



Civil Justice Council

Third National Forum on Access to Justice for Litigants in Person November 2014 – WEB SUMMARY

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

Opening Remarks - Lord Dyson MR, Chairman of the Civil Justice Council

The Master of the Rolls (MR) welcomed everyone to the event for this "enormously important" topic, and he praised the invaluable work of those in the room in serving the needs of LiPs.

While the April 2013 reforms had acted as a catalyst for the work taking place, LiPs had been on the scene for many years. The challenge of making the justice system more accessible had become more pressing than ever.

Lord Dyson welcomed the extra funding for the LiP support strategy, and the recognition it gave the advice and pro bono sector. He described pro bono work as wonderful, but a justice system should never be wholly or primarily dependent on it.

He praised Mr Justice Knowles for his work in helping secure the funding, and for leading the work on creating this forum.

The LiP Support Strategy: a presentation

This session was chaired by **Ruth Daniel** of the Access to Justice Foundation, with the panel comprising: **Judith March** MBE (PSU), **Alison Lamb** (RCJ Advice), **Nick Gallagher** (LawWorks), **Lisa Wintersteiger** (Law for Life/Advicenow) and **Joe Murphy** (Ministry of Justice). The strategy involves funding totalling £2m to be shared between for each agency, and a key feature was collaboration and the sum of the whole being greater than the parts.

Judith explained that for the PSU the additional funds would be used to boost their expansion plan to expand to other courts. New PSUs had opened in Bristol, Newcastle and Sheffield this year, and others were in the pipeline, such as Nottingham and additional support in the Central London County Court, and others subsequently. The PSU was working with a range of stakeholders, including HMCTS in prioritising court centres. The second part of the strategy was needed to improve training and the resources available online for PSU volunteers, so they could signpost more effectively to others, especially the partners represented.

Nick said that the LawWorks role was to provide face-to-face legal advice and the

funding would also enable more in-depth advice to be offered. Advice clinics would be developed linked with PSU areas. A key feature would be developing secondary specialisation, e.g. commercial lawyer volunteers being trained up in social welfare law, and closer referral links with the national pro bono centre.

Alison said LiPs were at the heart of the RCJ advice services which offer advice and support in the courts, but also provided online resources such as *CourtNav* and a 'Going to Court' guide. The new funding stream was critical in enabling more people to be supported with telephone contact giving other legal advisers in the field access to expert advisers. The early intervention of other advice agencies is crucial too as not all LiPs choose to go to court. Data would be compiled on users assisted to help develop the service.

Lisa spoke about how the grant would assist Law for Life/AdviceNow. It would enable the existing bespoke resources for LiPs to be developed and updated, and the website to be more accessible and fitted with more sophisticated search tools. Their key involvement was in assisting people before they reached court, and the funds would assist with training and public legal educational work.

Joe said in summary that the Ministry had worked closely with all the agencies in agreeing a package of complementary measures. MoJ was very committed to supporting this work, and although it would not all address all the needs of LiPs this was a sector-led approach to improving things.

Representation of LiPs

Rebecca Wilkie, CEO of the Bar Pro Bono Unit, spoke of the Unit's work on co-ordinating pro bono advocacy and representation nationally. The Unit offered expertise in all areas of the law from 3000 barristers, including a third of all QCs. Since April 2013 there had been a 76% increase in applications for assistance. The profession offered help through the FRU (Free Representation Unit) in certain tribunals and some duty schemes were helping at particular court sessions.

Key features in the year ahead would be sharing information to ensure no duplication effort in the advice sector, and the unit aimed to have further engagement with the Bar and judiciary to increase understanding of the Unit's role and work. It was hoped operations could be scaled up in the face of increased demand for services.

Tim Fancourt QC, former Chairman of the Chancery Bar Association, spoke about duty representation schemes, including CLIPS. This had stemmed from the Chancery Modernisation Review, and a rota scheme provided advice and free representation for LiPs at the busy Chancery applications court. The judiciary had been supportive and appreciative of the scheme that had assisted 183 individual LiPs to date, and was being extended to the Central London County Court, with a possibility of regional applications. The scheme was a vital access to justice resource, and experience had shown that having procedural knowledge was more important than specialist legal experience. The scheme collaborated closely with the bar PBU, RCJ Advice and the PSU. It was modelled on a scheme in the Queen's Bench Division and the model was now being used for the Central Family Division. Positive judicial feedback was greatly appreciated by the pro bono practitioners.

Judicial perspectives

Mrs Justice **Sarah Asplin** DBE summarised the work she has been doing since being asked to lead on co-ordinating judicial activities on LiPs. Collaboration – which

had been a theme of the day – had featured heavily in her work too. There had been three main strands to the work so far:

- Judicial training, liaising with the judicial College on more tailored and LiP related material;
- Role of the professions – positive discussions with Bar Council, CILEX and Law Society on joint guidance for practitioners acting against LiPs. A first draft had been produced, and a guide for LiPs on judges and their role was being considered; and
- Developing a national network of LiP liaison judges – around 80 had now been nominated, and were establishing links locally with professions, universities and the advice sector. The aim would be to harness good practice and disseminate it more widely.

HH Judge **Graham Robinson**, DCJ for Sheffield and South Yorkshire, provided feedback from an LIP Liaison Judge. He explained that each court in South Yorkshire had a liaison judge, and the increase in unrepresented parties in court had been very noticeable. The opening of a PSU office in Sheffield (October 2014) had made an impact, and services were being developed to assist people in housing and debt cases in particular, with a duty lawyer scheme on possession claim days. This was a very challenging area, particularly in making sure people were aware of what they needed before court. At present the court had to reject many appeals based on people not having understood what evidence they needed to produce/should have been disclosed at their hearing.

District Judge **Lynda Nightingale** gave a perspective from the judicial front-line in a smaller County Court centre. This was a difficult area with many people unrepresented for major life events on the civil or family court side. Cutbacks in court resources meant low staffing levels and other problems e.g. late delivery of court files. She spoke about her efforts to directly assist Lips, sitting down and going through material with them as far as was appropriate with judicial practice, and taking time and trouble on writing clear and immediate orders and explaining them.

Information and Technology issues

Theresa Harris, Law for Life – Advicenow, took the forum through the research paper commissioned by the CJC, “*Meeting the Information Needs of the LIP*”. The work had involved a survey of the judiciary which has received an excellent response rate. The material would assist this forum and policy makers and operational delivery workers. The report summarised areas where LiPs commonly made mistakes in pursuing their cases (e.g. following directions). The needs of LiPs were also detailed in an age where they were effectively being asked to do everything a lawyer would do on a case. The report highlighted how much work there was to be done, with one obvious example being an improvement in court forms.

Professor **Richard Susskind** OBE gave a thought-provoking presentation on Online Dispute Resolution (ODR), which he was currently managing a project on for the CJC. ODR tended to take one of three forms – either a form of e-adjudication, a type of online ADR negotiation via IT or a tool for diagnosing problems. There was no doubting the huge potential it offered in terms of resolving disputes quickly and cheaply, and was thus of great relevance in the LiP context. It raised the prospect of better dispute avoidance or containment. Many people now had access to the

internet, directly or via public facilities, and to illustrate this 60million disputes had been settled on e-bay through its resolution process.

Good ODR systems were already available, and the question now was to what extent the state would take ownership of an ODR structure. In other jurisdictions e.g. Holland, British Columbia, state run services were in operation, and parking adjudications offered a UK model. There was no doubt ODR would appeal to the under 30's. It would not solve all disputes, but it was a topic that needed to be explored in greater depth and urgently.

A strategic approach: a plenary discussion

This session was facilitated by Mr Justice **Robin Knowles** CBE. A wide range of relevant topics were discussed, and these are briefly summarised below.

- The need to build a coherent support strategy for LiPs.
- The role in-house lawyers could play in pro bono was very important.
- The CLOCK partnership offered a model for a community legal outreach project run by a University law department (Keele).
- 'Pop-up' citizens' advice facilities helped reach people needing services.
- CILEX work on telephone advice, especially helped those in rural areas.
- Professional voluntary register of Paralegals now available.
- Legal Services Consumer Panel undertaking work on future legal services.
- Enthusiasm of law students, need for support and supervision. Model and umbrella insurance agreements (e.g. Lawworks) to be shared.
- Need for early identification of case issues, particularly in more complex proceedings.
- Some very basic assistance was needed and valued by LiPs – help with completion of forms, writing letters etc.
- Training and supervision also needed for junior lawyers.
- Evaluation of services needed, and evaluation of outcomes for LiPs.
- Views on LiPs from the legal community were becoming more positive and constructive.
- Some sections of profession hit hard by legal aid cuts which had an adverse effect on their doing pro bono work.
- Possibility of the FRU tribunal representation model being taken up in other parts of the country.

Reflections: a panel discussion

This was chaired by Dame **Hazel Genn** DBE, UCL Judicial Institute, with a Panel comprising: **Elisabeth Davies**, Chair, Legal Services Consumer Panel, **Peter Farr**, Secretary, The Civil Justice Council, **Michael Napier** CBE, QC, Attorney General's Pro Bono Envoy, **Matthew Smerdon**, CEO, The Legal Education Foundation and **Amanda Finlay** CBE, The Low Commission.

Amongst the issues raised by the panel, or discussed in the ensuing session were the following:

- The event had reinforced the importance of collaboration and co-ordination of services and information resources;

- The role of regulation had not really been explored, but was an important dimension;
- The event had highlighted the problem of reaching LiPs at an early enough stage;
- Some wonderful initiatives were taking place, ODR had great potential, the challenge would be joining up the dots;
- Leadership was needed and a strategic approach. The system needed to ensure it helped the most vulnerable;
- We are going through a phase of ‘making people lawyers’, the next step may be to change the system so that LiPs don’t need to ‘be lawyers’;
- The Civil Procedure Rule Committee was looking at whether certain court rules could be stripped back to a more accessible form;
- Judicial work practices should be reviewed to ensure procedural fairness;
- Public legal education should be improved, with regulators doing more;
- Possible expansion in use of legal expenses cover on house insurance;
- Role being played by unregulated sector – something to offer but protection for consumers also an issue; and
- Point made on the need for the continuation of this forum to act as a catalyst for action and assist with co-ordination and collaboration.
- Point made on the pressing need to simplify the language of commonly used court forms and write in plain English, and make available online.

Ministerial Address

Rt Hon **Simon Hughes MP**, Minister of State for Justice, provided an overview on the Government’s position, and the additional commitment as per the support strategy. This was supporting a number of existing, tried and trusted services. There was a need to look further afield at the approaches others were taking in delivering support in a time of austerity. Real issue of a justice system needing to ensure people were represented or equipped to represent themselves.

Some very positive aspects coming out of the increased collaboration for the public good. There was a need to increase efforts on ADR. Confrontation to be avoided wherever possible in resolving disputes. Vision of non-criminal courts being legal information centres as well as hearing centres. Looking again at whether a more inquisitorial approach was now needed in courts.

Closing Remarks

Mr Justice Knowles closed the event with a final overview of the day’s discussions. The LiP support strategy was very important, and he praised the MoJ for having provided funding for it. This offered an opportunity for a new working relationship and there was a great deal to be done.

Three years on from the original CJC working group report much had been achieved, and yet the justice system was still a difficult and daunting environment for LiPs.

Collaboration had been the theme of the day, but it did not happen by chance, it required hard work and continued commitment.

The law was there for everyone, but some feel that at present it is not available to them – those present needed to lead by example in ensuring people had access to justice.

