



Litigants in person in Northern Ireland: barriers to legal participation

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The research study: overview

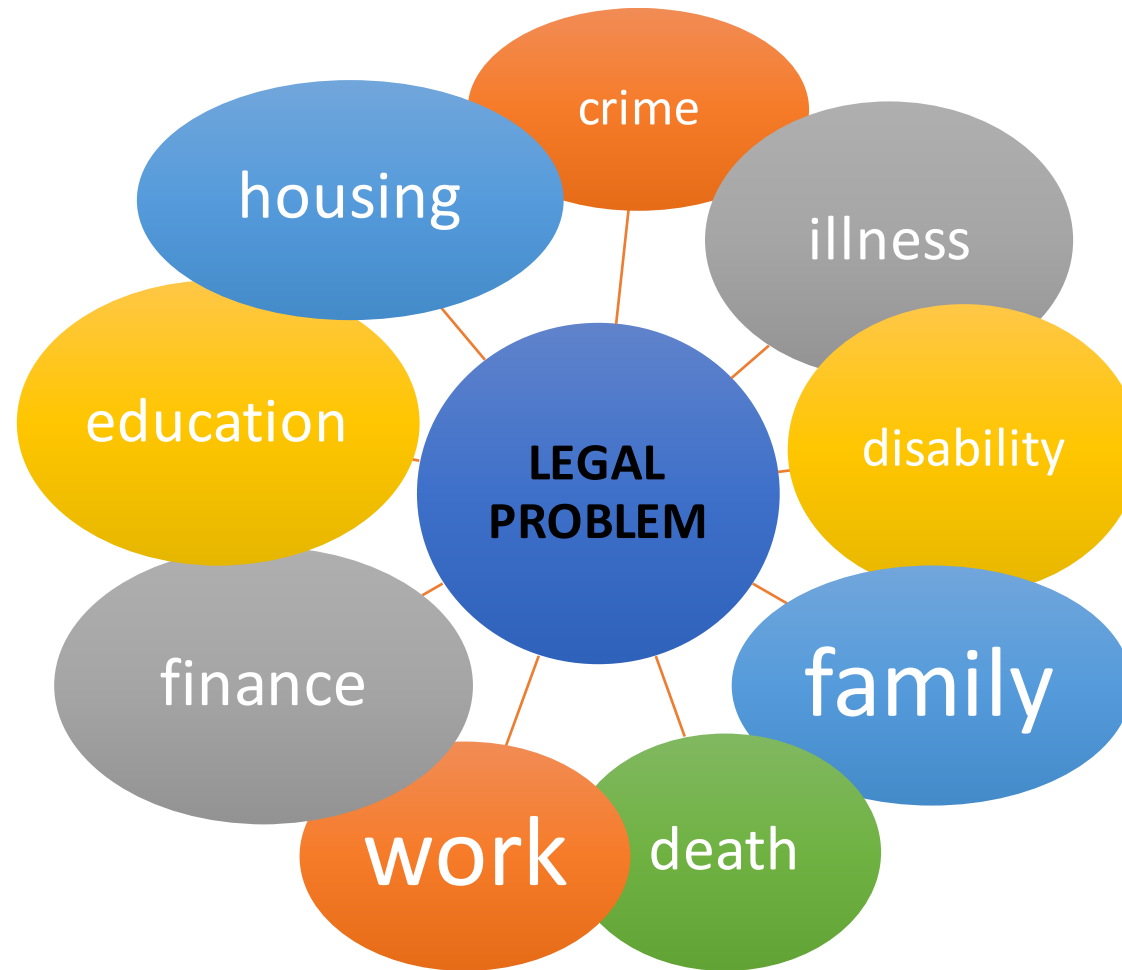


Research team's presentation

- 1 Setting the scene – Lucy Royal-Dawson
- 2 Why self-represent and what is it like to self-represent – John McCord
- 3 A model of procedural advice – Eleanor Kirk
- 4 Our recommendations – Gráinne McKeever

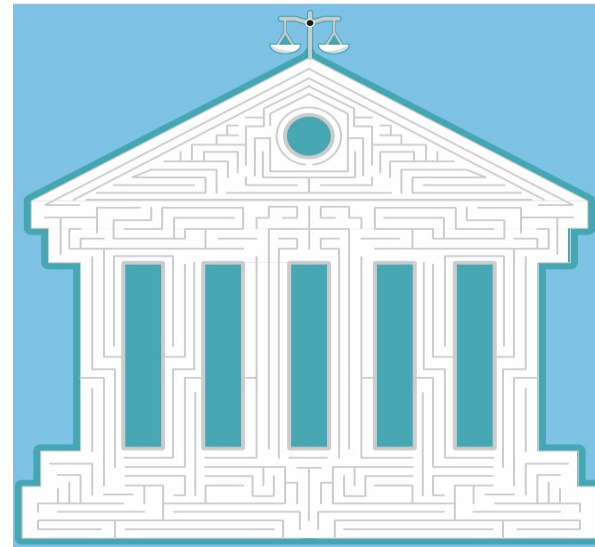


How people see legal problems



LIP research elsewhere

- England & Wales
- Scotland
- USA
- Canada
- New Zealand
- The Netherlands



Policy context

A Strategy for Access to Justice (2015) – The Stutt Report

Recommendations

There should be a statement and action plan to support litigants in person across all court levels (7.34)

Family Justice and Civil Justice Reviews (2017) – The Gillen Reviews

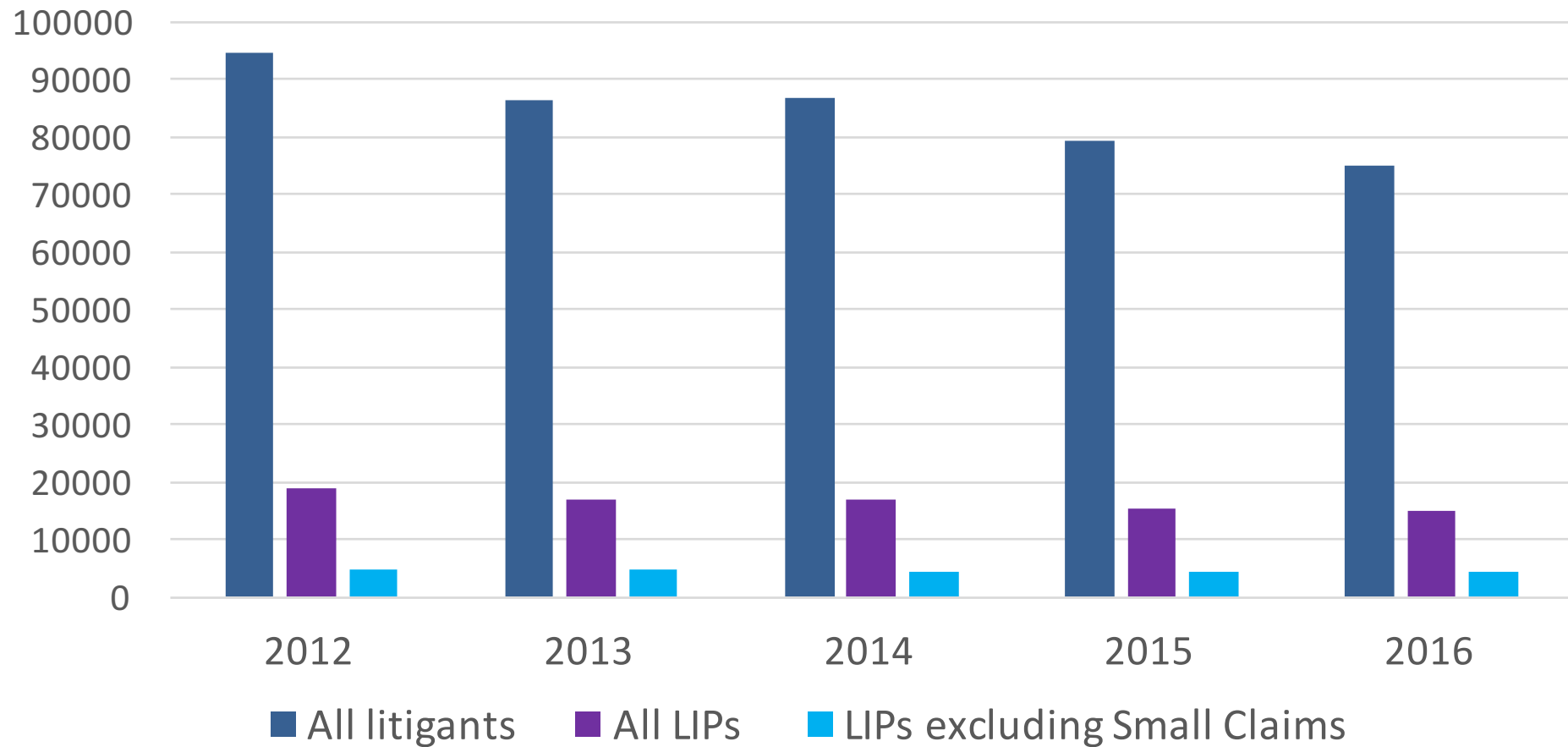
Recommendations: FJ148-FJ167 and CJ70-CJ93

1. Procedural changes
2. Training
3. Administrative changes



Number of LIPs 2012-2016

Source: NICTS



The human rights lens

The right to a fair trial: Article 6(1) of ECHR

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”

‘An analysis of the right to a fair trial and litigants in person’ by NIHRC



The right to a fair trial

Two key elements of the right to fair trial:

- 1 – effective participation
- 2 – equality of arms



Effective participation

Being able to participate effectively in the proceedings to a level where the litigant is able to influence the proceedings so that the court can reach a just decision.

Airey v Ireland (1979): representation may be necessary when the case is too complex or the litigant's capacity to self-represent is insufficient.

Doesn't say WHEN Art. 6 requires judges to address the LIP's capacity.



Equality of arms

The fair balance between the parties in the opportunities given to them to present their case in a manner that does not disadvantage them with respect to the other side.



The aims of the study

Funded by the Nuffield Foundation

The aims were:

1. to understand how LIPs participate in their case proceedings;
2. to evaluate the impact of LIPs on the Northern Ireland court system;
3. to assess the human rights implications of acting without a lawyer;
4. to evaluate the impact of providing advice to LIPs, both on their participation, and on the court.



Our sample

179 LIPs

59 court actors:

13 Judges: District, Magistrate's, County, High Court

27 legal representatives (barristers and solicitors)

11 members of NI Courts and Tribunals Service

5 Court Children's Officers

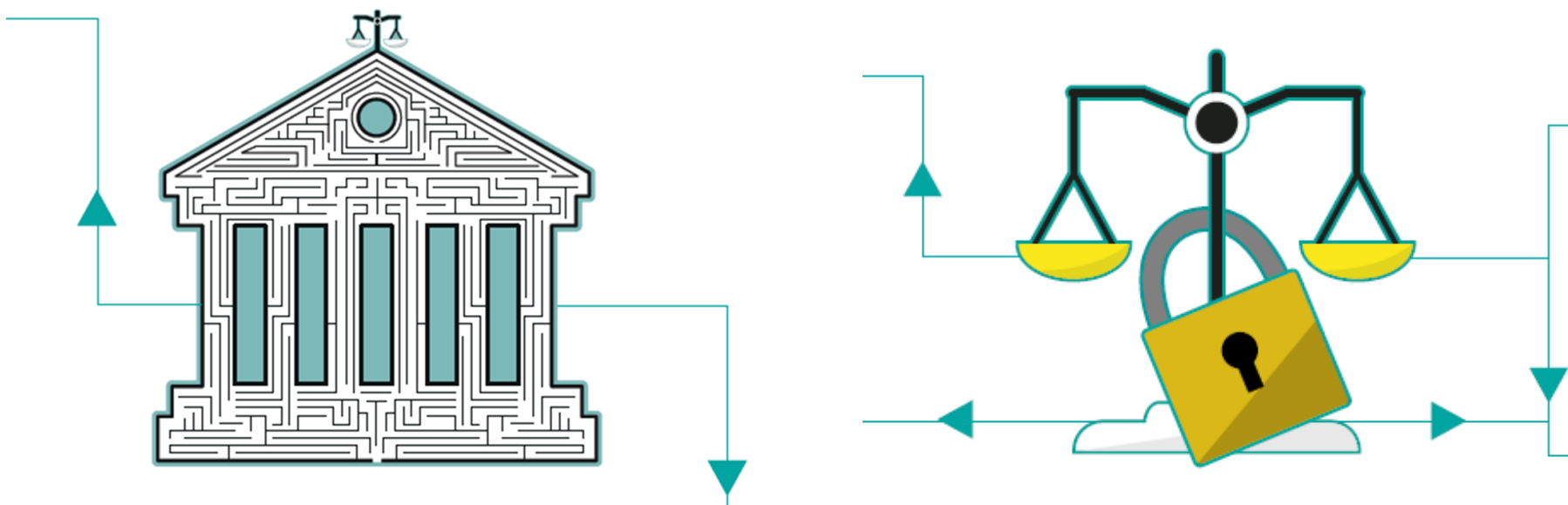
3 McKenzie Friends



LIP sample by business area

Un defended Divorce	12
Ancillary Relief, including Matrimonial Summons	32
Family Homes and Domestic Violence	7
Family Proceedings, Family Care Centre & Domestic Proceedings	77
Bankruptcy: Debtor's Petitions	11
Creditor's Petitions	32
Civil Bills	3
Total	179

What is it like to self-represent?



What is it like to self-represent

Who they are...

- Litigants are atypical; wide range of backgrounds & diverse abilities.
- Range of experiences of 'what it's like to self-represent'.
- Various challenges & issues which indicate that the experience is stressful, bewildering and frustrating; sense of unfairness.
- Where process adapted and (greater) advice and support offered; litigants' frustrations less prominent.

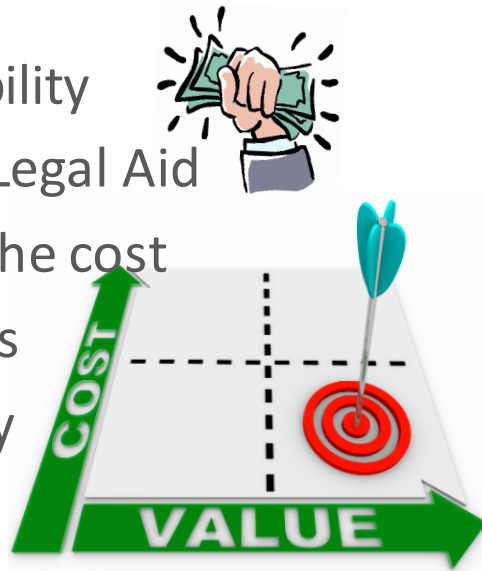


Why do litigants not have a lawyer?

Idiosyncratic, complex and multi-layered reasons

FINANCIAL

- Cost & Affordability
- Not eligible for Legal Aid
- Justification of the cost
- Run out of funds
- Value for Money



PERSONAL CHOICE

- Previous experience
 - Dissatisfaction / Deterrence
 - Lack of involvement / Participation
- Know the case better
- Straightforward
- Have nothing to hide



How do LIPs prepare and run their case?

Variation of cases and litigants ability and determination

CASE PREPARATION

- Information & Support
- Completing paperwork
- Understanding of law & procedure
- Contacting the other side
- Expectations of duration of proceedings



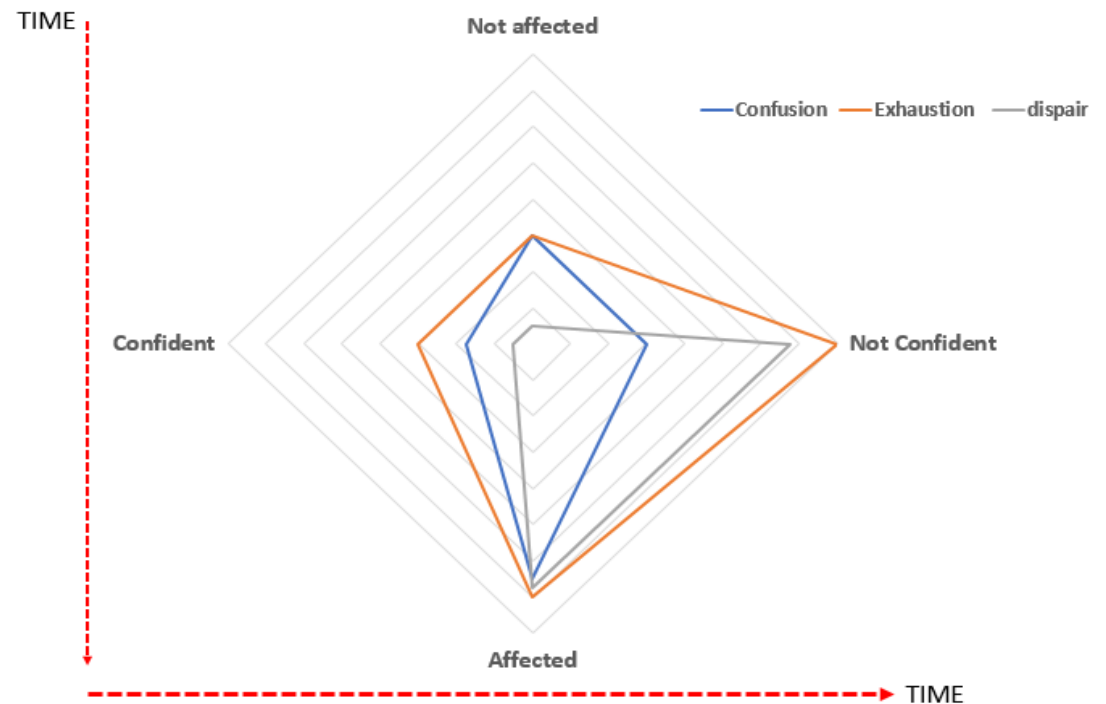
LIP EXPERIENCE OF COURT

- Location and time of hearing
- Accompaniment in court
- In the court room
- LIPs who were absent

How do LIPs prepare and run their case?

What is it like for the LIP...

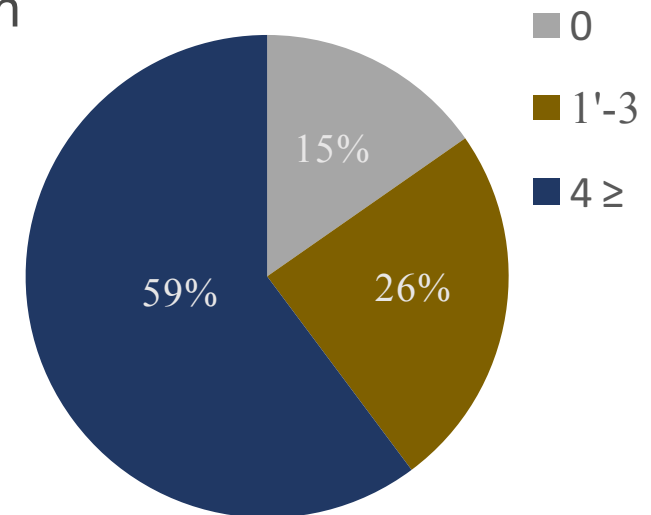
- Emotional investment
- Confidence, exhaustion, rage
- Length of proceedings
- Relationship lawyers & Judges
- Outsider / Firestarter
- Lack of Fairness



How do LIPs prepare and run their case?

Mental Health...

- GHQ-12 Questionnaire – measurement of mental health of LIPs
- Results show that:
 - Most LIPs anxious state and under stress
 - High prevalence of mental health amongst LIPs
 - 59% had 'caseness' in terms of psychiatric morbidity
 - 9% had scores of 12 – relatively rare
- Finding of high proportion broadly comparable to other studies of people involved in legal proceedings
- Additional analysis & research



How do LIPs prepare and run their case?

Mental Health...findings

- Gap in knowledge and understanding of mental health, LIPs and civil litigation
- High prevalence is a cause for concern
- LIP is exposed to unfamiliar court procedures irrespective of their mental health & the court is exposed to the LIP in that state.
- Currently limited help & support provision LIPs with mental health problems
- Lack of policy (strategic) and litigation awareness
- Implications for legal participation
 - How LIPs are perceived by court actors
 - Lawyer guidelines dealing with LIP
 - Equal Treatment Bench Book – LIPs & Mental Health



Can LIPs participate in court proceedings?

Intellectual barriers to legal participation

‘Not knowing’

- Difficulties understanding legal terms, language and legal process
- Difficulties assimilating and applying complex legal information
- Court forms, documentation or access to legal information needed
- Court actors expectation LIPs know, understand & apply
- Require more support



Can LIPs participate in court proceedings?

Practical barriers to legal participation

- Manage the practical demands of legal proceedings
 - Obtain relevant information
 - Litigation queries
 - What to expect
 - When to sit, or speak or stand
- Cost of legal representation
- Lack of information, advice & support



Can LIPs participate in court proceedings?

Practical barriers to legal participation

- Which advice sources trusted, relevant or reliable
- Length of proceedings
- Difficult to follow proceedings, take adequate notes of proceedings, directions or order
- LIPs may not be sent court directions/order
- NICTS not know if litigant will be represented until appearance



Can LIPs participate in court proceedings?

Emotional barriers to legal participation

- Anticipation or experience of proceedings
 - Extremely negative emotions experienced
 - ‘Frustration’ ‘anger’ ‘confusion’ ‘anxiety’ ‘fear’
 - Not knowing what to expect; how to behave; or how court actors supposed to behave
 - Waiting times
 - Lack of trust or alienation or despair
 - High GHQ-12 scores can act as intellectual, practical and emotional barriers



Can LIPs participate in court proceedings?

Attitudinal barriers to legal participation

- Court actors automatically adopt negative attitude to LIPs & assume difficult to deal with
- LIPs adopt negative attitude to court actors
- Stereotypically negative view of behavior related to the behavior of another LIP
- LIPs forceful views of legal representatives due to past negative experiences
- Dealing with intellectual, practical and emotional barriers to participation NOT enough if negativity and unwillingness to accommodate needs perpetuates



What the research is telling us

Conclusions...

- ☐ Many LIPs navigate the system but many face difficulties relating to information provision, assistance and support.
- ☐ Adaptions in court and process assist; however not consistently applied
- ☐ LIPs not able to easily detach themselves from emotive matters and often poor mental state of health
- ☐ Not lawyers and system needs to better accommodate lack of training and expertise
- ☐ Many LIPs not able to effectively participate with intellectual, practical, emotional and attitudinal barriers to legal participation clear
- ☐ Lack of access to information of legal and procedural substance; absence of accessible guidance; failure to ensure LIP understood requirements
- ☐ Measures can be put in place to mitigate threats and obstacles to legal participation and assist litigants to effectively participate in proceedings







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A model of procedural advice



A model of procedural advice

Clinic as experimental component of the study

Neutral advice and information to help inform decision-making

Developed & run by a qualified lawyer at NIHRC

Tailored to individual needs

Assisting to present litigants' best case

25 LiPs with family or Ancillary Relief cases



A model of procedural advice

Advice given

Understanding the law

- Making use of legal resources
- Where to find the law (e.g. legislation and case law)

Applying the law

- How to focus arguments on relevant legislation & principles
- Help articulating & phrasing (e.g. cross-examination)

Court hearings

- Preparing for specific appearances
- Clarifying expectations/norms, encouraging perspective & emotional self-management

Negotiating with the other party

- How & why contacting the other side could progress matters



A model of procedural advice

LIPs' perceptions of the clinic

Majority of LIPs very positive

- Informative & reassuring
- 'A human element'
- Developing perspective/realism
- Calm in court

Limited understanding leads to emotional distress which can be reduced

Observed examples of putting advice into practice but also failure to do so



A model of procedural advice

Limitations of the clinic?

‘Too late’

- Would have benefitted from advice much earlier
 - People learn as they go but want to avoid mistakes & wrong-turns

‘Too little’

- Remit of the clinic is too limited/right of the right type
 - Wanted/needed legal advice (i.e. sign-posting required)
 - Wanted in-court support or representation
 - Not enough to ‘make them lawyers’/match the opposing party

Design of any such intervention matters to how useful it will be for LIPs

Uptake by LIPs was influenced by perceptions of timeliness & utility of procedural advice

Will not be of equal benefit to all



A model of procedural advice

Conclusions

Adequately-resourced service could have major benefits

- LIPs better prepared to represent their cases & engage with court processes
- Better chance of meeting the demands of litigation
- Less reliance on court service staff (or representatives on the other side)
- Facilitating negotiation
- Focused arguments, questioning, timely & appropriate applications

Requirement for advice to be early & provided by a qualified lawyer

Needs to be part of a wider-ranging support system

- Better access to key information & resources
- Better management of LIPs within the court system
- Entrenching the recognition of the right to self-represent



Proposals for effective reform



Three options



1

Get
them
lawyers



2

Make
them
lawyers



3

Change
the
system

Get them lawyers

- Equalising arms
- Recognising complexity
- Valuing legal expertise

But:

- Cost implications
- Not everyone wants to have a lawyer
- Legitimate to go to court without a lawyer



Make them lawyers

- Empowering LIPs
- Filling the information gap
- Builds on existing legal capability

But:

- Knowledge/skills gap too big
- Creating false confidence
- Requires parallel adaptations of legal system



Change the system

- Build a new system to accommodate LIPs
- Adapt and adjust existing system
- Range of reforms possible

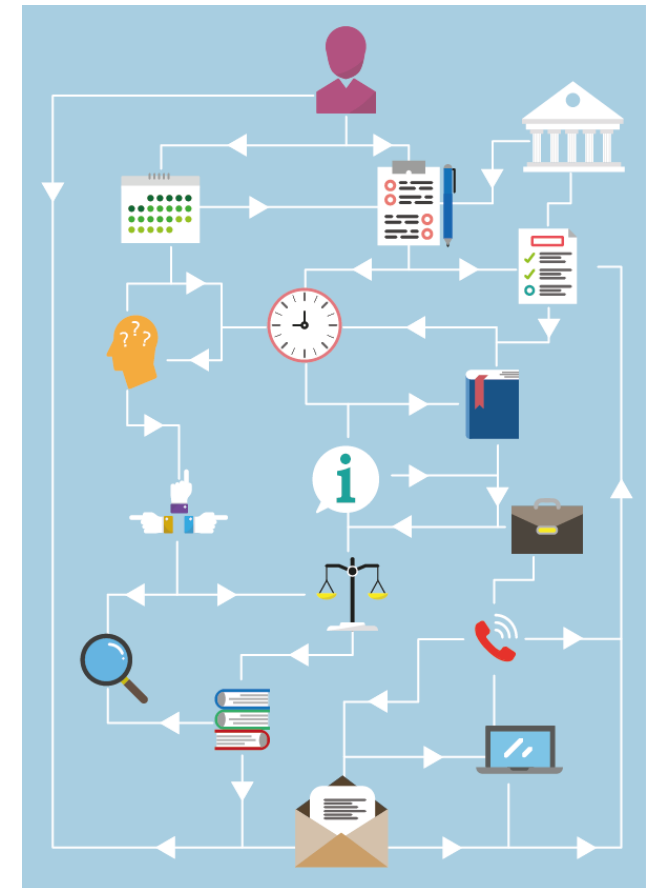
But:

- Cost implications
- Lack of system agility
- Need for cultural & behavioural change



The norm

“The users are identified as the legal profession.
That is the problem. That needs to change...”
(MF01)



LIPs challenge the norm

“Just, everything is just ruined by a personal litigant.” (Family solicitor)

“I got the feeling all along, through these proceedings, that you’re actually just a nuisance.”
(LIP in the High Court)



Context

LIPs at a disadvantage

Need to pre-empt breaches of art 6

Equality of arms & effective participation need to be protected

LIPs are legitimate part of court system – don't need to be lawyers, don't need to have lawyers

Need cultural orientation to put litigants at the heart of the system

Rec.s based on empirical evidence & academic research – all are achievable



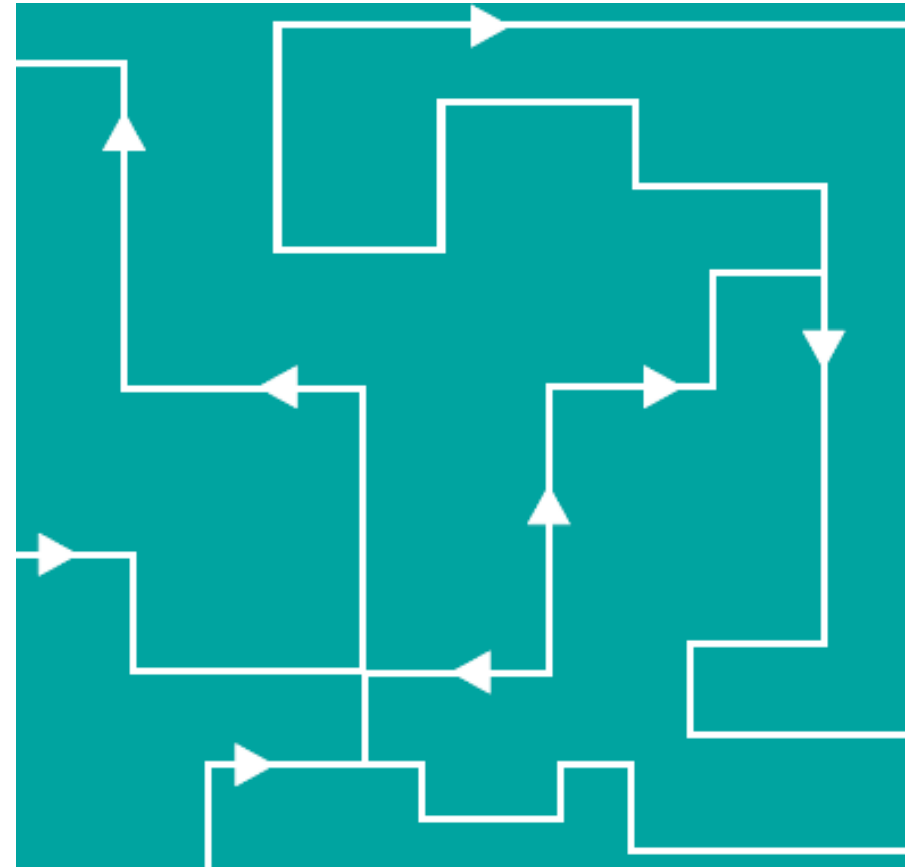
Cultural change

- Future reforms must be inclusive of multiple perspectives
- Perspective training for court actors
- Charter of rights and responsibilities
- Develop specific funding streams to support different initiatives, including new models of advice provision



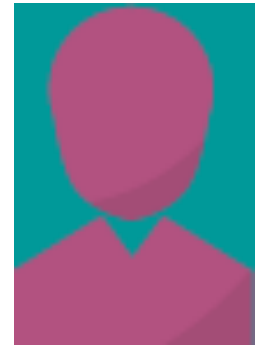
Administrative change

- Identify LIPs in the system
- Explore online and interactive engagement with/by LIPs



Access to legal services

- Review the income threshold for legal aid
- Consider alternative access routes to state funded legal support
- Consider unbundled legal services



Support Information

- Basic orientation course
- User-focused design principles to redesign
 - litigant information
 - means of access
- Develop a repository of Northern Ireland law & procedural guidance
- Language audit on court documents



Support Advice

- A litigant hub
- Face to face provision of information, procedural advice and guidance
- Staffed by lawyer



Support

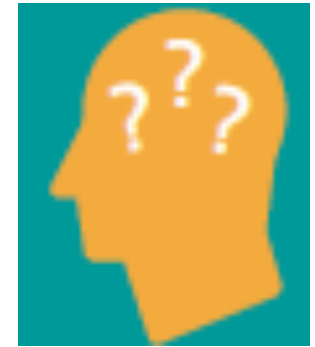
In-court

- Public guidelines on how/whether in-court support can be accessed
- Assess extent to which McKenzie Friends can assist within the court system



Judges and legal professionals

- Judicial training on judge-craft for LIPs
- Professional training on representing against LIPs
- Perspective training on procedural justice
- Self-care and support services to deal with trauma/abuse



Policy development

- Better data on need for court services, including unmet legal need
- GHQ-12 to identify mental ill-health for litigants
- Health-justice partnerships
- Integrated approach to reforms so consideration of LIPs is core not peripheral
- Evaluate reforms using principles of right to a fair trial, effective participation and procedural justice



Further areas for exploration

- Delay – differences in lengths of proceedings, potential for undue delay and resource management
- The relationship between anxiety, confidence, participation and engagement
- Legal needs survey with GHQ-12 as integral
- The dimensions of emotional detachment that permit effective participation
- Replicate the study for Court of Appeal, Chancery, Judicial Review, Small Claims and Queen's Bench proceedings



Change needs to happen

To protect LIPs and those working within the court system

To protect the integrity of the court system

To protect trust and confidence in the law



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www.ulster.ac.uk/litigantsinperson

