

Tips for dealing with Litigants in Person

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This article provides some tips to bear in mind when dealing with Litigants in Person and a reminder of a number of pieces of guidance, to assist **in-house teams** in dealing with Litigants in Person in disputes or court/tribunal proceedings.

Recent cuts to legal aid, the increase in the small claims limit and ongoing austerity are all factors which have triggered the number of Litigants in Person appearing in courts and tribunals to increase.

Dealing with Litigants in Person can sometimes be a frustrating and time-consuming experience. Some Litigants in Person have a working knowledge of court procedure and require little additional assistance in representing themselves, but other Litigants in Person can cause real difficulties. Maintaining that balance of treating Litigants in Person fairly while also acting in the best interests of your client can be a minefield. It can be difficult to know what you should or should not say or do and you might even find yourself being subjected to rude, unpleasant or even aggressive conduct or behaviour.

What are Litigants in Person?

A Litigant in Person is an individual, company or organisation that has rights of audience and is not represented in the courts of England and Wales by a solicitor or barrister.

Duties when dealing with Litigants in Person

A lawyer owes a duty to his/her client and also to the court and the administration of justice. The two duties may conflict where the lawyer is under a duty not to mislead the court but in doing so, the lawyer is, for example, obliged to present documents to the court which adversely affect or undermine the client's case. Where there is such a conflict, the lawyer's duty to the court must prevail.

When it comes to dealing with third parties, lawyers must not take unfair advantage of third parties, including Litigants in Person. Behaviour which might constitute the taking of unfair advantage includes bullying, the making of unjustifiable threats, misleading behaviour, claiming a sum which cannot properly be claimed or demanding something which cannot properly be demanded.

However, using the law and legal procedure effectively against a Litigant in Person because you have the knowledge/skills to do so is not taking unfair advantage. Contrary to what some Litigants in Person may think, there is also no obligation to assist a Litigant in Person to run their case or to take action on their behalf. So what exactly should you do?

Some tips and suggestions

Explain

Explain but don't advise. Explain what the Litigant in Person needs to do next, refer them to the Civil Procedure Rules where necessary and try to ensure they understand the next steps. For example, you might tell a Litigant in Person that they need to file and serve witness evidence by a certain date otherwise they may not be able to rely on that witness evidence at trial. You might also refer them to the relevant provisions of the CPR and suggest that they take legal advice. However, you should not advise the Litigant in Person what they

should cover in their witness evidence nor provide them with a template witness statement to use – this would be assisting the Litigant in Person to run their case.

Communicate

When communicating with a Litigant in Person, ensure you are professional, co-operative and courteous. Perhaps at the start of the matter you could send the Law Society's 'Notes for Litigants in Person' to the Litigant in Person, so that they are clear from day one what they can and cannot expect from you. Try to avoid unnecessary or inflammatory language and arguments. Avoid legal jargon where possible and ensure your language is clear. Encourage the Litigant in Person to seek independent legal advice, at the outset of the dispute and at appropriate stages as the dispute progresses.

You are under no obligation to accept or tolerate behaviour from a Litigant in Person which is abusive, aggressive or unacceptable in some other way. Litigants in Person can often become frustrated that lawyers are not able to respond to them immediately or deal with their correspondence straight away. You are under no obligation to respond to a Litigant in Person immediately but you might instead choose to acknowledge receipt of the Litigant in Person's correspondence, explain that you need to consider it and take instructions and confirm that you will get back to them when you can, perhaps giving an indication of when that might be. This approach will hopefully satisfy the Litigant in Person that you have received their correspondence and are dealing with it.

Prepare

Do not assume that the Litigant in Person will take the usual steps in the court/tribunal process which a represented party would. Be prepared to be responsible for hearing bundles and take conduct of drawing up and sealing orders, even if this would not happen if the Litigant in Person were represented. Think about how you might assist the court by taking responsibility for tasks/actions which a Litigant in Person is unlikely to complete. Make sure you serve documents correctly and on time. To protect yourself and your client, take a note of any conversations with the Litigant in Person so there is a record of what was discussed and when. Try to give plenty of notice to the Litigant in Person of applications, arguments and/or submissions if you can, to minimise the risk of surprises.

Anticipate

Anticipate that the Litigant in Person might request adjournments or make applications for extensions of time. If you have a hearing or trial coming up, consider whether a hearing might take longer than usual because the other party is a Litigant in Person and try to anticipate likely issues which might arise during hearings.

Guidance

If in doubt about how you should proceed in a scenario concerning a Litigant in Person, take a look at the [Law Society's Guidance](#).

If you are really unsure how you should proceed, run your situation past a colleague, sleep on it, take some time to think about the options available to you or give us a quick call to discuss. That way, you stand the best chance possible of ensuring you maintain that balance between acting fairly towards the Litigant in Person but also in the best interests of your client.

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