and other people involved in family proceedings and would be pleased to be involved in drafting guidance relating to McKenzie Friends in the family court if that would be helpful.

9: Do you agree that codified rules should contain a prohibition on fee-recovery, either by way of disbursement or other form of remuneration? Please give your reasons for your answer.

Nagalro does not agree with this proposal although we completely agree with the concerns set out in the consultation paper about protecting vulnerable litigants and have no wish to create a new branch of the legal profession. Nagalro has worked closely with the Association for Lawyers for Children (ALC) and, in particular, as joint founding members and co-chairs of the Interdisciplinary Alliance for Children (IAC). Family lawyers have long provided an excellent service in the family courts and Nagalro members would not wish to compete with them. However we believe that experienced family court social workers can provide a valuable service to the family courts as McKenzie Friends, particularly in cases in which there are no lawyers, and that for this they should be remunerated.

Question 10: Are there any other points arising from this consultation on that you would like to put forward for consideration? Please give your reasons for your answer.

All Nagalro full members are qualified and experienced social workers who are registered with their appropriate professional body (in England it is the Health and Care Professional Council (HCPC) <http://www.hcpc-uk.co.uk>). Registered social workers must abide by their regulatory body's professional standards, they must engage in continuous professional development and they must submit regular Disclosure and Barring Service (DBS) checks to their regulatory body. This 'fitness to practice' process is designed to protect the public from those who are not fit to practice.

Nagalro full members are provided with professional indemnity and public liability insurance cover through the association's group scheme, including whilst acting in the capacity of a McKenzie Friend.

Most private family law proceedings concern children whose parents have recently separated or divorced. Some 90% of separating couples with children do not have any contact with the family court. Some 75% of those who do are able to settle their dispute through mediation or a dispute resolution scheme. This leaves 2.5% of separating couples needing a family court to settle their dispute. These parents are invariably angry and upset. They are often not focussed on the needs of their children. They often do not understand court procedures or the principles of family law. There is clear evidence that court hearings are much longer if one or both parties are acting in person. This process often exacerbates an already difficult situation which can cause serious emotional damage to children, particularly when they are the subject of proceedings for ten years or more, as some are.

An experienced family court social worker acting as a McKenzie Friend will be able to explain procedures to parents. While they would not give legal advice, they would be able to give advice about the principles of family law, such as children having a right to have a relationship with both their parents providing it is safe, with the welfare of the child being the Court's paramount consideration. A family court social worker acting as a McKenzie Friend would strive to make sure parents remains child focussed and concentrated on relevant issues when presenting their case. We would not envisage a family court social worker acting as a McKenzie Friend becoming involved in litigation, but it would often be helpful when one parent is cross examining another for the social worker to read out questions.

If family court social workers undertake this work on a regular basis (and thus maintain their experience), and they participate in regular training and maintain professional indemnity and public liability insurance, it is reasonable that they should be remunerated for doing so.

Nagalro suggests that a register of approved professional McKenzie Friends could be maintained. This would include professionals with the training and experience to be able to assist parents in Court as a McKenzie Friend.

Ann Haigh, Chair, and Paul Bishop, Council Member

Nagalro

9 June 2016

Nagalro
PO Box 264
Esher
Surrey
KT10 0WA