



The Bar Council

## Representing yourself and your friends

<b>Purpose:</b>	To draw barristers' attention to their professional obligations in relation to this subject
<b>Scope of application:</b>	All practising barristers
<b>Issued by:</b>	The Ethics Committee
<b>Last reviewed:</b>	September 2020
<b>Status and effect:</b>	<b>Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.</b>

### **Q1. I am in litigation and wish to represent myself. May I do so?**

A. You have the same right as every other citizen to act as a litigant in person. What you may not do is appear as a barrister in your own case e.g. by wearing robes and appearing in counsel's row.

### **Q2. A friend has asked me for some legal advice. Am I able to help?**

A. You are allowed to give pro bono legal advice to friends and relations without instructions from a solicitor, even if you have not completed the public access training. This is because the provision of advice is not deemed to be a legal service. You should bear in mind that this is limited to advice and does not cover representation or the conduct of litigation. Both of these are legal services.

You should also note that giving advice free of charge to a friend or family member is **not** covered by the BMIF Terms of Cover, being expressly excluded from the definition of 'legal services'.

If you wish to provide legal services to your friend, you would need to be instructed by a solicitor or other authorised litigator, or to be instructed under the Public Access Rules (if you are qualified and authorised to do so). Further, you would only

be allowed to conduct your friend's litigation if you are authorised by the BSB to do so.

You should be extremely careful to ensure you adhere to all your professional duties, notwithstanding your relationship with your friend.

You should especially consider the BSB Handbook CD4 and whether your connection with the client is so close that you might find it difficult to maintain your professional independence. Clearly, the more serious the matter, the more likely it is that you will find it difficult to advise as independently as someone not connected with the client. For example, if you practise family law and are asked to advise a friend about a dispute with a spouse or partner whom you also know, you will need to consider whether your knowledge of that spouse or partner places you in a position of conflict such that you cannot provide independent advice or representation to your friend. Furthermore, CD6 requires you to maintain your friend's confidentiality. You will want to think carefully about the compatibility of your professional duties and your friendship.

Within family proceedings, a number of legislative measures may restrict the disclosure of confidential information to non-parties. Plainly a litigant will be at liberty to disclose such material to his lawyers and to any McKenzie friend (see paragraph 15 of the 'Practice Guidance' referred to below). Disclosure of confidential information to an informal adviser who is neither acting as a lawyer nor as a McKenzie friend may place your friend/family member in breach of such confidentiality, to which breach you would potentially be a party.

**Q3. A friend has asked me to appear at an Employment Tribunal hearing on her behalf. May I do so without instructions from a professional client? I will not be charging a fee and do not want my friend to go to the trouble and expense of instructing a solicitor. If this is not possible may I assist as a McKenzie friend?**

A. As noted in A2 above, the BSB Handbook permits you to offer advice free to a friend or relative and, as this is deemed not to be a legal service, you do not need instructions from a professional client in order to give such advice. Of course, were you to provide advice on an aspect of the law with which you were unfamiliar, you might run the risk of a complaint being made against you under BSB Handbook CD5 (You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession). Furthermore, as is also noted above, you should be aware that giving advice free of charge to a friend or family member is **not** covered by the BMIF Terms of Cover.

On the other hand, representation is a legal service, even if you undertake the work on a pro bono basis. If you wish to appear on behalf of a friend or relative you must get instructions from a solicitor or other authorised litigator or, alternatively, accept

instructions directly from the client if you are permitted to do so under the Public Access Rules (BSB Handbook D2).

The BSB Handbook does not prevent you from acting as a McKenzie Friend but you should be extremely careful not to go further than the traditional role. In civil/family proceedings you should read (a) the 12 July 2010 'Practice Guidance: McKenzie Friends (Civil and Family Courts)' issued by Lord Neuberger and Sir Nicholas Wall, which can be found at <https://www.judiciary.uk/publications/mckenzie-friends/> and supersedes the guidance contained in 'Practice Note (Family Courts: McKenzie Friends) (No. 2) [2008] 1 WLR 2757 and (b) the President of the Family Division's Guidance 'McKenzie Friends' dated 13 May 2005.

**Q4. A friend's brother has asked me to represent him in the Crown/County Court. May I do so without instructions from a professional client? I do not want him to go to the trouble and expense of instructing a solicitor and I do not intend to charge him a fee.**

**A.** In relation to any proceedings before a civil court in England and Wales, the position is the same as is set out in answer to Q3 above. It is irrelevant whether the court is the High Court, the Family Court, the County Court or another statutory tribunal.

The position is no different in criminal proceedings. You cannot represent someone without instructions from a professional client, or direct access instructions.

In any type of proceedings, you should consider the BSB Handbook CD4 and whether your connection with the client is so close that you might find it difficult to maintain your professional independence. Clearly, the more serious the matter, the more likely it is that you will find it difficult to advise as independently as someone not connected with the client.

### **Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council's website [here](#).