

Litigants in Person – Access to Justice via the Court Process?

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Abstract:

The right to access justice must be framed as a right, rather than a privilege. This is not always the case, however, as many litigants in person find it difficult to exercise this right. Since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force, there has been an increase in litigants in person, many of whom are particularly vulnerable. The Act implemented harsh cuts to legal aid, making it at times nearly impossible for many cases to receive funding within the civil and family courts. Jurists are now struggling with an influx of litigants in person. This article questions the notion that meaningful access to justice is easily achievable by vulnerable litigants in person.

1. Introduction

The right to access justice is exactly that, a right, not a privilege.¹ This is not always the case, however, as many litigants in person find it difficult to exercise this right.² Since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LAPSO) there has been an increase in the numbers of litigants in person, owing to the fact that this Act implemented harsh cuts to legal aid, making the receipt of legal aid awards virtually impossible for many cases within the civil and family courts. (Legal aid is still available, for example, where there are certain types of documentary evidence that a client has suffered domestic abuse.³) The increase in litigants in person can be seen via a fairly recent comparison of statistics which show that in the financial year of 2012/13 a total of 58% of parties were recorded as having had legal representation in private law cases that had at least one hearing.⁴ Compared to the financial year of 2017/18 the figure fell to 36% of parties.⁵

It can be argued that as a result of these cuts many litigants are now struggling alone to deal with the intricacies of their respective cases; civil and family courts are now similarly besieged by an influx of often quite vulnerable litigants in person.⁶ This article will ask therefore whether the concept of meaningful justice is open to unrepresented litigants in person. This will be done by firstly defining and explaining what litigants in person are and then by outlining the various issues that they might well expect to encounter. The advice and assistance which

¹ Edward Bailey, Neil Bidder, Peter Bowers, Alison Hampton, David Hodge, Peter Hughes 'A Handbook for Litigants in Person', p. i < https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/A_Handbook_for_Litigants_in_Person.pdf > accessed 11th August 2020

² Tatiana Tkacukova, 'Communication in Family Court: Financial Remedy Proceedings from the Perspective of Litigants in Person' (2016) *Journal of Social Welfare and Family Law*, Vol. 38, No. 4: 430, p. 430

³ Gabrielle Garton Grimwood, 'Litigants in Person: The Rise of the Self-Represented Litigant in Civil and Family Cases' (2016) House of Commons Briefing Paper, Number 07113, p. 4 < <http://commonslibrary.parliament.uk/research-briefings/sn07113/> > accessed 20th February 2020

⁴ Letter from Lord Burnett of Maldon to Bob Neill MP (25th January 2019)

⁵ *ibid*

⁶ Tkacukova (n2) p. 430

litigants in person might seek to access for support will then be outlined; this will include a discussion of the different organisations that are available to help litigants in person. The role of the judiciary post-legal aid cuts also merits mention here. Suggestions for possible future reforms - aimed at offering more support and assistance to vulnerable litigants in person - are also made by way of conclusion.

2. Litigants in Person

Historically, a litigant in person has been framed as the natural legal person representing himself or herself in a court hearing or tribunal.⁷ A corporation (having legal personality) can also however be a litigant in person if they were to act without a legal representative.⁸ The litigant in person might well have received advice from a lawyer – or from some legal organisation - but they do not have a solicitor or barrister acting for them on record.⁹ It should be asked at this point why some people might actively choose to represent themselves in the courtroom. The answer could be that they cannot afford to pay a solicitor or a barrister, especially if the case will take a long time in court.¹⁰ In Trinder *et al's* study a large group of litigants in person found themselves to be just over the eligibility threshold for legal aid, but still unable to afford the services of a lawyer.¹¹ This could well have been due to their various outgoings, which the threshold system of means assessment does not account for. Within this study, one substantially sized group did have the means to pay privately for their legal representation at the start of their case. However, their capital assets had limits which resulted in some of the participants' funds being exhausted; this then led to them being forced to appear in court in person.¹² This study highlights therefore that not all litigants in person can be simply categorised as individuals who cannot afford to pay for a solicitor or barrister.

Cameron and Kelly note also the many distinctions between individuals who are litigants in person. They state that you might well have litigants in person who are eligible for legal aid but then are later refused it, and those who are eligible for legal aid but have not applied for it; others might simply remain unaware that they perhaps might have been eligible for it.¹³ This demonstrates that people are litigants in person for many reasons, although principally it is generally due to the increasingly tight restrictions being placed upon the awarding of legal aid. There are various difficulties which litigants in person experience during their journeys through the court system, however. Litigants in person often have reduced prospects for a fair hearing and in turn they will not necessarily get a just result, due to these issues.¹⁴ This can be evidenced

⁷ Paul Lewis, 'Litigants in Person and Their Difficulties in Adducing Evidence: A Study of Small Claims in an English County Court' (2007) *The International Journal of Evidence & Proof*, Vol. 11: 24, p. 25; See also Liz Trinder, Rosemary Hunter, Emma Hitchings, Joanna Miles, Richard Moorhead, Leanne Smith, Mark Sefton, Victoria Hinchley, Kay Bader and Julia Pearce, 'Litigants in Person in Private Family Cases' (2014) Ministry of Justice Analytical Series. Retrieved from: <www.justice.gov.uk/publications/research-and-analysis/moj> accessed on 11th August 2020, p. 1

⁸ Lewis, *ibid*

⁹ Richard Moorhead and Mark Sefton, 'Litigants in Person: Unrepresented Litigants in First Instance Proceedings' (2005) Department for Constitutional Affairs Research Series 2/5, p. 5 <<https://orca.cf.ac.uk/2956/1/1221.pdf>> accessed 9th August 2020

¹⁰ Legal Choices, 'I want to represent myself in court' <<https://www.legalchoices.org.uk/legal-choices/got-a-legal-issue/courts/i-want-to-represent-myself-in-court>> accessed on 20th August 2020

¹¹ Trinder *et al* (n7), p. 13

¹² *ibid*, p. 15

¹³ Camille Cameron and Elsa Kelly, 'Litigants in Person in Civil Proceedings: Part 1' (2002) *Hong Kong Law Journal*, Vol. 32, No. 2: 313, p. 318

¹⁴ *ibid*, p. 317

by the fact that there do now tend to be more hearings where at least one of the parties in the matter are unrepresented legally. The two main issues which litigants in person face then are as follows: firstly, a lack of knowledge and understanding of the workings of the legal system (which affects most if not all litigants in person, it seems). The second issue of concern is the frequent presence of a significant language barrier which some individuals clearly face. These issues are examined in more detail, below.

3. Lack of Legal Knowledge and Understanding

Litigants in person may face a daunting range of problems, in terms of both knowledge and understanding. Unless a litigant in person has perhaps had some form of legal training, they will often be at an immediate disadvantage owing to their lack of advocacy skills and limited legal knowledge. This often leaves them ill-equipped to best protect their own interests.¹⁵ Arguably, this is likely also due to the justice system not always being sufficiently ‘user-friendly,’ for anyone unfamiliar with how it works.¹⁶ Trinder explains that the main challenge that litigants in person tend to face is the inability to overcome a profound lack of legal knowledge.¹⁷ For example, many litigants in person do not understand how they are meant to prepare bundles or written statements. Zuckerman furthers this point by suggesting that due to laypersons not being familiar with the substantive law and court procedures, they will have profound difficulty in terms of preparing adequately and in complying with rules of process and formal court orders.¹⁸ A lack of legal knowledge will most likely result in the litigant in person being very poorly placed to argue for their rights, in court.¹⁹ Due to this inherent disadvantage the litigant in person will generally struggle to ensure that they receive fair hearing or subsequent justice. In addition to the unfairness that litigants in person might face, their lack of legal knowledge and understanding may also have an adverse, ‘knock-on’ effect on the wider court system. Additional work, for example, can easily be created for judges and court staff which in turn leads to the court-listing process being far less efficient.²⁰

It could be argued that the issues of lack of knowledge and limited understanding are also made worse due to the law being too complex for most individuals who are lacking in legal training or knowledge.²¹ Assy argues that this is due to most areas of the law often being too complex or convoluted for the general public to easily grasp or quickly understand.²² The notion of access to justice may be highly reliant on having access to qualified, competent and professional lawyers: with litigants in person this is sometimes simply not possible, given the need to put their case to the court or tribunal in the correct legal terms.²³ Moorhead and Sefton demonstrated this in their study, finding that unrepresented litigants frequently make more

¹⁵ *ibid*, p. 318

¹⁶ *ibid*

¹⁷ Liz Trinder, ‘Taking Responsibility? Legal Aid Reform and Litigants in Person in England’ (2015) in Mavis Maclean, John Eekelaar and Benoit Bastard, *‘Delivering Family Justice in the 21st Century’* (Bloomsbury 2015), p. 236

¹⁸ Adrian Zuckerman, ‘No Justice Without Lawyers – The Myth of an Inquisitorial Solution’ (2014) *Civil Justice Quarterly*, Vol. 33, No. 4: 355, p. 355

¹⁹ *ibid*

²⁰ National Audit Office, *‘Implementing Reforms to Civil Legal Aid’* (2014) HC 784, 2014-15, p. 14

²¹ Rabeea Assy, ‘Can the Law Speak Directly to its Subjects? The Limitation of Plain Language’ (2011) *Journal of Law and Society*, Vol. 38, No. 3: 376, p. 382

²² *ibid*, p. 376-7

²³ Lewis (n 8), p. 31

mistakes within their case,²⁴ evidencing their struggles with both substantive law and with the various procedural rules and court regulations.²⁵ Judges too have similarly estimated that hearings involving litigants in person generally tend to take around 50% longer in terms of court time.²⁶ Many of these cases might well have been filtered out at an earlier stage had the litigants in person received accurate and adequate professional legal advice on the merits –or otherwise – of litigating their case.²⁷ In other words, a profound lack of legal literacy prevented them from being able to handle their own case effectively or efficiently, perhaps leading to a significant form of injustice within the very court systems designed to prevent it.

4. Language Barriers

The courts and tribunals in England and Wales predominantly conduct their proceedings in English.²⁸ English or Welsh may not be the first language of the litigant in person however, or they may perhaps have particular difficulties with written English or Welsh.²⁹ The charity ‘*Support Through the Court*’ found that English was not the first spoken language for some 24% of their clients.³⁰ Language barriers were not limited to the speaking of different languages within an English-speaking jurisdiction however: they also included the use and understanding of complex legal terminologies, and the presence of subtle cultural difficulties or sensitivities. Law has its own ‘legal language:’ understanding this legal language - including those words which might well have another non-legal meaning - is therefore difficult for people who do not have any legal background, even where their first language might be English. Usually, litigants in person must also face such tasks as filling in complex legal forms, understanding convoluted or nuanced legal principles, and then try to master speaking confidently in court and expressing themselves clearly and succinctly.³¹

Moreover, if litigants in person are coming from a country with a very different legal system, they will be less likely to have even general information about how the English legal system works, including the various protections and rights available to them.³² As such, some litigants in person are often left with only minimal options, either to somehow find a solicitor who speaks their language, or to retain the services of an interpreter. However, this creates another unwelcome layer of complexity. Although skilled bilingual persons may appear able to interact well with others in the language required, certain dialects do not necessarily always match each other closely. They can vary greatly in terms of grammatical structure, vocabulary,

²⁴ Moorhead (n 9), p. ii

²⁵ *ibid*

²⁶ National Audit Office (n20), p. 14

²⁷ *ibid*

²⁸ Judicial College, ‘*Equal Treatment Bench Book*’ (2018)

<<https://www.sentencingcouncil.org.uk/wp-content/uploads/equal-treatment-bench-book-february2018-v5-02mar18.pdf>> accessed 31th August 2020

²⁹ ‘*Litigants in Person*’ <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_LiP+_finalised_.pdf> accessed 30th August 2020

³⁰ Support Through Court, ‘*Our Charity*’ <<http://www.supportthroughcourt.org/our-impact/our-charity/>> accessed 15th August 2020

³¹ Grania Langdon-Down, ‘*Litigants in person could struggle to secure access to justice*’ (The Law Society Gazette, 19 January 2012) <<https://www.lawgazette.co.uk/analysis/litigants-in-person-could-struggle-to-secure-access-to-justice/63815.article>> accessed 30th August 2020

³² *ibid*

and in the meaning of certain abstract conceptions.³³ Therefore, interpreters may well have to translate everything that is mentioned in (and perhaps outside of) the court, whilst also keeping some core meanings unchanged, which can in turn perhaps create false impressions, and lead to unjust outcomes. A report by the Civil Justice Council has stated further that there is ‘an inequality of arms’ in terms of the many disadvantages and often innate lack of self-confidence that some litigants in person might face when in court, especially where the other side *is* being legally represented.³⁴ This too may result in a degree of injustice and then generate a wider mistrust of the legal system and its workings. In addition to this, they found that certain difficulties were often further compounded by the presence of additional socio-economic disadvantages, such as unemployment, and mental or physical disability.³⁵ Clearly, many problems may arise or be easily exacerbated if the language of the courtroom is not the litigant’s first language.

In sum, another level of complexity arises when additional problems flow from inherent individual vulnerabilities, not least illiteracy, disability such as a visual or auditory impairment, mental frailty, or learning difficulties.³⁶ Public legal information should follow a policy of plain English and avoid any overly formal, archaic or technical language styles where possible, to try and address the lowest level of legal knowledge and experience that might be present amongst vulnerable, unrepresented litigants.³⁷ Likewise, legal technological transformation - the rise of digital justice - in the courtroom is now a factor. This creates yet more barriers for certain litigants in person who must also have sufficient technological awareness and access to equipment.³⁸

5. Help Available to Litigants in Person?

There are various organisations which do offer significant help and support to litigants in person.³⁹ Trinder et al found that common sources of support for litigants in person included the use of *McKenzie Friends* and *Support Through Court* (referred to above).⁴⁰ Several other organisations also provide help.

³³ Judicial College, ‘*Equal Treatment Bench Book*’ (2018) <<https://www.sentencingcouncil.org.uk/wp-content/uploads/equal-treatment-bench-book-february2018-v5-02mar18.pdf>> accessed 31st August 2020

³⁴ Access to Justice for Litigants in Person (or self-represented litigants), ‘*A Report and Series of Recommendations to the Lord Chancellor and to the Lord Chief Justice*’ (2011) <<https://www.judiciary.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf>> accessed 31st August 2020

³⁵ *ibid*

³⁶ Tkacukova (n2), p. 431

³⁷ Law For Life, ‘*Law for Life’s Advicenow Project*’ (2014), p. 18 <<http://www.lawforlife.org.uk/wp-content/uploads/Meeting-the-information-needs-of-litigants-in-person.pdf>> accessed 30th August 2020

³⁸ Jane Donoghue, ‘The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice’ (2017) *Modern Law Review*, Vol. 80, No.6: 995, p.1025

³⁹ In addition to this, there are also highly informative leaflets and handbooks which can be accessed both online and within many court buildings.

⁴⁰ Liz Trinder, Rosemary Hunter, Emma Hitchings, Joanna Miles, Richard Moorhead, Leanne Smith, Mark Sefton, Victoria Hinchley, Kay Bader and Julia Pearce, ‘*Litigants in Person in Private Family Cases*’ (2014) Ministry of Justice Analytical Series. Retrived from: <www.justice.gov.uk/publications/research-and-analysis/moj> accessed on 11th August 2020, p. 93

a. *Support Through Court*

Formerly known as the Personal Support Unit, *Support Through Court* is an award-winning charity which supports individuals who are facing court alone.⁴¹ This organisation has over 750 volunteers operating from 23 courts across England and Wales. An essential aim is to reduce the disadvantage of litigants in person and thus enable them to better access justice.⁴² The assistance provided is predominantly delivered by dedicated volunteers offering practical, procedural or emotional supports.⁴³ Some of the support that the volunteers provide includes: explaining how the court works, helping litigants fill in forms, organising their papers, helping the litigant prepare what they will say in court, and if needed, the volunteers are able to go into court to provide support to the litigant in person.⁴⁴ The role of the volunteer does not stop after the court date: they can also provide support after the court hearing. They may do this by providing the litigant with details of other specialist advice agencies, and, where possible, help them find out whether or not they are entitled to legal advice.⁴⁵ The work of *Support Through Court* is invaluable not only in relation to giving practical assistance but also in respect of providing emotional supports. This can be seen by the fact that 73% of their clients were found to be feeling less anxious about their court experience due to the support that they had received from the volunteers.⁴⁶ The main weakness however is in the limited number of courts in which they operate. The fact that they are only operating out of 23 suggests that this is insufficient, given also that demand is already extremely high, with an ever-rising number of litigants in person on the horizon.⁴⁷

b. *McKenzie Friends*

McKenzie Friend is a term which originates from a matrimonial case in 1970;⁴⁸ it is typically used to describe an individual who is a lay person, who will accompany and support a litigant at court hearings.⁴⁹ They are able to advise the litigant and address the court on their behalf;⁵⁰ they may be a friend, relative or neighbour of the litigant, or they may be an adviser from an Advice Centre.⁵¹ The use of a *McKenzie Friend* may not be always helpful for litigants in person however; they may be a friend or relative, for example, and they might well have a close personal attachment to the case. This in turn could affect how the case is handled and impact adversely upon the outcome. Furthermore, even if the *McKenzie Friend* is an individual sourced independently (e.g. from the internet) and receiving a fee for their services, this is no guarantee that litigants will be provided with the best possible advice and help. Generally, their use in court is helpful for many litigants and it at least offers a friendly, familiar face to reassure them. Cameron and Kelly argue that the presence of a *McKenzie Friend* can help a litigant in person meet certain procedural challenges,⁵² if they are, for example, granted a right of

⁴¹ Support Through Court, 'How We Help' < <http://www.supportthroughcourt.org/get-help/how-we-help> > accessed 15th August 2020

⁴² Support Through Court (n30)

⁴³ Support Through Court (n41)

⁴⁴ *ibid*

⁴⁵ *ibid*

⁴⁶ *ibid*

⁴⁷ Trinder (n7), p. 110

⁴⁸ George Appleby, 'Justice Without Lawyers? Litigants in Person in the English Civil Court' (1997) *Holdsworth Law Review*, Vol. 18, No. 1: 109, p. 113

⁴⁹ Trinder (n7), p. 93

⁵⁰ Appleby (n48), p. 113-4

⁵¹ *ibid*, p. 114

⁵² Cameron (n13), p. 326

audience by the court. In addition to this, they can assist the litigant with documents or remind them of certain questions that might be put to witnesses, or of which key points to make to the judge within the closing address.⁵³

c. *Pro Bono work*

Pro Bono is the term used to describe the type of work which is undertaken altruistically without charge. Within the legal sector, this is usually done by solicitors and barristers. Fortunately, within England and Wales, there are many types of pro bono organisations available. For example, a litigant can obtain legal advice from the Citizens Advice Bureau in over 3,500 locations. Citizens Advice Bureaux have a long history of helping litigants both before and during litigation.⁵⁴ In addition to this, some solicitor firms offer free legal advice in allocated time slots during their working week. This enables individuals to obtain the information and guidance which they require. These various pro bono schemes provide an enormous amount of free help and advice.⁵⁵ Most universities also offer legal advice clinics which are normally staffed by a qualified lawyer, or volunteer lawyers, and then largely run by law students. These clinics advise litigants on a wide array of different matters, depending on the area of law which they are working on. For example, the law clinic could have a dedicated day for queries employment law. These clinics are extremely helpful to litigants in person as they are able to assist them in various ways, e.g. via detailed legal advice, or they perhaps can help the litigant assess their legal position and understand what their next steps might be.

6. How is the Judiciary affected by the increasing presence of Litigants in Person?

“Only too often the litigant in person is regarded as a problem for judges and for the court system rather than the person for whom the system of civil justice exists. The true problem is the court and its procedures which are too often inaccessible and incomprehensible to ordinary people.”⁵⁶

Lord Woolf’s quote demonstrates how some people see the litigant in person as the issue; the problem is often not the litigant in person, but our own often-overworked court system. The role of the judge within the court system is well established: they must ensure that justice is seen to be achieved. In civil or family cases, the judge is the final arbiter of law and/or fact; they will decide the outcome of the case. The increase in litigants in person can thus have an effect on the traditional role of judges. Cameron and Kelly argue that the increasing frequency of individuals representing themselves has placed judges in an invidious position.⁵⁷ The role of the judiciary is to ensure that all who appear before them will get a fair hearing.⁵⁸ It could be argued that in order for judges to ensure there is a fair hearing however, they need at times

⁵³ Bailey (n1), p. 6

⁵⁴ *ibid*, p. 4

⁵⁵ *ibid*, p. 5

⁵⁶ The Right Hon the Lord Woolf, ‘Access to Justice: Interim Report to the Lord Chancellor on the Civil System in England and Wales’ (1995) HMSO, London, Chapter 17, Para 2.

⁵⁷ Cameron (n13), p. 329

⁵⁸ *ibid*

to do for litigants in person what they cannot do for themselves.⁵⁹ This leaves judges in a difficult position as they are expected to assist litigants in person to some extent but they also must do so without compromising their own key role as a neutral party to the trial.⁶⁰ Trinder has further argued that some judges might face the difficult task of ensuring that they provide some support to the vulnerable litigant in person but are also fair to the other side (who will perhaps be a represented party).⁶¹ In other words, they must achieve fairness within the proceedings without showing any favouritism.⁶²

Lord Woolf has stated also that the courts should take a more pro-active role when it comes to helping litigants in person.⁶³ Such help should consist in the provision of information about the different avenues towards obtaining robust, professional advice, and also indicate any potential outside help available to such litigants.⁶⁴ This assistance could even stretch so far as to see the judge providing some direct assistance to the vulnerable litigant themselves.⁶⁵ Tkacukova argues that this active involvement could well play a significant role in enabling a more effective hearing.⁶⁶ If judges were to adopt a more active role it could also perhaps result in some of the key issues that the litigant in person faces being more speedily resolved. It is essential however to note that litigants in person must remember that the assistance that a judge provides is only able to extend so far.⁶⁷ Judges are unable to provide legal advice, nor are they permitted to compose the case for the litigant in person.⁶⁸ That being said, judges are expected to ensure that the litigant in person is treated fairly and justly before the law and that they have equal access to justice.⁶⁹

Trinder et al found that judges, and sometimes the opposing solicitors, did take time to explain things to the litigant in person.⁷⁰ They also established that the supports which might be available to the litigants in person often varied quite significantly between the different courts and judges.⁷¹ Moorhead also noted the inconsistencies between the different courts in terms of their respective approaches towards litigants in person.⁷² In order to achieve true justice and fairness, there needs to be a uniform approach to all cases, particularly in relation to those explanations - and pieces of information - which courts might provide to the vulnerable litigant in person.⁷³ Some courts are taking a different approach in respect of how they conduct hearings and trials for litigants in person. Moorhead found that some judges recognised the need for change,⁷⁴ calling upon the opposing solicitor or barrister to 'take over' the running of a case in order to ensure a smooth hearing.⁷⁵ In many cases, they did this by changing the order of the hearing as the judges saw this as a useful method of managing the process so that the

⁵⁹ *ibid*

⁶⁰ *ibid*

⁶¹ Trinder (n17), p. 235

⁶² *ibid*

⁶³ Appleby (n48), p. 133

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ Tkacukova (n2), p. 436

⁶⁷ Bailey (n1), p. iii

⁶⁸ *ibid*

⁶⁹ *ibid*

⁷⁰ Trinder (n7), p. 99

⁷¹ Trinder (n7), p. 79

⁷² Richard Moorhead, 'The Passive Arbiter: Litigants in Person and the Challenge to Neutrality' (2006) *Social & Legal Studies* < <http://ssrn.com/abstract=892327> > accessed 11th August 2020, p. 21

⁷³ Trinder (n17), p. 235

⁷⁴ Moorhead (n72), p. 6

⁷⁵ *ibid*, p. 7

litigant in person could simply respond to their opponent instead of having to go first.⁷⁶ These changes are the types of adjustments which are perhaps increasingly required. Lewis also found that some judges resolved 74% percent of problems which litigants had.⁷⁷ This represents how the role of the judge is actively changing in order to aid unrepresented litigants. However, when a litigant in person had severe problems with their case which were not resolved by the judge, then their case was often unsuccessful.⁷⁸ (This is a speculative assumption owing to the fact that the litigant may have had a weak legal case regardless). Regardless of how their case was seen in terms of merit, this is still an important factor to consider; a large volume of unresolved, unclear, or unjustly decided cases could have enormous impacts upon – and consequences for – the justice system, not least in respect of public confidence in the judiciary.

It is worth noting that the judge is also a disadvantaged party in some ways: though the judge is a legal professional, they too must face – or address – the various problems that the litigant in person brings to the court process. The judge may encounter poor paperwork and hear weak presentations of evidence.⁷⁹ The judge may then be expected to articulate the case properly to others ensure fairness within their courtroom.⁸⁰ Furthermore, the judge must also be mindful of the opponent of the litigant in person, especially if they are legally represented. If the judge is seen to perhaps be favouring the litigant in person, this could lead to complaints and potential appeals. This could in turn result in unfairness for the represented litigant. In any event, the role of judges as passive courtroom arbiters is now no longer a given, due to the increase in the numbers of unrepresented litigants, and their widely varying needs.⁸¹

The issues discussed above confirm that change is clearly needed. The limited number of organisations available to help litigants in person demonstrates a lack of resources, both locally and nationally. Fortunately, many judges have taken steps to ensure that court hearings uphold and follow principles of fairness. However, there are further changes which the court system must make to ensure that the vulnerable litigant in person will achieve visible justice. It has been found for example that the main support needs that litigants in person have, often are related to information about complex processes and procedures, emotional support needs, practical assistance, or tailored legal advice (including broader questions about their entitlements).⁸² In order to help litigants in person gain adequate and accurate information about processes and procedures, the courts must provide more user-friendly court communications.⁸³ Such court communications could also include some simplifying and clarifying of the rules in relation to procedure.⁸⁴ Another solution could be grounded in the provision of more accessible forms.⁸⁵ It is arguable that by making these changes, the problems associated with convoluted and opaque language – within Rules and Practice Directions, for example – may well lessen.⁸⁶ By doing this, the court would also appear more welcoming to litigants in person. Furthermore, in order to address the need for emotional and practical support, one potential change might be an increase to the number of *Support Through Court* offices. As highlighted above, there are few courts in England and Wales which house this

⁷⁶ *ibid*

⁷⁷ Lewis (n7), p. 31

⁷⁸ *ibid*

⁷⁹ Moorhead (n 9), p. 181

⁸⁰ *ibid*

⁸¹ Moorhead (n71), p. 21

⁸² Trinder (n7), p. 100

⁸³ Tkacukova (n2), p. 447

⁸⁴ Zuckerman (n18), p. 373

⁸⁵ Tkacukova (n2), p. 447

⁸⁶ Zuckerman (n18), p. 373

invaluable service; the limited number is disappointing given that there is as yet no other organisation providing a similar type of service to litigants in person.⁸⁷ This means that there is a substantial number of litigants in person not receiving *any* such support or service.

The final change to be suggested here is the need for tailored legal advice. Zuckerman argued that this could be achieved by the courts offering an annexed legal service which would provide legal assistance to litigants in person.⁸⁸ This work could be carried out by salaried solicitors and barristers employed for this specific purpose or indeed by volunteer solicitors and barristers working on a pro bono basis.⁸⁹ If this change were implemented, then it would provide litigants in person with the opportunity to receive sound, high quality legal advice before their court hearing. This in turn could help the litigants in person better understand their legal position and grasp whether or not they have a strong legal argument worth pursuing.

7. Conclusion

The litigant in person can sometime struggle with their lack of knowledge or understanding of the law. This issue is exacerbated when the litigant in person's first language is not English, or where they are vulnerable on the basis of literacy, disability, age or some other characteristic. The current help available to them - and the adjustments which many judges have undertaken in order to adapt to the rise in numbers of litigants in person – has been outlined above. Further changes are needed to modify court processes so that the diverse, often profound needs of litigants in person are better met, so that meaningful justice might be achieved. The government should for example allow for more funding to be allocated as a matter of urgency; likewise, the government did not put adequate thought into how litigants in person might be best accommodated in practical terms. The benefits of saving money – by cutting or removing legal aid - do not outweigh the risks and the impacts of having individuals attend court without proper legal representation, potentially in breach of the 'fair hearing' provisions of Article 6 of the European Convention. In sum, the changes to legal aid provision have often resulted in injustice for certain litigants in person and as such now require positive, urgent action on the part of UK jurists and legislators.

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⁸⁷ Support Through Court (n41)

⁸⁸ Zuckerman (n18), p. 373

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