

# A study of litigants in person in Birmingham Civil Justice Centre

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This paper presents the findings of research, initially commissioned by the Birmingham Law Society and conducted with the support of the Birmingham Civil Justice Centre, into the challenges facing litigants in person in gaining access to justice.

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# A study of litigants in person in Birmingham Civil Justice Centre

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## **Background to the project**

Birmingham Law School (BLS) was approached by Birmingham Law Society (Law Society) in February 2015 in relation to a research project on litigants in person (LIPs). The Law Society was keen to administer a questionnaire to litigants in person and had discussed the matter with the LIPs Liaison Judge at Birmingham Civil Justice Centre. According to our minute of the meeting the President of the Society said that she was worried that the limitations on access to justice impacted on those individuals who could not access legal aid. However no one organisation appeared to have been able to access the view of the LIPs which was thought to be imperative.<sup>1</sup> A questionnaire was suggested as the mechanism by which such views could be solicited. The Personal Support Unit (PSU) at the court were said to be prepared to support with the handing out and collecting up of the questionnaire and the request was that researchers from the University of Birmingham (UoB) could undertake analysis of the responses. We were told that the LIPs Liaison Judge was content for the initiative to be undertaken at the court but could not provide assistance via court clerks. At this stage it was suggested that a week at the court in the next month or so could see the data collected.

In the event it took a further year to administer the survey. Ethical approval processes alone meant that such early access to the court would prove impossible. For the purposes of ethical approval and to agree the project with Birmingham Law Society, a research proposal was drawn up. There was no available funding for the project, but, as initially discussed, little resource was said to be required. In the research proposal, additional stages were added to the administration of the questionnaire.<sup>2</sup> For example in advance of the questionnaire, the researchers would undertake a literature review, in part to shape the questionnaire, and would seek to access data from the court regarding the volume of cases involving LIPs from the court and/or the PSU. The literature review was completed but there was no ready access to relevant data on numbers of LIPs from the court. The PSU was able to provide us with some data for the year 2014/15 during which time it had a staggering 6,681 client contacts, averaging 557 client contacts per month, the vast majority face to face. We know that this represents a 59% increase on figures for 2013/14 but tracking longer historic trends proved elusive.

The researchers also suggested that follow up meetings with LIPs, either via interview or focus groups, would add some qualitative depth to the largely quantitative data gathered by the questionnaires. In addition, by this stage, the BLS researchers had teamed up with Dr Tanya Tkacukova, of Birmingham City University (BCU), a forensic linguist, so that it was thought that court room observation of LIPs might help reveal particular difficulties in interpreting and understanding legal concepts and procedures. We had hoped to interview judges and advocates about their general

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<sup>1</sup> In fact there were various studies to draw upon as our literature review (below) makes clear but interestingly in terms of research dissemination, these were not widely known to those with whom we dealt in the course of the research.

<sup>2</sup> The research was never funded other than by UoB resources for research assistance and the time of staff and students from UoB and Birmingham City University (BCU).

(i.e. not case-specific) experience of LIPs in court, alongside interviews of the particular experience of the LIPS themselves. Neither the focus groups nor the court observations were pursued for reasons explained below. We hit difficulty in interviewing judges (below) and therefore dropped the interviews of advocates at least for the time being.

### **The approval process**

Ethical approval from the University's Humanities and Social Science Review Panel questioned the position of minors participating in the research (and we agreed that they should not do so) as well as issues of consent, anonymity and data storage. Having satisfied the University on these points, we set out to seek approval of Her Majesty's Courts and Tribunal's Service (HMCTS) to the project proposal, draft questionnaire and interview topic list. A member of the Performance Analysis, Reporting Team responded with a host of questions, many of which had been dealt with in the course of University ethical review. We had assumed that HMCTS would rely on the ethical review process and be more concerned with the load on the court service and its staff. This was a misunderstanding on our part. For example, we had sent the questionnaire but had not attached the project explanation to participants or the consent form, both of which had been demanded as part of the ethical review. HMCTS wanted to see all of this and, in general, demanded a much greater level of detail of the practicalities than in the proposal supporting ethical review including for example: 'How will you differentiate between litigants in person and those that are represented?' and 'Have you thought about a low response rate, defendants coming to court are unlikely to want to be burdened with participating as there are more pressing matters?'. Needless to say, perhaps, that the research team had discussed such issues at great length.

Clearly some of the HMCTS concerns were driven by the orderly running of the court, for example: 'There is no detail about the interviews. Where they will take place? How long? etc?'. Above all HMCTS seem worried about data security and checked many things that might seem implicit in the handling of research data connected with storage, access and anonymity, as with the following exchange: 'You state that the questionnaire returns will be in hard copy but input into software for statistical analysis. Will this software be controlled by individual passwords? Where will this be held? On the secure University server? How will they be destroyed and when?' The HMCTS described their stance as follows:

'Even though your University ethics committee have approved the application we still need to know full details of your proposal in order to assess your request and ultimately approve it. Even though as you stated that many of the aspects were covered by ethic committee process we would like to know the full details of the activity taking place in our courts'.

It may be useful for future researchers to know this. It makes sense to forward to HMCTS the ethical approval documents and subsequent consent and to be explicit in the process of ethical approval in those areas where there may be implicit or internal understandings about how research systems work.

At this point we were dealing still with the Performance Analysis, Reporting Team, trying to shape the proposal such that it could go to HMCTS's Data Access Panel (DAP) for approval. It took seven weeks to arrive at this point, the delays being often on our part in making revisions to paperwork. Having gone through this process we were probably hoping that this would satisfy the DAP. In fact

the DAP came back with a host of further questions. The Panel demanded a better rationale for the research in the first place, saying that this was vital to determine the appropriateness of the methodology. The Panel asked if we had an estimate of the numbers of LIPs in the court (which we did, courtesy of the PSU) so that the timeframe of the research could be accurately assessed and asked what we might do if we did not hit target numbers of participants within that timeframe. We were asked also: how we could know that our sample of LIPs was representative of those passing through the court; how we would select for interview (or at that stage focus groups). In particular there were a host of questions on data analysis beginning with 'What analyses will be run on the questionnaire data?' and 'How will be the qualitative (focus group and interview) data be analysed?' For each data set we were asked: 'Which research questions will be addressed through each of these sources/analyses?' Finally DAP wanted to know where our findings would be published.

Having then addressed all of these questions in the most comprehensive manner by the end of July 2015, we received DAP approval (presumably by Chair's action) within a week. We were sent a Privileged Access Agreement (PAA) and were told that on signing, the research could begin. In fact, there was a piece of the jigsaw missing. In order to interview the Judiciary we were required to make an application to the Judicial Office providing further information.<sup>3</sup> Having taken three months to negotiate access, we were minded to begin gathering questionnaire data while seeking Judicial Office approval for judicial interviews. This proved a wise move since, as it transpired, the research would not include any such interviews.

### **Access to the court**

Birmingham Law Society had written to the LIPs Liaison Judge in February and again in March of 2015 to explain the project planning and in April sent in a first draft of the questionnaire. However, as a team of researchers we did not seek to meet with the Liaison Judge until after DAP approval came through and we initially tried in early September to secure a date for a meeting in mid-October 2015. In the event we did not meet until mid-November 2015 following a postponement and difficulties with diaries. In the meantime, the Operations Manager had warned us that 'there are some concerns in relation to the scope of the project and the confidential nature of some proceedings.' Apparently this had been conveyed to Birmingham Law Society in March 2015 but this message had not reached us.

In the meeting with the District Judge, these concerns became apparent. The Judge explained that in the Family Court the confidentiality of proceedings were frequently stressed and that this seemed at odds with (for example) focus groups which would discuss the court room experience. The judge was unhappy also with court room observation<sup>4</sup> and with any suggestion that court staff, including judges, might be interviewed. Indeed the Judge made it clear that any discussion or inquiry into the

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<sup>3</sup> <https://www.judiciary.gov.uk/publications/judicial-participation-in-research-projects/>

<sup>4</sup> Ironically in the course of the research the Court of Appeal handed down judgment in *JX MX (by her mother and litigation friend AX MX) v Dartford & Gravesham NHS Trust* [2015] EWCA Civ 96 in which Moore-Bick LJ stressed to judges in lower courts the general rule that a hearing is to be in public so that the hearing should be listed for hearing in public under the name in which the proceedings were issued, unless by the time of the hearing an anonymity order has already been made.) Because the hearing is then held in open court the press and members of the public will have a right to be present and to observe and report the proceedings.

court room experience would be unwelcome. Any agreement with Birmingham Law Society regarding questionnaires was premised on the idea that these might improve sources of information and support for LIPs but was never intended to go so far as to explore wider consequences of appearing in court without representation.

This was a somewhat bewildering situation since we had HMCTS approval for the project. We had rather assumed that HMCTS had been in contact with Birmingham Civil Justice Centre during the approval process but it appears that this was not the case. We provided the court's Operations Manager (an employee of HMCTS) with the relevant contacts in the Performance Analysis, Reporting Team so that our approval could be checked. The reality, however, was that, whatever the ambit of our approval, it would be futile to seek to undertake the research in the court without the necessary support. The only solution was to re-define (and considerably narrow) the project, focusing on the types of issues pointed to by the judge. Our research question became: in the absence of representation, how do LIPs access relevant legal and procedural information to allow self-representation? Fortunately with a linguist in the team, this was a pertinent question and one which arose in the context of wider civil justice issues such as the application of the government programme 'Digital by Default'<sup>5</sup> to the courts service.

This redesign necessitated reducing the scope of the questionnaires and abandoning other elements of the research. The redesigned project and associated questionnaires and topic lists were then submitted to Birmingham Civil Justice Centre. We managed to make out the case for interviews on the basis that it was meaningless to survey sources of assistance without some understanding of how useful these had been in court and this did require some form of post-trial enquiry. We forwarded the revised materials to the court in late November 2015, received comments back in December and resubmitted in January 2016 to gain the go-ahead from the Court in late February. We had hoped then to start work immediately but the court asked that we begin the research in mid-March. This may have been just as well. Discussions with the court had made it clear that we would need researchers and other helpers in the court on all days when the questionnaire was administered. As the helpers were to be students from UoB and BCU, we then needed to draw up confidentiality agreements to be signed by the students.

It became apparent that we needed five people especially in the morning to sit alongside ushers, who would direct us to LIPs. The court did not want us there for a prolonged period of time, so there was some mutuality of interest in processing as many questionnaires as we could. The court required all names of researchers/students a week in advance, which meant the careful compilation of rotas. We were invited to the staff Monday morning meeting in the first week in court to introduce ourselves, which proved a great help.

### **The eventual methodology**

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<sup>5</sup> The Digital By Default Performance Standards are set to apply to all transactional government services in which a user accesses a government service and specifically covers 'making a claim' and lodging an appeal' – see; <http://webarchive.nationalarchives.gov.uk/20160609173223/https://www.gov.uk/service-manual/digital-by-default-26-points>

The study of litigants in person (LIPs) is based, therefore, on two data sets. The first consists of 193 questionnaires filled in by LIPs in the Birmingham Civil Justice Centre within a four week period spread over April – May 2016. The second consists of 25 interviews with LIPs during the period of June – July 2016. During these periods we worked on the first, fourth and fifth floors of the court and only LIPs on those floors were approached. The first floor houses the reception desk for the court and the fourth floor hosts the personal support unit (PSU) so that these seemed to be the obvious locations to identify LIPs but it may be that LIPs not dealing with the court for the first time proceeded directly to other floors. Although the PSU was a point of contact for LIPs, the fourth floor did not always prove a good venue for contacting LIPs because there were fewer people in the waiting area and they may have been engaged with PSU volunteers. The fifth floor handles family cases and the ushers on the fifth floor were particularly helpful in directing researchers to LIPs. It was reported to us by court staff that on floors one and five, there were regularly more LIPs than represented parties.

Not all LIPs wished to fill in a questionnaire so that the data is gathered from willing participants, who might have been those feeling least stressed. Since the PSU volunteers or duty advisers helped identify some of the LIPs, it may be that our sample over represents LIPs who sought out assistance. Not all questionnaires were completed. Some LIPs had difficulties with written English; others were too stressed to complete the form. More usually, forms were not complete because the hearing intervened and the LIP did not return after the hearing. Similarly LIPs only disclosed the information they chose to reveal or of which they were aware. Consequently some element of judgement was used in deciding whether a form was sufficiently complete to provide meaningful data. Incomplete forms were withdrawn and were not included in the sample of 193 questionnaires.

The interview data was collected from LIPs who had indicated on a tear-off slip attached to the questionnaire their willingness to be interviewed. There was no attempt to correlate questionnaire returns with interview data; indeed the respondents were assured that this would not be done, given the sensitivity of the matters before the court. Many more LIPs filled in this slip than were willing actually to be interviewed when approached. Almost all of the interviews were conducted by telephone and it was not unusual for the respondent to hang up or decline to be interviewed. The final figure of 25 interviews was built up from numerous phone calls (the first 60 initial calls producing just seven interviews). These interviews vary from the loquacious, keen to talk about their case to rather monosyllabic answers to the questions put. Interviews were anonymised, transcribed and coded prior to analysis.

### **Profile of the LIPs**

Of the 193 respondents there was almost an equal split of men and women (50.7% male) from a young population of respondents, one third of whom were under 30 with only 14% over the age of 50. Over half (51.7%) of our sample were single and only just over one quarter in a permanent relationship (married, 21%, or co-habiting, 6%). In terms of educational attainment, almost two thirds (63%) of respondents declared either no formal qualification (25%) or a pre-A level qualification. Just less than one third (32%) of respondents ticked one of the conditions on the form relating to mental capacity with half of these choosing the box covering depression. One interviewee suggested that mental health issues added to the stress of acting in person:

*“it’s extremely stressful. Especially because I’ve got a mental disability ...*

*but the letter that they would send, it was written instructions, I couldn't read the instructions because I just couldn't process it."*

Just 29% of the sample declared as being in full time work with a further 14% returned as self-employed, whereas 35% stated that they were unemployed. This is reflected in income levels with 85% declaring an income less than £30,000, 52% of whom earned less than £14,000. Only two questionnaire responses disclosed a salary of more than £50,000 while more than half (53%) of the sample population were in receipt of some form of benefit. The profile then is of one of potential vulnerability with low income people, less likely to be in a stable relationship coming to court to represent themselves though with relatively little educational background to equip them for this task. This is reflected in this passage from an interview:

*"I had to prepare a statement, and basically tell them everything what went on. I just done it to the best way that I knew how. I think I probably done it all wrong, but I didn't know what I was doing. So I just think they understood that I didn't know what I was doing. So I just got my friend to help me do a statement, like write the statement for me, because I'm not very good with reading and writing. Yeah, so that's it, because I didn't know what else to do."*

In answering the questionnaires, 49% of respondents stated that they came to court as defendants, and 37% as claimants but the remainder did not state their role, with 10% ticking the 'don't know' box. About half of the sample disclosed issues relating to family law and a further quarter to housing law. These are in any case the main issues dealt with in the court (especially if one categorises issues such as domestic violence as a family issue) though the court deals also with debt and bankruptcy issues, some social security matters and some small claims. Some LIPS came with family/friends, a PSU volunteer or other adviser but the vast majority came to court on their own. One interviewee who was highly critical of assistance provided by a NGO was nonetheless grateful for a volunteer turning up at Court:

*"I must admit, just to know that there is somebody there, sitting with me, in that Courtroom, is very, very helpful."*

Other interviewees were surprised that family or friends were not always allowed into court:

*"I went with my friend, but they say you're not allowed inside. So if I take a friend then she can stay outside. No point to take them."*

Another said:

*"My uncle came just for moral support, but obviously waiting outside, but that's as far as it went."*

Exactly 50% of our sample stated that they had received some advice before coming to court.

When asked why no advice was sought, the most common reason given those not receiving advice was that they could not afford advice (57% with a further 4% stating that they did not wish to pay). Interestingly a fairly large percentage (37.5%) felt that they could manage without resort to advice.

One interviewee said:

*"I just..er.. I had the letter and it told me.. er.. advice to seek but I thought I'd just do it myself because it was only me that really knew it and it was short notice really, it was 3 weeks till the court case so I did it all myself yeah."*

Almost one in five (18.75%) stated that they did not know where to access advice or had tried but failed to find advice. Of those receiving advice just over half (56%) had received it in person and 51% had received it more than once with 7% receiving it from more than one adviser. It was noticeable in distributing the forms in the Civil Justice Centre that while some litigants in person were accompanied by friends or family or where with a PSU volunteer, the vast majority were in court on their own.

Our sample contained just one person who stated representation by a paid McKenzie friend and a further four using a McKenzie friend on an unpaid basis. A further five persons made use of a duty advisor and one person each was represented by a family support worker and Citizens Advice Bureau representative respectively. The person accompanied by the family support worker was asked how much this assisted and replied that it was:

*"Very helpful: It made me feel more confident and at ease. Because I was still nervous, even though I knew what the process was going to be. I was still nervous. Just going into Court is a bit of a... it's quite serious, isn't it?"*

Around 6.75% of our sample stated that they were represented by the PSU, which was the single largest source of formal support, although 13.5% went into court supported by family or friends. One interviewee gave the following account:

*"But a friend of mine, who works with me, is going through a similar process and he's wasted a lot of money, so he advised me to not get a solicitor, 'I'll help you out,' and he helped me out. So it was just a lot of help from a friend who guided me through the whole process, pretty much, as to how I should be going and doing this process. So I would say he's saved me a couple of thousand pounds."*

This still leaves a pattern in which the vast majority, 71% disclosed no form of support either because they were expressly unrepresented (45.6%) or because no other form of support was reported in the questionnaire. It is hard to escape the impression, often conveyed in the court waiting areas, that appearance in court was a lonely and a little scary.

Half of the sample had gained access to some legal advice at some stage in their court journey and half of those had received advice on more than one occasion. When asked for the reason for acting in person, the main response was that (further) advice was unaffordable as described by one interviewee, whose English language was limited:

*"It's just I think the language as well was difficult and then there's no presented or anything, it's just if you are paying somebody to present you, you need to pay more. So you're only like one person only, I couldn't do nothing so I have to do everything by myself"*

Around one in five of those who had never seen a lawyer claimed that they did not know where to go or that they could not find a lawyer. There were 36 respondents who felt that they could manage on their own, though it is not clear how many litigants formed this view after some legal consultation. Of those receiving advice, a little more than half (56%) received it in person with a further 28% accessing telephone advice. Of those stating that they had received advice, 6% disclosed that this was via the internet. Of those accessing legal advice a large number (around 43%) had done so immediately before or at least within seven days of the proceedings.

Legal advice is available from a wide range of sources but only 23 respondents had consulted a solicitor (21) or a barrister (2) meaning that at 88% of our sample had not consulted a lawyer in private practice. One interviewee suggested that a single session with a solicitor could prove helpful:

*“So I went to the solicitor, which my mum paid, as I say, and she was like, “Okay well, you know, we’ll do this..., then you do this, then you do this.” It felt a little bit easier after that because I knew what I had to do next. It was a bit easier to digest, but we only had her for one hour, that’s all we could afford.”*

Beyond private lawyers lay a good deal of advice and assistance from the PSU, CAB, charities, social workers and friends/family. A surprising number of respondents (over 50 in each case) having said that they had accessed advice then did not answer the questions as to which party provided that advice or as to why the advisor had not come to court with the respondent. Asked about the form of advice that litigants would prefer in the future, the preferred form was face-to-face, followed by online and telephone-mediated advice.

In terms of any additional advice 50 respondents cited their main source as the internet as opposed to books. Approximately one third of the sample reported some court based resource as a major source of secondary advice. This included the PSU, court staff, court leaflets and even other litigants. We were particularly interested in the use of the internet and asked about the experience of searching online. About one third of the sample did not answer this question, which might suggest that far more people did not use the internet than those admitting that they had no access (eight respondents) or did not know how (18 respondents). Interestingly, in interview at least two of our interviewees said that their only internet access was via their phone. Just over one in five of our sample felt that they had found all that they needed on the internet. By way of contrast, one in ten found nothing useful. This may reflect different levels of competence in searching for material or it could reflect the very different requirements of particular litigants depending on the matter before the court. Unsurprisingly, there was a reasonable percentage of the sample (16.5%) who said that they found some but not all material on the internet or were left with crucial information missing. One interviewee reported that on her use of the internet:

*“a lot of websites came up, but I didn’t know which ones were relevant. So I just looked at a few. A lot of information did come up but I didn’t like really go out of my way to sort of like go through a lot of information.”*

Again, details of where on the internet information had been obtained were hard to gather with over half of respondents not answering this question even though the categories were broad. One

third of respondents reported the use of information from websites, while 9% found helpful forums of message boards.

We have added a list of the major websites consulted, with frequencies, in the following table:

<b>WEBSITES CONSULTED</b>
gov.uk (5 responses)
CAB (3 responses)
Civil justice (once)
justice.gov.uk (once),
legislation.gov.uk (once),
Online forms (once)
Birmingham County Court website (once)
Crown Court website (once)
PSU Birmingham (once)
turn2us.org.uk (once)
National Debt Line (once)
Cafcass.co.uk (once)
GingerBread.org.uk (once)
Single parent support chat (once)
Facebook group on family advice (once)
Contact rights chat (once)
Search engines searching for:
• 'support for fathers' (once)
• 'family court' (once)
• 'health and safety' (once)
• 'legal advice' (once)
• 'legal websites' (once)
<b>NOTE</b> that most useful websites are largely missing from the list.

When asked whether they would prefer to be represented in the future just less than a quarter (23%) answered this in the affirmative but 54% of the sample left the question unanswered, suggesting perhaps that they were unsure of the benefits that representation could bring. On the other hand only 28% left unanswered a question about future advice and assistance in bringing a case in the future so that the majority of respondents seemed to want help and 40% said that they preferred this to be face to face consultation with a lawyer. One interviewee who had pursued a

case with legal representation and one without had expressed confidence in his dealings as a LIP but when asked if he would prefer a lawyer in the future responded:

*“Big time; I mean, because I don’t know - 100%. I know how things work. ...So when I tell my lawyer, or a lawyer who is qualified, what we are going to say and how we are going to go about and obviously he provides his advice as well, then they will be... you know, on top of the world. You will more than likely to bring the clear picture to the Judge, in front of the Judge. So he can understand your case. You know?”*

Roughly equal numbers of respondents said that they would be happy with internet based advice as telephone advice (18% each).

### **Levels of satisfaction**

A majority (55%) of the litigants surveyed agreed (25%) or strongly agreed (33%) that they would have preferred to resolve the matter outside of the court by negotiating a settlement. There were those who strongly disagreed (8%) or disagreed (6%) with this preferring the court hearing. On the whole, there was a high level of confidence expressed by the litigants in their capacity to understand and progress issues. For example 40% of litigants agreed (strongly or otherwise) with the statement that access to advice and information was easy. Only 17% of respondents disagreed. Similarly, 35% of respondents agreed that they understood the Court’s administrative processes though here 23% did not agree. Almost half (49%) expressed a level of agreement with the statement that ‘I understand the law that applies to my case’ with only 15% of litigants disagreeing with this statement. This was followed by a question on understandings of the strengths and weaknesses of the case which produced results in the same direction with now over half (52%) agreeing that they so understood with a smaller proportion (13%) disagreeing.

When it came to practical issues connected to the court appearance levels of understanding rose even further. The paperwork proved a struggle for some with 18% feeling that they were unable to prepare it properly as against 45% of respondents who agreed that they had been able to prepare it adequately. There was a strong level of agreement (54%) that the formal procedures in the hearing were readily understandable and only 13% of respondents disagreed with this. Only 7% in each case said that they did not understand what was said in the hearing and what was expected of them in terms of manner and etiquette. However, only 45% of respondents did agree that they had understood what was said while those who did not answer this question rose to 34% and with a further 14% neither agreeing nor disagreeing with the statement that they had understood everything said, there is certainly an element of doubt about how well the court proceedings were fully grasped by the LIPs.

In terms of the hearing itself, just over 1 in 5 (22%) of respondents didn’t comment on the hearing with a further 12% ticking the box to say that they neither understood nor failed to understand the procedures at the hearing. This is likely to be because the form was completed before the hearing took place, as in general around one third of respondents made no comment on experience in the hearing. Only 15% of respondents said that they failed to understand the procedure of the hearing. This figure falls to 7% of respondents disclosing that they failed to understand what was said or stating that they were confused by issues of manner or court etiquette though this was an issue:

*"I have to watch my language like I'm one of those people I come up with swearwords as English. You know what I mean, I'm in a courtroom and it's not good."*

Even allowing for any reluctance to admit difficulties in dealing with the court, the answers to two separate questions on this do seem to suggest that, once in court, litigants in person are able to follow proceedings. Only 6% of our respondents responded negatively to the statement that they understood the outcome of the proceedings and only 5% suggested that they did not know what needed to be done next in the matter on which they had come to court. However, when by interview we asked one LIP if they knew what they would need to prepare for the next upcoming hearing, we received the following reply:

*"no, like I've just got to take myself to court which is what was ordered."*

An ability to follow court proceedings says little about preparedness for that hearing or success in presenting a case before the court. Nonetheless, it is striking that the judges do appear to handle hearings in a manner that is accessible to litigants in person before them. One respondent in a housing arrears case was asked of her impression of the judge and replied:

*"That she does this very often. It was a very quick in and out process, really. Yeah. It... she seemed very... she didn't seem very intimidating or... she didn't make me feel any less of a person for the situation I was in. It was just very professional and straightforward, really".*

This was backed up by other interview data which broadly showed that LIPs are happy with and have few problems in understanding judges but do experience occasional communicative challenges with legal representatives for the other party. Indeed one interviewee complained of bullying by lawyers on the other side:

*To be totally honest and blunt with you, I was treated like rubbish, as if I was some piece of dirt. I would send them emails and they wouldn't respond. They had to send me documents, the documents that they sent to the court, they wouldn't send to me, so I've missed deadlines. And the deadlines I just missed, obviously they get a certain date that they need to send the documents by, and then obviously I need to respond to those documents for a month's time, and they write to me, saying, "We'll send it to you three days before," my deadline, so stuff like that."*

Another interviewee reported the following experience in dealing with a solicitor on the other side:

*"I didn't understand something one day – it was something that was in a letter and I didn't understand it and I phoned her to ask, like what did it mean. And she basically laughed on the phone and told me that she was looking forward to fighting me on it in court because she knew I didn't know what it meant, the word. So there was a lot of stuff like that. ... Completely like, they're bullies outside the courtroom until they get in, in front of the judge."*

Generally, LIPs report a positive experience during the hearings, but find it stressful waiting in the waiting room. This was apparent from our own observations in administering the questionnaires and came out in interview:

*“waiting for me to go into court that was the most difficult part for me because I think it started to dawn on me then you know eerm bit of a scene I was in until I walked into the courtroom.”*

### **Information and assistance in child cases**

The most frequent type of case, in our sample of litigants in person, concerned questions of child custody or contact. Given that generally access to information and advice is very poor, we explored whether, for instance, claimants in such cases, found any better access to information or advice. The context of these cases can make them stressful as the following interview material highlights:

*“the previous contact was stopped, because the man was too violent and too aggressive. I was scared because I thought, oh if I go to court, they’re going to allow him to see her, I don’t know what’s going to happen. I didn’t trust him with the child and the usual. But when I went for advice (Citizen’s Advice Bureau) I told them the situation and they said, “Well, more than likely they will still let him see her”. So I think that just made it even worse [sic] for me because when I knew that I had to go back to court, continuously go back to court, and he had a solicitor and I didn’t – and the situation was that, I was just more nervous and extremely panicky and nervous. So kind of terrifying it was ((laughs)) at the time.”*

We found, however, these LIPs found access to information and assistance equally problematic due to financial and time constraints or lack of knowledge as to the sources of information. They did nonetheless make use of some readily available sources of support, such as PSU, court leaflets, and online sources.

Of this sub-set of respondents, only 47% stated that they had sought access to legal advice, though 32% gave no answer as to whether they had sought such advice. Only 12% had actually received advice from a solicitor or barrister directly with the largest single source of advice being the Citizens’ Advice Bureau (19% of child cases). One third of our sample said that inability to pay was the main reason for appearing in court without representation. One respondent in a child case reported that:

*“the solicitor was wicked, I’ve got no qualms with my solicitor like it’s just the fact she cost too much.”*

Again interviewees tended to be complimentary of the judges though one interviewee said of the judge:

*“she was very, very middle class; sorry, upper class. And she didn’t have a clue, I wouldn’t say, about what real people go through”*

On the other hand the LIPs interviewed were suspicious of legal representatives on the other side:

*“It was never a problem of the judges. They were pretty good. They know what they’re doing and I think they can see through a lot of stuff. I think it’s mainly the solicitors, like not all of them but obviously the solicitors, when they know the other person hasn’t got a solicitor acting for them, they kind of use that badly – in a bad way they use it.”*

Not everyone stated that they felt the need for representation with 14% feeling that they could manage without, and 16% stating that they did not think that such representation would be helpful. One interviewee, in a child access case, when asked what had been prepared before the hearing stated;

*“Nothing, really. It was all straight forward, you know? I knew what they were going to ask me and what they were trying to get at. It was straight forward really.”* On the interviewee’s own admission, the hearing *“wasn’t very good”* but when asked about the next scheduled hearing responded *“so I don’t know what’s going to happen there. I think it’s just going to be straight forward.”*

In terms of other information used to help prepare for the hearing, only 5% followed any signposting to assistance referred to in the hearing notice or correspondence with the court. The PSU leaflets (9%) were slightly more widely used than court leaflets (5%). Perhaps surprisingly, book-based information was only slightly less well used (at 12%) than internet based sources (17%). In interviewee some respondents suggested that internet based material was not terribly helpful:

*“I did (research the internet) but there was such conflicting matters and because I was all over the shop emotionally, I was kind of bouncing to and from different points.... There was no kind of, “Step A, step B, step C, step D.” It’s extremely complex... It was so hard. It was like another language”*

Worryingly, almost one in ten (9%) stated that they had accessed none of the information cited in our questionnaire. The very diversity of answers given in relation to access to information strongly suggested that LIPs really struggle to know where best to access information as needed.

## **Conclusion**

The profile of the LIPs in our study is striking. They represent in terms of income and education people poorly placed to access information or assistance and to represent themselves in court. Court appearance for our LIPs was a stressful experience but often one through which they showed considerable resilience. Our respondents and interviewees were positive often about the court appearance regarding judicial management of the case as fair even when the outcome was not that which they had hoped for. On the other hand our interviewees were less enamoured with the lawyers appearing against them, not always on the basis of the courtroom experience but in matters leading up to trial were they came across in the words of one interviewee as *‘nasty, very nasty.’* It may well be that these lawyers were no more or less *‘nasty’* than they would have been to a qualified party on the other side in taking advantage of tactics within a litigious environment. However the perception among our LIPs is reflected in the following quote:

*"I really felt bullied and it's just unfair. Fine, the person is representing my partner, but it's really unfair that I should be treated the way I was treated... Fine, she's paying you and she's your client, but there is humanity out there and respect does not kill anyone."*

In particular our findings show that LIPs struggle to find the right source of information. Not all of our LIPs had effective access to web based information or the capacity to exploit it. Signposting LIPs to information sources via correspondence with the court seemed barely effective with the consequence that LIPs arrived at court unprepared or gained access to relevant information at a very late stage and often in the court building itself. If we accept that there is now likely to be a significant population of the profile represented in our sample, at least in urban courts such as that in Birmingham, then much more needs to be done to direct litigants at an appropriate early stage to helpful sources of information designed to take litigants through the various procedures ahead while explaining and helping draft the documentation which will be needed. Our study demonstrates that this cannot be left to an assumption either that web based material or guides will direct LIPs to the right source of information. Much more specific information, in a variety of formats may be required if LIPs are to fully and meaningfully engage with the court process. Meanwhile there is good but insufficient freely available legal assistance, even though our research suggests that even a short advice session at an early stage of the court process may make a crucial difference to the preparation of persons who will arrive, nonetheless, at court without representation.