

THE MCKENZIE FRIEND GUIDE TO HOW FAMILY COURTS WORK (15 PAGE SAMPLER)

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ABOUT THE AUTHOR



(Photo:Baxter Fletcher)

Graham Fletcher is professional McKenzie Friend, a alternative to using a solicitor or lawyer in family law cases. Graham has over 150 5 star reviews online. Graham's personal journey through divorce took him from acrimony to shared parenting and a positive relationship with his ex-partner. In his work as a McKenzie Friend, Graham mentors litigants in person (people who go to court without a lawyer) through the family courts in England and Wales. They are either being restricted or denied access to their children, in conflict about how to split joint financial assets upon divorce or involved in non-molestation or occupation order proceedings.

His working background was working with children and families for over fifteen years

A McKenzie Friend is a court defined term for someone who assists a litigant in person in a court of law in England and Wales, Northern Ireland, the Republic of Ireland, New Zealand, and Australia. In a courtroom they can take notes and quietly give advice. Outside of the courtroom they can assist in negotiations with lawyers and family court advisors. Prior to the court hearing they can help a litigant in person understand the relevant court processes and criteria being assessed and provide emotional support to prepare for presenting your own case. They need not be legally trained or have any professional legal qualifications. The right to a McKenzie Friend was established in the 1970 case of McKenzie v McKenzie. The President of the Family Division has issued practice guidance on McKenzie Friends (Civil and Family Courts) <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf>

Graham has no personal agenda behind his McKenzie Friend work. His own children benefit from shared parenting arrangements and he seeks to support parents to work towards positive shared-parenting arrangements where possible. He is passionate about helping people achieve reduced conflict outcomes for their children and improved parental relationships. He enjoys being a calm, friendly advocate in stressful situations. Graham has qualifications of Post Graduate Youth and Community work, BA Hon Fine Art, Qualified OCN Mentor. He is also a energy worker and subconscious mind coach, facilitating Psych-k and Emotion Code techniques (visit <https://www.awaken-your-highest-self.com> for more information).

How does a McKenzie Friend help a litigant in person?

1. Emotional support throughout the court process

2. Helps them understand how family courts work

3. Supports the development of a positive mindset

4. Provides impartial analysis of the case

5. Helps them articulate their short and long term aims

6. Reviews documents and offers feedback to consider

7. Assists them to understand legalese

8. Helps them in their negotiations with lawyers

9. Takes notes and supports them to stay calm and focussed

10. Helps them respond to fast moving court processes

The McKenzie friend guide to how family courts work is the book I wish I could have found when I was suddenly faced with family court proceedings at the start of my own divorce.

A book that lays out a road map of the road ahead and concisely explains the key factors that you need to consider. Examples of how I support McKenzie Friend clients are offered, so you can visualize how a McKenzie Friend could assist you to achieve a positive outcome.

The book will focus on the three main factors that I have found to be of most practical use to the parents I have helped in family courts over the years.

💖 Being aware of your emotions, who can influence them and how they can affect your mindset and actions.

👁️👁️ Being informed about how family courts work in principle, so you can look at your situation clearly.

👉 Imagine you are involved in a family court version of “spot the difference” but instead of comparing images you are analyzing the importance of words and emotions.

In addition to this 3-step “**Eyes Wide Open**” approach, throughout the book I will share with you 10 key moments when I have helped litigants in person to **spot the difference in family courts.**

Ten Spot the Difference Moments in Family courts

1. Different types of court hearings

2. Use of legalese to hide simple concepts of agree or disagree

3. Cafcass advise the court and do not make judgements

4. Lawyers have 2 roles - servants of the court and actors

5. Reporting an allegation doesn't mean it is believed

6. Lawyers try to pressure you to consent outside court

7. Did the court find the lawyers acting convincing?

8. The court decides if fact-finding required, not the lawyers

9. Understand the different evidential status of documents

10. Lawyers may try to draft orders in their clients favour

Road Map of Your Family Court Journey

This is the journey that the book aims to take you through.

1. Emotional check-in

2. Define your aims

3. Improve your mindset

4. Understand who the key people of influence are

5. Understand the criteria used to assess cases

6. Write up your position statement

7. Be prepared for out of court negotiations

8. Spot The Difference on the day of court

9. Be ready to communicate all your points to the judge

10. Understand your options and decide how to respond

You can apply for a child arrangements order

Criteria - the welfare checklist is the criteria that will be used by the court to consider any case.

<https://www.legislation.gov.uk/ukpga/1989/41/section/1>
for more information.

The welfare checklist covers:

The wishes and feelings of the child concerned,

Their age and level of understanding,

Their physical, emotional and educational needs

The likely effect on them of any change in their
circumstances

Their age, sex, background and any characteristics
which the court considers important

Any harm which they have suffered or are at risk of
suffering

How capable each of their parents is of meeting their
needs and the range of powers available to the
court (under the Children Act of 1989).

You can apply for a financial remedy in divorce proceedings (previously called ancillary relief)

Criteria - Section 25 of the Matrimonial Causes Act (MCA) 1973 contains the criteria that will be used by the court to consider any case. See <http://www.legislation.gov.uk/ukpga/1973/18/section/25> for more information.

The Matrimonial Causes Act 1973 is the criteria that a court considers when it decides how to help you resolve the dispute over how to financially separate from your partner and divide your assets (normally your family home and any pensions). Section 25 of the MCA tells the court to consider a number of factors when a couple is getting divorced – this includes the parties' ages, the length of marriage, their income, their needs, their future earning capacity, the standard of living they have been used to, if they have a physical or mental disability, the contributions of either person to the marriage assets and their conduct. The court then has quite wide discretion in deciding what is their judgement of a fair settlement.

The court can order the sale of homes, divide the financial assets, debts and pensions.

If you and your partner cannot come to an agreement over how to financially separate your marital assets by agreement or mediation, then you are faced with the stressful process of taking the matter to the family court. The most stressful part is compiling all of the financial documents, which will then be organised into a schedule of assets document for the judge to

HOW FAMILY COURTS WORK IN PRINCIPLE

💕👁👁 It's really important to be able to reconsider the views you may have built up about how you think courts work or how you want courts to work. I often find when new clients contact me that they have viewpoints that are not helpful and not what happens in reality. More often than not, these views are based on myths about family courts or second-hand accounts of situations where people possibly didn't understand how family courts work or the limitations of their powers.

👁👁👇 It's my view, from attending many court hearings that there are two different types of hearings -

Consent-based hearings and **Contested** hearings.

Consent-based hearings are normally called:

Directions hearings or **Dispute resolution appointments** (DRA) (or FDR in Divorce Finance hearings)

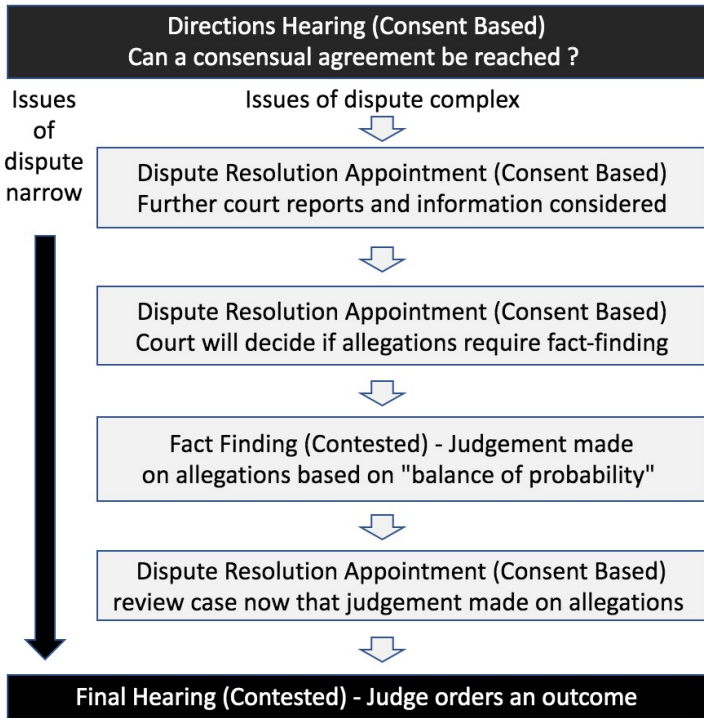
Contested Hearings are normally called:

Fact-finding hearings or **Final hearings**

It's my observation that neither courts nor lawyers explain the different types of court cases to participants. Not knowing the distinction between different types of hearings can mean people will sometimes agree on the day of court. Often this is because they don't like the stressful experience of coming to court and do not want to come back again.

👇 **This is the first moment for you to spot the difference in family court.**

The Potential Family Court Process Ahead



Lawyers - Solicitors and Barristers

The second person you are likely to encounter as part of the court process if you attend court and the other parent has legal representation is a solicitor or barrister. Solicitors and barristers are lawyers, trained in law.

It's important to understand that the lawyer will have two roles. The simple way I would describe their primary role is that they are "servants/officers of the court". By this I mean they have a duty to try and assist the courts to run better, more effectively and to follow the law, procedures and practice directions. They have a duty not to mislead the court. The professional and regulatory framework for lawyers defines that a lawyers primary duty is to the serve the court and to the administration of justice before the interests of their client. This primary role may work to the potential disadvantage of their client, requiring the lawyer to not mislead the court or withhold from it documents and even when they detract from the client's case. Read the Litigants in person guidelines for lawyers June 2015.pdf for more information

<https://www.lawsociety.org.uk/topics/civil-litigation/litigants-in-person-guidelines-for-lawyers>

The lawyer's second role at court is to "re-present" the views of the client and try to achieve the outcome their clients want. The reason I say "re-present" is because that's exactly what they're doing. They will do this in both out of court negotiations and in the courtroom in different ways. Simply put, they have been "presented" with the views of their client and then they "re-present" them to you in their legalese language (outside the courtroom) and to the judge or magistrates (inside the courtroom).

Influence of Cafcass reports and how to interpret them

In childcare arrangement hearings, either a safeguarding letter or section 7 report will be filed with the court and sent to parents either by email or post.

👉 **The letter or report has two sections. The first section “reports” and the second section “recommends”.** The first section informs you of the results of the checks made with relevant agencies and reports the expressed views of each of the parents. The second summary section is where Cafcass provide their professional social work recommendations to the court on how the court could possibly deal with the situation.

👁️👁️👉 Cafcass’s views on the allegations reported become clear in the second section when they give their professional recommendations. This is the more important section of the document to focus on. If the recommendations at the end of the document state that there are no safeguarding concerns and no further involvement from Cafcass is required, then Cafcass are effectively (in between the lines of their report) saying that they are not hugely concerned about the allegations and the matter should somehow move positively forward for the children involved.

👉 If Cafcass feel the allegations are of concern in connection to how childcare arrangements could work they would likely recommend that the court might need to consider if a fact-finding hearing is required (See Chapter 9).

Here is an example of how a well-written position statement could help gain a positive outcome at court.

Let's say for example, my client is being prevented from seeing their child. Communication between the parents may have completely stopped and my client felt that a court application was the only way forward.

💕👁️👁️ I could support my client to review their proposed position statement before court, think about how it could briefly name the past issues but focus more on their proposals of the way forward. If the safeguarding report is received and confirms that there are no safeguarding issues, a sensitively worded position statement could be very helpful to the out of court negotiations. If both parents had found the process of coming to court stressful, they could discuss the practical arrangements proposed in the position statement outside court, adapt them by agreement and ask the court to write their agreement up into an order. This would mean they would not need a further court hearing.

Each party making their presentations to the court

👁️👁️ Plan your presentations to the court in line with the criteria relevant to your specific hearing. The family court very much operates on the principle that the hearing is about the factual reality on the day of the court hearing (or if you want to use legalese, what is the “status quo” - meaning what is set as the reality on the ground today). Ask if your position statement has been read and if so, go through the key points it makes and be clear about the outcome you want the court to order. It will be useful to have a tick list version to go through your aims or points one by one. Your McKenzie Friend can quietly prompt you if you forget any of key points in the heat of the moment. When you leave the court you will then know you have made all the points you wanted to.

The court will consider how much the current situation can positively move on today or are there any factors of concern alleged which mean the court feels they need further information and advice before they feel confident to order an outcome upon the parents. These are the kind of decisions and considerations that the courts are having to make.

👉 If you are a litigant in person and the other parent has a lawyer talking on their behalf, remember (as covered in Chapter 5) they will partly be presenting to the judge their opinion of how they think the case should go forward as a “servant of the court” and partly acting on behalf of their clients to try and achieve their aims. I'd observe it's never made clear in court when solicitors or barristers are jumping between working in these two roles. Often they will very quickly jump between one role and the other, if you are a litigant in person you may not **spot the difference**.

CHAPTER 10

OVERVIEW OF COMPLEX CASES

As this short book is primarily focussed on outlining how the first couple of hearings should work in principle and other key factors that can lead to achieving positive outcomes, I have decided not to go into describing in detail how court may deal with allegations of domestic abuse, drug and alcohol use or mental health as this is often complex and specific to each case. I will outline generally how such alleged factors are assessed by the court in this chapter.

Fact-Finding Hearings, Scott schedules and dispute resolution appointments

It's important to understand allegations that have previously been made to the police (with no further action) may be reconsidered in the family court.

When allegations have been made in the past, one person or both people may have called the police. The police may have attended an incident and taken a number of different actions and this will have been detailed in the safeguarding letter. The person alleging perhaps decided they didn't want to press charges. The police may have felt there was insufficient evidence on which to proceed with a prosecution in a criminal court.

From the point of view of the family courts this means those situations are at this point just alleged and not fact.

AFTERWORD

What I have been trying to do is give you a concise overview of the typical family court experience for the first few hearings and an insight into how a McKenzie Friend can help litigants in person to achieve positive outcomes in family courts. Not all clients I have supported have achieved successful outcomes but a high percentage have.

Presenting your own case in court against a lawyer will be emotionally challenging but with an understanding of how family courts really work and emotional support on the day I have seen many litigants in person achieve positive outcomes against lawyers.

It could feel very empowering to have achieved a positive outcome for your family by doing it yourself. I like to think the fact so many of my clients are happy to leave positive reviews online on matters that are sensitive in nature confirms my Eyes Wide Open approach and emotional support can lead to positive outcomes.

This book outlines my interpretation of the boundaries and limitations of the McKenzie friend role. Other McKenzie Friends may have different views and approaches.

💕👁️👁️ I am not legally trained. Consider if my explanations and observations make sense to you. I am just describing my own perceptions, based on my own life experience. We are all unique people with different viewpoints and decisions to make in life. I take no responsibility for the use or interpretation of the observations in the book.