

## **Lay advisers in family law settings: The role and quality of advice provided on social media**

### **Introduction**

Accessing legal advice and representation can be challenging with limited financial means. One seeming alternative to professional legal advice is to reach to social media groups and online forums, though such online support is increasingly being offered by lay advisers with unproven expertise (Smith et al. 2017, Melville 2017). The article explores the quality of advice offered in social media groups and online forums run by lay adviser to enhance our understanding of the scope, accuracy and linguistic framing of online advice provision.

Given the growing popularity of online discussion forums where anyone can ask legal questions and obtain an answer from lawyers or other users (Maggs 2006), the topic of the article has an international appeal. It is especially relevant to the context of common law countries (such as USA, Australia, Canada, New Zealand, England and Wales), where litigants have the right to represent themselves in person. The right of self-representation has been linked to the right to access the justice system and the court thus often cannot deny a litigant the right to self-represent (see Assy 2011 for the discussion why the link between the two rights should be challenged and Greacean 2014 on the myths and realities of self-representation). As a result, many of the common law countries deal with an increasing number of self-represented litigants (Richardson et al. 2012). Most of the literature on self-representation focuses on civil and private family proceedings, the jurisdictions with most unrepresented parties (Trinder et al. 2014, McKeever et al. 2018, MacFarlane 2013, Lee and Tkacukova 2017, Moorhead and Sefton 2005, Richardson et al. 2012).

The focus of this study is on private family proceedings, specifically child-related proceedings, in the legal context of England and Wales, where the proportion of private law disposals with at least one unrepresented party is as high as 79% (*Family Court Statistics Quarterly: July to*

*September 2021*);<sup>1</sup> the access to professional legal advice was curtailed by cuts in legal aid, which came into effect in 2013 and, subsequently, caused the increase in the numbers of self-represented parties by almost a half (ibid). Many litigants in person (LIPs), the term used in England and Wales for unrepresented litigants, thus have to resort to self-representation due to the lack of affordable legal advice or state-funded support with legal disputes (Trinder et al. 2014, Moor and Newbury 2017, Lee and Tkacukova 2017, Maclean and Eekelaar 2019, Mant 2019).

The existing research across a wide range of jurisdictions shows that self-representation is rarely a good idea: it impacts the administration and management of court hearings, the role of the judiciary, the duties of the lawyer representing the opposing party (Trinder et al. 2014); but above all, the lack of representation puts LIPs in a disadvantaged position (Trinder et al. 2014, Lee and Tkacukova 2017, Tkacukova 2016, MacFarlane 2013, McKeever et al. 2018). It is argued that LIPs, especially LIPs with disputes about child-related issues, tend to be vulnerable and potentially susceptible to biased advice and unreliable information (Trinder et al 2014; Legal Services Consumer Panel 2014). Yet the need for urgent legal and procedural advice from the rising number of LIPs creates a market for lay advisers, or McKenzie Friends (MFs), the term used following the case of *McKenzie v McKenzie*<sup>2</sup>, which established that unrepresented litigants have a right to reasonable assistance in court (Smith et al. 2017). MFs are thus lay advisers who provide advice either for free or for a fee. As a general principle, the lay assistance provided for free (e.g. assistance and support from friends and family or legal charities) has been found to be helpful across different contexts and jurisdictions (MacFarlane et al 2013, Sandefur 2020, Smith et al. 2017).

It is fee-charging MFs that have become the center of criticism from legal professionals due to the uncertain quality of their advice and lack of regulation (Smith et al. 2017, Barry 2019). Regulating fee-charging MFs seems to offer some assurance as to the quality of support provided, as exemplified by a successful model of lay advisers' practice offered in Washington, US where

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<sup>1</sup> <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2021>

<sup>2</sup> [2010] 1 WLR 1881

'limited license legal technicians'<sup>3</sup> have to pass qualifying exams before they are allowed to help self-represented parties with family disputes. In the context of England and Wales, the lack of regulation does not only complicate the consumer rights but also pushes MFs 'outside of the system', which means that their services are more likely to be provided 'below the radar' (Barry 2019, p.83).

Fee-charging MFs predominantly focus on child arrangement cases<sup>4</sup> (Smith et al. 2017, Melville 2017) as this is the area with the highest concentration of LIPs, but possibly also because the emotional nature of child related cases necessitates moral support and/or because this area of law is sometimes viewed as less technical (Lee and Tkacukova 2017), leading to some ex-LIPs starting to offer MF services (Smith et al. 2017). Despite the original definition of MFs as lay advisers offering in-court support, MF services are increasingly being offered in out-of-court settings and online environments (Smith et al. 2017, Melville 2017, Smith 2019). Yet, very little is known about the substance of the out-of-court advice provided by lay advisers in the environments which often rely on distorted facts and prejudiced information.

This article addresses this gap in research by exploring how MFs use social media and online forums to interact with potential clients and provide information and advice on public and private child related cases. The data discussion draws on content analysis and discourse analysis methods to explore (1) the roles MFs perform on social media, (2) the substantive content of MF advice, (3) linguistic strategies used in communicating this advice, and (4) the broader impact of discursive practices used in online communities on the provision of online advice. This study is thus the first example of empirical research which explores actual MF-LIP interactions, contributing an important insight into the potential of interactive online advice provision, an area which is rapidly developing due to the increased demand for digitized dispute resolution services and the growing reliance on technology in legal settings.

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<sup>3</sup> [www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians](http://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians), last accessed 10 April 2020.

<sup>4</sup> Cases about who the child would live with or have contact with

## Evaluating the role of lay advice in the current legal landscape

The provision of lay advice and the increase in fee-charging MFs in England and Wales should be viewed in the context of the diminishing accessibility of legal aid over several decades (Moore and Newbury 2017: 21-31, Maclean and Eekelaar 2019: 6-13); the ever-increasing austerity measures eventually resulted in the introduction of Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which removed private family law almost entirely from scope.<sup>5</sup> And although public family law is still funded, there are some crucial gaps in accessing the funding (e.g. gaps in the funding of initial preparatory stages, during which parties would benefit from legal advice but need to wait for the funding to become available).<sup>6</sup> The stark reduction in numbers of legal aid clients has had a devastating impact on the legal aid advice sector: some firms went bankrupt and some shifted their focus towards mediation or another area of law (Barlow et al 2017; Organ and Sigafos 2017; Wong and Cain 2019), reducing thus the availability of legal advice in private family law. As a result, the legal profession started to offer unbundled services, allowing clients to decide which aspects of legal proceedings they need legal support with and what could be managed on the DIY basis (Maclean and Eekelaar 2019). But many LIPs are either not aware of the availability of such services or cannot afford to pay for legal assistance even when offered on the unbundled basis (Barry 2019).

The availability of advice from the third sector is equally limited. In the initial post-LASPO stages, many legal charities were underprepared for the influx of LIPs (Maclean and Eekelaar 2019). Although the offer has since then improved thanks to the establishment of new university law clinics and the enhancement of the existing support network based on pro bono services and different volunteer schemes (e.g. Citizens Advice Bureau or local community advice centres), many LIPs cannot benefit from free support due to the location of the services, their restricted capacity for taking new clients or limitations in the type of services provided (some organisations

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<sup>5</sup> Legal aid for victims of domestic violence abuse is still available if they satisfy eligibility criteria: [www.lawsociety.org.uk/topics/research/impact-of-legal-aid-thresholds-for-victims-of-domestic-violence](http://www.lawsociety.org.uk/topics/research/impact-of-legal-aid-thresholds-for-victims-of-domestic-violence) or <https://www.gov.uk/legal-aid/eligibility>, last accessed 23 September 2021.

<sup>6</sup> The Law Society of England and Wales. *LASPO DENIED? LASPO four years on: The Law Society Review* (2017) [www.lawsociety.org.uk/topics/research/laspo-4-years-on](http://www.lawsociety.org.uk/topics/research/laspo-4-years-on), last accessed 23 September 2021.

provide only moral support and help with paperwork, e.g. Support through Court) (Maclean and Eekelaar 2019).

Turning to online resources also shows little potential. Government-led attempts to create an online hub with all the necessary information have not been very successful (Maclean and Eekelaar 2019: 35-36). There is some useful information dispersed across a range of institutional websites linked to social services, local courts or individual justice departments, but the lack of consistency across the sources or clear sign-posting strategy creates an unnecessary barrier to locating the information. The guidance embedded in court forms is equally patchy and often not comprehensible due to complex language and lack of explicit explanations (Grieshofer et al. 2021). And although there is an abundance of other online resources, they often vary in quality of information they provide and can potentially be misleading or biased (Tkacukova 2020, Melville 2017). There are occasionally examples of user-friendly and coherent sources of information from independent charities (e.g. AdviceNow guides prepared by the charity Advice for Life), but the static presentation of information is not always sufficient; what draws many LIPs to online forums is their interactive nature and an opportunity to receive advice tailored to specific needs (Tkacukova 2020).

The unrealistic expectation behind the institutional culture of directing the public to online self-help resources as a fix-it-all solution (Laster and Kornhauser 2017) is linked to the shift towards defining family breakdown as a private responsibility and therefore not a justifiable expense from the state budget (Kaganas 2017). Owing to the family law privatisation and shifting landscape in the legal advice provision, LIPs find themselves in the void between the right to self-represent and unavoidable limitations of the 'DIY Law' approach (Laster and Kornhauser 2017). In the context of the overwhelming lack of affordable or easily accessible sources of support, MFs offer a possible route to accessing information and advice in a flexible and affordable manner (Barry 2019). There are, nonetheless, many uncertainties around the role MFs play in court proceedings or the quality of advice they provide.

Evaluating MFs' services is challenging due to: (1) the flexibility of the MF definition as the term describes a wide range of lay advisers who assist with ancillary tasks relating to court proceedings

(Legal Services Consumer Panel 2014, Smith et al 2017); (2) MFs' varying motivations for acting as lay advisers, especially between fee-charging MFs for whom financial remuneration is one of the key motivators (Smith et al 2017) and those providing support for free (such as volunteers for Support through Court); and (3) the heterogeneity within the MF community as to the experience with legal proceedings and the knowledge of the relevant law (Trinder et al 2014, p. 94).

The *Practice Guidance* (2010) limits the role of MFs to helping LIPs with taking notes, assisting with paperwork, providing moral support, and quietly giving advice on any aspect of the conduct of the case, but excludes legal advice as an area of practice reserved for lawyers. Yet empirical evidence shows that some MFs tend to provide advice on law and legal strategy, case management and occasionally seek rights of audience (Trinder et al 2014, Smith et al 2017). Given that MFs are not regulated, conducting reserved legal activities raises serious concerns around consumer rights.

The MF population is equally diverse when it comes to their professional motivation and level of expertise. Examining fee-charging MFs, Smith et al (2017: 17-20) arrive at a wide range of categories, ranging from 'the business opportunist' and 'the redirected specialist' through 'the good Samaritan' to 'the family justice crusader' and 'the rogue'. As these terms suggest, commercial factors play an important role in MF motivation: for qualified legal practitioners, the MF path can be perceived as an alternative to a fully qualified legal career, with the bonus of not incurring expenses associated with running an independent family law firm. The 'good Samaritans' were, nonetheless, driven by a strong interest in the welfare and well-being of their clients and a desire to support vulnerable LIPs by charging lower fees (19-20).

On the other hand, 'family justice crusaders' or 'rogues' were categorized as problematic MFs (Legal Services Consumer Panel 2014: 21, Smith et al 2017: 20-21). They tend to be ex-LIPs who had a negative experience with the court system and some of them belong to Fathers' Rights Groups which can be aggressive in respect of mothers' rights to children (Melville 2017). For these MFs, the pursuit of the MF career thus presents an opportunity to further their personal agenda against the justice system, leading to potentially harmful ramifications for the cases of

their clients. For instance, MFs have been observed trying to impact their clients' cases (MacFarlane et al. 2013: 78; Legal Services Consumer Panel 2014: 21; Trinder et al. 2014: 97-8) or showing signs of inappropriate involvement in cases, such as negotiating or calling the court on behalf of LIPs (Moorhead and Sefton 2005: 57-8; Legal Services Consumer Panel 2014: 26). Given the vulnerability of many LIPs, any pressure or distorted advice may discourage them from engaging in negotiations or trigger distrust in family courts (Moorhead and Sefton 2005: 172-3; Trinder et al. 2014: 49-50; Lee and Tkacukova 2017).

Nevertheless, such problematic conduct is rare among MFs (Legal Services Consumer Panel 2014: 21, Smith et al 2017: 20-21) and, as Smith et al (2017, 16-17, 43, 54) show, most of the fee-charging MFs they observed in court helped LIPs manage their cases and the necessary paperwork, explained relevant court procedures or even supported them with the negotiation process by preparing them for realistic outcomes, leading to a successful settlement (see also MacFarlane 2013: 79-81; Trinder et al. 2014: 96). Interestingly, procedural and sometimes even legal assistance provided by lay advisers can be of similar quality to that given by lawyers (Sandefur 2020).

The support offered by MFs is mostly appreciated by LIPs because it allows them to continue with their cases (Trinder et al 2014, p.96; Smith et al 2017; McKeever et al. 2018, p.93; Sandefur 2020). The overwhelmingly positive experiences possibly show that LIPs base their feedback on aspects they are able to assess, such as the quality of customer services provided to them, rather than the quality of advice (Sandefur 2020). Furthermore, the complexity of legal proceedings, including the complexity of legal discourse in which proceedings are held (Tkacukova 2016), makes it difficult for most LIPs to discern the quality of MFs' advice (Sandefur 2020). As a result, LIPs may wrongly assume that MFs are knowledgeable and experienced even when presented with misleading or partial advice (Trinder et al 2014: 112; Barry 2019: 79-81); LIPs' evaluation is thus not a reliable measure for assessing the quality of MF advice or risks related to obtaining advice from an unregulated service provider (Economic Insight Limited 2016).

So far the value and role of MF advice has been discussed as part of the qualitative small-scale research studies which focused predominantly on the experiences of LIPs (Barry 2019; Mant

2019) or MF role in the court environment (Smith et al 2017: 59-69, Barry 2019: 78). The informal out-of-court advice, abundant in online spaces (Smith et al 2019), has not been explored yet (Smith et al 2017). Given the potential for vulnerable LIPs to be more susceptible in online environments, it is crucial to explore the quality and nature of advice provided online by the diverse population of MFs. The dynamic nature of online interactions enables MFs to build rapport with potential clients and increase the authoritativeness of their advice (Tkacukova 2020). Investigating the linguistic framing of how MFs provide advice and support online, as well as the nature of such advice, is thus central to understanding the role MFs play in supporting LIPs.

### **MFs' role in facilitating information and advice online**

Family proceedings are designed around the fact that family lawyers play an important role in supporting their clients, explaining relevant legal principles, providing tailored legal advice, managing their expectations and conducting negotiations on their behalf (Ingleby 1992; Eekelaar et al 2000). Without such support, LIPs face multiple issues when trying to engage with the legal process, including intellectual, emotional, practical, and attitudinal barriers (McKeever et al 2018). These barriers are often linked to language-related difficulties, such as comprehending legal jargon, identifying relevant legal concepts, and framing their narratives in a legally coherent manner while also observing the legal processes and procedures applicable to their cases (Tkacukova 2016). LIPs thus have to engage with challenging legal discourse, which comprises complex legal terminology, grammatical constructions and syntactic choices (Bhatia 1993; 2004) alongside unfamiliar genre characteristics of witness statements, and formalized nature of legal communicative settings, including the pre-determined turn-taking that is central to the court settings (Tkacukova 2016).

In contrast, the advice provided via social media is often conveyed in everyday language. Language use on social media is characterised by informal lexical expressions (see Example 1) and sentences which syntactically and grammatically resemble the instantaneous flow of spoken communication, including, for example, false starts and short or fragmented sentences (Herring 2012). The fact that legal advice is presented in a comprehensible manner, without the use of



legalese, and is available instantaneously helps MFs attract potential clients to their forums. The natural flow of communication plays a role in establishing common ground on social media and building trust in the information gained (Ridings et al. 2002), which helps to implicitly advertise MF services (Tkacukova 2020) and increase the impact of the shared information on LIPs (Smith 2019). Some LIPs may thus actively choose to use social media for support, even if they can access free legal advice elsewhere (Mant 2020). The benefit of lay advisors or “trusted intermediaries” (Law Commission of Ontario 2013), acting as ‘translators/interpreters’ between the legal discourse community and LIPs, has been acknowledged as crucial in supporting LIPs to navigate complex legal processes (Smith et al 2017; Sandefur 2020; Maclean and Eekelaar 2019: 198-199; Law Commission of Ontario 2013). When reflecting on the quality of MF advice, it is thus important to discuss not only the linguistic framing of the advice, but also the extent to which they support LIPs with reconceptualising their narratives to fit the conceptual and stylistic boundaries of the established discursive practices in legal settings.

## **Methodology**

The representativeness of the data sample for the study was accomplished by identifying online forums and social media groups which are most frequently used by LIPs with queries related to public or private family law. The sample thus includes forums and groups identified through: (1) existing publications (Smith et al. 2017; Lee & Tkacukova 2017; Melville 2017) or recommendations from legal professionals who encounter MFs (e.g. *Transform Justice* practitioners); (2) Google search results based on search terms from existing LIP surveys (Lee and Tkacukova 2017) and headings in relevant AdviceNow guides (easy-to-read information leaflets for LIPs). Due to the flexible understanding of the term ‘MF’, the sample included those who refer to themselves simply as online advisors or as forum/group moderators and administrators. Such approach enables insight into what advice and information is available to LIPs online, irrespective of the type of online advisors. The paper also works with a flexible definition of LIPs as there is often no information about whether forum or social group users are representing themselves or whether they are party to an ongoing court case or just require

generic information. The final data sample includes three Facebook groups and five online forums over a period of three months (the group/forum names were anonymised):

- 105 threads from three Facebook groups (FB1-3) run by MFs (45 from FB1, 30 from FB2, 30 from FB3); the threads from the three Facebook groups contain responses from 31 MFs: two ex-lawyers, three ex-LIPs, 11 active MFs (refer to their court experience representing LIPs, offer to private message LIPs or respond to LIPs' requests for MF contacts in specific locations) and 15 MFs moderators/administrators (no information available whether they are fee-charging or what their professional background or level of expertise is);
- 69 threads from open public forums (F1-5) run by forum facilitators who either claim to have legal background and provide legal information (17 from F1 used predominantly by fathers) or do not have any legal background and provide emotional support only (three from F2 for fathers, 24 from F3 for fathers, 19 from F4 for mothers, six from F5).

The differences in the numbers of individual threads reflect the frequency of queries posted and the availability of relevant threads during the data collection period. The threads were selected manually, which means that irrelevant threads (e.g. on forum updates, generic information, newspaper articles, judgements, jokes or advertisements) were excluded. As has been noted elsewhere (Smith et al. 2017; Melville 2017; Barry 2019), there tends to be a gender imbalance in the availability of MF support: there are more public forums targeted solely at fathers than those at mothers (though there may be more privately administered groups for mothers - see Mant 2020). The dataset nevertheless includes one forum for mothers to explore differences in advice provision in online spaces targeting specific family roles. For instance, on the forums for fathers, MFs tended to respond to questions, offer moral support (Forum 3), and sometimes even provide legal information (Forum 2). Similar platforms for mothers, including Forum 4, did not have an MF or forum facilitator, and so support came from other users.

In terms of research ethics, the public forums chosen for the study were available online without any registration, and since the information is in the public domain, it is important to assess its quality as well as research the context in which such advice is provided (see also Melville 2017).

To access the data from Facebook groups, the author had to create a Facebook account linked to the project and contact group facilitators to introduce the project and ask for permission to join the group for research purposes. Access to all groups was provided within days and the group facilitators welcomed the concept behind the research project. All data was anonymised to ensure that neither the contributors nor MFs could be easily identified.

The originality of the study lies in its methodological approach, which offers insights into the linguistic and socio-legal construction of MFs' online interactions and advice provision. The content analysis was used to categorise MFs' responses according to the type of advice provided, themes covered and general adequacy and accuracy of their advice<sup>7</sup>. The discourse analysis explored discursive strategies used in communicating the advice and reflected on discursive practices of advice provision in online settings. Both methods are qualitative and complement each other: content analysis is a top-down approach (Anandarajan et al. 2019), whereas discourse analysis was employed here in its bottom-up adaptation as a language-based methodology<sup>8</sup> (Biber et al. 2007). Building on a mixed-methods approach allows the paper to explore both the substantive content and linguistic framing of MFs' advice and thus provide a detailed overview of the role lay advisers, and social media more generally, play in the current climate of DIY Law.

### **Content analysis of MFs' advice**

This section focuses on the type and functions of MFs' advice provided in the constantly unfolding online interactions. MF responses that performed several functions or contained more than one type of advice were double/triple coded. As sometimes several MFs responded to the same query

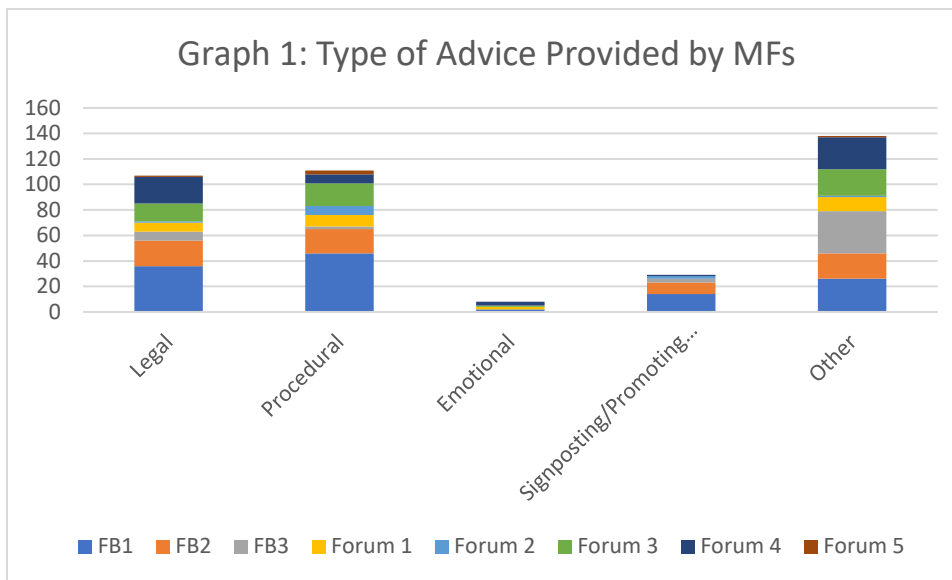
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<sup>7</sup> The paper does not consider what the MFs in the sample were intending or perceiving when they posted their responses, whether the responses effectively addressed the LIP's concerns, or whether their responses were perceived as useful because these issues were out of scope of this study and have already been explored in existing research (e.g. Smith et al. 2017, Trinder et al. 2014, Leader 2017, Mant 2019, McKeever et al. 2018).

<sup>8</sup> The discourse analysis presented here is based on the semi-automated corpus linguistics methodology, detailed in Tkacukova (2020).

or the same MF responded several times to the query, the number of responses is higher than the number of threads.

In Graph 1, the interpretation of responses as either procedural or legal depended on whether they were framed around rights and judicial decision-making principles (e.g. legal reasons to support an application to revoke a placement order) or referring to how certain steps could be completed in terms of court procedures (e.g. forms to be filled in by grandparents to gain leave of the court). Responses coded as 'other' often did not refer to a legal case or legal problem but to a more general problem, e.g. contacting Children and Family Court Advisory and Support Service (CAFCASS), social services for private family cases, after the case is closed.

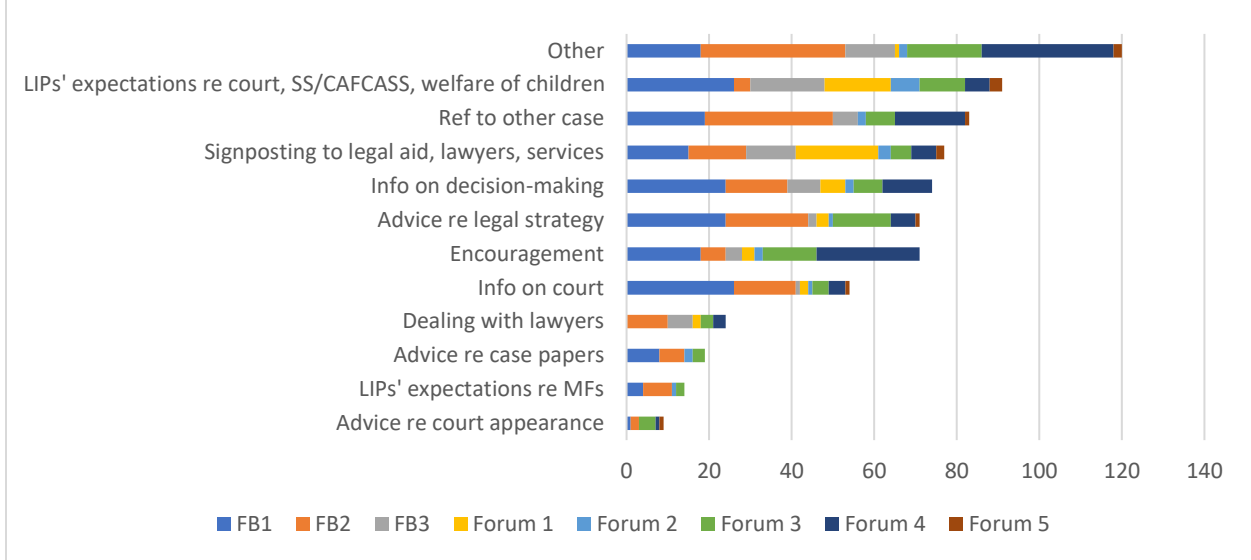


Graph 1 shows the broad range of advice provided, including the high occurrence of procedural advice, in addition to legal advice. The importance of procedural advice has been emphasised by several studies (Sandefur 2015; Trinder et al. 2014, p.83), which found that previous experience and understanding of court procedures had a positive impact on the capacity to self-represent. MFs' advice also included signposting or promoting MFs' services, demonstrating their use of social media for marketing purposes. Examples include instances when MFs advised LIPs to contact either themselves or a specific MF directly. Overall, there are 30 instances of MFs signposting LIPs to specific MFs in their area or offering their own services (e.g. by asking LIPs to message them privately); by contrast, there are only three requests from LIPs to be privately

messaging by MFs. There is also a noticeable absence of signposting to government or third-party sources of advice (e.g. AdviceNow guides). The following exchange between an MF and a parent illustrates this use of Facebook for marketing purposes: “there are a dozen or two lay practitioners here on this page helping parents such as yourself” (MFa5, professional MF). The MF further reveals specifically who can be contacted in the area while also saying that group administrators will be happy to support by “dispensing advice and guidance” and warning the poster that they “SHOULD ALWAYS ASK FOR REFERENCES [capitals as used in the original] when engaging with any practitioner including those in here”. Another MF insists: “Please get some proper legal advice before deciding on your next step” and subsequently suggesting the LIP turns to “one of our many trusted McKenzie friends” (MFa8, administrator).

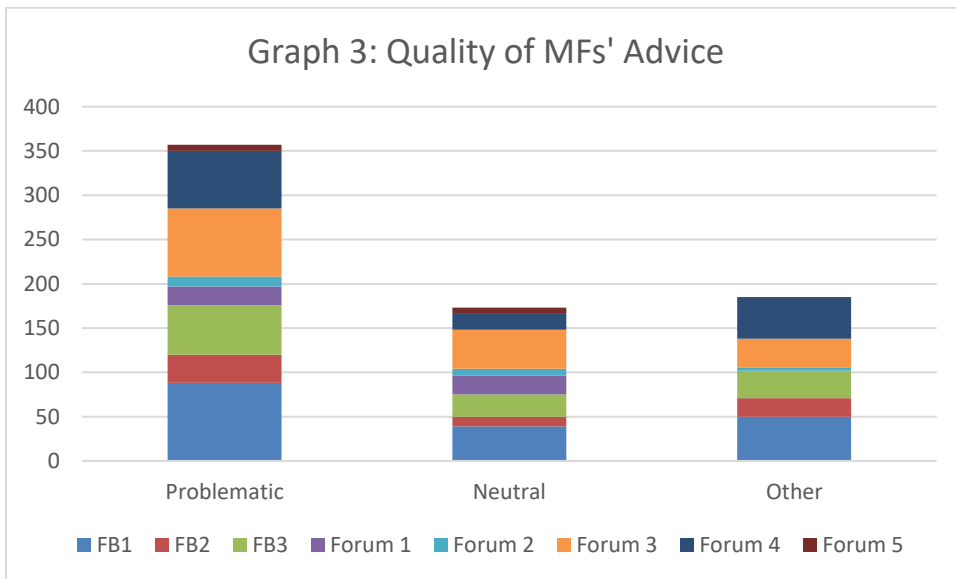
Graph 2 illustrates the complexity of functions MFs perform when responding to LIP queries on social media. The coding takes into consideration the main functions (e.g. signposting to services and providing legal or procedural advice/information) and additional ones (e.g. dealing with lawyers, signposting to MFs’ services, encouragement, advising on communication in legal settings) as well as provides information on different stages of the proceedings (e.g. dealing with Social Services/CAFCASS, giving information on case papers, advising on court appearance). Given the categorisation criteria, the occurrence of individual sub-categories is not necessarily important as different categories can be combined (e.g. advice in relation to court appearance and case papers) or separated (e.g. LIPs’ expectations in relation to court, Social Services/CAFCASS and the welfare of children), depending on the focus of the analysis. This fine-grained categorisation indicates the type of guidance LIPs obtain in the analysed sample (what aspects court users need more guidance on) and highlights communication-related topics covered in such advice (e.g. what information court users need in relation to case papers or court appearance). The category ‘other’ encompasses MFs’ responses to questions about dealing with institutions outside of legal proceedings (e.g. police, schools), their requests for clarification of the original queries (e.g. about the posters’ stage of proceedings, or about the type of case the query is related to), and MF management of discussions (e.g. asking other posters not to provide legal advice unless they have legal qualifications, or explaining that judgemental posts are removed from forums).

Graph 2: Functions of MFs' responses



Finally, the below graph illustrates the quality of MFs' advice in terms of its tone and substance.

Graph 3: Quality of MFs' Advice



Around half of MFs' advice was categorised as problematic either due to its substantive content or linguistic framing, which reinforces some of the concerns highlighted by the studies discussed earlier (Legal Services Consumer Panel 2014; Trinder et al. 2014; Smith et al. 2017). Interestingly, linguistic framing or the combination of linguistic framing with substantive content (it was not always possible or even necessary to discern between the two types of problems as they often co-occurred) created problems more frequently than just substantive advice. It is worth noting

the high proportion of procedural advice provided by MFs and the corresponding high number of responses related to CAFCASS and social services (Graphs 1 and 2). It is, arguably, easier to provide correct information and advice about procedures than about complex legal concepts and principles. The following section expands on the quantitative results, discussing specific examples of MFs' roles and reflecting on the quality of their advice in more detail.

### **Discussion of MFs' roles and quality of advice**

As shown in Graph 2, MFs play an important role in terms of assisting LIPs to navigate the family justice system, for example by managing expectations as to the role of courts and services (Example 1), explaining the practical implications of the concept 'welfare of children' (Example 2), and advising whether claims are worth pursuing (Example 3). By viewing these interactions through the lens of discourse analysis, it is possible to reflect on how this support relates to the linguistic features they use when engaging with LIPs. For instance, Example 1 delineates the cognitive frame within which parents' narratives are presented and interpreted during court proceedings:

Example 1 (FB1, MFa5, professional MF: in response to the question about what courts do if the resident parent moves away and the existing court orders cannot be followed any more): "You are essentially referring to anticipatory breaches of what was and what was before that. (...) The problems come from the way courts make decisions. Courts deal in matters of fact and points of law. Law trumps fact. The Judge will decide what is and will be lawful but knows nothing of the facts because they didn't live with you. CAFCASS are the agency employed by the courts to go forth and gather the facts that are relevant to the case and they will make recommendations to the court. The court in turn are conventionally bound to follow the recommendations made by CAFCASS unless compelling grounds are given not to. (...) Their [CAFCASS's] declared concerns are for the well being of the child regardless of the law. Thus in situations like this they will often say something along the lines of 'yes this may have been legally agreed or ordered but here and now the child is living here or there and we feel moving him or changing that would

be harmful'. (...) I cannot predict with any certainty what may unfold in your case but courts generally have scant regard for the significance and value of a father in the life of a child."

This response illustrates a close correlation between the content of the advice and linguistic framing. Firstly, the informal tone<sup>9</sup> of this clear explanation is paired with the experience and understanding of what the courts are "conventionally bound" to do and "would often say". So, on the one hand, the MF uses informal vocabulary ("trumps", "scant"), simple and short sentences ("Courts deal in matters of fact and points of law. Law trumps fact.") or short clauses in longer sentences reflecting the syntactic structure of spoken language as in: "The Judge will decide what is and will be lawful but knows nothing of the facts because they didn't live with you." On the other hand, there are several lexical clusters characteristic of professional legal discourse ("anticipatory breaches", "compelling grounds") as well as those which only adopt the lawyer-like tone ("conventionally bound", "declared concerns"). The seeming detachment of courts from parents' needs ("courts" co-occur with "problems" and "scant regard" within the same sentences) is juxtaposed with the MF's empathy for the "significance and value of a father in the life of a child". This sets up the dichotomy between 'them' (courts or social services) and 'us' (MFs sympathising with parents, or, in this case, specifically dads). An integral part of the MF's management of the parent's expectations is thus the construction of the MF image as both an expert and an ally. The following example also sets the parent's expectations in terms of social services' role, and, more importantly, the practical implications of the concept of the welfare of children, illustrating that MFs' procedural knowledge can be useful in supporting LIPs and preventing potentially vexatious behaviour (Sandefur 2020).

Example 2 (FB3, MFc1, ex-LIP: in response to the complaint about the actions of social services in relation to a partner with mental health issues): "Unfortunately they [social services] are not interested in yourself or your partner they are purely interested in the

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<sup>9</sup> It is important to note that grammar or spelling errors (e.g. 'turns') are common in informal communication modes, such as online groups/forums, and may be caused by the medium (e.g. typing on the phone) and thus cannot be conclusively linked to a sign of lower literacy or education attainment. It is more appropriate to evaluate professional writing standards based on the genres relevant to court proceedings, e.g. court correspondence, witness statements.



children's welfare under section 8 amendments<sup>10</sup> 4 a person whom as responsible actions for a child and does not act when that child is [in] Danger is subject too a eight year mandatory prison sentence (...)The child's more important than you or your girlfriend sorry mate these are the facts."

The informal language use ("4" instead of 'for', "mate") alongside formal stylistic features ("children's welfare under section 8 amendments" or "subject too a eight year mandatory prison sentence" though note the misspelt words) make this message sound authoritative. The impoliteness strategy, or positive face threatening act (Brown and Levinson 1987), used here entails denying the wish of the addressee to be approved and liked by others ("not interested in yourself", "The child's more important than you or your girlfriend"); it is presented here as part of the function of social services, while the MF, as in Example 1, shows empathy with the parent ("unfortunately", "sorry mate") while also seeking to illustrate their knowledge of the system ("these are the facts").

The content of MFs' responses reframes LIPs' queries and presents the recontextualised concepts in informal language and tone, showing that there are no visible or implied status obstacles among MFs and LIPs, which helps MFs build rapport with potential clients. But the use of everyday language makes it more difficult to manifest the professional prestige and establish the much-needed 'expert status'. The latter qualities are displayed through frequent references to family case law (see Graph 2). These sometimes appear in the form of intertextual references: for instance, in response to a query about an accusation of an alleged drug use, one MF claims to use a citation ("To quote the then President of the Family Division 'many parents use cannabis that do not go on to harm children' Re: A (A Child) 2015 EWFC 11") and then interprets the quote by providing contextualised examples of harmful substance use ("parent smokes cannabis in a confined space causing the child to ingest the drug, they are inattentive because of drug use"). On other occasions, the MF expertise is illustrated through their procedural knowledge; for instance, clear instructions on how to deal with domestic abuse when the victim does not have

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<sup>10</sup> Section 8 of the Children Act 1989 relates to residence, contact and other orders with respect to children (<https://www.legislation.gov.uk/ukpga/1989/41/section/8>). Note that due to the syntactic inaccuracy and spelling problems, it would be difficult to find the relevant part of the legislation.

where to live: “fill out a C1a<sup>11</sup> emergency hearing application form and obtain an Occupation Order and Non Molestation Order appended with the power of arrest”, and the advice on the timeline, “she can be heard the same day and have it enforced when she goes home”. Identifying the right court forms is notoriously difficult for LIPs (Trinder et al 2014, Tkacukova 2016) and the procedural information on documentation and the purpose of hearings is the type of advice where MFs can potentially make a positive difference to the LIP experience (Sandefur 2020, Smith et al 2017). Sandefur (2015) found that lawyers’ main contribution to case outcome was their extensive knowledge of procedures rather than substantive law and Williams (2011: 7) concludes that the presence of a lay representative familiar with procedures may be as effective as representation by a professional.

An inherent part of procedural knowledge is the understanding of how to narrate a story throughout court proceedings (Tkacukova 2016). The following example illustrates how the information provided by the MF is meant to support decision making and devise the legal strategy in relation to how/what/when to communicate to CAFCASS, courts and social services:

Example 3 (Forum 3, query on how to approach an upcoming CAFCASS interview due to concerns that the baby daughter is in her mother’s care, but step brother displays alleged violent behaviour): “With Cafcass - focus on being a Dad to your daughter and why you think it's important to see her regularly (ie to grow up having love and time with both parents). Keep it child focused - ie the best interests of the child are to have time with both parents and for parents to attempt successful co-parenting. You could try mentioning some positives first - eg your ex and you have reasonable communication but can't agree on a regular schedule or whatever. I think if you are going to mention some concerns you need to have evidence - or it may come across as trying to undermine the Mother. Usual advice is don't say anything negative about the ex (or they label you). (...) only mention evidential facts. The bruise on your baby's leg - if you have no evidence I would not mention it at this stage if you have mentioned social services involvement

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<sup>11</sup> The court form C1a elicits information about harm already suffered or at risk of suffering by the applicant or children or, alternatively, to respond to allegations. Occupation Orders restrict rights to occupy the matrimonial home; Non-Molestation Orders prohibit an abuser from threatening/intimidating/harassing the victim.

already. If there is later a report to or investigation by social services relating to this then you can email it.

What you are trying to do is get a court order for regular time with your child. Courts only work with evidence regarding welfare issues - anything else is classed as mud-slinging or he said/she said. They are not there to judge who is the best parent.”

The occurrence of only a few instances of hesitation (“you could”, “I think”) alongside multiple imperatives (“focus”, “keep”, “don’t say”, “only mention”) indicates the authoritative tone of the response. The MF is, nonetheless, unnecessarily categorical about the bruise without eliciting more information – they state that it may be necessary to report the bruise to the GP or police, but do not enquire about the circumstances or any evidence in relation to the incident. Their tone may therefore discourage the LIP from raising this point with CAFCASS. Furthermore, the MF provides a clear conceptual frame for the main focus of the LIP’s narrative by discussing specific communication and narrativisation strategies (how to keep communication with CAFCASS child-focused and how to include “evidential facts”), so that the parent could avoid being “labelled” for potential “mud-slinging or he said/she said”. While this is clearly useful in helping parents to understand the role of CAFCASS and social services, coaching parents on what to say can be unethical. According to the Solicitors Regulation Authority Code of Conduct<sup>12</sup>, this advice could be in breach of the following two principles: the principle of upholding the rule of law and the proper administration of justice and the principle of acting with integrity. Melville (2017: 163) found that MFs linked to father rights groups (FRGs) tend to coach their clients on what to say to CAFCASS and although they promote shared parenting or co-parenting, the focus is on fathers’ rights instead of the paramount principle of the child’s best interest. The conflation of children’s and father’s rights is one of the discursive strategies used by FRGs to enhance the credibility of their cause (Kaye and Tolmie 1998); FRGs are often driven by the destructive incitement and confrontational litigiousness, demanding formal equality over constructive approaches to positive parenting or interest in the well-being of children (Flood 2010).

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<sup>12</sup> <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>

In sum, Examples 1-3 illustrate that MFs have a unique position on social media targeted at LIPs: they fulfil the role of knowledgeable lay experts who are outside the system and yet understand court requirements as well as LIPs' needs and can provide tailored information and expert knowledge in a comprehensible manner; this duality was observed across the wide range of MFs (ex-lawyers, ex-LIPs, professional MFs and those MFs who run the forums/groups). MFs' professional image is conveyed by adopting a powerful language style (Conley et al. 2019) characterised by linguistic features which imply criticism of the legal system (hence the 'anti-system' or an 'outsider' projection), but which also suggest discursive competence within legal settings. The distinctive communicative function of MF responses (and thus the selling point of MFs' services) is rooted in their potential to empower LIPs to actively participate in the legal discourse by providing specific advice on what to mention in different communicative situations (e.g. when talking to social workers or appearing in court) and by contextualising the speech events within legal settings (e.g. the relationship between CAFCASS and courts). The anti-system stance, however, undermines the usefulness of many MFs' responses.

The heterogeneity of MFs' expertise, skills and understanding of law can be revealed via a more detailed analysis of the linguistic framing and substantive content of their advice. The following discussion illustrates some of the typical responses which were coded as problematic (see Graph 3). It is often the linguistic framing of advice that undermines its usefulness, especially if the advice contains explicit and/or implicit criticism of the justice system (Tkacukova 2020). Sometimes the criticism was directed towards courts because their institutional role empowers them to exercise control over the parent/child relationships (e.g. Example 1); alternatively, the justice system was linked to the perceived bias towards mothers (e.g. Example 1).

Most of the criticism was directed towards CAFCASS and social services workers: "Don't engage with them and make sure you have an advocate with you at all times. Social Worker may try to distort evidence so don't let them!" (MFb7, Facebook 2) or "Truth no matter what many many Caffcass reports are wrong many contain falsehoods or the INTERPRETATION of caffcass don't do as they do & sweep truth under the carpet xx" (MFa8, Facebook 1). While making derogatory comments about social workers ("not every social worker in the country are corrupt just a said few and of course there's a lot of inexperienced workers too"), another MF discouraged a LIP

from engaging with social services: “they are voluntary you do not need to engage with them !!!!” (MFc1, Facebook 3). Such comments do not only instil distrust in the system, but also potentially discourage LIPs from engaging effectively with court processes (Tkacukova 2020). By contrast, lawyers tend to encourage vulnerable clients to engage with social services as this shows their commitment to their children before the court and, if necessary, makes it possible to challenge the social worker’s narrative during cross-examination and thus provides a mechanism for their clients to cope with difficult circumstances, irrespective of the case outcome (Masson 2012).

Occasionally, the linguistic framing of MFs’ responses was not conducive to supporting an amicable relationship among parents or among parents and children, possibly inspired by the FRGs’ confrontational approaches to post-separation litigation (Flood 2010). Examples include an MF supporting a dad by criticising the mum and thus failing to prioritise smoother post-separation parenting: “the softly softly approach doesn't work with these people. They think they're the centre of their children world just because they physically gave birth” (Forum 3). Another instance of unnecessarily complicating relationships without taking into account children’s wishes is illustrated in the response to a query about whether social services could prohibit parents from having photos of their children: “The original question is whether you (...) can ask for a child already adopted for new pictures. That answer is no. However, if you have pictures of them in your possession already then you can post them all over Facebook providing there is no court order not to do so” (MFb1, professional MF, Facebook 1). The inflammatory comments and non-conciliatory tone of some advice was clearly against the traditionally non-adversarial character of family proceedings in which the paramount principle is the welfare of the child.

From the point of view of substantive content, many of MFs’ responses provide helpful guidance. Only some responses from several MFs contained advice which would obstruct justice and put children at risk. For instance, the MF who presented themselves as an ex-lawyer in one of the posts advises the parent not to disclose crucial information to social services: “if you have been diagnosed with a serious illness, try to ensure the SS don’t find out” (MFb6, ex-lawyer, Facebook 2). In another thread, the same MF posted an equally dangerous advice in response to a query

about foster care arrangements: “Parents should get their children out of the country as soon as it becomes possible, and then what are the laws to bring them back?” (MFb6, ex-lawyer, Facebook 2).

The main issues in relation to content were, nonetheless, linked to inaccuracies and incompleteness of responses rather than attempts to obstruct justice. The deficiencies in advice were thus predominantly grounded in the lack of legal expertise or procedural knowledge. One frequent issue seemed to be related to the common confusion between criminal proceedings, public family law proceedings and private family law proceedings. For example, one MF, an ex-LIP (MFb3, Facebook 2), mistook a public family matter for a private one and advised the LIP to complete the wrong court form (“a C2 under PART 25<sup>13</sup>”). Similarly, two other MFs (MFa17 and MFa8, Facebook 1) within the same thread failed to acknowledge that the police can stop contact between partners or parents and children by issuing, for instance, a Domestic Violence Protection Notice (this can be followed by a Domestic Violence Protection Order and potentially a Restraining Order as a result of criminal proceedings). This points to the general unfamiliarity of MFs with the police and criminal court equivalents to protective measures issued by civil courts. The third MF in the same thread (MFa9, moderator, Facebook 1) wrongly presumed that the same judge would be presiding over criminal proceedings and private family matters; furthermore, the advice failed to draw the parent’s attention to the variation in judicial approaches.

Most of the misleading advice provided by MFs could, in practical terms, lead to confusion as to relevant court processes and procedures or set unrealistic expectations. For instance, MFc1 (Facebook 3) was not aware that parenting assessments and capacity assessments are different types of assessments. Similarly, the advice to promptly submit “an application in to the local court this afternoon to Discharge the Placement Order” (MFb5, Facebook 2) would require sufficient evidence of change in circumstances in order for it to be successful, yet this was not highlighted in the response. It would also be unrealistic to expect that, as stated by MFc1 (ex-LIP, Facebook

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<sup>13</sup> The court form C2 is used to apply for orders (or to be joined as a party) in existing private family proceedings. PART 25 refers to rules in relation to experts and assessors in Family Procedure Rules ([https://www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_25](https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25)).

3), a negative parent assessment “doesn’t mean they are taking your children it means there’s areas for improvement x” as the assessment would likely have an impact on the court decision or at least the interim orders.

Overall, the results of the study show that, within the diminished context of family law advice in England and Wales, there is a wide range of functions being performed by MFs in online spaces, including several of those which would have traditionally been performed by legal aid lawyers, such as managing expectations and advising on options available (Ingleby 1992; Eekelaar et al. 2000). Approximately a third of the MFs’ advice was accurate and fully addressed LIPs’ queries. The advice coded as problematic was mainly due to linguistic framing of such advice or due to the misleading content which could potentially confuse LIPs or alter their expectations as to the timeline or achievable remedies. In fitting with the findings of earlier studies, the advice which was clearly obstructive and dangerous was very rare and tended to be provided by a minority of MFs.

## **Conclusion**

Using empirical data based on MF-LIP online interactions, this article has contributed an original insight into the role and quality of family law advice provided by MFs in online spaces. One shared feature of MFs’ responses is that their advice is pitched in an informal and accessible way. Balancing out everyday language use with the need to demonstrate professional expertise in law and court procedures, MFs position themselves as LIPs’ entrusted allies, who are ‘outsiders’ with the expertise of ‘insiders’, allowing their clients to experience both worlds without artificial status barriers. The discursive proximity to LIPs, alongside the interactive format of online groups, enable MFs to create a sense of online community which supports the users and provides advice and information that may otherwise be difficult to access elsewhere, i.e. the advice which is contextualised and tailored to individual needs (Tkacukova 2020).

What stands out in the data is that MFs seek to manage LIPs’ expectations as to law, social services and courts and in doing so, they help LIPs frame their narratives within the relevant legal

concepts. Although only a minority of responses from very few MFs presented a concern due to the obstructive nature of their advice, there were some responses containing misleading information as to procedures or law. The root of most of the problematic advice was linguistic framing, which implicitly or explicitly criticised the justice system, courts, the legal profession, social services and CAFCASS.

The contributions of this article are of significance for both policy reform and the development of future research in other jurisdictions. The existing literature already clearly shows that LIPs benefit from the support of intermediaries who can translate the law for them (Sandefur 2020, Law Commission of Ontario 2013), and this article reiterates that such lay advisors are now playing a central role in providing advice and support to communities who cannot afford to instruct lawyers privately. In the absence of legal aid advice or other affordable options, LIPs are increasingly seeking support in relation to their family law problems in online spaces. Taking regulatory approaches which position lay advisers as external to the legal system fail to recognise this current reality. Bringing MFs within the constraints of institutional remit and standardizing the quality of their services through required training and proven expertise could offer a more reliable advice option for LIPs and will most likely address the linguistic framing of MFs' advice (e.g. 'outsiders' or 'anti-system' perspectives), though the gendered angle or FRG-related views are unlikely to disappear from social media and need to be addressed via public legal education initiatives. More broadly, this article also shows that online spaces require further investigation due to their potential impact on how the wider public perceives the justice system.



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