

The ten descriptors of legal participation – a Q methods study

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Executive summary

This report describes what the right to participation under Article 6 European Convention on Human Rights looks like within the family court system and recommends what needs to happen to ensure it is protected for litigants in person (LIPs).

We refer to the participation standard established through case law on Article 6(1) as **effective participation**. Three attributes were identified that need to be present for effective participation:

1. Non-discriminatory access to a court and proceedings;
2. Equality of arms, i.e. being given an equal opportunity to affect the outcome of the case;
3. Being afforded respect.

We refer to the range of participative experiences that represent what participation, or barriers to participation, look like in practice for LIPs in the family court system in Northern Ireland as **the descriptors of legal participation**. We identified these descriptors from an extensive dataset of observed and reported experiences of LIPs litigating in the family courts in Northern Ireland. We then needed to interrogate and validate these descriptors to refine them so that they provided an accurate description of what the right to participate under Article 6 looks like in practice.

We used Q methodology to verify the descriptors. This uses quantitative and qualitative data to investigate patterns of opinion among groups of people on a particular topic, exploring their perspectives, identifying commonalities and differences in these viewpoints. The focus of our Q study was on what is understood about legal participation by LIPs and court actors, and we recruited 81 participants from across the relevant stakeholder groups. As this is an innovative methodology for socio-legal research, [our full report](#) provides a detailed outline of how to conduct a Q study (Chapter 5) which is available here: www.ulster.ac.uk/10-descriptors.

The descriptors of participation

There are ten descriptors that define the necessary conditions for participation under Article 6. They may appear straightforward or even too obvious to be stated. By stating them, however, we are bringing into focus the things which are so often taken for granted when there are legal practitioners on both sides of a case but overlooked when there is a LIP in a case. They serve as salutary reminders of the position of marginalisation and base level that LIPs tend to operate at.

The practical application of the descriptors lies in their potential to be used in live proceedings as a checklist or aide-memoire for what takes place and in evaluations of system-wide processes and how LIPs are considered with them.

NON-DISCRIMINATORY ACCESS TO A COURT AND PROCEEDINGS

1. There are consistent approaches towards LIPs across the courts.

3. Independent support & advice for LIPs is available and affordable from various sources, legal representatives, McKenzie Friends and others.

4. Legal representatives in cases involving LIPs should accommodate LIPs with respect to their non-practitioner status and promote consistent practice.

2. The system accommodates LIP status:

- iv. the system and procedures, including court forms, staff training and management, are suitable for LIPs, i.e. coherent, easy to understand, affordable, and take into account anxiety and high levels of emotion.
- v. Court buildings and online services are amenable to LIPs.
- vi. Information on how to self-represent is available, followable and good quality.
- vii. Support at court is available and appropriate.
- viii. Adaptations are available and affordable for, for example, those with experience of domestic violence or non-English speaking LIPs.
- ix. Evidence, case papers etc are equally accessible to both parties.
- x. Hearings, whether online or face-to-face, take account of LIPs' non-practitioner status and access issues, such as internet connectivity, availability if not resident in the jurisdiction, caring commitments.

EQUALITY OF ARMS

5. LIP feels they are treated fairly and have a perception of fairness.

7. In court, the judge ensures the LIP has opportunities to present their case.

8. The judge accommodates absent LIPs, for example does not allow case submissions to be made if a LIP is absent unexpectedly or with a good reason.

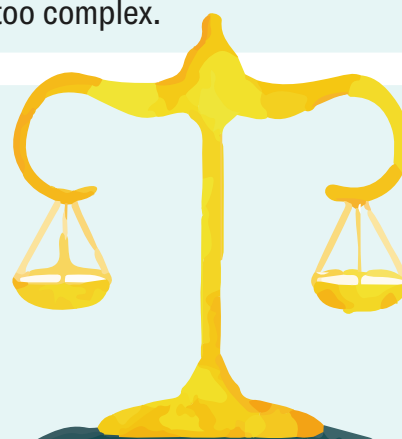
6. The judge accommodates LIP status by:

- xi. treating all LIPs equally regardless of their perceived reasons for self-representing, unless remedial measures are required to deal with malice.
- xii. adapting their approach to take into consideration the LIP's lack of familiarity with litigation and likely anxious state of mind, including clearing the court of people who are not involved in the case, ensuring they have received case documents in good time and adopting consistent practice with LIPs.
- xiii. ensuring comprehension by explaining what is taking place in the hearing, checking LIPs can follow proceedings and know what is expected of them to manage their case.

9. The complexity of the case is taken into account with regards to the LIP whose case it is, and action is taken if it becomes too complex.

BEING AFFORDED RESPECT

10. All interactions, written or verbal, are respectful and clear.



Perspectives on participation

As well as allowing us to test and refine the descriptors, our Q study also revealed five different perspectives held by those LIPs, staff members of the Northern Ireland Courts and Tribunals Service (NICTS), judges, legal representatives and McKenzie Friends who took part in our research on what was most important to ensure that LIPs could participate in their court proceedings. It is important to note that the stakeholder views were spread across the perspectives, rather than there being one stakeholder group per viewpoint:

1. **Change the system** – LIPs currently struggle to navigate the system, so it must adapt to their needs to ensure a fair outcome in their case.
2. **Treat LIPs like lawyers** – LIPs have to fit into the system which can't be bent around the needs of LIPs. It is their responsibility to upskill and ensure the system is not disrupted by their presence.
3. **LIPs are an inconvenience but are entitled to be there** – LIPs have to put the necessary time and effort into preparing their own case, and the judge needs to help them understand what they are required to do if the system is to work properly, and they are to get a fair outcome.
4. **Consistency in court contributes to fairness** – a standard approach to how LIPs are dealt with by judges and legal representatives can help reassure LIPs and build trust, to provide a fair outcome.
5. **Recognise LIPs' vulnerability in the system** – LIPs have individual vulnerabilities in addition to those generated by the system and accommodations need to be made for them, so they can be supported to participate.

These five perspectives are distinctive and tell us the range of opinion that exists about LIPs in the family justice system in Northern Ireland. Perspectives #2 and #3 are at odds with the notion of access to justice for all in a system that allows self-representation. The opinions about LIPs will be useful for mapping out the work that needs to be done to remove the barriers that hinder LIPs' participation in family proceedings.

Despite these different viewpoints, descriptor number 7 – 'in court, the judge ensures LIPs have opportunities to present their case' – was a consensus statement, which means it was a commonly held view among all participants that this was important. We have identified this descriptor as the essential element of participation. It manifests as the preconditions of process requirements, such as being able to access the case papers in good time, and its absence will undermine all other efforts to ensure Article 6 standards are reached. The second most commonly held view across all of the perspectives is descriptor number 5 – 'LIP feels they are treated fairly and have a perception of fairness'. This becomes the outworking of effective participation.

Recommendations

1. Our core recommendation is for **cultural change** within the court system that acknowledges and responds to the difficulties of self-representation. A **Practice Direction** for cases involving Litigants in Person which sets out expectations, party responsibilities, procedural and case management requirements should be implemented to drive this change. Judges and legal representatives will need support to ensure they can attend to the Practice Direction.

WHAT JUDGES NEED:

- An aide-memoire, reflecting the participation descriptors, which will help to ground judicial actions in the participation rights that LIPs can struggle to access.
- Being resourced to allocate additional time on their court lists for LIP cases which will help recalibrate the target of efficiency that is based on a fully represented case model.

WHAT LEGAL REPRESENTATIVES NEED:

- Professional guidelines on how to manage cases to which a LIP is party that accommodates professional obligations and the reality of what a LIP can be expected to do.
- A code of practice co-produced by LIPs and legal representatives focused on the expectations and behaviours of LIPs and legal representatives towards each other. We recommend that the human-centred design approach that resulted in the co-production of [online information resources](#) for LIPs is adopted.



2. The Department of Justice (DOJ), with the NICTS, should conduct **an audit of the family court system for LIP participation in line with the descriptors of participation**. An assessment of what is currently provided and what gaps exist would allow the Department to direct resources appropriately and inform the current Family Law Action Plan and priorities.

WHAT TYPES OF SUPPORT ARE RECOMMENDED?

- Signposting LIPs to effective information and advice sources. The [Northern Ireland Family Court Info](#) website is already being sponsored by the DOJ, but more can be done by those within the system to signpost LIPs to here and to ensure its long-term future.
- A LIP support service, delivered through advice organisations, McKenzie Friends or via unbundled legal services. There is an important role for lawyers here to act in different capacities but a need also to extend legal services beyond their traditional boundaries.

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