

## **Written evidence from the Litigant in Person Support Strategy (LIPSS)**

### **Overview**

This submission provides comment from the Litigant in Person Support Strategy (LIPSS) on the access and engagement of litigants in person with the court system. We welcome the opportunity to inform the Justice Committee's inquiry on court capacity, and the practical challenges arising from the Covid pandemic.

In looking at the issues of remote engagement and court capacity, a key consideration should be the long-term impact of rapid service adaptation on the development of the online courts and modernisation of the justice system. The current standard of delivery, implemented with urgency at a time of crisis, has brought innovation and new ways of working into the system, but should not inadvertently be accepted as the baseline of delivery. There is a need to revisit issues of court reform and how vulnerable people can meaningfully engage with the justice system, with a renewed focus on improving access to justice.

Key points we would draw out from our submission are that:

- There has been confusion around the accessibility of court buildings due to webpages stating opening hours without details of restricted access. Litigants in person have received inconsistent messaging from court staff on what constitutes legitimate reasons to visit buildings, which can vary from court to court. This confusion results in members of the public being refused entry to court buildings and/or to open court-based support services, without further signposting. Whilst this has been the result of the pandemic, it is part of the wider issue pertaining to a lack of signposting protocols and strategy.
- Influenced by the socio-economic impact of the pandemic and court disruption, the demographic and need of those engaging with the court process has changed, and this is reflected in the changing demand for LIPSS Partner services. We have seen a new cohort of service users who are digitally able and are accessing the social welfare system for the first time, whilst those who are digitally excluded, or experiencing vulnerability, have become more disengaged and 'lost' to services. Processing delays have led to less people engaging with welfare benefit related digital tools, indicating a pending surge in need when 'usual' court service resumes.
- The shift to remote hearings has improved accessibility for many during the pandemic, however delays in decisions on the modality of specific hearings or short notice listings have hindered litigants in person from obtaining pro bono legal help and support.
- Communications about what to expect from remote hearings has been a key issue. Anxiety and unfamiliarity with legal procedure often prevents litigants in person from engaging meaningfully with the court process. In remote hearings, these issues are

exacerbated by a lack of visual cues, technical issues and having no prescribed method to communicate with legal representatives, or support volunteers, during the hearing.

Issues around court capacity and users' capacity to engage in the court process, cannot be considered separately from the availability of support. As the Government's Legal Support Action Plan makes clear, legal support covers a "spectrum" of need from information and guidance to advice and representation.<sup>i</sup> Last autumn the LIPSS Partners provided a submission to the comprehensive spending review (CSR) outlining the positive impact that investment in legal support can make, and the demonstrable economic and social value of this support, including to the effective operation of the court system.<sup>ii</sup> Throughout the pandemic, we have adapted delivery and implemented new services to continue to encourage those who can use self-help resources to do so, whilst prioritising remote and face to face advice and representation for those who need it most.

### **The Litigant in Person Support Strategy**

The Litigant in Person Support Strategy is a partnership of national organisations working together, throughout England and Wales, to improve the experience of people facing the legal process alone. The partnership, which focuses on civil justice, is funded by the Ministry of Justice and comprises the work of the following partner organisations:

- The Access to Justice Foundation;
- Advocate (formerly the Bar Pro Bono Unit);
- Law for Life (incorporating Advicenow).
- LawWorks (the Solicitors Pro Bono Group);
- RCJ Advice (Royal Courts of Justice Citizens Advice Service)
- Support through Court (formerly the Personal Support Unit).

The journey of a litigant in person is not linear, with people accessing help at different points and requiring support tailored to their specific legal matter and wider needs. Through varied expertise and delivery models, the LIPSS Partnership strives to meet the following aims and ensure that those in need can access the right type of support, at the earliest point so that:

- Litigants in person know what support is available to them;
- Litigants in person can access appropriate practical and emotional support;
- Litigants in person have routes to free or affordable legal advice;
- The legal system is more responsive to the needs of litigants in person.

### **Overall impact of Covid on court capacity**

When the first UK-wide lockdown was announced, courts and tribunals in England and Wales were already facing significant and longstanding challenges; reductions in Government funding for the justice system (including legal aid), a shrinking estate and staff reductions had all incrementally impacted on the capacity of the system. Reports by Lord

Justice Briggs on the civil courts (2016),<sup>iii</sup> and Lord Justice Levenson on criminal proceedings (2014),<sup>iv</sup> whilst praising the professionalism of the courts service, identified serious weaknesses in IT infrastructure and case management. Since 2016 the HMCTS reform programme has aimed to simplify court procedures, digitise court forms, and introduce new IT systems and online procedures, with video conferencing platforms for some types of proceedings and communications.

In April 2020, a month after lockdown, the LIPSS Partners published a briefing on the impact of Covid-19 on family justice.<sup>v</sup> It noted that when the pandemic hit, the Ministry of Justice were already four years into the reform programme that aimed to bring new technology and modern ways of working into the way justice is administered, including video conferencing options. Yet in many respects the system was unprepared for a significant scaling-up of remote working and the rapid switch to video-conference hearings. The Ministry of Justice had yet to implement its centralised remote access system ('Cloud Video Platform' or CVP), so Judicial leaders had to reach for off-the-shelf, bespoke packages and solutions. As the House of Lords report on Covid and the Courts has noted: "Delays to the original timetable for the HMCTS reform programme meant that a number of planned improvements to court IT systems had not been implemented by the time the COVID-19 pandemic suddenly rendered courts reliant on remote technology."<sup>vi</sup>

The justice system has nevertheless been able to demonstrate its resilience, and a capacity to adapt and innovate. However, systemic weaknesses have contributed to large backlogs. At the same time the policy context in which courts operate has also undergone rapid change and development as Government have introduced new regulations, protections, and interventions to mitigate the impact of Covid on society and the economy, with a corresponding impact on rights and redress through the justice system. It is in this context that the Justice Select Committee should address issues of capacity, not only from the perspective of the capacity of the courts, but also the capacity of users to engage with the system.

### **Adapting to the needs of litigants in person**

Funded by the Ministry of Justice, LIPSS was established in 2014 in response to the significant increase in litigants in person presenting at court following legal aid reforms. The increase in unrepresented parties slowed down proceedings, increased costs, and risked inadvertent influence over the outcome of a hearing due to ineffectual advocacy and lack of procedural knowledge. For those digitally able to contact free legal services online, remote hearings have increased the number of volunteers potentially able to offer support, due to omitting the issue of location/ geographical reach. In 2020/21 RCJ Advice have increased the amount of support they provide outside of London, and Advocate placed a record number of cases with pro bono barristers. However, delays in hearing listings or short notice periods, alongside delays in decisions around hearing modality or locations, significantly reduce the ability of free legal advice providers to allocate volunteers to provide support. Although it is unlikely this can be avoided during the current court disruption, in the long-term a more

consistent approach to court listings and early decisions on modality/ location would support services to find legal help for those who would otherwise be unrepresented.

Preparation and awareness of what to expect at a hearing are key to successfully navigating the court system. HMCTS have provided helpful step by step guides on Gov.uk that have been well received by litigants in person, and Law for Life have produced and regularly updated their related guidance and resources on the Advicenow platform,<sup>vii</sup> to encourage engagement and efficiency at hearings throughout Covid-19.

Some remote hearing guidance available on Gov.uk provide links to services that do not target information at the necessary stage of the legal journey (going to court), nor do they provide specific support around remote hearings. LIPSS Partners have met with the HMCTS Continuous Improvement Team to share concerns around insufficient signposting in remote hearing guidance and resources. Based on our thorough understanding of the needs of litigants in person throughout the court process, and with a view to supporting court efficiency, signposting in remote hearing guidance materials should be reviewed and updated as a matter of urgency, ideally in consultation with those working directly with litigants in person on a day-to-day basis. Directing litigants in person to services which meet their legal needs and stage of their journey is essential to early intervention, which helps reduce the escalation of legal issues, and avoidable litigation. Addressing the wider issue of a lack of signposting protocols and strategy should be a priority, which would significantly benefit litigants in person and improve court capacity.

For those digitally able to submit an e-bundle for remote hearings, it is difficult to identify which documents may be relevant without a legal background and minimal online guidance available. Brief general guidance for litigants in person preparing pdf bundles has been produced by Sir Andrew McFarlane, President of the Family Division, Lady Justice Thirlwall Senior Presiding Judge and Mr Justice Mann, Judge in charge of Live Services.<sup>viii</sup> However, this guidance has not (to our knowledge) been made available on Gov.uk. A team at the Royal Courts of Justice presented draft guidance for litigants in person on the RCJ E-Filing system, to the Litigant in Person Engagement Group (sub-group of the Court Reform Programme) for comment, which to our knowledge has not been further developed by HMCTS. We encourage publication of a step-by-step guide to submitting e-bundles as soon as possible, and would welcome the opportunity engage with this at the development stage.

RCJ Advice users noted that they found security at court buildings to be being extremely high, and were discouraged from entering the court. Specific court webpages do not always provide details of limited opening hours, which has resulted in court users travelling to court being turned away. Inconsistent messaging around legitimate reasons to visit court buildings or court-based services have also caused confusion for those visiting court, service providers and court staff, with guidance varying from court to court operating under the same Covid restrictions. As courts provide in-person and remote hearings going forward, clear messaging to avoid needless travel and confusion is necessary. With security, and often court staff,

unable to provide further signposting, we support centralised baseline guidance for court staff, outlining legitimate reasons to visit courts based on geographical restrictions, which can then be tailored and clearly communicated based on the specific needs of the court building.

Unfamiliarity with the legal process, anxiety and lack of confidence often prevent litigants in person from engaging meaningfully with the court process. Law for Life have noted a 10% increase in surveyed litigants in person reporting that their health had been affected by their legal problem during the pandemic. The mental health and potential vulnerability of litigants in person should be a priority when considering engagement with the court process. This was supported by the Civil Justice Council, which recommended the development of operational protocols and amendment of specific rules covering vulnerable parties/witnesses or addition to the overriding objective of the Civil Procedure Rules (CPR) to focus attention on the issue of vulnerability to ensure that all parties have equal and full access to justice.<sup>ix</sup> LIPSS Partners have identified a rise in the number of distressed callers contacting them over the phone, including litigants in person articulating thoughts of self-harm and/or suicide. Whilst remote hearings and online support has many benefits, it is imperative that we maintain face-to-face services and hearings for those who may be vulnerable, including those who are digitally excluded and where self-isolation has led to self-neglect, which increases risk.

### **Experience of remote hearings**

Remote hearings have provided access to legal remedies for many who would otherwise experience significant delays during the pandemic, and we have found that remote hearings are more inclined to run to time. However, feedback received from litigants in person in 2020 showed that clients were not satisfied with remote hearings for a variety of reasons, including providing links that were then not viewed by judiciary and/or the other party, and ongoing technical and Wi-Fi/connectivity issues. With no legal background and limited knowledge of court processes, litigants in person are often overwhelmed when trying to advocate for themselves during a hearing, experiencing distress over terminology and etiquette, and confusion over potential consequences or remedies available. The lack of visual cues in remote hearings can exacerbate this, and litigants in person have repeatedly reported feeling ignored and/or unsure of when it is appropriate to speak. A key issue to look at is how the judiciary and court staff introduce the hearing process, and how unrepresented parties can be encouraged to communicate if anything becomes unclear during the hearing. This could help address some of the distress and panic associated with interrupting the other party or legal professional, whilst also reducing the time needed to repeat information or clarify issues throughout the hearing.

Remote hearings provide an additional tier of digital challenges, which can make interaction difficult and at times overwhelming. HMCTS worked in close partnership with Support Through Court (STC) to develop the STC Remote Hearing Service, (RHS), which provides practical and emotional support before, during and after remote hearings. This support

provides crucial help, particularly for those who are vulnerable, and the value of the service for litigants in person, and savings to court time and cost, have been recognised by members of the judiciary. However, there have been instances where RHS volunteers have received pre-approval to provide remote support but were then denied access at the actual hearing, causing distress and delay. STC and HMCTS are working to resolve this issue. Given that RHS was developed in close partnership with HMCTS, we request that information on RHS and the STC National Helpline is provided as standard with remote hearing listings, to help those in need of emotional and practical support, and encourage court efficiency.

During a remote hearing, there is no prescribed way for the litigant in person and the legal representative/person supporting them to communicate. Currently, an additional online platform could be used as an additional tool, however this can be overwhelming when already facing the toll of the legal issue, court hearing and managing the CVP/ call. We were recently informed by a volunteer that in a remote hearing, a litigant in person engaged with the other party's barrister due to mistaking the barrister for their own advocate prior to the start of the hearing. It would be beneficial to implement secure functionality for each party, and their legal representative or volunteer, to communicate appropriately throughout the remote hearing.

HMCTS are working in partnership with the University of Oxford to investigate engagement of lay users in video hearings, a project supported by the Economic and Social Research Council (ESRC) and Sir Ernest Ryder.<sup>x</sup> It is our understanding that the study will look to engage with up to five tribunals over an 18-month period, the first of which being the SEND tribunal. Due to the expected backlog around employment and welfare benefit matters, it would be useful if these areas of law and respective tribunals could also be brought under the remit of this study, to provide additional resource to gather data and support informed changes, made in real time, to improve the service and efficiency.

### **Further evidence**

Two important reports have been published on remote hearings and the impact of Covid on the court system and HMCTS operations. The Civil Justice Council's (CJC) report 'Impact of COVID-19 measures on the civil justice system',<sup>xi</sup> and the Nuffield Observatory's rapid review of use of remote hearings in the family justice system;<sup>xii</sup> have both pointed to issues of tech failures and the challenges of engaging with more vulnerable litigants. The House of Lords Constitutional Committee has also been looking at the impact of virtual proceedings on access to justice, participation in proceedings, transparency and media reporting. LawWorks and the Legal Action Group (LAG) have both given evidence. Their report on 'COVID-19 and the Courts' concludes that remote hearings have been most effective where the technology had been optimal and functioning well with all parties fully conversant, and when deployed in preliminary, interlocutory or procedural cases.<sup>xiii</sup>

Key issues from these reports have been about consistency, data collection, and spreading best practice between different court and tribunal jurisdictions. How remote proceedings

work has differed quite significantly between different jurisdictions. The House of Lords Committee report has pointed to an “uneven impact” of the shift to remote working as between senior and lower courts, and attributes some of the differences to the distribution of resources and variable technological capabilities, both within HMTCS and amongst the judiciary. Inevitably, one approach will not be suitable for all types of courts and proceedings, and there will be differences – for example, some tribunals initially focused on using telephone hearings or have made more decisions based on paper submissions (i.e., decisions “on the papers”), or at interlocutory stages. However, there is a risk that too much operational inconsistency, will make it impossible to establish a baseline and framework for best practice. Looking at look at the judiciary’s guidance and advice across all areas of the different court and tribunal jurisdictions, there are over 125 different documents covering practice directions, procedural changes, and operational guidance.<sup>xiv</sup>

The CJC and Nuffield reports also highlight issues of inadequate data capture about what works – especially what works for users; this issue had previously been flagged in the Legal Education Foundation’s report, ‘Digital Justice: HMCTS data strategy and delivering access to justice’.<sup>xv</sup> So whilst there is some anecdotal evidence from our LIPSS partners that more vulnerable litigants have felt comfortable with telephone hearings or decisions “on the papers” compared to video hearings, and that some user groups have been able to engage well with online procedure, there is little by way of systemic or comparative evidence from different user cohorts to enable meaningful conclusions to be drawn.

## Case studies

### Domestic abuse through the court process

12-year-old child. Her self-esteem had been severely damaged due to domestic abuse. She was married under duress and had left the marital home. She applied for Non-Molestation and Occupations orders and called the National Domestic Abuse Helpline for guidance.

Evana was supported to understand how a hearing was structured and what it would be like to represent herself in court. Evana was also supported to access legal aid support, an Advicenow video, and the Rights of Women guidance on witness statements.

STC empowered Evana to look into legal aid support, gather convincing evidence in preparation for her court hearing and to write her witness statements.

*“I received great help which put me at ease. They also provided me with useful websites. I was only expecting basic support but they were very thorough and quick while providing useful information. The volunteer was very sensitive towards my situation. I am no longer as fearful of talking to the judge. You have kept me motivated when I can easily get discouraged and weakened.”*

- Evana

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## Endnotes

- <sup>i</sup> <https://www.gov.uk/government/publications/legal-support-action-plan>
- <sup>ii</sup> <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/submission-comprehensive-spending-review>
- <sup>iii</sup> <https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf>
- <sup>iv</sup> <https://www.judiciary.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>
- <sup>v</sup> <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/family-law-briefing-parliamentarians>
- <sup>vi</sup> <https://committees.parliament.uk/publications/5323/documents/53089/default/>
- <sup>vii</sup> <https://www.advicenow.org.uk/know-hows/court-and-tribunal-hearings-and-coronavirus-covid-19>
- <sup>viii</sup> <https://www.judiciary.uk/wp-content/uploads/2020/05/GENERAL-GUIDANCE-ON-PDF-BUNDLES-f-1.pdf>
- <sup>ix</sup> <https://www.judiciary.uk/wp-content/uploads/2020/08/Vulnerable-witnesses-and-parties-consultation-September-2019.pdf>
- <sup>x</sup> <https://www.law.ox.ac.uk/virtual-justice-enhancing-accessibility-participation-and-procedural-justice-family-courts-and>
- <sup>xi</sup> <https://www.judiciary.uk/announcements/civil-justice-council-report-on-the-impact-of-covid-19-on-civil-court-users-published/>
- <sup>xii</sup> <https://www.nuffieldfjo.org.uk/resource/remote-hearings-rapid-consultation>
- <sup>xiii</sup> <https://committees.parliament.uk/publications/5323/documents/53089/default/>
- <sup>xiv</sup> <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>
- <sup>xv</sup> <https://research.thelegaleducationfoundation.org/wp-content/uploads/2019/09/DigitalJusticeFINAL.pdf>

### Advicenow helps clarify court procedure

Paul was going to attend a court hearing regarding a family issue. He could not afford the legal fees for representation and was facing court alone. The situation had affected Paul's health, resulting in hair loss, lack of concentration at work and struggling to keep up sleep patterns. Paul visited our film, A survival guide to representing yourself in family court.

*"I found the video of a court room scenario very useful and easy to comprehend. I just wished I would have found your website earlier to seek further advice. But I hope that the short video of the court room scene will suffice my hearing preparation."*

- Paul