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| **Neutral Citation No: [2025] NICA 14**<br><br>*Judgment: approved by the court for handing down (subject to editorial corrections)** | *Ref:* **McC12728**<br><br>*ICOS Nos:*<br><br>*Delivered:* **10/03/2025** |

**IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**APPEAL No 1**

**Between:**

**JOHN ISSAC PATTERSON AND JAMES BARKLEY PATTERSON**
**Appellants:**

**-and-**

**RATHFRILAND FARMERS CO-OPERATIVE SOCIETY LIMITED**
**Respondent:**

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**APPEAL No 2**

**Between:**

**JOHN ISSAC PATTERSON AND JAMES BARCLAY PATTERSON**
**Appellants:**

**-and-**

**MARKETHILL LIVESTOCK AND FARM SALES LIMITED**
**Respondent:**

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**Appellants unrepresented**
**Michael Tierney (instructed by Fisher & Fisher Solicitors) for the Respondents**

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**RULING: McKENZIE FRIEND APPLICATION**

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**Before: McCloskey LJ and McAlinden J**

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**McCLOSKEY LJ (*delivering the judgment of the court*)**

*Introduction*

[1] **Nomenlature:** In this ruling John Isaac Patterson and James Barclay Patterson are described as, respectively, the "first appellant", the "second appellant" and as "the appellants" collectively. Markethill Livestock and Farm Sales Limited and

Rathfriland Farmer's Co-operative Society Limited are described, individually, as "Markethill" and "Rathfriland" respectively and as "the respondents" collectively. By this ruling the court determines an application on behalf of the second appellant (James Barclay Patterson), made by one Edward Ward, that he be granted the facility of assistance from a "McKenzie Friend."

***The litigation***

[2] Markethill and Rathfriland brought separate proceedings against both appellants. As long ago as 26 June 2013, Markethill claimed that the appellants were indebted to them in the amount of £144,292.96 arising out of sales of sheep to the appellants, who are described as sheep dealers and brothers. Markethill secured judgement in default of appearance against both appellants. Three subsequent applications to set aside this judgement were dismissed by the Queen's Bench Master. The third of these dismissal Orders stimulated an appeal to the High Court, which was dismissed by the order and judgement of Colton J, both dated 7 November 2024.

[3] The separate claim brought by Rathfriland against both appellants had the same essential features, with the exception of the amount claimed, which was £79,039.38 and the date of the default judgment, 04 March 2013. The same litigation course and eventual outcome ensued. In both cases, the appellants are purporting to appeal to this court in consequence. The vintage of both cases is a matter of grave concern.

***McKenzie Friend application***

[4] At the initial case management stage this court was alerted to a suggestion that the second appellant should be permitted the facility of assistance from a McKenzie friend. By order of this court dated 27 January 2025 an application to this end was directed. This has stimulated the provision of a document entitled "Interlocutory Notice of Motion", which has the following features:

(a) Mr Edward Ward is described as the "moving party."

(b) The document is apparently signed by Mr Ward in manuscript, followed by the printed words "Mr Edward Ward acting on behalf of James Barclay Patterson."

(c) The court is requested to exercise its discretion by granting Mr Ward "… a right of audience to act and conduct the litigation in full on behalf of the second named [appellant] James Barkley".

The substance of the foregoing facility/service is unparticularized.

[5] The content of the application has the following salient features. First, it is represented that, at first instance, Edward Ward:

> "…was previously granted rights of audience …where he effectively presented the case on behalf of the second [appellant]."

Second, it is asserted that Colton J "…excluded [the second appellant] from the hearing that led to this appeal…" Third, Mr Ward claims that he "...presented the case comprehensively and demonstrated a deep understanding of the legal and factual issues." Fourth, it is asserted that the second appellant has been unable to secure legal representation as a result of unidentified members of the legal profession having "…committed serious fraud against him… [generating] a pervasive reluctance within the legal community to represent him…" Fifth, the second appellant is allegedly unable to attend court on medical grounds. The court will address the three issues of substance arising below.

[6] **First, there is the medical issue.** The following information can be gleaned from a letter dated 25 February 2025 purportedly signed by the first appellant and a letter dated 18 February 2025 from an identified SHSCT consultant urologist to a doctor who appears to be the second appellant's General Medical Practitioner. From these sources it appears that the second appellant is retired and is aged 78 years. He has received a diagnosis of prostrate cancer. He attended a February hospital appointment with his sister-in-law. He did not report any bony pain. A CT scan was scheduled for the following week, 25 February 2025. The appointment letter anticipated that the second appellant would attend by car. The cancer diagnosis is described as "recent."

[7] The court file also contains a letter dated 6 January 2025 from a consultant rheumatologist documenting other medical conditions from which the second appellant is suffering.

[8] The McKenzie Friend application comprises the aforementioned Notice of Motion and accompanying "Written submissions in Support", purportedly signed by Mr Ward. The submissions contain the assertion that the second appellant "…has recently undergone surgery, making his participation in person impractical." There is a further suggestion that the second appellant's medical condition:

> "…prevents him from presenting his case personally, and without representation he would face insurmountable difficulties in pursuing the appeal."

This suggestion is bare, unevidenced assertion. The preceding assertion of recent surgery is equally unevidenced.

[9] **Next, there is the issue of the conduct of the first instance proceedings**. Colton J recorded a similar application by Mr Ward based on a document (which this court has seen) entitled "Joint Power of Attorney Deed for James Barclay Patterson." The judge stated at para [3]:

> "I have considered the Deed, and I make it clear that this does not in any way convey a right of audience on Mr Ward. That said, I was persuaded to permit Mr Ward to address the court, on an exceptional basis. I did so because of the lengthy history of this litigation and to ensure that I fully understood the case being made on behalf of the appellants. It should not be taken as a precedent."

There is no further mention of either Mr Ward or the second appellant in the judgment. There is a similar, updated "Joint Power …(etc)" before this court. This does not purport to have any signatures. Rather there are three "Autographs", each dated 20 January 2025. On the face of the document, James Barclay Patterson (the second appellant) is the "donor" and Edward Ward is the second of two "donees."

[10] The assertion made by Mr Ward to this court regarding the basis upon which he was granted a facility on behalf of the second appellant at first instance is confounded by the passage in the judgment of Colton J reproduced above and has no supporting evidential foundation. In addition, there is no supporting evidence underpinning Mr. Ward's claim about the excellence of his services at first instance. This is another illustration of bare, unsubstantiated and self-serving mere assertion. This claim must be treated with circumspection. Furthermore, there is no evidence whatsoever substantiating Mr Ward's bare assertion that the second appellant was "excluded from" the first instance hearing or that he has made strenuous unsuccessful efforts to secure legal representation. Nor is either an agreed fact.

[11] **Mr Ward's conduct before this court.** On the occasion of the third case management review on 7 March 2025 Mr Ward attended. He purported to conduct himself as if he was already the recipient of the facility sought in the undetermined application before the court. Inter alia, he attempted to address the court more than once, he interrupted the proceedings and he purported to converse with and support the only appellant in attendance, namely the first appellant. Mr Ward's conduct was wholly inappropriate.

***Governing principles***

[12] In *McKenzie v McKenzie* [1970] 3 WLR 472. Mr McKenzie, who was involved in divorce litigation, had been granted legal aid. However, this was withdrawn and his legal representation evaporated. On the day before the hearing, he contacted an Australian barrister in London whose qualifications did not allow him to practice in that jurisdiction. The barrister agreed to provide assistance. The following day, at the outset of the hearing, the trial judge ordered the assistant to sit in the public gallery and take no active part in the case other than to advise Mr McKenzie during adjournments. Mr McKenzie lost. The Court of Appeal ordered a retrial. The Court held that every party has the right to have a friend present in court beside them to

assist by prompting, taking notes and quietly giving advice. This would not extend to addressing the court save by express judicial authorisation to this effect.

[13] In *R v Bow Street County Court, ex parte Pelling* [1999] EWCA Civ 2004 and [1999] 1 WLR 1807 the Court of Appeal formulated the test of whether fairness and the interests of justice require an unrepresented litigant to have assistance of this kind. The court further held: reasons for refusing this facility should be provided; the services could be paid or unpaid; and, fundamentally, the right in play is that of the litigant: the McKenzie Friend ("MF") cannot assert any right.

[14] Later cases include *Re G (Litigants in Person)* [2003] EWCA 1055/[2003] 2 FLR 963 and *Re O'Connell and Others* [2005] EWCA Civ 759/[2005] 3 WLR 1191, which endorse an earlier COA decision that the presumption in favour of permitting a McKenzie Friend is a strong one, at para [65]: see *Re H* [2001] EWCA Civ 1444/[2002] 1 FLR 39.

[15] We consider the test to be applied to be the following: ***Is it necessary in the interests of justice and, more particularly, in furtherance of this unrepresented litigant's right to a fair hearing that the services of a McKenzie Friend be authorised by the court?***

***Procedure: The Practice Note***

[16] Next it is necessary to consider the form and content of the application which Mr Ward has presented to this court. On 5 September 2012 a general Practice Note – No 03/2012 – entitled "McKenzie Friends" was promulged by the Lord Chief Justice. The Practice Note is published on the courts' website and, thus, is accessible by all members of the public. The current version is the revised edition dated 7 June 2024. Paragraph 2 states:

> "A personal litigant has a right to have reasonable assistance from a lay person, sometimes called a McKenzie friend Personal litigants assisted by McKenzie Friends remain litigants in person. McKenzie friends have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation."

Mr Ward's application to this court airbrushes all of the foregoing.

[17] The most significant reform effected by the June 2024 Practice Note was the introduction, at Annex A, of the "Code of Conduct for McKenzie Friends." In the Introduction it is stated, inter alia:

> "This Code of Conduct summarises what is involved if you apply for the status of McKenzie friend and what the court will expect of you."

The text continues:

> "You may apply to the judge for the status known as 'McKenzie friend' for the purpose of assisting, not representing, an identified litigant…
>
> **You must complete the application form attached** ….
>
> You may attend the hearing of the court case unless the court indicates otherwise ….
>
> With the permission of the judge and in accordance with the guidance set out in Practice Note 03/2012 as amended you may provide moral support, take notes, help with case papers and quietly give advice to the person you are assisting…
>
> Normally the person you are assisting will be the one to speak to the judge, but if that person cannot manage the judge may let you speak instead…
>
> You may apply to the judge for rights of audience. This measure may only be granted in exceptional circumstances and where reasonable and in the interests of justice to do so; for example, where the litigant concerned has physical or mental health problems or some disability or learning, literacy or communication difficulties or where English is not the litigants first language. You should make this application at the earliest possible opportunity, providing all relevant available supporting evidence…
>
> You must ensure that your presence and conduct in court does not cause any disruption or distract others…
>
> Finally, you must remember at all times that your paramount duty is owed to the court."
>
> [emphasis added]

[18] The application form to be completed is at Appendix A. The information which this must contain includes the following:

**"Details of all previous applications of this kind**

In particular name(s) of case(s), name(s) of court(s), whether granted or refused and anything else of note, eg a ruling of the court revoking your McKenzie friend status or a comparable decision by the litigant concerned."

"Remuneration details" and "Application for rights of audience or the right to conduct litigation" are the next two sections to be completed. In addition, there is the "Undertaking to the Court" by the applicant. This is in the following terms:

"**UNDERTAKING TO THE COURT BY THE PERSON WHO WISHES TO PROVIDE ASSISTANCE AS A McKENZIE FRIEND**

I, the undersigned, confirm that I:

- Have no personal interest in the case in which I will be providing assistance;

- Have read fully, and will comply with, Practice Note (3/2012) issued by the Lord Chief Justice on 5 September 2012 which is entitled "McKenzie Friends (Civil and Family Courts)" and the Code of Conduct issued on……..;

- Will observe strict confidentiality in relation to any documents I have sight of and in relation to any information I hear in relation to the proceedings;

- Have attached a copy of my CV to this application form

- Unless stated otherwise below, will not be seeking or receiving payment of any fees for any assistance or services provided by me;

(If you do intend to enter in to any agreement to be paid fees for the service you provide then provide full disclosure of the nature of this agreement, attaching supplementary documents as required)

- Have fully and honestly responded to all of the questions contained within this form and accept that any inaccurate or misleading statements may result in

the removal of any permission to act as a McKenzie Friend in this case.

Signed……..(McKenzie Friend applicant)

Signed…… (Litigant in Person)

Date …….”

Finally, the form must be signed by the person applying and the litigant concerned and must be dated.

[19] Practice Note 03/2012, as amended and updated, the accompanying Code of Conduct and the associated Application Form combine to form a single unit. All of their content must be considered as a whole.

[20] The Practice Note contemplates two possible applications to the court. The first is an application seeking the facility of conventional, typical McKenzie Friend assistance. The second is an application for “rights of audience or the right to conduct litigation.” There is no provision for waiver, full or partial, of the requirement to complete the Application Form, in full.

[21] The information to be provided in every completed Application Form has the following function. In every case, the court, as master of its own procedure, exercises a discretion. Specifically, the court determines whether to exercise its discretion to provide either of the two basic facilities contemplated in the Practice Note. The Application Form has been devised to enable the court to exercise this discretion on the most fully informed basis possible, as required by elementary public law principles. The provision of the information thus required enables the court to exercise its discretion lawfully.

[22] It is a principle of longstanding that the law does not require the impossible. Accordingly, if there are cases where some aspect of the information required by the Practice Note genuinely cannot be provided this should simply be stated, with a brief accompanying explanation. Alternatively, if there are cases where to provide some aspect of the information might raise an issue of a breach of a legal duty to some other person or an infringement of some statutory or other legal requirement, this too should simply be stated, with an accompanying brief explanation. In such cases the court will determine the appropriate consequential course of action.

***Conclusion***

[23] In the present case, the application before this court is in wholesale disregard of the requirements of the Practice Note. Fundamentally, the Application Form has not been completed. As a result, none of the information specified in paras [17] – [18]

above – or, alternatively, a representation that there is no information of the relevant kind to be provided (for whatever reason) – has been furnished to the court. These are not technical, pedantic frailties. Rather they concern matters which go to the heart of the application and, hence, the exercise of the court's discretion. Arguably the most egregious default of all is the absence of a completed undertaking in the terms required by the Practice Note. Furthermore, Practice Notes and kindred instruments are designed to be observed. As Lowry LCJ stated memorably in *Davis v NI Carriers* [1979] NI 19, at 20 :

> "… the rules of court are there to be observed."

This "important principle" applies with full vigour to all Practice Notes and kindred instruments.

[24] Any request for relaxation or modification of the Practice Note should be made timeously, containing all appropriate detail. This is a simple and proportionate step, entailing no cost and no onerous burden. There has been no such request to this court. Furthermore, the several serious defaults concerning the Practice Note identified above are aggravated by all that is rehearsed in paras [6]–[11] *supra*.

***Decision***

[25] This court, without hesitation and for the reasons provided, refuses the application. This is a gravely defective and thoroughly unmeritorious application. We conclude that Mr Edward Ward is not a fit and proper person to act as the second appellant's McKenzie Friend or in any related capacity. This will not preclude a further application proposing a different person for this role. The court will adjourn the forthcoming substantive listing of the appeals to accommodate this possibility.