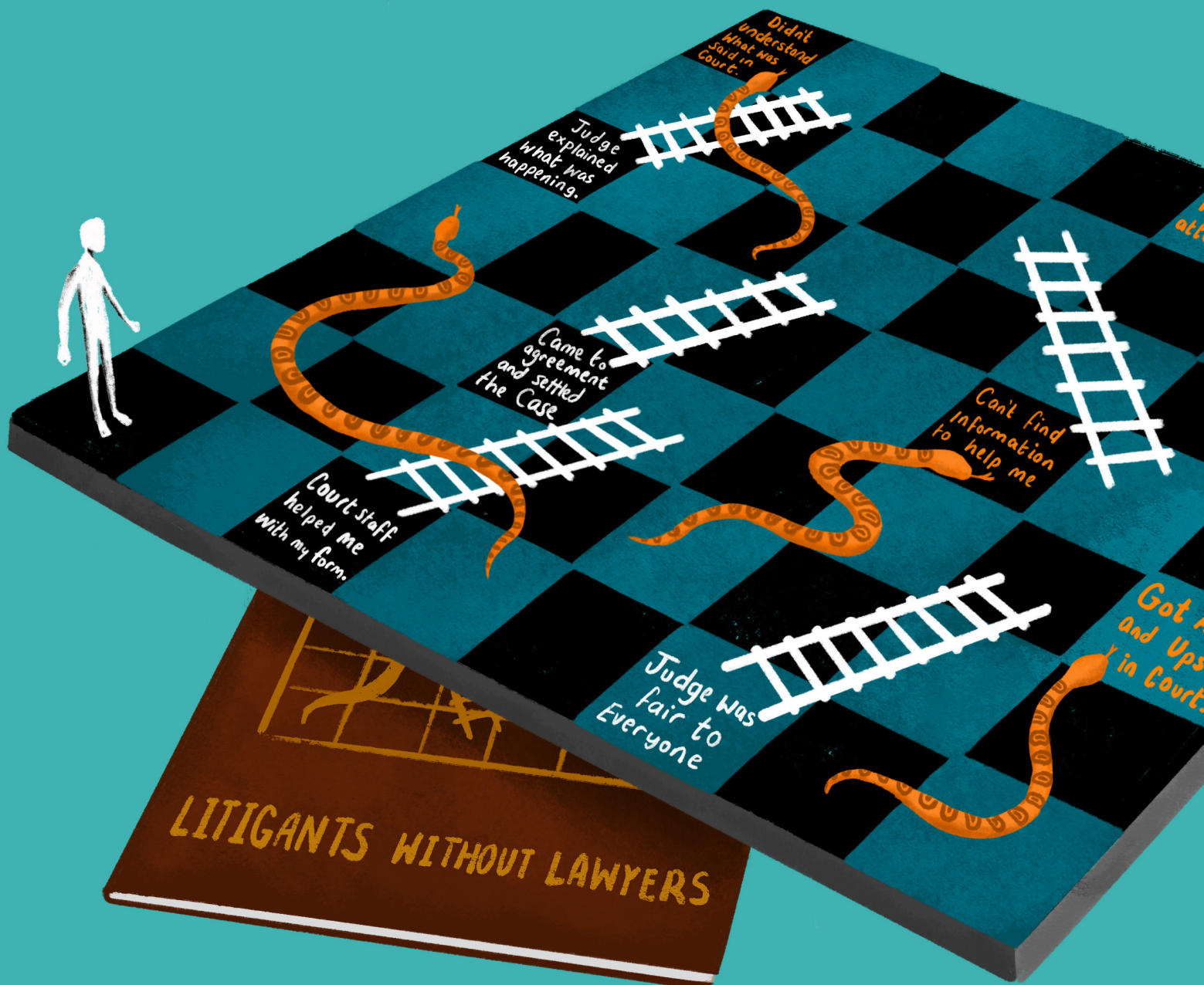


# Litigants in Person in Civil and Family Courts in Northern Ireland

Overview of research & policy developments

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## Introduction

The Nuffield Foundation has funded research in Northern Ireland from 2016-2023, examining how people who go to civil or family court without a lawyer are able to participate in their court hearings. We refer to these individuals as ‘Litigants in Person’ or LIPs. The research, conducted by a team of researchers at Ulster University School of Law led by Professor Gráinne McKeever, resulted in the publication of four reports, including a report during the pandemic on the impact of COVID-19 on family courts in Northern Ireland.

These reports respond to a gap in research and policy on LIPs in Northern Ireland. An Access to Justice Review, published by the Department of Justice in 2015 included a focus on LIPs. The Review did not provide any baseline figure from which to measure any increase, or decrease, in the numbers of LIPs in the system and there was no modelling conducted to predict future trends. From 2012-2017, NICTS management information data indicates that the number of LIPs in Northern Ireland varies across the different business areas and from year to year, averaging out at approximately five per cent of the litigant population, around 4,500 LIPs (excluding those in Small Claims cases). These figures may have changed since then but the data is not routinely collected or available.

The Review also recommended that the Northern Ireland Courts and Tribunals Service (NICTS), in consultation with the Northern Ireland judiciary, develop an action plan to facilitate access to justice for litigants in person. It did not, however, establish whether litigants in person were experiencing barriers in accessing justice, the extent to which this might be the case, or the nature of the barriers that might exist to determine how to facilitate or improve access to justice. There was no empirical data to assess whether there were any specific risks which might block the access to justice rights for litigants in person.

In Northern Ireland, as in all jurisdictions of the UK, LIPs have the right to access a public legal system and to do so directly through self-representation. This does not dilute their human right to a fair trial and if the legal system disadvantages them for representing themselves then reform is needed. The legal system has evolved over many years, proving its ability to adapt to changing circumstances, including the adaptations that are beginning to be made for litigants in person. The reports summarised below build on the strength of the legal system to meet the access to justice needs of its users, providing evidence-based recommendations of how it should continue to develop in relation to litigants in person.

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## Findings

The main findings from each report are set out here:

### 1. Litigants in Person in Northern Ireland: barriers to legal participation (2018)

LIPs face barriers in being able to participate in their court hearings that put their right to a fair trial under Article 6 of the European Convention of Human Rights (ECHR) at risk. These barriers are defined as:

- Intellectual – these relate to the limits of knowledge and understanding of legal issues by LIPs, regardless of their efforts to prepare;
- Practical – these concern the difficulties LIPs face in obtaining information, advice and resources;
- Emotional – these describe the negative emotions and high levels of anxiety that LIPs experience in the litigation process;
- Attitudinal – these reflect unrealistic expectations that LIPs can fit into the court system without any system adjustments required.

This research was produced with the Northern Ireland Human Rights Commission.

### 2. The Impact of COVID-19 on the Family Courts in Northern Ireland (2020)

When courts moved online due to COVID-19, NICTS developed LIP-specific court forms and hearing guidance. This was a positive step but the overall experience for LIPs was that they did not feel the court system treated them fairly due to delays in getting court hearings and contact with children, and the difficulty of participating in remote hearings. Specific problems arose for LIPs where there were inconsistent approaches to facilitating McKenzie Friends in hearings, inconsistencies in communications between court offices and LIPs, and where the intended support planned for LIPs was not delivered in practice.

### 3. Using human-centred design to develop empathy and supports for litigants in person (2023)

The central barrier that LIPs face in being able to participate in hearings is attitudinal (the expectation that LIPs can fit into the system). A process known as user- or human-centred design can, through empathy, counter negative attitudes held against and by LIPs by involving multiple stakeholders in developing supports for people going to court. In testing this process the research also created a public information website on [Family Court Information](#) in Northern Ireland and an [online navigation tool](#) to help identify the appropriate route litigants would need to take for their particular circumstances.

### 4. The ten descriptors of legal participation – a Q methods study (2023)

Mapping the legal requirements of Article 6 ECHR against the lived experiences of LIPs, the research produced a set of 10 descriptors of participation, using Q methodology. These descriptors identify what needs to happen in practice to meet the legal standard of participation, to prevent breaches from happening. The descriptors are relevant to each stage of the litigation process, from being able to find and understand relevant court forms to the work judges need to do to ensure LIPs understand what is happening in their hearing.

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## Recommendations:

The overall recommendations from these reports can be summarised as follows:

1. Cultural change is required across the court system to debunk the expectation that LIPs should be able to fit into the existing system.
2. There is a need to audit systems in which LIPs engage, both as a risk assessment measure and as means of identifying the most effective adaptations that would ensure the court system meets the legal standards required under Article 6 ECHR their hearing.
3. Change processes should use multi-stakeholder, co-production approaches. Human-centred design has proved to be a highly effective form of co-production to support LIPs, both to enable buy-in and to develop responsive and sustainable solutions.
4. Human-centred design is recommended for tackling both small scale and wicked legal problems.
5. There should be system-wide consideration of LIPs to ensure their differences to legally represented litigants are acknowledged and acted upon. This can be broken down into discrete elements and would include:
  - a. Identifying LIPs in the system in real-time and capturing data on their protected characteristics and case duration.
  - b. Adaptations to court forms to increase accessibility, for example: renaming court forms to reflect their purpose; auditing content for compliance with plain English and disability requirements; language translations; online submission options; document assembly of form templates.
  - c. Developing litigation information supports, including more navigation tools for other business areas, and promoting these supports to LIPs by including the relevant weblink as standard in correspondence with all litigants.
  - d. Awareness raising, training and supportive resources on managing cases with LIPs for judiciary, legal representatives, and court staff.
  - e. An aide-memoire for judges setting out the operational indicators of participation in court hearings, combined with training to promote consistency in dealing with LIPs.
  - f. Practice Direction for judges, legal representatives, Children's Court Officers, McKenzie Friends and LIPs outlining expectations of procedure, behaviour and case management where there is a LIP.
  - g. Co-produced Charter of Rights and Responsibilities and/or professional guidelines and a code of practice which all court actors and LIPs are bound by when at least one party is unrepresented.

- h. Online case management supports including LIP access to case documents and e-bundles.
  - i. Review scheduling practices for LIP hearings.
6. There is a need for ongoing monitoring, evaluation and development of initiatives to promote LIPs' participation, from generalised support through to personalised support via unbundled legal services.
7. Future research – including government funded research – should be directed towards filling knowledge and evidence gaps of broader access to justice concerns.

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## Policy developments

The research has brought LIPs into view, and they are now being considered as part of a range of policy developments that have aligned with the research recommendations:

- A [Litigant in Person Reference Group](#) was established by the Department of Justice in 2019, comprising equal numbers of LIPs and other court stakeholders, to identify ways to improve the experience of personal litigants in the court system. The Group has been part of a range of different stakeholder groups, including the shadow Civil Justice Council and Family Justice Board, and the Northern Ireland Courts and Tribunals Service (NICTS) modernisation stakeholder group.
- NICTS created LIP-specific procedures in the migration to remote hearings during COVID-19. This included the introduction of separate forms for LIPs and LIPs being contacted directly by NICTS about their remote hearings.
- The Department of Justice has commissioned Ulster University to maintain and update the Northern Ireland [Family Court Information website](#).
- The first priority stated in the joint Department of Justice/Department of Health [Private Family Law Early Resolution Action Plan](#), is to “enhance information and awareness of dispute resolution options” for separating parents. The progress towards this priority is indicated by the sponsorship of our Family Court Information website.
- Links to the Family Court Information website have been included on:
  - a. The [NI Direct](#) website
  - b. The [Family Support NI](#) website, which is part of NI Direct
  - c. The [Department of Justice](#) website, where a webpage has been created for LIPs, and which includes a link to the LIP Reference Group.



- The Department of Justice has created and published [a video for separating parents](#) encouraging out of court solutions, which is [embedded in our Family Court Information website](#).
- NICTS displays posters with a QR code linking to our Family Court Information website in their buildings and offers business cards with the QR code to individuals attending their offices.
- Through the Judicial Studies Board, the research team delivered three judicial workshops in Northern Ireland, including for the Annual UK and Ireland Judicial Studies Council Meeting, based on our LIP research and showcasing our Family Court Information website.
- Through the Law Society of Northern Ireland, the research team delivered a workshop for solicitors on the research findings and the Family Court Information website.
- Through the NICTS, the research team delivered a series of online workshops for court service staff involved in family proceedings services, to help them understand how the resources on our Family Court Information website could assist with enquiries from the public.
- A new [Practice Direction \(02/2022\)](#) regarding e-bundles intended for the High Court, and Court of Appeal has been issued, which includes specific guidance for LIPs.
- Department of Justice and NICTS officials engaged with the HCD process and have provided highly positive feedback on it as a proof of concept.

There are a number of policy areas where further development is needed, as highlighted by our recommendations, that would help ensure that LIPs are able to participate in their court hearings, giving effect to the State's obligations under Article 6 ECHR.

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## Policy Briefing

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