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Consumer Panel calls for culture shift to recognise contribution of fee-charging McKenzie Friends

The Legal Services Consumer Panel is today publishing the first-ever detailed study into the emerging market of fee-charging McKenzie Friends.

Traditionally, a McKenzie Friend supports litigants in person by providing moral support, taking notes, helping with case papers and quietly giving advice in court. There have been reports of increasing numbers of fee-charging McKenzie Friends, especially in family cases, following changes to legal aid eligibility in April 2013. Some of these McKenzie Friends are expanding the role by providing legal advice and seeking a right of audience, in order to mirror the service offered by lawyers.

While highlighting the potential dangers of fee-charging McKenzie Friends, who often assist people in vulnerable situations, the Panel concluded that the access to justice benefits outweigh these risks. Despite there being some individual cases which had a serious impact on people, the study found no evidence of widespread detriment. As a result, the Panel rules out statutory regulation at this stage, but instead calls on the sector to develop a credible system of self-regulation to earn greater trust from judges, the legal profession and the general public alike.

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

Elisabeth Davies, Chair of the Legal Services Consumer Panel, said:

“If you are getting divorced or fighting for access to your children, but cannot afford the services of a lawyer, often the real choice is between using a McKenzie Friend or going to court alone. While there are legitimate concerns about the quality and behaviour of some McKenzie Friends, they can provide valuable support which improves access to justice and helps the courts to get through their busy workload.

“Despite McKenzie Friends doing more good than harm, conservative attitudes mean they often encounter resistance in court and barely get a mention in advice guides. There needs to be a culture shift which recognises the reality of the modern legal services market: where legal aid is withdrawn and lawyers’ fees are out of reach, alternative providers offering different services will inevitably emerge to fill the gap. Greater acceptance of McKenzie Friends is one of many adjustments the family courts will need to make in a world where litigants in person are becoming the norm.

“Fee-charging McKenzie Friends must also do their bit to earn greater recognition. This should start with forming a credible trade association to address the concerns about poor courtroom and commercial practices highlighted in our report. Going to court isn’t easy, leaving people open to exploitation that can cause a lot of damage. By raising standards and marginalising the few rogue operators, McKenzie Friends will build public trust and at the same time help themselves.”

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For more information, contact Steve Brooker, Consumer Panel Manager, on 020 7271 0077.

Notes to editors

1. The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.
2. The Panel’s report is here:
http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html
3. A short summary of the report is here:
<http://www.legalservicesconsumerpanel.org.uk/ourwork/CurrentProjects.html>