

Litigants in person in Northern Ireland: barriers to legal participation

Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord



Briefing Paper 5:
Improving the experience of going to court
without a lawyer

LIPNI study overview

The Litigants in Person in Northern Ireland study looked at people who were involved in civil or family proceedings without representation by a lawyer. They are known as litigants in person (LIPs). The study was interested in people who had taken a legal route to solve an issue, and not those who were involved in mediation or other types of dispute resolution.

Civil and family law in Northern Ireland is similar to that of England and Wales; Scotland has a different legal system. Legal Aid is available in all parts of the United Kingdom, but is more limited in England and Wales than in Northern Ireland or Scotland. The similarities between the Northern Ireland legal system and other legal systems like England and Wales mean that this research will be relevant to all of these legal systems. The difficulty for LIPs in Northern Ireland is that there are still some differences in the law in Northern Ireland that LIPs may need to know about.

The study investigated the experiences of litigants in person (LIPs) to assess their access to justice rights. This examined the right of LIPs to a fair trial. It also tested a model of providing advice on legal procedures to LIPs to see whether it was effective. From September 2016 to August 2017, data from people who took part in the research study were collected in civil and family courts in Northern Ireland.

The participants included:

- 179 LIPs: 49 women, 126 men; 3 couples and 1 group counted as one LIP each.
- 13 members of the judiciary
- 7 legal representatives
- 11 members of Northern Ireland Courts and Tribunals Service
- 5 Court Children's Officers
- 3 people who act as McKenzie Friends

The data were interviews from all participants and court room observations. LIPs also completed a questionnaire about their experiences of self-representing and their demographic background. These qualitative and quantitative data were analysed and the results are presented in the main report and the summary report, available at:

www.ulster.ac.uk/litigantsinperson

There are five briefing papers which summarise the research study :

1. Litigants in person and access to justice

2. What's it like to go to court without a lawyer?

3. Can litigants in person participate in court proceedings?

4. A model of procedural advice

5. Improving the experience of going to court without a lawyer

Improving the experience of going to court without a lawyer

Introduction

LIPNI Briefing Paper 5 is a short summary of the conclusions and recommendations of our research on how the experience of going to court without a lawyer could be improved. It describes some of the problems litigants in person (LIPs) face in a system that is not designed for their needs and the changes that we think are required to protect their right to a fair hearing. The full list of recommendations is available in our main report at: <https://www.ulster.ac.uk/litigantsinperson>.

LIPs in the system

Our study found that the court system expects that litigants will be represented. Court proceedings are based around this being 'normal' practice. Litigants in person (LIPs) did not follow this 'normal' practice and while the court was sometimes able to adapt to this difference there were times when LIPs were not fully accepted as legitimate court users.

Access to justice requires that everyone has the right to a fair hearing. Two of the protections of this right are effective participation and equality of arms. Effective participation means that the LIP is able to influence the court proceedings by their participation. Not all LIPs in the study were able to participate effectively. This is because they were not able to access information that could have helped them to represent themselves, they did not have a good enough understanding of the law and legal procedures, or they were too emotionally involved to be objective about their own cases. Equality of arms means that there is a fair balance of opportunities for all parties to present their case. Equality of arms was threatened when LIPs were not given enough of an opportunity to present their case. We explain these rights in more detail in Briefing Paper 1 on 'Litigants in person and access to justice'.

There will be times when it will be necessary for a litigant to have legal representation to protect their right to a fair trial. This is likely to be where the case is too complex or the litigant's ability to self-represent is too limited. In some cases it will not be clear when representation is necessary. Our research points out where the risks of breaching the right to a fair trial lie.

Most LIPs in our study would have preferred to be legally represented. For those who cannot afford it or prefer to self-represent, their right to access a court requires the State to ensure the disadvantage of self-representation does not result in unlawful discrimination. This does not mean that LIPs must be turned into lawyers to pursue their cases. Instead, a change in the orientation of the court service is required which places the needs of all court users on a more equal footing. This cultural change also requires changes to some administrative procedures, the development of support and information for LIPs, specific judicial techniques and professional legal education. To improve the experience of LIPs and the effectiveness of the court system the recommendations from this research need to be adopted in a holistic rather than piecemeal way.

Our recommendations are based mainly on the data gathered for this report: from LIPs and court actors (judges, legal representatives, court staff, children's court officers and McKenzie Friends). We also had an Advisory Group to help with the progress of the research and to review the recommendations. Not all of the members of the Advisory Group agreed with all of our recommendations. This meant we had to be sure that we could still stand by the recommendations. We were able to do this by making sure the final recommendations reflected the issues that came out of the data, as well considering different ideas about how problems could be solved and the insights from academic knowledge of access to justice solutions in other countries.

Cultural change

There should be an acceptance that LIPs have a right to be in the court system. This means accepting that LIPs behave differently and have different needs to solicitors and barristers: they take longer, they do not understand the legal procedures, and the rate of possible mental ill health is likely to be high. This tells us that changes to the court system need to take account of the views of LIPs and we think that the best way to do this is to involve LIPs in making decisions about the changes that need to happen. We think this is the most important recommendation of all.

LIPs told us that they did not know what was expected of them at court or how to behave. They did not know how others were supposed to behave or what the roles and responsibilities of other court actors was. Court actors also said that LIPs should be told how everyone is supposed to behave. We think there should be a Charter of Rights and Responsibilities that applies to everyone at court, that lets LIPs and court actors know what they should expect from each other.

Administrative change

There was no way of knowing whether someone was a LIP until they turned up at court and we think that there should be a better way to know whether someone going through the court system has a lawyer or not. This would help the court service know how many LIPs are in the court system at any point in time and make it easier to create reliable methods for contacting LIPs. We think this is very important when LIPs do not attend their court hearing, or live outside Northern Ireland. We also think this might allow LIPs to be given specific time slots for their hearings and help the court service know better what resources they need to support LIPs.

We know that LIPs looked online for information. This tells us that LIPs are likely to find online resources helpful. There are lots of good examples of how court services can be brought online, including through the development of apps and making existing court forms interactive so they are easier to complete.

Access to legal services

LIPs told us that one of the main reasons they did not have a lawyer was because they could not afford one. We think that there should be a review of Legal Aid to make sure that LIPs who have complex cases or do not have the capacity to represent themselves are not being disadvantaged. We also think that lawyers should consider how they might provide ‘unbundled services’ which are discrete pieces of work at a set price.

More information

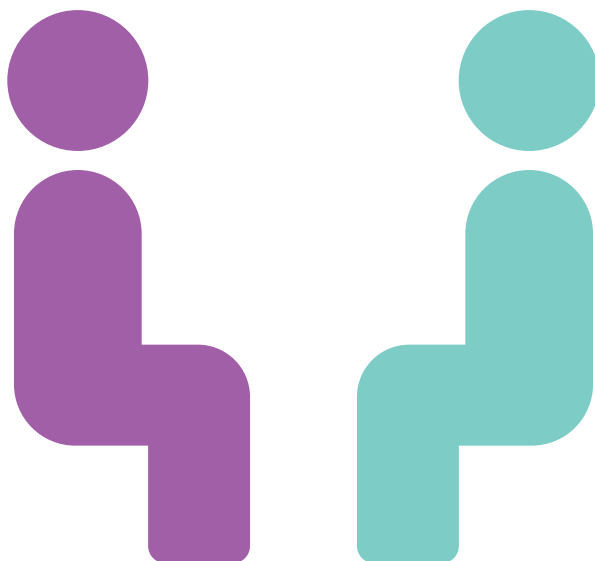
We found that LIPs did not know what to expect in their legal proceedings and this was frustrating and upsetting for many. We think that an orientation course should be developed to introduce LIPs to the court system.

LIPs made lots of efforts to prepare for their hearings and this tells us that if there were good sources of information for them these would be very helpful. We think the development of information sources for all litigants should adopt user-focused design principles to make sure that the information is accessible by those who need to use it. LIPs needed better information on court procedures and relevant law, as well as guidance on how to complete court forms and documents. Because LIPs often did not know if they could rely on some online information we think that the Northern Ireland Courts and Tribunals Service should be in charge of these new information sources for litigants. That would mean that the court service should get additional resources so that they can do this.



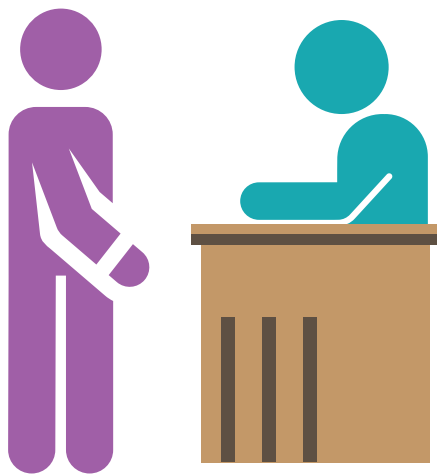
More Advice

LIPs spoke about the lack of a place to go to get help. This tells us that there should be a support unit that can provide procedural advice, information and guidance. Procedural advice is about giving people neutral advice or information that is intended to inform their decision. It helps the person think through their options and decide for themselves the best approach to their case. This is different from legal advice which looks at the merits of the person's case and suggests a legal strategy. Legal advice is intended to influence or guide a person's decision by setting out the pros and cons of different legal positions. We learned from the procedural advice clinic that the Northern Ireland Human Rights Commission set up for this research project how important it is to have a professionally qualified lawyer providing procedural advice. This is because a lawyer will be able to understand clearly the difference between legal and procedural advice. As most LIPs are in contact with the court service during their court proceedings we think the support unit should be located at court buildings.



Judicial support

Judges play a critical role in protecting the right to a fair trial for LIPs. They need to balance judicial neutrality with making sure they get enough information from LIPs to decide the case fairly. We think that judges should get special training on this difficult issue.



In-court support

LIPs reported that having someone to accompany them in court, either for moral support, to take notes or sometimes to speak to the judge for them was helpful. It was not always clear if or when a LIP was allowed to have someone in court with them. This tells us that there should be guidelines on when a person can come into court to help a LIP and what way they might be allowed to help the LIP.

Engaging the legal profession

Some of the opportunities to resolve a case out of court were not available to LIPs. Lawyers told us that they did not get trained in how to deal with LIPs and some had bad experiences when they had been representing in a case that involved a LIP. This tells us that lawyers need professional legal education and training on how to represent clients against LIPs. We think this should include encouraging lawyers to see how ideas of 'fairness' in the legal system should be seen from the litigant's perspective, as well as how lawyers can be supported in dealing with difficult litigants and LIPs.

Policy development

We met LIPs during the research who stopped engaging in their legal proceedings, and we do not know enough about why these people dropped out of the legal system. We also do not know enough about other people who did not use the court system to resolve their legal problems and whether improvements to the system to support litigants would encourage more people to resolve their problems through the courts. This tells us that we need better data to understand the demand for court services and the reasons why people do not engage with the court system. One of the ways to get this data would be to conduct a legal needs survey for Northern Ireland. The last legal needs survey for Northern Ireland was conducted in 2006.

59% of the LIPs in our research sample scored highly on a general health self-assessment, which indicates they may have had mental health problems. We think that there should also be an assessment of potential mental health problems among represented litigants. We know from other research that there is a relationship between mental illness and rights problems. We think that a co-ordinated approach between mental health services and legal advice services might improve health and justice outcomes.¹ We recommend that the government should develop a plan for health-justice partnerships in Northern Ireland.

Integrating changes

We know that reforms are needed to help litigants understand the legal system and to support those who go to court without a lawyer. We think there should be an integrated, holistic approach to reform and that changes made to the system should be evaluated for their impact to allow for continuous development. We recommend that the over-arching standards for the right to a fair trial, effective participation and procedural justice are used as the evaluative framework.

Conclusion

Our research has shown that there are many ways in which the court system could be improved to make sure that the right to a fair trial is protected for LIPs. Because the experiences and needs of LIPs are so varied there is a need to implement more than one solution to overcome the different barriers that LIPs face in participating in court proceedings. Some of these solutions will be more easily achievable than others, some will require more resources than others, but none are impossible. What is most important is that future reforms to the court system, including those that we have identified, recognise that the users of the system are the litigants, not the lawyers. Litigants should be involved in making decisions about the changes that need to happen and in helping to bring about those changes to improve the legal system for those who use it and work within it.

Full report available at :

www.ulster.ac.uk/litigantsinperson

¹ Pleasence, P. and Balmer, N.J. (2009) 'Mental health and the experience of social problems involving rights: Findings from the United Kingdom and New Zealand', *Psychiatry, Psychology and Law*, 16(1), pp123-140; The Low Commission and Advice Services Alliance (2015) The role of advice services in health outcomes – Evidence review and mapping study. Available at: <https://www.lowcommission.org.uk/News/Advice-and-Health>

This project was funded by the Nuffield Foundation, but the views expressed are those of the authors and not necessarily those of the Foundation.

Design by Mat Wylie / Ulster University



NORTHERN IRELAND
HUMAN RIGHTS
COMMISSION



Nuffield
Foundation

