



The Law Society



# **Litigants in person: guidelines for lawyers**

June 2015

## Foreword

1. These guidelines have been prepared by the Bar Council, CILEx and the Law Society to assist lawyers when dealing with litigants in person (LiPs)<sup>1</sup>. They are intended to offer practical advice to lawyers on good practice that is broadly applicable across the civil and family courts and tribunals.
2. These guidelines discuss the relationship between a lawyer's duty to their client, their duty to the court and the administration of justice, and the extent to which the latter duty requires a lawyer to assist the LiP. These guidelines also cover those circumstances when a LiP is assisted by someone who is not legally qualified (usually described as a McKenzie Friend)<sup>2</sup>. Although directed to lawyers, the information in these guidelines may also be of assistance to clients, LiPs and the courts.
3. The rising number of LiPs following legal aid cuts, the increase in the small-claims limit, and the introduction of employment tribunal fees is well-documented. LiPs are appearing more frequently in the civil courts and tribunals including the Court of Appeal. These developments have an impact on the operation of courts and on the lawyers representing the other side in a case<sup>3</sup>.
4. There have always been LiPs in the courts and in principle an increase in the number of LiPs should not of itself have any bearing on a lawyer's professional duties towards the court or their client. The increase does, however, mean that lawyers find themselves encountering LiPs more frequently and this has practical implications.
5. Many lawyers will recognise from their own experience that there is no single type of LiP and that LiPs should not be seen stereotypically as 'a problem'. Unrepresented parties may be encountered at any stage of the court process. Some LiPs will take legal advice up to the point of going to a court where they will represent themselves, or they might represent themselves at appeal, having been represented at first instance. It is likely to become increasingly common for LiPs to receive legal advice for some stages only. Other LiPs may have chosen to litigate or defend claims without having obtained any legal advice at all.
6. A lawyer should not make assumptions about the merits of a LiP's case simply on the basis that they have not obtained representation. Some

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<sup>1</sup> In March 2013 the Master of the Rolls issued Practice Guidance which determined that the term 'Litigant in Person' should be the sole term used to describe individuals who exercise their right to conduct legal proceedings on their own behalf.

<sup>2</sup> For convenience, the abbreviation MF is used in these guidelines.

<sup>3</sup> See for example the research study *Litigants in person in private family law cases* published by the MoJ in November 2014 for an in-depth analysis of the impact in the family courts: <https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases>

LiPs are court-literate and able to navigate the process because they have a legal background or other expertise which equips them for managing their case. Others have no option but to represent themselves because they cannot afford to instruct a lawyer and have not been able to obtain free legal advice. They may not have any understanding of the legal process, be able to form an objective assessment of their own case, or see the potential benefits of a settlement.

### **The professional and regulatory framework**

7. A lawyer's paramount duty is to the court and to the administration of justice. The Legal Services Act 2007 s1(3), referring to lawyers as 'authorised persons', provides that:
  - (c) ...authorised persons should act in the best interests of their client,
  - (d) ...persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice...'
8. That duty may operate to the potential disadvantage of a lawyer's client by, for example, requiring that the lawyer should not mislead the court or withhold from it documents and authorities even when they detract from the client's case.
9. Subject to that, a lawyer's duty is to their client.

### **Bar Standards Board**

10. Every barrister is bound by the [core duties](#) in the Bar Standards Board Handbook (the 'BSB Handbook'). The guidance at gC1 identifies when particular duties may take precedence over others. This includes the statement at gC1.1 that the duty to the court in the administration of justice overrides any other core duty, if and to the extent that the two are inconsistent.
11. **Rule C3 states:** 'You owe a duty to the court to act with independence in the interests of justice. This duty overrides any inconsistent obligations which you may have (other than obligations under the criminal law). It includes the following specific obligations which apply whether you are acting as an advocate or are otherwise involved in the conduct of litigation in whatever role (with the exception of rule C3.1 below, which applies when acting as an advocate):
  - you must not knowingly or recklessly mislead or attempt to mislead the court;
  - you must not abuse your role as an advocate;
  - you must take reasonable steps to avoid wasting the court's time;

- you must take reasonable steps to ensure that the court has before it all relevant decisions and legislative provisions; and
- you must ensure that your ability to act independently is not compromised.

**Rule C4 states:** ‘Your duty to act in the best interests of each client is subject to your duty to the court’.

12. The BSB Handbook also makes this specific reference to LiPs:

**gC5** Your duty under rule C3.3 includes drawing to the attention of the court any decision or provision which may be adverse to the interests of your client. It is particularly important where you are appearing against a litigant who is not legally represented’.

### CILEx Regulation

13. The CILEx Code of Conduct applies to CILEx members, CILEx practitioners and CILEx Authorised Entities. It provides that they must:

*‘1. Uphold the rule of law and the impartial administration of justice:*

*1.1 Understand and comply with your primary and overriding duty to the court, obey court orders and do nothing which would place you in contempt.*

*1.2 Not knowingly or recklessly allow the court to be misled.*

*2.2 Not engage in any conduct that could undermine or affect adversely the confidence and trust placed in you and your profession by your client, your employer, professional colleagues, the public and others’.*

14. Rule 4 of the [CILEx Rights of Audience Conduct Rules](#) provides:

*‘CILEx advocates have a primary and an overriding duty to the court to ensure in the public interest, that the proper and efficient administration of justice is achieved. They must assist the court in the administration of justice and must not deceive the court or knowingly or recklessly mislead it’.*

15. Rule 5 provides that:

*‘CILEx advocates must not engage in conduct, whether in the exercise of their rights of audience or otherwise, which is:*

*(a) dishonest or otherwise discreditable to an advocate;*

*(b) prejudicial to the administration of justice; or*

*(c) likely to diminish public confidence in the legal profession or the administration of justice, or otherwise bring the legal profession into disrepute’.*

### Solicitors Regulation Authority

16. [Chapter 5](#) of the SRA’s Handbook, ‘Your client and the court’, includes the following provisions:

*‘Outcome (5.1) you do not attempt to deceive or knowingly or recklessly mislead the court;*

*Outcome (5.5) where relevant, clients are informed of the circumstances in which your duties to the court outweigh your obligations to your client;*

*Outcome (5.6) you comply with your duties to the court.’*

17. The SRA Handbook covers relations with third parties at [chapter 11](#):

*‘This chapter is about ensuring you do not take unfair advantage of those you deal with and that you act in a manner which promotes the proper operation of the legal system’.*

- *Outcome 11.1 - you do not take unfair advantage of third parties in either your professional or personal capacity;*
- *Indicative Behaviour 11.7 - you do not take unfair advantage of an opposing party’s lack of legal knowledge where they have not instructed a lawyer.*

Taking ‘unfair advantage’ refers to behaviour that any reasonable lawyer would regard as wrong and improper. That might include:

- bullying and unjustifiable threats;
- misleading or deceitful behaviour;
- claiming what cannot be properly be claimed; or
- demanding what cannot properly be demanded.

Such conduct is likely to be penalised if identified by a judge or upon complaint.

Solicitors should note that their client care obligations under the SRA Handbook apply as much to ‘unbundled’ services (see paragraphs 25 and 26 below) as they do to a full retainer. See also IB 1.2 and IB 1.5.

18. Knowing and using law and procedure effectively against your opponent because you have the skills to do so, whether that be against a qualified

representative or a LiP, is not taking 'unfair advantage' or a breach of any regulatory code.

- You owe a paramount duty as a lawyer to the court and the administration of justice.
- Your duty to the court will take precedence if it conflicts with your duty to your client.
- You should tell your client if your duty to the court outweighs your obligations to them.
- You must not take unfair advantage of a LiP.

However, you are under no obligation to help a LiP to run their case or to take any action on a LiP's behalf. Moreover, you should be aware that by doing so you might, depending on the circumstances, be failing in your duties to your own client<sup>4</sup>.

### **Communication with a LiP**

19. You should adopt a professional, co-operative and courteous approach at all times. Your first contact with a LiP might well set the tone for the way in which the case is dealt with from then on. For example, in a family case, an initial letter from a lawyer might be the first indication the LiP has that the dispute is serious. An initial letter should briefly address the issues and avoid protracted, clearly one-sided and unnecessary arguments or assertions.
20. In your initial contact, and at other suitable stages in any dispute, you should recommend to a LiP that they seek independent legal advice, or point them to other advice or support agencies. You might wish to consider enclosing a copy of an initial letter to be passed on to a support agency or to any lawyer who is instructed.
21. You should take care to communicate clearly and to avoid any technical language or legal jargon, or to explain jargon where it cannot be avoided: a LiP who is already feeling at a disadvantage may be further intimidated and antagonised by the use of such language.
22. You should take extra care to avoid using inflammatory words or phrases that suggest or cause a dispute where there is none, or inflame a dispute, and avoid expressing any personal opinions on the LiP's behaviour. Correspondence and telephone calls from some LiPs may be emotive, repetitive, and potentially hostile.

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<sup>4</sup> See *Khudados v Hayden* [2007] EWCA Civ 1316@ paragraph 38

23. Annex B to these guidelines lists a range of sources of advice and information to which it might be helpful to refer a LiP. A separate note is attached which you might wish to give to a LiP to explain the extent and limits to the assistance that you can provide to them. Other parts of these guidelines may also help to answer questions that LiPs might have.
24. Where a LiP is a defendant to proceedings and no other pre-action protocol applies, the [Civil Procedure Rules](#) (CPR) state that you should refer the LiP to the Pre-Action Conduct Practice Direction and draw their attention to paragraph 4 which concerns the court's power to impose sanctions for failure to comply with the Practice Direction. You can inform the LiP that ignoring the letter before claim may lead to the claimant starting proceedings, and may give rise to a liability for costs.
25. Where a specialist protocol applies and more detailed pre-action procedures are required, a LiP will ultimately be subject to the same obligations as a represented party. You should consider sending a copy of or a web-link to the relevant protocol to a LiP when first contacting them about a claim.
26. You should communicate in a manner of which the court would approve, which includes treating LiPs with courtesy and in a way that any ordinary person would regard as fair and reasonable. This does not mean that you have to tolerate unacceptable behaviour from a LiP, nor does it mean that a LiP has a right to expect you to respond immediately to their calls or correspondence.
27. If a barrister is contacted directly by a LiP, the barrister's clerk or the barrister themselves should let the LiP know whether it is appropriate for the LiP to speak with the barrister or the solicitor. This situation will have to be managed on a case by case basis, as direct communication may be required by the barrister's duty to the court, or professional courtesy.
28. Barristers must still exercise their professional independence about this issue and have regard to the best interests of their client. For example, if the purpose of the discussion is related to the conduct of the litigation, referral to the instructing solicitor (or the client in a public access case) would be appropriate. If the communication is related to the barrister's role as advocate, the barrister would be entitled to refer the communication to the solicitor (or client), but it may be appropriate for the barrister to communicate with the LiP directly, particularly if the issues are matters that ordinarily would be discussed between barristers.

### **'Unbundled' services**

29. 'Unbundling' describes the provision of discrete and limited pieces of legal assistance in relation to a case under a partial retainer, rather than

a traditional full retainer where a lawyer typically deals with all matters from initial instructions until the case is concluded.

30. When providing 'unbundled' services to a client you should consider carefully whether to be the lawyer acting for the party (see CPR 42). If you do not go on the record, your client remains a LiP and you would not accept service of documents, send out correspondence or otherwise communicate with third parties and would not incur disbursements<sup>5</sup>.
31. It is important to keep in mind your duties to the court if you do go on the court record, when you have full responsibility for the conduct of the case. Although this is unlikely to be relevant to barristers, for other lawyers the greater their involvement, the greater the risk that they may be deemed to have assumed obligations in the litigation to which they had not expressly agreed. The Law Society has produced a [practice note](#) for solicitors which offers guidance on providing 'unbundled' services.

### Preparing for a hearing

32. The general impact of LiPs upon the civil court system is one of an increased demand on time, costs and resources. The court may ask the represented party to:
  - prepare all necessary bundles of documents and provide them to the court (unless the LiP confirms that they will undertake the work);
  - provide copies of bundles to the LiP at the same time as providing them to the court;
  - provide written arguments and documents to the court and the LiP in good time before any hearing, unless a delay is unavoidable; and
  - where necessary, promptly draw up and seal the order made by the court (unless the LiP confirms that they will undertake the work).
33. Those are examples where your duty to the court may require you to take steps for the assistance of the court and a LiP, that you might not have to take in cases which do not involve a LiP. If this will give rise to significant expense to you or your client, for example in preparing a bundle, then the court should be encouraged either to direct the LiP to professional services which can assist in the preparation of bundles or to direct that the LiP bear the costs of the lawyer preparing the bundle. Ultimately, the court may impose requirements on you or your client by specific order.
34. Beyond these examples of what the court may require, it would be unwise for you to offer to provide photocopying or other office support for a LiP, because of the confidentiality risks and potential liabilities that may arise. There are commercial services available to do this work.

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<sup>5</sup> This is not the case for barristers who can conduct correspondence (which is not conducting litigation) even when not on the court record, including for public access instructions



## **Explaining your responsibilities to your client**

35. It will be important to explain to your client why you are giving assistance to the opposing party, if this is not made clear in court by the judge. You should emphasise that you have a professional duty to the court and that in the interests of fairness the court may require you to provide procedural assistance to a LiP.
36. There are potential benefits for your client in your assisting the LiP, which could include avoiding time taken at hearings, delays through adjournments and the associated costs to your client in terms of their money and time.

With these guidelines is information that you can give to your client to explain why you might be required by your duty to the court to provide assistance to a LiP.

You should not give assistance to a LiP if it involves a cost to your client and your client is not willing to meet that cost, unless ordered to do so by the court or unless you consider that your duty to the court requires you to do so in any event.

If you believe that requests from the court to provide assistance to a LiP go beyond your duty to the court, or go so far as to place you in a conflict with your duty to your client which ought to be avoided or would incur excessive costs, you should draw this to the attention of the court and invite the judge to reconsider and/or make a suitable interim costs order.

## **At court**

### **General considerations**

37. The court is obliged to afford procedural fairness to all parties, whether represented or appearing in person, and your duty to the court extends to providing appropriate assistance accordingly. Common law and article 6 compliance require:
  - the right to be heard and the right to challenge evidence (a 'fair trial');
  - access to the same information and to production of the same documents;
  - a person's right to know the case against them;
  - the right to a decision affecting their rights; and
  - to be present and participate in hearings about the case;
  - a reasoned decision.

## Communication at court

38. Lawyers should take care to avoid using language that might confuse a LiP, including the use of abbreviated terms or legal jargon. A LiP might not only find it confusing, but may also resent the case being conducted in a way that means he or she cannot understand what is happening.
39. If you speak to a LiP outside court it is generally wise to do so in the presence of a colleague, if possible. It would be wise in any event to make a note as soon as practicable of any material explanation or assistance which you have given to a LiP.
40. If you are negotiating a settlement it would be more appropriate to say 'are you prepared to agree to...' rather than to say 'the courts in this situation would never agree to x, so I suggest that you agree to....'. The latter approach might be seen as unfair to the LiP, even if legally accurate.

## Case management

**Note: a rule change is under consideration by the Civil Procedure Rules Committee which will clarify the court's powers when dealing with LiPs. This rule change is expected to be introduced in the summer of 2015, and these guidelines may need to be amended accordingly.**

41. Judges are under a duty to further the overriding objective by actively managing cases<sup>6</sup>. This includes the freedom to extend or shorten the time for compliance with any rule, practice direction or court order; adjourn or bring forward a hearing; to receive evidence by phone or other means; decide the order in which issues are to be heard; exclude an issue from consideration; take any other step or make any other order for the purpose of managing the case and furthering the overriding objective. The court may exercise these powers on application by one of the parties or of its own initiative. Achieving the overriding objective might require a judge to offer a degree of latitude to a LiP whose preparation and presentation of case does not conform to the court rules, provided that this does not compromise due process.
42. The effective management of a case involving a LiP might require more directions hearings than would otherwise be necessary, or a pre-trial review. It might be sufficient to hold directions hearings by telephone. You should be prepared to suggest such steps to the court if you believe it would be helpful. In these circumstances it might also be helpful if the case were reserved to the same judge. You should also bear in mind – and advise your client as appropriate – that all parties are obliged under

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<sup>6</sup> In the family court 'a judge exercising the family jurisdiction has a much broader discretion than he would in the civil jurisdiction to determine the way in which an application...should be pursued' Munby LJ in Re C [2012] EWCA Civ 1489

CPR rule 1.3 (where this applies) to help the court to further the overriding objective.

43. You can expect the judge to explain to the LiP how the hearing will proceed, such as the order of calling witnesses and the right which he or she has to cross-examine a witness. An advantage of these explanations being given in court is that they take place in front of your client. If your client asks why the judge is apparently going out of their way to help the LiP, you can explain that it is in the interests of fairness and justice and ultimately in your client's interest for the judge to do so.
44. A LiP's written case may be unfocussed. It is not part of your function to distil the case for the LiP, but there are obvious advantages in trying to ensure that it is reduced to the essential issues<sup>7</sup>. To that end, you might consider whether you should invite the court to identify or approve a list of the issues, which helps make clear to the LiP that it is only those issues that should be addressed. Similarly, you might invite the judge to explain what evidence is admissible.

### **Adjournment and extension applications**

45. A LiP might ask for an adjournment or an extension of time in circumstances where a lawyer may believe that no adjournment or extension is necessary or that the circumstances behind the application are primarily or wholly of the LiP's making. For example, a LiP genuinely might not appreciate the importance of the attendance of witnesses. In terms of helping the court process go more smoothly, it may be useful to try to anticipate such requests, for instance, by explaining to the LiP, or inviting the court to explain to the LiP, in advance, their responsibility to secure the attendance of witnesses.
46. The granting of an adjournment or extension is always a matter of discretion and courts may more readily grant an application when it is sought by a LiP. It is appropriate to be ready to consent to a reasonable request (whether from a LiP or a represented party) where the rules allow. Bear in mind that appellate courts are particularly concerned to ensure that LiPs are given every opportunity to present their case, in so far as that is consistent with fairness.
47. A judge is likely to grant an adjournment or extension where a submission or issue catches a LiP by surprise, so providing the LiP with reasonable advance notice could forestall such an application.

### **Drafting orders**

48. Template orders are increasingly likely to be used to assist LiPs. When facing a LiP it might be sensible to present only those template orders

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<sup>7</sup> See CPR 1998 r.1.4(2) (b); FPR 2010 r 1.4 (2) (b) (i)

that are relevant to the case. To assist in finalising the terms of an order with a LiP, you might be well advised to ensure that there is as much clarity as possible - if necessary, by pressing the judge for this – about the order being made. This will help to avoid difficulties (and the attendant costs to your client, where you are entitled to charge for this work) in finalising an order which has left too much open to further discussion.

49. This process may be assisted by new directions being issued in some courts. For example, the practice note applicable in the Chancery Division when these guidelines were prepared makes specific reference to how orders should properly be recorded: '*The terms of the order must be noted by the legal representatives present and in the case of doubt about the terms of the order they must be clarified with the court at the hearing.*' This is good practice in any circumstances, but should probably be seen as essential when an order is made at a hearing attended by a LiP.
50. The Family Court Financial Remedies Working Group made a number of suggestions for the drafting of orders which may usefully be applied more widely: for example, instead of '*file and serve*', it might be clearer to the LiP to say '*send a copy to the other party's legal representative and send a copy to the court office*<sup>8</sup>'.

### **Failure to comply with case management/procedural orders**

51. When an order is made, it is helpful if the court can be clear about the consequences of non-compliance, including that costs may be sought against the LiP and the quantum of those costs. If you can see that a LiP is heading towards non-compliance, you should consider drawing this to the LiP's attention. The court might give a LiP less leeway if it is aware that the LiP has been reminded of the court's requirements and the possible consequences of non-compliance.

### **Vulnerable parties**

52. Some LiPs may be vulnerable adults, and may require additional support from the court or the lawyer. If you believe that a LiP is vulnerable and that their needs in terms of participating in the proceedings have not been recognised, you should bring this to the court's attention. The final report of the Vulnerable Witnesses and Children Working Group published in March 2015 sets out proposed Practice Direction

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<sup>8</sup> See paragraphs 59-60 <https://www.judiciary.gov.uk/publications/report-of-the-financial-remedies-working-group-31-july-2014/>

requirements on this point<sup>9</sup>. Note that since April 2014 the family court has been able to conduct cross-examination for a LiP<sup>10</sup>.

53. In providing information to a vulnerable LiP with a disability, the requirements of the Equality Act apply as they would for a client. There have been recent family law cases in which the court has held that HMCTS should be liable for meeting certain costs incurred by vulnerable unrepresented parties.

### **McKenzie Friends**

**Note: in 2015 the Judicial Executive Board is expected to consult on revised guidance to judges on McKenzie Friends. The following paragraphs may be subject to amendment in the light of that guidance.**

**The following paragraphs apply to anyone who is not legally qualified and is assisting a LiP, whether described as a McKenzie Friend or not.**

54. In the civil and family courts, there is a presumption in favour of permitting a LiP to have reasonable assistance from a lay person, sometimes called a McKenzie Friend (MF). Litigants assisted by MFs remain LiPs. The court's permission for the assistance of an MF must be sought. The fact that a case is straightforward, or that the LiP has chosen to be without representation, or that the proceedings are confidential, are not sufficient reasons for the court to refuse permission<sup>11</sup>.
55. There is judicial guidance<sup>12</sup> (not a Practice Direction) for the civil and family courts: <http://www.judiciary.gov.uk/publications/mckenzie-friends/>. The Equal Treatment handbook for the judiciary also gives useful guidance <http://www.judiciary.gov.uk/publications-and-reports/judicial-college/2013/equal-treatment-bench-book>

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[http://www.familylaw.co.uk/system/redactor\\_assets/documents/2763/Vulnerable\\_Witnesses\\_and\\_Children\\_Working\\_Group\\_final\\_report\\_evidence\\_in\\_Family\\_Courts.pdf](http://www.familylaw.co.uk/system/redactor_assets/documents/2763/Vulnerable_Witnesses_and_Children_Working_Group_final_report_evidence_in_Family_Courts.pdf)

<sup>10</sup> Matrimonial and Family Proceedings Act 1984 s 31G (6). The power is to be exercised only if appropriate to do so. The decisions in Q v Q; Re B (A Child); Re C (A Child) [2014] EWFC 31 and Re K and H (Children: Unrepresented Father: Cross-Examination of Child) [2015] EWFC 1 demonstrate that it is not always appropriate to use this power

<sup>11</sup> There are no restrictions on rights of audience in the employment tribunals, so MFs are able to speak on behalf of an individual in the employment tribunal without need for permission

<sup>12</sup> Practice Guidance authored by Lord Neuberger of Abbotsbury, Master of the Rolls and Sir Nicholas Wall, President of the Family Division 12 July 2010

What McKenzie Friends may do:

- i. provide moral support for litigants;
- ii. take notes;
- iii. help with case papers; and
- iv. quietly give advice on any aspect of the conduct of the case.

What McKenzie Friends may not do:

Without the court's leave, MFs have no right to act as advocates or to carry out the conduct of litigation. It is a criminal offence to exercise rights of audience or to conduct litigation unless authorised to do so by an appropriate regulatory body or with the leave of the court.

MFs have no independent right to provide assistance. Without the court's leave, they may not:

- i. act as the litigant's agent in relation to the proceedings;
- ii. manage the litigant's case outside court, for example by signing court documents; or
- iii. address the court, make oral submissions or examine witnesses.

56. Like LiPs, MFs are not a single group. They might be family members or friends with no previous experience of the court system; or they might be well-informed and therefore well-placed to assist a less capable or particularly nervous LiP, which in turn could help the smooth conduct of proceedings. They might charge a fee for their services. Whether they are fee-paid or not has no bearing on how a lawyer should deal with an MF. The essential requirement of courtesy, as with any LiP, remains.
57. Lawyers should ensure that documents are served on litigants in good time to enable them to seek assistance from their MFs in advance of any hearing or advocates' meeting.

It is not for the litigant to justify the exercise of the right to assistance from an MF. It is for the court or the objecting party to provide sufficient reasons why the litigant should not receive such assistance.

58. A lawyer is entitled to raise with the judge any well-founded concerns, including but not limited to whether:
- the MF will observe the confidentiality of proceedings;
  - the assistance being provided to the LiP is being provided for an improper purpose;
  - the assistance being provided is unreasonable in nature or degree;
  - the MF is using the litigant as a puppet, where the MF is using the case to promote his or her own cause or the interests of some other person or organisation; or
  - the MF is directly or indirectly conducting the litigation.
59. The fact that an MF may belong to an organisation that promotes a particular cause is not in itself a reason for the court to deny the LiP their assistance.
60. The Practice Guidance<sup>13</sup> says that when considering whether to circumscribe the right to assistance or refuse an MF permission to attend, the right to a fair trial is engaged. The matter should be considered carefully. The litigant should be given a reasonable opportunity to argue the point. The proposed MF should not be excluded from that hearing and should normally be allowed to help the litigant.
61. The Practice Guidance goes on to say that where proceedings are in closed court, i.e. the hearing is in private, or the proceedings relate to a child, the litigant is required to justify the MF's presence in court; however, 'the presumption in favour of permitting an MF to attend such hearings, and thereby enable litigants to exercise the right to assistance, is a strong one.'
62. The court should give a short judgment setting out the reasons why it has curtailed the right to assistance. Litigants may appeal such decisions. MFs have no standing to do so.

### Care proceedings

63. The Practice Guidance specifically refers to where a litigant is receiving assistance from an MF in care proceedings, and states that the court should consider the MF's attendance at any advocates' meetings directed by the court.

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<sup>13</sup> See paragraph 50

## McKenzie Friends: rights of audience and conduct of litigation

The burden of showing that it is in the interests of justice for a lay person to be granted the right to be an advocate at a hearing lies upon the litigant who wishes him to do so.

64. Lawyers should be vigilant about the exercise of rights of audience or the conduct of litigation by an MF without the court's leave.
65. A LiP can conduct their own litigation, but under Part 3 of the Legal Services Act 2007 the only other person who has a right of audience and the right to conduct litigation is a lawyer regulated by a relevant professional body<sup>14</sup>. With the exception of LiPs themselves (who are the subject of a specific exemption), lay persons can neither conduct litigation nor act as an advocates for LiPs; nor has a LiP any right to receive such assistance or to authorise another lay person to act in such a way (for example under a power of attorney).
66. The Act specifically maintains the court's inherent power to allow any individual to act as an advocate before it in relation to a particular case. The court may do so where it is satisfied that the overriding objective of dealing with cases justly requires the litigant to receive such assistance in that case. Generally, once the right to appear as an advocate has been given to a lay person, that right will extend to all hearings in that claim, unless specifically directed otherwise or the right is revoked.
67. The Equal Treatment Handbook provides useful guidance to judges on the points to be borne in mind before granting permission. The handbook quotes extensively from the report of the Judicial Working Group on Litigants in Person<sup>15</sup> which cites the judgment of Mr Justice Hickinbottom in *Graham v Eltham Conservative & Unionist Club and Ors*. In summary, that judgment emphasises the need for the courts to respect the will of parliament, which is that, ordinarily, leaving aside LiPs who have a right to represent themselves, advocates will be restricted to those who are subject to the statutory scheme of regulation: '*The intention of parliament is firm and clear*'.
68. Lawyers should ensure that they are given an opportunity to raise any objections to any application to exercise a right of audience. This will usually be at the first directions hearing.

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<sup>14</sup> Barristers have rights of audience but no automatic right to conduct litigation.

<sup>15</sup> <http://www.judiciary.gov.uk/publications/judicial-working-group-lip-report/>



69. A lawyer is entitled to ascertain that the court has satisfied itself about:
- (i) the relationship, if any, between the LiP and the proposed advocate, including whether the relationship is a commercial one;
  - (ii) the reasons why the litigant wishes the proposed advocate to speak on their behalf, including any particular difficulties the LiP might have in presenting their own case;
  - (iii) the experience, if any, the proposed advocate has had in presenting cases to a court; and
  - (iv) any court orders that might be relevant to the appropriateness of the proposed advocate (eg. orders made against him or her acting in person or as an advocate in previous proceedings, including any orders restraining him or her from conducting litigation or from acting as an advocate).
70. In deciding whether or not to advise their client to oppose such an application, a lawyer will need to make a careful judgment as to how justice will best be served in the particular case, weighing up their own client's interests, the other options available, and the likely attitude of the court.
71. Similar considerations apply when the LiP wants the MF to conduct litigation. In addition, the court should be reminded that although the court can oversee advocacy, litigation is conducted away from the courtroom without supervision or regulation. The conduct of litigation by a LiP is likely to be more exceptional than the conduct of advocacy.
72. If an MF is proposing to charge a fee to the LiP and the charges are higher than might be payable to a lawyer for equivalent services, this may be a point that you might wish to draw to the court's or the LiP's attention.
73. You should not communicate directly with an MF, but address all communications to the LiP. If a LiP uses an MF, the MF cannot appear in court unless the LiP is also present.

### **McKenzie Friends: recovery of fees**

74. The practice guidance sets out that:
- fees paid by a litigant to an MF for the provision of reasonable assistance in or out of court cannot be lawfully recovered from the opposing party;
  - fees said to have been incurred by MFs for carrying out the conduct of litigation, where the court has *not* granted such a right, cannot

lawfully be recovered from either the litigant for whom they carry out such work or the opposing party;

- fees said to have been incurred by MFs for carrying out the conduct of litigation after the court has granted such a right are in principle recoverable from the litigant for whom the work is carried out. Such fees cannot be lawfully recovered from the opposing party; and
- fees said to have been incurred by MFs for exercising a right of audience following the grant of such a right by the court are in principle recoverable from the litigant on whose behalf the right is exercised. Such fees are also recoverable, in principle, from the opposing party as a recoverable disbursement.

### **Persistent unmeritorious claims/vexatious litigants**

75. You should be vigilant about LiPs who habitually and persistently issue claims without reasonable grounds, where such practice amounts to an abuse of the court process. They should be distinguished from LiPs who are displaying symptoms of stress or anxiety, or those who are suspicious of lawyers and the legal system.
76. Dealings with vexatious litigants can be time consuming and expensive. You may take the following steps to manage people who you suspect fall into this category:
- if a claim form is issued and the name appears familiar, check that the individual has not made a claim about the same issue previously if the cost of doing so is proportionate, subject to your client's instructions;
  - consult the court's [list of individuals that have been declared vexatious](#) by the Attorney General, and those subject to Civil Restraint Orders (CRO);<sup>16</sup>
  - if there are no reasonable grounds for bringing a claim, or if there has been a failure to comply with a rule, practice direction or court order, you may wish to advise your client to make an application for an appropriate sanction or ask the judge to record that an application/claim was 'totally without merit'; or
  - if you believe that the LiP in question is vexatious or a habitual litigant without reasonable grounds for issuing repeated claims, you may wish to advise your client to apply to the court for a CRO which prevents a LiP from bringing a claim or making an

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<sup>16</sup> The CRO list is at: <https://www.justice.gov.uk/courts/civil-restraint-orders>  
The vexatious litigants list is at: <https://www.justice.gov.uk/courts/vexatious-litigants>

application in certain circumstances and for specified lengths of time.

### **Application to the attorney general**

77. If you have explored all of the options detailed above, including an application for a CRO, and you have evidence that an individual is making persistent unmeritorious claims, you may make an application for the Attorney General to declare a LiP vexatious.
78. Under [section 42](#) of the Senior Courts Act 1981, the Attorney General can apply to the high court to prevent a litigant instituting any proceedings without the leave of the high court, either for a specified period or indefinitely. Such an application should only be made in exceptional circumstances.

## Guidelines for lawyers

Walking the line: the balancing of duties in litigation: Solicitors Regulation Authority March 2015:

<http://www.sra.org.uk/risk/resources/balancing-duties-litigation.page>

[Resolution's Guide to Good Practice on Dealing with LiPs](#) (2014)

### Court guidance and related reports

Civil Justice Council report on Access to Justice for litigants in person:

<https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/working-parties/access-to-justice-for-litigants-in-person/>

The Admiralty and Commercial Courts Guide:

<https://www.justice.gov.uk/downloads/courts/admiraltycomm/admiralty-and-commercial-courts-guide.pdf> (see paragraph M2.1)

Practice Guidance on McKenzie Friends (July 2010):

<http://www.judiciary.gov.uk/publications/mckenzie-friends/>

The Equal Treatment Bench Book (November 2013) includes a chapter on litigants in person:

<http://www.judiciary.gov.uk/publications-and-reports/judicial-college/2013/equal-treatment-bench-book>

The Judicial Working Group on Litigants in Person Report (July 2013):

<http://www.judiciary.gov.uk/publications/judicial-working-group-lip-report/>

*In the family court, the Financial Remedies Working Group in its report of July 2014 made a number of specific suggestions for the drafting of orders at paragraphs 59-60:*

*'[we] encourage judges (and practitioners where appearing on one side) to use language which is readily understood by LiPs, therefore:*

- a. LiPs are more likely to understand what is being asked of them better if their NAMES are used, rather than the terms Applicant/ Respondent';*
- b. The traditional expression 'File and Serve' may be readily understood by lawyers but is perhaps less well understood by LiPs. The standard orders have been adapted to use the expression 'send to the court and serve on the other party'. In some instances it may be appropriate to include in an order a case-specific simple explanation of what the word 'serve' means. Typically this may simply mean sending a document in the post, but there are of course instances when this is not sufficient.*

- c. *Penal notice. In a financial remedy case the applicant is entitled to the endorsement as of right, (a point which should be wider understood by judges and court staff). We consider that it is probably wise for each order to be endorsed with a penal notice at the time it is made (often orders are seen to say 'a penal notice is attached to this paragraph' which is not enough). The full content of the penal notice should be prominently displayed on the front of the copy of the order and/or spelt out in the body of each paragraph to which it applies. All the financial orders in the suggested standard orders follow this suggestion.*
- d. *'Schedule of deficiencies' should perhaps be described in the definition section as 'a list of all questions that have not been properly answered and an explanation of what is missing'*
- e. *'Chattels' should perhaps be described in the definition section as 'property and belongings other than land or houses'*
- f. *'Points of dispute' should perhaps be described in the definition section as 'things disagreed about and which the court needs to decide'*
- g. *Further, it may be preferable to avoid 'providing only that' (using instead 'as long as') and 'adjourn' (using instead 'postpone').*

<https://www.judiciary.gov.uk/publications/report-of-the-financial-remedies-working-group-31-july-2014/>

## Help for litigants in person

### General

Advice Now 'Going to Court' leaflets: [www.advicenow.org.uk](http://www.advicenow.org.uk)

Bundles providers:

<https://www.caselines.co.uk/>

<http://atkinsonlewis.co.uk/solutions/technologies/document-bundles.html>

<http://www.systemstechnology.co.uk/solutions/trial-bundle-preparation-legal/>

Ministry of Justice Guide: [www.gov.uk/represent-yourself-in-court.gov.uk](http://www.gov.uk/represent-yourself-in-court.gov.uk);

The Bar Council's A Guide to Representing Yourself In Court:

[http://live.barcouncil.netxtra.net/media/203109/srl\\_guide\\_final\\_for\\_online\\_use.pdf](http://live.barcouncil.netxtra.net/media/203109/srl_guide_final_for_online_use.pdf)

Bar Pro Bono Unit: [www.barprobono.org.uk](http://www.barprobono.org.uk)

Personal Support Unit: [www.thepsu.org/contact-us](http://www.thepsu.org/contact-us)

The PSU at the Royal Courts of Justice in London can be contacted on 020 7947 7701, by email at [rcj@thepsu.org.uk](mailto:rcj@thepsu.org.uk) or at the enquiry desk. Other PSU units include those at:

[Birmingham@thepsu.org.uk](mailto:Birmingham@thepsu.org.uk)

[Bristol@thepsu.org.uk](mailto:Bristol@thepsu.org.uk)

[Cardiff@thepsu.org.uk](mailto:Cardiff@thepsu.org.uk)

[Leeds@thepsu.org.uk](mailto:Leeds@thepsu.org.uk)

[Liverpool@thepsu.org.uk](mailto:Liverpool@thepsu.org.uk)

[Manchester@thepsu.org.uk](mailto:Manchester@thepsu.org.uk)

[Newcastle@thepsu.org.uk](mailto:Newcastle@thepsu.org.uk)

[Wandsworth@thepsu.org.uk](mailto:Wandsworth@thepsu.org.uk)

Citizens Advice: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

The CAB at the Royal Courts of Justice in London can be contacted on 020 7947 6564 or [www.rcjadvice.org.uk](http://www.rcjadvice.org.uk) at the enquiry desk

LawWorks: <http://lawworks.org.uk>

Courts Service (addresses/maps/ some practice directions):

[www.hmcourtsservice.gov.uk](http://www.hmcourtsservice.gov.uk)

To check whether you can get financial help (legal aid):

<https://www.gov.uk/check-legal-aid>

## **Civil courts including small claims**

Civil Justice Council: The Guide for Litigants in Person to Small Claims:  
<http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/Small+Claims+Guide+for+web+FINAL.pdf>

Courts and Tribunals judiciary: A Handbook for Litigants in Person:  
<http://www.judiciary.gov.uk/publications/handbook-litigants-person-civil-221013/>

Interim Applications in the Chancery Division: A Guide for Litigants In Person:  
[https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/chancery\\_lip\\_2013\\_2.pdf](https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/chancery_lip_2013_2.pdf)

The Interim Applications Court of the Queen's Bench Division of the High Court: A guide for litigants in person:  
<https://www.judiciary.gov.uk/publications/guide-self-represented-qbd/>

## **Family courts and family mediation**

Advice Now: Arrangements for Children:  
<http://www.advicenow.org.uk/advicenow-guides/family/sorting-out-arrangements-for-your-children/>

Advice Now: applying for financial orders without the help of a lawyer:  
[www.advicenow.org.uk/advicenow-guides/family/applying-for-a-financial-order-without-the-help-of-a-lawyer](http://www.advicenow.org.uk/advicenow-guides/family/applying-for-a-financial-order-without-the-help-of-a-lawyer)

Contact centres (search for a contact centre by location/geography and type of service): [www.naccc.org.uk](http://www.naccc.org.uk)

CAFCASS: [www.cafcass.gov.uk](http://www.cafcass.gov.uk)

CAFCASS Cymru (Wales): [www.wales.gov.uk/cafcasscymru](http://www.wales.gov.uk/cafcasscymru);

Child maintenance options (information on child maintenance and how LiPs can sort it out by agreement): [www.cmoptions.org](http://www.cmoptions.org)

Family mediation and to find the nearest mediation service:  
[www.familymediationcouncil.org.uk](http://www.familymediationcouncil.org.uk)

For a guide about children and the family courts for separating parents (including representing yourself in court): the form 'CB7':  
<http://www.cafcass.gov.uk/media/168195/cb7-eng.pdf>

For general advice on separation services and options for resolving disputes:  
[www.sortingoutseparation.org.uk](http://www.sortingoutseparation.org.uk)

For the form to apply for a child arrangements order:

<https://www.gov.uk/looking-after-children-divorce/apply-for-court-order>;

Law Society guidance on 'getting a divorce':

<http://www.lawsociety.org.uk/for-the-public/common-legal-issues/getting-a-divorce/>

Guidance on money and property when a relationship ends:

(<https://www.gov.uk/money-property-when-relationship-ends/overview>).

Other sources:

<http://www.nofamilylawyer.co.uk/>

<http://www.familycourtinfo.org.uk/> (for court services in the south west)

## **Housing**

Shelter: <http://england.shelter.org.uk/home>

## **The High Court**

High Court guide for litigants in person in interim applications:

[http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/srl\\_qbd.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/srl_qbd.pdf)

## **The Supreme Court**

A Guide to proceedings in the Supreme Court (February 2014):

<http://www.supremecourt.uk/procedures/guide-to-proceedings-for-those-without-a-legal-representative.html>



## **Litigants in person – guidelines for lawyers: Notes for clients**

*These notes explain how your lawyer will deal with the other side in a court case if they do not have their own lawyer. In the family court this might be your ex-partner, in the civil court someone who is making a claim against you or who you are making a claim against, and in the employment tribunal this might be your former employer or employee. Whoever they are, someone who is not legally represented in a court case is called a 'litigant in person' (LiP for short).*

- Your lawyer has duties to you as the client, but all lawyers also have a professional duty to the court and the administration of justice. This means that they must take steps to help the case run fairly and smoothly. This might include doing something that the court asks them to do which you may not want them to do.
- Your lawyer cannot give the LiP legal or tactical advice but the court may ask your lawyer to explain court procedure to the LiP and to explain what they need to do to follow the court's rules. In some situations, your lawyer's duty to the court may require them to do this without being asked.
- Your lawyer is expected to behave professionally towards LiPs and is not allowed to take unfair advantage of the fact they do not have their own lawyer by, for example, misleading them or withholding information.
- Court hearings involving LiPs often last longer because the judge may have to give the LiP more time.
- To help the case go smoothly, the judge may ask your lawyer to deal with some practical matters such as preparing the bundles of court papers for the LiP. Your lawyer may also take on some tasks of this sort even without being asked by the court. This can reduce the overall time that the case takes, and the time that you need to spend at court. It can also cut down on the overall cost - for example by cutting down the need for the case to be adjourned (put off to another day).
- As your lawyer may need to spend more time on such tasks as required by the court, and especially if your charges are based on time spent, they may be increased. Your lawyer will be able to explain the impact on the overall costs. Ultimately, the court may require you to meet the cost of a task which it asks your lawyer to carry out.
- When at court, do not be surprised if the judge spends time making sure that the LiP understands what is happening and is dealing with the right points. This may appear to be 'helping' but is actually being done only to make sure that the court hearing is fair.

- The judge may put questions to you or your witnesses on behalf of the LiP. This is because it is the judge's duty to ensure that there is a fair hearing. That includes giving you or your witnesses a proper opportunity to reply to what the LiP has said to the court.

## **Litigants in person – guidelines for lawyers: Notes for litigants in person**

*These notes are to help you understand what to expect (and what you cannot expect) from the lawyer for the other side in court proceedings.*

- You should be treated with courtesy and respect by the other side's lawyer. Likewise, you should treat them and their staff with courtesy and respect.
- If you telephone the lawyer, they may not always be available to take or return your call straight away and it may not always be appropriate for the lawyer to speak to you directly (for example if they are a barrister who is acting on a solicitor's instructions) although in that event you are likely to be told who you should speak to instead.
- It is always better to put any proposals in writing. Keep a copy for yourself. You should receive replies in writing. The lawyer will need enough time to take their client's (the other side's) instructions before they reply to you.
- Any letters that you receive from the lawyer should, wherever possible, avoid jargon. If you do not understand something, do not be afraid to ask them to explain it.
- If you send any documents to the court for the judge to see you should also send a copy to the other side's lawyer. They are entitled to see anything that the judge will see. Whenever the lawyer writes to the court, they should send a copy to you.
- The lawyer cannot give you legal or tactical advice but can explain the court procedures to you.
- The lawyer should use plain language in court. If you do not understand anything that is said in court do not be afraid to ask the lawyer or the judge to explain it.
- It is not unusual for those who are involved in a case to have discussions outside court before going before the judge. These discussions can be helpful in clarifying what is already agreed and narrowing down the issues that the judge needs to decide. It does not mean that pressure is being put on you to agree matters that you would prefer the judge to decide. Do not be surprised if someone from the lawyer's office is there to take a note of a discussion so that there is a record of it. This is not intended to intimidate you.
- Remember that the lawyer has a professional duty to their own client. They are obliged to present their client's case and to follow their client's

instructions. Any work undertaken by a lawyer is at the expense of their client and there may for this reason be a limit on the number of telephone calls or letters and emails that they are able to make or to which they can respond.

### *Court orders*

When the court makes its decision it will usually ask a party who has a lawyer acting for them to draw up the necessary court order. When the court makes an order, both you and the other side's lawyers need to be clear about what the order requires everyone to do. The other side's lawyer will draft the order for the judge and will send you a copy so that you can inform the judge if there are any parts of the order that you think do not reflect what the court decided.

### *Mediation*

In most court cases there is the option to attend mediation. This is where an independent mediator will try to help both sides agree a reasonable settlement between them. In family cases the judge will expect both sides to have tried mediation before coming to the court. The judge may adjourn (put off to another day) a hearing to give you the opportunity to consider mediation.

### *Where to get help*

You may be able to obtain assistance from:

- Citizen's Advice: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk);
- a Law Centre if there is one in your area;
- the Personal Support Unit (in some cities): [www.thepsu.org](http://www.thepsu.org);
- or a LawWorks clinic: <http://lawworks.org.uk> .

Advice UK's website provides a lot of useful information [www.adviceuk.org.uk](http://www.adviceuk.org.uk)