

To:	Legal Services Board	
Date of Meeting:	27 April 2016	Item: Paper (16) 25

Title:	Response to Judicial Executive Board consultation on McKenzie Friends	
Workstream(s):	McKenzie Friends watching brief	
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Status:	Official Sensitive	

Summary:

This board paper summarises the proposals in the Judicial Executive Board's (JEB) consultation on "Reforming the courts' approach to McKenzie Friends" and presents a draft LSB response to the consultation (see Annex A).

The consultation proposes the following:

- Renaming McKenzie Friends 'court supporters'.
- Replacing current practice guidance for the judiciary on McKenzie Friends (which primarily summarises the existing case law) with rules of court.
- Introducing a standard form of notice to the court for litigants in person wishing to use a McKenzie Friend.
- Developing a plain language guide for litigants in person and McKenzie Friends.
- Banning McKenzie Friends from charging fees or recovering expenses.

It is proposed that in our response we should make the following overarching points:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Recommendation(s):

The Board is invited:

- (1) to discuss the proposed response (Annex A) to the JEB consultation paper.
- (2) to delegate final sign off of our response to the Chief Executive.

Risks and mitigations

Financial:	N/A
Legal:	Low. Our response concerns interpretation of the Legal Services Act 2007. This has been checked by our in house legal team who are satisfied that this does not present an elevated risk.
Reputational:	Medium. The draft response is critical of the proposals which may play badly with the judiciary. Mike and Neil met senior representatives of the Judiciary on 19 April and have advised them. It is anticipated that the Law Society and Bar Council will support the proposals.
Resource:	N/A

Consultation	Yes	No	Who / why?
Board Members:	X		Annaliese Day QC was consulted by teleconference.
Consumer Panel:		X	
Others:	All colleagues have been given an opportunity to contribute with significant take up.		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Summary box: all three of second set of bullet points; Para's 7-9; Annex A	Section 22: information intended for future publication	When response is published

LEGAL SERVICES BOARD

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Response to Judicial Executive Board McKenzie Friends consultation

The Board is invited:

- (1) to discuss the proposed response (Annex A) to the JEB consultation paper.
- (2) to delegate final sign off of our response to the Chief Executive.

Background

1. In February 2016 the Judicial Executive Board (JEB) published a consultation paper ([Reforming the courts' approach to McKenzie Friends](#)) that proposes a number of new restrictions on consumers' ability to use McKenzie Friends. This Board paper summarises the proposals in the consultation paper and presents an LSB response to the consultation.
2. McKenzie Friends are unregulated individuals who attend court with litigants in person to provide support. This support is often limited to taking notes, helping with case papers, giving some advice on the conduct of the case and providing moral support. Litigants in person can also request that a court allow a McKenzie Friend to conduct litigation or exercise a right of audience on their behalf. Courts have a discretion to allow such requests under Schedule 3 paragraph 1(2) and 2(2) of the Legal Services Act 2007 (the Act). There is currently nothing to prevent a McKenzie Friend from charging a fee for any of their services.
3. The JEB consultation notes that requests to exercise rights of audience and conduct litigation are becoming increasingly common. In addition, it suggests that McKenzie Friends who charge fees for their services are becoming more common. There is limited evidence on the extent to which these changes are occurring across the market. Analysis of our own data suggests that any increases are small.
4. In the light of the perceived developments in consumers' use of McKenzie Friends, the JEB is proposing a number of reforms in a bid to improve consistency in the way that different courts treat McKenzie Friends. The main changes proposed are:
 - Renaming McKenzie Friends 'court supporters'.
 - Replacing current practice guidance for the judiciary on McKenzie Friends (which primarily summarises the existing case law) with rules of court, which create new requirements and remove or limit judicial discretion.
 - Introducing a standard form of notice to the court for litigants in person wishing to use a McKenzie Friend.

- Developing a plain language guide for litigants in person and McKenzie Friends.
 - Banning McKenzie Friends from charging fees or recovering expenses.
5. Board members may recall that the Legal Services Consumer Panel undertook research into fee-charging McKenzie Friends in 2014. Its [report](#) identified a number of benefits and risks presented by McKenzie Friends. On the basis of these it made a series of recommendations that would “*strike a better balance between access to justice and consumer protection than exists now*”. However, it concluded that regulation of McKenzie Friends would be a disproportionate response. On 2 September 2014 the Board responded to this report, welcoming its contribution to the issue and commenting on some of its recommendations.¹

Proposed LSB response

6. The JEB has sent us the consultation paper and encouraged us to respond. This issue is directly relevant to the regulatory objectives of protecting and promoting the interests of consumers and improving access to justice. It is important that we respond to this consultation paper.

7. [REDACTED]

- [REDACTED]

8. [REDACTED]

(i) [REDACTED]

[REDACTED]

[REDACTED]

¹ http://www.legalservicesboard.org.uk/what_we_do/responses_to_consultations/pdf/20140902_LSB_Response_To_LSCP_McKenzie_Friends_Report.pdf

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9. [Redacted text block]

10. A draft response is included below at Annex A. The closing date for responses is 19 May 2016.

15.04.16