

## **CAJ's submission no. S346**

# **CAJ's submission to the Consultation on the Practice Note in relation to McKenzie Friends**

**July 2011**

### *What is the CAJ?*

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Joseph Rowntree Charitable Trust and the Oak Foundation.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

Beverly Hall  
Consultation Co-ordinator  
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5 July 2011

Dear Beverly Hall,

Thank you for the invitation to the Committee on the Administration of Justice (CAJ) to make a submission to the consultation on a **Practice Note in relation to McKenzie Friends**. As you will know, CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

### **Introduction**

As reforms of the legal aid system in Northern Ireland come into effect, the instances of self-represented litigants is likely to increase. While McKenzie Friends may have a valuable role to play in ensuring the accessibility of the legal system to people, they cannot be considered an equal substitute for trained solicitors. CAJ has previously emphasised the importance of enabling access to justice for all and we direct your attention to our [submission to the Access to Justice Review Team](#). We would welcome clarity on how this issue interacts with the ongoing Access to Justice Review. Is this an issue that the Review Team will be considering?

### **The Practice Note**

The aim of the Practice Note is to provide clarity on the issue of McKenzie Friends and to establish the role and duties of those who can assist litigants in person. Unlike its English counterpart, this Note includes the relevant case law for reference, which provides for a more useful document. Equally, the language and structure of this document is easy to understand. However, in view of accessibility issues, we encourage the Lord Chief Justice to make this document available in other formats, such as Braille and other languages.

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CAJ welcomes the acknowledgement that McKenzie Friends are not substitutes for interpreters and other professionals (pg 1) and that the practice has no impact on the provision or funding of these services. It is important that, in this age of cost-cutting, these two distinct roles should remain separate.

Again, the Practice Note is near identical to that currently in use in England and Wales. While there is nothing necessarily wrong with this approach, it is hoped that there is sufficient flexibility within the Note's development to take into account the specific circumstances and experiences of Northern Ireland.

At paragraph 8, it is noted that the right to a fair trial is engaged. There would be merit in setting out the source of this right, for instance the *European Convention on Human Rights*, the *Human Rights Act* and the UN *International Covenant on Civil and Political Rights* and the implications of this engagement.

We note that at paragraph 12(ii), the Court can refuse assistance to the litigant where "the litigant appears capable of conducting the case without assistance". There is a difference between *appearing* capable and *being* capable. As such, we would welcome more clarity on the ground for refusal. It may become a particular issue where the litigant has mental health concerns or a mental disability. Also paragraph 12(iv) states that refusal is allowed where the other party is not represented. While bearing in mind the need for an equality of arms, CAJ does not believe that this is appropriate as the option of a McKenzie Friend is open to all and should not be restricted if the other party has chosen not to pursue this option.

CAJ also has concerns at the broad wording of paragraph 12(v) where: "the proposed MF belongs to an organisation that promotes a particular cause". Our concerns centre on the potential for NGOs, who may be providing assistance to a litigant, to be excluded on this basis. There is a need to provide more clarity on this issue. For instance, how the concept of promoting a particular cause is to be defined, and whether a differentiation will be made between political parties, which may have a clear political agenda and NGOs, whose "cause" may simply be "access to justice". In this respect, a role may be played by a disability charity, which promotes a particular cause such as disability rights, but whose function, in this context, is to assist an individual in accessing justice, via the McKenzie Friend role. Our concern is that legitimate individuals and organisations offering assistance would be excluded from the role of McKenzie Friend, and thus denying individuals important support and assistance.

### **NGO Observers**

NGOs in Northern Ireland, such as CAJ, have played a key role in monitoring the administration of justice and supporting individuals in accessing judicial mechanisms. Part of this role includes the observation of criminal trials and inquests. We are perturbed that note-taking now requires the permission of the judge, as outlined on the [NICTS website](#). We can see no reason why note-taking could in anyway disrupt the administration of justice. While we acknowledge the courtesy of informing the court that a note-taker will be present, we can find no legal basis for the need to request permission. Particularly as, for the purposes of the Court, there is limited difference between a journalist and an NGO observer. CAJ has raised this issue with Court Service and are currently awaiting a full response; we understand this has been delayed by the need to resolve the question of "live text" or tweeting from court which is under consideration.

We direct attention to the obligations under Article 6 (1) of the ECHR which states: "Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." CAJ has no opposition to the restriction of note-taking as long as it adheres to the principle that justice mechanisms and their administration, should be as transparent and accountable as possible.

Concerns around the need for permission to take notes is not limited to NGOs but may also effect family members of victims in criminal trials and inquests. CAJ is aware of a number of cases where family members, who wished to have a record of a particular aspect of the trial, and have been prevented from doing so by court officials. This has often made an already difficult situation more testing for families.

### **Equality**

CAJ welcomes the initiative shown by the Northern Ireland Judiciary with regard to s.75. While we acknowledge that the Judiciary is not a public authority, we advocate if the Judiciary is going to engage with s.75, there is benefit in doing so using the standard method. This makes it clearer to those evaluating the equality implications of the policy.

Yours sincerely,

Caroline Parkes,  
Criminal Justice Programme Assistant.

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