# Access to Justice for Litigants in Person (or self-represented litigants)


**A Report and Series of Recommendations**

**to the Lord Chancellor**

**and to the Lord Chief Justice**

**November 2011**

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# Chapter 1
# Introduction and Terms of Reference

1. Access to justice for all is central to the Rule of Law. The proposed reduction of publicly-funded legal aid, and the current cost of privately-paid legal services, are likely to lead to a substantial increase in those whose access to law is unaided by lawyers. The result will be no access to justice for some, and compromised access to justice for others.

2. In many cases members of the public, as defendants to civil proceedings, will have no option but to attempt to represent themselves or allow judgment to be entered in default of a response to the claimant's case. In many other cases, members of the public with good claims will be left with no option but to abandon their rights and leave problems unresolved and potentially worsening, unless they are prepared to attempt to represent themselves.

3. Recognising this, the Civil Justice Council[1] constituted a Working Group to examine access to justice for "litigants in person", or (to use a description the Working Group suggests is preferable) "self-represented litigants".

4. The Working Group was drawn widely. It has sought to pool the expertise and experience within its number[2], as well as draw on views from outside its number[3].

5. This is not the first Working Group or study on the topic, in the UK or overseas. Indeed the Working Group has drawn, with gratitude, on previous work and study. But it is a particular feature of this Working Group that it reports at the time it does – a time of severe economic difficulty and a time of proposed substantial reduction and changes in publicly-funded legal aid and substantial reductions in local authority funding to the advice sector – and with terms of reference that require it (with one exception[4]) to focus on steps that would not require material additional financial resources.

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[1] The Civil Justice Council ("CJC") is an advisory body established under section 6 of the Civil Procedure Act 1997. Its functions include keeping the civil justice system under review, considering how to make the civil justice system more accessible, fair and efficient, and advising the Lord Chancellor and the judiciary on the development of the civil justice system. Its members are appointed by the Lord Chief Justice or the Lord Chancellor.

[2] Short biographies of the members of the Working Group are included in the report.

[3] A list is included in the report.

[4] Please see paragraph 8.

## Terms of Reference

6. The terms of reference of the Working Group were as follows:

   (1) To consider what steps could be taken to improve access to justice for litigants in person.

   (2) To consider what steps could be taken to prepare for the possibility that the number of litigants in person will increase materially.

   (3) To focus on steps that would not require material additional financial resources.

   (4) To consider the possibilities for further development of pro bono advice and assistance for litigants in person.

7. The terms of reference further required a report to the Lord Chancellor making recommendations. In light of the recommendations made, and having regard to the statutory remit of the Civil Justice Council, this report is in the event addressed both to the Lord Chancellor and to the Lord Chief Justice (as Head of the Judiciary).

8. In the course of its work the Working Group was asked by the Ministry of Justice to extend its remit so as include its recommendations for the expenditure, to help address the issues under consideration, of a sum of money if that sum was available but was only available to be spent in the year ending March 2012[5].

9. The Working Group began its work in July 2011. An advanced draft of the report was considered by the full Civil Justice Council at its meeting on 27 October 2011 and the report is submitted with the approval of the Council.

10. Inevitably, given the combination of experience drawn together with the Working Group, individual members of the Working Group have an involvement with some of the organisations the subject of the discussion and of recommendations made in this report. It is hoped that the short biographies that are included in the report will help with transparency in this regard. By reason of the involvement mentioned some of the recommendations, although recommendations of the Working Group acting as a whole, are given by way of example.

[5] Please see Appendix 6.

# Chapter 2
# Overview and Executive Summary

11. This report focuses on civil justice in England and Wales, by which it is meant justice within the remit of the civil courts, rather than the criminal courts and the family courts. The emphasis is on the courts rather than tribunals. The report is about self-represented litigants, but that involves the whole system, including legal aid.

12. The forthcoming reductions and changes in legal aid will have the most serious consequences. This is not simply because of their scale, it is also by reason of their design and incidence. Among other things they will have a disproportionately adverse effect on the most vulnerable in our society. Moreover the reductions and changes in legal aid are taking place at a time of reductions in local authority contribution to the funding of advice agencies, and reductions in staff, venue and infrastructure at HMCTS (the courts and tribunals service).

13. Even before those reductions and changes, our civil justice system had many users who represented themselves, or attempted to. They faced a system of real quality, but one designed for lawyers, and which as a consequence was and is far too complex and obscure for those representing themselves. It is hard to overstate just how difficult it can be – for the person, for the court, and for other parties – when someone self-represents.

14. It is a reality that those who cannot afford legal services and those for whom the state will not provide legal aid comprise the larger part of the population of England and Wales. Thus for most members of the public who become involved in legal proceedings they will have to represent themselves. The thing that keeps that reality below the surface is simply the hope or belief on the part of most people that they will not have a civil dispute.

15. Every informed prediction is that, by reason of the forthcoming reductions and changes in legal aid, the number of self-represented litigants will increase, and on a considerable scale. Such litigants will be the rule rather than the exception. Where there is not an increase the reason will be that the individual was resigned to accepting that the civil justice system was not open to them even if they had a problem it could solve or it could give access to the rights they were entitled to.

16. The design of the legal aid reductions and changes will take away routes to accessible early advice (including by the damage done to the advice sector, which in turn damages access to wider pro bono legal services) and leave intervention too late or denied altogether. As a result we will find more cases started by self-represented claimants that

need not have been started, more cases where self-represented defendants are involved for longer than need be, and more cases not starting when they should be started so that they can be resolved. We will find problems clustering, with increasingly wide and serious consequences for the individual, for families, and the state.

17. Pro bono legal services cannot begin to meet the scale of shortfall in provision that will be left by the proposed reductions and changes in legal aid. For all its development over the last decade, pro bono work exists only as an adjunct to legal aid and privately-paid legal services. It can never replace legal aid.

18. This report starts from the position that the forthcoming reductions and changes in legal aid are going to happen. It makes ten recommendations for immediate action, ten for the medium term, and identifies those areas most requiring longer term focus. In accordance with the terms of reference the recommendations are for steps that would not require material additional financial resources. At the later invitation of the Ministry of Justice the report adds ten recommendations for action should a (in the scheme of things, modest) sum of money in fact be available in the short term.

19. Even if all the recommendations we make are acted upon, they will not prevent the reality that in many situations, as a result of the reductions and changes in legal aid, there will be a denial of justice. There must be no misunderstanding about this. Put colloquially, the recommendations are about making "the best of a bad job".

20. The report and recommendations should be read as a whole. But the fundamental points include these:

    (1) The guiding framework of principle should continue to be that articulated by Lord Woolf in his review of Access to Justice. He set out eight basic principles; these remain utterly sound.

    (2) Self-represented litigants are users of the civil justice system, and the system exists for its users.

    (3) Judges can be at the heart of addressing what needs to be done; and in creating solutions rather than dealing with imposed solutions.

    (4) The most important thing for self-represented litigants is access to objective advice that can be trusted. Above all, advice about merits, and risks (including costs), but also about process. As a result every effort should be made to increase the availability and accessibility of early advice of this type, including on a paying basis for those litigants who can afford a piece of advice but not to engage lawyers for the whole case.

(5) Everything must be done to simplify and demystify the law and the system, including its language. This includes Court forms, procedures and hearings.

(6) As far as possible the fullest assistance (from legal aid, from the courts and court staff, from advice agencies and - within obvious limits - from the pro bono sector) should be reserved for those with the most complex personal needs, but available from the earliest point possible so that problems do not escalate unnecessarily or begin to cluster.

(7) While technology and improved written materials are essential, they are not alone sufficient to achieve the support required. People are the most important resource for all self-represented litigants, but especially the most vulnerable.

21. If progress is to be made then an overall approach that is less cautious than hitherto will be necessary. We must recognise that we are at a point when to insist on a perfect model may mean that there can be no model at all.

22. Specific recommendations include the following:

(1) A complete new information system is not needed, but what is needed is sorting out what guidance is already available that is good, and giving better access to it. This requires the close involvement of those, especially Advicenow, who can best identify what works for self-represented litigants.

(2) It is important to combine technology with human assistance rather than just leave technology to contribute on its own.

(3) There needs to be a systematic review, involving full consultation with those with expertise in service provision to self-represented litigants, of all HMCTS leaflets and Court forms and arrangements for access to them.

(4) The role of judges is crucial, including through judicial case management, in defining the key issues and making the case manageable and explaining the process. Arguments about "front loading" costs should no longer hold back case management.

(5) Specific steps should be taken (in line with our recommendations) to achieve greater transparency and confidence about what can be expected of judges, of court staff, of lawyers representing other parties, and of McKenzie friends[6].

[6] "McKenzie friends" are discussed in Chapter 11 and described in Appendix 5.

(6) The Personal Support Unit (PSU) network (providing practical and emotional but not legal support, although including some signposting) needs to be extended to more courts across England and Wales.

(7) Advice agencies face huge challenges but are more essential than ever. Every effort must be made to support them, and that includes when national or local government is contemplating change. At the same time, advice agencies must develop their contribution, including through coordination and collaboration, and the use of technology.

(8) In regulation the task is the facilitate affordable access to lawyers for discrete pieces of advice rather than a whole case, while retaining safeguards against exploitation.

(9) There must be concerted leadership from the major umbrella bodies representing advice agencies and the pro bono clearing houses to drive coordination and collaboration.

(10) The role of the mediator is an important one, and mediation needs to be better understood by all participants in the civil justice system. The prospects of success, and fairness in success, may be increased if a party has early advice, if the issues have been defined, and if it is still clear that the court is available to the self-represented litigant.

23. More generally:

(1) Public legal education (or PLE) is the true starting point for helping the public and thereby those who could become self-represented litigants. The regulatory objective[7] of increasing public understanding of the citizen's legal rights and duties is important.

(2) Because even pro bono interventions require funded infrastructure we have to find new and additional ways of funding that infrastructure if pro bono is to play its fullest part as an adjunct to legal aid. With additional infrastructure, material increases in human resource can be achieved, including with the supervised use of law students; and the involvement of established lawyers through LawWorks Initial Electronic Advice. Without it, effective pro bono work will decrease.

(3) If the civil justice system is to be there for self-represented litigants, it must try to improve further all its interfaces: between judiciary and court staff; between court staff and the advice and pro bono sectors; between the advice sector and the pro bono sector; between the judiciary and the advice and pro bono sectors. There is an

[7] Section 1, Legal Services Act 2007

increased imperative for all concerned with access to justice for self-represented litigants to share ideas and experience.

(4) More research is needed into self-represented litigant numbers, makeup, trends and experience, including into the potential for knowledge-based, IT-assisted, systems that can help people analyse a problem and reach a decision.

# Chapter 3
# Litigants in Person – "self -represented litigants"

## The term "Litigant in Person"

24. Experience shows that Litigants in Person do not always recognise the term as describing them. Court staff do not generally use the phrase "litigant in person"; instead they ask users if they have a lawyer or if they are representing themselves.

25. The Working Group favoured a concerted move to the term "self-represented litigant", and uses that in this report. It is recognised that even this term is not ideal[8].

26. Two general points about language lie behind this change. First, the importance of using language that those representing themselves will recognise. Second, the desirability of using language that emphasises that representation of a party does not only exist when there is a lawyer, and language that does not imply a deficiency in the fact of self-representation.

## A whole spectrum

27. It is vital to keep in mind that different self-represented litigants will have very different circumstances[9]. In particular:

    (1) Some self-represented litigants can afford legal services or are entitled to legal aid or could obtain pro bono assistance, but choose to act without lawyers.

    (2) Others may have started by paying for legal services or receiving legal services on legal aid or pro bono, but then continue without lawyers (sometimes through choice and sometimes not).

[8] In Scotland it is understood that the term "party-litigant" is used. Although the term is shorter, the Working Group was not convinced that "party-litigants" would recognise the term as describing them.

[9] "… [W]hen we are devising the lean, effective, efficient systems, can we all remember please … those whom they are going to impact on": John Thornhill , Chairman Magistrates Association, at *"Reforming the courts and tribunals service – challenges for modernisation and prospects for alternative dispute resolution"* 14 July 2011 Westminster Legal Policy Forum.

(3) Some self-represented litigants may find their dispute is with another self-represented litigant; others may find their dispute is with a party with full or partial legal representation.

(4) As with the population as a whole, some self-represented litigants will face additional challenges whether of health (physical or mental[10]), disability, social or economic circumstance[11], intellect, language[12], responsibility to others[13], or location (remote area or urban area)[14].

(5) For some self-represented litigants the nature of the dispute adds to the difficulty of managing it without the assistance of lawyers or other third parties. This might be because the dispute is legally complex, but it might also be because of the importance of the issues at stake to the self-represented litigant, the presence of an emotional dimension to the dispute, shock following unexpected redundancy, illness or divorce, the presence of other problems triggered by the legal problem, or the fact that the dispute is simply one dimension of an underlying cluster of problems[15].

(6) While there are occasional serial litigants, for the vast majority of self-represented litigants court is a 'one off' experience and can be centred round a turning point event in their lives.

[10] The PSU estimates that 30-40% of its 3000 clients at the Royal Courts of Justice annually have some form of mental health issue, 27% of its clients nationwide report that they have a serious health problem, and 15% are registered disabled.

[11] For example a small but significant proportion of people seeking help from the PSU are homeless or have no regular access to the internet or phone, or office facilities such as photocopying or use of a computer for filling in forms.

[12] The PSU estimates the 25% of its 7000 clients across England annually speak English as a second language.

[13] "… I'm talking about . .. single parents or deserted mothers with two children who live 60 miles away from a Court centre and would have to get up at 6 o'clock in the morning having arranged for their children to be looked after, or take them to Court out of school, and have their case dealt with after about two changes of public transport, and these are an awful lot of people": Sir Mark Potter, former President of the Family Division, 14 July 2011 Westminster Legal Policy Forum.

[14] "I'm very concerned about simple and efficient call centres because our clients aren't simple and efficient": Judith March, Director of the Personal Support Unit (and a member of the Working Group), 14 July 2011 Westminster Legal Policy Forum.

[15] Categories of law have "only a loose association with real lives and real problems": Tribunal Judge Robert Martin, President of the Social Entitlement Chamber, in *"Justice for All, Saving Justice: where next for legal aid?"* (2011), p1.

## Claimants and Defendants

28. It is also important to keep in mind that the challenges presented will be different for the self-represented litigant who is (or would be) a claimant and the self-represented litigant who is a defendant. The former may not be able to commence litigation, even if that becomes necessary. The latter may be involved in litigation without a choice in the matter: for example as defendants in debt or possession cases.

## SMEs

29. The small landlord, the self-employed individual, the person running a small or medium business enterprise (SME) may not be able to afford the services (at least the full services) of a lawyer[16]. It is estimated by the Birmingham Mercantile Court that 20% of its users were self-represented litigants, mostly SMEs.

## A user of the system, not a problem for the system

30. Self-represented litigants are often described as a problem for the system. This is perhaps understandable because, for example, for a party with lawyers a case against a self-represented litigant presents challenges.

31. Although a small minority of self-represented litigants behave in a way that leaves an adverse impression, the overwhelming majority of self-represented litigants are legitimate users of the system. More fundamentally, those who cannot afford legal services and those for whom the state will not provide legal aid comprise the larger part of the population of England and Wales. That proportion is about to increase materially when and if the proposed legal aid reductions and changes are introduced. There will be an increase in numbers in court, but even where there is not, the reason will be that the individual was resigned to accepting that the civil justice system was not open to them although they had a problem it could solve and although it could give access to the rights they were entitled to.

32. Acceptance of these truths is central to any lasting achievement of access to justice for self-represented litigants. The system will receive many self-represented litigants and the system should strive as far as possible to achieve access to justice for them[17]. "Courts and tribunals exist for their users, not the other way round"[18].

[16] CPR Practice Direction 39A paragraph 3.3 provides that "Rule 39.6 is intended to enable a company or other corporation to represent itself as a litigant in person. Permission under rule 39.6(b) should therefore be given by the court unless there is some particular and sufficient reason why it should be withheld. …"

[17] There is little public awareness of the reality of being a self-represented litigant. Many members of the public believe the circumstance will never affect them. There are few external drivers to change the system for this important class of user.

33. The exception is, of course, the vexatious litigant and others for whose ends the system was not designed. It will be important to identify these individuals robustly so that precious resources are not used on them. The system will need to differentiate between them, and the vast majority of self-represented litigants who are and will be those who do need to access the system or have been brought into the system as defendants. The system will need to be supported in this differentiation.

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[18] Carnwath LJ (as Senior President of Tribunals (UK)) at the Commonwealth Law Conference 2011 echoing Leggatt LJ (in his report *"Tribunals for Users – One System One Service"*): "it should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfil their function unless they are accessible by the people who want to use them, and unless the users receive the help they need to prepare and present their cases". See further Lord Woolf in *"Access to Justice" Interim Report to the Lord Chancellor on the Civil Justice System in England & Wales"* (1995), p 119:

> "Only too often the litigant in person is regarded as a problem for judges and for the court system rather that the person for whom the system of justice exists. The true problem is the court system and its procedures which are still too often inaccessible and incomprehensible to ordinary people."

# Chapter 4
# The landscape

## High existing levels of self-representation

34. A Literature Review published by the Ministry of Justice in June 2011 records:

> "Civil cases had high levels of non-representation, particularly among defendants: 85% of individual defendants in County Court cases and 52% of High Court cases were unrepresented at some stage during their case. Most unrepresented litigants were inactive and did not participate in their case. However, a small but significant proportion of cases involved at least one active party who was unrepresented throughout the life of their case: 28% in the County Court and 17% in the High Court"[19].

35. While such statistics obviously have considerable value, they do not tell us how many individuals have been unable to access the system. It is also a serious shortcoming that no major official study has been undertaken on current levels of self-representation. Without it, no impact assessment offered in relation to the proposed reductions in legal aid can have true quality or validity. The review of previous academic study that has been undertaken is no substitute.

36. The Personal Support Unit (PSU), which provides non-legal support at court to those without lawyers, has experienced marked recent increases in demand in all its locations[20]. The RCJ Advice Bureau experienced a 40% increase in litigants in 2010/11 and staff report signs that access to legal aid is already reducing, with more cases such as disrepair and arrears resulting from increased unemployment and cuts to legal services. The main pro bono clearing houses have experienced a significant increase in demand, even in advance of the implementation of the proposed reductions in legal aid. Anecdotal evidence from the judiciary also speaks of a considerable increase in self-represented litigants.

37. It is inevitable that courts and tribunals will struggle to manage caseloads with substantially increased numbers of self-represented litigants[21]. A consequence of this is

[19] Ministry of Justice Research Summary 2/11 (June 2011): *"Litigants in person: a literature review"*.

[20] Including a reported 89% increase at the Manchester Civil Justice Centre over the 3 month period July to September 2011 compared to the same 3 month period in 2010.

[21] The Civil Sub Committee of the Council of Her Majesty's Circuit Judges advised the Working Group that:

that access to justice for other litigants, either in the same case or in the cases that are waiting to be heard, will be compromised**.**

## Proposed reductions in legal aid

38. The proposed reductions are a matter of regret. This is because, if the focus is on the individual citizen (and not the lawyer), their legal rights can be as important as their health, deserving of the same respect, and meriting equivalent support[22].

39. It is appreciated that after the proposed reductions there remains the greater part of £2 billion of legal aid (although much is taken as criminal legal aid), and that is a large sum. There also remain reduced, but large, sums for courts and tribunals. The important thing is to use these sums well. Thus the design of the proposed legal aid reductions and changes is also important.

40. The equality impact assessment accompanying the proposals for reducing the scope of legal aid contains an acknowledgement that the proposals will have a disproportionate impact upon women, ethnic minorities and people with disabilities[23]. It also accepts that these groups are currently the larger users of publicly-funded legal aid in key areas. The proposed removal from scope of social welfare law in particular will increase the number of self-represented litigants for whom there is no question of being able to seek privately-paid assistance. Yet welfare benefits and tax credits are complex areas and many people need independent advice in order to understand their rights and obligations.

41. It is further the case that the design of the legal aid reductions and changes will take away routes to accessible early advice (including by the damage done to the advice sector, which in turn damages access to wider pro bono legal services) and leave intervention too late or denied altogether.

42. Thus the proposed reductions and changes in legal aid will have a considerable impact on many of the most vulnerable in our society. These citizens often have complex lives, with clusters of problems; they can have mental health issues and in many cases they lack the capacity to engage effectively with the justice system without assistance.

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> "… the actual and proposed reductions in Civil Legal Aid will inevitably mean a significant rise in the numbers of LIPs using the courts which will certainly take up much more court time, not simply at final hearings, but in case management hearings, with it being rarely possible to have telephone hearings and in which judges could no longer expect to have draft orders agreed between the parties. Such hearings will take more time as judges will have to explore and identify issues with the LIPs and explain what the court will expect in preparation for trials."

[22] See Hazel Genn *"Paths to Justice"* (1999) on the issue of the negative impact of unresolved civil justice problems on physical and mental health.

[23] For the equality impact assessments see http://www.justice.gov.uk/consultations/legal-aid-reform.htm

43. Our survey of measures that could be taken to support self-represented litigants has brought home to us ever more forcibly the limits of these measures when it comes to helping the most vulnerable. The recommendations we make are essential to enable those who have some measure of capacity to engage with the justice system, but they cannot replace the effective help that legal aid should offer to these individuals.

## Particular pressure on advice agencies

44. In its response to the Green Paper on Legal Aid, the Legal Services Commission expressed concerns that legal aid "fee cuts may result in market failure and premature exits from the market where, for example, a firm or not-for-profit organisation becomes insolvent"[24].

45. More generally in relation to the not-for-profit sector the Commission said: "We have noted that these have may be particularly threatened by the changes proposed, as these will coincide with funding reductions being made elsewhere …"[25]. Perhaps first among these in importance, cuts in local authority funding extend to advice agencies. To take an example, the Law Centres Federation reports local authority cuts in Law Centre funding of 61% in London and 42% out of London.

46. Even while the Working Group has undertaken its work, other key frontline not-for-profit legal assistance providers have closed or are considering closing[26]. In some areas there are already reports of complete or near complete loss of services. In other areas there is real concern about whether and how critical services can continue[27].

## Reductions and change at Her Majesty's Courts and Tribunals Service

47. The Deputy Director of Strategy and Change at HMCTS has recently summarised some of the changes taking place:

[24] http://www.legalservices.gov.uk/docs/access_to_information/LSC_Commissioner_response_to_LAR.pdf

[25] The Commission added: … We believe the Government should look at the funding of NfP organisations collectively by the public sector to ensure that these valuable advice agencies are maintained at an appropriate level."

[26] The closure of the Immigration Advice Service in July 2011 coincided with the commencement of the work of the Working Group and followed the closure of Refugee and Migrant Justice earlier this year. More recent, Law for All has closed. Law Centres Federation reports that a number of Law Centres are considering closing.

[27] For example, Manchester Advice (which has 2 specialist advisers in post at the Manchester Civil Justice Centre) is understood to have secured funding to operate in the Civil Justice Centre until August 2012 only.

"For those who still require the Courts and the Tribunals … [w]e believe it should be possible to adopt modern contact centre approaches for handling simple calls and e-queries across the jurisdictions, so they are managed away from the Courtroom ….

We also believe we can provide the public with a significantly better service and at a lower cost if we remove paper processing from our frontline estate. …

We are already removing telephone contact with the front line so that we reduce the costs of handling simple enquiries by taking them in [a] centralised way … rather than [at] every local Court or Tribunal."[28]

48. Related to these changes are substantial reductions in front desk counters and in counter opening hours. In addition, reductions in court staff numbers are experienced all the time, and there is a programme of county court closures.

## Misunderstanding and mistrust

49. It is only realistic to recognise, and it is vital to understand, how readily the system can generate misunderstanding and mistrust for self-represented litigants[29]. One organisation led by some with personal experience of self-representing described the experience as follows:

"[They] are starting litigation wholly inexperienced in litigious matters. … Too frequently, due to this inexperience, [they] are failing in court. This can lead to resentment and polarisation of issues by [them]. They frequently feel the whole process is against them. … [They] need to recognise at the earliest possible time that the system, the judiciary and the Courts Service attempt to be transparently even handed. However [they] also need to recognise that the opposition is taught to be adversarial in order to win. …"[30]

50. Some of the system's features are these:

(1) A self-represented litigant may feel at a disadvantage simply because other parties have lawyers and he or she does not.

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[28] Dileeni Daniel-Selvaratnam *"A new operating model for a new agency – next steps for Her Majesty's Courts and Tribunals Service"*, 14 July 2011 Westminster Legal Policy Forum.

[29] The Bar Standards Board has already reported what it described as "an unprecedented increase in the level of complaints received from litigants in person", observing that "the rise is perhaps not surprising given the cuts in legal aid which have inevitably forced more people to represent themselves": Bar Standards Board September Update 22 September 2011.

[30] Help4LIPs, which describes its aim as "to share knowledge and learning from experience between Litigants in Person to help them approach the court system more effectively and with more confidence".

(2) The shared familiarity of the Judge and of the lawyers with environment, terms and practice, and their use of formal modes of address, may leave a litigant who has no lawyer feeling that the Judge and the lawyers are too close.

(3) In the eyes of the self-represented litigant, the adversarial process may seem more about hostility than about testing the evidence and points; and it can be hard for people to see things clearly if they believe they are in a hostile environment, not least one with which they are unfamiliar[31].

(4) Some lawyers, and some Judges, will make less accommodation for a self-represented litigant than others.

51. The consequences include:

(1) Reduced communication because of suspicion or caution. Thus self-represented litigants may refuse to make contact with the other party because they fear being taken advantage of[32].

(2) Increased appeals and complaints about Judges and lawyers, borne of misunderstanding rather than merit.

## Inequality of arms

52. It was noted above that a self-represented litigant may feel at a disadvantage because other parties have lawyers and he or she does not. There are some things the Court can and should do in the name of equal treatment. But it may remain the truth, and not just the perception, that there is inequality of arms where one party is represented and another is not.[33]

[31] PSU clients regularly report initial shock and anger on discovering that the Courts are adversarial, and seem impossible to fathom for lay people, when they had entered a legal system with an understanding that it was fair and just.

[32] Richard Moorhead and Mark Sefton (2005) "*Litigants in person. Unrepresented litigants in first instance proceedings".* Department for Constitutional Affairs Research Series 2/05.

[33] "The adversarial procedure which we adopt is heavily dependent upon lawyers preparing, presenting and arguing the case.": Baroness Hale, *"Equal Access to Justice in the Big Society"*, The Sir Henry Hodge Memorial Lecture 2011..

## Existing experience with small claims hearings and fast track trials

53. In one area of the civil courts the experience of self-represented litigants seems generally to have been positive, although there remains room for improvement and further research. Small claims hearings are designed for self-represented litigants. The nature of the hearings is usually less adversarial and more inquisitorial or interventionist than in higher courts. Witness statements may be dispensed with. It is recognised that most self-represented litigants do not know how to cross-examine. Parties bring undisclosed documents to the hearing quite regularly. There are differing experiences and views about the complexity that can still remain, but there is research suggesting that self-represented litigants have a high satisfaction rate for small claims[34].

54. The primary difficulty lies with cases which are more substantial, and the existing experience is that these are considerably slower. The impact on waiting times is striking. Already a "fast track" trial in central London must wait until October 2012 for a trial date.

[34] J. Baldwin "*Monitoring the rise of the small claims limit: litigants' experiences of different forms of adjudication"* (1997) Lord Chancellor's Department Research Series, No 1/97.

# Chapter 5
# Approach

## A framework of principle

55. A framework of eight "basic principles which should be met by a civil justice system so that it ensures access to justice" was identified by Lord Woolf in his review of Access to Justice.

56. The eight basic principles are as follows[35]:

    (1) It should be just in the results it delivers.

    (2) It should be fair and seen to be so by:

    - ensuring that litigants have an equal opportunity, regardless of their resources, to assert or defend their legal rights;
    - providing every litigant with an adequate opportunity to state his own case and answer his opponent's;
    - treating like cases alike.

    (3) Procedures and costs should be proportionate to the nature of the issues involved.

    (4) It should deal with cases with reasonable speed.

    (5) It should be understandable to those who use it.

    (6) It should be responsive to the needs of those who use it.

    (7) It should provide as much certainty as the nature of particular cases allows.

    (8) It should be effective: adequately resourced and organised so as to give effect to the previous principles.

57. These principles find reflection in the overriding objective of Civil Procedure Rules. Taken together[36], the principles in Lord Woolf's framework of principles remain utterly

[35] *"Access to Justice"* Interim Report (1995), Chapter 1.

[36] In a recent Consultation Paper on "Solving Disputes in the County Court" the Ministry of Justice put forward proposals "designed to respond to what matters to citizens and … based around" four principles. These are "Proportionality", "Personal Responsibility"," Streamlined Procedures" and "Transparency". "Personal Responsibility" is defined as meaning "that wherever possible citizens should take responsibility for resolving their own disputes, with the courts being focused on adjudicating particularly complex or legal issues". The Civil Justice Council has responded to this approach by noting that although at least three of the four principles have their broad merits (the second is more open to question), it is important to recognise that they do not provide a comprehensive framework for civil justice reform. The Civil Justice Council commended the

sound as the correct approach for trying to ensure the system plays its part in the particular context of access to justice for self-represented litigants.

## Access to justice v. access to the courts v. access to lawyers

58. Justice is secured through a system, with the courts (and tribunals) at the apex, and effective public legal education and access to advice and assistance at the base. Lawyers play a key part in that system. In any particular situation access to lawyers may be key to meaningful access to justice and the courts. In other situations access to justice may be achieved without needing to reach the courts, and access to lawyers may or may not have been key to that achievement.

59. Thus there are many links between access to justice, access to the courts and access to lawyers. But this does not mean that access to justice is identical to access to the courts[37] or access to lawyers[38]. In current circumstances we will need to be more rigorous in our readiness to recognise this reality. At the same time there are many cases where access to lawyers, or to lawyers and the courts, is crucial to access to justice.

## Adjusting; becoming less cautious

60. Despite the development of pro bono legal services, the combination of reduction in legal aid and the cost of privately-paid legal services means that it is not possible to provide access to lawyers for all the self-represented litigants that would benefit from it (and accept it).

61. In a common law adversarial system most of our procedures reflect the assumption that lawyers would be involved.

62. The result is a legal system that the world admires and which is the forum of choice for much international litigation. But it is not a legal system designed with self-represented litigants in mind.

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continued use of Lord Woolf's more comprehensive framework of principles, when the proposals in the Consultation Paper were further considered alongside responses to the Consultation Paper.

[37] Note Viviane Reding (Vice President of the European Commission; EU Justice Commissioner) giving a lecture entitled *"Justice in Times of Austerity – Safeguarding the Efficient Protection of Rights"* in London on 20 June 2011.

[38] "Equal Access to Justice in the Big Society" is "a slightly more complicated subject that 'equal access to lawyers', although of course that comes into it": Baroness Hale (above).

63. While improvements to the system in the past have been cautious, in order to accommodate the likely growth in self-represented litigants and wish to deliver access to justice, it is now necessary to introduce more radical changes.

64. Some will argue that the challenge is to make the system we have better. Others would argue towards a different system, at least in some areas. There is not necessarily a bright line between the two, and the choice is not necessarily an "either or" choice. The Chairman of the Administrative Justice & Tribunals Council has recently argued that "accessible, fair and efficient dispute resolution" means:

> "that one size cannot fit all, … we need much more of a horses for courses approach, more flexibility, more triage, more choice for individuals, more allocation to different types of dispute resolution according to different types of people, different types of case, different types of circumstances…"[39].

65. If we try to make the current system better by simply trying to extend it in its existing form to more cases we shall fail because that requires resources that are not available, and we are not in truth making it better.

## The challenge

66. The challenge is to protect the quality and values that underpin our system of justice while seeking to deliver, as far as possible, accessible and affordable procedures that promote accurate judicial determination on the merits.

67. We require practical and cultural changes that will enable self-represented litigants to recognise that they have a problem which has a possible means of resolution, to identify the best means of resolution and, if that involves going to court, to access the court and present their case in court.

68. Reducing the complexity of avenues for legal redress will meet little principled opposition. One judge observed: "All too often an LIP tells me that he/she is not a lawyer when legal knowledge is not required and what is required is clarity of expression and common sense".

69. We may also have to guard against a situation in which we end up denying assistance altogether because the assistance, although valuable, would not meet our current view of what that assistance would look like if it could be purchased. We need to look at what we can actually provide to the self-represented litigant, and not just what we would like to give.

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[39] Richard Thomas *"Reforming the courts and tribunals services – challenges for efficiency, technology and accessibility"* 14 July 2011 Westminster Legal Policy Forum.

## Key interfaces

70. Meeting the challenge will require leadership, collaboration and coordination. The system is an interdependent one, with a number of interfaces that are key. Among those that will be more relevant still will be the interface between the Courts and the advice sector, and between the advice sector and the pro bono sector.

## Overseas experience and ideas

71. The Working Group has not undertaken a systematic programme of study of overseas experience and ideas. There is a strong case for that to be undertaken in due course. However, the Working Group has drawn on some overseas experience and ideas, and would particularly highlight the following.

72. A review by the former President of the Victoria Civil and Administrative Tribunal in Australia[40] proposed a "self-represented persons strategy" that would include the following elements: a positive duty on a tribunal to assist all parties; a litigants in person coordinator; enhanced powers and duties of the principal registrar (including to assist parties); expanded pro bono services; and the establishment of a self-representation civil law service.

73. Minnesota offers a Self-Help Center, both as a physical entity and as a website integrated within its equivalent of a Courts Service website[41].

74. The recently published Greacen Report for the Michigan State Bar Association[42] surveyed the way in which 50 states in America had developed ways of supporting self-represented litigants. It provides a structure for developing support and numerous examples of best practice in doing so. The examples of best practice range:

    (1) from websites which help potential litigants to assess whether they have the capacity and skills to be a self-represented litigants.

    (2) through websites which help them to assess the strength or weakness of their case.

    (3) to packages of forms which have been drafted in ordinary language and road tested with potential litigants.

[40] *"One VCAT: President's Review of the Victoria Civil and Administrative Tribunal"* by the Hon. Justice Kevin Bell, 2009.

[41] www.mncourts.gov/selfhelp.

[42] *"Resources to Assist Self represented Litigants: A Fifty-State Review of "The State of the Art""* by John M Greacen ,JD;. Greacen Associates LLC (2011)

(4) a new approach to procedural advice and information from court staff or others.

(5) to practice guides and training for the judiciary on how to support self-represented litigants.

75. The Greacen Report provides the following valuable introduction, before recommending a continuum of information sources for self-represented litigants so as to provide the continuum of information they need:

"Self-represented litigants and their cases present an endless variety of situations, ranging from highly educated and capable persons seeking to obtain the simplest forms of court relief (such as a change of name) to persons with limited education, limited English capability, and other handicaps (ranging from hearing and sight impairment to mental illness) seeking to obtain relief in the most complex sorts of legal proceedings .....Some litigants can obtain all the assistance they need to vindicate their legal rights from court-provided forms and information. Others need limited legal advice to enable them to represent themselves. Others need full legal representation because of the complexity of the factual or legal issues involved in their cases or because of their lack of the basic skills needed to present them to a court."

76. Professor Richard Moorhead in his blog *"Lawyer Watch"* has highlighted and adapted the Greacen recommendations and the list includes:

(1) Because of its importance to self-represented litigants, the area of family law should be a key initial focus of any self-help initiative. Domestic violence should be a priority.

(2) The Self-Help Service's website should provide a comprehensive set of information for persons needing to use the courts, including full supporting information as well as forms.

(3) To the extent that data on the extent of self-representation is not now tracked, courts should consider doing so to inform future planning.

(4) Courts should take care in the wording of their advice to self-represented litigants to obtain legal representation to make sure that they are not so strong that they will cause persons who could succeed on their own to abandon the attempt because they cannot afford a lawyer.

(5) Self-Help Service plans should include the opportunity for self-represented litigants to attend educational sessions on key topics online as well as in person where there are self-help centres and consider the use of videoconferencing.

(6) Self-Help Information Delivery Systems should be trialled via a variety of information delivery media and each should be field tested for effectiveness with self-represented litigants.

(7) The Self-Help Service should draft judicial guidelines to clarify the propriety of active judicial involvement in self-represented litigation for recommendation to the Judiciary for adoption.

(8) A nationwide support entity should be created to provide self-help services by telephone, internet, videoconference and chat room.

(9) There should be a policy that sets forth what self-help centre staff can do (giving legal information and related assistance) and cannot do (giving legal advice).

(10) Court technology efforts should be viewed from the perspective of self-represented litigants.

(11) Comprehensive training on appropriate assistance for the self-represented should be developed for judges, court staff, and others who encounter the self-represented.

(12) A permanent oversight body (including judicial and extra-judicial stakeholders) should be created to ensure sustained quality and continuity of effort for any self-help program.

## Using resources to open up assistance

77. Our terms of reference require us "to focus on steps that would not require material additional resources". We take this to mean financial resources. We do not interpret our terms of reference to require existing resources (even existing reduced resources) to be used unchanged. In Appendix 6 we suggest, as requested, a number of ways in which comparatively modest investment could reap substantial rewards in terms of helping more people more effectively.

# Chapter 6
# The minimum core needs

78. It is suggested that the minimum core needs for accessing justice as a self-represented litigant are these:

(1) Information or intervention that helps identify the nature and merits of the issue.

(2) Information or intervention that helps to identify the best means of resolution including the risks and likely cost.

(3) Good early advice on merits and on litigation risks, including adverse costs, and on the need to be realistic and to be prepared to compromise.

(4) Access to early and continuing professional help for the more difficult matters and complex matters, and for the most vulnerable.

(5) Clarity about what to do and how to do it at all stages of any Court process, including:

(a) At the start, simple accessible forms with information about how to use them;
(b) Simple accessible information on how to prepare for hearings, including getting papers in order;
(c) Simple accessible information about how the Court and those in it will behave.

(6) Early and continuing effective judicial case management.

79. Implicit throughout is the need to simplify and demystify, to take an holistic approach and to take an approach that is directed to supporting the litigant.

## The most important thing: access to objective advice that can be trusted

80. Experience, and almost all available research on self-represented litigants[43], underlines the need for objective advice and shows the value of early advice on the issues, the

[43] Ministry of Justice Research Summary 2/11(June 2011) : *"Litigants in person: a literature review"* (above); *"Resources to Assist Self represented Litigants: A Fifty-State Review of "The State of the Art"* by John M Greacen ,JD (above); *"One VCAT :President's Review of the Victoria Civil and Administrative Tribunal"* by the Hon. Justice Kevin Bell (above). See also the contribution made by allowing claimants access to quality information and advice from the earliest stages of the asylum process, and the collaboration and enhanced quality of decision making that could follow from this frontloading: Jane Aspen (Independent Evaluator),

merits and the possible routes to resolution. Without access to early objective advice, other system improvements may be insufficient and the first opportunity for a dispassionate review of the issues might be when the case comes before a Judge. This is the least efficient use of that limited and valuable resource.

81. Advicenow identifies "Seven Steps to Solving a Problem". These are: (1) What's your problem (2) Know your rights (3) Know what you want (4) Know who to speak to (5) Communicate clearly (6) Be organised (7) Know when to get help.

82. The represented litigant or potential litigant hands much of the "Seven Steps" over to their legal representative. This is because behind almost all of these steps is a need for sound impartial advice. While lawyers are most visible in court, they perform a critical initial function in listening to their client's story, extracting the salient facts, identifying the legal issues, considering the relevant law and then considering the legal arguments, the evidential requirements and the strength of the evidence. From this information they are able to assess the strength of the case, the risks and the best method of resolution: including abandonment, negotiation, mediation or court[44].

83. It is hard to overstate the value of advice, and trust in advice, to access to justice[45]. Trusted advice can achieve many things:

    (1) Identification of the issue.

    (2) Recognition (where this is the position) that there is no case with which the law can assist.

    (3) Objective appreciation of the proportionality of the issue, or of the presence of other issues.

    (4) An informed decision to go to a court or tribunal.

    (5) More successful participation in mediation.

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"*Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission"* (October 2008).

[44] T Badioli, a debt adviser at Arun & Chichester Citizens Advice Bureau and chair of West Sussex Money Advice Group suggests a useful four stage decision-making process: "Do I have a good chance of winning? If I win, can the other party pay? Is this worth my time and money? Have I done everything to try to avoid proceedings?".

[45] The Director of Policy at the Law Society has put things in this way: "I think what is essential for vulnerable people who are facing problems is to have someone who knows what they are talking about, who can give them advice and who can actually seek to resolve something before it gets to Court …" Mark Stobbs 14 July 2011 Westminster Legal Policy Forum.

(6) Knowledge of how best to advance or defend a matter in court.

(7) A greater chance of a more issue-focused presentation in court.

(8) A realistic assessment of when an appeal is available and what it might achieve[46].

(9) An increase in the proportion of cases with merit that are pursued or cases without merit that are not pursued.

(10) Reduction in escalation or problem clustering.

(11) Saving time and cost for the parties and the Court.

(12) Savings to other public sector organisations e.g. health services and social service.

84. The Greacen Report[47] observes:

"While there was some doubt several decades ago about how the courts would respond when self-represented litigants began appearing in large numbers in general jurisdiction courts where they "did not belong," it is clear that there is current consensus within the judicial branch and the legal community that the courts have an obligation to ensure that self-represented persons have the best possible opportunity to obtain a court decision reflecting the facts and law of their situations.

Providing a particular litigant with needed information from the most appropriate source is the function referred to as "triage." This is the least well-developed function within current state self-help programs. For the most part, triage is left to the litigant. Courts typically encourage litigants in every instance to obtain the services of a lawyer – in information provided, in personal conversations with staff, and by formal advisements from the judge in the courtroom. A few states (as described in the full report) provide assessment tools for litigants to assess their own skills and personality traits to determine their likelihood of successfully representing their own interests in court. But the triage function generally devolves to the staff of a court or other self help

[46] PSU Cardiff's Advisory Committee, which has a valuable cross-section of those who understand the experience of self-represented litigants in Wales noted that many appeals were dismissed because they contained no points of law causing frustration to self-represented litigants who did not anticipate this or understand why. The Advisory Committee expressed the view that if there was a provision for quick assessment of these applications, with the capacity to explain why they are untenable, this would enable the system to become more transparent and could go some way towards reducing frustrations on all sides.

[47] *"Resources to Assist Self represented Litigants: A Fifty-State Review of "The State of the Art"* by John M Greacen JD (above).

program or (when there is no such program available) to the clerical staff at the court's filing counter.

The merit of a person's case is highly relevant to triage decisions. Lawyers always make merits-based assessments of possible claims before proceeding with them. They are ethically required to do so. Lawyers – including legal services lawyers – simply refuse to pursue unsupportable claims when their clients are potential plaintiffs and advise their clients who are defendants when they have no viable defenses to the claims brought against them. This is a more difficult issue for self-help center or court staff (whether or not they are lawyers) because of the prohibition on their giving legal advice. Making merits-based judgments about cases and making procedural recommendations based upon those judgments falls within the ambit of giving legal advice. It is an obvious role for *pro bono* attorneys or attorneys providing limited scope representation."

85. Lawyers might be our first choice for the provision of trusted advice, and we should strive to maximise the opportunities for the trusted advice to be that of a lawyer. It is however a reality that we cannot bring the advice of a lawyer to every case. The time has come to be readier to look for alternatives, and to be less cautious in accepting alternatives[48]. But in that search it is vital to recognise that if advice is not trusted it is worthless or worse[49].

## Advice about risks, including costs

86. Self-represented litigants often do not understand the risks of litigation, especially of adverse costs if they lose. Many self-represented litigants will be unaware how expensive the costs are of the other side's lawyers, and that if they own a family home a charge could be imposed on the home to secure payment of such costs.

87. The warnings to self-represented litigants of the risk in terms of adverse costs that they face in many jurisdictions should they lose should be very prominent and, for example, appear on Court forms. There is much to be said for the warnings to be equivalent to the warnings on mortgage advertisements and documentation to the effect that a "home is at risk" if mortgage payments are not maintained.

88. In addition, awareness needs to be raised of the pro bono costs jurisdiction under section 194 of the Legal Services Act 2007. In particular, one valuable result of that jurisdiction is that pro bono assistance can help level the playing field in negotiations

[48] Current regulatory focus includes general legal advice: See current Legal Services Board Consultation Paper *"Enhancing Consumer Protection".*

[49] See generally *"Time well-spent: The importance of the one-to-one relationship between advice workers and their clients"* Council on Social Action (2009).

by introducing a risk for a privately-represented opponent of liability for costs should that opponent lose. In the event that pro bono costs are ordered by the court or agreed in a settlement, the funds are paid to the Access to Justice Foundation to support further pro bono help in other cases.

89. So too, more accessible information for self-represented litigants is needed about the costs they may claim if successful.

# Chapter 7
# The Judiciary

## Generally

90. We start with the judiciary because they have a particularly significant part to play, especially in current circumstances. In particular:

(1) They are at the apex of the civil justice system.

(2) Through commitment, formal training[50] and collegiate judicial discussion, they can develop practice[51] and help drive change.

(3) They hold the key to case management.

(4) The courtroom presents a special challenge to self-represented litigants.

(5) "For every problem solved by a court, there are 3 to 10 solved in the shadow of the court's intervention".[52]

91. It is important for the judiciary to recognize the challenges for self-represented litigants, understand the need for early assistance (general advice, the role of court staff, better forms and guides, help with form filling, duty schemes, preparation, managing papers, generally reducing complexity and more) and to take a lead in improving the accessibility of judicial proceedings for self-represented litigants.

## Assisting self-represented litigants at the hearing

92. Judges are committed to delivering fair hearings. Their selection requires it, their oath obliges it, and their vocation underscores it. A challenge lies in how this translates when there is one or more self-represented litigants in a case. It involves helping one

[50] The experience of the Judicial College will increase even further as the number of self-represented litigants grows. The Judicial College course on "The Craft of Judging" was commended to the Working Group for its treatment of the subject of self-represented litigants. See also the Equal Treatment Bench Book.

[51] The experience in tribunals has been the development of much good practice in supporting self-represented litigants.

[52] Maurits Barendrecht, *"Legal aid, accessible courts or legal information? Three access to justice strategies compared"* Tilburg University Tisco Working Paper Series on Civil Law and Conflict Resolution Systems.

side rather than the other, and often giving more help to one side than another. The help given will vary from case to case, and judge to judge.

93. The more help the self-represented litigant is given (for example a suggested question or a reference to an overlooked precedent) the more a represented party may feel uncertain about or dissatisfied with the process. At least part of the answer may be in moving over time, and where possible, towards stating what should be expected of the judiciary in assisting self-represented litigants[53].

94. And as one judge emphasised, "[t]here's no substitute for Judges being patient, courteous and helpful to the [self-represented litigants] themselves."

95. PSU Cardiff's Advisory Committee observed that in their experience self-represented litigants "…frequently leave court unsure as to what has just happened. They are confused by the process and unsure where they stand". An oral summary of what had happened (and perhaps the assistance of a copy of the Court's order drawn up there and then) together with (where appropriate) a statement of what the next stage was or what if anything could be done next would help alleviate what the Advisory Committee termed the "isolation and confusion that many litigants feel".

## Assisting self-represented litigants by explaining and simplifying the system

96. The Working Group heard of some valuable initiatives taken or proposed by judges. These included the possibility of occasional seminars after court hours in which litigation in general could be further explained by judges, without reference to individual cases[54]. It was suggested that each Designated Civil Judge should be

[53] The President of the Victoria Civil and Administrative Tribunal in his 2008/9 review, suggested:

> "… it is permissible, and it may be necessary in a given case, for the tribunal:
> • to explain to a self-represented party the procedures to be followed
> • to direct the self-represented party positively to the legal and factual issues in the case, helping them to understand what they are
> • to direct the self-represented party negatively away from irrelevant issues, explaining why
> • to assist the self-represented party to present their evidence and to test the evidence of the other party, in that regard asking questions of the self-represented party or the witnesses of the other party to a limited extent where necessary
> • to assist the self-represented party to present their submissions in the case by directing their attention to the relevant issues and asking for their response
> In performing this function, the tribunal cannot become the advocate of the self-represented person and must balance the assistance they give with their duty to act fairly, objectively and impartially towards all parties."

[54] This alongside an information pack for self-represented litigants would, it was proposed, form "a system of instruction that is readily available to the [self-represented litigant] which explains the court process and how to handle it."

supported by someone whose role specifically encompasses the coordination of service for self-represented litigants. The initiatives have their challenges, but they are in the right spirit.

97. One such example was witnessed at the Mercantile Court within the Birmingham Civil Justice Centre[55]. The following features are of particular note:

(1) The Court uses electronic working as much as possible, including filing of forms and documents, helping SMEs who hold the majority of documents electronically and saving expense and resources for those without law firm backup.

(2) The practice at the Court is to ensure that orders are drawn up immediately after the hearings with the parties, using a computer in the court room, and emailed straight away electronically[56]. This was explained as particularly assisting those SMEs without lawyers.

(3) The practice of the Court is to ensure all parties are asked about their costs, in particular so that LIPs are aware of the costs risks. All parties are asked to carry out cost budgeting using a template spreadsheet available on the Court website. A judge would encourage an SME self-represented litigant to consider the other side's costs as part of the business's risk assessment of the litigation and to consider settlement accordingly.

(4) The Court website contains an "Easy Guide" on the Court, with references to the rules and court forms. The website is included at the bottom of all orders, as is the clerk's email address.

(5) An experienced and dedicated court clerk liaises with and provides assistance to self-represented litigants.

98. Many other Courts will recognise features of the experience of the Birmingham Civil Justice Centre and of the practice of the Mercantile Court there as resembling their own

[55] Birmingham Civil Justice Centre is a very busy building. The court staff perceive an increased number of self-represented litigants. It was reported that tempers can run high in the main waiting areas for the public which are noticeably busy and inevitably noisy. Security guards are increasingly being called in particular for eviction and family cases. The court service does not record the number of cases involving self-represented litigants at the court. As an estimate, court staff and judges reported that approximately 65% of appeals are by self-represented litigants, 9 out of 10 of which are judged to have no merit, and approximately 20% of cases in the Mercantile Court involve a self-represented litigant, mostly small and medium enterprises (SMEs). The general consensus from judges was that hearings increase in length by at least 25% with self-represented litigants; 50% for complex cases. The number of hearings also increases, as does the number of hopeless appeals. Judges are also more likely to reserve judgment.

[56] The value of ensuring in a case involving a self-represented litigant that court orders were given to the parties to take away from a hearing rather than sent in the post was emphasised by others too.

experience and procedure. The important thing is at least much of the practice owes itself to Court-led coordination.

99. One self-represented litigant suggested ten things that would have made a difference to him in the, lengthy and technical, litigation in which he was involved. With some refinement, the ten things represent a modest and sensible check-list, including many things that many courts and tribunals do already, but not all and not always. As refined, they are:

(1) The Court should ensure that hearings are arranged when required under the CPR, particularly early in proceedings, rather than leaving this to the parties.

(2) There should be encouragement for parties to engage in mediation.

(3) The distinction between which provisions of the CPR are mandatory and which are not should be clearer.

(4) There should be a starting presumption that provisions of the CPR that are mandatory should be strictly enforced.

(5) Guidance by a Judge to parties on which specific parts of the CPR are likely to be critical to a case, should be included in notices of hearings.

(6) Decisions should always be justified by reasons, and parties should be notified of the specific provision of the CPR that has been applied in reaching significant decisions,

(7) Reasons should be given when parties are notified of decisions taken on applications that are determined without a hearing.

(8) Litigants should be given advance notice of the amount of time they are likely to be given to outline their evidence/arguments, and then allowed that amount of time to present their evidence/argument at the hearing.

(9) The documentation should be read by the judge prior to the hearing.

(10) The Judge should clarify the parts of the CPR, or forms of evidence, that will be crucial to the case at the commencement of the hearing (reinforcing the earlier notification suggested above), and thus help make clear the scope of the hearing.

## Case management

100. It is often said of case management that it can "front load" costs. But there was near unanimity of view that it is crucial to the effective conduct of litigation, including where self-represented litigants are involved in that litigation.

101. A good early case management conference, properly prepared[57], offers the opportunity to do the following, with lasting benefits throughout the case, for the self-represented litigant and all other parties (and it can done by telephone in an appropriate case):

(1) Define the issues.

(2) Say what needs to be done and when and by whom; and allocating responsibilities between the parties.

(3) Ensure that the costs risks and time commitments that the litigation will involve are understood by all.

(4) Encourage the obtaining of advice and identifying possible avenues for settlement.

102. It is worth developing the importance of the first point (defining the issues, at an early stage[58]) a little. Its value includes:

(1) A reference point for the Court's future conduct of the case.

(2) A source of structure for the self-represented litigant when it comes to documents, witnesses and submissions.

(3) A basis on which to seek further advice.

(4) A framework for any discussion of settlement, with or without a mediator.

(5) An encouragement to using analysis as a tool.

## Finality

103. It is appreciated that the encouragement of the use of case management conferences involves committing resources to that form of oral hearing. We have sought to bring out the dividends of doing so. We mention next an area where the commitment of resources

[57] The Mercantile Court in Birmingham has been developing a Case Management Conference Notice to assist all those involved (including self-represented litigants) with preparation.

[58] This is routinely done in the Employment Tribunal, and elsewhere, and works very well.

to an oral hearing might correspondingly be reduced. For some time now the Court of Appeal has in certain cases been prepared to treat some refusals of permission to appeal on paper as the end of the process, without allowing an oral hearing as of right. There is merit in a review of the question whether this approach should be extended in relation to other appeals. Oral hearings are a finite resource. Further if a self-represented litigant knew that the matter could be concluded on paper, then earlier help might be sought. Access to justice does not mean allowing a litigant, self-represented litigant or not, to consume disproportionate resources.

## Judicial awareness of pro bono assistance

104. The Working Group was also reminded of the fact that some judges remain unaware of the pro bono advice and assistance that is available. Others have detailed knowledge, and indeed are able to use that to help encourage the development of pro bono advice and assistance both generally and where it is most needed. It is crucial that there is a concerted effort, by the judiciary and pro bono organisations alike, to ensure that there is a high and consistent level of awareness.

# Chapter 8
# Court staff

105. Court staff can play a critical role. An ethos of customer service and support towards self-represented litigants is fundamental to the future of the system. It is hard to overstate the importance of the role of ushers, counter staff and clerks when self-represented litigants are involved. They are also often well placed to identify where there are problems in the complexity of process[59], and how those might be addressed[60].

106. Most court staff attempt to be professional and accommodating towards self-represented litigants[61]. A customer service team will attempt to do its best, within the limitations of the roles and responsibilities involved, to guide self-represented litigants in starting and managing their case.

107. However, there are challenges and these include:

    (1) Court staff are increasingly thinner on the ground.

    (2) Those remaining face an increasing number of demands, and morale is understandably low in places.

    (3) The concern that court staff not exceed proper boundaries has at times led to a very cautious approach to their involvement in assisting self-represented litigants.

    (4) The range of experience among court staff is considerable – that is, some are very experienced indeed and some are very inexperienced.

    (5) Some staff are being moved around too frequently to enable specialisation in one area of work.

[59] Thus it was Court staff who mentioned the complexity involved when self-represented litigants are required to prove their eligibility in order obtain an exemption from court fees.

[60] Various suggestions were made to the Working Group of ways in which the court staff could help judges with the judges' work on cases involving self-represented litigants. These included simple but effective steps such as using a different colour paper in a court file for court orders, and helping move to a position in which wherever possible the trial judge had sight of the trial bundle well before the trial in cases involving self-represented litigants so that problems could be identified and rectified in advance.

[61] This was, for example, the specific experience of Manchester PSU commenting on the court staff at Manchester Civil Justice Centre; but many more examples could be given across England and Wales.

(6) Advice agencies reported that there were a large number of occasions when Court staff gave wrong information, and occasions where helpline staff were not up to date.

(7) Some courts cannot be contacted by email.

(8) Court counters are closing and reducing hours[62], yet face-to-face contact at court counters was highlighted as crucial, from the help that can be given in completing court forms to understanding the procedure to knowing from where advice might be obtained.

(9) Court staff reported that self-represented litigants can be taken by surprise when they learn that there is not a duty solicitor.

(10) The importance of training, supported by the judiciary's Equal Treatment Benchbook, extending to dealing with self-represented litigants who have mental health problem was underscored.

108. As examples of some of the initiatives that have proved possible, in London:

(1) A senior employee at the Royal Courts of Justice initiated occasional seminars after court hours in which information could be provided to self-represented litigants.

(2) HMCTS senior managers at the RCJ, together with the PSU and the RCJ Advice Bureau, hold a forum twice a year for self-represented litigants, where self-represented litigants can drop in to talk about common problems and discuss improvements.

(3) Again at the RCJ, representatives of the RCJ Advice Bureau, the PSU and the national pro bono clearing houses attend and contribute to (and learn from) court staff training sessions, with results that include more understanding about self-represented litigants and about what the advice agencies and pro bono clearing houses do.

109. These initiatives and the spirit behind them are to be commended. The highest immediate priority (from those that did not require material additional resources) is the

[62] The opening hours of the counters in Cardiff Civil Justice Centre are 10am to 4pm. These are longer than at some court centres. But the effect of even these hours was described as follows by PSU Cardiff's Advisory Committee: "The limited opening hours of the counters in Cardiff (10am – 4pm) means that LIPs are forced to take time off work to collect and hand in forms. This additional demand on LIPs reinforces the difficulties they face, as they must therefore raise the issue of their case in their workplaces. Understandably, this is a situation that makes many litigants uncomfortable."

availability of guidance so that court staff and self-represented litigants know what can and cannot be done by court staff. It is important that this is balanced and not too cautious. In the United States of America, the Self-Help Center offered by the Minnesota Judicial Branch poses and answers the question "What Court staff can and cannot do for you" in a published document. Drawing on this and elsewhere the Working Group offers a draft for immediate use at Appendix 1.

110. In California Self-Help Centers are staffed and supervised by an attorney who works for the Court. Assistance is provided by the attorney, to anyone who asks, with determining which forms to use, and explaining the process. No attorney-client relationship is formed or representation offered[63].

[63] Bonnie Rose Hough (Managing Attorney, California Administrative Office of the Courts *"Developing the Continuum of Legal Services in California – Expanding Systems to Maximise Funds for Representation".*

# Chapter 9
# Lawyers

## Paid for legal assistance

112. Some self-represented litigants would be able to pay for some legal assistance. Traditional legal assistance throughout a case might be unaffordable, but, for example, advice on merits or advice on a procedural step might be affordable.

113. Generally speaking the more this opportunity is present the better – for the self-represented litigant, the courts and other parties. Regulatory momentum is designed to encourage it[64]. To increase opportunities there needs to be greater readiness of solicitors, barristers and legal executives to sell small amounts of their time or take on one or two defined pieces of work in the course of a case rather than the case as a whole. The example of one practice, charging £7 for 5 minutes of advice, illustrates the potential. A fixed price for a piece of advice is another approach.

114. Awareness of services offered in this way will need to be increased, so that people feel they can take a single question about their case into a law firm, and not expect to have to hand the whole case over at costs they cannot afford, or where that is not what they want to do.

115. At the same time it will need to be made clear that potential regulatory barriers have no place here unless strictly necessary. For example:

    (1) A full engagement letter should rarely be necessary where a client wants to purchase the answer to a procedural question, or obtain advice on the merits[65].

    (2) There should be no use of money laundering procedures where all the customer is purchasing is advice on a point of procedure or even the merits of the case[66].

[64] "We now expect many firms to adjust their practices … to become … more imaginative in the packages they offer": David Edmonds, Chairman of the Legal Services Board, in an article in The Times 6 October 2011.

[65] The Chief Executive of the Solicitors Regulation Authority, Mr Anthony Townsend, was quoted in The Times on 6 October 2011 as saying "Under the old scheme you'd have big firms having to send letters of engagement, which were designed for solicitors working in the high street, to large companies such as Shell or BP". The additional point made in the text of the Working Group's report is that there should be critical scrutiny of whether letters of engagement "designed for solicitors working in the high street" "under the old scheme" are really required for some or most of the "pieces" of work that those solicitors might be encouraged to undertake to help self-represented litigants.

[66] See Law Society Practice Note citing Treasury confirmation at https://www.lawsociety.org.uk/productsandservices/practicenotes/aml/4992.article#.

(The client would not face regulatory hurdles if he or she could obtain the answer from a book or through an online resource.)

(3) There is currently a prohibition on barristers under 3 years call undertaking paid Direct Access work. We question whether this should continue when the current challenges are so great.

116. The insurance sector may see an increase in "Before The Event" insurance. New providers of legal services will develop products that enable and support the resolution of issues that affect citizens, the self employed and small businesses. Even over the last year or so there have been significant developments in the provision of legal services by bodies such as the Co-operative, the Halifax, Saga and the AA[67]. This autumn sees the start of licensing for Alternative Business Structures to provide legal services. New ways of digital delivery will allow these people to be helped face to face by advisors supported by expert systems and these expert systems should be developed to meet the needs of individuals directly and through an informed intermediary[68].

117. It is entirely possible that more people will be able to afford at least some access to legal services. The choice for the litigant may move from self-represented or lawyer-represented to self-help, or lawyer-review, or lawyer-led.

118. It is also important that pro bono and non-profit approaches do not waste resources providing help for those people and those problems that will be well served by the emerging legal services market. The effort and expertise of the not-for-profit sector needs to be focused on those people and those issues which are less likely to be assisted in this new marketplace: the problems of the poor, the vulnerable, and those with mental health problems. These are groups which the Legal Services Research Centre identified as least likely to be reached by online resources and who will more often require face-to-face assistance. They are also those who can be most prey to exploitative practices.

## The lawyers on the other side (where there are lawyers on the other side)

119. An advocate's duties to the Court include the duty to ensure that the Court is informed of all relevant decisions and legislative provisions of which the advocate is aware

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[67] http://www.co-operative.coop/legalservices/ ; http://www.halifaxlegalexpress.co.uk/halifax/ ; http://www.sagalegalservices.co.uk/saga/ ; http://www.aalegaldocuments.co.uk/aa/

[68] As Professor Richard Susskind has suggested, this all entails a new way of working for lawyers.

(whether favourable to his or her case or not) and to bring any procedural irregularity to the attention of the Court during the hearing.

120. The Bar Standards Board has recently stated to the Bar[69]:

"If you find yourself against a litigant in person you may need to be particularly conscious that such parties may have a limited understanding of the realities of the adversarial system and therefore do your best, where it is possible, to assist litigants in person to understand the court process. We will continue to monitor the situation and it may be that action will need to be recommended to improve the information and support given to litigants in person by the courts."

121. These apart, there does not appear to be regulatory guidance on the duties and responsibilities of the lawyer "on the other side" towards a self-represented litigant.

122. Of the available court guides, ironically it is the Admiralty and Commercial Court Guide that deals in most detail with the requirements on lawyers "for the other side". It includes an express provision in these terms[70]:

"Where a litigant in person is involved in a case the court will expect solicitors and counsel for other parties to do what they reasonably can to ensure that he has a fair opportunity to prepare and put his case."

123. Guidance and clarity in guidance in relation to the duties and responsibilities of lawyers "on the other side" should help achieve several ends[71]:

(1) It helps the lawyers know what is expected of them.

(2) It helps their clients understand what they are doing.

(3) It helps the self-represented litigant know what to expect.

124. If guidance is to serve these various ends it must be in language a self-represented litigant can understand, not just a lawyer. In identifying and formulating the guidance it is legitimate to draw on an advocates' duty to the Court and the duty of an officer of the

[69] Bar Standards Board September Update 22 September 2011.

[70] Paragraph M2.1.

[71] PSU Cardiff's Advisory Committee put things in these terms: "It is unclear how the lawyer should act and there is no clear mechanism for alleviating the initial distrust felt by the litigant when faced with the other side. Proper guidance and support should be given to all lawyers in how to deal with LIPs before, during and after the trial."

Court (such as a solicitor) towards the Court[72]. This can help resolve arguments about perceived conflict with a lawyer's duty to his client. Draft Guidance, drawing on and extending that available in the Commercial Court Guide, is at Appendix 2. At Appendix 3 we include a draft statement that would help inform a self-represented litigant about some of what he or she was entitled to expect from legal professionals representing other parties in the case.

## Pro bono legal assistance

125. Pro bono legal assistance makes an appreciable contribution of legal services to those unable to afford legal assistance and unable to obtain legal aid. But pro bono exists only as a voluntary adjunct to legal aid and privately funded legal services. It will always have limits both in the amount and type of help possible. It can never replace legal aid and it cannot meet the scale of shortfall in provision that will be left by the proposed reductions in legal aid.

126. Over the last decade pro bono work has been increasingly coordinated. With the advent of clearing houses for each branch of the profession there is now a means by which every barrister, solicitor and legal executive is able (subject to some exceptions) to volunteer through a hub that undertakes the task of matching the help they can offer to the need. Underlining the advances made in cooperation and coordination, the three national clearing houses (the Bar Pro Bono Unit, LawWorks and ILEX Pro Bono) now share the same operational centre at the National Pro Bono Centre in London.

127. At the same time, pro bono work also continues on individual initiative, on the initiative of a form or chambers, and through a number of other pro bono schemes[73] and organisations.

128. The challenge ahead will be to ensure that the available pro bono resource is used well. This will involve:

[72] There may also be room here, where the State is "the other side", to develop further the concept of the duty of the State to act as a model litigant in litigation.

[73] For a long-standing example, the ELAAS scheme providing advice and representation on the day of an application to the Employment Appeal Tribunal. As one commentator observed, it "allows focus, saves a lot of time and effort, probably results in a greater success rate … and best of all, helped the [self-represented litigant] understand why it is his case is rejected … or allowed … Justice in the broad sense is well served, and respect for the court is best preserved by the process." If cases go further they are often referred on to the Bar Pro Bono Unit. As example shortly due to begin, a public law scheme is to be piloted in administrative law cases in Manchester as a collaboration between the Northern Administrative Law Association, a national firm of solicitors, and the University of Manchester; and a family law scheme is to be piloted in the Principal Registry of the Family Division as a collaboration between family law chambers, the RCJ Advice Bureau and the Bar Pro Bono Unit.

(1) Continuing to recognise that early advice on merits and risks is a particularly valuable pro bono contribution to a self-represented litigant.

(2) Improving coordination between those arranging or giving that advice and those in a position to provide more in-depth professional help for the more difficult matters.

(3) Encouraging more lawyers to volunteer through the clearing houses rather than rely on ad hoc approaches to help.

(4) Increasing awareness of what assistance may be available pro bono and how to access it, among self-represented litigants, advice agencies, Court staff and the judiciary.

(5) Recognition that it is very difficult to achieve pro bono representation at short notice.

(6) Dealing with perceived regulatory impediments to pro bono work. The immediate examples concern suggested obstacles to (a) in-house counsel acting pro bono in contentious matters through LawWorks, and (b) legal executives acting pro bono in their individual capacity alongside counsel in Bar Pro Bono Unit cases.

(7) Ensuring that all pro bono initiatives in England and Wales are known and indentified.

(8) Understanding that even pro bono initiatives require funded infrastructure to cover the basic cost of the service even though the lawyers act for free[74]. Pro bono work will decrease rather than increase without renewed infrastructure support.

(9) Identifying new and additional ways of funding the infrastructure that coordinates pro bono assistance[75].

129. A particular need has been identified in Wales. Although the clearing house services of the Bar Pro Bono Unit and LawWorks have been open to legal practitioners there, and some have used those services, it is nonetheless apparent that many believe there is no central point of approach for a register of pro bono practitioner help in Wales. A mapping exercise by Reaching Justice Wales in 2010 identified a demand for pro bono services from the voluntary sector and a willingness within the practising profession to do pro bono work. The solution may lie with a Wales-specific clearing house service,

[74] Experience shows that relatively modest sums can be leveraged to make a huge difference. For example, the entire annual cost of the LawWorks Clinics team at full (rather than expanded) complement is around £130,000.

[75] An example that shows new ways can be found is the Access to Justice Foundation which was established in 2008 by the Advice Services Alliance, the Bar Council, ILEX and the Law Society.

and discussions with LawWorks to launch a LawWorks Cymru are in hand. Here too however a service requires infrastructure cost.

# Chapter 10
# The Advice Sector

130. Advice agencies exist in many forms, including Citizens Advice Bureaux and individual front-line agencies. There are many differences, including between individual agencies (including between individual agencies and Bureaux). Some include focus on the law and some focus on related demands of being involved in the legal system. The potential for advice agencies to help meet some of the minimum core needs is apparent. Some can provide access to good early advice on merits, some provide literature, some provide clarity about what to do and how to do it. However, the picture across England and Wales is not one of consistency.

131. The advice sector is going to be needed more than ever. Advice agencies offer the greatest prospect of being the place to which a self-represented litigant may be encouraged to turn for help, at least to start with and at least in order to get that critical early advice on merits. They have shown, over many years and by many examples, that they are adept at developing the interface with the public sector, which is particularly crucial to helping a self-represented litigant or prospective litigant.

132. There are a number of corollaries to the fact that the advice sector will be needed more than ever:

    (1) The sector should attract a supportive approach from Government, the Courts and the professions.

    (2) The impact on the sector of steps taken in relation to legal aid need always to be carefully considered. The impact of funding changes or adjustments can be very different on an advice agency than on a commercial provider: this needs to be appreciated in advance.

    (3) Advice agencies need all the more to work together and share[76], encouraged by leadership from top of their umbrella organisations.

    (4) The ability of advice agencies to support clients remotely will be more and more important as the increase in the number of self-represented litigants includes an increase in the number from remote areas.

[76] Coventry was identified as a good example of an area where, with the help of shared software and protocols, there is coordination between advice agencies.

(5) Further advances in coordination and collaboration between the advice sector and the pro bono sector are a priority. Referrals, including to specialist support and pro bono agencies, should increase. A "key volunteer" at each advice agency, given particular responsibility for coordination and collaboration with the pro bono sector, could make a significant difference.

(6) There is no reason why the advice sector should not increasingly provide paid for legal services, to those who can afford to pay something. There may be those occasions when a self-represented litigant can afford to pay for one piece of advice but not for another. This could help the sector's resources, as well as reserving the sector's free of charge assistance to those who need it most.

(7) Feedback systems will be more crucial than ever now in all advice provision, so that needed improvements are identified and shifts in problem incidence are identified.

133. Good examples of what can be achieved by combining advice agencies with pro bono lawyers are seen among the many clinics held at advice agencies and attended by volunteer lawyers. Sustainable clinics require dedicated hard work from those experienced in the field, drawing on sector knowledge and partnerships. LawWorks has run a Clinics Project since 2001. There is now a network of over 100 LawWorks clinics all over England & Wales, supporting around 110,000 individual clients. On average a further 5 clinics are added each year, through the offices of the clinics team which to date has comprised 2.5 staff plus line management time, until recent funding reductions reduced it to 1.6. The project also provides training, best practice information, handbooks and case management systems.

134. Another example of coordination and collaboration between advice agencies and pro bono lawyers is given by the RCJ Advice Bureau. This was established in 1978 specifically to provide a service to self-represented litigants at the Court of Appeal at the Royal Courts of Justice. The service has developed over the years to deliver procedural advice to self-represented litigants in civil matters in the High Courts, Court of Appeal and County Courts. RCJ Advice Bureau also delivers procedural family legal advice at the Principal Registry of the Family Division. Both services are co-ordinated by paid solicitors who also deliver advice. Over 200 solicitors from 60 firms provide pro bono procedural advice or advice on merits. Several firms provide bundling for appeals in the Court of Appeal cases, advice from a courts draftsman about orders for costs against a self-represented litigant. The availability of paid duty solicitors to support the pro bono contribution is currently made possible via a grant from the Legal Services Commission. RCJ Advice Bureau also delivers a daily bankruptcy help desk for self-represented litigants attending the bankruptcy court at RCJ. Each of these services refer appropriate cases to the Bar Pro Bono Unit for in-depth advice in writing or representation.

135. And as an example of what can be achieved through cooperation, in Nottingham[77] the conclusions from a recent pilot were as follows:

> "Prior to the pilot, advice agencies were taking on cases, writing and chasing and, while helping to resolve clients' problems, actually adding to level of work and delays in the benefit system. In the pilot, working directly with the benefits officers had the effect of refocusing their role on setting the case up clean and handing over to the benefits service, thus reducing demand on both services and increasing capacity all round. This does not detract from the rights-based advocacy approach when required e.g. in the event of misapplied policy and decisions needing to be challenged. But, in the pilot, all of the claims were processed and resolved satisfactorily first time with the benefit of full information thus minimising the potential for challenges, review requests and appeals."[78]

[77] "[W]hile recognising that advice services provide vital support and advocacy to people experiencing problems with social welfare issues such as debt, welfare benefits or housing, they cannot in themselves solve those problems: [yet] it is the public services, commercial bodies and others that administer the systems with which individual citizens are confronted, that have the power to take the necessary decisions and to resolve the problems".

[78] *"Working Together To Improve Services Advice Nottingham and Nottingham City Council"* Advice UK draft report 23 May 2011

# Chapter 11
# Non-lawyer assistance

## Personal Support Units

136. The Personal Support Unit provides practical and emotional support to people who are attending civil and family courts without legal representation. PSU volunteers do not give advice, but attend court with clients, prepare litigants for hearings, help litigants sort out their paperwork and find the correct legal forms, guide people around court buildings, provide some assistance for court users with special needs, refer individuals to other specialist agencies and look up online materials with clients. At the PSU based in the Royal Courts of Justice an increasingly useful service offered is to prepare a brief summary of the case in lay terms beforehand and then for the PSU volunteer to attend appointments at the RCJ Advice Bureau alongside the client to help increase the chances of the client being able to make best use of the advice given.

137. The PSU currently operates at the Royal Courts of Justice, the Principal Registry of the Family Division, Manchester and Cardiff Civil Justice Centres, and Wandsworth County Court. It will open in Birmingham and Liverpool Civil Justice Centres in 2011. Access to the service is usually immediate. Future growth of the service will require strengthened infrastructure without losing the 'bureaucracy light' nature of the service.

138. The PSU has a simple business model. Its total budget of £165,000 in 2010/11 included costs for 5.4 FTE employed staff to run 5 PSUs across England and Wales. Wandsworth County Court PSU, which helps about 100 self-represented litigants a month, is run by a volunteer and costs £5,000 a year to run. PSU has a tried and tested "plug and play" set-up, with the advantage of no external capital costs as HMCTS will look to provide the office space. The model could roll out quickly with only modest resources. Amongst a range of additional options is that of establishing a post of Information Officer whose job would be to keep volunteers in all PSUs abreast of all the advice that is available online for self-represented litigants and help develop office and IT facilities in PSUs for volunteers to use with self-represented litigants.

139. It is important to keep in mind the limitations if there are not services offering substantive legal advice and assistance to which PSU can refer clients. But among others the Council of HM Circuit Judges saw it as important that the PSU "which has been so successful in the RCJ in guiding LIPs about the courts" expand to more court centres, and the Working Group fully agrees.

## McKenzie Friends

140. Some react positively to a reference to McKenzie friends, and others react negatively. The truth is that there are many different types of McKenzie friends, and anecdotal experience of one can be positive but another can be negative. One may be the doctor next door, or the local youth worker. Another may be a regular volunteer. One may be driven by a cause personal to himself. Another may belong to an organisation that is trying to help self-represented litigants. One may help just by being there. Another may be charging money.

141. In different minds there are different meanings of the term McKenzie Friends. To some the phrase will of course have no meaning. There is a case for trying to move to a different term altogether, and "litigant helper" has been suggested.

142. From many quarters we heard the general view from judges and staff was that on balance it was better to have McKenzie Friends than not.

143. There is existing published Practice Guidance on McKenzie friends[79]. This was a welcome and appropriate development as soon as introduced, and has helped bring out the role McKenzie friends could play rather than just the role they could not. However, the Guidance is very formally worded, and has been described as off-putting.

144. There will be more McKenzie friends in the future, and there may be a clear need for them. How else are some self-represented litigants expected to address the challenges that isolation, nervousness, fear or disability may present if they have to appear in Court? From where else may they draw some support, help with analysis, and even (with permission of the Court, which we would hope would be increasingly readily forthcoming in any appropriate case) help to express themselves or be understood?

145. It will become more important to ensure that the approach to McKenzie friends is one of readiness to welcome and value the contribution that some can make rather than one of over-caution about the harm that some can do. Indeed there is real force in there being active encouragement of self-represented litigants to consider bringing a friend to Court with them, and active promotion of the "right" to bring a neighbour, a trusted friend or the like to Court to help.[80]

146. The promotion might encourage self-represented litigants to consult a front line agency for ideas about who to take to Court. Indeed if volunteer willingness allowed, it may be that, for example, CAB volunteers would be ready on occasions themselves to provide

[79] Practice Guidance: McKenzie Friends (Civil and Family Courts) 12 July 2010 [2010] 4 All ER 272.

[80] Note the requirements in employment law to offer employees the right to be accompanied at grievance and disciplinary meetings.

lay assistance at Court. This could be a welcome supply of objectivity and reassurance. Again in any appropriate case, if the volunteer was willing, and the self-represented litigant was in difficulty, the Courts could be increasingly ready to grant permission for the advice volunteer to speak. By contrast it is to be hoped that courts would be very resistant to allowing a right of audience to a McKenzie friend who was taking payment[81].

147. Of course, at least in the courtroom, the Judge's control of proceedings can help the best to be achieved from the involvement of the particular McKenzie friend. A useful combination of additional tools to help the Judge and all others concerned would be:

(1) A few standard questions for a McKenzie friend to be asked to answer as a matter of routine, at least by the Court and perhaps in time by self-represented litigants. A standard form is already used, for example, in Newcastle – a practice found useful there and which is to be commended. The questions might be on a form or notice and included in the judicial bench books. A suggested notice is at Appendix 4 to this Report.

(2) A short, simple, voluntary Code of Conduct for McKenzie friends. Adherence to this could be promoted as a feature of membership by reputable organisations which encourage and may sometimes train volunteers to act as McKenzie friends. But in addition it would allow the "once only" McKenzie friend (the teacher, the neighbour) to see what was involved and expected of them. A draft Code is at Appendix 5 to this Report.

148. There is little doubt that attendance at a brief familiarisation session could make the contribution made by many McKenzie friends more valuable.

149. Zacchaeus 2000 Trust is a small charity that helps and assists vulnerable individuals involved in court proceedings. The service is provided without charge, and the volunteers range from lawyers to retired magistrates and law students, as well as those who have no background in the law. They have developed a training manual and offer one day training to volunteers and arrange for junior volunteers to spend time with senior volunteers for experience. They are about to start a pilot in conjunction with LawWorks and College of Law in Brent Magistrates Court (civil section) which will involve a duty McKenzie friend.

150. The Bristol Civil Justice Centre has early experience of a scheme that involves students as McKenzie Friends. The service is delivered by University of the West of England (UWE)'s Bristol Institute of Legal Practice using law students from both the Bar

[81] The Chancery Guide points out at paragraph 13.12 that "Different considerations may apply where the person seeking the right of audience is acting for remuneration and any applicant should be prepared to disclose whether he or she is acting for remuneration and if so how the remuneration is calculated."

Professional Training Course (BPTC) and the Law CPE course. The service is classed as part of CLARS[82]. The McKenzie Friend Service was built around domestic violence matters and initially started in Gloucester (Gloucester and Cheltenham Family and Civil Courts), where clients are seen at a legal clinic held at ISIS (a women's voluntary organisation). The service was extended to Bristol Civil Justice Centre in July 2011 and so is at an early stage. A member of the academic staff recruits, trains, supervises and supports the students. This takes about one third of his working week; supervision and support includes attending Court at times, and at other times being available by phone. The university meets this cost and pays for overheads. The scheme is covered by the University's Professional Indemnity cover. The students sign up to providing assistance in at least two cases per year. They attend three sessions where they receive training on the procedure used in the service and a general introduction to the service. New students shadow the more experienced students for a few weeks before taking on a case themselves. Students work from templates drawn up by the academic.

151. The court staff generally welcomed the service provided by the university and the students - "It is better than having nothing for people". The Judges in general view the idea as a good one but hold some reservations. The questions include whether the McKenzie friends start to advise or to litigate. Direct contact and frequent communication between the providers of the service and the Judges will be crucial to resolve these questions. Establishing clear boundaries and scope, ensuring supervision and training and access to legal resources, and client care are all important areas with this type of initiative.

## Other assistance from law students

152. There is a huge variation of resource for pro bono work within Universities and Law Schools. LawWorks' 2010 survey showed that in at least 43% of law schools there are more students interested in getting involved in a pro bono activity than there are opportunities.

153. The existence of a large number of willing but inexperienced students will not achieve a contribution towards self-represented litigants without support, coordination and supervision. With support, coordination and supervision there is a different story.

[82] CLARS is a much wider collaboration between both universities in Bristol, Bristol CAB, the members of the Western Circuit and the ADR Group, Bristol. Clients are seen initially by the CAB, the Victim Support Unit or the University of Bristol Law Clinic before being referred on to the CLARS advisory and representation team, which includes the Bristol Institute of Legal Practice. CLARS assists in all areas except immigration and asylum. The main areas are criminal injuries compensation, family, insolvency and bankruptcy, employment, trusts and probate, consumer, housing and landlord and tenant. Students participate in area specific 'specialist firms' which each have a student as firm manager and a specialist tutor supporting and supervising the activity. Up to thirty students volunteer in each firm.

Alongside the important contribution that academic staff can make in these respects, the pro bono contribution of some external lawyers can be to help oversee students.

154. LawWorks' Student Project has helped raise the number of university law faculties and graduate law schools engaging in pro bono work from 43% in 2006 to 65% in 2010[83]. This has required a great deal of sustained hard work. It is worth noting that almost half of Personal Support Unit volunteers nationally are BPTC or GDL students recruited through successful partnerships with local law schools[84].

155. A more ambitious form of supervised student involvement has been studied in California[85]. Under the Justicecorps programme 250 undergraduates committed 300 hours over a year at court-based self-help centers, each receiving a $1,000 award against tuition fees or student loans[86]. After training and under supervision the students (among other things) listen to litigants' stories, triage to identify what help is needed, make appropriate referrals, assist in completing forms, conduct workshops and interpret information. In Los Angeles the Justicecorps students got basic information from self-represented litigants, filled that into forms, printed out the forms needed for a workshop, with the litigants filling in the rest by hand in the workshop and after explanation. After an initial period the appropriateness of referrals was found to be very high, and so too was the accuracy of the forms. Litigant satisfaction ratings were very high, including on the extent to which they felt better prepared and with a greater understanding of the legal process. The personal and professional development of the students was marked. The programme also brought a wide range of language capability to bear in a very mixed population. From the point of view of the Court, enabling self-help to do as much as possible allowed more complicated cases to be referred to attorneys (especially where one side was represented and the other was not), with a "Right to Counsel" initiative helping direct funding to the more serious cases.

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[83] To take a single example, among many available, of a well-established facility see the Legal Advice Centre conducted within the auspices of the Queen Mary Department of Law (see further: http://www.advicecentre.law.qmul.ac.uk/).

[84] The PSU has trained about 500 student volunteers since the first project with BPP law school in 2004 and provides experienced supervisors on-site to help them. Typically, a law student signs up to 20 days of volunteering during the academic year. This is a challenging personal commitments but it gives the student substantial hands-on experience in court procedures and in client handling. PSU has to turn away hundreds of prospective student volunteers each year. PSU recruitment of potential volunteers from 3 Law Colleges in Manchester (BPP, The College of Law and Manchester Metropolitan University (MMU)) saw over 200 students expressing an interest in pro bono volunteering, 65 submitting very comprehensive and well thought out applications and 27 students selected to attend the training and become volunteers for the November 2011 – June 2012 period.

[85] Bonnie Hough (above)

[86] With a small number of paid fulltime fellowships for top students.

## Experts

156. When expert opinion is required for a self-represented litigant to form or be helped to form a view on the merits of a claim, or as part of the evidence required in a case, sometimes the proposed expert will decline to accept instructions unless they come from a solicitor. Unless there is good reason for this requirement in the individual case, this approach should be discouraged, including by the associations of which experts are often members. Where the approach is related to the question of payment of fees, to invite payment in advance of fees is an unobjectionable course (where the expert is unwilling having regard to the circumstances of the self-represented litigant and the case, to act pro bono). The associations of which experts are often members might also valuably ensure that their members are themselves fully aware of relevant pre-action protocols where these deal with access to necessary documents.

## Support services

157. Our attention was drawn to the availability to self-represented litigants with modest resources of commercial services that will put documents in order and put them online. These are services that may help some self-represented litigants manage some aspects of the process.

# Chapter 12
# IT, Information, Documents and Court Forms

## Generally

158. The provision of "one-to-many" (as opposed to "one-to-one") general and topic specific information, advice and assistance via the internet is a potentially powerful source of awareness raising, information giving and practical support. At present many sites betray their hard copy background with long text based sections of advice, some of which can be hard to follow for those who have grown up in the internet age. But there are good examples of videos, magazine type visual formats, templates, checklists and interactive tools to help make assessments and decide on actions.

159. However, in our assessment the existing position suffers from the following weaknesses:

    (1) The quantity of material on-line is overwhelming and there is much duplication.

    (2) It is often hard to find what you are looking for.

    (3) The quality is very variable[87].

    (4) Some material is not kept up to date[88].

160. There are of course some good materials and facilities. To mention just a few existing examples by way of illustration:

    (1) Advicenow guides[89].

[87] This includes the potential for bias (often unintentional) in the material from some sources.

[88] Even the Government's legislation website is not up to date.

[89] http://www.advicenow.org.uk/advicenow-guides/. In addition, under development by the RCJ Advice Bureau with Advicenow are 3 leaflets specifically for self-represented litigants including case studies and checklists. The leaflets will cover:

> Leaflet 1 – Is court appropriate? Covering getting advice, informal dispute resolutions, complaints procedures, ADR, regulators, ombudsman schemes, deciding to do nothing.

(2) National Debtline factsheets and self-help materials, including a range of sample letters for members of the public to complete[90].

(3) Animated "walk throughs" aimed at giving self-represented litigants information about what to expect in the Court process have been under development for some time and some are now available.

(4) The Insolvency Service website was suggested as an example of an official website that was useful and easy to use, and therefore one that court staff refer bankruptcy self-represented litigants to.

161. At present the DirectGov website is a central reference point. It is understood that the site is to undergo some change. It is essential that there is close involvement from across the justice sector so that the present position can be improved. To illustrate some of the immediate difficulties from the perspective of a self-represented litigant:

(1) The *Crime & Justice* section is entirely concerned with criminal justice. Civil justice matters are instead found in other sections in particular *Government*, *citizens and rights* and *Money, tax and benefits*.

(2) To find out about making a court claim - which may not be about money, but could be say a dispute with a neighbour – a self-represented litigant would have to go to *Money, tax and benefits* and then the *Debt* subsection.

(3) Legal aid and legal advice is covered under a section named *Government, citizens and rights*.

(4) While the website uses logical links bring material together, this may not help people bringing complaints under more than one heading.

(5) A search for "mediation" from the home page of DirectGov takes the self-represented litigant to a series of articles about mediation mainly of family disputes, a link to the debt page, and neighbour disputes and workplace disputes.

162. By contrast the Courts Service website previously offered a menu of different types of case, access to all HMCTS leaflets which in turn seemed informed by those familiar

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Leaflet 2 – Building your case. Covering limitations, evidence, assessing the risk, assessing the opponent's ability to pay, getting advice.

Leaflet 3 – Before you start. Covering settling your case and pre-action conduct.

[90] http://www.nationaldebtline.co.uk/england_wales/debt_advice.php#3

with the basic queries often posed across the counter or by telephone. This website (http://www.hmcourts-service.gov.uk/) now contains only one page which directs visitors to various other websites: the Ministry of Justice webpage about the Service, various DirectGov pages, a separate court forms page, the Businesslink homepage, and the Possession Claim Online page at Businesslink.

163. The National Mediation Helpline is no longer operating. Its website has been decommissioned and now redirects to a new page on the Ministry of Justice website http://www.civilmediation.justice.gov.uk. Here a self-represented litigant can search by county for a commercial provider, and LawWorks is on the front page as a free service. However, the only information about mediation itself is on a link to another Ministry of Justice website which is written for lawyers not the public: http://www.justice.gov.uk/guidance/mediation/index.htm.[91]

164. Websites cannot of course be the only medium. Recent study has shown that many do not understand search engine results pages, particularly with respect to the accuracy and the independence of information presented[92]. The poorest and most vulnerable members of society find it most difficult to access advice services and have a particular need for face to face services as they often lack the skills and ability to present their problems and deal with telephone and web enabled services[93]. The response by Mind and Rethink to the legal aid consultation paper draws attention to the particular needs of those with mental health problems. For some self-represented litigants the Public Sector Equality Duty may be engaged when it comes to provision of assistance and

[91] Of other IT based systems it is also worth mentioning (a) that Money Claim online only applies at the stages of issue and judgment; if there is a defence then one reverts to back to paper. (b) the PI portal scheme is only accessible by solicitors not even advice agencies.

[92] *UK Adults Media Literacy*. Research Report. London: Ofcom (2011: 57).

[93] See for example *"Young People and Civil Justice": Findings from the 2004 English and Welsh Civil and Social Justice Survey"*; Legal Services Research Centre; Denvir C, Balmer N and Pleasence P *"Surfing the web – creation or resource? Exploring how young people in the UK use the internet as an advice portal for problems with a legal dimension"* Interacting with Computers 23 (2011) 96: at 1.2:

> "Youth Access (2009) identified socially excluded young people - those who experience multiple social disadvantage and young people not in education, employment or training (NEET's) - as a case where online services are less likely to be appropriate. Socially excluded groups have been shown to be often unable or unwilling to access the Internet for advice (Greater London Authority, 2002; MBA, 2007) and even those with the willingness and physical access, may struggle to derive the anticipated benefit of online activity (Parle, 2009; EdComms, 2007). Particularly if relevant services are difficult to locate (Scott, 1999), these individuals do not possess the skills to maximise their use of the Internet (Eysenbach & Kohler, 2002), are not aware of what the Internet can do (Greater London Authority, 2002), or do not have the money necessary for ongoing use of the facilities. With the Prince's Trust (2004) reporting that disadvantaged youths utilise the Internet as an information resource to a lesser degree than other youths, it is clear that face-to-face services will remain relevant. Importantly, for socially excluded groups and individuals, the retention of 'offline' access to advice services will remain not just a matter of preference but a matter of necessity."

information. At least in some respects the web may help meet the needs of new users more than the needs of those most disadvantaged or marginalised.

165. It is nonetheless beyond question that the power of the web has not yet been fully exploited to help meet the needs of those with problems that could be resolved through access to justice. In some ways this comparative underdevelopment is an advantage because there is still a space for a more purposeful development which takes account of people's different needs and the different ways in which they will access the web.

166. The Working Group's discussions with those advisers who provide face to face general, specialist and legal help have also suggested the role that technology could increasingly play in supporting advisers. This might be through provision of speedy access to specialist websites for general advisors who have a signposting and hand-holding role, and speedy access to expert systems, templates and case management functions for those already providing specialist services. An approach which uses website materials as a resource to help scarce advisors reserve more time to meet the needs of the most vulnerable would help to address the criticism that websites cannot be used by everybody and cannot be the only medium. The approach is one that uses IT to speed up the adviser's job or increase the number of clients an adviser can see, rather than push IT onto the self-represented litigant.

167. So too there is the possibility of volunteers, perhaps deployed by PSU, being ready at Court centres to help self-represented litigants with their access to the internet. Sometimes it is an informed suggestion of which website to start with, or where to go next, or a simple facility to print a key checklist or a leaflet, that will help the self-represented litigant access the intelligence on the machine. Signposting to substantive legal advice and assistance could also feature. There are self-help kiosks in other parts of the world but for all their qualities they are not useful to someone who is under the stress of being a self-represented litigant at Court; but a helpful person standing by can make the difference.

168. Perhaps the whole might be summarised as the advent of moderated technology, rather than just technology. But the related important issue is whether advice agencies and other advice providers will be prepared to work cooperatively and collaboratively to support the development and maintenance of such systems which could be used both by them and by web enabled self-represented litigants acting on their own, or whether each grouping will want to develop its own system, risking duplication and sub optimal results.

169. There are a number of telephone helplines already available, including from insurers. These offer "one to one" contact but have strengths and weaknesses too. They present challenges of selection and quality; they will work for some self-represented litigants

but not others. As a gateway to legal aid a telephone helpline[94] will present many challenges.

170. The following approach is recommended:

(1) There is no need to develop "all singing, all dancing" IT systems; simple off-the-shelf products should be used where possible.

(2) Electronic service delivery of court services is important to access to justice at a reasonable and proportionate cost[95].

(3) As for websites, one website should be chosen, developed and promoted by all bodies as the "go to" primary website for access to coordinated material for self-represented litigants.

(4) That primary website should have links to an informed choice of the best information (and not all information) available free-of-charge in a particular area. It should provide good links between websites for particular groups of people – such as AgeUK or Mind, websites for particular types of problem, such as Shelter, and websites that are designed to answer questions and to bring together the very best of other websites, such as Advicenow.

(5) The primary website, and all information offered to users by way of link from the website, should comply with the Better Information Handbook recently published by Advicenow in 2011.

(6) The primary website should be maintained so that it is always current. The previous arrangement with Advicenow, which identified best of breed websites and made sure links were up to date and helpful, has not been continued. There is a strong case for its reinstatement. Advicenow would seem well placed to fulfil such a role requiring discerning independence.

(7) Leaflets should not be seen as different from documents available online; leaflets would be effectively a print out of what is online.

[94] The proposal that a Community Legal Advice helpline should be established as a single gateway to access civil legal aid advice (even if limited to four areas of law initially) could lead to a reduced role for the advice sector in giving initial legal advice (and reduced access to pro bono assistance in consequence). If there is to be a Community Legal Service helpline it is important that it is developed with input from the advice sector and the pro bono sector.

[95] See further *"Review of Civil Litigation Costs: Final Report"* by Lord Justice Jackson (2009).

(8) The website should be developed so as to be suitable to be used either by self-represented litigants acting on their own, or with help from a general adviser such as a PSU representative.

(9) A checklist approach to guidance should be used where possible.

(10) The primary website should link to all court forms and information on how to complete them.

(11) The primary website should also contain, or provide a direct link to, guidance on how to prepare for a court hearing and comply with pre-action protocols.

(12) Specific and published arrangements should be made to assist those who have difficulty in accessing or using the website[96].

(13) Access to internet should be offered at Court, supported where possible by PSU volunteers.

(14) Throughout, the offering needs to be designed around the need of the citizen; to recognise that people need to understand not just the law and the procedure, and the practical steps that have to be taken, but also they need to be given the skills and the emotional intelligence to enable them to interact effectively with the organisations which may include the organisations that may have caused the problem in the first place.

(15) In time it should be feasible to take in succession a series of common commoditised issues and develop simple IT based models to assist timely resolution, by email and by telephone whenever possible. This would free up court resources and judicial time to deal face to face and in court with those issues and those litigants who are not amenable to this approach, and those cases which could not be resolved within the new streamlined proportionate procedures.

## Two important projects

171. Two important projects are in development. Developed successfully and collaboratively they could have a valuable part to play.

172. First, the RCJ Advice Bureau is working with a major law firm to devise an online tool that draws on the Bureau's experience of advising self-represented litigants on how to navigate court systems and comply with civil procedure rules and the Bureau's

[96] Because they face additional challenges of disability or health (physical or mental), social or economic circumstance, intellect, language, responsibility to others, or location (remote area or urban area).

knowledge of the sort of problems self-represented litigants frequently encounter. This forms part of RCJ Advice Bureau's strategy to respond to the increase in self-represented litigants and to enhance their support to other advice agencies in responding to self-represented litigants needs. The interactive tool is intended to identify which court and civil procedure a self-represented litigant needs to follow, and enable them to download appropriate court forms applicable to their case and obtain self-help tips and tailored advice regarding the civil procedure they are following. RCJ Advice Bureau initially intends to pilot the tool with their own volunteers and focus on the family court. In the longer term, dependent on the resources available, they intend to extend the tool to cover county court procedure, probate, High Court and Court of Appeal. The employed staff team at RCJ and the legal volunteers will support self-represented litigants and other advice agencies in using the tool.

173. The second project develops LawWorks' Initial Electronic Advice (IEA). This is a web-based system which provides short, initial legal advice in response to straightforward questions. It recognises that assistance with procedure is often needed in "bite-size" pieces. It was originally designed to assist not-for-profit organisations and advice agencies[97]. It is undertaking a re-design with the objective of allowing it to be accessed directly by individual members of the public through an online portal. A survey of LawWorks' members carried out in 2009 had made clear that the most significant obstacle to lawyers carrying out pro bono work was time, and signalled a desire to make greater use of IT resources. The new system makes use of social networking technology. Lawyers will collaborate online to triage questions, answer questions, approve or challenge and develop answers, "follow" other lawyers and develop online resource material available to users of the system. A range of functionality will allow answers to be provided much more quickly in a programme which early feedback suggests lawyers will find attractive, energising and motivating (and therefore use in significant numbers, increasing the capacity of the system). Questioner and respondent will remain anonymous to each other.

[97] Questions are entered into the system under a specific legal area and the system selects the first lawyer on its database with the relevant expertise. An email link to the question is sent to the lawyer who has 24 hours in which to accept or reject the question. After 24 hours the option to answer or reject the question automatically expires and the question is passed to the next lawyer in the specified field. Once a question is accepted, the lawyer has 3 days to provide an answer before the question moves on again automatically. When a lawyer enters an answer onto the system, LawWorks receives an email notification. LawWorks staff then log on to retrieve the answer and forward to the organisation/referral organisation. Although the system keeps track of who answers what, the questions are anonymous to the lawyers and the responses are anonymous to those who pose the questions. This enables the lawyer to answer the question in the knowledge that there is no follow up contact and no further time will be taken up dealing with that issue. Once a question is answered, the lawyer goes to the bottom of the list so that the same lawyers are not continually approached.

## Telephone hearings

174. For some self-represented litigants the facility of a telephone hearing will be valuable; for others it will not be suitable. The current practice direction[98] allows telephone hearings unless all parties are self-represented litigants. It is not clear why this limit should exist. If it is because a lawyer is thought necessary to take responsibility to arrange the hearing, that approach is open to question. There is also much to commend the Employment Tribunal procedure of the tribunal issuing a telephone and PIN number to the parties.

## Court forms

175. For self-represented litigants court forms are an essential part of the process of responding to or initiating a claim. Research[99] indicates that development of forms together with supporting information, and road testing with self-represented litigants, are an essential part of any strategy to help self-represented litigants. The Working Group consistently heard from court staff that forms present a major problem for many self-represented litigants, and therefore consumed a significant amount of court staff time.

176. The particular challenges with court forms at present include:

    (1) It can be difficult to obtain court forms[100] or find them. Often you first have to know the name or number of the form, and to be able to ascertain that it is the one you need.

    (2) They are all not easy to follow, although the changes with the introduction of the CPR have been positive. Even then expressions like "fast track" or "multi track" or "execution of warrant" have no meaning to a first-time user.[101]

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[98] CPR Practice Direction 23A.

[99] *"Resources to Assist Self represented Litigants: A Fifty-State Review of "The State of the Art"* by John M Greacen ,JD (above); *"One VCAT: President's Review of the Victoria Civil and Administrative Tribunal"* by the Hon. Justice Kevin Bell (above).

[100] This was the experience, in particular, of members of the County Court Issues Group. The Group's membership includes local authorities, CABx, independent advice centres, the Money Advice Trust and Shelter.

[101] Among the forms that court staff suggested, from their experience with self-represented litigants, needed to be simpler, were:

(1) Appeal Notice (form M161) – it was suggested this should be more like the small claims appeal notice in which the guidance notes are part of the form.
(2) Respondent's Notice – the terminology used in section 6 of the form was criticised.
(3) Court Fee Exemption Form - the Office of Public Guardian form was suggested as a better example.

(3) They often contain only limited procedural guidance[102].

177. It is important that there is a future review of forms and how to access them. This should involve advice sector representatives, court staff and self-represented litigants or those with close experience of self-represented litigants. The Working Group strongly favours simplification where possible, converting legal terminology into plain, understandable, language where possible, and inclusion of procedural guidance on the form where possible[103]. The latter could appropriately include a warning of the risks as to adverse costs of taking the step initiated by the use of the form.

178. The recent Greacen Report for the State Bar of Michigan includes the following recommendations on forms[104], and these have relevance in this jurisdiction too:

(1) When the resources become available, forms should be provided for all types of proceedings in which significant numbers of persons appear in court representing themselves. A forms completion process should be designed for completion without staff assistance.

(2) The courts should ensure that it develops automated forms in an even-handed manner – providing forms for respondents or defendants whenever it provides forms for petitioners or claimants.

(3) All forms processes should possess the capability to print a set of forms to be completed by hand or typewriter rather than by computer.

(4) All forms should be in plain English, using relevant Plain English standards and using the services of an English language readability expert. All forms and document assembly applications should be field tested with self-represented litigants for usability. All forms should be available in Welsh.

(5) A limited number of case types and forms should be targeted in the initial phase of a self-help web site to test for effectiveness and efficiency before expanding to additional case types and forms.

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[102] A strong example is a charging order nisi form which has no helpful information for judgment debtors. The name of the procedure is also open to objection if we are to have language that self-represented litigants can understand.

[103] Including by use of footnotes or endnotes, or adopting the approach taken with a passport application which is accompanied by guidance for completion.

[104] *"Resources to Assist Self represented Litigants: A Fifty-State Review of "The State of the Art"* by John M Greacen ,JD (above).

(6) In choosing additional subject matter areas for development following the pilot phase, court data and a survey of judges and other court personnel should be used to establish a long range plan for forms and information development.

(7) Self-Help Service plans should ensure that trial or hearing preparation materials are available for each case type for which forms are developed, as part of the comprehensive information envelope within which each form is presented. These should include a hearing or trial preparation matrix appropriate to that proceeding, listing the elements required to obtain relief and guiding the self-represented litigant through the logical process of preparing for the court event.

(8) Information and forms on enforcement of court orders and judgments should be part of the materials presented for every case type for which forms are developed, deployed at the same time as the rest of the forms and information for that case type are deployed.

## New systems

179. Traditionally, most potential litigants have sought advice and assistance on a "one-to-one" basis from those expert in the law: lawyers, and specialist and expert advice workers. They have mainly done this face to face but may also have accessed telephone advice. This has given them person and issue specific advice.

180. They may also have accessed "one to many" (rather than "one to one") general and topic specific advice through leaflets provided by courts, advice providers and others. In recent years there has been a significant increase in the "one to many" provision of general and topic specific advice through the internet. But until recently there has been little if any development of this to provide person and issue specific advice through expert systems, that is using the internet to provide the equivalent of "one to one" advice .

181. There has been little systematic attempt to look at how to maximise the effectiveness of all these sources of potential help. In particular little attention has been given to how to focus the scarce resource of "one-to-one" face to face advice on those who most need it because of the complexity or difficulty of the issues or the complexity and difficulty of their lives and/or their lack of capacity to engage unaided in the process of resolving their problems.

182. Given the challenge which now faces us, it is essential that as we look at each of the potential sources of information, advice and assistance, we consider how it can be used most effectively in future, how best it can be used in combination with other sources, and in particular how we can make sure that we exploit to the utmost those advances in

web based solutions that have already been developed and that will be developed in future.

183. We can identify pointers to potential ways forward in experience overseas and experience in other sectors, notably the health sector and the Financial Ombudsmen services. Both NHS Direct and FOS have developed web based systems which can be used either direct by the user or indirectly through telephoning an intermediary who is using the same web based system. In general, websites such as these demand a fairly high level of capability on the part of the one-off user[105] but, importantly enable trained intermediaries to offer a high level of well-informed advice.

[105] The same is true of the CAB website compared say with the Advicenow website.

# Chapter 13
# Education

184. This Report has concentrated on the stages at which a problem has arisen and where it may need help if it is to be resolved, or where it has already reached court.

185. The true starting point for helping the public and thereby those who could become self-represented litigants is in fact before those stages. It is the point at which there is the opportunity for increasing public understanding of the law and of rights and obligations under the law, including the ability to recognise problems and access help with those problems where help will be needed.

186. This is the province of public legal education (or PLE). This Report is not the place in which to deal with PLE, but it is the place to highlight its importance in the overall scheme of access to justice. For this reason it takes its place in our recommendations for longer term focus in Chapter 15.

187. PLE has already seen practical development in various forms, including through pro bono "Streetlaw" initiatives[106], often involving law students and previously highlighted during National Pro Bono Week. The PLEAS Task Force made a series of important recommendations for its strategic development. It is the focus of the new charity Law for Life, in succession to the PLENET initiative at AdviceUK, but the resources of that charity are presently very limited.

188. The regulatory objectives set by the Legal Services Act 2007 expressly include increasing public understanding of the citizen's legal rights and obligations. This regulatory objective, alongside the related objectives of promoting the public interest and promoting the interest of consumers, is now more important than ever in light of the proposed reductions and changes to legal aid.

[106] "Streetlaw" and like seminars and presentations have taken place at schools, youth clubs and community halls, and have addressed (for example) children, young people, the elderly, those in social housing, the unemployed, and those from a minority within the community, as well as the general public as a whole including all the groups just mentioned. Other important examples include the Galleries of Justice initiative (working with children of school age) and the National Mock Trials competition (supported by the Bar Council and the Citizenship Foundation among others, and working with students and young people).

# Chapter 14
# Mediation

189. Mediation has an important place in any modern system of dispute resolution and access to justice[107].

190. However, whilst a mediated resolution may prove an alternative to a court adjudication, the provision of mediation facilities is not an alternative to the provision of access to the courts.

191. In the context of self-represented litigants:

(1) Good early advice on the merits is as relevant here as elsewhere. It is harder for mediation to succeed where one party has no legal advice (whether before or at the mediation). The mediator cannot fill the gap.

(2) "Unless [a mediation] is very professionally conducted, there is plenty of scope for the strong to bully the weak into agreeing a solution which is against their best interests"[108]. For that or other reason, including fear and tiredness, the self-represented litigant may be too ready to take a poor deal rather than face court. In these circumstances professionalism in mediators is crucial.

(3) Alternative forms of dispute resolution, like mediation, depend on a functioning justice system in order to bring reluctant parties to the negotiating table. In the end only the Courts and tribunals can require a just outcome.

192. Provided all the points are kept in mind, including those just mentioned, there is every reason to encourage the awareness of mediation, including its availability pro bono[109], and its use[110]. For many self-represented litigants or potential litigants, there is a desire

[107] "Access to adjudication is a human right and the function of the justice system to provide. It must not be limited. In the velvet glove of the concept of 'dispute resolution' is the hard fist of the unequivocal statutory responsibility of the tribunal, as a justice institution, to vindicate legal rights when called on to do so. Equally, access to ADR is an important new method, and often a better method, for resolving disputes by fair and cost-effective means.": Hon Justice Kevin Bell, President of the Victoria Civil and Administrative Tribunal in his 2008/9 review.

[108] Baroness Hale (above).

[109] Including through LawWorks Mediation.

[110] "Ultimately, the success of dispute resolution as an alternative to Court will not, of course, be due to policy change coming from the centre of Government. I think success over the longer term will be heavily reliant upon mediation services themselves innovating and working in partnership with their local solicitors, advice

not to be in court, or to face the adverse costs risks of litigation. For these, mediation can provide an opportunity to be heard and reach a compromise. And sometimes the opportunity through mediation will be more satisfactory than the opportunity without even that structure or process. Mediation has the advantage that the mediator can take as a starting point the proposition that all parties have a problem because of the issues, and the question for all is what to do about that. Though not an adjudicator or fact finder[111], a mediator can begin with an inquisitorial approach to help identify the issues.

services, health and education practitioners.": Catherine Lee, Director, Access to Justice, Ministry of Justice, in *"The next steps for dispute resolution"* 14 July 2011 Westminster Legal Policy Forum.

[111] Assuming a facilitative rather than an evaluative mediation.

# Chapter 15
# Recommendations

## Recommended immediate actions

193. The Working Group recommends 10 immediate actions. These are itemised below. We have sought to identify intensely practical recommendations that can be introduced immediately without requiring material additional financial resources. We would look for their introduction over the next six months and before the proposed reductions in legal aid would come fully into effect.

(1) **Improve accessibility, currency and content of existing website material.**

Suggested lead responsibility: HMCTS.
Working with: Advicenow, advice agencies and the judiciary.
Timeline: by 1 April 2012

(2) **Prepare and publish (at least online) a "nutshell" guide for self-represented litigants**[112] (to include a specimen documents bundle index and guidance on preparing a documents bundle[113], a glossary of legal terms, and simple procedure and appeal flow-charts[114]).

[112] The Civil Sub-Committee of the Council of HM Circuit Judges has kindly offered to write such a guide, and to invite the Association of District Judges to add their input. In addition the language and form of the guide should be informed by assistance from Advicenow, and there should be input from PSU and a cross-section of advice agencies. The Mercantile Court currently offers an "Easy Guide", available online at www.justice.gov.uk/guidance/courts-and-tribunals/courts/mercantile-court/using-the-mercantile-court-an-easy-guide.htm, and those involved with the development of that will have a really valuable contribution to make. A valuable handbook for self-represented litigants in family courts ("Family Courts without a Lawyer" by Lucy Reed) has recently been published; and Pearl's "Small Claims Procedure in the County Court: A Practical Guide to Mediation and Litigation" is now in a new edition.

[113] Drawing, but in simpler terms, on the guidance on documents bundles for family cases (Practice Direction 27 July 2006), chancery cases (Chancery Court Guide Appendix 6), commercial cases (Admiralty and Commercial Court Guide Appendix 10) and under CPR Practice Direction 39A paragraph 3.

[114] A short guide was described in these terms by the Civil Sub-Committee of the Council of HM Circuit Judges:

> "… it would be an attempt to summarise the CPR …, in simple and clear language, with worked examples, dealing with all main stages of simple actions, explaining what "issues" were, encouraging the parties to a dispute to identify those issues between them, to consider and utilise mediation, and, if that proved unsuccessful, to present the necessary evidence in proper form to enable the court to decide those issues essential to resolve the parties' dispute. Simple explanations would be given, with examples taken from commonly met types of case of the process of disclosure and its importance, of pre-trial hearings and of the trial itself. A simple summary of appeal routes and the necessity for permission would also be given."

Suggested lead responsibility: Council of HM Circuit Judges
Working with: HMCTS, Advicenow, the Association of District Judges and advice agencies.
Timeline: by 1 April 2012

(3) **Prioritise judicial and court staff discussion on service provision to self-represented litigants.**

Suggested lead responsibility: the judiciary and court staff at each court centre
Working with: local advice agencies and HMCTS
Timeline: starting by 1 April 2012, then continuous

(4) **Provide a short Memorandum to Judges that summarises the existing availability of pro bono advice and assistance.**

Suggested lead responsibility: The National Pro Bono Centre
Working with: the judiciary, pro bono agencies and advice agencies
Timeline: by 1 February 2012

(5) **Publish guidance for Court Staff when dealing with self-represented litigants** (a draft is at Appendix 1).

Suggested lead responsibility: HMCTS
Working with: the judiciary
Timeline: by 1 February 2012

(6) **Publish guidance for legal professionals representing a party against a self-represented litigant and a statement of what a self-represented litigant is entitled to expect from legal professionals representing other parties in the case** (drafts are at Appendices 2 and 3).

Suggested lead responsibility: the legal professional bodies, working jointly
Working with: the Legal Services Board and the judiciary
Timeline: by 1 February 2012

(7) **Introduce a notice of McKenzie Friend** (a draft is at Appendix 4).

Suggested lead responsibility: HMCTS
Working with: the judiciary

Timeline: by 1 February 2012

(8) **Introduce a short Code of Conduct for McKenzie Friends** (a draft is at Appendix 5).

Suggested lead responsibility: the judiciary
Working with: HMCTS
Timeline: by 1 February 2012

(9) **Clarify the position over pro bono working by in-house counsel and legal executives, and remove any impediments.**

Suggested lead responsibility: The National Pro Bono Centre
Working with: the Legal Services Board, the Ministry of Justice, the Attorney General's Office
Timeline: by 1 April 2012

(10) **Concerted leadership from the major umbrella bodies representing advice agencies and the pro bono clearing houses to drive coordination and collaboration between all advice agencies and pro bono initiatives across England and Wales.**

Suggested lead responsibility: Citizens Advice, AdviceUK, Law Centres Federation, the National Pro Bono Centre and the Attorney General's National Pro Bono Coordinating Committee
Working with: advice agencies, the legal professional bodies working jointly, the judiciary
Timeline: starting by 1 February 2012, then continuing

## Recommended medium term actions

194. For the medium term, that is over the period between now and 2014, the Working Group recommends focus on 10 areas:

(1) **Undertake a systematic review, involving full consultation with those with expertise in service provision to self-represented litigants, of all HMCTS leaflets and Court Forms and supporting information, and arrangements for access to them.**

Suggested lead responsibility: HMCTS

Working with: Advicenow, the judiciary, advice agencies
Timeline: by 1 October 2012

(2) **Ensure the availability of a primary website that draws the best guidance together and is kept up to date.**

Suggested lead responsibility: HMCTS
Working with: Advicenow, Directgov, Ministry of Justice, advice agencies
Timeline: by 1 October 2012

(3) **Increase the number of court centres that have a Personal Support Unit, and support these with an information officer.**[115]

Suggested lead responsibility: PSU
Working with: Ministry of Justice, HMCTS, the judiciary
Timeline: continuing

(4) **Introduce a Guide to Small Claims.**

Suggested lead responsibility: The Civil Justice Council
Working with: advice agencies and the judiciary
Timeline: by 1 April 2012

(5) **Encourage the accessible retail of legal advice without transferring the conduct of the case to the lawyer.**

[115] The PSU's draft 3 Year plan (which is unfunded) assumes that its annual expenditure budget will be £500k by 2014/2015; and that Birmingham, Liverpool and a new London PSU are running, and PSUs would be open or opening in 2 more London county courts and 4 more regional Civil Justice Centres across England and Wales. Should the pace of expansion be increased substantially, the PSU would need to spend an additional £100-150k per annum on its infrastructure i.e. governance, training, publicity, information, finance, HR, IT etc in addition to the planned expenditure of £350k in 2012/2013 and £450k in 2014/2015. More office space would also need to be made available preferably in the RCJ.

The PSU is experimenting with a variety of management models regionally, ranging from the cheapest at £5k per annum run by a volunteer to £30k run by full-time paid senior coordinators. Unpaid volunteer coordinators require much more additional support from the charity's base or another regional hub; paid senior coordinators can run more than once centre.

A large regional PSU, like PSU Manchester Civil Justice Centre costs about £3000 to set up, then annual running costs of about £30k, i.e. coordinator plus volunteer expenses and office costs. Manchester PSU is currently helping over 200 clients per month and this is rising rapidly, and the Manchester PSU Coordinator will also set up and run PSU Liverpool. A smaller County Court PSU costs about £1000 to set up, and then between £2000 and £15000 per annum to run depending on whether the coordinator is unpaid (as in Wandsworth), or how many days per week he or she works - more is needed when PSUs are initially established. Wandsworth PSU regularly helps about 100 clients per month.

Suggested lead responsibility: The Law Society, the Bar Council, ILEX, working jointly
Working with: advice agencies, ABSs
Timeline: continuing

(6) **Develop LawWorks Initial Electronic Advice for use by self-represented litigants as well as advice agencies.**

Suggested lead responsibility: LawWorks
Working with: Ministry of Justice, advice agencies
Timeline: continuing

(7) **Find new ways of funding the infrastructure of pro bono and other types of support[116].**

Suggested lead responsibility: The Access to Justice Foundation
Working with: the pro bono agencies, Government, the Legal Support Trusts
Timeline: continuing

(8) **Offer surgeries and after-hours sessions at Court for self-represented litigants.**

Suggested lead responsibility: the judiciary
Working with: HMCTS and advice agencies
Timeline: start by 1 April 2012 and continuing

(9) **Keep records of and monitor the numbers and circumstances of self-represented litigants, and cause self-represented litigants to be a standing item on the agenda of Court user groups.**

Suggested lead responsibility: Ministry of Justice
Working with: HMCTS, the judiciary, The Civil Justice Council
Timeline: start by 1 April 2012 and continuing

[116] The potential in this respect is well illustrated by the success of the Access to Justice Foundation. This began with responsibility for distributing proceeds received under the new "pro bono costs order" jurisdiction so as to resource pro bono and advice agency infrastructure. It has since developed a scheme to use unclaimed client account monies to the same ends. There is real potential for bona vacantia monies and the unclaimed proceeds from collective actions (collective redress) to be distributed through the Foundation. The Civil Justice Council has already raised the latter possibility in the course of its work on collective redress.

(10) **Review the question of access to appeals after a refusal on paper.**

Suggested lead responsibility: the judiciary
Working with: The Civil Procedure Rules Committee, The Civil Justice Council, the Ministry of Justice
Timeline: by 1 January 2013

## Recommended longer term focus

195. For the longer term, that is over the period between now and 2016, the Working Group recommends focus on the following areas:

(1) **Development of arrangements for Mediation and Early Neutral Evaluation that are suitable where a self-represented litigant is involved.**[117]

(2) **Development of public legal education (PLE) in line with the work of and that has followed the PLEAS Task Force.**

(3) **Further development of forms of pro bono advice and assistance.**

(4) **Research-led improvement to the small claims procedure**[118].

(5) **A study of the possibility for a different procedure, at least in some types of case, where a party will be self-represented and in particular where both parties will be self-represented**[119]**.**

[117] We emphasise that mediation should be seen as part of the potential toolkit for resolving justiciable issues and not as an alternative to litigation; it should be one door within the multi door courthouse and litigants should be free to choose it and supported in making that choice by legal expertise.

[118] There is the opportunity to make the small claims system itself more citizen friendly: which was after all the original intention of the scheme. We envisage the development of more streamlined procedures and citizen friendly pre-action protocols that ensure that litigants collect the appropriate evidence and have the relevant legal issues set out in clear form so that they are assisted in preparing their case. This should be developed on the basis of a detailed examination of the type of litigants and the issues they present in the small claims scheme. It should include focus, with the assistance of research, on those issues which are most easily capable of "standardisation" and "commoditisation" and on those litigants who are most capable of using expert self help systems.

[119] This might involve different types of venue (eg community centres or places closer to the demographic group in question). And perhaps a more interventionist style for some types of litigation. And perhaps a different approach to the incidence of costs.

# The Working Group - short biographies

**The Hon Mr Justice Ross Cranston** is a judge of the High Court, Queen's Bench Division. He is also a Visiting Professor of Law at the London School of Economics and Political Science.

He was a member of the House of Commons in the United Kingdom from 1997-2005 and Solicitor General from 1998-2001. Previously he was Centennial Professor and Cassel Professor of Commercial Law at the LSE, and Lubbock Professor of Banking Law and Director of the Centre for Commercial Law Studies at Queen Mary & Westfield College.

He has held consultancies with UNCTAD, the World Bank, the IMF and the Commonwealth Secretariat to advise different countries on commercial, banking and securities laws. He has also undertaken peer reviews of the legal system for the European Commission in Bulgaria, Croatia and Turkey. He was a long time member of the legal advisory panel of the National Consumer Council in Britain until 1997 and chair of trustees of Public Concern at Work. He is a Fellow of the British Academy.

Among his publications is "How Law Works" (Oxford, OUP, 2006).

**Peter Farr** is Private Secretary to the Master of the Rolls and has worked in the Judicial Office since 2005, for most of that time as Chief Press Officer. He joined the Lord Chancellor's Department in 1998 and worked on media relations for a number of high profile trials as well as the Princess Diana and Omagh inquests, and led on the pilot for filming courts. He began his career in local government as a Committee Clerk in 1984, and has also worked as Public Relations Officer for an NHS Trust, so his overall public sector experience spans 27 years.

**Amanda Finlay CBE** is the former Director of Legal Services Strategy, Ministry of Justice; and was Secretary to Lord Woolf's inquiry on Access to Justice.

In the early part of her career in the Lord Chancellor's Department, Amanda worked on implementation of the Courts Act 1971; on Unmet Need for Legal Services with Richard White and Cyril Glasser; and was Assistant Private Secretary to the Lord Chancellor, Lord Elwyn-Jones. She was Secretary to the Legal Aid Advisory Committee, and then worked on the establishment of the Legal Services Ombudsman and the Advisory Committee on Legal Education and Conduct. She worked on the new competition machinery, on policy advice on the early applications for Rights of Audience, and on legal aid. She conducted a Fundamental Review of expenditure for the Department and the Treasury

Amanda was Secretary to Lord Woolf's Inquiry: Access to Justice, and then worked on the Human Rights Bill, scoping the potential impact on the courts and working with the Judicial Studies Board, Justice and Liberty on training for judges, lawyers and civil servants, chairing walkthroughs to identify potential incompatibility issues from magistrates courts to the Court of Appeal. As Director, in the then Department for Constitutional Affairs, she initiated the work which led to Sir Andrew Leggatt's Report "Tribunals for Users"; worked on streamlining and speeding up asylum appeals; chaired working groups on both private and public law Children Act cases; and led the work on the Fundamental Review of Legal Aid, improving the Ministry of Justice understanding of legal aid cost drivers and forecasting. She chaired the Working Group on Quality Assurance for Advocacy and worked to establish the new Legal Services Board and to support the Public Legal Education Task force.

Amanda retired from the Ministry of Justice in 2009. She is a Member of the Civil Justice Council, a Council member and Executive Board Member of Justice, a Trustee of LawWorks and a Trustee of LawforLife. She is a publicly elected governor for Greenwich of Oxleas NHS Mental Health Trust.

**Professor Dame Hazel Genn DBE** is Dean of Laws, Professor of Socio-Legal Studies and co-director of the UCL Judicial Institute in the Faculty of Laws at University College London, where she is also an Honorary Fellow.

She previously held a Chair and was Head of the Department of Law at Queen Mary and Westfield College, University of London . Before joining London University, she held full-time research posts at Oxford University Centre for Socio-Legal Studies (1974-1985) and the Cambridge Institute of Criminology (1972-74). In January 2006, she was appointed an Inaugural Commissioner of the new Judicial Appointments Commission established under the Constitutional Reform Act 2005 and was a member of the Committee on Standards in Public Life 2003-7. In April 2009 she was appointed to the Secretary of State's Advisory Panel on Judicial Diversity.

She has been a Fellow of the British Academy since 2000, a member of its Council 2001-2004 and is currently Chair of Communications and Publications Committee. In 2005, she was awarded the US Law and Society International Prize for distinguished scholarship and she holds Honorary Doctorates from the Universities of Keele, Edinburgh, Leicester, and Kingston . She worked with the Judicial Studies Board for 12 years, serving as a member of the Main Board and the Tribunals Committee, and contributing to the design and delivery of training for the judiciary at all levels. She served for eight years as Deputy Chair and then Chair of the Economic and Social Research Council's Research Grants Board.

Her work has focused on the experiences of ordinary people caught up in legal problems and the responsiveness of the justice system to the needs of citizens. Her work has had a major influence on policy-makers around the world and she is regularly invited to lecture and provide advice abroad. Consistent with her interest in public use of and experiences of the justice system, she led the Task force on Public Legal Education (PLEAS). In recognition of

her work on civil justice, she was awarded a CBE in the Queen's Birthday Honours List in 2000 and appointed DBE in the Queen's Birthday Honours List in 2006. In 2006 she was also appointed Queen's Counsel Honoris Causa. In 2008 she was elected Honorary Master of the Bench of Gray's Inn.

Among her publications is "Paths to Justice – what people do and think about going to the law" (Hart, 1999)

**Nick Hanning** is the Vice President of the Institute of Legal Executives (the second largest body of legal professionals). He is a partner in RWPS (a Legal Disciplinary Practice).

He:

- is immediate past Chair of the ILEX Pro Bono Forum;
- will become Chairman of the independent charity ILEX Pro Bono in January 2012;
- is Chair of Bournemouth and Poole Pro Bono, which brokers pro bono services in Dorset and Hampshire;
- is a Founding Trustee and the Treasurer of the South West Legal Support Trust (one the 7 Legal Support Trusts working with the Access to Justice Foundation).

**Rebecca Hilsenrath** has been the CEO of LawWorks since September 2008, on secondment from the Treasury Solicitor's Department. LawWorks is the operating name of the Solicitor's Pro Bono Group, a national charity which interfaces between solicitors who are able to provide pro bono legal advice and assistance and individuals and community groups who cannot afford to pay for help and cannot access legal aid.

As a government lawyer, Rebecca worked most recently in the Attorney General's Office, where her responsibilities included advising the Attorney in relation to pro bono legal services; equality and diversity in relation to appointments to Government legal panels; public interest functions; and the drafting of Law Officer opinions. Before that, she worked in the Legal Advisor's Office at the then Department for Education.

Rebecca trained and qualified at Linklaters and as a young lawyer volunteered at and chaired a legal advice clinic in Stoke Newington. She is also a long-standing school governor and trustee. She was instrumental in establishing two schools in Hertfordshire – one primary, one secondary – which opened in 1999 and 2007. She served as the chair of governors of the primary school for 9 years and provides free clerking services for school admissions appeals as well as delivering training on school admissions and governance. She is a trustee of the Mary Ward Legal Centre, a member of the Management Committee of the Bar Pro Bono Unit and a trustee of the National Pro Bono Centre. A member of the Attorney General's National

and International Pro Bono Coordinating Committees, she is also a member of the Employment and Education Taskforce Governance Expert Working Group.

**Robin Knowles CBE, QC** (Chair of the Working Group) is a practising barrister and a Council member of the Civil Justice Council. A former Chairman of the Commercial Bar Association of England & Wales, alongside his commercial law practice as a Queen's Counsel he sits part-time as a Recorder in the Crown Court and as a Deputy High Court Judge. He is an accredited mediator and an ICC arbitrator. He was a member of the Aikens Working Party on Long Trials.

In the field of pro bono legal services he is:

- Chairman of the Bar Pro Bono Unit, of Bar in the Community, of Pro Bono in the LMC (London Muslim Centre), and of University House (Legal Advice Centre) (a front-line legal advice agency in the East End that has just celebrated its 70th birthday)

- A Trustee of the National Pro Bono Centre, of LawWorks (the Solicitors Pro Bono Group), of the RCJ Advice Bureau, of ProbonoUK.net, and of Law for Life (formerly PLENET)

- A member of the Advisory Council of i-probono, a member of the Delivery Group of the Slynn Foundation (and the former Chairman of the Advisory Council of Advocates for International Development (A4ID)).

- A member of the Attorney General's National and International Pro Bono Coordinating Committees (and in that capacity chaired the Working Party that led to the establishment of the Access to Justice Foundation).

He was awarded the CBE for service to pro bono legal services in 2006.

Outside the law, he is the Chairman of the newly-merged UK charity for palliative care for life-limited children and young people (Together for Short Lives), the Chairman of Richard House (London's first children's hospice), and the Chairman of the trust restoring the world's oldest surviving steam coaster.

**Alison Lamb** is the Chief Executive of the RCJ Advice Bureau. Before taking that appointment she was a Director of ADP Consultancy, providing consultancy primarily to the advice sector in the UK and internationally.

Before that she worked within the Citizens Advice movement for a number of years, managing Nottingham and District CAB and as Area Development Officers for (as it was

then known) the National Association of Citizens Advice Bureaux. Alison was also National Membership Director at Advice UK for 5 years.

She is a Trustee of "Rights of Women".

**District Judge Margaret Langley** is the Chair of the London Association of District Judges. She is the Senior District Judge and Senior Chancery District Judge at the Central London County Court. As such, she has extensive experience in dealing with self-represented Litigants in a variety of cases and situations.

She is also:

- Deputy Costs Judge at the Senior Courts Costs Office
- National Coordinator of Regional Costs Judges
- Chair of the London Mediation Committee

She is a contributor to Civil Procedure (the White Book) and to Greenslade on Costs, and a tutor and lecturer for the Judicial College.

**Vicky Ling** is joint editor (with Simon Pugh) of the Legal Aid Handbook 2011-12, published by Legal Action Group, and a member of the Law Consultancy Network. She is a Chartered Quality Professional and Management Consultant and has advised over 200 firms of solicitors in England and Wales and many not-for-profit agencies providing legal advice.

She was a founder member of the Civil Justice Council and is currently serving a second term.

She is a long serving member of the Lewisham CAN Trustee Board, of which she has been Chair for two period. She is also a Trustee representative on the Joint Negotiating and Consultative Committee with Unite, the trades union.

**Judith March** is the Director of the Personal Support Unit, which celebrated its tenth birthday in February 2011. Her background is in the public sector, providing education services for children and young people with special educational needs or excluded from schools. She is a member of the Attorney General's National Pro Bono Coordinating Committee.

**John Sorabji** is a barrister and the Legal Secretary to the Master of the Rolls. He has a long-standing interest in the civil justice system and is, amongst other things, a regular contributor

to and assistant editor of the Civil Justice Quarterly and assistant editor of the International Journal of Procedural Law.

He is also a senior fellow in the Judicial Institute at University College, London.

**Rebecca Wilkie** is the Chief Executive of the Bar Pro Bono Unit. She recently obtained her MSc in business administration. Before moving to the Bar Pro Bono Unit she worked for Hogan Lovells (as it is now named) and LawWorks.

She is also:

- A Trustee of Advice Services Alliance
- A Trustee of Blackfriars Settlement
- A member of the Attorney General's National and International Pro Bono Coordinating Committees

She has just given birth to Harry.

## The Working Group was assisted by

| | |
|---|---|
| **Mizan Abdulrouf** | Legal Assistant, Head of PBLMC (ProBono in the London Muslim Centre) |
| **Toby Brown** | Barrister, Officer of the Access to Justice Foundation |
| **Alex Clark** | Secretary to the Civil and Family Justice Councils |
| **Graham Hutchens** | Systems and Finance Manager, Civil Justice Council |
| **Chris Morris-Perry** | Assistant Secretary to the Civil Justice Council |

# Other contributions to the Report

It was not the task of the Working Group to conduct a consultation. However, the list below is of those outside the Working Group membership whose views or information have, directly or indirectly, contributed to work on the Report. Their readiness to give their time and assistance is acknowledged with thanks.

The Working Group would like to record its gratitude to the many individual judges who sent suggestions when they learned about the Working Group's inquiry.

Access to Justice Foundation

Administrative Justice & Tribunals Council

Bar Pro Bono Unit

Citizens Advice

Civil Justice Council

Civil Sub-Committee of the Council of Her Majesty's Circuit Judges

Commercial Litigation Association

County Court Issues Group

Help4LIPs

(Staff from) HM Courts and Tribunals Service

(Individual members of) the Judiciary

ILEX Pro Bono

Law Centres Federation

Law for Life

LawWorks (the Solicitors Pro Bono Group)

Legal Services Commission

Ministry of Justice

Personal Support Unit (including PSU Cardiff's Advisory Committee)

Pro Bono in the LMC (London Muslim Centre)

Professor Richard Grimes OBE

Professor Richard Moorhead

Professor Richard Susskind OBE

RCJ Advice Bureau

(Individual) self-represented litigants

Zacchaeus 2000 Trust

# Appendix 1

## Suggested Draft Guidance on what Court Staff can and cannot do for a self-represented litigant

1. Court staff are ready to help you in whatever way they can. Please understand that court resources and the time available to staff are limited.

2. Their role is to provide you with information about the court and how to use the court. They can give you general information on court rules, procedures and practices. They can provide you with forms or tell you how to obtain them. They can give you information on court calendars on how to schedule a hearing.

3. They cannot give you legal advice about your case. They cannot tell you what to say in court. They cannot tell you what a judge might do. They cannot give you advice about whether you should file a case or whether you should take any particular action in a case.

4. They may be able to give you some help in completing some forms, but they cannot tell you what to say in a form about your case.

5. They have been instructed not to answer questions if they do not know the answer.

6. They may refer you to other resources to assist you in getting the information you need.

7. They may be able to give you information about where you might be able obtain advice from, and especially (where known to them) about where you might obtain assistance from an advice agency.

8. If they see that you have made a mistake (for example you have not filed or served the right papers) they can normally tell you.

# Appendix 2

## Suggested Draft Guidance for legal professionals representing against a self-represented litigant

1. Where a self-represented litigant is involved in a case the court will expect the legal representatives for other parties in the case to do what they reasonably can to ensure that the self-represented litigant has a fair opportunity to prepare and put his or her case.

2. Of particular importance in such a case are the existing duties of an advocate:

   2.1 to ensure that the court is informed of all relevant decisions and legislative provisions of which he or she is aware (whether favourable to the case he or she is advancing or not); and

   2.2 to bring any procedural irregularity to the attention of the court before or during the hearing.

3. In the conduct of such a case, the legal representatives for other parties should take particular care:

   3.1 to use language that the self-represented litigant will understand;

   3.2 to keep to the timetable and the directions that the court has given in the case;

   3.3 to give the self-represented litigant advance notice when the timetable cannot be met;

   3.4 to co-operate if the self-represented litigant requires additional time and it is reasonable to agree that time; and

   3.5 unless the court otherwise directs or allows, to copy to the self-represented litigant at the same time as they are provided to the court, every communication with the court in relation to the case, including written arguments.

4. In preparation for any hearings, the court will expect the legal representatives for other parties to the case to ensure that:

   4.1 all necessary bundles of documents are prepared and provided to the court (unless the self-represented litigant confirms that he or she will undertake that work);

   4.2 copies of the bundles are provided to the self-represented litigant at the same time as they are provided to the court;

   4.3 unless it is wholly unavoidable, written arguments and documents are provided to the court and the self-represented litigant in good time before any hearing; and

   4.4 where necessary, the order made by the court is drawn and sealed promptly (unless the self-represented litigant confirms that he or she will undertake that work).

5. At all times the legal representatives for other parties are expected to treat the self-represented litigant with courtesy and respect and:

   5.1 in correspondence, to be polite and factual and not intimidatory;

   5.2 before any hearing at court, to be ready and willing to speak to the self-represented litigant about any matter which can reasonably be answered or discussed prior to the hearing if the self-represented litigant has any questions or wishes to raise any matter; and

   5.3 after any hearing at court, unless there is good reason to the contrary, to be ready and willing to speak to the self-represented litigant about the outcome of the hearing and any orders made by the Court.

# Appendix 3

## Suggested Draft statement of what a self-represented litigant is entitled to expect from legal professionals representing other parties in the case

If you are representing yourself in a case and there are legal professionals representing other parties in the case, then among the things you are entitled to expect from those legal professionals are:

1. that they will treat you with courtesy and respect.
2. that they will keep diligently to the timetable and the directions that the court has given in the case, but give you advance notice when the timetable cannot be met.
3. that they will co-operate if you require additional time and it is reasonable to agree that time.
4. that unless the court otherwise directs or allows, they will copy to you at the same time as they are provided to the court, every communication with the court in relation to the case, including written arguments.
5. that, unless it is wholly unavoidable, they will provide you with any written arguments and documents in good time before any hearing.
6. that before any hearing at court, they will be ready and willing to speak to you about any matter which can reasonably be answered and discussed prior to the hearing if you have any questions or wish to raise any matter.
7. that after any hearing at court, and unless there is good reason to the contrary, they will be ready and willing to speak to you about the outcome of the hearing and any orders made by the Court.

| | |
|---|---|
| **Name of court:** | |
| **Claim Number:** | |
| **Case Name:** | |
| **Date** | |

# Appendix 4

## Suggested Draft Notice of McKenzie Friend

Please fill in the form, take it to the hearing and hand it to the court staff or judge.

To the court:

**A**

**To be completed by the Claimant or the Defendant**

I am the claimant (  ) defendant (  ) (please tick) in this case

A hearing is to take place in this court on (  insert date  ) at (  insert time  )

I am bringing a McKenzie Friend with me to the hearing

If the Judge agrees, do you want the McKenzie Friend to speak for you at the hearing? Yes / No

The McKenzie Friend is (please tick)

(a) a relative (please give relationship) ☐

(b) a friend/ neighbour/ colleague/ other (please specify) ☐

(c) an advice agency worker (the service is free) ☐

(d) a person I am paying to help in this case ☐

If you have ticked box (c) or (d) above, please say what agency or organisation or association the person belongs to (if any):

Name and Address of McKenzie Friend
(business address if (c) or (d) above has been ticked)

**B**

**The McKenzie Friend should complete below.**

1. Have you read the Code of Conduct for McKenzie Friends? Yes / No
2. Do you agree to comply with it? Yes / No
3. Do you have a legal qualification? Yes / No
   (please specify)

# Appendix 5

## Suggested Draft Code of Conduct for McKenzie Friends

1. When someone involved in a court case asks another person to assist, not as a lawyer or a witness but as a friend, the person assisting is often called a "McKenzie Friend".

2. This Code of Conduct summarises what is involved if you are asked to be a "McKenzie Friend", and what the Court will expect of you.

3. Detailed guidance (the Guidance) was issued on 12 July 2010 by the Head of Civil Justice and the Head of Family Justice, and you should read that. It is available online at http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf and a hard copy can be obtained from [ ].

4. If you follow the Guidance and this Code of Conduct then your involvement may be of material help to the person you are assisting and to the Court.

5. If you have a financial interest in the outcome of the case you should normally decline to assist.

6. If you have a personal interest in the outcome of the case then before agreeing to assist you should think about whether someone else who does not have a personal interest might be better placed to assist.

7. You may attend the hearing of the court case unless the Court says you cannot.

8. You may read the papers for the court case unless the Court says you cannot.

9. You should let the staff at the Court know as soon as you arrive that you have been asked to assist.

10. You should bring a short curriculum vitae (cv), and if you are asked by the Court staff to complete a short set of questions about yourself you should do so.

11. If you are being paid to assist or if you regularly assist a number of different people as a McKenzie Friend then you should make the Court aware of that.

12. The Guidance makes clear that you may provide moral support, take notes, help with case papers and give advice to the person you are assisting.

13. Normally the person you are assisting will be the one to speak to the Judge. But if that person cannot manage, the Judge may let you speak instead.

14. You must always follow any instructions given by the Judge.

15. If the Judge asks the person you are assisting to do something, please encourage them to do it, and remind them of any deadlines.

16. You should be courteous at all times to everyone else.

17. You should try to ensure that the way in which you assist does not cause any disruption or distract others. This is particularly important when someone else is speaking to the Judge or the Judge is speaking.

18. You must behave with honesty and not do anything that might mislead the Court or anyone else.

19. You should consider at regular points whether the person you are assisting might also be helped by attending a Citizens Advice Bureau, Law Centre or Personal Support Unit. If you conclude that they might, you should give genuine and conscientious consideration to encouraging the person you are assisting to seek that further help. If may be very helpful if you go with them.

20. Please remember at all times that you are there to assist someone else, and not on your own behalf.

# Appendix 6

## Using a further sum of money well

As indicated above, in the course of its work the Working Group was recently asked by the Ministry of Justice to extend its remit so as to include its recommendations for the expenditure, to help address the issues under consideration, of a sum if a sum was available but was only available to be spent in the year ending March 2012.

The sum would be modest in the context of what is at issue, but a large sum in the context of the limited time available. There is precedent for using well an amount provided under these time constraints[120]. It is particularly important to focus on opportunities that offer potential to develop strategy or innovation, to prepare for the increase in self-represented litigants and to avoid people regarding the system as unavailable to them.

Any distribution of monies should be through a fair and transparent process, and against criteria, but from the vantage point available to them the Working Group, acting as a whole, would make the recommendations itemised below by way of example.

Inevitably, given the combination of experience drawn together with the Working Group, individual members of the Working Group have an involvement with some of the organisations the subject of the recommendations itemised below. The short biographies that are included in the report will help with transparency in this regard. It is by reason of the involvement mentioned that the recommendations are given by way of example.

**(1) A series of one-off training seminars across England and Wales for local Court Staff and call-centre staff (and also attended by local advice agency staff) on service provision to self-represented litigants.**

**(2) A programme of "Square Table" discussions[121] at each Court centre to focus on the development of service for self-represented litigants, with the conclusions reached to be collated and shared nationally.**

[120] See www.30millionstars.org.uk where the national children's palliative care charity ACT (recently merged with Children's Hospice UK to become Together for Short Lives) records the projects and resources completed from the Department of Health £30 million children's palliative care funding programme launched in Summer 2010 with funding to be spent by April 2011.

[121] A series of 41 "Square Table" discussions, funded by the Department of Health under the £30 funding programme referred to above have been held throughout the United Kingdom in the last year with very valuable results. These involve a conversation, guided by a facilitator who has received training, between representatives drawn from as wide a range of interest or perspective as possible, each taking an equal seat at the table. In the current context, places at the table would be taken by (among others) judges, court staff, PSU volunteers, self-represented litigants, McKenzie Friends, lawyers, academics, law students, advice agencies, pro bono organisations, social welfare organisations, local authorities.

**(3) A resources room in each court centre to include an internet-connected computer with printer, access to which is administered by the Personal Support Unit or other on-site advice agency, available for use by self-represented litigants (supported in their use, as necessary, by PSU or advice agency volunteers)[122].**

**(4) For a fixed transitional period fund (a) a LawWorks project manager to establish more pro bono advice clinics in areas of greatest need; and (b) an Access to Justice Foundation manager to work on the search for new ways of funding the infrastructure to support pro bono initiatives.**

**(5) Introduce enhanced computer hardware at all Law Centres.**

**(6) Enable Advicenow to review and enhance its website and leaflets (and including ensuring the proposed leaflets being developed in conjunction with RCJ Advice Bureau will be suitable for use across England and Wales).**

**(7) Enhance the impact of the 10 recommended immediate actions, including through the appointment of a project manager to provide oversight and support across all actions.**

**(8) Achieve acceleration of the 10 recommended medium term actions on:**

- **Court forms and leaflets**
- **Primary website**
- **Personal Support Unit roll-out**
- **LawWorks Initial Electronic Advice.**

**(9) A thorough mapping of pro bono and advice agency provision across England and Wales.**

**(10) Research into self-represented litigant numbers, make-up, trends and experience, including (in collaboration with Dutch and US work in this area) into the potential for knowledge base systems that can help people analyse a problem and reach a decision.**

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[122] See further "Justice in a time of economic crisis and in the age of the internet", High Sheriff's Lecture 2011, Leeds, 13 October 2011, by Lord Neuberger MR, at 27.