



Fourth National Forum on Access to Justice for Litigants in Person

Friday 4 December 2015

SUMMARY

The Civil Justice Council (CJC)'s fourth national forum brought together 130 judges, lawyers, advice workers, academics, regulators, civil servants and others to discuss progress made on improving access to justice for litigants in person (LiPs).

Opening address: Lord Dyson MR, The Chairman of the CJC opened the event, and welcomed attendees. As well as personally regarding the event as important, he noted its growing significance as the number of LiPs continued to rise in the light of legal aid cuts and the ever-rising costs of lawyers. He wondered how many potential litigants gave up before starting a claim. The recent announcement in the Autumn Statement of a £700 million investment in the court system meant that there was now funding for digitisation of the court process. He expressed his gratitude to HM Treasury for providing that funding, and to the Ministry of Justice (MoJ) for supporting the bid. Lord Dyson made a further plea to the Government to continue to maintain and increase the level of support for LiPs at a national level and to exert the influence they had to do the same for other Ministers to fund support at a local level. Local advice agencies were under great pressure.

Address: Lord Faulks, The Minister of State for Civil Justice acknowledged the challenges presented to the civil justice system by the increasing number of LiPs. He described the Forum as having become an essential feature in the civil justice calendar and noted as well the range of people present, and the opportunity offered to share experiences and take stock. The LiP support strategy announced the previous year continued to build on the good work already done, and much of that was as the direct result of the work of those in the room. The expansion of the Personal Support Unit (PSU) network was in particular to be welcomed– the most recent having opened this week in Exeter. He touched on some of the other initiatives currently underway. The Government's 'One Nation Justice' concept envisaged a reformed service for dispute resolution centred around the needs of the litigant – digital by default, but catering for all. Our justice system was excellent and its reputation remained intact. The challenges continued to be considerable, however, and this event made an important contribution in helping the thinking about how best to meet them. It was important that everyone worked together.

Updates on specific projects. The next part of the morning saw brief updates on a number of particular projects.

Theresa Harris, Head of Information and Digital Innovation at Advicenow described improvements to the function and content of the Advicenow website, as it continued in its aim to provide accurate, user-friendly information and guidance for users. This had been carried out with the benefit of funding from the Legal Education Foundation (LEF) and MOJ through the LIP Support Strategy. The website's aim continued to be to raise awareness of people's rights, but also to give individuals the confidence and skills to pursue a claim. The core guidance, the 'Going to Court' leaflets, gave practical advice and signposted readers to further sources of advice and representation. Their purpose was also to prevent problems from escalating by helping to answer the questions – what did you need to do and where did you need to go to prevent a problem from becoming intractable? The website was also now accessible from mobiles and tablets; 59% of its hits came from those devices.

The challenges for the immediate future were:

1. To connect with people on and off line.
2. To continue to extend an already broad range of topic areas.
3. To keep existing areas up to date, and to identify and fill gaps in existing information.

Katherine Barry, from Citizens Advice, spoke about face-to-face front-line advice, noting that the CAB had had 136,000 questions about purely legal matters so far this year. Those queries involved increasingly complex and multi-faceted problems and she highlighted the importance of early advice – often on what the issues actually were. She welcomed initiatives such as CourtNav for those able to fill in court forms unaided. Otherwise, she believed innovation should focus on triage, ways of checking the information that people had gathered and provided, and on using pro bono resources efficiently. Face-to-face advice remained important for vulnerable clients; only 25% of CAB users had internet access and 33% had basic IT skills. A small proportion - 14% - felt confident about representing themselves in court.

HHJ Stephen Wildblood described the recent series of three 'masterclasses' in Bristol Combined Court Centre – sessions that were open to the public and which described the work of the family court, touched on substantive law and procedure, and were followed by Q&A sessions. Inspired by the Californian family courts' approach, each audience of around 100 people included members of the public – many of whom had had involvement with the court – students and representatives from the press and voluntary and charitable sectors. The events had been marketed in collaboration with Jordans and the CAB. Bookings had been made by name, with email contacts taken. It was important to bear security in mind – but not to be hidebound by it. It was also important not to lecture people, to dress down and to start with ground rules. The reaction had been entirely positive – and both sides had learnt a lot. There was a package of support at Bristol – including a website, films of mock trials, a multi-faith and multi cultural support group, PSU and rota of pro bono lawyers, as well as close links with local universities – in particular University of the West of England, CAB and the Samaritans.

Elisabeth Davies, Chair of the Legal Services Consumer Panel talked about the advantages of 'unbundling' for litigants. One in five legal transactions now included an element of unbundling. At a recent roundtable, people had discussed whether or not this increased access to justice. Three themes had emerged:

1. It was important to assess clients' capabilities, including the likely impact of their emotional state on their ability to work on their own case.
2. An absolutely clear written agreement between lawyer and client was paramount.
3. Elements such as professional indemnity insurance, complaints process and professional standards all had to be in place to support the process.

The *Minkin* decision of the Court of Appeal the previous month ([2015] EWCA Civ 1152) had given some helpful guidance.

She identified three areas in which further work was needed:

1. More data on the services that clients were actually seeking.
2. A stronger partnership with the advice sector so that cases could be transferred to a direct access barrister and/or solicitor.
3. Continued monitoring of a changing landscape, to ensure that processes were joined up.

DJ Chris Lethem, a member of the Civil Procedure Rule Committee talked about the new Rule 3.1A, the aim of which was to make it clear to the judge that the case management of a claim must have regard to a LiP and to unshackle judges from any perception that they were not able to adopt such a flexible approach.

Judges must also make processes more accessible to LiPs, for example by ascertaining those matters to be put to a witness, or supporting the LiP in questioning. The Rules had been written for lawyers – and it was a question of how to mould them so that they are accessible to LiPs.

Clear language in drafting directions and orders was also to be encouraged – directing people to Advicenow wherever possible.

He also touched on the training module being put together to encourage judges to think about how far they might step into a case with one or more LiPs – and the limits.

Bob Chapman, Chair of the Welsh National Advice Network touched on developments in Wales. Though justice itself was not a devolved matter, many other areas of public service and spending (e.g. education or health) were. The law governing such areas was developing in slightly different directions in Wales in some respects. The Welsh Assembly had developed a Quality Framework to set new standards, and this had improved the quality of funding for the advice and voluntary sector. 2016 was likely to see the extension of the Welsh Assembly's powers, and one area of political debate had been the development of a distinct Welsh legal jurisdiction.

That said, the experience of LiPs in Wales was largely the same as in England- cases were taking longer, unsuitable cases were not being filtered out via legal advice and there was some evidence that people were giving up before even starting a claim, for example in challenging visiting arrangements for children.

Taking a strategic approach: a panel discussion. A panel discussion followed on the challenge was how to use these various initiatives strategically, chaired by **Matthew Smerdon**, CEO, The Legal Education Foundation and including:

- **Rebecca Wilkie**, The LIP Support Strategy
- **Alasdair Douglas**, Chair, City of London Law Society
- Mrs Justice **Sarah Asplin**, Lead on judicial coordination for LIPs
- Rt Hon **Dominic Grieve** QC, MP, Chair of the All Party Parliamentary Group on the Rule of Law
- **Sidonie Kingsmill**, Director, Customer Engagement, HMCTS

Various points emerged during the panel's discussion:

- LIPs should understand the options available to them, including the routes to free or affordable advice. **Over-communicating** was not necessarily a bad thing.
- There was a variety of ways in which lawyers could offer **pro bono** assistance – using existing skills to, e.g. help with international initiatives or in conducting a bond issue for charity, or in developing new secondary skills. Was there any benefit in a pro bono strategy? Might that include a plan for sorting out the regulatory aspects, and encouraging initiatives outside major cities by, e.g. the use of Skype? Pro bono work might be harnessed by emphasising the business case – it was often something clients wanted their law firms to be doing. The talents within the Government Legal Service should also be liberated!
- **Judges** should be allowed to share their skills and experiences.
- **Local networks** should be developed and more targeted information provided – it was not just about national umbrella organisations, but about making the threshold of the local court less daunting. Were individuals getting to the court or tribunal they need to resolve their problem? Justice was the original social service and must remain accessible.
- The importance to a strategic approach of **capturing** what was working and the role of technology in revealing what is already out there.
- The need to strike a balance between creating a more open environment in the court while still maintaining the **independence** of the courts. Maintaining three facets of the courts in tandem – user-friendly, independent and high quality.
- The need to bear in mind examples of **good government digital services** when considering what should accessible systems look like.
- To clarify the line between offering information and giving guidance for PSU staff and volunteers.
- To clarify the cost risks for an LIP in pursuing a case.

Plenary session: 'Taking a strategic approach': A plenary discussion (continued in the afternoon) was facilitated by Mr Justice **Robin Knowles** CBE. Points raised included:

- In developing **local networks**, the importance of engaging with what was already happening at local level.
- Need to be more **strategic** than just a collection of co-ordinated offerings. It's not just about the national picture! Low Commission has toolkit for local government in putting together strategy, including for social care and health sector. Included clear goals, centralised communication structures and lists of resources.
- The need to continue to point people in the direction of **legal aid** and exceptional funding, where available.

- Improve referrals between LawWorks Clinics and pro bono services where specialist advice needed.
- The desirability of further judge-led **after court sessions** around the country.
- The success of ‘**show-arounds**’ at courts for litigants and those who work with them, giving an introduction to the court and increasing confidence for all.
- Reiterating the importance of defining clearly the roles of the client and lawyer in relation to an **unbundling** agreement. The Bar Council needs to consider guidance for barristers on how to work out the client’s needs and their ability to meet them. It was noted that the LSB and LSCP had made recommendations and created toolkits to help support barristers in this work.
- Moving from information to advice. How should **PSU** react to the challenge? Might volunteers express the LIP’s point if the judge wants the volunteer to help pose or answer questions. Would volunteers be in a position to accurately represent the LIP – or would LIP be able to correct them if they got it wrong? What would the training implications be?
- Importance of enabling litigant also to understand the court order – and considering their experience **after the court hearing**. Judges might type up orders, so the LIP can take away and take advice or get someone to explain.
- Challenges for the judge when the other side was **poorly represented**.
- Need to consider scope for secondary specialisation for lawyers. Realisation that lawyers have **transferable skills**. Also might be trained to understand legal aid system – not simply topics such as Special Educational Needs and employment support allowance. How to supplement where legal aid was only available patchily – e.g. housing. Need also for honesty about limits of pro bono. Would a framework help? Need for more pro bono help outside cities.
- Help law firms make business case for **pro bono**. How to get together resources and apply those where most needed? What’s the position of employed in-house lawyers? There is a perception that section 15 of the Legal Services Act prevents those lawyers from doing pro bono work. Free initial appointments also count as pro bono.
- Bar in the community talked about **transferable skills**. Pro bono work is not just about the day job – barristers are often in a position to help, e.g. as a trustee or in mentoring front line advisers.
- Need to realise low levels of **legal understanding** among populace. For young people – it is about protection, not just punishment. OK to put LIP at centre – but need to be real about where they are with grasp and understanding. Might Citizenship Foundation advise on the gaps in knowledge and understanding?
- Also an international problem. **Access to Justice Commissions** elsewhere – should there be one in the UK?
- That ‘**the Government**’ included DCLG and DWP as well as MoJ.

Short update: Rebecca Hilsenrath, CEO, Equality and Human Rights Commission then spoke about the Commission’s plans to look at the barriers facing those considering making a discrimination claim or one under the Equality Act, and invited delegates to join a discussion over lunch on new models to provide access to justice in those cases. The Commission had published a literature review of how recent changes to the justice system had affected groups with protected characteristics, and this had shown a disproportionate impact.

Over lunch there were break-out sessions (a) organised by the EHRC (chaired by **Rebecca Hilsenrath**) on new approaches to discrimination disputes and (b) for LIP Liaison Judges (chaired by Mrs Justice **Sarah Asplin**) to consider a new DVD to support local judicial discussion on best practice in cases involving LiPs.

Short address: Tribunal Justice: After lunch, Lord Justice **Ernest Ryder**, Senior President of Tribunals, gave a brief update on the tribunal jurisdiction and the ways in which work was continuing to build on Sir Andrew Leggatt's 2007 report. That work was centred on increasing benefits for users by delivering 'one system of justice' that was good enough for everyone. Digital processes could be enhanced by the use of case workers and registrars, and also improved the quality of work undertaken by the judges themselves, and the experiences of users. Sharing skills and expertise more widely through the development and use of deployment and assignment policies also enhanced the quality of the decision-making, though the implications for the jurisdiction of proper assignment had to be faced. He emphasised the importance of research-validated good practice, particularly that relating to any re-designed digitised process. These changes would be incremental – it was not a 'big bang' approach..

'New approaches to simpler or lower value disputes' – a panel discussion. This session was chaired by **Andrea Coomber**, Director, JUSTICE with a panel comprising:

- Professor **Richard Susskind** OBE, Chair, CJC On-line Dispute Resolution Wkg Group; Member, JUSTICE Austerity Working Group
- Dame **Janet Finch** DBE, Chair, Ombudsman Services
- HH Judge **Graham Robinson**, Designated Civil Judge, Sheffield and South Yorkshire
- **Caroline Sheppard**, Chief Adjudicator, Traffic Penalty Tribunal
- **Roger Smith** OBE, Digital Delivery

Various points emerged during the panel's discussion:

- It was important for any new system not to incentivise the escalation of a claim. It was about dispute avoidance, containment and finally resolution.
- All civil court users should be involved in any reform, including local authorities and court staff.
- There was some debate about the level of access to the internet among groups likely to bring a claim – though the system could be built with an icon indicating that a particular individual needed to be sent paper versions of documents, or to be telephoned rather than emailed.
- Experience had shown creative use of online resources by parties in parking appeal cases, e.g. verifying weather conditions on a particular date.
- A digital reform bill would free up the process and service of documents.

Short address: Civil Courts Structure review. Lord Justice **Michael Briggs** then gave a brief summary of his work on the Review. The civil system lagged behind the family and tribunals systems in relation to structural reform. He was working closely in tandem with the HMCTS reform programme. He believed that in five years time the word 'court' would refer to a system, rather than a geographical place. There had been a deep-rooted inability to date to provide a satisfactory service for LiPs and they had to be at the centre of any new structure. It must be designed for use without lawyers. Early signs were that there should be four stages:

1. interactive triage, putting together the bones of a claim with the necessary documentation, a system that could also be used by defendants..
2. A partly automated stage at which mediation was normal but not compulsory.
3. A case managed hearing stage.
4. An enforcement stage.

The system would need new rules, and that too needed the involvement of the expertise and experience in the room. 'Low value' would have a higher ceiling than small claims currently. Those unable to access a digital system would get the help they needed. He would produce his interim report for the MR by the end of this year, and his final report was expected to be submitted in July 2016.

Three short reflections followed on the theme 'How far travelled; how far to travel', by:

- **John Sorabji**, Principal Legal Adviser to the LCJ and MR
- **Nick Hanning**, Chairman, CILEX Pro Bono Trust
- **Sir David Bean**, Chairman of the Law Commission

Points made included the following reflections:

- There remained an urgent need to analyse and respond to the changing needs of the civil justice system. Legal expenses insurance was a source for potential widespread civil litigation funding.
- Some good progress had been made, but much more needed to be done. The commitment being shown was highly commendable, but there were still many others who could contribute.
- Many reforms were taking place in the justice system and there was a continuing need to ensure that the interests of LiPs were being addressed.

Sir **David Bean** invited recommendations to the Law Commission for areas that those in the room consider important for attention.

After which the closing remarks were made by **Peter Farr**, Secretary, The Civil Justice Council who summed up some of the key points made and thanked all speakers and attendees, including the staff and volunteer team, for their contribution.

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