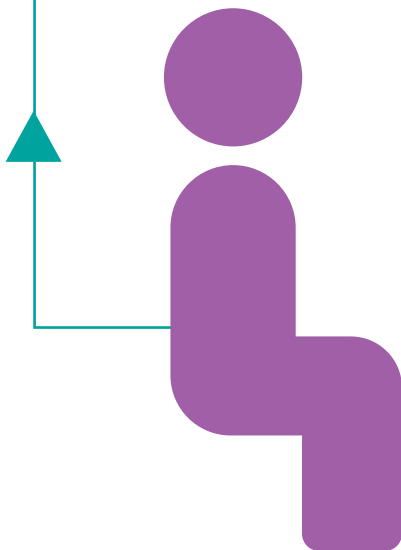


Litigants in person in Northern Ireland: barriers to legal participation

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Briefing Paper 4:
A model of procedural advice

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

A model of procedural evidence

Introduction

LIPNI Briefing Paper 4 reports on the experimental part of the study: procedural advice offered to litigants in person (LIPs) in the study. Procedural advice is neutral advice or information that is intended to inform a person's decision. It helps the person think through their options and decide for themselves the best approach to their case. It is different from legal advice which looks at the merits of the person's case and suggests a strategy. Legal advice is intended to influence or guide a person's decision by setting out the pros and cons of different legal positions. LIPs' perceptions of how procedural advice helped them when they were litigating in person and the limitations of the service are discussed, as well as the methodological challenges to offering the advice we encountered.

Litigants have a right to represent themselves in civil and family courts. The State is required to make sure that LIPs can participate effectively in their court proceedings but our research shows that there are barriers faced by LIPs that need to be removed to protect their rights. As part of our research, we worked with the Northern Ireland Human Rights Commission who set up a procedural advice clinic for some of the LIPs in our study. We examined whether procedural advice could help LIPs overcome some of the barriers they faced.

What did the procedural advice clinic do?

The clinic was developed and run by a qualified lawyer in the Northern Ireland Human Rights Commission. Its development was informed by a visit to the Royal Courts of Justice in London to observe both the procedural advice service offered by Citizens Advice and the pastoral support provided by the Personal Support Unit. The clinic was designed to provide procedural rather than legal advice. The clinic adviser had to be very careful not to cross the line between procedural and legal advice.

The clinic was designed to support the level of understanding of each LIP, which was different for each individual. This approach was intended to help LIPs understand the options they were considering, and to assist them to present their best case.

The clinic adviser gave advice to 25 LIPs in the study who were in family or Ancillary

Relief cases. Mostly, they met the adviser face-to-face, though some LIPs phoned the adviser too when it was not convenient to visit her or needed to check something quickly.

Advice given

Understanding the law

The clinic adviser helped LIPs understand how to build their cases and make use of legal resources. Some LIPs did not know where to find the law they needed or how to use it. The clinic adviser was able to provide the relevant legislation (the laws made by parliament) or case law (the decisions made by judges) for LIPs to help them understand the legal position.

Applying the law

She advised LIPs on how to focus their arguments so that they could apply the law to the facts of their own case. For this, the clinic adviser coached LIPs on how to apply key legislation or legal principles, where it was clear that LIPs did not understand these legal tests. This included helping LIPs consider which arguments were relevant to their cases and which arguments were not. This was designed to help LIPs concentrate on what the court would be focused on in making its decision. It also encouraged the LIPs to keep their arguments short and to the point, as well as helping them to think about how to phrase cross-examination questions. The adviser also helped LIPs identify ways to progress their cases, suggesting information sources or other advice organisations that they could use.

Court hearings

LIPs were advised on how to prepare for their next court hearing and what was expected of them in court. For example, LIPs were advised that the judge would expect their arguments to be brief and relevant. They would be expected to be courteous and respectful to the judge and other party, and they would need to focus on the arguments of the other party rather than on any personal characteristics or behaviour. The adviser helped LIPs to think about the perspectives of the judge, the other side, as well as those of the Court Children's Officers and social workers who might be helping the court makes its decision. This also helped LIPs understand how each of these court actors might react to different arguments.

LIPs discussed their concerns with the clinic adviser about managing their nerves or avoiding emotional outbursts in court.

Negotiating with the other party

The adviser was able to help LIPs consider how they could contact the legal representative of the other party, and why it might be helpful to do this. This included identifying how LIPs could negotiate with the representative on the other side to help resolve some issues in their cases. The adviser explained how negotiations usually worked by getting LIPs to think about what the main or most important issue was for them, to recognise that negotiation usually requires both sides to compromise on some issues, and how to phrase these negotiations without losing any tactical advantage.



LIPs' perceptions of the clinic

LIPs were very positive about the clinic, with most of them recommending that there should be a procedural advice clinic for all LIPs. They told us that having someone knowledgeable and professional to talk to and who could check their understanding was helpful and gave them more confidence:

“Extremely helpful. First of all, [the clinic adviser] knows a lot, and she could advise me on the legal proceedings. She helped me with the forms. She answered all my questions. It’s helped. I felt much more confident than the books, it’s a different thing talking just to the right person than finding information on the internet.”

Some said they appreciated being taken seriously and listened to, often when they felt isolated and intimidated by the prospect of court. In the words of one LIP, the clinic provided “a human element... A wee bit of empathy, and a bit of sympathy.”



LIPs often described how the advice helped them see their cases differently. This might include being more realistic about what they could achieve through their court hearing. LIPs also reported that it encouraged them to consider negotiated settlements. They found it helpful to be able to get feedback from the clinic adviser on the arguments they were preparing for their court hearing. This was described by LIPs as improving their ability to focus, and helping some LIPs avoid becoming frustrated.

LIPs reported that the clinic helped them develop greater skills in managing their emotional responses in court. LIPs described the clinic as having boosted their confidence and peace of mind, and reducing their anxiety about their upcoming court appearances. They said that this reassurance and emotional support, along with feeling more prepared and knowledgeable because of information and skills the clinic adviser had provided, helped them to be calm and articulate in court. As one LIP explained, having the procedures explained to her steadied her before going into court, which she said was like when “you’re going into an exam, and you find out what’s going to be in the exam.”

The reports from LIPs about how the advice helped to calm them told us that a limited understanding of the proceedings and the difficulties in finding information were linked to LIPs’ being emotionally distressed about their cases. Access to information about self-representation may help to reduce some of the distress the LIPs were feeling.

We observed some LIPs implement the advice they had received. For example, they took notes, asked for clarification and controlled their emotions. Others felt the gap between what they needed to be able to do to represent themselves and their actual level of ability was still too great. For example, they did not take the paperwork they needed on the day, were unfocused when they spoke or the court proceedings went over their heads.

What were the limitations of the clinic?

LIPs said that there were some limitations to the procedural advice clinic. These were either that the advice was ‘too little’ or ‘too late’.

‘Too late’

‘Too late’ meant LIPs felt they would have benefited from advice much earlier. LIPs in the study often reported that they had learned as they went along how the court system worked and how to manage courtroom appearances. Most of the LIPs who attended the clinic were already part-way into their cases. Some LIPs therefore felt they would have benefited much more if the advice had been provided at the outset of their cases so getting off to a better start, and possibly speeding up the progress of the case. They felt that this would have helped them avoid mistakes that they made, for example submitting the wrong forms or choosing which court to make an application to, and that this would then have saved them a lot of stress. We know these mistakes can have an impact on the court service, causing delay and frustration for LIPs, judges, court staff and the legal profession.

‘Too little’

‘Too little’ meant that the remit of the clinic was too limited, or not of the right type. In some cases, LIPs wanted the clinic adviser to direct them so they would know which argument was better or which decision they should make. For these LIPs, it seemed clear that they really wanted legal advice. On a couple of occasions, the adviser could see that the LIP really needed legal advice.

Some LIPs wanted someone with them in court to help them at that moment, especially where the case seemed to move in a different direction from what they had prepared for. Not all LIPs who attended the clinic were able to put the advice they had received into practice, even though they tried to do so. While many LIPs felt that the clinic boosted their confidence and supported them, the help was not enough to match the advantages of legal representation on the other side. This told us that the type and range of work the clinic does will influence how useful different LIPs will find it.

Methodological challenges

Recruiting LIPs to the clinic was not straight-forward. We invited 56 LIPs to attend the clinic, but only 25 actually attended. Eleven refused the offer on the spot. The reasons given included that the LIP was at the end of proceedings, too far in to get someone on board with their case and that they were happy with the support they currently had (for example, a McKenzie Friend). When they were invited to attend, some LIPs had doubts over whether procedural rather than legal advice would be valuable. They were uncertain how it could benefit them. This told us that there is no familiarity with this model of advice and that clear examples of the type of advice available may help to encourage uptake.

Twenty LIPs said they were interested in the clinic but never attended. We were able to contact some of them to ask why and there was a variety of reasons: instructed a solicitor, felt comfortable acting alone or felt the advice would make no difference to the outcome of the case. This suggested to us that this model of advice is not appropriate for all litigants, again emphasising the variety of litigants' needs and differences.

The small number of LIPs attending the clinic meant we could not conduct a comparative analysis on the attendees' pre- and post-clinic questionnaires. There was, however, sufficient qualitative data to inform the view of its strengths and weaknesses, as discussed above.

Conclusions

An adequately-resourced service providing procedural advice could have major benefits. It would help LIPs become better prepared to represent their cases. This would then improve the ability of LIPs' to engage with the court process and to have a better chance of meeting the demands of litigation. LIPs with access to procedural advice would not have to rely on court service staff to assist them as much. They would understand the value of negotiating with the other party in their case, how to focus their arguments and questions and make timely and appropriate applications. This would be of value not just to LIPs but to others within the court system.

There are two main lessons that can be learned from the procedural advice clinic. The first is the need for procedural advice early on in the process. The second is the need to have a qualified lawyer provide the procedural advice.

A procedural advice clinic on its own will not be the only improvement that is needed to support LIPs but it would be an important part of that support system. LIPs will also need better access to information, including legal resources, improved management of LIPs in the court system, and a recognition that they have a right to self-represent and should be supported in this.

Full report available at :

www.ulster.ac.uk/litigantsinperson

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