

## Civil Justice Council

### **National Forum for Implementation of the Report on Access to Justice for Litigants in person**

#### **WEBSITE SUMMARY**

##### **Introduction**

Over one hundred delegates from across England and Wales and representing a variety of sectors attended an event in London on 29 November 2013. This second national forum looked issues relating to litigants in person in the light of the legal aid reforms introduced in April 2013. It also considered progress that had been made on the actions recommended by the CJC working group's report (include link) two years previously.

The Forum had been provided with an implementation update which attempted to describe the work and initiatives that had been undertaken during the two years since the publication of the report, and those on which progress was awaited. Delegates were invited to report on further work that had been or might be undertaken.

##### **Opening addresses**

*Lord Dyson*, Master of the Rolls, opened the event by welcoming delegates and the progress described in the implementation update. Work was still required to take the 'mystery and terror' out of the civil justice system for LIPs and he believed there needed to be a focus on making the system simpler and more user friendly. In the broad sense, this included consolidating the information that had been produced by different bodies into one place, but it also meant identifying the essential issues in particular cases at an early stage, and focussing on them.

He had been hugely impressed by the work underway in Personal Support Units (PSUs) during recent visits, including to Leeds and Cardiff, and congratulated them on their dedication, enthusiasm and creative energy. He believed that there was a danger of a duplication of effort and that one aspect of the work that still needed to be done was to ensure that local initiatives were not taken in isolation. He was delighted the Mrs Justice Asplin had agreed to coordinate efforts to meet the needs of LIPs across England and Wales.

Finally, he paid tribute to the CJC and in particular to Robin Knowles for his inspiring leadership and tireless promotion of the needs of LIPs in ensuring access to justice.

*Lord McNally*, Minister of State, Ministry of Justice, welcomed the spirit of Lord Dyson's speech and endorsed his comments about the CJC and Robin Knowles. The pressures on the legal aid budget would continue – and it was important that it was spent as efficiently and widely as possible to protect the rights of the marginalised and vulnerable. LIPs should be able to navigate the system, and the CJC continued to develop its plan to allow them to do that. He welcomed the collaboration between the public and not-for-profit bodies and their role in suggesting solutions to some of the problems encountered by LIPs. He emphasised the importance of mediation and of directing people to the right services at the right time and considered the Forum a fresh impetus to continue work in the area.

## **Implementing the report**

**Robin Knowles** led this session, which he described as a practical forward-looking approach to the area and the work that continued. He welcomed the presence at the Forum of civil servants from the MoJ and HMCTS, whom he had always found helpful and available for sensible discussion about the best way forward and welcomed Lord McNally's indication that that dialogue would continue.

He pointed out that potential LIPs – that is, people who were not eligible for legal aid but who could not afford legal representation – now made up the majority of the populace. The intention of this session was to look at fresh initiatives or opportunities for coordination in providing help for them so that the system became more than the sum of its individual parts.

Robin then invited representatives from different parts of the system to update the Forum on work in their area. Topics covered included:

1. Ensuring the distribution of material to all who need it, including centralising existing sources of information.
2. Ways of unbundling legal advice so that it was targeted to the particular question at the particular time
3. The importance of early, initial contact with an LIP, including preliminary hearings.
4. Making rules, forms, orders and directions work well where there is an LIP in a case, including help filling in forms online.
5. Checking for pre-existing insurance for legal services.
6. Assuaging the concerns of lawyers about exposure to professional negligence claims for legal advice given pro bono.
7. Support available to in-house lawyers wishing to offer legal services pro bono.
8. The role of court staff
9. The role of court user committees
10. Clarifying the role of the lawyer on the other side
11. Communicating the outcome of the case and next steps.

A short presentation followed by *Judge Seys-Llewellyn, the Designated Civil Judge for Wales and Rebecca Hilsenrath, CEO, LawWorks (the Solicitors Pro Bono Group)* on work during the past six months to establish a network of services for LIPs in Wales.

## **Break-out Sessions**

In the afternoon, discussion moved to focus on key topics raised during the morning's session. The panel comprised:

- *Alison Lamb, CEO, RCJ Advice Bureau*
- *Robert Heslett, Chairman, Personal Support Unit*
- *Lord Justice Richards, Chairman, Civil Procedure Rules Committee*
- *Amanda Finlay CBE, Vice Chairperson, the Low Commission*

Points raised included:

1. The exposure of LIPs to adverse costs orders.
2. Focusing case management on pinning down triable issues and encouraging mediation.
3. The balance in drafting Rules between precision and completeness, and simplicity.

Delegates then broke up into small groups to discuss four different topics, with the option to move among them. The facilitators then reported back to the Forum as a whole on some of the key points covered. The clarification of legal materials and documents, centralisation of guidance for LIPs, need to encourage mediation where appropriate and potential role of universities were recurring themes.

**Group 1**, covering the judge's role and mediation

1. The different skills needed by a judge at different stages of a hearing
2. The development of standard applications and statements for LIPs.
3. The benefits of docketing.
4. The role of small claims mediation and the judicial mediation scheme for longer cases in the employment jurisdiction.
5. The lack of awareness of adverse costs orders.
6. The role of the judge in suggesting mediation, and the need for careful timing in doing so.

**Group 2**, covering McKenzie friends and the role of the lawyer on the other side

1. The need to build a picture of the different types of McKenzie friend.
2. The desirability – or not – of self-regulation in the sector
3. The need for guidelines for new lawyers on their role when faced with an LIP

**Group 3**, covering information and other support services for LIPs

1. The use of videos and cartoons should be explored to explain the experience of attending court.
2. How to quality control information for LIPs.
3. Using early advice (including Skype clinics) to establish whether there was a case, and early hearings to clarify process.
4. Bundling legal advice with employment and budgeting advice.
5. The need to centralise and categorise guidance for LIPs.
6. Using other bodies, such as YMCAs, mosques and youth community centres to make information available.
7. The potential of universities as a source of help falling short of legal advice.

**Group 4**, covering rules, forms, orders - and the role of public legal education

1. The need for a diagnostic tool, allowing people to assess whether or not they have a case.
2. The use of preliminary hearings to establish the particulars of claim.
3. Working with law students to give support and take LIPs to a point where care worker could step in.

The day closed with the final observations from a panel which comprised:

- *Mr Justice Hickinbottom, the Judicial Working Group Report*
- *Lord Justice Briggs, the Chancery Modernisation Review*
- *Mr Justice Cobb, Judicial Proposals for the Modernisation of Family Justice; the Children's Arrangements Programme*

- *Lord Low of Dalston CBE, the Low Commission*

The observations included:

1. Continuing concerns about the length of trials, when preliminary hearings had to be incorporated, and the increasing time taken by judges to explain procedural issues rather than make decisions and dispense justice.
2. The need for coordination in the work being done, the need for simple and authoritative guidance on what is required of LIPs – and the importance of the role taken on by Asplin J.
3. The need for local databases of information and sources of advice with liaison judges for each PSU.
4. The need to encourage ADR – not necessarily with both parties present.

#### **Next steps & final remarks**

Robin summarised some of the issues and themes arising over the day. The implementation update would be amended and recirculated as the basis for further work in all the area touched upon. He welcomed further thoughts from delegates on e-mail (to [cjc@judiciary.gsi.gov.uk](mailto:cjc@judiciary.gsi.gov.uk)), including further updates or amendments to the implementation document.