Ulster University

The ten descriptors of legal participation – a Q methods study

Gráinne McKeever, Lucy Royal-Dawson,
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Foreword

The Honourable Mr Justice McAlinden

This research is an important contribution to understanding how to support personal litigants in their journeys through the family courts in Northern Ireland. Going to court is stressful for individuals, particularly where a person does not have a lawyer to assist with the legal requirements and procedures. Personal litigants come from a variety of different backgrounds and need support at each of the different stages of the legal process, from deciding whether to go to court, to initiating or responding to legal action, to representing themselves in their hearing. It is clear that many personal litigants are unaware of what is expected of them and obtaining the necessary information can be difficult.

The practical focus of this research, through the creation of an information website and online navigation tool for people going through the family court system, has been a significant development in filling this information gap. I am delighted that the Department of Justice is now sponsoring the maintenance of this website so that it can continue to be used by members of the public. By creating these online materials through a people-centred design process, the research has also helped to close the communication gap between personal litigants, lawyers and other court actors, but it is clear that a gap still remains. This engenders a level of mistrust which operates to the detriment of everyone, further increasing stress levels in an already stressful environment and potentially hindering the achievement of meaningful and constructive progress towards a fair and just outcome.

The research is valuably underpinned by a rights-based approach based on the guarantee of a right to a fair hearing provided under Article 6 of the European Convention on Human Rights. It remains a challenge for all of us in the legal system to ensure personal litigants feel they are treated fairly and have a perception of fairness. Identifying ways in which this outcome can be achieved will benefit not just personal litigants but others within the court system. The research gives us valuable insights into how we might adapt the system and our own practice to meet the obligation that Article 6 imposes.

The findings and recommendations of this research are based on rigorous research and provide a robust and detailed road map for all of those involved in court proceedings, administration and policy development and Professor McKeever and her colleagues are to be rightly lauded for their development of this research project and their tireless efforts to ensure that it was brought to a successful conclusion despite the impact of the COVID-19 pandemic. The findings and recommendations deserve to be examined alongside the recommendations put forward in Lord Justice Gillen's civil and family justice reviews from 2017, alongside the research published in 2018 by Ulster University, with the Northern Ireland Human Rights Commission.

I was privileged to chair the advisory group linked to this research project the membership of which included both branches of the legal profession, judges, court service and Department of Justice officials, the Legal Services Commission, academics with expertise in participation, court systems and research methods, the Law Centre (NI) and the Family Justice Innovation Lab in British Columbia. I want to extend my personal thanks to all the members of the advisory group for their support, wisdom and insight. Finally, I would like to thank the School of Law at Ulster University, and their research team for completing this research and the Nuffield Foundation for their financial support.

Acknowledgements

This research starts from the place where our original 2016-18 research left off. In 2018, we published our report on Litigants in Person in Northern Ireland: Barriers to Legal Participation. Over the last five years, while the current research was completed, we have turned to many of the same people that our original research drew on and we are immensely grateful for their continued engagement. We are grateful also to those who joined us from 2019 onwards, as we started our new projects. Their participation was critical to the success of our research.

There are too many individuals to mention but we are indebted to the litigants in person who shared their insights with us; to members of the Northern Ireland Courts and Tribunals Service and the Access to Justice Directorate in the Department of Justice who helped guide the development and dissemination of the information tools; to the Law Society and Bar Council, particularly those members who worked directly with us to shape the research; to the Office of the Lady Chief Justice and members of the judiciary who took part in our data collection; to the amazing members of our Human-Centred Design Group, who stuck with us through COVID-19 and all of the challenges that it presented; to the advice organisations who gave substantial feedback on the information tools; to Kari Boyle and Jane Morley from the Family Justice Innovation Lab, British Columbia, who mentored us on Human-Centred Design; to our academic colleagues at the Yunus Centre for Social Business and Health, Glasgow Caledonian University who mentored us on Q methods; to our Ulster University web team, Mark Kennedy and James Rogers, who worked patiently with us to bring the research products to life; and to Dan Farley and Hannah Miller for their design work so we could finally publish the reports.

We acknowledge, with huge gratitude, the support of the Nuffield Foundation, which has funded our research on litigants in person in Northern Ireland since 2016. We are particularly grateful for the support from Ash Patel and Rob Street who helped ensure the research did not get derailed by COVID-19 and allowed us to take a different route to our destination.

The Nuffield Foundation is an endowed charitable trust that aims to improve social wellbeing in the widest sense. It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research. The Nuffield Foundation has funded this project, but the views expressed are those of the authors and not necessarily those of the Foundation. More information is available at www.nuffieldfoundation.org.

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Bronagh O'Reilly, Access to Justice Directorate, Department of Justice Northern Ireland
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Samantha Sayers, Legal Services Manager, Law Centre Northern Ireland

Membership of the Advisory Group does not constitute an endorsement of the research and its recommendations, which are the responsibility of the authors alone.

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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 our existing data on LIPs 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 Article 6(1) 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. As this is an innovative methodology for socio-legal research, the report provides a detailed outline of how to conduct a Q study (Chapter 5).

The descriptors of participation

There are ten descriptors that define the necessary conditions for participation under Article 6:

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:

i. 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.
ii. Court buildings and online services are amenable to LIPs.
iii. Information on how to self-represent is available, followable and good quality.
iv. Support at court is available and appropriate.
v. Adaptations are available and affordable for, for example, those with experience of domestic violence or non-English speaking LIPs.
vi. Evidence, case papers etc are equally accessible to both parties.
vii. 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:

i. treating all LIPs equally regardless of their perceived reasons for self-representing, unless remedial measures are required to deal with malice.
ii. 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.
iii. 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 representative 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.

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 method that resulted in the co-production of online information resources for LIPs is adopted here.

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 a role for lawyers here to act in different capacities but a need also to extend legal services beyond their traditional boundaries.

Chapter 1: **The rationale for the research**

Article 6(1) of the European Convention on Human Rights protects the right to a fair trial. This includes the right to participate in the legal proceedings that determine the legal and factual issues at stake. It is not clear, however, what this right to participate looks like in practice. Through an empirical examination of family court proceedings in Northern Ireland, this research seeks to understand what it means to 'participate' in legal proceedings. It builds on our earlier empirical research from 2018, which we refer to as 'LIPNI1', also funded by the Nuffield Foundation, where we examined the difficulties faced by Litigants in Person (LIPs) in participating in civil and family court proceedings in Northern Ireland.[1] We defined these difficulties as barriers to 'legal participation'.

The European Court of Human Rights' (ECHR) decision in *Airey* determined that it is the state's responsibility to ensure that LIPs can participate in a way that allows them 'to present [their] case properly and satisfactorily' as a means of ensuring that the court can make a just decision.[2] Case law since *Airey* explores the standard of participation that is required to meet the Article 6(1) duty, but two issues limit the application of this jurisprudence to everyday practice. First, that a breach of Article 6(1) can only be determined retrospectively rather than at a particular point in proceedings and second, that the requirements for the human rights standard of what we are calling 'effective participation' under Article 6(1) are general rather than specific, making it difficult to develop a bright-line test for what is or is not effective participation for LIPs. The challenge is to articulate the rights of LIPs in the terms of Article 6(1) in a way that supports judges or others to act pre-emptively to enable or facilitate participation, as Article 6(1) allows them to do. Identifying what effective participation is (or is not) and acting to mitigate the impact of barriers to it could result in prevention of breach rather than remedy after the fact.

The aim of the current research is to connect the concept of legal participation to the human rights standard of effective participation, making the human rights standard tangible and something that can be facilitated *in situ*. We constructed two key research questions (RQs) that would allow us to establish whether it might be possible to identify the risks to Article 6(1) during court proceedings, to allow for *in situ* responses to mitigate these risks:

RQ1: What are the key descriptors of legal participation?

RQ2: What are the main elements for determining whether effective participation is reached?

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1 G McKeever, L Royal-Dawson, E Kirk and J McCord, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) Ulster University <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf>. Throughout this report we refer to our 2018 research as LIPNI1. Our current research is in two parts: this report and G McKeever, J McCord, L Royal-Dawson and P Yarnell (2023) 'Using human-centred design to develop empathy and supports for litigants in person' <https://www.ulster.ac.uk/empathy-for-LIPs>

2 *Airey v. Ireland* (1979) Application no. 6289/73. 2 EHRR 305

In order to address these RQs we examined how we could identify key descriptors of legal participation from our existing empirical data set from our 2018 research and how we might test these descriptors to match their compatibility with the risk factors to effective participation under Article 6(1) ECHR. The intended outcome is a framework of legal participation which maps real life litigation behaviour and performance to the legal standards of Article 6(1) and, in so doing, provide a description of the types of behaviour and performance that may indicate possible breaches or threats to the human rights standard, as a means to pre-empt a breach of Article 6(1).

We begin first with an examination of the concept of participation, based on an empirical interpretation of how participation can be hindered in the litigation efforts of LIPs, before analysing how the normative content of effective participation as an essential element of the right to a fair trial has been defined through legal doctrine. The empirical interpretation of what we are calling 'legal participation' and the doctrinal requirements of what we are calling 'effective participation' are mapped on to each other to see where they overlap. The development of a conceptual framework for legal participation as an approximation of effective participation is then described. Such an approximation is necessary since the breach of effective participation can only be determined by a judge, and the closest an in-case assessment can get is to legal participation and where its denial may be cause for concern about a litigant's effective participation.

Chapter three describes our methodology for identifying the descriptors of legal participation. Here, we set out how reanalysing our LIPNI1 data on family courts, and reviewing these against the attributes of effective participation derived from our doctrinal analysis, led us to a set of descriptors that represent the practical out-workings of the Article 6 obligations. The descriptors are tested for their validity, first against a sub-set of the empirical data and then through a judicial workshop.

Chapter four describes how the descriptors were translated into an observation schedule, intended for use by researchers observing LIPs in their family court hearings. Only a limited testing of the schedule was completed through a small number of observations of online and in-person hearings, due to COVID-19 and GDPR-cited restrictions which meant that the original methodology had to be abandoned. While it is clear that valuable lessons can be learned from this failure, the greater concern is that the route to researching the family court system in Northern Ireland is blocked.

We identified Q methodology as an alternative approach that would allow us to address our research questions, and chapter five explains how Q complements our approach of integrating a multiplicity of perspectives from all of those who have a stake in seeing Article 6 rights protected – judges, legal representatives, LIPs, court clerks and McKenzie Friends – and how we conducted the Q study. Q methodology is a study of subjectivity using both qualitative and quantitative analysis to investigate patterns of opinion among groups of people on a particular topic, identifying where those opinions are shared or different. In our study, we investigated views on what is important for LIPs to participate in their proceedings. An account of the statistical analysis that generates the factor solutions and how we decided on a five-factor solution is given along with the interpretations of the results as five distinct perspectives.

These five perspectives are explored in depth in chapter six. Each factor represents a distinct viewpoint and this chapter explores how they each respond differently to the question of what is most important to ensure that LIPs can participate in their court proceedings. The first viewpoint is that there is a need to change the system. This perspective identifies how LIPs struggle to navigate the system, which must adapt to their needs to ensure a fair outcome in their case. The second viewpoint is that LIPs should be treated like lawyers, so that the onus is on the LIP to adapt rather than bending the system to shape to the needs of LIPs. The third is that LIPs are an inconvenience in the system but are entitled to be there. The individuals who make up this viewpoint consider that LIPs should put the necessary time and effort into preparing their own case and that the judge should help the LIPs understand what they are required to do if the system is to work properly and they are to get a fair outcome. Viewpoint four prioritises the need for consistency in court as a direct contribution to fairness. This perspective advocates for a standard approach to how LIPs are dealt with by judges and legal representatives, to help reassure LIPs and build trust, which can then create better conditions to provide a fair outcome. The final viewpoint is that there is a need to recognise LIPs' vulnerability in the system. This perspective acknowledges that LIPs have individual vulnerabilities in addition to those generated by the system and argues that accommodations need to be made for them, so they can be supported to participate.

Chapter seven puts the five factor descriptions into context, reviewing the meaning of each of the factors in relation to each other and to the human rights framing of participation. Our overall objective is to refine and validate the descriptors of legal participation as mutually exclusive, relevant and practical so that they might apply to live, on-going proceedings to ensure fair trial rights are protected. The perspectives from each of the factors provide reflections on participation and on the descriptors that we can populate our participation framework with.

Chapter eight departs from a standard Q study, by examining each participation attribute in turn through their component descriptors by reviewing what the responses to the Q statements contribute to our understanding of legal participation. This critical examination of the framework leads us to a more condensed and focused rendering of participation, through which we identify ten descriptors of participation that give effect to the Article 6 right to participate.

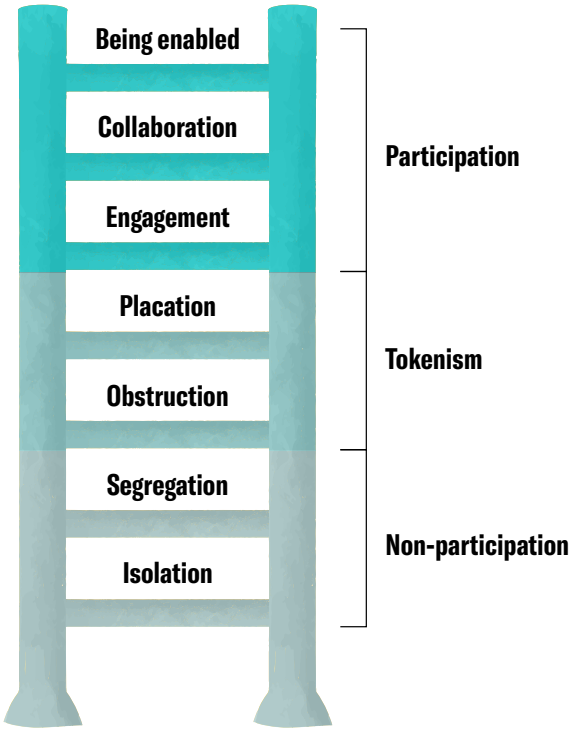
Our report concludes with a summary of our findings and sets out the main recommendations that flow from these. These are firmly located within the state's duty under Article 6 to ensure that LIPs can participate effectively in their court hearings. The recommendations in themselves are therefore straightforward and achievable but highlight the continuing gap between the identified need and the implementation of policy to give effect to the right to a fair trial for LIPs.

Chapter 2: What is participation?

In order to understand how Article 6 rights are protected for LIPs in the court system we need to understand both the empirical experiences of participation and the legal standard established through the case law on Article 6 ECHR. We refer to each of these aspects of participation as 'legal participation' to reflect the empirical data on LIPs in family court hearings and 'effective participation' to reflect the doctrinal analysis that sets out the participative rights under Article 6.

What is legal participation?

In 2018, the participative difficulties experienced by LIPs in Northern Ireland were examined through an empirical analysis of live civil and family court proceedings, applying a conceptual model of legal participation designed to describe the different participative experiences of court and tribunal users. Drawing on Arnstein's seminal model of political participation, legal participation is conceptualised as a 'ladder' with seven rungs, representing seven different types of legal participation.[3]



3 SR Arnstein, 'A ladder of citizen participation' (1969) 35 *Journal of the American Institute of Planners* 216; G McKeever, 'A ladder of legal participation for tribunal users' (2013) July *Public Law* 575; G McKeever, *Modelling participation for court litigants: Final report* (2015) British Academy / Leverhulme Small Research Grant SG150085

This 'ladder' of legal participation divides the broad range of experiences into three categories of participation: non-participative, tokenistic, or participative. It then identifies different types of participative experience within each of these categories. Non-participative experiences are defined as isolation, which involves feeling excluded and unable or unwilling to engage with legal proceedings; and segregation, which includes feeling segregated from the legal process, or secondary within it, without sufficient account being taken of the difficulties in participating. Tokenistic experiences are defined as obstruction, where the individual's journey through legal proceedings is obstructed by delays or inadequate information, or through fatigue at having to search for assistance. Tokenistic experiences can also be described as placation, where the support that is provided, or referred to, is ineffective in assisting the individual. Participative experiences encompass engagement, where users can navigate the process and communicate with the actors to understand each other's role; collaboration, where individuals are supported in their journey through the process, with their understanding of proceedings taken as the starting point, and difficulties dealt with as they arise; and being enabled, where individuals are put in the position where they feel supported and equipped to engage in the process as equals, with an element of self-determination within recognised limits.

The model reflects the participative barriers that can arise as part of the dispute resolution process. These participative barriers are defined as intellectual, practical, emotional and attitudinal barriers:[4]

- **Intellectual barriers** relate to the difficulties litigants have in understanding and assimilating complex legal information and applying it to their case, but it also includes the intellectual barriers that litigants face in understanding the common legal terms and processes that legal proceedings involve. In our 2018 study, there were many instances where LIPs had exhausted the limits of their knowledge or understanding of the legal issues, sometimes regardless of how much preparation they had done. LIPs reported not understanding the legal language, what the forms require, or how to apply law to facts. It was common for LIPs to say that they thought that the court system should be more supportive of them. The theme of 'not knowing' was prevalent among LIPs throughout the study and raises concern about how LIPs can participate in a process that they do not understand.

- **Practical barriers** relate to issues of access and the practical demands of the process: where to get relevant information, who to direct queries to, how to comply with court expectations, when to sit or speak or stand. Many LIPs in the 2018 study expected that once they decided to self-represent there would be advice and support readily available to them but were disappointed or frustrated when they found information and resources either non-existent, irrelevant or difficult to find, and points of contact, such as court staff, unable to advise. For their part, judges and legal representatives sometimes held a vague sense that pro bono services and voluntary sector advice agencies were already offering basic assistance to those who want it. However, information and advice are woefully inadequate in meeting demand.

4 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 206

- **Emotional barriers** arise from the anticipation or experience of the legal proceedings, that can amplify existing – usually negative – emotions. LIPs in the 2018 study detailed a range of emotions which acted as barriers to participation, including frustration, anger, confusion, anxiety and fear, with relief acting as the corollary to these negative emotions. While many LIPs described feeling supported by some court actors, this was in contrast to descriptions of a system that does not care and lacks sympathy for the difficulties they faced. This in turn had resulted in some LIPs becoming alienated or despairing of their situation. For others, it resulted in incredulity and the suspicion of unfairness, which could then elide into practical and intellectual barriers.

- **Attitudinal barriers** are defined as negative or recalcitrant perceptions of LIPs held by actors or others within the legal arena, and reciprocal views by LIPs of court actors, that hinder the smooth progression of a case. In the 2018 study, these barriers were evident where LIPs were regarded as trespassers in the legal system, and where court actors and LIPs each saw the system as distorted by serving the needs of the other, with consequentially negative implications for how they engage with each other.

The data shows that participation is not a static state: a LIP could move between the 'rungs' on the ladder within the life of their dispute and even within the space of a single court hearing. The participative experiences vary depending on the extent to which the litigant is able to mitigate the effects of the barriers and the model reflects this variation by categorising the range of participative experiences:

- Significant intellectual, practical, emotional and attitudinal barriers could be seen in the participative experiences of isolation and segregation: not understanding what was happening, not having any effective support to aid their understanding and such difficulties not being accommodated, rendering any attempt to participate as futile.

- The tokenistic participative experiences of obstruction and placation also evidenced the presence of these barriers, though to a lesser extent. These tokenistic experiences were highlighted where LIPs were referred to notional, inaccessible or inadequate supports revealing a systemic attitude of some court actors that LIPs should be well enough informed on their own initiative if they are to play a part in court proceedings.

- Where participative experiences of engagement, collaboration and being enabled were evident, the research showed the value of support in being able to break down barriers. Evidence here in particular pointed to the participative impact of judges' clear explanations of steps LIPs needed to take, using LIPs' understanding and expectation of the court process as the starting point to take them through what the process involves, and identifying and dealing with difficulties as they arose. Beyond judicial interventions, other forms of support before and after the hearing could give LIPs the confidence to make some sense of what the legal process required and to understand where there were critical gaps in their legal and procedural knowledge.

While the concept of legal participation is useful in recognising and potentially addressing the inherent barriers, what matters most is that the LIP's right to a fair trial under Article 6(1) ECHR – incorporating the right to participate effectively – is protected. This raises the question of the extent to which the barriers to legal participation need to be removed or reduced to protect Article 6(1) rights, which first requires an analysis of how the right to participate effectively has been interpreted under Article 6(1).

What is effective participation?

The study considers the right to a fair trial for LIPs as flowing mainly from Article 6(1) of the ECHR, as incorporated by the Human Rights Act 1998, as well as the treaty obligations of the Council of Europe, European Union and United Nations (UN) systems. Article 6(1) states:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

To facilitate the development of descriptors for legal participation, we first need to understand the normative content of the right to effective participation.[5] By teasing apart the content of a right, we can identify the attributes that together give meaning to the essence of the right. This will edge us closer to defining meaningful, mutually exclusive and relevant descriptors for the attributes which in turn will assist in understanding how the standard can be upheld and, even at some stage, monitored.

Article 6(1), which makes no distinction between represented and unrepresented litigants, describes two broad attributes: the right of access to a court and fair trial guarantees.[6] A third attribute related to the individual LIP's personal characteristics is also considered here because the lack of a legal background is what separates LIPs from other rights-holders who are litigants.

A. THE RIGHT OF ACCESS TO A COURT

The right of access to a court requires that procedural guarantees be in place for individuals to institute legal proceedings in a non-discriminatory manner.[7] It is up to States Parties to decide how best to fulfil the obligation to provide access to a court, and this may include the provision of legal assistance if the case is of too great legal or procedural complexity to ensure effective access to a court, or alternatively through the simplification of procedure.[8] Determining the complexity of the procedure or case

5 Office of the High Commissioner for Human Rights, Human Rights Indicators: A guide to measurement and implementation (2012) <https://www.ohchr.org/sites/default/files/documents/issues/HRIndicators/AGuideMeasurementImplementationCompleteGuide_en.pdf.pdf> 31

6 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> Appendix 1 teases out two broad elements arising from Article 6(1) ECHR: 1) access to a court and 2) fair trial guarantees

7 *Golder v. UK* (1975) Application no. 4451/70. 1 EHRR 524, at para 36

8 *Airey v. Ireland* (1979) Application no. 6289/73. 2 EHRR 305, at para 26. For example, some legal proceedings have been simplified so that they can be undertaken without the aid of a legal representative, such uncontested divorce proceedings and small claims

must be done, to some extent, in view of the personal characteristics of the litigant, unless the procedure is so obscure as to be beyond the ability of all other than the most specialised counsel. Having access to a court therefore encompasses access to processes and proceedings which are not so complex that they create barriers for LIPs that would affect their participation, which in turn would jeopardise their Article 6(1) rights. How this interplay between the characteristics of the litigant and the complexity of the processes is managed in proceedings is important and is discussed below.

Access to a court also includes administrative and legal procedures which are coherent with the provision of sufficient information and assistance to make them implementable, including by LIPs.[9] It may seem an obvious point that LIPs are unable to participate when procedures are opaque and unknown to them, yet bringing these aspects of Article 6(1) under the microscope enlarges the relevance of transparent procedures, accessible information and support for the layperson. Clearly, how individuals take up and make use of these resources will differ and will have differential impacts on their ability to litigate.

A final aspect of the right of access to a court is the ability to participate in the proceedings to a level where the LIP is able to do justice to the case such that the court is able to identify the facts and principles to reach a just decision.[10] This means that effective participation requires the LIP to be able to affect the outcome of the case which in turn rests on being able to manage the adversarial process to ensure both procedural and substantive justice.[11] This requires access to information on how to litigate, capacity to engage in the adversarial process, being able to cope with the stress, demands and complexity of the proceedings, and managing interactions within and outside of the court room.[12]

B. FAIR TRIAL GUARANTEES

The second element of Article 6(1) relates to fair trial guarantees. These guarantees include the equality of arms, which is the fair balance between the parties in the opportunities given to them to present their case in a manner that does not disadvantage them with respect to the other side.[13] Inside the courtroom, there is an interface between the LIP's ability to manage the adversarial process and how the judge ensures equality of arms. If the procedures and law underpinning the case are too complex for the LIP and they are unable to manage the adversarial process, equality of arms may be difficult to achieve. In such circumstances, the judge may exercise judicial latitude towards the LIP to ensure balance, but in a way that does not interfere with judicial impartiality and neutrality. *In extremis,* the court may direct legal assistance from the State.[14]

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9 *de Geouffre de la Pradelle v. France* Application no. 12964/87, at paras 34-35. *Blumberga v. Latvia* Application no. 70930/01, at para 78. The right of access to a court also requires the court to exercise 'diligence' to make sure a party has been informed of proceedings: *Colozza v. Italy* Application no. 9024/80, at para 28

10 [2003] EWCA Civ 1521 *Perotti v Collyer-Bristow (a firm)* at para 32

11 [2014] EWCA Civ *1622 R (on the application of Gudanaviciene & ors) v The Director of Legal Aid Casework and The Lord Chancellor* para 55; E Allen Lind and TR Tyler, *The Social Psychology of Procedural Justice* (Springer 1988); TR Tyler, 'Social Justice: Outcome and Procedure' (2000) 35 *International Journal of Psychology* 117; R Moorhead, M Sefton and L Scanlan, *Just Satisfaction? What drives public and participant satisfaction with courts and tribunals?* (2008) MOJ Research Series 5/08; G Leventhal, 'What Should Be Done with Equity Theory? New Approaches to the Study of Fairness in Social Relationships' in K Gergen, M Greenberg and R Willis (eds) *Social Exchange* (Springer 1980); L Solum, 'Procedural Justice' (2004) 78 *Southern California Law Review* 181

12 [2014] EWCA Civ 1622 *R (on the application of Gudanaviciene & ors) v The Director of Legal Aid Casework and The Lord Chancellor* para 56. See also OJ Settem, *Applications of the 'Fair Hearing' Norm in ECHR Article 6(1) to Civil Proceedings, with special emphasis on the balance between procedural safeguards and efficiency* (Springer International Publishing 2016) 92

13 *de Haes and Gijsels v. Belgium* Application no. 19983/92, at para 53

14 *Steel & Morris v. UK* Application no. 68416/01 at para 69, 72

In Settem's analysis of the fairness standard of Article 6(1), he states that 'proper participation' in the legal process is essential for it to be upheld:

> "... as a main rule, the fairness standard implies a right for each party to participate properly in the decision-making procedure by making his voice heard, either by addressing the court himself, or through a legal representative..."[15]

His argument is that participation in the decision-making procedure rests on three principles: the adversarial principle; equality of arms; and respectful treatment.[16] The adversarial nature of the proceedings affords both parties reasonable opportunity to comment on all relevant aspects of the case so that the court can arrive at a fair decision and participation is therefore necessary to operationalise adversarial proceedings. The judge's role in ensuring equality of arms is key to legitimising adversarial proceedings, while respectful treatment requires that the proceedings cannot demean or undermine either party and their rights are given equal respect.[17] The idea here is that respect must be afforded to litigants for them to make their voice heard to ultimately ensure their rights are protected, and participation is key to enabling this. Being treated with respect, dignity and without discrimination are bedrock principles in human rights standards and any analysis of fair trial rights without them would be incomplete.[18]

C. PERSONAL CHARACTERISTICS OF LIPS

Already in this description of participation rights of LIPs under Article 6(1), we see that having certain personal characteristics is important to an individual's exercise of these rights, for example, being able to manage the complexity of the case, being able to navigate and apply information on the administrative and legal procedures and being able to do justice to one's case. The lack of professional skills is what sets LIPs apart from legal representatives.[19] The paradox in the case law that LIPs need some skills to manage their case when their lack of skill is what defines their non-practitioner status is difficult to reconcile. Clearly, some LIPs will manage their cases better than others as a product of case complexity, their individual characteristics and the support they have. Yet, the administration of justice should not depend on the capacities of the litigant because it is there to serve all-comers. There is no requirement to be represented. Equally, adapting a system to infinitely yield to the variety of capacities that LIPs may attend with is an unrealistic expectation. Somehow the human rights standard for effective participation needs to account for both individual differences and the elasticity of the system to cope with them. As we established in LIPNI 1:

> "Effective participation therefore recognises the litigant's autonomy and enables them to build knowledge and skill that will support them to influence the proceedings."[20]

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15 OJ Settem, *Applications of the 'Fair Hearing' Norm in ECHR Article 6(1) to Civil Proceedings, with special emphasis on the balance between procedural safeguards and efficiency* (Springer International Publishing 2016) 92

16 ibid 97

17 This does not mean the judge cannot be harsh provided the treatment remains respectful; ibid 97-119

18 Universal Declaration of Human Rights: Art. 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Art. 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...; DJ Harris, M O'Boyle and C Warbrick, *Law of the European Convention on Human Rights* (Butterworths 1995) 475

19 K Leader, 'From bear gardens to the County Court: creating the litigant in person' (2020) 79 *Cambridge Law Journal* 260

20 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> p212

There is no test to give LIPs to assess whether they are match-fit for self-representation, so it falls to the court actors and voluntary sector to provide support or guidance where the LIP needs it. There should be no contingency between an individual's capacities or health and their enjoyment of their rights. The equality and non-discrimination principle prohibits rights being contingent on personal attributes, although some positive rights are afforded to some groups of people who have been historically discriminated against. However, the point here is not the amount of ability they have but whether incompetence, bewilderment, breakdown, obsessiveness, a lack of ability or detachment are barriers to legal participation. Part of our work here is to explore the contingencies and impact of personal characteristics on participation rights.

Conclusion

In summary, the standards for effective participation rely on unobstructed access to and exercise of many practical, procedural and individual attributes.

The attributes giving meaning to effective participation are:

1. Non-discriminatory access to a court and proceedings, including to coherent administrative and legal procedures and sufficient information and assistance to implement them;
2. Being able to engage in adversarial proceedings;
3. Equality of arms, i.e. being given an equal opportunity to affect the outcome of the case;
4. Being afforded respect.

They include the participative and performative actions of the LIP (or any litigant) and, in particular, how they as individuals interact with the procedural and infrastructural provisions of the court system, simultaneously depending on individual and systemic attributes. The systemic attributes include having access to a court and the information necessary to understand, prepare and process one's case and being given the opportunity by the judge and officers of the court to present one's case. The individual attributes include having the ability to present one's case to enable the judge to reach a fair and just decision. These attributes attach duties to the state to ensure all litigants, particularly those with no legal representation, are not prevented from accessing them. If any one of these attributes is blocked or fails to meet the appropriate standard, then effective participation – and therefore fair trial rights – may be in jeopardy.

This interpretation of the jurisprudence on effective participation provides a useful framework for the normative content of the right. The next stage is to elaborate the four attributes with descriptors that relate directly to the experience of participation – which we call legal participation. We will identify empirically the characteristics of legal participation and develop them into descriptors. Though beyond the remit of this study, the eventual use of the descriptors is for them to be developed into indicators or other measures to identify whether the standards of effective participation as an element of the right to a fair trial under Article 6(1) ECHR may be under threat.

The next step then is to map the experience of legal participation as observed and reported in empirical data to the doctrinal attributes of effective participation.

Chapter 3: **Connecting 'legal participation' to 'effective participation'**

The intended output of this part of the study is a set of descriptors for legal participation mapped onto the attributes of effective participation. The steps to reaching this goal, in brief, are to initially derive expressions of legal participation from the existing empirical data through a deductive process, resulting in a set of descriptors. These are then validated, interrogated and refined.

Raw descriptors

The LIPNI1 dataset provides the empirical realities of court proceedings and is a solid base from which to build categories of behaviour, performance, infrastructural facilities and court processes related to legal participation. The original dataset contained 275 court room observations of civil proceedings involving LIPs and 163 transcribed interviews. These data had been analysed previously using 1,033 descriptive codes, including codes relating to observers' comments, case characteristics, LIPs' pathway to litigation and other categorical data not relevant to the experience of participation. For this project, the dataset was anonymised by stripping out any personally identifying data. For the purposes of the connecting experiences of legal participation to effective participation, we selected only the codes which related to Article 6(1) rights in some way, a total of 309 codes.

The 309 original codes had not been analysed for participation at this stage and existed in their raw state and were associated with hundreds of individual references. Our aim at this stage was to construct discrete mutually exclusive, robust expressions to describe the salient features of the lived realities of legal participation. There were several raw codes where the focus overlapped with other codes, or they had a similar focus but varied in degree. We reviewed the codes and their associated data references, firstly, by clustering cognate or repeated raw codes along with their data references together. We then categorised the codes into 40 separate loose expressions which were beginning to resemble distinctly defined descriptors. The next stage was to use the Matrix Tool in NVivo to run cross-tabulations for the 40 to produce counts for instances where data references were co-coded. This was a means to assess further overlap or related meanings in the underlying coding structure and merge the expressions into 18 initial descriptors, as follows:

TABLE 1: INITIAL DESCRIPTORS FROM THE FIRST ROUND OF ANALYSIS (NO. 1)

1. information on court procedure and being a LIP, and court forms are freely available and accessible
2. the court building is an enabling and not an obstructive environment to litigants [for example, suitable signage, information, staff available to guide, space to wait, amenities]
3. the litigant in person is able to access sufficient information and other material to prepare their case
4. the litigant in person has the ability and confidence to self-represent
5. the litigant in person sees the proceedings as not biased and procedural justice as being intact
6. the litigant in person has time to prepare and manage their case
7. the litigant in person has made efforts to prepare their case
8. the litigant in person is able to communicate their needs and views to court staff and in court either directly or via a supporter, such as a McKenzie friend
9. the litigant in person is sufficiently healthy - mentally and physically - to manage their case [for example, as indicated by General Health Questionnaire 12]
10. the litigant in person is sufficiently emotionally detached to communicate and understand
11. 1the litigant in person is supported / enabled to communicate his or her needs and views to the opponent or their representative where appropriate, court staff and in court
12. in court, the judge is welcoming and supportive and explains what the day's proceedings are for
13. in court and outside of court, the communication between any court actor [including the judge, legal representatives of the opponent, court staff] and the litigant in person is polite, clear, unambiguous and in layperson's language
14. in court, it is clear that the litigant in person has understood the proceedings and knows what to do next and, if relevant, is in possession of the court order [for example, comprehension is established by more than saying 'yes I understand']
15. in court, the litigant in person is given opportunities to present their case
16. in court, the judge is able to obtain a clear and full understanding of the LIP's views or case
17. in court, the litigant in person's views are taken into consideration (not necessarily agreed with)
18. the proceedings will enable the judge to make an informed and fair decision based on the facts.

In brief, these 18 initial raw descriptors encompass behaviour (i.e., the actions), performance (i.e., the process of carrying out the action) and institutional attributes for both the court, its systems and the LIP. They include the obligations of the court service to make available the information and documents necessary for litigation and to make accessible the court premises, whether physical or virtual, where cases are heard. Access to all of these is required for all and any litigant, including LIPs. Also, included in the elements is the LIP's ability, confidence and time available to prepare and manage their case unrepresented, communicate their needs and views, to be sufficiently healthy in mind and body to manage their case. Their perception of the procedural justice of their case is positive and they perceive their proceedings as unbiased. Clear communication between all court actors in a LIP case is necessary to aid comprehension. Finally, the judge's role is crucial in ensuring that LIPs are aware

of the purpose of the proceedings, understands what is happening and what to do next and that they give LIPs opportunities to present their case, take their views into consideration, all so they are furnished with the information they need to make an informed and fair decision.[21]

Reviewing the descriptors with respect to the doctrinal analysis of effective participation, it became immediately clear that #18 – 'the proceedings will enable the judge to make an informed and fair decision based on the facts' – was not a behaviour or performance of legal participation but the desired outcome of the proceedings. It was thus removed from the list, leaving us with 17. In addition, despite the richness of the empirical data, the deductive analysis overlooked the human rights standard of respect. That meant there was no descriptor related to being treated with respect, so it was added, bringing the list back to 18.

The next step was to check whether the descriptors were realistic renderings of actual participative performance and behaviour experienced by LIPs. We used a set of 20 anonymised Family and Domestic Proceedings cases from the original dataset, where a case contained either observation notes, a transcribed interview or both. We read through the observation and interview data again looking to understand how or whether the descriptors could be applied to the behaviours recorded therein. The aim was to assess whether the descriptors were efficient and sufficiently descriptive to capture behaviour and performance which may suggest any hindrance to legal participation.

This analysis of the 20 cases raised several honing points for us:

1. The application of the descriptors to the cases was very patchy because some of them are only relevant in one locus, and so we needed to define the different loci where we would be able to obtain a rounded picture of legal participation. They were: the **court system**, the **court hearings**, and the **LIP.** We needed to apply the descriptors to each loci appropriately. It became clear we would need a suite of tools to address all aspects of participation, comprising an observation tool for hearings, a questionnaire for LIPs to complete by themselves and an audit tool for the court system. For example, #7. 'litigant has made efforts to prepare their case' would be better ascertained through a questionnaire than during a hearing observation.

2. The analysis showed that the application of the descriptors to actual behaviour could not account for varying levels of the behaviour. For example, #7. 'litigant in person has made efforts to prepare their case' could not distinguish between a litigant who was observed reading out a prepared submission to one who reported having prepared in an interview with no opportunity to observe to verify. Furthermore, within cases, a LIP may display exemplary self-representation behaviour on one day, but less so on another or even on the same day. This suggested two issues with regard to our conceptual framework: 1) the need to indicate the level or quality of the phenomena observed or reported; 2) the difference between reported behaviour and observable behaviour.

21 The development of the participation framework went through several iterations which are summarised in Appendix 1: Evolution of the descriptors of legal participation. Described here is the first phase No. 1

We needed to unpack these two issues because they presented obstacles for applying the descriptors. The level or quality of the observed or reported phenomenon arose because of varying levels of fulfilment of the descriptor. Some judges take great pains to explain the day's proceedings to the LIP while others are more cursory. To register this qualitative detail, it struck us that any eventual data collection tool might need a rating scale. Secondly, both interview and observation data yield subjective renderings of the phenomenon being looked at, the former from the litigant in person and the latter from the observer. The subjective perspective is to be expected from the litigant in person, but one would expect regular observations by the same observer to yield consistent interpretations over time. Hesitation arises at taking a self-reported behaviour at face value as it may be over- or under-inflated. Arriving at a tool that objectively verifies reported behaviour will be the task of the tool developer, but this operational requirement does not deflate the relevance of these descriptors and they still have a place in the conceptual framework.

3. In addition to varying levels of behaviour, we also found some of the descriptors were too broad to decide whether they applied or not. To make the descriptors more widely accessible in the audit tools, we decided examples for each of the descriptors would aid recognition. These were developed from the source codes and exemplar behaviour recommended in the 'Equal Treatment Bench Book' (ETBB), published by the Judicial College, England and Wales.[22]

4. We also found that court room observations did not always offer opportunities to apply any of the descriptors because the hearing was too brief to make an assessment or the LIP was not required to perform, other than listen. This suggested the inclusion of a rating 'Can't tell' in an eventual rating scale.

5. Personal attributes of litigants related to their capacity or health are the focus of several descriptors, such as:

    4.'litigant in person has the ability and confidence to self-represent'
    9.'litigant in person is sufficiently healthy - mentally and physically - to manage their case [for example, as indicated by GHQ12]'
    10.'the litigant in person is sufficiently emotionally detached to communicate and understand'

Personal attributes having a negative impact on legal participation is prevalent in the empirical data. This made us think about how to apply these positively worded descriptors when legal participation is utterly absent or blocked in some way.[23] Because legal participation is easier to detect when it has been blocked, we found the barriers to legal participation, discussed earlier, were a useful rubric to guide thinking about the attributes of legal participation for the tools themselves. When the behaviour or performance described by a descriptor is absent, blocked or prevented, such as when a LIP has no idea what to do next, legal participation is in jeopardy and accommodations may need to be made by the court. The eventual tools in the audit suite will need

22 Judicial College, Equal Treatment Bench Book (2021 Revised April 2023) <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf> The ETBB is guidance which judges are "encouraged … to take into account wherever applicable", in order to adhere to core judicial values, namely "independence, impartiality, integrity, propriety, ensuring equality of treatment, and competence and diligence."

23 Cf 'possession paradox' of J Donnelly, *Universal Human Rights in Theory & Practice* (3rd edn, Cornell University Press 2013) 9: 'Paradoxically, then, "having" a right is of most value precisely when one does not "have" (the object of) the right… I call this the "possession paradox": "having" and "not having" a right at the same time – possessing it but not enjoying it – with the "having" being particularly important precisely when one does not "have" it.' The presence of one of the barriers signals when legal participation is in jeopardy

to consider how to frame descriptors like these which have more relevance to legal participation when the LIP is experiencing them at the extremes that jeopardise legal participation. We retained these descriptors related to personal characteristics to explore further their contingencies and impact on legal participation.

6. One of the descriptors proved too difficult to ascertain: 16. 'in court, the judge is able to obtain a clear and full understanding of the LIP's views or case.' There would be no way to determine whether the judge had obtained a clear understanding or whether the LIP had expressed their views. This impressionistic descriptor would not be operational and was removed.

Having removed descriptors 16 and 18 from the initial list, and added being one about being reared with respect, we then also teased apart descriptors with multiple ideas, leaving 19 descriptors. We re-worded the descriptors slightly based on these findings and arranged them according to the attribute of effective participation they align with and then allocated the relevant locus of interest to them. This meant repeating the descriptors which apply severally to different loci, for example clear communication applies to court staff, the judge and the opposing party, but not all instances of communication will be observable in a hearing and apply to a different data collection method, such as a self-completion questionnaire by the LIP. This early draft of the framework of legal participation was then put forward for a validation exercise with the judiciary.

Judicial workshop to validate the descriptors

The next step in the construction of the framework for legal participation was assessing its construct validity, in other words, whether the descriptors describe what we think they describe.[24] A tried and trusted method to do this is obtaining the view of experts.[25] In essence, we wanted to know the degree to which the descriptors are accurate renderings of the behaviour and performance they describe and correspond with the experts' understanding of effective participation. We invited judges with family proceedings experience to take part in an online workshop.

We constructed a draft hearing checklist consisting of the descriptors of legal participation relevant to a court hearing, adding examples (see Appendix 2). It necessarily only includes loci relevant to a hearing, so descriptors applicable to a system audit or litigant interview were omitted.

A two-hour online workshop with judges experienced in the family court proceedings was held in July 2021. The aim of the validation exercise was for the judges to tell us if they recognised these descriptors from their lived experience as judges in the court and as duty-bearers of Article 6(1) rights. For the initial round of feedback, the judges were asked to read through the checklist and comment on the descriptors and examples.

Overall, the judges concurred that the descriptors were neither idealistic nor unrealistic and endorsed them as evidence of existing judicial practice. They identified one area missing in the checklist, namely LIPs' understanding of the principles of family law –

24 C Robson, *Real World Research* (2nd edn, Blackwell Publishing 2006) 102
25 M Simpson and J Tuson, *Using Observations in Small Scale Research – A Beginner's Guide* (2003) University of Glasgow 66

in particular, the paramountcy of child's welfare, and confidentiality of proceedings and documents related to the case. The point here was that LIPs are often unaware of or abuse the requirement to keep proceedings confidential and thus the LIPs' understanding of procedural rights as well as obligations needed to be included. The judges also thought 'court etiquette' should be added, though it may be included under 'LIP understands the process of the hearing.'

The judges recognised their professional role and capacity was limited with regards to having a view on 'LIP's health and emotional state are suitable for self-representation' and that judges are not qualified to make assumptions about the health of litigants, even if they form a private opinion. The judges recognised that they see LIPs who are not doing themselves justice, but the evidence of a psychiatrist would be needed to trigger the involvement of the Official Solicitor to take over representation. The inclusion of this descriptor was not specifically directed at judges but is included in the framework because the emotional barriers to legal participation featured so heavily in our 2018 research.[26] However, at this stage, we had not resolved how to deal with this descriptor in either the observation checklist or via post-hearing questionnaire with LIPs.

The judges highlighted a wording choice they felt poorly represented their role, namely 'the judge is supportive' towards the LIP, which was seen to suggest an imbalance in treatment between the parties. The term 'facilitative' was preferred.

The second half of the workshop was dedicated to the judges providing feedback on case studies the team had devised, a mix of both observed cases and fictitious scenarios which contained exemplars of practice that fell short of legal participation in a court hearing. The judges easily recognised the instances or absence of legal participation apparent in the scenarios and offered examples of practice they undertake in similar situations to ensure LIPs were able to participate in the hearing.

The judges felt that the observation checklist might be useful for judges who do not have a family law background, but that many of the actions described were already being done. This statement was reassuring as it affirmed what we believed to be indicative behaviours of legal participation. The name 'checklist,' however, was rejected as it suggested a very ordered and comprehensively itemised process.

We used the feedback from the judges to further refine the descriptors resulting in the working version of the conceptual framework of legal participation (see Table 2). The framework acts as a source from which the tools for the audit suite can be constructed. Each descriptor relates to performance and/or behaviour that underpins legal participation. Their wording might need to be re-articulated and re-formulated in the tools in a way that suits each tool and its means of data collection while still remaining a valid rendering of the aspect of legal participation concerned.

26 G McKeever et al, Litigants in person in Northern Ireland: barriers to legal participation (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf>161. In this study, the General Health Questionnaire 12 was completed by LIPs and additionally, some LIPs reported their states of health in the semi-structured interviews

TABLE 2: DESCRIPTORS AFTER JUDICIAL WORKSHOP (NO. 2 IN APPENDIX 1)

Attribute of effective participation Art.6(1)	Legal Participation descriptor	Locus of verification
Access to court and proceedings	1. Information is accessible by LIP	LIP
	2. Information, forms and guidance are available	LIP
	3. Infrastructure and procedures are suitable for lay people	Observation / Court service
	4. Communications between court staff and other court actors (including Court Children's Officer) and LIPs support engagement	LIP / observation
	5. LIP's circumstances allow time and space for self-representation	LIP
Ability to participate in adversarial approach	6. LIP understands case and self-representation	LIP / observation
	7. LIP has prepared	LIP / observation
	8. LIP is able to self-represent	LIP / observation
	9. LIP'S health and emotional state are suitable for self-representation	LIP / observation
Being given an opportunity to present case	10. 1Judge is supportive and ensures LIP understands the process of the hearing, depending on the type and hearing protocols	Observation
	11. Judge ensures LIP understands what happened and what happens next	Observation
	12. Judge ensures LIP has opportunities to present their case	Observation
	13. Judge appears to take LIP's views into consideration	Observation
	14. Judge uses clear language	Observation
	15. Opposing party enables LIP to communicate views, where appropriate	LIP / observation
	16. Opposing party uses clear language	LIP / observation
	17. Evidence is accessible	LIP / observation
	18. LIP sees the proceedings as not biased and procedural justice as being intact	LIP
Being treated with respect	19. LIP is treated with respect by all court actors	LIP / observation

Conclusion

The development of the descriptors was firmly rooted in their relationship to Article 6 case law and, in reality, of how participation manifests and can be protected in the court system. The validation of the descriptors was intended as an ongoing process, taking the expertise of the judiciary and combining this with the insights of research observations and LIP reflections along with a system checklist. How we went about developing the court hearing observation schedule is described in the next chapter. Despite attempts at developing a questionnaire for LIPs and a court-house audit list, neither reached fruition due to the access issues and consequential change of methodology.

Chapter 4: **Tool development – plans v reality**

The aim of the research was to create descriptors of participation to develop a series of audit tools that would enable an assessment of whether the right to participate under Article 6(1) ECHR was at risk. It was anticipated that this would encompass an observation tool, LIP questionnaire and a systems/facilities checklist, all drawn from the framework for legal participation. Some descriptors could be informed by data from more than one source, so the next task was to apportion the descriptors to the three tools. Due to the barriers in accessing court buildings, court hearings (online and in-person) and LIPs *in situ*, neither the LIP questionnaire or the systems/facilities checklist could be progressed and the only audit tool developed was the observation schedule. The COVID-19 barriers to research set out here may now be familiar, and while they may be regarded as transient, COVID-19 was the trigger for subsequent problems that we highlight here as a lesson for future research. This chapter summarises those problems before describing the process to develop and test the observation schedule.

The COVID-19 and GDPR challenges

The original research that we conducted from 2016-18, looking at how being a LIP can impact on the Article 6(1) right to a fair trial, involved a year spent in civil and family courts in Northern Ireland, recruiting from the public waiting areas, observing hearings and interviewing relevant parties and personnel.[27] Access to hearings for this project was negotiated in principle and set out in a protocol in advance of the research being funded and the researchers built time into the start of the project to work with court service staff and the judiciary to confirm how access could be operationalised.

The current research was premised on similar recruitment and access methods but the intervention of COVID-19, at the cusp of the fieldwork starting, rendered them obsolete. Most obviously, we were not able to attend the court buildings in person to recruit from the waiting areas because public health restrictions limited the number of court attendees permitted. Additionally, the solution to the public health requirements was to move court hearings online, removing any publicly available contact with litigants waiting for their cases to be heard. Also, in the initial stages of the pandemic, only emergency hearings for family courts were taking place online and so even if access had been possible, the pool of potential recruits was greatly reduced.

27 G McKeever et al, *Litigants in person in Northern Ireland, barriers to legal participation* (2018) < https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf>

When family courts returned to non-emergency business, and with additional funding from the Nuffield Foundation, we conducted an online survey to gather experiences from judges, litigants, lawyers, court staff and other personnel of family court hearings that had been moved to hybrid or fully online rather than face to face.[28] Significant problems were evident although one positive issue identified was that LIPs were considered in the shift online from the outset, with the new online processes and documentation inclusive of those with and without legal representation. Less positively, the experience of LIPs did not always match the ambition of inclusion and the findings identified particular problems associated with LIP hearings. Our findings both informed our approach to recruiting research participants and evidenced a continuing need for the research, particularly in relation to how LIPs participate in their hearings. Despite extensive efforts, however, working with NICTS staff who were simultaneously dealing with the COVID-19 burden on court business, obtaining access to the courts – both online and face to face – proved almost impossible.

The General Data Protection Regulations (GDPR) coming into force brought a new prism through which to view researcher access to family courts.[29] As a data controller, the Northern Ireland Courts and Tribunals Service (NICTS) has responsibilities to protect and safeguard the personal identifiable data of their clients. However, there are exemptions for research in the provisions of GDPR under the lawful basis of conducting a research task in the public interest.[30] Had we negotiated a relationship as a data processor with NICTS, the sharing of personal data should have been possible under GDPR.

Obscuring this fact was the application of the Departmental Solicitor's Office unpublished legal advice which we understood to apply to media reporting in the family courts, that was read-across by NICTS as applying equally to research access. As a Higher Education Institution, however, we are bound by strict ethical procedures safeguarding the privacy and anonymity of research participants, which require us to safeguard the identities and any personal identifiable information relating the research participants. In this regard, we were not sure why or whether this legal advice applied to our seeking access as there is a fundamental difference between observations for data collection for research purposes and direct media reporting on individual cases. The work of the Open Justice Family Court Reporting Pilot in England and Wales may be instructive to developing future protocols for researchers.[31]

There is a significant concern, however, that researcher access to family courts, that was once relatively straightforward, is now regarded as impossible. Future researchers will need to work alongside NICTS to work out how access to courts can be permitted through research exemptions under GDPR before making decisions on whether court observations can be a part of their methodology. The implications for the transparency of family justice and the future of research are otherwise depressing.

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28 G McKeever, J McCord, L Royal-Dawson and P Yarnell *The Impact of COVID-19 on Family Courts in Northern Ireland* (2020) < https://www.ulster.ac.uk/__data/assets/pdf_file/0010/799039/Impact-of-CV19-on-family-courts-NI-201217.pdf >

29 As implemented through the Data Protection Act (2018)

30 The Information Commissioner's Office *A guide to the data protection exemptions* <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/exemptions/a-guide-to-the-data-protection-exemptions/>

31 Open Justice Family Court Reporting Pilot is an initiative in three courts (Leeds, Cardiff & Carlisle) to promote more transparency with the workings of the family justice system <https://www.judiciary.uk/wp-content/uploads/2022/08/Open-Justice-Family-Court-reporting-pilot-rationale.pdf > The Transparency Project aims to promote the transparency of Family Court proceedings in England and Wales through providing straightforward, accurate and accessible information for litigants and the wider public < https://transparencyproject.org.uk/> and guidance to the media is provided by HM Courts and Tribunal Service <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals#full-publication-update-history >

Developing an observation tool

The use of observation as a means by which to monitor compliance with the right to a fair trial is a well-established practice in International Governmental Organisations (IGOs) with specific mandates to support state compliance with their Article 6 obligations.[32] Non-Governmental Organisations (NGOs) also frequently send observers to monitor trials and advocate for Article 6 compliance.[33] These observation tools are for the purpose of reporting retrospectively on the extent to which the right to a fair trial was breached and/or identify systemic shortfalls in fair trial compliance. In contrast, our observation tool was intended to act as a live guide for researchers and potentially also judges to determine whether effective participation is being reached *in situ*. Despite this difference, however, the examination of the IGO and NGO observation tools gave us insights into what, in practice, instruments measuring fair trial standards look at. We looked at, firstly, what elements of Article 6(1) are deemed observable and secondly, recommended good practice for observation tool development.[34]

Two observation tools in particular provided some guidance: United Nations Office of the High Commissioner for Human Rights (OHCHR) guidance on monitoring the right to a fair trial under Article 14 of the International Covenant on Civil and Political Rights; and the Organisation for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) manual for monitoring the same Article 14 ICCPR and Article 6 ECHR. Both contain lengthy itemised checklists of phenomenon linked directly to the protections given in fair trial rights. In addition, the OSCE-ODIHR manual provides guidance on different types of observation templates that can be utilised, for what purposes and their strengths and limitations. The 'open' template usually provides observers with a checklist of issues to be monitored, often comprised of questions on fair trial standards and/or specific law. These give observers wide discretion on what to report on and are recommended for observers who are experts in that particular legal field. 'Closed' templates ask a set of standardised questions, all of which require a response. These are valuable when a programme is focused on 'specific issues that must be documented systematically', but also allow for recording of 'problematic practices' that may not be foreseen in the questionnaire.[35]

In education scholarship, rigorous observation instruments have been designed to measure teaching capability and student learning capacity, embodying properties such as objectivity, relevance, parsimony and efficiency in order to ensure the tool is both reliable and valid.[36] One of the potential weaknesses of data gathering via observations is that the observer is liable to record "what he or she thought occurred rather than what actually took place", opening up opportunities for misinterpretation.[37] Our objective was to meet the standard of "a descriptive stenographer", so that the

32 Including United Nations' Office of the High Commissioner for Human Rights, *Trial Observation and Monitoring the Administration of Justice* (nd) <https://www.ohchr.org/sites/default/files/Documents/Publications/MonitoringChapter22.pdf> and the Organisation for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights, *Trial Monitoring – A Reference Manual for Practitioners* (2012) <https://www.osce.org/files/f/documents/5/f/94216.pdf >

33 Including the International Commission of Jurists, Frontline Defenders, University of Oslo and Norwegian Centre for Human Rights

34 KE Hauer, ES Holmboe and JR Kogan, 'Twelve tips for implementing tools for direct observation of medical trainees' clinical skills during patient encounters' (2010) 33 *Medical Teacher* 27; J Martin, 'The Development and Use of Classroom Observation Instruments' (1977) 2 *Canadian Journal of Education* 43

35 Organisation for Security and Cooperation in Europe, *Trial Monitoring – A Reference Manual for Practitioners* (2012) <https://www.osce.org/files/f/documents/5/f/94216.pdf> 95-96

36 See for example, J Martin, 'The Development and Use of Classroom Observation Instruments' (1977) 2 *Canadian Journal of Education* 43; P Mantzicopoulos, H Patrick, A Strati and JS Watson, 'Predicting Kindergarteners' Achievement and Motivation From Observational Measures of Teaching Effectiveness' (2018) 86 *The Journal of Experimental Education* 214; D Whitebread, P Coltman, D Pino Pasternak, C Sangster, V Grau, S Bingham, Q Almeqdad and D Demetriou, 'The Development of two observational tools for assessing metacognition and self-regulated learning in young children' (2009) *Metacognition and Learning* 63

37 M Simpson and J Tuson, *Using Observations in Small Scale Research – A Beginner's Guide* (2003) University of Glasgow 18

observation tool was capable of responding to a set of questions which require a record of directly observable actions.[38] This would allow for unobtrusive observations, examining the process in situ and recording the substantive behaviour within the courtroom.

Applying best practice

It was important that the observations related directly to the attribute of effective participation that the observer was seeking to understand. A defined focus was necessary, underlining the importance of testing the framework to ensure all and only relevant descriptors are present, making the instrument more efficient to use. For our purposes, we needed to check that the 'empirical realities' (performative and behavioural indicators) recorded were accounted for in the effective participation attributes of being given the opportunity to present the case, being treated with respect, access to court and proceedings and the ability to engage in an adversarial approach. The tool needed to be both valid and reliable. While the research team could work together to build the reliability of the descriptors and observation points, via inter-rater agreement,[39] this quality ultimately rests on the degree to which a tool is consistent and stable in measuring what it is intended to measure over time. We also wanted to ensure that the tool was of manageable size to be operable – sufficiently brief to give the observer enough time to complete and favouring unambiguous language to allow the observations to be completed without hesitation.

The development of our observation tool reflects these practical and epistemological considerations of tool development. In relation to the type of observation tool that was most appropriate, we used a mixture of the OHCHR'S closed template and the OSCE's open reporting on Article 6(1) rights. In matching the empirical realities to the conceptual framework, we used prompts for specific acts to record, as seen in the human rights trial observation manuals. Since these descriptors of legal participation were based on the empirical realities observed in our 2018 research, we used these observed examples as a guide for the observers to follow. This bolstered our ambition to act as 'descriptive stenographers' and to identify what we already knew to be directly observable acts. Parsimony was pursued by reducing the observation schedule to two A-4 pages, which was a manageable size for checking across the different categories and observable actions as they arose. What then remained was to test the tool *in situ*. However, due to the COVID-19 pandemic, and associated social distancing measures we were unable to subject the tool to sufficient testing in a live environment limiting our ability to establish the tool's reliability.

Piloting the observation tool

As the discussions progressed on enabling researcher access to family court LIPs, observations took place of three male LIPs over 11 family court hearings between July 2021 and May 2022. Ten reviews, one final and one appeal hearings were observed. All

38 J Martin, 'The Development and Use of Classroom Observation Instruments' (1977) 2 Canadian Journal of Education 43, 45

39 Inter-rater agreement is the first step to achieve reliability and requires two or more observers observing the same event, utilising identical observation instruments, according to the same set of instructions and then to compare their observations and discuss their reasonings. See D Whitebread et al, 'The Development of two observational tools for assessing metacognition and self-regulated learning in young children' (2009) *Metacognition and Learning* 63; M Simpson and J Tuson, *Using Observations in Small Scale Research – A Beginner's Guide* (2003) University of Glasgow 64

hearings were at Family Care Centre or High Court level. Some were in person, others were online via the Northern Ireland system of Sightlink, whereby only the judge was present in court and other attended online; and others still were hybrid where parties and/or Court Children's Officer were online and the LIP and judge were in court.

The researchers attended the hearings with both the printed observation schedule (See Appendix 2) and an open format sheet for recording the participants, mode of attendance, court level and location, hearing type, the visibility and audibility of participants, the time listed for hearing and the actual start and end time. The researchers used this for free-hand notes and their reflections.

The observations were too low in number to assess the reliability of the schedule but nonetheless we could test the utility and salience of the descriptors in the framework. We found a number of difficulties with the intent and wording of some of the descriptors, which serve as useful lessons for constructing the observation schedule. They are summarised as follows:

DESCRIPTORS REQUIRING INFERENCE

Some descriptors, such as 'judge ensures LIPs understands...,' were not directly observable and required the observer to infer. Others similarly rely on inference, such as 'LIPs' health and emotional state are suitable for self-representation' and 'attitude toward LIP is respectful and not discouraging.' There may be other ways to gather information on a LIP's health and emotional state, such as the LIP questionnaire, although self-reporting is also not foolproof. Using the phrase 'appears to be' to recognise that some indicators were not empirically observable but rather inferences might avoid this difficulty.

SOCIAL CONSTRUCTS

Some descriptors contained ideas which are socially referenced and constructed such as 'judge is welcoming and inclusive, takes into account vulnerabilities and facilitates communication.' They require an interpretation of behaviour, and whether it is 'welcoming', in particular, is based on a shared cultural understanding of what observers believe is welcoming.[40]

LIMITATIONS OF OBSERVING ON-LINE AND HYBRID HEARINGS

Online hearings via Sightlink severely restrict what can be seen and heard and the limitations of this were evident in both fully online and hybrid hearings and call into question the viability of observing hearings which are not in person.[41] Good practice recommends that observers should sit where they can hear the proceedings clearly and have clear sight of the judge and the parties.[42] A clear view of both the judge and the parties was not possible when the LIP was in the court in a hybrid hearing and often parties had their camera switched off. On some occasions we had a close-up, side view of the judge, and no view of the LIP. On others, the view was a view of the

40 D Whitebread et al, 'The Development of two observational tools for assessing metacognition and self-regulated learning in young children' (2009) *Metacognition and Learning* 63

41 G McKeever et al, *The Impact of COVID-19 on Family Courts in Northern Ireland* (2020) <https://www.ulster.ac.uk/__data/assets/pdf_file/0010/799039/Impact-of-CV19-on-family-courts-NI-201217.pdf> 30-39 where litigant participants reported it was difficult to see who was speaking or hear what was being said and practitioners respondents reported difficulties in reading body language and developing rapport

42 Organisation for Security and Cooperation in Europe, *Trial Monitoring – A Reference Manual for Practitioners* (2012) <https://www.osce.org/files/f/documents/5/f/94216.pdf> 97

courtroom, where participants were either not in frame or too small on screen to be observed. Furthermore, the sound was not always clear or voices were quiet when LIPs or legal representatives were talking. This was sometimes the experience for others in the hearing, including the judge, who would ask for missed phrases to be repeated. The final problem was that researchers were highly visible, which may have had an observer effect, whereby those observed either consciously or unconsciously alter their behaviour in light of the observer's presence.[43] One LIP commented, for example, that the presence of the researcher made the judge in their case more attentive to the opposing party, while in the previous research, it was anecdotally noted that judges paid more attention to LIPs when observers were in court.[44] Poor visibility and audibility clearly have an impact on all attendees, not only researchers. If it is difficult for an observer to ascertain what is occurring, it is likely the judge or the other court actors are in similar difficulty.[45]

Conclusion

Testing the tool *in situ* turned out to be impossible because we were not able to access the courts, for reasons we set out above. We tried to pilot the tool, in preparation for what we hoped would be a resolution to barriers to access, but this method was unsuccessful.

Only 11 hearings from the same three cases were observed. The demographics of the pilot sample were limited to white males. All three cases were observed in the senior courts. Additionally we did not observe any first hearings and all the LIPs were relatively 'seasoned' in the sense that they had experienced representing themselves at several previous court hearings. Not all indicators were observed and so the observation tool could not be fully piloted. Ultimately this was the main limitation of the pilot: the lack of variety to put the tool through its paces means that it remains to be robustly tested.

The barriers to court hearings for data gathering required a re-think of the study's methodology. The next chapter explores the rationale, relevance and methodology of the chosen technique – Q methodology.

43 C Robson, *Real World Research* (2nd edn, Blackwell Publishing 2006) 327

44 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 47

45 N Byrom et al, *The impact of COVID-19 measures on the civil justice system* (2020) Civil Justice Council and Legal Education Foundation <https://www.judiciary.uk/wp-content/uploads/2020/06/CJC-Rapid-Review-Final-Report-f.pdf>; G McKeever et al, *The Impact of COVID-19 on Family Courts in Northern Ireland* (2020) <https://www.ulster.ac.uk/__data/assets/pdf_file/0010/799039/Impact-of-CV19-on-family-courts-NI-201217.pdf>; Northern Ireland Statistics and Research Agency, *Northern Ireland Courts and Tribunals Service – Remote and hybrid bearings: A qualitative analysis* (2022) NISRA Research Hub <https://www.justice-ni.gov.uk/publications/nicts-qualitative-analysis-remote-and-hybrid-hearings>; J Clark, *Evaluation of remote hearings during the COVID-19 pandemic. Research report* (2021) HM Courts and Tribunal Service <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040183/Evaluation_of_remote_hearings_v23.pdf >

Chapter 5: **Pivoting to an alternative methodology**

Our original method resulted in a draft conceptual framework for effective participation with attributes of the rights elaborated by descriptors theorised from empirical data from the perspectives of the multiple stakeholders of litigating in person – LIPs, judges, court officers, legal representatives, Court Children's Officers and McKenzie Friends. The framework was validated by members of the judiciary and was going to be subjected to further interrogation and review through trialling the monitoring tools based on the framework – observation schedule, LIP questionnaire and court system audit tool. The intention was to pilot these tools as a means to further reflect on the framework and assess its robustness in light of the findings or responses from the various stakeholders. Having reached the limits of possibility on our original methodology due to access issues we investigated alternative methods that would enable us to answer our original research questions, namely:

1. What are the key descriptors of legal participation?

2. What are the main elements for determining whether effective participation is reached?

One of the findings in LIPNI1 was the largely siloed thinking each of the stakeholder groups revealed in their attitudes towards the others.[46] There were distinct attitudes towards LIPs from the other court actors and similarly from LIPs towards the other court actors. Each of the stakeholder groups is implicated in the human rights framing of effective participation either as rights-holders or as duty-bearers. This means no single group can be sole arbiter of the right's content and scope. We thus needed to preserve the multiplicity of perspectives and use their insights to articulate how effective participation might be protected, or denied, in court hearings.

Why Q methodology?

Q methodology attracted our attention as a means of studying subjectivity.[47] Using both qualitative and quantitative analysis, it is widely used to investigate patterns of opinion among groups of people on a particular topic.[48] It identifies individuals' shared ways of thinking on a given topic. It allows the exploration of their perspectives, identifying

46 G McKeever et al, Litigants in person in Northern Ireland: barriers to legal participation (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> ch5 'Perspectives: how LIPs are viewed and their views of others'

47 S Watts and P Stenner, *Doing Q Methodological Research: Theory, Method and Interpretation* (Sage Publications 2012) - referred to as Watts and Stenner hereon; B McKeown and DB Thomas, *Q Methodology* (2nd ed, Sage Publication 2013) - referred to as McKeown and Thomas hereon

48 S Ramlo, 'Mixed Method Lessons Learned from 80 Years of Q Methodology' (2016) 10 *Journal of Mixed Methods* 28; SR Brown, *Political Subjectivity: applications of Q Methodology in Political Science* (Yale University Press 1980)

commonalities and differences in opinion, and relationships within the topic.[49]

We were interested in how an individual's standpoint relates to others' standpoints on the descriptors in the framework. Their agreements and disagreements, additionally informed by interviews would provide fresh insights to each of the framework's components. For example, the view of a judge who does not support clearing the court room of lawyers not involved in a case has less significance when it is compared to the views of other judges, some of whom will concur, and others not. There is a continuum of agreement. When this view is placed in relation to the view of a bewildered litigant in person who was intimidated by the presence of so many strangers, the judge's view takes on new significance because of its dissonance with the view of the LIP. There is still a continuum of agreement but this time it is informed by subjectivities that add relevant significance.

Q methodology promised a means of exploring stakeholder perspectives to review and refine the descriptors of legal participation through a positive lens. Rather than asking what acts breach Article 6, we could explore what legal participation encompasses from the stakeholders' lived reality of the family court system, drawing in wider expressions of participation from other sources.

Ultimately, therefore, Q method offered a means to interrogate the components of the conceptual framework and its use in comparable studies in the fields of political science, health economics, social policy, education, criminology and very occasionally in law reassured us it was relevant to our study.[50]

The following sections describe how we conducted the Q study by touching on the main stages of the method. In brief, Q methodology uses a type of factor analysis to indicate relationships between the subjective viewpoints of the study's participants on a set of statements, or other stimuli, using rank ordering related to the research question. The statements are developed from a broad understanding of the topic and represent a variety of opinions. The participants rank these statements and reflect on their rank order, providing the data to be analysed.

Research question

The research question needs to take into account the method, i.e. the research question reflects the need for ranking or sorting something according to a dimension such as 'most agree or most disagree' or 'most like to most dislike' or whatever suits.[51]

49 T Webler, S Danielson and S Tuler, 'Using Q method to reveal social perspectives in environmental research' (2009) Greenfield MA: Social and Environmental Research Institute < https://www.betterevaluation.org/sites/default/files/Qprimer.pdf > 7; DR Durning and SR Brown, 'Q Methodology and Decision-Making' in G Morcol (ed.) *Handbook of Decision-Making* (Taylor & Francis 2006)

50 W Stephenson, *The Study of Human Behaviour: Q technique and its methodology* (Chicago University Press 1953); G de Graaf and J van Exel, 'Using Q Methodology in Administrative Ethics' (2008) 11 *Public Integrity* 63; AM Lien, G Ruyle and I López-Hoffman, 'Q Methodology: A Method for Understanding Complex Viewpoints in Communities Served by Extension' (2008) 56 *Journal of Extension* Article 18; L Kidd, JD Millar, H Mason, T Quinn, KI Gallacher, RJ Fisher, T Lebedis, M Barber, K Brennan and M Smith, 'Supported self-management in community stroke rehabilitation: what is it and how does it work? A protocol for a realist evaluation study' (2022) 12 *BMJ Open* 1; JM Cramm, L Leensvaart, M Berghout, and J van Exel, 'Exploring views on what is important for patient-centred care in end-stage renal disease using Q methodology' (2015) *BMC Nephrology* 1; P Dell and O Korotona, 'Accounting for Domestic Violence: A Q Methodological Study' (2000) 6 *Violence Against Women* 286; H Marshall, 'The social identities of women lawyers' (1991) 13 *Operant Subjectivity* 106; TD Ungs and LR Baas, 'Judicial Role Perceptions: A Q Technique Study of Ohio Judges' (1972) 6 *Law & Society Review* 343

51 Watts and Stenner 53

The aim of the current research is to connect the descriptors of legal participation to the normative content of effective participation. The objective is to identify empirically the characteristics of legal participation that indicate whether the standards of effective participation as an element of the right to a fair trial under Article 6 ECHR may be under threat. The focus of the Q study then is on what is understood about legal participation by those actors involved in it. The research question we presented to the participants was worded as follows:

> What do you think is most important, important and least important for LIPs to participate in a family proceedings case?

The wording was intended to be accessible to all participants and focus on LIPs and participation.

Developing the concourse

The statements used to elicit the participants' subjective points of view are derived from a universe of understandings about the topic under study, known as the concourse.[52] The concourse is the whole set of subjective communication or understandings about the topic and is infinite since the range of subjectivity that exists on any one topic can be extensive. The Q set, in our case a set of statements, is a sub-set of the wider concourse of understandings, selected to make the exercise of ranking humanly possible.[53] The Q set, then, needs to be representative of the concourse, preferably without gaps or repetition.[54]

The starting point for our concourse was the framework we had already developed the first phase of the project which encapsulated the key descriptors of legal participation using the empirical data from LIPNI1 and had been validated in the judicial workshop (see chapter 3, and No. 2 in Evolution table in Appendix 1). This distillation of legal participation had been interpreted through the wider understandings of the socio-legal context, but with no explicit reference to many pertinent aspects, such as case law, legal capability concepts, legal self-efficacy, legal confidence, legal anxiety, research findings on LIPs attending online hearings, practice directions or judgecraft guidance, such as the Equal Treatment Bench Book.[55] For the Q study, we needed a broader concourse that would reflect the universe of understandings of legal participation to

52 McKeown and Thomas 17
53 McKeown and Thomas 18
54 Watts and Stenner 58
55 Judicial College, Equal Treatment Bench Book (2021 Revised April 2023) <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf >; N Byrom et al, The impact of COVID-19 measures on the civil justice system (2020) Civil Justice Council and Legal Education Foundation <https://www.judiciary.uk/wp-content/uploads/2020/06/CJC-Rapid-Review-Final-Report-f.pdf>; G McKeever et al, Impact of COVID-19 on Family Courts in Northern Ireland (2020) < https://www.ulster.ac.uk/__data/assets/pdf_file/0010/799039/Impact-of-CV19-on-family-courts-NI-201217.pdf>; Northern Ireland Statistics and Research Agency, Northern Ireland Courts and Tribunals Service – *Remote and hybrid hearings: A qualitative analysis* (2022) NISRA Research Hub <https://www.justice-ni.gov.uk/publications/nicts-qualitative-analysis-remote-and-hybrid-hearings>; J Clark, *Evaluation of remote hearings during the COVID-19 pandemic. Research report.* (2021) HM Courts and Tribunal Service <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040183/Evaluation_of_remote_hearings_v23.pdf>
P Pleasence and NJ Balmer, 'Development of a General Legal Confidence Scale: A First Implementation of the Rasch Measurement Model in Empirical Legal Studies' (2019) 16 *Journal of Empirical Legal Studies* 143
P Pleasence and NJ Balmer, *Legal confidence & attitudes to law: Developing standardised Measures* (2018) The Legal Education Foundation <https://research.thelegaleducationfoundation.org/research-learning/funded-research/legal-confidence-and-attitudes-to-law-developing-standardised-measures >; The General Council of the Bar, Chartered Institute of Legal Executives and The Law Society, *Litigants in person: guidelines for lawyers; Notes for Litigants in Person; and Notes for Clients* (2015) <https://www.lawsociety.org.uk/topics/civil-litigation/litigants-in-person-guidelines-for-lawyers>;
The Judiciary of Northern Ireland, *Practice Note 3/2012 McKenzie Friends (Civil and Family Courts)* (2012) <https://www.judiciaryni.uk/sites/judiciary/files/decisions/Practice%20Note%2003-12.pdf>

reach coverage and balance of the full gamut of perspectives of legal participation. From this concourse we would be able to develop our Q set for the sorting exercise. We re-visited these expressions of legal participation in conjunction with the then current framework (No. 2) which inevitably had a backwash effect on it, described here.

The existence of the participation framework with its 19 descriptors under the four attributes underpinning effective participation in Article 6(1) ECHR (see No. 2 in Appendix 1) led us to opt for a structured concourse and Q set. The structured approach organises the topic according to existing theory or from themes or issues of relevance derived from research or observation.[56] The Q set is then developed so that each theme or concept is represented within the whole set. An unstructured approach is organic, less grounded, and unsystematic.

Combing the sources of relevant case law and literature related to the wider expressions of legal participation, we interrogated the existing descriptors, reviewing them where necessary and adding more. The searches allowed us to identify quotations, sentences and ideas that encapsulated the meaning of the 19 descriptors. Initially, we aimed to have 2 or 3 statements for each of the 19 descriptors to achieve balance across the universe of understanding, leading to over 70 statements in the first round. We also found the descriptors themselves benefitted from this review and we refined the wording of several and even drew in two new descriptors:

UNDER THE ATTRIBUTE: NON-DISCRIMINATORY ACCESS TO A COURT

Legal representatives in cases involving LIPs accommodate LIP status

i. Legal representatives practice consistent approaches based on guidelines

ii. Legal representatives adhere to their duty to court to engage with LIPs to progress the case

In the post-judicial workshop framework (No.2), legal representatives for the other party were only explicitly referred to in relation to enabling the LIP to communicate their views when not in a hearing and implicitly included in the descriptor about all parties treating each other with respect. An explicit reference to legal representatives of the other party was developed for the concourse to highlight their impact on LIPs' legal participation. The rationale for this addition is supported by Paragraph 1-28 of the Equal Treatment Bench Book, which refers to the judge's role in managing undue pressure on the LIP from the represented party and the frustration the represented party may feel from the LIP.[57] It suggests the judge takes control of the process 'reminding both parties of their duty to cooperate with each other and the court under the overriding objective.' This aspect of judgecraft and the implied potential for legal representatives to derail or frustrate LIPs needed to be explicit.

56 Watts and Stenner 59

57 Judicial College, *Equal Treatment Bench Book* (2021 Revised April 2023) <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf> para1-28

UNDER THE ATTRIBUTE: ABILITY TO ENGAGE IN ADVERSARIAL PROCEEDINGS

> 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.

Again, in the original analysis of legal participation, we were alert to the importance of the interplay between the complexity of the case and the LIP's capacity to manage (see chapters 2 & 3) as arising from *Airey v. Republic of Ireland*.[58] However, we opted to view the interplay as a function of the LIP's ability to self-represent as 'LIP is able to self-represent.' If the complexity of a case is or becomes too great for the LIP to manage, we saw this as a barrier to legal participation. In this new analysis, we opted to explicitly include a regard for case complexity as the duty of the court to keep an eye on and step in when necessary.

Related to LIPs' ability, when we assessed legal capability and legal anxiety for the concourse, we again ran into the contradiction that legal participation as a human right should not be determined by a personal characteristic while at the same time, knowing from the empirical data that some LIPs coped with self-representation better than others.[59] We reviewed several different related concepts, such as self-efficacy, low legal anxiety, high legal confidence and having trust in the system, but found them all to be too restricting and imposing on LIPs. However, we were not willing to abandon personal characteristics entirely, however vague, in the expectation that the subjectivities arising from the Q sorts would help us develop this descriptor further. For this reason, we included this vaguely worded descriptor under the attribute: Ability to engage in adversarial proceedings:

> LIPs have certain personal characteristics

58 *Airey v. Ireland* (1979), Application no. 6289/73. 2 EHRR 305

59 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> Ch 10

Aside from the additional and undecided descriptors, the framework remained largely the same. These are the descriptors from developing Q concourse (No. 3 in the Evolution table in Appendix 1).

Attributes	Descriptors of legal participation
Non-discriminatory access to a court and proceedings, including to coherent administrative and legal procedures and sufficient information and assistance to implement them.	1. There are consistent approaches towards LIPs across the courts
	2. The system accommodates LIP status: i. Procedures including court forms are suitable for LIPs, i.e. coherent, followable, affordable ii. Court buildings are amenable to LIPs iii. Information on how to self-represent is available, followable and good quality. iv. Support at court is available and appropriate v. Adaptations are available and affordable for non-English speaking LIPs and those with experience of domestic violence vi. Evidence, case papers etc are equally accessible to both parties vii. Hearings accommodate LIPs
	3. Independent support & advice for LIPs is available and affordable from various sources: i. Legal representatives ii. McKenzie Friends iii. Others
	4. Legal representatives in cases involving LIPs accommodate LIP status i. Legal representatives practice consistent approaches based on guidelines ii. Legal representatives adhere to their duty to court to engage with LIPs to progress the case
Equality of arms – being given the opportunity to affect the outcome of one's case	5. LIP feels they are treated fairly and have a perception of fairness
	6. The judge accommodates LIP status: i. The judge facilitates LIPs' participation ii. The judge adapts to the LIP iii. The judge ensures comprehension
	7. In court, the judge ensures LIP has opportunities to present their case.
	8. The judge accommodates absent LIPs.
Ability to engage in adversarial proceedings	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.
	10. LIP has capacity to manage case and conduct self-advocacy: i. LIPs are able to manage the legal proceedings of their case ii. LIPs have certain personal characteristics iii. LIPs understand their case and proceedings
	11. LIPs put in the time and effort to prepare their cases to a reasonable degree
	12. LIP's health and emotional involvement are suitable for self-representation
Being afforded respect	13. All interactions, written or verbal, are respectful and clear

Developing the Q set or statements

Having settled on the structured concourse, it provided the basis from which to develop the Q set of statements. The Q set is developed to answer the research question, not the other way around.[60] Each statement in the Q set should be directed towards the chosen research question so that when the individuals sort or rank each statement in relation to each of the others, they accord to them salience with the question being asked.[61] Once in the hands of the participant, the Q set takes on meaning and significance that is particular to their world view and they inject it with their own understanding.[62] This means that the attribution of meaning is not determined by the statements alone, but by the participants' interpretation of them as a function of their reaction to the sorting instruction, known as the condition of instruction.[63] The process of developing the Q set thus cannot be divorced from developing the condition of instruction and the latter is described in the following section.

There are some general rules about composing statements for a Q set. Avoid technical language, avoid double-barrelled items, avoid negatively phrased items to minimise confusion with negative ranking scales, avoid repetition and keep the language 'natural and operant'.[64]

With these rules in mind, we went about crafting our statements identifying the eventual form of words through a number of decisions and several iterations which fell under three main headings.

1. Should the statements be in the first person and in the vernacular?

For example: "I couldn't make head nor tail of what the legal process wanted."

Given there are multiple perspectives on the topic, we felt it may be leading and biased if we only had the LIP's voice in the statements, and confusing if we had more than one voice. The vernacular did not apply to all of the perspectives we wanted to include. We opted for the third person using formal English. For example: #35– LIPs should understand what they are agreeing to and what they are required to do.

2. Should the statements be in the present tense to offer an ideal world perspective of legal participation?

For example: "The legal procedures are easy to understand and follow."

Even though they were clear and unambiguous in their meaning, we found some statements caused confusion about what the status quo actually was, creating a cognitive dissonance between the reader's experience and the statement. We rejected the use of the present tense for statements describing ideal world perspectives, for example: #4. The legal procedures should be easy to understand and follow.

60 Watts and Stenner 56
61 McKeown and Thomas 5
62 Watts and Stenner 64; S Brown, 'A Primer on Q Methodology' (1993) 16 *Operant Subjectivity* 91, 97
63 McKeown and Thomas 25
64 Watts and Stenner 62; McKeown and Thomas 18

3. Should the statements use 'should' as a means to convey an ideal world perspective?

For example "In hearings, judges should ensure only the relevant people involved in the case are present in the hearing."

Using 'should' made some statements sound critical as if the action was not being practised when in some cases it was. While in other statements it sounded like opinions of things that were not in place and were being recommended rather than an ideal world perspective. To be able to formulate the statements using 'should' to represent the ideal world perspectives, we worked on the condition of instruction to remove the disconnect between actual practice and practice good for legal participation.

After much debate and many iterations, we settled on statements in the third person, voicing opinions about what might be important or good practice for fostering legal participation. Developing the statements was a long, drawn-out process of trial and error in our attempt to arrive at the most amenable, comprehensible and accessible form of words for the statements that would appeal to all of the various stakeholder groups. It took 61 hours of intense discussion over 13 weeks to derive our Pilot Q set of 59 statements for legal participation (see Appendix 3 for the Pilot statements and the section below on the Pilot). This was done in conjunction with developing the condition of instruction.

Developing the condition of instruction

Accompanying the research question is the condition of instruction which is a reference point that the participants use to decide how to rank the statements.[65] The subjectivity that Q methodology explores derives from the individual Q sorts produced by the participants and the meaning they impose on the statements as they place them in relation to each of the others according to the condition of instruction. The factor analysis makes sense of the relationship between each statement in each individual sort and how they are placed in each of the other Q sorts. The instruction that guides the participant on where to place each statement is thus crucial for making sense of their eventual order. Examples of conditions of instruction are:

65 Watts and Stenner 56

> Represent your personal perceptions of your judicial role by arranging the statements on a scale from +5 (most agree) to -5 (most disagree)[66]
>
> Health could be improved in low-income communities by ... Rank the statements from Most unlike my point of view (-5) to Most like my point of view (+5)[67]
>
> Rank these 35 statements about patient-centred care in end-stage renal disease according to what you perceive is least important (1) to most important (9)[68]

What health care interventions should be given priority while considering that the NHS operates within a fixed budget? Rank order the interventions from highest priority (+4) to lowest priority (-4)[69]

The dimension for the ranking – agree/disagree, like/unlike my point of view, least/most important, highest/lowest priority – needs to make sense in relation to the condition of instruction so that the participant can impose meaning and salience on the statements.

Whether the range should run from 'most something' to 'most un-something' or 'most something' to 'least something' does not have consensus among practitioners. Watts and Stenner (p80) maintain that 'most something' to 'most un-something' offers distinct polarity between positive and negative reactions with the less distinctly 'something' statements placed in the middle of the range. They appear to be arguing that the 'least to most' range does not offer a home for the 'neither most or least [something]' in the middle of the range. Yet this does not tally with other Q practitioners' approaches who used the 'least to most' range in their studies, emphasising the importance of the statements placed at the extremes of the range and instructing indifferent or unsure statements to be placed in the middle.[70]

66 TD Ungs and LR Baas, 'Judicial Role Perceptions: A Q Technique Study of Ohio Judges' (1972) 6 *Law & Society Review* 343

67 N McHugh, R Baker, O Biosca, F Ibrahim and C Donaldson, 'Who knows best? A Q methodology study to explore perspectives of professional stakeholders and community participants on heath in low-income communities' (2019) *BMC Heath Service Research* <https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-019-3884-9#:~:text=This%20study%20has%20shown%20that,societal%20groups%20were%20also%20explored>

68 JM Cramm et al, 'Exploring views on what is important for patient-centred care in end-stage renal disease using Q methodology' (2015) *BMC Nephrology* 1

69 H Mason, R Baker and C Donaldson, 'Understanding public preferences for prioritising health care interventions in England: Does the type of health gain matter? (2011) 16 *Journal of Health Services Research & Policy* 81

70 JM Cramm at al, 'Exploring views on what is important for patient-centred care in end-stage renal disease using Q methodology' (2015) *BMC Nephrology* 1; JF Barrow et al, 'Using Q methodology to Explore What is Valued from Child Sexual Exploitation Services: The Importance of Safety' (2021) 30 *Journal of Child Sexual Abuse* 746; RS Prasad, 'Development of the HIV/AIDS Q sort Instrument to Measure Physician Attitudes' (2001) 33 *Family Medicine* 772

We experimented with several conditions of instruction and dimensions alongside the shaping of the statements, and we opted for a narrative condition of instruction for the Pilot:

> "The right to a fair trial includes the ability to participate in your case, so ultimately the judge can make a fair decision.
>
> Case law, lived experience and research highlight the problems litigants in person (LIPs) face in participating in all aspects of their case. Litigants in person are people who are not represented by a lawyer in their court hearing.
>
> There are many different things that can have an impact on how litigants in person participate in their cases. Here are some statements describing some of them.
>
> Which ones do you believe have the most positive impact and which ones have the most negative impact on how LIPs participate in their cases? We are focusing on private family cases, such as Children's Order cases."

Piloting the statements and condition of instruction

Four people undertook the pilot Q Sort in-person with a member of the team: a judge, a solicitor, a court staffer, and a McKenzie Friend who was previously a LIP. All provided informed consent. We hand-drew a sorting grid large enough for 59 cards sized 5cm x 5cm in 13 columns following the shape of the normal distribution, running from -6 most negative impact to +6 most positive impact. See below in this section for more on developing the sorting grid.

As well as an opportunity for the research team to practice running a Q sort, the pilot allowed us to obtain feedback from the participants on the sorting exercise, the clarity of the condition of instruction and the statements, whether anything was missing, and their reflections on the statements and the exercise as a whole.

The participants collectively viewed the exercise as thought-provoking, useful, stimulating and enjoyable. One participant commented that there were a lot of words suggesting the exercise had a high cognitive demand. They were all able to complete the ranking exercise, although they recognised that it was challenging. They found the physical material, the card and dimensions workable and the grid helped to force their sorts. They found the condition of instruction clear but did not always respond well to the notion of impact on LIPs' participation. Responding using True or False instead felt more intuitive for one of the participants to the statements expressing an opinion. Another noted that it was difficult to know what would have an impact on LIPs and how the statements would impact on them, whether positively or negatively. There was a slight cognitive leap to make between a statement's meaning and its impact on a hypothetical omni-LIP. It was important for participants to be able to refer back to the condition of instruction as they completed the ranking exercise.

They found the wording clear but they noted that some statements, in particular the ideal world statements, did not reflect the reality of what happens in the court system. Their deep familiarity with the status quo meant that ideal world statements jarred and created a cognitive dissonance because they made no sense without some signal that they were describing an ideal or possibility.

One participant felt the Q set overlooked the motives of LIPs to self-represent, which in their view, made a difference to how court actors interact professionally with LIPs. LIPs are perceived differently depending on their reasons for self-representing, which makes an impact on how the LIPs are treated – sympathetically or with suspicion. Another pointed to the absence of statements on alternative dispute resolution methods to the litigation route, such as mediation. They also felt the issue of rights of audience for a McKenzie Friend or similar when a LIP is struggling could usefully be added. They noted too that the difficulties LIPs experience with accessing electronic documents was not highlighted.

Final amendments to the study instruments

The findings from the Pilot were highly instructive to amending the statements and condition of instruction. We took several courses of action: merging, re-wording and removing statements. This last round of edits resulted in 40 statements, all worded as possible positively contributing factors for protecting and promoting legal participation.

LEGAL PARTICIPATION SET OF STATEMENTS

1. Practice between judges in how they deal with LIPs should be consistent across different family courts.
2. LIPs should have the same judge throughout their case for continuity.
3. The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.
4. The legal procedures should be easy to understand and follow.
5. Court forms, the law and procedural rules should be easy to find.
6. Court buildings should be user-friendly for LIPs, e.g. safe spaces for LIPs, clear signage.
7. Information on how to self-represent should be available and helpful for LIPs.
8. There needs to be somewhere for LIPs to get support at court as and when it is needed.
9. The courts should accommodate the needs of LIPs who have particular vulnerabilities, e.g. experienced domestic violence, health issues, non-native English speakers.
10. Case documents should be equally accessible to LIPs and received in good time.
11. LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.
12. When court hearings are scheduled to take account of LIPs' circumstances, e.g. their caring or work commitments.
13. LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.
14. LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e.g. a McKenzie Friend.
15. There should be advice organisations able to offer free assistance to LIPs.

16. Legal representatives should follow agreed professional guidelines on dealing with LIPs.
17. Legal representatives should assist LIPs to progress the case as part of their duty to the court.
18. LIPs should feel they are taken seriously, listened to and have a fair hearing.
19. When judges treat LIPs the same regardless of their reasons for self-representing.
20. Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.
21. Only relevant people involved in the case should be present in hearings.
22. The judge should see beyond the LIP's emotional state.
23. In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.
24. In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.
25. When judges allow the legally represented party to speak first when the LIP is the applicant in the case.
26. When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.
27. No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.
28. The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.
29. When LIPs are able to apply and present relevant information to their case.
30. When LIPs are able to negotiate with the other party.
31. LIPs should follow court norms and etiquette.
32. When LIPs have the skills to test the evidence in their case.
33. When LIPs are highly educated.
34. When LIPs are confident in their ability to self-represent.
35. LIPs should understand what they are agreeing to and what they are required to do.
36. When LIPs put in the time and effort required to manage their case and hearings.
37. LIPs should take notes in their hearings.
38. LIPs should be aware of the emotional burden of self-representing.
39. When LIPs are able to separate their legal issues from their emotions.
40. LIPs should not be treated as a nuisance.

These are also given in Appendix 4.

THE STUDY CONDITION OF INSTRUCTION

To accommodate the positive, ideal world orientation of the statements, the condition of instruction was also once again changed, this time to 'most important to least important'. The pilot informed us that the each of the statements was important and a distinction between most and least important could be meaningfully made by participants familiar with the topic.

The following sorting instruction was used (see Appendix 5 for the full version):

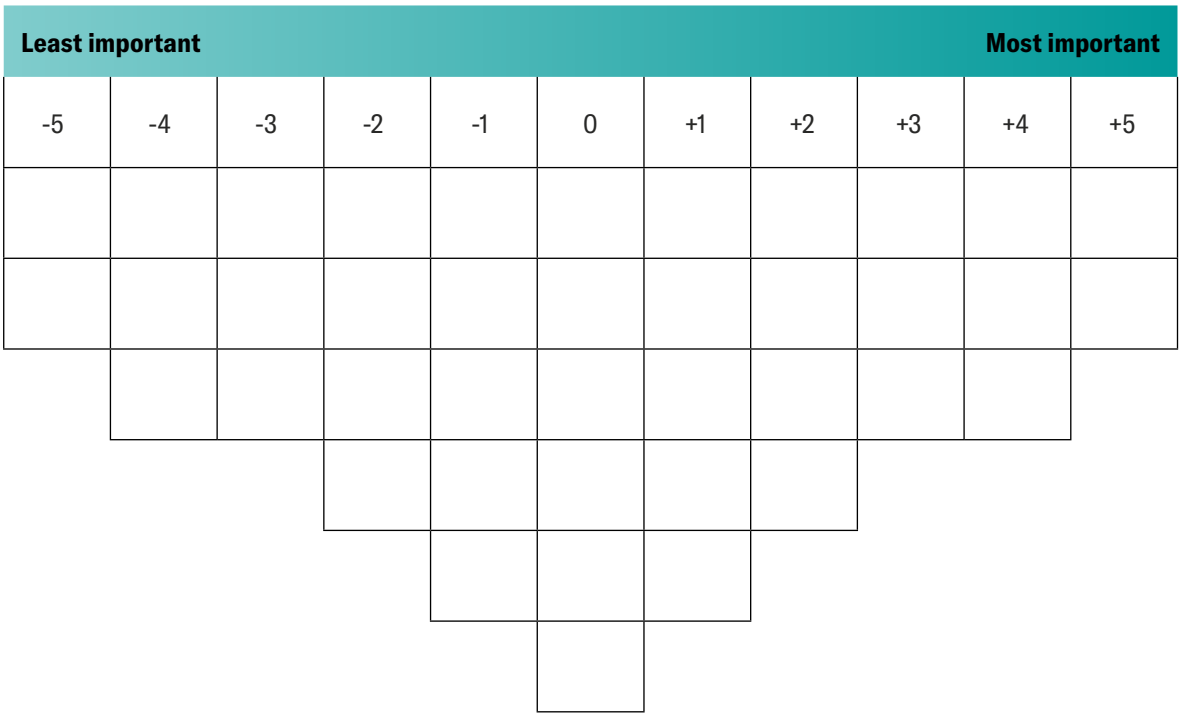
> What do you think is most important, important, least important for LIPs to participate in a family proceedings case?
>
> Please sort the following statements into 3 piles: most important for LIPs to participate, important for LIPs to participate and least important for LIPs to participate.
>
> This meant for each statement the participants ordered the statements according to their understanding of a hierarchy of what is important for LIPs to participate in family cases.

THE STUDY SORTING GRID

Having settled on 40 statements, the next step was to decide on the sorting distribution. This is the device which the participants use to order the statements. The participants impose their own salience on the statements through the order in which they place them, so it is critical that the task of ordering is amenable to them.[71] The distribution can be a fixed distribution, also known as forced-choice, following a fixed pattern, or the distribution can allow the participants to decide how many statements to place at each given ranking value.[72]

We judged our participants to be familiar with the topic and likely to be able to distinguish between the statements according to importance, so we opted for an 11-point range (-5 to +5) to promote decision making, particularly at the extremes – see Figure 1.

FIGURE 1: SORTING GRID USED IN THE STUDY



71 Watts and Stenner 77
72 Watts and Stenner 78

Participants or the P set

Q studies aim to identify and establish the existence of distinct perceptions on a topic, and to uncover patterns of shared thinking, where they exist, requiring Q participants to be selected strategically.[73] Participants, or the P set, are chosen to represent the widest possible range of informed opinion on the topic.[74] However, unlike traditional inference statistical methods, the aim is not to generalise to a population of people but to show that different viewpoints exist.[75] As the subjectivity that Q methodology explores derives from the individual Q sorts produced by the participants and the meaning they place on the statements as they rank them in relation to each other, a deeper understanding of subjectivity will be obtained where the participants have informed opinions[76] and are able to articulate them.[77] Just as the Q set should cover the whole range of opinions on the topic, the P set should have the potential to reflect all possible opinions on it.[78] Sampling strategically is necessary to ensure a balanced and unbiased sample is achieved that covers the main stakeholder groups.[79]

The rule of thumb for the recommended number of participants is one participant per two Q statements, so there are twice as many statements as participants and no more than the number of statements.[80]

The relevant set of stakeholders for our study on the descriptors of legal participation for litigants in person are those actors with direct experience of LIPs: LIPs, McKenzie Friends, judges, legal representatives, and court staff. The recommended number of participants for a Q study depends on the discipline under study and the variety of relevant stakeholder groups. Q studies draw on qualitative sampling practices, such as strategic sampling and do not seek to represent a population.[81] Our Q set was 40 statements and there were four distinct stakeholder groups: litigants in person (including McKenzie Friends), legal representatives, judges and court officers. We aimed to have a minimum of 10 within each stakeholder group, but were aware of the variety of the tiers of the courts and thus the associated variety of experience amongst judges, the legal professions and litigants that we were likely to recruit. For example, family cases are heard in Magistrates', District, County, High and Appeal Courts and the variety of experience and procedure at the different levels of court required us to consider sampling more widely to capture different viewpoints across the tiers.

Our participants were recruited through several pathways. We used our existing network of contacts built up through this and the previous research project. In the first instance individual participants with whom we had active working relations were contacted. Members of the Research Design Group and individuals who had provided feedback on the court information website as part of the human centred design phase of the project, recently observed LIPs and a solicitor were amongst the first to take up the invitation to complete the ranking exercise and feedback. Additionally, participants were recruited via our other contacts. Members of the Advisory Group and other networks were asked

73 Watts and Stenner 71-72; MQ Patton, *Qualitative Research and Evaluation Methods* (Sage, 3rd edition, 2002) 40
74 SR Brown, *Political Subjectivity: applications of Q Methodology in Political Science* (Yale University Press 1980) 92.
75 Watts and Stenner 72
76 T Webler, S Danielson and S Tuler, 'Using Q method to reveal social perspectives in environmental research' (2009) Greenfield MA: Social and Environmental Research Institute <https://www.betterevaluation.org/sites/default/files/Qprimer.pdf > 10
77 G de Graaf and J van Exel, 'Using Q Methodology in Administrative Ethics' (2008) 11 Public Integrity 63, 75
78 SR Brown, *Political Subjectivity: applications of Q Methodology in Political Science* (Yale University Press 1980) 92
79 Watts and Stenner 71
80 Watts and Stenner 72
81 Watts and Stenner 71

to assist in a call out for participants: several individual solicitors were contacted via a senior member of the Law Society. Snowballing also occurred as solicitors encouraged their colleagues to participate.

We also contacted the Judicial Studies Board, The Law Society of Northern Ireland and the Bar Council of Northern Ireland to suggest we hold continuing professional development (CPD) events as a way of recruiting sufficient numbers of the judiciary and family legal practitioners. We held two such events: one with judges of whom 22 consented to take part and the other with solicitors of whom 12 consented to take part. The Bar did not take up the offer and consequently there are only two barristers in the P set. The two (CPD) sessions included an overview of the LIPs in Northern Ireland research to date followed by the Q sorting exercise, individual written feedback and a group discussion lasting 30 minutes, with each group discussion facilitated by one of the four researchers. In all, we recruited 81 participants.

All participants gave their consent to the data collection activity. The Q sorting exercises were conducted using an A1 sheet for the grid and 40 cards measuring 5cm x 5cm with the statements printed on them, along with an A4 sheet with the condition of instruction which also had three squares to put the pre-sorted piles – see Appendix 4.

Characteristics of our participants

Our P set totalled 81 participants, given in the table below. 22 LIPs including 4 McKenzie Friends, 23 judges, 26 legal representatives and 10 court officers.

TABLE 3: PARTICIPANTS IN THE Q STUDY

	Q Sorts Total	Q Sorts Female	Q Sorts Male
LIPs + McKenzie Friends	18 + 4 = 22	3	19
Solicitors & Barristers	26	19	7
Judges	23	6	17
Court Officers	10	5	5
TOTAL	81	33	48

Our sample met the original aim of at least 10 per stakeholder group and the variety of court tiers represented ensured we heard the views across them all. We aimed for a variety of stakeholders and were not sampling for gender quotas.[82] Although Q studies are acceptable with fewer participants and it is recommended that there are fewer participants than Q statements, larger numbers can also be accommodated and the coverage we attained across the range of stakeholders ensured sufficient numbers within group and between group variability.[83]

82 As a point of reflection, the gender balance in the sample appears to follow what we understand to be a male dominated judiciary, a female dominated family legal practice in Northern Ireland. With regards to LIPs, the sample was predominately male which is unlikely to mirror the LIP population in Family Proceedings cases. In the absence of recent figures, LIPNI1 showed the LIP population in Family Proceedings in NICTS data between 2012 and 2016 was around 46% female and 54% male (Appendix 5a). The imbalance here was attributable to the difficulty of identifying female LIPs in the system and a readiness of the male LIPs to take part, as we also found in LIPNI1, p61.

83 Watts and Stenner 72

Data gathering

We opted to hold only face-to-face Q sorting exercises to avoid high attrition rates that occur through postal or online data collection. We also wanted to be present to immediately clarify any issues and collect the qualitative data.[84] We found that being present at the sorting exercise was valuable as some generalised comments and immediate reactions to the statements were made by some interviewees which could then be taken up in the post-sort interview.

In advance of the sessions, the participants were sent an information sheet. At the meeting, the participant was re-introduced to the purpose of the study: to obtain multiple stakeholders' perspectives on what is important for LIPs to participate in family proceedings cases. They were briefed on the purpose of Q – that by using a statistical method we hoped to identify commonalities as well as differences which could help us understand possible measures that can be taken to assist LIP participation. We reiterated that we were seeking personal perspectives, via their ordering of the statements in the grid, and there was no right or wrong placement of the statements. We did not use the term 'descriptors' of participation, or the phrase 'legal' or 'effective' participation, we simply asked them to place the 'statements' according to what they believed was important for LIP participation.

The Q sorting exercises were conducted in three stages: first, provisional ranking of categories – the pre-sort piles – followed by completion of the Q sort, and a post-sort interview for individuals and written feedback with group discussion for the two group sessions. The exercise began with the participants being asked to read through the statements and place them into three piles – most important, important and least important. After their initial sort into three piles, they were instructed to take their most important pile and place their two most important statements at +5 and so on, working their way toward 0, and then to repeat the same process with the least important two starting at -5 filling the grid towards 0 and finally to place the remaining statements of the important pile into the grid. After they completed their grid they had a few moments to check it and make any change they wished to. The researchers photographed and / or recorded the sort.

The post-sort interviews and discussions began by asking participants 'what was running through [their] minds as they were doing the sorting exercise' and then we asked them about the rationale for the placement of their extremes (+5, +4, and -5, -4) and their middling statements (0) we were enabling them to make 'explicit' their opinions of the statements.[85] This can explain *why* they have the viewpoint, in addition to *what* their viewpoint is.[86]

We conducted 39 semi-structured interviews with individual participants and a further 36 participants provided insights through the group discussions and/or written notes. The interviews were audio-recorded and transcribed. Group discussions were transcribed with comments attributed to the individuals in the groups. Out of the 81 Q sorts, there were six individuals who provided Q sorts only. Table 4 below enumerates the qualitative data collected.

84 Watts and Stenner 87
85 K Gallagher and D Porock, 'The Use of Interviews in Q Methodology' (2010) 59 *Nursing Research* 299
86 SR Brown, *Political Subjectivity: applications of Q Methodology in Political Science* (Yale University Press 1980) 200; S Watts and Stenner 82

TABLE 4: QUALITATIVE DATA GATHERED FROM THE PARTICIPANTS

	Individual interview			Discussion and/or notes			Total
	Total	Female	Male	Total	Female	Male	
LIPs	13	3	10	-	-	-	13
McKenzie Friends	4	0	4	-	-	-	4
Solicitor & Barristers	12	10	2	14*	11	3	26
Judges	1	0	1	22~	6	16	23
Court Officers	9	4	5	-	-	-	9
TOTAL	39	18	22	36	17	19	75

*in 3 groups; ~in 4 groups

A photograph and hand-written record were taken of each Q sort and the ranks of each sort were entered into a spreadsheet. The 39 interview and 7 focus group audio files were transcribed into Word documents, as were the hand-written notes from the groups. For some there was a resistance to the grid when presented with it, including on the forced distribution element. Many said they struggled with placing statements at 'least important', because everything was so important. Many court actors noted that the exercise made them reflect on how they interact with LIPs, noting that it raised some points they had not realised before and even for others they would look beyond the nuisance LIPs may present and see how they can facilitate or take their needs into consideration.

Data analysis

To reach a solution in a Q study, both sets of data are required. The qualitative data are used to shed light on the factor solutions derived from the analysis of the sorts.

QUALITATIVE DATA ANALYSIS

All transcripts were uploaded into a NVivo 12 Pro database and were coded against three coding frames: the questions asked in the interviews and focus groups; responses attached to the Q statements; and thematically.[87] NVivo query matrices were created to extract the coded text of the significant loaders on each factor for all the codes assigned to them. This permitted access to text relevant to each factor and further drilling down to references attached to statements and thematic codes of interest.

QUANTITATIVE ANALYSIS – Q FACTOR ANALYSIS

We used Ken-Q Analysis Desktop Edition (KADE), specialist Q methodology software, to conduct the Q factor analysis.[88] The datafile containing all 81 Q sorts and the 40 Q statements were uploaded into KADE.

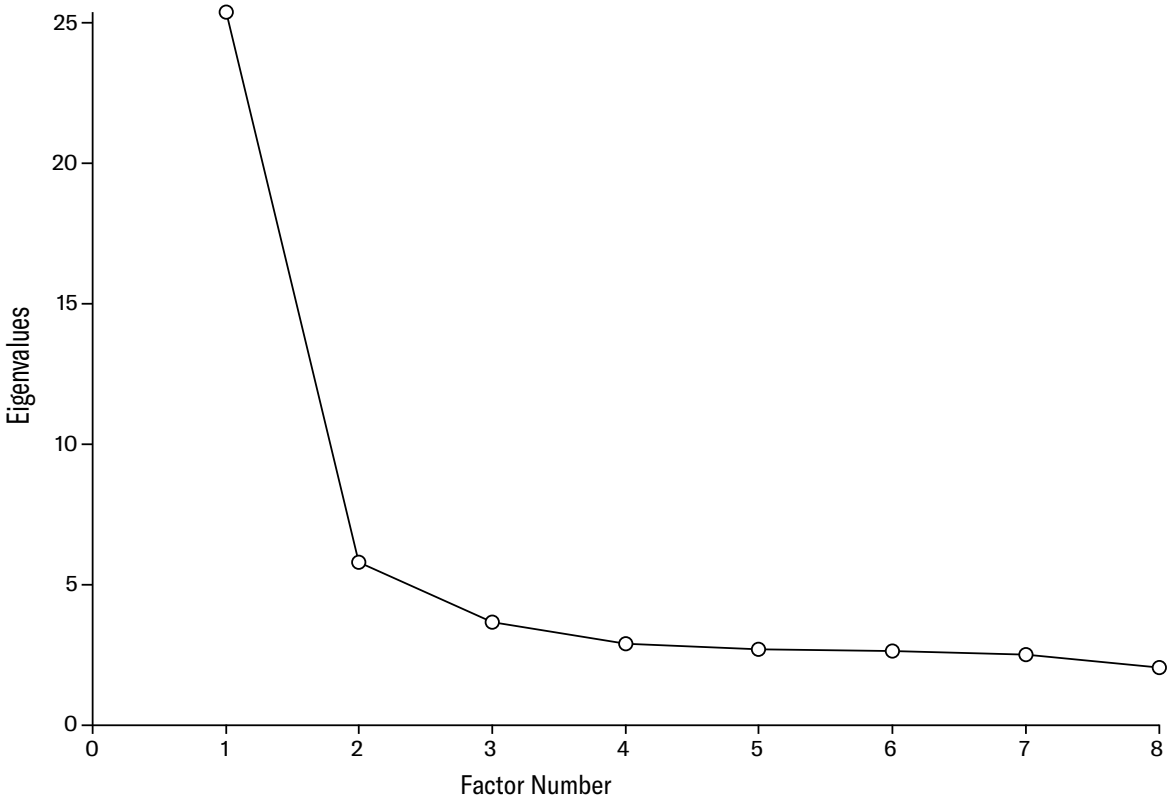
The first step of the analysis calculated the inter-sorter correlations in an 81x81 correlation matrix. These provided the basis for the factor analysis. Next, the number

87 Lumivero (formerly QSA International) - https://lumivero.com/products/nvivo/
88 Available at https://shawnbanasick.github.io/ken-q-analysis/

of factors – up to eight – to extract from the dataset was selected. As we had no preconception of the likely number of factors, we selected the maximum eight. KADE provides the option of Brown Centroid Factors or Horst 5.5 Centroid Factors to calculate the factor loadings. We opted for the former.

The scree plot generated displays the eigenvalue of each of the extracted and as yet unrotated factors.

FIGURE 2: SCREE PLOT OF THE EIGENVALUES OF THE UNROTATED FACTORS



Alongside the eigenvalues, the percentage of variance explained or accounted for by each factor is also given. The eigenvalue and percentage of explained variance per factor are two criteria that can be used to decide how many factors to rotate. A rule of thumb for a factor solution is an explained variance of around 35-40% and eigenvalues greater than one.[89] As shown in Table 5, unrotated Factor 1 explains 31% of the variance in the dataset and all eight factors combined account for 57% of all variance. The solution needs to account for as much of the study variance as possible, so the higher the cumulative variance, the better. Similarly, eigenvalues are indicative of the statistical strength and explanatory power of a factor, and factors with eigenvalues greater than 1 are considered worthwhile retaining in the rotation. All eight factors had eigenvalues greater than 1. For these reasons, we opted in our first iteration to keep all eight factors in the rotation process.

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TABLE 5: EIGENVALUES AND EXPLAINED VARIANCE FOR 8 UNROTATED FACTORS

	Factor 1	Factor 2	Factor 3	Factor 4	Factor 5	Factor 6	Factor 7	Factor 8
Eigenvalues	25.29	5.75	3.61	2.86	2.65	2.61	2.47	1.99
% explained variance	31	7	4	4	3	3	3	2
Cumulative % explained variance	31	38	42	46	49	52	55	57

We note, however, the debate in the Q methodology academy that the criteria of eigenvalues greater than one tends to lead to too many, difficult to define factors. For this reason, we maintained an open mind and conducted all possible factor rotations from one to eight factors solutions. We used Varimax to obtain factor loadings for 1-, 2- ... up to 8-factor solutions, selecting factor loadings that tested significant at the 95% level and selecting for the majority of common variance. The eight solutions are summarised in Table 6.

TABLE 6: SUMMARY OF THE EIGHT SEPARATE FACTOR SOLUTIONS RANGING FROM 1- TO 8-FACTORS:

including the number of significant loaders / percentage of explained variance and eigenvalues per factor (in bold) and the total number of loaders, cumulative explained variance and bipolar factors for each of the eight solutions

No. of factors	1	2	3	4	5	6	7	8
Factor 1	74 / 31	47 / 21	17 / 13	4 / 6	10 / 11	4 / 6	2 / 4	2 / 6
	25.29	**17.11**	**10.32**	**4.77**	**9.25**	**5.04**	**3.07**	**5.15**
Factor 2		32 / 17	31 / 16	23 / 15	15 / 12	6 / 9	4 / 7	3 / 7
		13.92	**13.23**	**12.38**	**9.90**	**7.13**	**5.91**	**6.01**
Factor 3			20 / 14	19 / 13	6 / 8	7 / 11	8 / 12	7 / 11
			11.09	**10.70**	**6.86**	**8.81**	**9.59**	**8.60**
Factor 4				15 / 12	4 / 7	6 / 9	5 / 9	10 / 9
				9.66	**5.28**	**7.14**	**7.45**	**7.58**
Factor 5					16 / 11	9 / 12	3 / 7	2 / 4
					8.87	**9.56**	**5.43**	**3.63**
Factor 6						4 / 6	5 / 9	5 / 10
						5.11	**7.10**	**8.33**
Factor 7							6 / 8	2 / 4
							6.68	**3.55**
Factor 8								4 / 5
								4.38
Total no. of significant loaders	74	79	68	61	51	36	33	35
Non significant Q sorts	7	2	13	20	30	45	48	46
% explained variance	31	38	43	46	49	53	56	56
Bipolar factors	0	0	0	0	F3, F5	F1	F1	0

The iterations of the factor solutions show how the higher the number of factors in a solution, the fewer Q sorts which load on to it and the higher the percentage of explained variance. The 8-factor solution explained 56% of the explained variance with 35 Q sorts significantly contributing to it.

We interpreted the 8-factor solution data by looking at the 8 Q factor arrays, the distinguishing statements per factor and the qualitative data from the significant loaders. For each factor, the interpretation moves between the array displaying the statements in rank order, its distinguishing statements which are those sorted significantly differently in one factor to all other factors in the solution, and the qualitative data. The qualitative data provides explanations of why statements are ranked as they are in the arrays and so can be mined for nuance, explanation or even contradictory thinking. The disparate perspectives expressed individually by participants are revealed through the qualitative data and would be lost if only the factor array ranks were relied upon for interpretation. The interpretation thus revolves between exploring highest ranked, lowest ranked statements, distinguishing statements and those in the middle ranks and the qualitative data associated to the statements, searching for salience, priorities and nuance. This constant cycle gradually builds up each factor's perspective.

As flagged by Watts & Stenner, in this instance opting for a high number of factors proved unamenable to clearly defined perspectives. Exploration of both the 6- and 7-factor solutions resulted in similar absence of coherence in one and two factors respectively. Indeed, only five factors out of the possible eight stood out as clearly distinguishable.[90] The other three either failed to cohere around a single perspective, were irreconcilably conflicted or lacked the qualitative data to support sufficiently what the view represented. We decided on this basis to investigate the perspectives more deeply on the 5 Factor Solution to see whether salience was demonstrable on each of the five factors. This left open the possibility to roll back further if necessary. The five factors yielded distinct perspectives and despite feeling on firm ground with them, we nonetheless applied Ockham's Razor and explored the 4 Factor Solution in case this proved the more parsimonious solution. The 4 Factor Solution was very similar to the 5 Factor Solution but did not incorporate the highly salient perspective related to judicial consistency which was prevalent on Factor 4 in the 5 Factor Solution. We therefore opted for the 5 Factor Solution to preserve this distinct view.

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The 5-factor solution

The 5-factor solution had a clearly interpretable account and 49% of the variance was explained by the solution. There were 51 loaders across the 5 factors, and three of them loaded negatively. Table 7 shows which participants loaded onto the 5 factors.

TABLE 7: PARTICIPANTS' FACTOR ASSOCIATIONS

Participant	F1	F2	F3	F4	F5
Court Officer C01	0.33	0.25	0.13	0.24	0.48
C02	0.55*	0.35	0.17	0.33	-0.02
C03	0.35	0.41	0.49	0.09	0.11
C04	0.36	0.65*	0.11	0.27	0.26
C05	0.12	0.58*	-0.04	-0.12	0.06
C06	0.19	0.47*	0.12	0.23	0.23
C07	-0.03	0.37*	-0.01	0.37	-0.03
C08	0.06	0.30	0.61*	0.01	0.36
C09	0.23	0.32	0.48	0.22	0.31
C10	-0.05	0.48*	0.18	0.26	0.09
Judge J01	0.13	0.38	0.34	0.33	0.10
J02	0.35	0.31	0.28	0.32	0.32
J03	-0.01	0.27	0.20	0.13	-0.60*
J04	0.31	0.38	0.08	0.51*	0.10
J05	0.45	0.05	0.43	0.24	0.30
J06	0.55*	0.21	0.14	0.43	0.12
J07	0.27	0.16	0.55*	-0.04	0.22
J08	-0.04	0.46	0.17	0.22	0.44
J10	0.58*	0.29	0.10	0.06	0.47
J11	0.37	0.32	0.44	0.33	0.36
J12	0.12	0.00	0.67*	-0.02	0.27
J13	0.47	0.44	0.27	0.12	0.35
J14	0.29	-0.02	0.48	0.51	0.01
J15	0.37	0.21	0.25	0.23	0.60*
J17	0.37	0.50	0.47	0.13	0.29
J18	0.16	0.42	0.45	0.11	0.35
J19	0.41	0.34	0.05	0.01	0.57*
J20	0.45	0.31	0.47	0.32	0.23

Participant	F1	F2	F3	F4	F5
J21	0.32	0.04	0.34	0.08	0.62*
J22	-0.11	0.57*	0.07	0.27	0.25
J23	0.14	-0.02	0.29	-0.09	0.47*
J24	0.62*	0.14	0.23	0.01	0.35
J25	0.12	0.43	0.20	0.16	0.56*
Litigant in person LIP01	0.37	0.18	0.28	0.00	0.54*
LIP02	0.62*	-0.02	0.05	0.09	0.05
LIP03	0.18	0.07	0.00	0.46*	0.37
LIP04	-0.01	-0.03	0.33	0.13	0.45*
LIP05	0.57*	0.21	0.11	0.27	0.28
LIP06	0.19	0.04	-0.37*	-0.07	0.03
LIP07	0.10	0.07	0.06	0.62*	0.22
LIP08	0.24	0.28	0.02	0.22	0.48*
LIP09	0.39	-0.12	-0.05	0.43	0.24
LIP10	0.13	0.02	0.07	0.08	0.59*
LIP11	0.27	0.09	0.20	0.50	0.53
LIP12	0.35	0.08	-0.29	-0.01	0.53*
LIP13	0.16	0.38	0.14	0.42	0.02
LIP14	0.22	-0.14	-0.26	0.33	0.19
LIP15	0.06	0.04	0.19	-0.04	0.42*
LIP16	0.02	0.02	0.40	0.32	0.44
LIP17	0.11	0.21	0.14	0.20	0.56*
LIP18	0.41	0.01	-0.05	0.23	0.44
McKenzie Friend M01	0.41	0.06	0.09	0.11	0.51*
M02	0.37	0.18	0.06	0.36	0.26
M03	0.62*	0.07	-0.13	-0.09	0.16
M04	0.13	0.26	0.06	0.19	0.55*
Barrister BAR01	0.53*	0.41	0.15	-0.13	0.23
BAR02	0.51*	0.20	0.19	0.12	0.28
Solicitor SOL01	0.22	0.50*	-0.08	0.12	0.10
SOL02	0.34	0.28	0.44	0.08	0.28
SOL03	0.23	0.43	-0.07	0.58	-0.33
SOL04	0.12	0.64*	0.55	0.05	0.06
SOL05	0.03	0.20	0.49*	0.07	0.31

Participant	F1	F2	F3	F4	F5
SOL06	0.34	0.37	0.30	0.19	-0.25
SOL07	-0.06	0.57*	0.29	0.09	0.00
SOL08	0.08	0.58*	0.40	-0.23	-0.12
SOL09	-0.22	0.15	0.24	0.51*	-0.08
SOL10	0.18	0.29	0.10	0.40	-0.56*
SOL11	0.53	0.30	0.37	0.23	0.19
SOL12	0.60	0.42	0.28	0.13	0.34
SOL13	0.34	0.36	0.45	0.04	0.01
SOL14	0.24	0.70*	0.20	0.07	0.25
SOL15	0.46	0.54	0.07	0.27	0.10
SOL16	0.32	0.46	0.24	0.20	0.17
SOL17	0.34	0.36	0.32	0.12	0.18
SOL18	0.61*	0.32	0.12	0.24	0.21
SOL19	0.46	0.36	0.27	0.16	-0.03
SOL20	0.21	0.34	0.55*	0.16	-0.32
SOL21	0.49	0.57*	0.14	-0.05	0.10
SOL22	0.31	0.52*	-0.07	-0.07	-0.16
SOL23	0.37	0.60*	0.13	0.10	0.00
SOL24	0.14	0.56*	0.35	0.37	0.6
Number of loaders	10	15	6	4	16

Automatic flagging in KADE is shown by * against the factor loading.[91]

Factors 1 – 5 were defined by 10, 15, 6, 4 and 16 participants respectively. We opted to keep the negative loaders in the solution because they offered an opposing view to the factor's overall perspective.[92] Table 8 shows the participant types who loaded onto each of the factors.

91 KADE identifies sorts that meet these criteria: 1) a2>h2/2 (i.e. factor explains more than half of the common variance) and 2) a>1.96/Sq Root of N items (i.e. loading is significant at p<0.05)

92 Practice with regards to negative loaders is divided, with some practitioners preferring to remove negative loaders from the factors and others keeping them in to provide contrast – see V Reckers-Droog, M Jansen, L Bijlmakers, R Baltussen, W Brouwer and J van Exel, 'How does participating in a deliberative citizens panel on healthcare priority setting influence the views of participants?' (2020) 124 *Health Policy* 143, 150

TABLE 8: DISTRIBUTION OF PARTICIPANTS WHO LOAD ONTO THE FACTORS

Factor	LIPs & McKenzie Friends	Judges	Court Officers	Solicitors	Barristers	No. of loaders
F1	3	3	1	1	2	10
F2		1	5	9	-	15
F3	1 negative	2	1	2	-	6
F4	2	1	-	1	-	4
F5	9	6 (1 negative)	-	1 negative	-	16

It is tempting to look for commonalities in the stakeholder groups, but it risks stereotyping and lumping people together in an exercise that is designed to tease out individual subjectivities. Any such nuances and tendencies can be gleaned from the factor descriptions in the next section.

Finally in this analysis section, Table 9 shows the positioning of each statement in each of the five factors showing the statements' affiliation within the participation framework. The statement positions per factor are additionally displayed pictorially as factor arrays in the Appendix. The ranks assigned to each statement by KADE are marked as distinguishing (* or **) and statement #16 is the only consensus statement. These are discussed in the next section.

TABLE 9: STATEMENT RANKS PER FACTOR IN 5 FACTOR SOLUTION WITHIN THE PARTICIPATION FRAMEWORK

with distinguishing statements highlighted and consensus statement in italics

Statement	F5/1	F5/2	F5/3	F5/4	F5/5
1. Practice between judges in how they deal with LIPs should be consistent across different family courts.	2	1	-4**	4*	-1**
2. LIPs should have the same judge throughout their case for continuity.	0**	-3	-4	4**	-2
3. The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.	-1	-1	-1	3	3
4. The legal procedures should be easy to understand and follow.	3*	1	0*	-3*	1
5. Court forms, the law and procedural rules should be easy to find.	1	4*	1	-4**	2
6. Court buildings should be user-friendly for LIPs, e. g. safe spaces for LIPs, clear signage.	0	-2	-1	-5**	-1
7. Information on how to self-represent should be available and helpful for LIPs.	0	0	2	-2**	2
8. There needs to be somewhere for LIPs to get support at court as and when it is needed.	-1	-3	-2	0	0

Statement	F5/1	F5/2	F5/3	F5/4	F5/5
9. The courts should accommodate the needs of LIPs who have particular vulnerabilities, e. g. experienced domestic violence, health issues, non-native English speakers.	2	3	0	0	5
10. Case documents should be equally accessible to LIPs and received in good time.	4	3	1	1	2
11. LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.	4	2	-3	-1	-1
12. When court hearings are scheduled to take account of LIPs' circumstances, e. g. their caring or work commitments.	-1	-2	-2	-1	0
13. LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.	-2	-4**	0	-2	1**
14. LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e. g. a McKenzie Friend.	1	-1	-2	1	4**
15. There should be advice organisations able to offer free assistance to LIPs.	0	-2	-1	-4	3**
16. Legal representatives should follow agreed professional guidelines on dealing with LIPs.	1	0	1	2	0
17. Legal representatives should assist LIPs to progress the case as part of their duty to the court.	-2	-5**	-3**	-1	-1
18. LIPs should feel they are taken seriously, listened to and have a fair hearing.	2	5	3	5	5
19. When judges treat LIPs the same regardless of their reasons for self-representing.	-2	3	-1	4	1*
20. Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.	1	0**	4	3	3
21. Only relevant people involved in the case should be present in hearings.	2	2	-5	-1**	-4
22. The judge should see beyond the LIP's emotional state.	-1	0	2	3	0
23. In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.	5	2	4	1**	4
24. In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.	4	4	5	5	4
25. When judges allow the legally represented party to speak first when the LIP is the applicant in the case.	-3	-4	-4	2**	-4
26. When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.	0	-1	1	-3	-2

Statement	F5/1	F5/2	F5/3	F5/4	F5/5
27. No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.	5**	0	0	2	1
28. The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.	1	1	1	-2	0
29. When LIPs are able to apply and present relevant information to their case.	-4**	1*	3*	0	0
30. When LIPs are able to negotiate with the other party.	-2*	4**	0	-1	-1
31. LIPs should follow court norms and etiquette.	-4	2**	-3**	0**	-5
32. When LIPs have the skills to test the evidence in their case.	-4	-1	-1	-3	-2
33. When LIPs are highly educated.	-5	-5	-5	-5	-5
34. When LIPs are confident in their ability to self-represent.	-5*	-4*	-2	-2	-2
35. LIPs should understand what they are agreeing to and what they are required to do.	3	5	5**	0	1
36. When LIPs put in the time and effort required to manage their case and hearings.	-3	-2	3*	1*	-3
37. LIPs should take notes in their hearings.	-1*	-3*	0*	-4	-3
38. LIPs should be aware of the emotional burden of self-representing.	0	-1	2**	0	-3**
39. When LIPs are able to separate their legal issues from their emotions.	-3**	1	2	2	-4**
40. LIPs should not be treated as a nuisance.	3	0	4	1	2

** Distinguishing statement at $p<0.05$; * distinguishing statement at $p<0.01$

Conclusion

Following the steps to conducting the Q sorts, we arrived at 81 different interpretations of what is important for LIPs to participate in their proceedings. The Q factor analysis reduced these sorts into five factors. The next stage is to interpret each factor looking at how the statements are placed in their factor arrays along with the qualitative reasonings and views of the people who are represented on them. This combination of the factor arrays and qualitative data is given in the next chapter as five distinct perspectives on what is important for LIPs to participate.

Chapter 6: **Findings – the five perspectives**

The aim of this Q methodology study is to explore the views of relevant stakeholders on our framework of legal participation both directly through qualitative interview data and through quantitative factor analysis so that we can review the robustness and meaning of the participation descriptors against their lived experience. The ranks assigned to the 40 statements that describe legal participation by the 81 participants were analysed and produced five distinct and pertinent perspectives. Areas of commonality were also revealed. This chapter describes the five perspectives and the commonalities across them derived by the analysis and interpretation.

Statements are referenced using their number prefixed with # and are followed by the rank from the factor array. For example (#24, +5) indicates that for that factor, statement number 24 was ranked at +5 in the factor array. The interpretation is supported by the analysis of the qualitative data and quotes from the participants are given anonymously, identified according to their stakeholder group as BAR for barristers, SOL for solicitors, J for judges, C for court staff, LIP for litigants in person, and M for McKenzie Friends.

Factor 1 – Change the system

This perspective is defined by 11 participants and is characterised by these quotes:

> "It has reinforced my view that many barriers still exist but can be easily alleviated if more funding is in place for very practical adjustments such as information provision, signage, court accommodations and free support services for the vulnerable." (J24)

> "I've something to say to the judges: take time on every case, put time into it and see past the behaviour of the litigant at that time, because they're stepping into your world. They're not in their own." (LIP02)

This perspective is litigant-centric and recognises the need for accommodations for LIPs in family proceedings. It advocates wide scaffolding within the legal process and responding to LIPs to ensure they can participate fairly.

The focus for the scaffolding is predominantly on the courtroom rather than on support services for the preparation for the legal proceedings. The judge, legal representatives and case parties, and the court system all play a role in providing this scaffolding. In ensuring equality of arms, the judge needs to provide explanations and check that LIPs can follow procedure and know what to do next (#23, +5), not allow case submissions

when the LIP is absent (#27, +5) and ensure LIPs have opportunities to present their case (#24, +4). The other party and the court need to ensure case documents are equally available (#10, +4) and all court actors should ensure LIPs are not treated as a nuisance (#40, +3).

Drilling a little deeper into the perspective, being present is a fundamental element of good participation. Ensuring no case submissions are made when a LIP is absent with good reason (#27, +5) and being able to see and hear all other participants in a hearing (#11, +4) are afforded high importance and point to what may seem obvious and a given – absence denies a LIP the opportunity to respond to anything submitted to the court and not hearing what the other parties contribute is a barrier to participation. This comes from the experience of LIPs who have been left outside the courtroom during the call-over or missing what is said when being called into the courtroom:

> "While for instance the court list is being called over, there's things being mentioned, the case mightn't be discussed in full but there are things being said and it's giving the opportunity to that represented person's solicitor to maybe sway the court slightly, by a one word comment or something, that could influence the case. (LIP05)

The sense of being on the backfoot felt by a LIP when they are not present when their case is discussed breeds suspicion, impacts on the perception of fairness and undermines legal participation.

The principle that the court is there for all-comers regardless of their education, background or abilities is emphatically defined in this view. Respondents in this factor gave a low priority to LIPs' education level (#33, -5), legal ability (#29, -4), legal skills (#32, -4), following court norms and etiquette, (#31, -4), confidence (#34, -5), putting in time and effort (#36, -3) and their ability to separate their emotions (#39, -3) because these attributes are not important in supporting LIP participation:

> "They should just be taken as they are, ... what is important is – why am I here, what do I need to do? And what is the next step? .... I'm not there to be assessed on my education or my confidence. I am there to open a relationship with my children and find a way to communicate that across." (LIP02)

> "Treating people all the same is not necessarily promoting participation for all as each personal litigant will have individual needs. High levels of education should not be a precursor if we consider access to justice should be achievable for all persons." (J24)

Developing legal ability, skills and confidence are given low importance because the gap to be filled is too large. Factor 1 more than the other factors broadened the scope of personal characteristics and was consistent in its de-prioritisation of the statements related to legal ability. LIPs have no training and lack experience and these traits, seen in practitioners who are trained and skilled, should not be expected:

> "They're skills that are acquired. And most litigants in person will not have had the opportunity to do that. So, you know, it's asking for impossible things." (SOL18)

> "[LIPs are] not trained. They might be passionate, and they may be articulate ... but they don't have the skills to [cross] examine ... Worse still is when a LIP is expected to give evidence-in-chief on their own, whereas a solicitor and barrister represent another party, they lead the other party. They can put them in the witness box, and they ask them the questions that they want answers to. Whereas a self-litigant ... they can't ask themselves the same questions." (M03)

The recognition in this view that LIPs are out of their depth in court proceedings is partly attributable to three of the loaders who have or had very long running cases in Family Proceedings Court (FPC), Family Care Centre (FCC) and the High Court (HC). Their views are shaped by years of difficult and stressful litigating, mostly in person. Understandably, not being treated like a nuisance (#40, +3) was rated as important in this view.

Of note is the low importance attributed to being able to separate their legal issues from their emotions (#39, -3). This perspective, like Factor 5, positions LIP emotions as needing to be accepted as a part of the proceedings. It is related to the adversarial nature of family proceedings which pitches parents against each other in a battle for the children in an already highly charged situation.

> "That minute you walk in, you should feel heard, listened to, accepted for who you are, not judged because you've become emotional thinking of maybe the last time you've seen your children... and more of a family system approach, holistic, humanistic. Because the whole way it's set up you're coming from the defence straightaway. I'm proving that I'm a good parent." (LIP02)

> "It's virtually impossible for a LIP to negotiate with the other party. ... It's an adversarial position has been created in court ... and it is personal. Somebody's trying to take your children away ... So to negotiate with somebody that's your adversary, it's just not, I don't think it's possible, it's least important. The judge should be able to deal with it." (M03)

In contrast, other participants were more absolute in their views:

> "I think that's aspirational... They can't do it." (BAR02)

However, Factor 1 does not go as far as Factor 5 which advocates for a systemic capacity to accommodate high levels of stress and ensure LIPs feel safe.

Another practitioner-specific expectation that is disregarded in this view is following court norms and etiquette (#31, -4) which is assigned very low importance because they are seen as having no bearing on the substance of the case and are of little relevance:

> "They don't achieve any real function. And they don't go towards either improving representation or improving outcomes. So whether the litigant in person knows to say Your Worship, Your Honour, another word, actually means absolutely nothing." (BAR01)

There is, then, an inherent tension in this perspective that litigating in person should be for all-comers as a right, but there are aspects of litigation that a LIP cannot feasibly undertake, and there is little point trying to 'make them lawyers' by helping them to develop litigating skills for a hopefully once-off endeavour.

To manage this tension, this perspective promotes scaffolding and the role of the judge, the court and other actors to facilitate LIPs and accommodate them as non-practitioners. Ensuring comprehension (#23, +5), ensuring LIPs have opportunities to present their case (#24, +4), making documents equally available (#10, +4), making procedures easy to follow (#4, +3) and treating LIPs with respect (#40, +3) are favoured as ways of encouraging participation. A system that is fit for LIPs is promoted in this perspective:

> "Judicial consistency and allowing LIPs opportunity to speak and ensuring they understand the process. Makes for a potentially less intimidating arena & shows empathy on part of [the] judge." (J06)

> "We need to come into the 21st century, and just make it more user-friendly for personal litigants." (BAR02)

The emphasis is on the system adapting to suit non-practitioners so they reach a fair and just outcome. LIPs need to be accommodated and so it falls to the judge in their position of impartiality to provide explanations and check that LIPs can follow procedure and know what to do next (#23, +5):

> "The litigant in person needs to know exactly what is required of them, or at least to be explained in a way that they understand it." (BAR01)

> "If whoever is on the bench is seen to be proactive, actively case managing, assisting and listening... they can't seem partial in any way. But they have to give a fair explanation to the person as to okay, you know, this is a first directions hearing in your case, it's the first time I've looked at it. This is what I'm looking at today." (BAR02)

What counts is how LIPs are facilitated and given some leeway to make their case and perform the necessary actions. In the courtroom, the judge is the preferred actor to facilitate LIPs because of the duty of impartiality. Several examples of reform and changes to the system so that it accommodates LIPs are suggested by the loaders in this perspective and are discussed later.

Attention to the greater impact on LIPs than on practitioners of failing to manage when gaps arise in court processes is also promoted in this view. For example, having documents available in a timely fashion (#10, +4) is regarded as important. It arises from bitter experience and an admission that the court is not always as attentive about this point as it could be. One impact on LIPs of not receiving documents from the other party on time is the reduction in the time they have to process them and prepare their response:

> "In most cases I was only given the other side's position papers one week before the case. And if that ran late it was dropping my time to research down from seven days to five. On most occasions, papers had to be submitted on a Friday. If they weren't submitted on a Friday, I had

> lost Friday, Saturday and Sunday, which was three days out of my time to study those papers and that happened regularly ..." (LIP05)

Accepting that the impact of late or non-arrival of case documents on LIPs may be significant in ways that are different to represented parties opens the door to considering the court's role in this. It is the parties' responsibility to ensure documents are served on each other, but when one party is a non-practitioner, the courts' responsibility to check comes sharply into focus:

> "There doesn't seem to be much emphasis on whereby the judge ensures that the other side got ABCD, affidavits, Article 8 reports, Guardian ad litem - whatever it may be. And there have been occasions when they came back and said that they haven't received those documents. So maybe it's something for the courts to do that ensures that the parties [have] documentation and they share it." (C02)

While accommodations and changes to promote participation in the court room are seen as important and personal characteristics as less important, in the middle ranks come statements related to support, availability of information, and adaptations to the court buildings. This litigant-centric view draws on the adaptations and accommodations required for LIPs in proceedings within the participation framework while pushing to one side almost all of the elements related to personal abilities. The reforms suggested by the loaders include a triage system to signpost LIPs to information; a checklist for judges to ensure LIPs are aware of the main stages in a case; leaflets for all litigants on what to expect from legal representatives; careful attention to cases when there are allegations of abuse or coercive control; one judge to be assigned when there are criminal and FPC proceedings; support for LIPs who are unable to self-represent.

The call for accommodations and reforms align with the litigant-centric view of this perspective. Scaffolding is needed to promote participation for litigants in family proceedings and it should not depend on individual characteristics. The system needs to adapt.

Factor 2 – Treat LIPs like lawyers

This perspective is defined by 15 participants and is characterised by the following quotes:

> "If you're a litigant in person, you run your case." (SOL24)

> "There's no point in having a lame litigant in person, you really do need somebody who comes along to court and is prepared." (SOL08)

This view promotes ways to make LIPs fit better into the existing system and place low importance on accommodations in the system for LIPs. Shaping LIPs to fit better is thought to result in smoother operations for solicitors and the court in general. LIPs who can function well not only help themselves but the legal process and other party too.

The sense of procedural fairness is promoted in this view as both a fair trial principle of access to justice and as a means to make the process run smoothly for others. The perception of being treated fairly and feeling one is taken seriously is most important (#18, +5). This ties in with fair practice and equality of treatment being foremost and not being penalised for self-representing.

> "The court process is overwhelming as it is, and whether you can afford a lawyer or not, or you choose to have a lawyer or not, I think when you're going through something as serious and as important, normally, as what as any court hearing would be, you have a right to feel as if you've had a proper hearing, and you've been taken seriously ... [Y]ou shouldn't be punished in that you don't have a fair hearing, or you don't feel like you've been taken seriously, just because you don't have a lawyer." (SOL24)

The references to LIPs not being penalised for self-representing suggests they may be penalised by some.

As with other factors, judges giving LIPs opportunities to speak (#24, +4) is highly important and it is an aspect of equality of arms for LIPs as much as for anyone else. It is noteworthy that another aspect of equality of arms is regarded as much less important: when the judge allows the represented respondent to speak first (#25, -4), contrary to established procedure. The reasoning comes from opposite points of view which cannot be saliently reconciled and draws out attitudinal differences between participant types. For the judges and court officers in this group, they do not believe it happens or should happen, so they deprioritise it as irrelevant.

> "That wouldn't happen, certainly I was surprised." (J22)

> "In my opinion, over 20 years of doing it that it's always a moving party that gets to go first, whether that's a lawyer or a personal litigant, you know, so things like that wouldn't be as important to me because that happens anyway as far as I see." (C10)

On the other hand, the solicitors in this group can see no harm in the LIP applicant speaking after the represented respondent, indeed, it may even benefit them:

> "I don't really think there's an issue raised about who goes first, as long as the litigant in person gets an opportunity to speak. That's more important to me than who goes first. And sometimes it assists the court and the smooth running of the court to have a legal representative who knows the running of the court, and knows, makes it easier for the judge to understand what's happening in the case. And obviously, if the litigant in person doesn't agree with that they'll speak and say. But I don't really think if it makes a difference." (SOL04)

This rationale assumes that LIPs are as comfortable and familiar with procedure and with speaking up as legal representatives are. The slippage in procedure is convenient for the case and the skilled representative but it overlooks how it is unfamiliar to LIPs and can wrong-foot them.

This viewpoint of the inconvenience of LIPs is also drawn out in the expectation that LIPs can fit within the system and conduct their litigation in a professional way. Key to participation is understanding what they are agreeing to and what they are required to do next (#35, +5) and being able to negotiate with the other party (#30, +4). This is not only for the sake of the LIP and how they participate or enjoy a fair trial, but also to avert problems down the line, avoid prolonging cases and reduce their reliance on court staff.

> "They fundamentally have to have an understanding of what they're agreeing to, so that an issue does not arise down the line, where they say, I didn't know what I was doing. And, you know, it could cause a number of issues." (SOL04)

Being able to negotiate with the other party (#30, +4) is a distinguishing statement in this view which comes from solicitors for whom dealing with the other party is a key aspect. Such a capability helps to move a case towards resolution, while also averting difficulties for legal representatives. The view is more pragmatic than directed towards promoting participation:

> "If you have a litigant in person who isn't able to negotiate, well, then it's going to be actually very difficult to deal with the case because a lot of proceedings are meant to be non-adversarial. So that would actually mean in the family courts, you don't really want to have an opponent who is treating it like a battlefield. … So a litigant in person who can't negotiate will really not be of any assistance to anyone." (SOL08)

Given the recognition in this view of the impact of LIPs not understanding, it would be pertinent to prioritise access to information or support for LIPs. Instead, this perspective places less importance on the provision of information on how to self-represent (#7, 0), support at court (#8, -3) or advice organisations able to offer free assistance to LIPs (#15, -2). The rationale again derives from seeing LIPs as equals to legal representatives:

> "I don't think the court should be offering [support at court]. And they don't offer the legal representatives and then therefore their clients support, I think it does muddy the water." (SOL07)

> "If [LIPs] are prepared … If they know their legal points, and they're able to apply and present the relevant information. They know that, and they won't need as much support at court, because they'll know. They're more confident in presenting it and, you know, putting their points forward …" (C10)

However, this viewpoint does not see LIPs as needing to be highly educated (#33, -5) or being confident in their ability to self-represent (#34, -4).

Factor 2 gives a distinguishingly low priority to hiring a legal representative to undertake discrete pieces of work for LIPs (#13, -4).[93] This perspective promotes the view that legal representation cannot be piecemeal, it has to be all or nothing. The motivation

93 Known as unbundled services or limited scope services, this is the practice where there is an agreement between the litigant and a legal representative to divide up the work of the case between them or for the legal representative to provide a limited service rather than an end to end service

for this view comes from several quarters. There are concerns about the practicality of unbundled services with respect to insurance and the retainer:

> "I think, even maybe, from an insurance point of view, I think solicitors have to be cautious about their involvement and the type of advice they give." (SOL08)

> "I can't because I have to properly retain you. And then, therefore, I have to get your ID, I have to get the money on account. It can't be done." (SOL07)

A concern about unbundled services also arises from the hired solicitor not having full oversight of the case:

> "I would want to know the ins and outs of the case. And in order for me to do that, I, you know, they may hire me to draft a statement, but I would have to actually read the entire papers in the case, you know, get an understanding of that to do my job." (SOL04)

An additional concern is the possibility that the LIP will not understand documents prepared for them:

> "Then you're going to be referring to that [skeleton argument] and not know what you're talking about if you don't, if you're not able to understand that." (C10)

Similarly, any assistance a legal representative may provide to progress the case as part of their duty to the court (#17, -5) receives a low priority. It is also a distinguishing statement on Factor 2. This perspective is alive to the conflict a solicitor may face with their client if they assist a self-representing party in the case:

> "There's a litigant in person and she's 'oh what do I do? What do I do?' And I was like I can't tell you ... You run your case how you want it and we'll run ours, but we can't give you advice, that'll be conflict there." (SOL07)

The perspective promotes finding a balance so that legal representatives are not over-burdened by LIPs and their needs, and ensuring fairness:

> "I would help them procedurally because it makes it easier for everybody. But I wouldn't outright tell them how to do it, I would imply it in sentences." (SOL07)

> "Legal representatives at court will want a litigant in person to be treated fairly, so they want a solicitor who has a sense of fairness, which most should have. Shouldn't really encourage a litigant in person to accept an agreement that they know deep down isn't really fair on them. So I think just it's getting the balance right, so that the litigant in person isn't taken advantage of by the legal representative. But I don't think the legal representative should have to take on any burden in terms of advising the litigant in person or assisting them over and above the call of duty." (SOL08)

Indeed, the burden of preparing the court bundle, which often falls to the legally represented party because they have experience and competence, can be huge and can feel unfair:

> "It is a huge administrative burden and it feels very unfair that that is shifted to the other parties just because it's a self-litigant ... many of whom are threatening and abusive." (SOL21)

The low priority given to the notion of legal representatives taking on unbundled services (#13, -4) aligns with the high priority afforded to the need for the court forms, the law and procedural rules being easy to find (#5, +4). Court officers, who are on the front line of dealing with applications and respondent documents, can see the benefit of forms being easy to find and extend this into forms being easy to complete too – it smooths the process:

> "I think if the court forms are a bit more straightforward and, you know, easier to explain, then you know, that makes it that wee bit overall easier, because we get someone, especially if there is complications... if you have like a mother representing herself, but there's maybe two or three different fathers a couple of different children, you know, it might be a wee bit more complicated and complex and stuff for them to... so I just think that's really important they should have access to that and the form should be easy for them to fill in." (C06)

Similar to Factor 3, this view promotes LIPs as agents in their own case, doing it for themselves. The need for LIPs to follow court norms and etiquette comes across strongly (#31, +2), from court officers in particular, so highly that it is a distinguishing statement for Factor 2. This perspective sees LIPs as choosing to self-represent. This places an onus on them to understand the process (#35, +5), the norms and etiquette (#31, +2), and be able to apply and present relevant information to their case (#29, +1):

> "They need to understand what their role is. It's really about what they want. They're the ones who have decided not to instruct barristers or instruct legal representation for whatever reason ... [T]hey should understand ... they follow the court etiquette and the norms. But it's their place to know where they stand ..." (C10)

> "[Staff are] ever so busy, but these personal litigants think we have all the time in the world to spend with them. Yes, we will offer them and give them advice regarding their forms and how they complete forms, etc. But, do you know, they have decided to go down this route themselves. So therefore, they have to do their research themselves and their homework themselves and come prepared for court and come dressed accordingly. And, you know, have the etiquette, you know, and be prepared for their hearings." (C05)

This view that LIPs are autonomous in their proceedings may come from a position of utter familiarity with the system and utter unfamiliarity with the actual experience of self-representing. The rankings of two statements suggest this unawareness about how LIPs fare in the current system: firstly, how hearings and judges take into account LIPs' lack of familiarity with litigation and the support and resources available to them (#20,

0) and secondly, how LIPs should not be treated as a nuisance (#40, 0). Both received the lowest ranking in Factor 2 compared to the other four factors. Keeping processes the same for LIPs as for legal representatives means that making accommodations for LIPs to buildings (#6, -2), hearing schedules (#12, -2) or in court to take account of their lack of familiarity with litigation (#20, 0) are less important. They need to fit in as they are:

> "I'm going to sound like an awful person. But in all honesty, why should a litigant in person have special treatment? Why should they have if they're coming down to represent themselves, and this is probably slightly clouded from some of the litigants in person we've come across because it hasn't just been because they couldn't afford, and it is used at times to perpetuate abuse or to be very obstructive. But why should they have a nice friendly space in the court that's separate from everybody else? Why should they be treated more favourably than somebody that's paying for a lawyer? I don't think that's fair." (SOL24)

This perspective sees current efforts as sufficient, requiring no further attention.

The 'othering' of LIPs by many legal representatives is prevalent in their interviews. Many, if not all, recollect 'war stories' of difficult experiences with LIPs which validate their hesitation to support LIPs and speak to the view that the role of legal representatives is critical, distinct and necessary. Some legal representatives have sympathies with the difficulties LIPs have, but none in this perspective see it as their role to act as a buffer or guide.

Running through the perspective is a pragmatic approach to involving LIPs. Slicker and easier to follow processes would probably improve LIPs' participation while making the experience for other court actors smoother too but there is no need to make accommodations for LIPs and treat them differently. In this view, participation is instrumental rather than rights-based. This perspective casts LIPs in the role of legal representative and not as litigants. They need to arrive with the requisite knowledge and skills to manage their cases. LIPs are just another case to be expedited through the courts and so they need to fit in to that representation role and play the game properly.

Factor 3 – LIPs are an inconvenience but are entitled to be there

This perspective is defined by six participants including one negative loader who provides a contrasting view. This quote typifies the perspective in Factor 3:

> "They should understand what they're getting into. The law and procedural rules should be easy for them to find - I can tell you now it's not. ... But being able to understand what you're undertaking and how much of it is down to you because you've chosen to self-represent and, and yes, not be treated as a nuisance." (C08)

This perspective is characterised by the need for LIPs to be on the ball and have their eyes open to the intricacies and pitfalls related to litigation. It is crucial that LIPs have

the capacity to manage their case, have opportunities to speak and understand the implications of decisions and what to do next, which in turn requires being provided with explanations. Implicit in the facilitation of LIPs is the acceptance of their lack of familiarity with litigation and so not being treated as a nuisance even if their demands and presence place what is seen as additional burdens on court staff and others. It differs from Factor 2 in its recognition that LIPs need some support to be able to manage their case, while Factor 2 assumes they are akin to legal practitioners. However, like Factor 2, maintaining the status quo is prioritised for the convenience of the other court actors and to keep the case progressing.

A distinguishing aspect is that LIPs understand what they are agreeing to and what they are required to do (#35, +5). This places LIPs in an active role similar to that expected in Factor 2 and not as a passive entity passing through court.

> "That nobody signs up to any sort of agreement or has an order imposed without understanding the implications of it, you know, and, and that, to me, is just the most essential thing for whether you're representing the client yourself as a solicitor, or whether you're dealing with a litigant in person, you know?" (SOL05)

Having the ability to apply and present information relevant to their case (#29, +3) and putting in the time and effort (#36, +3) are both distinguishing statements in this view with the highest ranks assigned across all the factors. The view does not extend to the LIP being highly educated (#33, -5). It is derived from both efficiency arguments and fair trial principles. Not being prepared for a hearing has an impact on whether a case can go ahead and a judge may well decide to proceed with what is in front of them rather than delay:

> "[LIPs] have to present evidence to the court – documents. That makes such a difference to the court clerk. And it makes such a difference to how the case will run and case progression. Because ... the judge could go on ahead without you and say, well, you know what, you had five clear days or whatever to do this, you haven't presented it. I'm going on and hear it on the evidence he has in front of him. So that to me is important." (C08)

> "I feel that we need for the whole thing to work, we need [LIPs] too to put in the time and effort. And I've found in practice is a difficulty." (SOL05)

From the LIP's point of view, it is less about efficiency and more about knowing their case intimately and so they can present it in a credible way.

> "So obviously, you know, the one massive advantage that a litigant will have, he or she would know every aspect of their case inside out, and when you're presenting information, it may be credible to them. However, the judges and the legal profession sometimes ... view it as unimportant, and ... shelve it, or else just completely discard it." (LIP06)

The impact of good preparation is on the progression of the case which in turn has an impact on other court actors. This view places less emphasis on the intrinsic importance of reaching a just outcome, but rather on keeping the wheels of justice

turning for the convenience of others. The efficiency of proficient LIPs presumes skill, expertise, time and application that they are unlikely to have, again drawing on personal characteristics within the participation framework.

The perspective, like Factor 2, promotes LIPs who are able to act like legal representatives, but promotes as more important the need for some facilitation from the judge. This judicial facilitation ensures LIPs have opportunities to present their case (#24, +5), provides explanations (#23, +4) which are based on the recognition of their lack of familiarity with litigation, the support and resources available to them (#20, +4). These are prioritised to ensure LIPs understand what is going on in the courtroom, and feel they are being taken seriously (#18, +3). While others may help when outside the courtroom, only the judge can fulfil the role of ensuring LIPs have opportunities to present their case in the courtroom:

> "Serve[s] to empower the LIPs most out of all the options available in my view." (J12)

> "The legal process is opaque in a lot of ways, and so that's where the court does need to spend more time with litigants in person to ensure that they understand, like the cases with litigants in person do take very much greater time than whenever there's legal representatives in place, but they are entitled and then they must know what is going on." (SOL05)

The contrasting view is provided by the negative loader on Factor 3, who recognises the importance of having opportunities to speak and being facilitated:

> "Some judges can be very harsh, very dismissive, don't give you the opportunity to finish off some of the ... aspects of your case that you want to address. And you do ramble, you definitely do ramble so I think it's like a natural thing. You know, when you're not too familiar with what you're talking about as such as you're trying to put your case across in a professional manner, and you will ramble a wee bit, so some judges will just completely cut you dead and knock you off your flow. So you have to get back on track again, try and recollect where you were .. and by that time, you know, you're completely dishevelled and you're mumbling and ...and you find it quite difficult to be quite punchy in your in your argument." (LIP06)

Additionally underlying having opportunities to speak, understanding what they are doing and receiving explanations is the requirement that LIPs are not to be treated like a nuisance (#40, +4), they are aware of the emotional burden of self-representing (#38, +2) and are able to separate their legal issues from their emotions (#39, +2). Here, court staff and solicitors may see LIPs as a nuisance because they alter the usual run of the court process or place demands on court staff which are different to those from legal representatives – 'we are tortured' (C08) – and would like to see LIPs more emotionally detached. Nonetheless, the view considers that LIPs should not be penalised for it or feel like they are treated as such and places the onus of managing the LIP's emotional state on the judge (#22, +2).

Treating LIPs with respect is important as presented in the contrasting voice in this factor:

> "So over the years, I've felt that there's been high levels of professional snobbery within the legal system... there's like this invisible line that you've crossed over, and they're completely snobbish against you, they completely start to dismiss you, they see you as a nuisance and who are you - you are not a legal representative, and so on. So, there should be like a level of respect, regardless, if you have an understanding of the judiciary or not, even though you have, like a small level of understanding, there should be there should be like a level of understanding from the, from the professionals." (LIP06)

Of less importance to legal participation in this perspective are the statements that challenge the status quo, and which may cause inconvenience for court actors other than LIPs. The statement on only the people involved in a case being present in hearings (#21, -5) is viewed as least important in this view, and is ranked the lowest on this factor out of all of the factors.

> "The vast bulk of cases are still being done on Sightlink now, so you can have days where you have, you know, 35 plus people linked in to the Sightlink and the difficulty is that if there's a litigant in person comes on, and it can only be the people involved in that case, everybody else goes off... I think that's really counterproductive. ... If it's an actual proper hearing then that's different, but a review hearing I don't think it should be necessary that everybody else steps out." (SOL05)

Not what is important for LIPs to participate but rather for what is convenient for practitioners is prioritised here. This may account for why being able to see and hear all participants in a hearing (#11, -3) is also given less priority. Factor 3 differs from Factor 2 in these two aspects. The latter affords them more importance out of a sense of fairness and an equal footing against an equal adversary, while Factor 3 sees LIPs as an inconvenience.

> "I feel that sometimes, personally, I don't treat them like a nuisance. But there's people that you go (rolls eyes) when they come." (C08)

This sense that LIPs are an inconvenient reality in the court system is also demonstrated by the low priority given in this view to other accommodations or changes that could strengthen legal participation. Some elements are seen as unlikely to ever happen and are given a low rank. Contrasting acutely with Factor 4, ensuring consistent practice between judges in how they deal with LIPs in the family courts (#1, -4) is deprioritised because it is unlikely to happen and contrary to judicial discretion to expect consistent practice across courts:

> "Judges will run their court the way they want to run their court. So I don't mean it's least [important] - it probably is very important." (C08)

In a similar vein, having the same judge throughout one's case (#2, -4) is also ranked as less important because of the impracticality of achieving it and its irrelevance:

> "Yes, in an ideal world, yes, but not necessarily. I thought that was a bit idealistic, I suppose." (C08)

> "Not really relevant to an evidence based outcome." (J07)

The negative loader in this factor provides the mirror image of this point seeing consistency as important, having been before eight judges and experienced what he calls 'erratic' behaviour:

> "There's no set pattern. They seem to be very self-opinionated. And they seem to have their own procedures and ways of doing things, rather than doing things within the credence of the courts and the legal status." (LIP06)

Likewise, the impact on LIPs of not being invited to speak first when it is their application (#25, -4) is not considered important.

> "It's a common misconception that, you know, if you're the applicant, you speak first. However, the judges will in my case and in the 10 years I have submitted applications, they have let the other side speak beforehand. ... There's been times that I've even walked into the courts and the case has been addressed by the judge and the other side. They've been actually talking about it when I haven't been present or haven't even opened my bag or even present myself, get myself ready." (LIP06)

Other procedural rules that are considered less important are ensuring LIPs can see and hear all parties (#11, -3) and only parties relevant to the case are present (#21, -5):

Any expectation that legal representatives in the case should assist LIPs to progress the case (#17, -3) is met with both disdain and sympathy. Any support or help a legal representative may give the LIP in the case is not appropriate:

> "It's very difficult to do that you know, and they're not your client and it's very hard and I think it isn't really the legal representative's job to do that at all, and it never was. And once you start down that road, it is terribly difficult. Your own client then begins to get suspicious of you. It's fraught with difficulties..." (SOL20)

The opposite view of the negative loader is that legal representatives should lend support to LIPs to speed the process along:

> "We don't know sometimes the policies and procedures of how to address that discussion or even an argument in court. However, if we have someone there to assist, and sort of, you know, erase or eradicate or else add to it, it would make things an awful lot quicker, it would expediate the decision from the court." (LIP06)

Yet it is recognised that some aspects of case management or support are fulfilled by the legal representative on the other side. This happens partly as directed by the court or to help progress the case and make sure it keeps on track. Either way, it is a considerable additional burden on the solicitors' time spent on a case:

> "It's very time-intense. And you're always trying to make sure you're covering all the points. You're doing extra work that you wouldn't do in other cases, in terms of writing to them, when the court should just be writing to them. But you don't want balls to be dropped. And you want to make sure too that they're getting a proper service ... But I certainly would do it regardless, you know, it's important but you do you feel sometimes that shouldn't be the role of solicitors on the other side - in effect to be spending all this time..." (SOL05)

The lack of legal capability is the reason for needing to lean in to help LIPs but it would be better if someone was appointed or on hand to lend support to LIPs:

> "And so even if there's stuff put online or whatever, people aren't able to absorb the information and it's hard... So I really don't know how that can be helped unless there was something like, there was a person nearly like a professional, you know, position created. And not necessarily a lawyer going in, but just nearly like a professional McKenzie friend or something, you know, assigned to courts to deal with this specific thing." (SOL05)

But, echoing Factor 2, statements that relate to providing support, information or accommodations for LIPs are similarly afforded low importance: case documents should be equally accessible to LIPs and received in good time (#10, +1), support at court (#8, -2), availability of advice organisations (#15, -1), user-friendly court buildings (#6, -1), hearings scheduled to take account of LIPs' circumstances (#12, -2), having a McKenzie Friend to support (#14, -2). Factor 3 departs from Factor 2 in that the view gives less support to the court forms being easy to find (#5, +1). The prevailing view is that there is no need to change anything just because there are LIPs and changes should be for all court users. However, LIPs needing to adhere to court norms and etiquette (#31, -3) is unimportant.

The view defined in Factor 3 is one that LIPs put in the time and effort to run their case, have a firm understanding of what they are walking into and are facilitated by the judge. They are recognised as an inconvenience and it would be better for all if they could control their emotions but nevertheless should not be treated as an inconvenience. Engaging with the court means LIPs are in contact with the court officers who provide information and process paperwork. It is understandable in a system that has not been fully adapted to managing the progress of LIPs that they may be seen as an irritant rather than as an expected part of the working day. They are entitled to be there, so they need to be facilitated with respect.

Factor 4 – Consistency in court contributes to fairness

This view is defined by four participants and is characterised as follows:

> "Well, it would be helpful to have the same judge throughout their case - it doesn't always happen even in child protection cases. Because at least then there would be some sort of rapport between, hopefully,... the personal litigant would have some sort of trust in the judge that they were being fair, and they were trying to help them put their side of the case and their views." (SOL09)

The perspective centres on how LIPs are treated by judges and others in their cases in pursuit of fairness. LIPs feeling they are taken seriously (#18, +5) and judges ensuring they have opportunities to present their case (#24, +5) are ranked most important, followed by consistent and fair treatment. Judicial consistency, both with regards to having one judge (#2, +4) and there being consistent practice with LIPs across the court system (#1, +4), is important and both statements are distinguishing statements. Consistency is a means to ensure a satisfactory outcome:

> "Consistency so that all are engaged in process from start to end should achieve satisfactory outcome." (J04)

Having the same judge brings continuity to a case and allows familiarity to develop. This avoids LIPs having to explain themselves to different judges, a litigation skill they may not have. It also enables the judge to see the LIP's dedication to their case:

> "My case has been going on for four and a half years. And over that period of time, I've had a few different judges. If you had the same one throughout, then they're going to be familiar with your case. I understand that they've got a big workload and they receive many cases a day but if they see your face, and they can see that you're still thriving and pushing, you know, for what you've tried to achieve from day one, which is only to see your son, your daughter or your loved one... I think that will give a better understanding and sort of base for them to help with the case and to make decisions in a fair and unbiased way." (LIP07)

The consistent engagement with a judge is seen to help the judge make fairer decisions, and it cautions against a stand-in judge from making major decisions in a case where they have not had the chance to fully familiarise themselves with the case.

This is related in this view to consistency of practice between judges too (#2, +4). LIPs who become familiar with how one judge operates can be flummoxed when before a different judge who has different priorities or preferences.

> "I've had six judges, maybe more. [Judge X] was horrendously process driven. [They] did what [they] wanted to do. Whereas all the other judges did the same thing. They got me in first at 10 o'clock, standard process. They listened to the reports, except for one. They run the standard process. [Judge X] never." (LIP03)

The view in Factor 4 contrasts acutely with that in Factor 3 which deprioritises judicial consistency because it is unlikely to happen. Factor 4 also assigns the highest ranking out of all the factors to the statement about the legal representatives following agreed professional guidelines on dealing with LIPs (#16, +2) again highlighting consistency in practice and favouring a litigation environment facilitated by all court actors that is stable and knowable.

Supporting LIPs feeling that they are listened to requires being given opportunities to speak to present their case (#24, +5). As across all of the factors, this is of most importance in this perspective too because it is essential to enable LIPs to get their case across to the judge, all in the interests of fairness against represented parties:

> "It's being given the right to speak and not being over spoken by the likes of the barristers or, you know, the judges, I don't understand all of the legal jargon and all of the legal terminology. So yes, correct me if I'm wrong, by all means. Still, let me speak and let me try to explain it in say layman's terms, the way that I understand it. I didn't go to law school, I'm not a barrister, I'm trying my best to do so, please don't, you know, put me down whenever I'm trying to speak and let someone else speak over the top of me ..." (LIP07)

Other practice specific to the courtroom is prioritised in this view: when LIPs' lack of familiarity is taken into account (#20, +3); when the court system pays attention to the high levels of anxiety LIPs may experience (#3,+3); and the judge can see beyond the LIP's emotional state (#22, +3). The view here is litigant-centric like Factor 5 in that LIPs come as they are:

> "The judge has to be able to deal with it." (LIP03)

but it does not go as far in its emphasis on taking stress and vulnerabilities of LIPs into account as seen in Factor 5.

Aspects of litigating that take place outside of the courtroom were of less importance in this perspective, like the view in Factor 2. Of least importance in this view were the user-friendliness of court buildings (#6, -5), the provision of organisations which offer free advice to LIPs (#15, -4), the ease of finding the court rules or forms (#5, -4) and legal procedures being easy to follow (#4, -3). The rationales were not saliently coherent and were divided between believing these aspects to be less important than being treated fairly or consistently and believing they were in place already or easy to obtain. This latter reasoning is less related to participation than to personal circumstances or a misconception, for example, that advice organisations are readily available to offer free advice.

Taking notes in their hearings (#37, -4) is also regarded as less important either because it is impossible for LIPs to do so on the hoof:

> "It is still a very important fact that we should be able to take notes. But ... we can't speak and try and take notes and try to keep up with everything that's going on. It's quite a fast environment in there. You know, it's rapid fire whenever, one person's [speaking] so it's important yes to take notes, but we don't have that luxury to be able to take notes." (LIP07)

or because what they verbally articulate to the court is more important, placing an importance on the performative aspect of a hearing for the benefit of the judge rather than what is important for the LIP to participate.

> "If they're taking part, then they're not taking notes, are they? They're articulating, they're advocating, so they're talking." (J04)

Bringing about more consistency in how judges run their courts when there is a LIP, and the practice of legal representatives when against a LIP are prioritised in this view in pursuit of building trust and a sense of fair treatment. The provision of information so that LIPs are more informed of the process may also encourage more consistent

behaviour on their part too, though as in the other perspectives, there is no expectation that LIPs should be highly educated (#33, -5) or have the skills to test evidence in their case (#32, -3).

Factor 5 – Recognise LIPs' vulnerability in the system

This view is defined by 16 participants including one negative loader and can be summed up as follows:

> "LIPs are not one group or type and can't be treated as such. Important always to make sure inclusion and participation within courtroom is observed." (J03)

> "I think we just have to take a litigant in person as they come." (J25)

This perspective emphasises the importance of accommodating LIPs' vulnerabilities, the stress they undergo and their lack of familiarity with the court system. The need for litigation support for LIPs through advice organisations, provision of information and lay support are particularly important for good legal participation.

The characterising quote above encapsulates the importance of the individuality of LIPs and the need to facilitate their participation in court. They are not lawyers entrenched in normative procedure and they present with their untrammelled individual characteristics, including the stresses and emotional involvement arising from their case and litigating. Factor 5 more than any of the other factors gives prominence to managing the stress, emotional involvement and difficulties LIPs experience. This focus on the individual, from the judge's point of view, arises because they appreciate LIPs are not familiar with the court system and their lack of familiarity can be overlooked:

> "I think the things we take for granted are important to them." (J15)

From the LIPs' perspective, it comes from not being considered as having a valid place in the system and the accommodations are needed to bridge LIPs' lack of familiarity with it:

> "LIPs should be considered in the system. … Otherwise you're a ghost. … You enter in this new world, everyone else is comfortable because they're there every day. You're in a new environment." (LIP01)

Most important to having a legitimate place in the system is that LIPs should feel they are taken seriously, listened to and have a fair hearing (#18, +5). It assumes several other elements of the process are in place, such as not being treated as a nuisance (#40, +2) and the court paying attention to high levels of stress (#3, +3), mirroring a similar emphasis on litigant-centric practice as seen in Factor 4. The overriding principle of being taken seriously arises from two points of view – top down from the fair trial principles engrained in judicial thinking and bottom up from bitter experience of the marginalised.

> "A fair hearing is the most important role judges perform." (J21)

> "I felt on many occasions, 'your man's in the room, we have to give him a hearing.' You know, I walked in one day and there's a full blown conversation going on about our case between the barrister and the judge ... I know this shouldn't be happening, because I should be in the room when there is conversations going on. But you kind of feel like you're a bit of an inconvenience. ... 'Well, we have to hear him, we have to hear what he says,' tick a box, you know, but ... you feel like you feel like actually that you're being penalised for being a litigant in person." (LIP08)

This perspective emphasises paying attention to LIPs' individual circumstances. Accommodations are needed for LIPs with vulnerabilities (#9, +5), and for the high levels of stress LIPs experience (#3, +3) and the directions made by judges should take account of LIPs' lack of familiarity with litigation and the support and resources available to them (#20, +3). It accepts that self-representing is an emotional endeavour and that it is difficult to leave one's emotions outside the door, as would be expected of a legally trained representative. This perspective formulates this as both the notion of access to justice for all, so including people with vulnerabilities:

> "The most vulnerable people in our society should be accommodated at court with priority." (J21)

and also of being aware of the stress LIPs may experience. The process of litigating without representation can be so traumatic that it interferes with the capacity to participate, especially when family ties are at stake, to the extent that LIPs can experience mental ill-health. So, being aware of this is important.

> "It's becoming aware of it, and making allowances for it, because they're in serious states, and they're highly vulnerable." (M04)

This perspective logically co-prioritises accommodating the needs of LIPs with vulnerabilities (#9, +5) with the court system being aware of the stress LIPs experience (#3, +3). LIPs enter into proceedings unaware of how stressful they are:

> "I never realised how much anxious stress levels there were when you're in the middle of it all. ... You don't realise how stressful it is until you're actually in it. Yeah, it would be a lot easier for litigants in person if they knew what they were letting themselves in for and if they knew what was ahead of them." (LIP10)

Experiencing high levels of stress can leave some LIPs feeing unsafe and vulnerable, again coming back to the point in this view that system-induced vulnerabilities need to be accommodated:

> "To feel safe, simply to feel safe, because it's a very difficult place to be in because people are stressed, highly stressed. And it's difficult to feel safe in those scenarios. So it's to make things as easy for them as possible, because they're highly stressed and to make allowances for people that are in that state." (M04)

It is noteworthy that this perspective does not rank more highly the provision of hearings to decide on formats and adjustments for LIPs (#26, -2). One respondent felt that once a triage system was instituted it would fall into place and another said hearings already covered these points, albeit unsystematically.

There is a humane acceptance in this perspective of how difficult it is for LIPs to separate their legal issues from their emotions (#39, -4) and the difficulty of being aware of the emotional burden of self-representing (#38, -3). Both are recognised distinctly in this view and are assigned the lowest rank compared to how they are ranked in the other factors. Even if beneficial, it is not seen as important for LIPs to separate their emotions from the case because it is unachievable.

> "I just think that it is emotionally charged environment anyway, so, it's just, you can't really ask them to do that [#38], it's not achievable." (J21)

> "So the thing about being a litigant in person is, you know, it's incredibly hard to separate your emotions from the legal issues. And I think allowances should be made for judges that, you know, this isn't someone who's in and who's paid to represent this guy in relation to the issues he has in relation to his kids or whatever the family matters there are. So allowances should be made for that." (LIP08)

In this view, making the proceedings participative for LIPs requires accommodating people who are not familiar with the system by judges providing explanations, checking LIPs can follow and know what to do next (#23, +4) and ensuring LIPs have opportunities to speak so they can present their case (#24, +4). Again, these are seen both as basic facets of justice and participation.

> "There's undoubted difficulties for them to present their case but I think we are aware of the need to give them a fair hearing, they are given a chance to speak." (J15)

> "I definitely think that, you know, advocacy, whether it's from a lay advocate or the person themselves, it's very important that they must be heard, and they must be directed and guided in a way that enables a judge to understand the issues in the case, sometimes very complex issues." (M01)

It is possible to make accommodations that help manage LIPs' vulnerabilities through judicial checking (#23, +4) and flexibility on court rules:

> "People will say they understand it or people will nod or people will, you know, whatever, whatever, but it is important to ensure that they know what's happening and that they know the significance of what's being said. A lawyer can throw out a point, or observation, that carries actually a lot of weight with the issues about credibility or probative value and so forth. It may go over the head of the litigant in person. So, you know, there are moments when you do have to check that the litigant in person understands that they need to address that particular thing. That's an important element." (J25)

Nonetheless, there are limitations to accommodating LIPs, particularly ones who are perceived to be in proceedings to deliberately cause mischief.

> "You also can't bend over backwards and make it unfair for the other person, but some of them do have an attitudinal problem and they do deliberately come in to obstruct the proceedings, to prolong them or whatever. So you do have to ensure fairness to everybody in those cases." (J21)

This perspective with its appreciation of vulnerability, the absent sense of safety and acute emotional engagement in the proceedings understandably gives prominence to LIPs having someone other than a lawyer to support, assist and advise, such as a McKenzie Friend (#14, +4). This is a distinguishing statement in this factor assigned the highest rank between all of the factors

> "McKenzie Friend is very a much fundamental right and one simply facilitates that after the various protocols are gone through." (J25)

> "Where I had [a McKenzie Friend] there at the final hearing, you know, which was an enormous help to me. And as I say to obviously the emotional aspect, you know, for attending the hearing like that, but it was definitely very beneficial to have [McKenzie Friend's] knowledge to help me through that." (LIP12)

The importance of the support of a McKenzie Friend (#14, +4) promotes the view in this factor that facilitation in court from a judge alone is not enough. The availability of somewhere for LIPs to get support at court (#8, 0) is favoured in this view:

> "I believe there should be some sort of guidance counsellor, guidance person in court itself to give you any more information that you need, support you need inside it ... And we might just need that extra bit of help to get you across that line. Or maybe understanding what way to come across to the judge." (LIP17)

> "If I don't have access to support systems ... or if they cannot direct me to places that I can go to inform myself - I'm not asking them to inform me, I'm just asking them to be able to direct me to somewhere where I can inform myself about it. You know, if I don't have access to that information, I'm not going to be given a fair hearing." (LIP04)

Furthermore, the provision of advice organisations to offer free assistance to LIPs (#15, +3) is also a distinguishing statement and Factor 5 is the only factor where this statement is ranked positively.

> "I regard it as the highest priority that LIPs obtain support and understand the process they are involved in." (J23)

Related also to this theme of support – whether it is facilitation from the judge (#23, +4) or McKenzie Friend (#14, +4) or a third party (#15, +3) – is another distinguishing statement in this factor, namely whether LIPs should be able to hire a legally trained professional for specific pieces of work (#13, +1). In Factor 5, it receives the only positive

rank amongst the factors and is the polar opposite to the view found in Factor 2. The benefit to case management and to the LIPs themselves is recognised:

> "I totally agree with that. Bringing someone in for a limited time, help with their statements of claim, something that's really fundamental to their case, to crystalise the issues so they can be presented in court ... because the amount of times you have to adjourn things because you get a 27 page document which is purportedly a statement of claim. It's a really important document in their case but they don't understand the importance of it but it's... really goes back to mixing up their emotions with the legal issues and a lawyer even for a limited time period could assist with that. I just think that would be really useful." (J15)

However, this support is very difficult to obtain as exemplified by the resistance to it described in Factor 2.

In line with this perspective prioritising individuality and accommodating LIPs' lack of litigation skill, it correspondingly downplays the need for LIPs to be highly educated (#33, -5) and to follow court norms and etiquette (#31, -5). Factor 5 deprioritises LIPs' personal characteristics as important to legal participation:

> "The court should ensure that all, of all varying abilities, are accommodated to ensure effective participation." (J19)

> "For me, should largely be irrelevant, you know, because everyone has a right to a fair trial. Everyone has a right to be heard ..." (LIP08)

This view therefore recognises the status of LIPs as litigants and that they should not be expected to have the skills of lawyers, rather they need considerable support and litigation assistance and should not be seen as advocates or representatives, but as litigants.

Little importance is given to the displacement of the procedural norm of the applicant party being invited to speak first when they are a LIP (#25, -4). Reasons for this vary, including seeing the practice as either a learning opportunity for a LIP applicant or as the LIP being given the chance to respond without having to formulate opening remarks. More negatively, it is seen as reinforcing a sense of being treated unequally, with lip service being paid to LIP input.

> "Judge X certainly would have asked the respondent's solicitor to speak first and gave kind of an update on where I suppose what stage the application was at, and then asked me for my response on that. ... There might have been times maybe where I felt as if what I wanted to say ... the judge didn't seem ready to listen to it even. You know, because they had already taken what the legal representative had to say and taken that as read. And, as I say, then, my input really wasn't, I felt at times maybe wasn't really taken into account, you know?" (LIP12)

However, this negative view can be counteracted where the LIP feels they have a voice:

> "I would be less concerned about being able to speak firstly if I feel I'm getting, you know, been treated equally, you know, getting that kind

> of level of kind of, you know, you feel that you've been taken seriously, you're being heard, you're getting a fair trial." (LIP08)

The less important ranking for this statement (#25, -4) aligns saliently with the more highly ranked opinions that judges should provide explanations (#23, +4) and that LIPs should feel they are taken seriously (#18, +5) and with the more lowly ranked opinion that LIPs should follow court norms and etiquette (#31, -5).

> "Ultimately it's the judge's role that parties can actively participate. Inevitably they are not going to follow norms and etiquette so I don't think that's a barrier." (J15)

The underlying point is respect for the court:

> "But if someone's not familiar with the etiquette and the court norms, then it shouldn't be expected of them that they – as long as they're being respectful." (LIP08)

Taking notes during a hearing (#37, -3) is not seen as a priority either because the judge is there to ensure a fair hearing – which overlooks the practical utility of coming away from a hearing with a written record of it – or it is extremely difficult to do when advocating for oneself. Putting in the time and effort to manage one's case (#36, -3) is ranked as less important again for several varying reasons. From the judicial point of view it is an impractical requirement and not up to the judge to pay attention to:

> "I think that's, you know, totally impractical ... [T]o get vexed or to get annoyed that they haven't put in the work involved is dangerous. I think we just have to take a litigant in person as they come." (J25)

From the LIP perspective, it is impractical because there is no way of knowing how much time and effort might be required when they are clueless about the process. Indeed, making information available or simplifying the system would reduce the amount of time and effort it takes to litigate without a legal representative.

> "If you make [information] easier to find then there will be less time and effort, would be less time and effort and less stress. If this information was, if the system was easier to do there, then this becomes irrelevant." (LIP10)

Factor 5 is a LIP-centric view that recognises the difficulties that LIPs have. It is different to Factor 1 in its emphasis on recognising and managing the stress and vulnerability that they may arrive with or may develop as a result of self-representing. Making appropriate accommodations so participation is not hindered and ensuring LIPs feel they have a legitimate place in the court are important in this view and this can only come about through overt action on the part of the court service and the judge. Adherence to conventional practice is less important provided deviations are not unfair on the other party. Facilitation by the judge, support from McKenzie Friends and the availability of third-party advice organisations are all promoted in this view.

Statements that reached some consensus

As we have seen, the interpretation of the factor arrays delivers five clear and distinct perspectives. Nonetheless, there were statements that reached consensus across the five perspectives. One was identified by KADE (the Q software analysis programme) as not distinguishing between the factors, that is, it was assigned a similar rank on all factors. Statement #16 about legal representatives following agreed professional guidelines on dealing with LIPs received middling to modest support across the perspectives:

#	Statement	F1	F2	F3	F4	F5
16	Legal representatives should follow agreed professional guidelines on dealing with LIPs.	1	0	1	2	0

The interview data show the more positive support comes from an appreciation of common practice amongst legal professionals. Guidelines for legal representatives which would inform LIPs and clients alike of what to expect from the legal representatives, akin to those developed by the Law Society of England and Wales, were mentioned.[94]

> "Whereas if you have just a piece of A4 paper, you can say... this is a sheet that will just tell you about my professional obligations, and how I might be able to help you today, you know. And then one that you can give to your client to say, because your husband or wife is in person, these are the rules that I have to follow when I engage with them now" (BAR02)

Others placed little emphasis on guidelines, believing there to be enough already and the fewer guidelines, the better.

> "I kind of think that the less guidelines the solicitor, the legal representative, has to follow, the better. But guidelines are probably useful at the same time just to keep everybody right." (SOL08)

Factor 4 which prioritised consistency allocated #16 the highest ranking, endorsing consistency of practice amongst legal representatives as well as judges. Reference to what to expect from legal representatives for both represented and unrepresented litigants would provide baselines and some reassurance.

Throughout the perspectives, other statements were assigned broadly similar (identical in one case) ranks across the factors but were not statistically significant. Identifying statements that were assigned ranks no more than 3 ranks apart and appear on the same side of the grid highlight the areas of commonality between the perspectives and so what may be taken as fundamental to participation for all participants. These five statements have been discussed in the factor descriptions, but it is instructive to review them as commonly held views across all five factors.

94 The General Council of the Bar, Chartered Institute of Legal Executives and The Law Society, *Litigants in person: guidelines for lawyers; Notes for Litigants in Person; and Notes for Clients* (2015) <https://www.lawsociety.org.uk/topics/civil-litigation/litigants-in-person-guidelines-for-lawyers>

Two statements were commonly upheld as more important. They both relate to the participation attribute of *Equality of Arms* - #18 and #24:

More important:						
#	Statement	F1	F2	F3	F4	F5
24	In hearings, judges should ensure LIPs have opportunities to speak so they can present their case	+4	+4	+4	+5	+4
18	LIPs should feel they are taken seriously, listened to and have a fair hearing.	+2	+5	+3	+5	+5

There is consensus in the qualitative data in the rationale for the support for statement #24. Loaders of all stripes rank it highly, associating it with a fundamental aspect of fairness for anyone with a court case:

> "The very basics, if it's not [happening] how can you have a fair judgment?" (LIP01)

> "It's fundamental to being able to present your case. You're not really a litigant at all if you don't get an opportunity to present your case. So, if you don't get the opportunity to speak, that's going to have a real drastic impact on whether you have a fair hearing and the outcome that you then get." (BAR01)

> "it's really one of the 2 the planks of natural justice and I just thought it was fundamental and therefore it had to be paramount." (J12)

> "I think this should be treated in the same way as anybody coming to court, you know, to be able to be given a fair treatment, and it also helps them coming in too because it's nerve wracking enough coming into a court without, you know, not being given the opportunity to speak and say what you want to say ... [T]hey want somebody to hear their side of it and what they have to say." (C06)

It is such a basic aspect of participation, it almost goes without saying. One judge (J22) found it hard to believe that LIPs might not have been afforded the chance to speak in their hearing, despite the evidence in LIPNI1 that this has happened.[95] Another judge teased out the essence of this statement as presenting one's case rather than just speaking given that some people will be less articulate or willing to speak up. Flexibility in hearings is key.

> "I had in mind that the right to speak isn't always the most important mode of communicating one's case. Some people are terrible speakers, some are desperately shy and nervous. No amount of encouragement or guidance will work for them, so I was thinking about the right to present their case whether in writing or by speech or by a combination, or simply Q and Answer. We've got to be terribly flexible in these hearings." (J10)

95 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 142-7

This suggestion that the statement #24 emphasises the principle of presenting one's case rather than speaking recalls the original formulation of this descriptor present throughout the development of the legal participation framework. It is:

In court, the judge ensures LIPs have opportunities to present their case

The insertion of 'speak' in #24 was to emphasise the performative aspect of advocating in the hearing and distinguish it from submitting documents. The simpler wording of the descriptor is more appropriate to emphasise the principle of presenting one's case.

The commonality in not only importance but also in the reasons for the high ranks assigned to #24 across the loaders in the five factors singles out this statement as a fundamental feature of participation. It rises to the top of the statement pile with regards to importance from all perspectives. It is an essential element of participation – like the hydrogen of effective participation.

A consensus in ranking but less so in reasoning existed for statement #18 (LIPs should feel they are taken seriously, listened to and have a fair hearing). Its importance comes from two sources – the fair trial principles engrained in judicial practice and LIPs' bitter experience of not feeling listened to. Clearly, the principle of fairness in court proceedings is an established, non-negotiable requirement, but the statement was included to recognise and specifically address the LIPs' perception of fairness. Whether this difference between upholding the fairness principle and ensuring there is a perception of fairness on the part of the LIP was appreciated by all the participants is uncertain. Either way, fairness and the sense of it were embraced by all types of participants:

> "I feel that they should be taken seriously and have a fair hearing and I just don't think just because they're representing themselves, they should be treated any differently to anybody coming in with a barrister or a solicitor, I think they should be given the same right to a fair trial and a fair hearing." (C06)

> "It is essential that LIPs have proper access to justice." (SOL14)

> "A fair hearing is the most important role judges perform." (J21)

> "That is a very, very crucial part that to any case or any hearing that you're going to, you know, if you're not being taken seriously, and you feel that you're being classed as a second class citizen, just because you [self-]represent. How are you ever going to have a fair trial? You know, the judge, there should be clarity across the board where judges should not make any difference towards anyone, whether it be the barrister or the litigant in person, everyone should be respected and honoured in that way." (LIP07)

The headline for legal participation here is there is a high degree of importance attributed to litigants feeling they are taken seriously, listened to and have a fair hearing.

Three less important statements that were commonly held relate to LIPs' personal characteristics – their education (#33), their confidence in their ability to self-represent (#34) and their skills to test evidence (#32). They all relate to the descriptor of legal

participation *LIP has capacity to manage case and conduct self-advocacy* under the participation attribute of *Ability to engage in adversarial proceedings.*

Less important						
#	Statement	F1	F2	F3	F4	F5
33	When LIPs are highly educated	-5	-5	-5	-5	-5
34	When LIPs are confident in their ability to self-represent	-5	-4	-2	-2	-2
32	When LIPs have the skills to test the evidence in their case	-4	-1	-1	-3	-2

The attribution of less importance to personal characteristics by the participants unanimously derived from the opinion that access to justice is available to all regardless of individual traits.

> "The system, as a matter of a public facing system, should be able to cater for the public, regardless of their educational attainment." (BAR01)

> "If I believe that access to justice is available for all, that (pointing to #33) should be the least of all the considerations and it really actually should be imperative that someone who has particular needs that should be addressed." (J24)

> "Everyone should have the right to represent themselves, no matter what their level of education is and the courts should adjust to that." (LIP05)

This opinion that litigating in person should not be contingent on individual characteristics is sometimes challenged by the experience of LIPs being told by a judge that they are educated so surely must be able to self-represent, overlooking their lack of familiarity with the court processes:

> "You could have a degree in sociology or a degree in maths and be a teacher and then go into courtroom and say, 'you have a third level education in maths then you must be able to represent yourself.'" (LIP10)

There may be an intellectual acceptance that level of education is irrelevant but also there is a belief that some education will surely be of use to a LIP. Being able to read, handle legal documents and process them may well come more easily to those who have a higher level of education, but the point here is that it should not be a determinant of legal participation and no expectation on capability in managing one's case should be assumed for any LIP, not even those with third level education.

As discussed in chapter 5 on developing the concourse, we decided to keep descriptors related to individual characteristics in the concourse despite our view that personal traits should not decide whether an individual can participate in their case. The rationale for retaining them was their high prevalence in the qualitative data from

LIPNI1.[96] The assignment of less importance to these three statements from participants of all types provides support for our view. This point is discussed further in relation to the final composition of the framework in chapter 8.

This review of the consensus statements has indicated the importance of judges giving LIPs opportunities to present their case and of LIPs being, and feeling they are, taken seriously, listened to and that they have a fair hearing. The personal characteristics that LIPs arrive with should have no bearing on their participation in their case.

96 Ibid 142-7, Ch 9

Chapter 7: The perspectives in context

Our overall objective is to understand more deeply the descriptors of participation and what they mean in live, on-going proceedings to ensure fair trial rights are protected. The output of the Q study was five perspectives from stakeholders of litigating in person – LIPs, judges, court officers, legal representatives, and McKenzie Friends. Each of the stakeholders is implicated in the human rights framing of effective participation either as rights-holders or as duty-bearers. Their perspectives therefore provide reflections on participation and on the descriptors in the Framework. This chapter reviews the factor descriptions in relation to each other and to the human rights framing of participation and the next chapter reflects on the content of the Framework.

There were no two sorts the same from the 81 participants in the Q study. Clearly, multiple interpretations of what is important for LIPs to participate in family proceedings exist, which is Q method's strength for the exploration of subjectivity. The factorisation and interpretation of the 81 stakeholders' opinions resulted into five recognisable perspectives. The factor descriptions are given in the previous chapter as unalloyed interpretations from the data sources without discussion of the context or their implications. As well as the commonality across the five, as discussed above, there is commonality between individual factors. These aspects of the factor descriptions and how the factors relate to participation are discussed here. First, here the five perspectives are summarised.

Summaries of the five perspectives

FACTOR 1 – CHANGE THE SYSTEM

This perspective is litigant-centric and recognises the need for accommodations for LIPs in family proceedings. It advocates wide scaffolding within the legal process and responses to LIPs to ensure they can participate fairly. The judge, legal representatives and case parties, and the court system all play a role in providing this scaffolding. The principle that the court is there for all-comers regardless of their education, background or abilities is emphatically defined in this view. It also recognises that LIPs may not have the ability to self-manage and that confidence, legal capability and educational ability are not important in supporting the LIP to self-represent and legally participate in hearings. The emphasis is on the system adapting to suit non-practitioners' so they reach a fair outcome and avoid miscarriages of justice. LIPs need to be accommodated in pursuit of an outcome.

FACTOR 2 - TREAT LIPS LIKE LAWYERS

This perspective positions LIPs in the role of legal representative, requiring them to fit into the existing system as if they were legal representatives. LIPs choose to self-represent and so they need to be autonomous in their proceedings. This places an onus on them to be able to negotiate with the other party, understand the process, the norms and etiquette, the language, and all the other aspects of litigating to be treated fairly and manage the process. Accommodations for them in their role as litigant, such as support and the provision of information, therefore, are not important. They need to understand what they are doing so they can enjoy fair trial rights by averting problems in their cases and reducing their reliance on court staff. The bewilderment LIPs face or what it is like to self-represent with no prior training or experience is absent in this view.

FACTOR 3 – LIPS ARE AN INCONVENIENCE BUT ARE ENTITLED TO BE THERE

This perspective positions LIPs as an inconvenience to be managed so it is better if they are active in their litigation and have their eyes open to the intricacies and pitfalls of the litigation process. It is crucial that LIPs have the capacity to manage their cases and know what to do next. The role of the judge to facilitate their participation is key so they have opportunities to speak and understand the implications of decisions. Implicit in the facilitation of LIPs is the acceptance of their lack of familiarity with litigation and so not being treated as a nuisance even if their demands and presence place what is seen as additional burdens on court staff and others. The view holds that when LIPs are able to prepare their case and put in the time and effort, it is beneficial to the court and other court actors. As a party to a case, they have to pull their weight and not be passive in their case.

Factor 3 differs from Factor 2 in its recognition that LIPs need some support to be able to manage their case, while Factor 2 assumes they are akin to legal practitioners. Both factors support maintain the status quo.

FACTOR 4 – CONSISTENCY IN COURT CONTRIBUTES TO FAIRNESS

This perspective centres on how LIPs are treated by judges and others in their cases. Consistent and fair treatment carry the greatest importance in this view. Judicial consistency and consistent practice with LIPs across the court system is important. A standard approach to how LIPs are dealt with may provide some consistency and reassurance to LIPs as a means to ensure a satisfactory outcome, and this includes legal representatives following agreed professional guidelines.

The view in Factor 4 contrasts acutely with that in Factor 3 which deprioritises judicial consistency because it is unlikely to happen.

FACTOR 5 – RECOGNISE LIPS' VULNERABILITIES IN THE SYSTEM

Factor 5 more than any of the other factors gives prominence to managing the stress, emotional involvement and difficulties LIPs experience. The importance of accommodating LIPs' vulnerabilities, the stress they undergo and their lack of familiarity with the court system is prioritised because they are not lawyers entrenched in normative procedure and instead they present with their untrammelled individual characteristics. In particular, system-induced vulnerabilities need to be accommodated. There is a need for litigation support for LIPs through advice organisations, provision of information and lay support for good participation.

Putting the perspectives into context

The perspectives do not derive from mutually exclusive groups of stakeholders (see Table 8: Distribution of participants who load onto the factors). Instead, they mostly consist of reflections from a mix of stakeholder groups, underlining the danger of equating stakeholders with stereotyped views. Nonetheless, there was some commonality in stakeholder groups in some of the factors.

Factor 1 draws out the tension that exists in a system that permits self-representation by all-comers and yet has not adapted to their non-practitioner status. Less importance is given to legal skills, level of education, confidence and legal ability because the perspective recognises the difficulty of LIPs being able to skill up sufficiently to manage their cases. The gap is too large in many cases. Clearly, there are some procedures and accommodations for LIPs that will allow and facilitate participation, but there will inevitably be a limit to what individual LIPs can manage alone, and in complex cases, this limit may be reached sooner. In this view, the role of the judge, the court and other actors are called upon to facilitate LIPs and their non-practitioner status to promote participation. Given the difficulties LIPs face, a presumption of no familiarity or understanding of the system on their part is a good starting point for all court actors, even in a system where some scaffolding and supports are available. Until the system is overhauled to fully accommodate non-practitioners, any presumption or expectation of ability, familiarity or understanding is misplaced.

Factor 2 contrasts with Factor 1 in how it positions LIPs on a par with legal representatives and levels an expectation that LIPs should be able to perform to a similar standard. For example, no harm is seen in a LIP applicant speaking after the represented respondent because the represented party will be better able to lay out the case to assist the judge and the LIP will get their turn in due course. There is no need to adapt procedures or the court space to accommodate LIPs. This places a high expectation on LIPs. Getting their turn after the represented respondent is not the same as setting out one's case at the outset. Having to respond requires a gear-change to when they are expecting to present their own submission. Assisting the court should be secondary to upholding procedure that ensures a fair trial. The perspective fails to see how an inexperienced LIP will find it difficult to respond, present their own submission, follow what is going on, find where to go, and feel protected. The presumption that LIPs will be able think on their feet is unrealistic for non-practitioners.

This perspective bestows importance on negotiation skills which in the participation framework are regarded as a personal characteristic and defines the perspective's expectation that LIPs are worthy adversaries. Linking LIPs' understanding of (a) what they are agreeing to, what to do next and an ability to negotiate with the other party to (b) benefits for the case, legal process and other court actors, creates a virtuous circle of good participation which upholds Article 6 right to timeliness.[97] There is a benefit to all if LIPs can behave and act more like legal representatives. This attitude is logical if one thinks of LIPs as trained representatives or knowledgeable and skilled laypeople, but they are not or rarely are.

This attitude may arise from a lack of familiarity with what it is like to self-represent. LIPNI2 Part 1 on the human-centred approach told us how walking in the shoes of LIPs and vicariously experiencing LIPs' pain points can bring about realisation of, and empathy with, the difficulties LIPs face in a system not set up for them.[98] This process of revelation may be the type of orientation some court actors need to see LIPs not as legal representatives, but that LIPs are litigants and not representatives and have no training or guidance in how to litigate.

The perspective's lack of priority for unbundled services, also known as limited scope or discrete task representation, seems resistant before it has been fully explored. It is a model already in use in family law in other jurisdictions.[99] A pilot conducted this year by the Solicitors Regulatory Authority (SRA) in family cases England and Wales indicates that unbundling makes some legal services more affordable which would encourage some LIPs to retain a legal representative.[100] Levels of satisfaction for both end-to-end and unbundled clients were very similar and some clients preferred unbundling because they could exercise more control in their case. Research by Law for Life examined the effectiveness of a bespoke unbundled 'Affordable Advice' service, which provided a blend of step-by-step guidance from the AdviceNow website with fixed fee, unbundled legal advice from Resolution family lawyers at the most crucial points in the process.[101] Not only did the procedural and substantive outcomes improve for those who used the service, but it also reached a new market of people who could not afford to instruct a solicitor and those nervous about accessing legal advice because of the uncertainty of the final cost. Additionally, service users reported that the guides and the solicitor appointment helped them cope better with the process and mitigated the emotions generated by their case, while their levels of trust in legal services increased. The SRA pilot revealed that concerns still exist around indemnity insurance and the SRA is working with the industry to explore risks and develop guidance for law firms. Lessons on liabilities can be gleaned from practice in the USA and so while insurance

97 Article 6(1) of the ECHR states: 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

98 G McKeever and L Royal-Dawson, 'Using human-centred design to break down barriers to legal participation,' in E Allbon and A Perry-Kessaris (eds) *Design in legal education* (Routledge 2023) 146-7

99 American Bar Association's Modest Means Task Force, *Handbook on Limited Scope Legal Assistance* (2003) <https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_handbook_on_limited_scope_legal_assistance.pdf>; Courthouse Libraries BC, *Family Law Unbundling Toolkit* <https://www.courthouselibrary.ca/our-programs/family-law-unbundling-toolkit>; The Law Society of British Columbia's Code of Professional Conduct for British Columbia was revised in 2013 to include rules on Limited Scope Representation to provide guidance to lawyers <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/ >; FS Mosten and EP Scully, *Unbundled Services: A Family Lawyer's Guide* (ABA Book Publishing 2017); For a current operating unbundled service provider, see BC Family Unbundling Roster at www.unbundling.ca

100 Solicitors Regulatory Authority, *Unbundled services pilot: final report* (2023) <https://www.sra.org.uk/pdfcentre/?type=Id&data=1795725364>

101 Law for Life, *Affordable Advice Service* (2023) Research Briefing <https://www.advicenow.org.uk/lawforlife/news/new-research-briefing-affordable-advice-service-published>

arrangements must be considered they do not represent an insurmountable barrier.[102]

Treating someone without representation either the same as a legal representative or a represented litigant overlooks the chasm of difference between having and not having representation. Not being penalised goes without saying in a system that permits self-representation, but not paying any attention to the difference it makes to a litigant if you are represented or not is neglectful and ignores protections that need to be in place to ensure fair trial rights are upheld.

Factor 2 and **Factor 3** have commonalities but differ in that Factor 3 recognises that LIPs are not legal representatives and do require some accommodations. Nonetheless, LIPs need to be active agents in their cases to put in the time and effort and have some legal skills. Facilitation from the judge is key to keeping them on track but clearly this only applies while LIPs are in court. They are seen as an inconvenience in the system to be managed to keep proceedings fair and the wheels turning. Maintaining the status quo is preferred because it is not easy to see how changes can be made. Applying the human rights lens of participation as a part of the right to a fair trial, this apathy or disinterest in change is concerning as it overlooks the marginal experiences of legitimate court users. Indeed, it is interesting how infrequently the human rights entitlements of LIPs are invoked in the qualitative data.

Contrasting views on judicial consistency are present in Factor 3 and Factor 4. While Factor 3 sees it as impossible and of little relevance, **Factor 4** is alive to the impact that inconsistency has on LIPs' participation when they are unfamiliar with the process. Making sure a LIP is not excluded from part of the proceedings, or that only those connected with the case are present, for example, has been noted by Higgins J in Re: D's Application for Judicial Review.[103] More consistency in how judges run their courts when there is a LIP, and the practice of legal representatives when against a LIP are prioritised in this view in pursuit of building trust and a sense of fair treatment. Even though continuity of the same judge throughout one's case may be difficult to achieve, especially if it is a long case, it is listed as recommended practice in The Children Order Advisory Committee's Best Practice Guidance for Northern Ireland.[104] The provision of information so that LIPs are more informed of the process may also encourage more consistent behaviour on their part too. The difficulty of ensuring consistent practice should not overshadow the importance of it. A standard approach to how LIPs are dealt with may ensure greater participation for LIPs.

Feeling side-lined and ignored is a common experience amongst LIPs. This may well come about because of the time demands on judges to expedite proceedings efficiently. So, striking the balance between affording LIPs the time they want or expect and keeping proceedings succinct and time-efficient is not easy. All court actors report cases involving LIPs take longer than fully represented cases, suggesting not only experience but also expectation that LIPs will take up more time than legal professionals.[105] **Factor 4** highlights how making sure the LIPs feel listened to, that they count and therefore giving them feedback and explanations would surely help to not

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102 AR Rothrock, 'Limited Scope & Lawyer Liability: How Courts View the Lawyer's Role in Unbundling' (2012) 35 *Family Advocate* 30

103 *Re: D's Application for Judicial Review* [2000] Northern Ireland Judgments Bulletin, 248-257

104 The Children Order Advisory Committee, *Best Practice Guidance* 2nd edition (2010) <https://www.lawsoc-ni.org/DatabaseDocs/med_7204369__coac-best-practice-guidance.pdf>

105 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 153

only provide consistent practice but also trust and the sense of inclusion. This takes time and suggests the expectation that LIPs take longer should be institutionalised as a norm rather than seen as an anomaly to standard practice.

Factor 5 emphasises accepting the high emotions LIPs may feel as it is impossible to separate one's emotions from proceedings. LIPs' vulnerability needs attention. This echoes our findings in the first phase of the LIP research where indicators of the level of psychiatric ill-health amongst the study sample was far higher (59%) than in the general population (17%). Furthermore, outward appearances of LIPs can mask anxiety and other aspects of vulnerability.[106] The perspective presents the process of litigating without representation itself as highly stressful and reducing the capacity to participate. Co-prioritising accommodating the needs of LIPs who may have vulnerabilities with the court system being aware of the stress LIPs experience speaks to a systemic capacity to accommodate individual vulnerability that would include the capacity to pay attention to high levels of stress, especially if the stress arises from engaging with the court system. It may not be realistic to expect court processes to be entirely stress free, but the multiplicity of stress-inducing elements associated with self-representing should place a responsibility on the court system to minimise additional stress arising from navigating the process, again recalling an onus on the system to adapt to LIPs seen in Factor 1. This perspective recalls the judgement in Galo v. Bombardier which set out the principles that an early ground rules hearings should consider the procedure tailored to the circumstances of the litigant with reference to the Equal Treatment Bench Book.[107]

Themes

Beyond the factor descriptions, a number of themes are identifiable across them, all of which derive from the respondents' opinions and experience. This real-life subjectivity allows us to understand the frustrations that some stakeholders have with others and how they have developed, which in turn will help us understand what steps may be needed to bridge the attitudinal gaps and deconstruct the barriers to effective participation.

The tension between maintaining the status quo and instituting reforms to the court process to accommodate LIPs arises in all of the factors, sometimes overtly and sometimes implied. Factors 1 and 5 advocate for the widest reforms while Factors 2 and 3 the least. Advocacy for change comes from a place of pain and negative experiences while maintaining the status quo is supported by those for whom the system was designed, that is all stakeholders apart from litigants in person. Since LIPNI1, there have been some changes to reflect the presence of LIPs in the system, such as the establishment of the LIP Reference Group by the DOJ, NICTS taking LIPs into account when planning the migration to online hearings during COVID19 movement restrictions and the development of a website dedicated to family court proceedings.[108] However, the recommendation in LIPNI1 for a broader cultural change that accepts the presence

106 ibid Ch9

107 *Galo v Bombardier Aerospace UK [2016]* NICA 25, Northern Ireland Court of Appeal (2 June 2016); Judicial College, *Equal Treatment Bench Book* (2021 Revised April 2023) <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>

108 See the LIP Reference Group website, available at <https://www.litigant-voice.co.uk/>; G McKeever et al, *The Impact of COVID-19 on Family Courts in Northern Ireland* (2020) <https://www.ulster.ac.uk/__data/assets/pdf_file/0010/799039/Impact-of-CV19-on-family-courts-NI-201217.pdf> 6; G McKeever et al, 'Using human-centred design to develop empathy and supports for litigants in person' (2023) Report to The Nuffield Foundation <https://www.ulster.ac.uk/empathy-for-LIPs>

of LIPs with the extra time they take, demand on resources and need for adapted procedure has yet to occur:

> "For there to be acceptance of LIPs' place in the system, the expectations of all parties need to be better managed. This entails re-orienting the status quo, which currently puts legal representatives at the forefront of court procedures, to give the interests of all litigants, including LIPs, a higher profile than they currently have. The perspective of acting alone in the system needs to be brought to the forefront so that LIPs' specific needs are taken into consideration."[109]

Understanding the dynamics of resistance to change as well as identifying opportunities for change will be key to nurturing a culture attuned to the marginalisation experienced by LIPs.

Related to reform is a further tension between improving court efficiency with the aim of expediting proceedings in a timely manner (Factors 2 & 3) and accommodating LIPs who inevitably take longer (Factor 1). When LIPs are not accepted as a specific type of court user requiring particular accommodations to ensure their fair trial rights, the extra time and resources they take are regarded as inefficiencies and a burden. Instituting reforms that accommodate and accept their deviation from the legally represented model would allow a recalibration of efficiency targets which accommodate LIPs. Clearly, this would have implications for resource allocation, particularly for the time court officers spend dealing with queries and the development of consistent and easy-to-follow procedures. These are decisions for the state party, in this case the Department of Justice, which has the duty to ensure fair trial rights for all as well as controlling the choice of support measures that can be implemented.

Treating LIPs either as litigants or as representatives is another theme present in the views. Factor 2 sees LIPs as representatives who should act like a representative, while Factors 1 and 5 take a litigant-centric view and see LIPs as litigants with no expectation of capacity to conduct proceedings. Related to this is the contention in advocating for the availability of support and advice for LIPs (Factor 5) as opposed to the expectation that they arrive knowing what to do (Factors 2 & 3). Affirming LIPs as litigants and not representatives may help to soften the attitude that LIPs should be held to the same standards as legally trained professionals. It clarifies their position as rights-holders in the justice system exercising their right to a fair trial when seeking a remedy for a claim. There are few opportunities in either the current court environment or within professional legal training to reposition LIPs as litigants and encourage empathetic attitudes. Challenging the view that LIPs should be treated as if they were legal representatives would require an intervention of some kind, such as a Practice Direction.

Another dichotomy exists in views on judicial consistency versus judicial autonomy. Factor 4 strongly advocates for more consistency in proceedings while Factor 3 recognises the difficulty of instituting this. Judges who adapt and are flexible to the circumstances of the case before them clearly benefit LIPs in the sense that judges can alter the practice they habitually use with legal professionals when a LIP is present. However, standards or common practice that are acceptable for judges to adhere to

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109 G McKeever et al Litigants in person in Northern Ireland: barriers to legal participation (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 240

when there is a LIP in their courtroom are not yet agreed. Clear guidelines such as a Practice Direction building on existing resources, including the Equal Treatment Bench Book, should be developed to ensure that there is a baseline standard across the judiciary, allowing LIPs to be aware of what to expect.[110] This would need to encompass the practice expected of legal representatives to ensure coherence between court actors.

Q methodology gifts subjectivity from multiple stakeholders. These distinct viewpoints are of great value to our understanding of the barriers that still exist for LIPs in their efforts to participate in their cases. The development of interventions or adaptations should acknowledge and refer to these distinct viewpoints too if they are to dissolve the barriers and promote the exercise of fair trial rights.

110 Judicial College, *Equal Treatment Bench Book* (2021 Revised April 2023) <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf> which is deployed in England and Wales as guidance for judges.

Chapter 8: The ten descriptors of legal participation

The Q study delivered five perspectives with their underlying reasoning as real-world reactions to the participation framework via the 40 statements. In addition to what the perspectives tell us about real world views on what is important for LIPs to participate in their cases, we were interested in what the perspectives tell us about the robustness and meaning of the effective participation attributes and their legal participation descriptors within the Framework, both conceptually and operationally. Departing from a standard Q study, in this section we examine each participation attribute in turn through their component descriptors by reviewing what the responses to the Q statements contribute to our understanding of legal participation. This critical examination of the Framework leads us to a more condensed and focused rendering of participation.

Attribute 1: Non-discriminatory access to a court and proceedings, including to coherent administrative and legal procedures and sufficient information, and assistance to implement them

Descriptors of legal participation	Q statements
1. There are consistent approaches towards LIPs across the courts	#1. Practice between judges in how they deal with LIPs should be consistent across different family courts.
	#2. LIPs should have the same judge throughout their case for continuity.

The perspectives revealed diverse views on the extent to which judicial consistency is critical to participation. In Factor 4 we see that consistency is important for LIPs who are bewildered by different judges practising differently, but the perspective in Factor 3 is that consistency is aspirational and contrary to judicial discretion. Regardless of the operational difficulty involved to assign one judge throughout a case and to bring about consistent practice between judges, the impact of variations in approach to LIPs is destabilising and has a greater impact on them than on practitioners, which may have implications for their effective participation in their cases.[111] For this reason, descriptor 1 remains. Additionally, as it straddles both administrative procedures and judgecraft, it needs to be situated both here under *Access to a court* and under *Equality of Arms* with respect to the impact of consistency of a single judge on ensuring equal opportunities for both parties to present their case.

111 ibid Ch 1 on LIPs identifies ways to implement consistent practice

Descriptors of legal participation	Q statements
2. The system accommodates LIP status: i. Procedures including court forms are suitable for LIPs, i.e. coherent, followable, affordable	#3. The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.
	#4. The legal procedures should be easy to understand and follow.
	#5. Court forms, the law and procedural rules should be easy to find.
ii. Court buildings are amenable to LIPs	#6. Court buildings should be user-friendly for LIPs, e. g. safe spaces for LIPs, clear signage.
iii. Information on how to self-represent is available, followable and good quality	#7. Information on how to self-represent should be available and helpful for LIPs.
iv. Support at court is available and appropriate	#8. There needs to be somewhere for LIPs to get support at court as and when it is needed.
v. Adaptations are available and affordable for non-English speaking LIPs and those with experience of domestic violence	#9. The courts should accommodate the needs of LIPs who have particular vulnerabilities, e. g. experienced domestic violence, health issues, non-native English speakers.
vi. Evidence, case papers etc are equally accessible to both parties	#10. Case documents should be equally accessible to LIPs and received in good time.
vii. Hearings accommodate LIPs	#11. LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.
	#12. When court hearings are scheduled to take account of LIPs' circumstances, e. g. their caring or work commitments.

The ten statements above were developed to convey a court system that is oriented towards the presence of LIPs. They covered several aspects and subsequently elicited varying reactions in the five perspectives. This is helpful for interrogating the robustness of descriptor 2.

Statement #3, relating to descriptor 2.i, explicitly tackles the court's role in dealing with the high level of stress and anxiety LIPs may experience. The litigant-centric Factors 4 and 5 found this very important while the other three factors found it less so. A public court system open to practitioners and non-practitioners alike that is responsive to its users' likely state of mind is going to be not only better suited for the users, but also better prepared for dealing with people presenting with anxiety by, for example, developing measures for staff to de-brief or be sensitised to non-practitioners. Taking into account the stress and anxiety experienced by LIPs is not included in the descriptor 2.i so it needs to be reworded as follows:

> 2. The court system accommodates LIP status:
>
> i the system and legal 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.

Statements #4 & #5 also apply descriptor 2.i and address the accessibility of procedures, with regards to both comprehension and availability. Positive rankings for these statements reflected the rationale that promoting efficiency would ensure a smooth process for all and facilitate LIPs to run their cases. Negative rankings of these statements were related to assumptions that the necessary procedures were in place already or were less important than other rights-based descriptors, such as fair treatment. The re-wording of 2.i above is sufficient to capture the importance of making the system and procedures accessible to LIPs.

Statement #6 relates to the physical court environment and was not held to be of much importance across all the factors. For some it was the case that LIPs needed to fit into the environment (Factors 2 & 3); for others it is of less importance compared to other matters. Yet, a court arena – virtual or physical – that presents a barrier to effective participation is not acceptable. Furthermore, in view of the increase in online hearings and the forbidding nature of courts to unaccompanied litigants that our research and others has documented, the framework should include the amenability of user-interface, both online and physically, and descriptor 2.ii is expanded:[112]

> 2.ii Court buildings and online services are amenable to LIPs.

Statement #7 focused on information on how to self-represent being available and helpful. It received a variety of ranks across the factors, including some low ranks which surprised us.[113] The lack of available information about how to self-represent and about court proceedings in general is known to be a major intellectual and practical barrier to participation.[114] For this reason, 2.iii remains in the Framework as a necessary descriptor to facilitate participation for LIPs.

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112 For more on the increase in online hearings: Northern Ireland Statistics and Research Agency, *Northern Ireland Courts and Tribunals Service – Remote and Hybrid Hearings - A Qualitative Analysis* (2022) NISRA Hub Research <https://www.justice-ni.gov.uk/publications/nicts-qualitative-analysis-remote-and-hybrid-hearings> G McKeever et al, *The Impact of COVID-19 on Family Courts in Northern Ireland* (2020) <https://www.ulster.ac.uk/__data/assets/pdf_file/0010/799039/Impact-of-CV19-on-family-courts-NI-201217.pdf>
For more on the forbidding nature of courts to LIPs: J Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (2013) <https://scholar.uwindsor.ca/lawpub/85/> p97 for descriptions of feeling like an outsider; L Trinder, R Hunter, E Hitchings, J Miles, R Moorhead, L Smith, M Sefton, V Hinchly, K Bader, and J Pearce, *Litigants in person in private family law cases* (2014) Ministry of Justice Analytical Series <https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases > 26 they termed LIPs as 'vanquished' to refer to those who were so out of their depth they could not manage their case; section 3.4 describes the need for clear signage so LIPs know where to go; section 6.4 discusses the need for emotional support for LIPs who feel out of their depth or are fearful of a former partner; B Toy-Cronin, *Keeping up appearances: accessing New Zealand's civil courts as a litigant in person.* PhD thesis. (2015) University of Otago, Faculty of Law, p181 on how entering the court can be overwhelming for LIPs

113 Statement ranks per factor are given in Table 9

114 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> Ch9, 107, 207; L Trinder et al, *Litigants in person in private family law cases* (2014) Ministry of Justice Analytical Series <https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases> section 3.3 and 105-110 indicate the need for information and other support aimed at LIPs to engage in their cases. Also, inter alia: R Lee and T Tkacukova, *A study of litigants in person in Birmingham Civil Justice Centre* (2017) The Centre for Professional Legal Education and Research, Birmingham Law School <http://epapers.bham.ac.uk/3014/1/cepler_working_paper_2_2017.pdf> 15 reports that LIPs turn up to court ill-prepared because of the difficulty of finding information; Civil Justice Council, *Access to Justice for Litigants in Person (or self-represented litigants)* (2011) <https://www.judiciary.gov.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf> ch6 discusses access to information and advice as minimum core needs for LIPs to act in person

Statement #8 addressed the facility for LIPs to get support at court as and when they need it. Similar to the previous statement, rankings across the factors were around the middle with some individual participants assigning it a high rank. Research on such 'just in time' provision indicates its positive benefits to LIPs.[115] Whether it is an extended remit for court staff to have more time available for LIPs or a dedicated drop-in support service, the availability of such support offers favourable conditions for participation and descriptor 2.iii remains the same.

Statement #9 relates to the adaptations that might be needed for LIPs with particular needs that would usually be dealt with or requested by a legal representative, such as an interpreter or space allocated to avoid a past abusive partner. High importance was afforded to this by the litigants in Factor 5, and a few other respondents ranked it highly noting the importance of fairness and access to justice, while some respondents were satisfied this happens already. There is no reason to change descriptor 2.v.

Statement #10 relates to case papers being equally accessible to both parties. This statement received support across the factors citing fairness and the need for the courts to check that LIPs receive all documents that are due to them. There is a role in ensuring provision both inside and outside the court room. Ensuring a LIP has received the case documents in good time falls to the judge to check as timely access is crucial to achieving equality of arms. It is necessary, therefore, to add this provision in descriptor 2.iv to *Equality of arms* as well.

Statements #11 and #12 pertain to the descriptor about ensuring hearings accommodate LIPs, which focuses on adaptations for LIPs, but is not specific about what or how. #11 addresses LIPs being able to see and hear all other participants in their hearing. The necessity of a litigant being present to hear and be in a position to respond to submissions received support across the respondents and was seen as fundamental by some respondents in Factor 1. Statement #12 raises the idea of the timing of court hearings to take account of LIPs' work or caring commitments and was afforded less importance because it was seen as an unnecessary accommodation. The disparate responses to these two statements help to show where the limits of acceptable accommodations may lie. Descriptor 2.vii is re-worded as follows:

> 2.vii 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.

115 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> ch10: A procedural advice clinic for LIPs in civil and family proceedings was piloted in LIPNI1 as means of establishing whether advice had any impact on their ability to participation in court proceedings. The clinic was run by the Northern Ireland Human Rights Commission on an appointment system. The LIPs who attended it welcomed the support and said they felt listened to and better equipped than before. Almost all of them recommended that such a clinic to be available in the future. The limitations of the offering were reported as being too little information provided to address constantly evolving information demands in their on-going cases which often meant the information arrived too late. See also Support Through Court, *Report and financial statements for the year ended 31 March 2022* (2022) <https://www.supportthroughcourt.org/media/2779/stc-annual-report-2022_aw_high-res_spreads.pdf> Positive endorsement of the Support Through Court service in England and Wales, which provides personal and practical support to litigants in person in civil and family proceedings is similarly reported as leaving LIPs feeling better prepared, less anxious and more confident. Also, Law for Life, *Meeting the information needs of litigants in person* (2014) <https://www.lawforlife.org.uk/wp-content/uploads/Meeting-the-information-needs-of-litigants-in-person.pdf>

Descriptors of legal participation	Q statements
3. Independent support & advice for LIPs is available and affordable from various sources: i. Legal representatives	#13. LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.
ii. McKenzie Friends	#14. LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e. g. a McKenzie Friend.
iii. Others	#15. There should be advice organisations able to offer free assistance to LIPs.

Statements #13, #14, #15 all related to the availability of independent support and advice from legal representatives, McKenzie Friends and advice organisations. Factor 5 with its emphasis on supporting LIPs gave positive affirmation to these statements; however, there was scepticism in Factor 2 over whether it was appropriate or viable for solicitors to do specific pieces of legal work for LIPs when they were not instructed fully to the case. Concerns like these have been overcome in the work to make limited scope representation more widespread in the USA.[116] The principle of descriptor 3 to address the availability and affordability of independent support and advice remains valid.

Similarly, statement #14 about LIPs having a McKenzie Friend to support, assist and advise was included because it is known to provide positive benefits to legal participation and yet procedures for admitting them to hearings is not systematic in Northern Ireland.[117] This statement was ranked as important to participation by respondents in Factor 5 and some court officers in other factors. McKenzie Friends are a feature of cases with LIPs and so their availability and permission to accompany LIPs is a feature of participation for LIPs.

Statement #15 poses the existence of third-party organisations to provide independent support and advice for LIPs. Litigant-centric respondents loading on to Factor 5 were supportive of this statement while those loading onto other factors gave it very little support. The existence of a small number of organisations offering such support for LIPs in Northern Ireland and research showing the difference it makes to LIPs' confidence, sense of preparedness and understanding of their cases underlines the need for such sources of information and support to be available and accessible and not simply from legal representatives and McKenzie Friends.[118] There is no reason to alter descriptor 3 in the framework.

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116 American Bar Association's Modest Means Task Force, *Handbook on Limited Scope Legal Assistance* (2003) <https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_handbook_on_limited_scope_legal_assistance.pdf>; Courthouse Libraries BC, *Family Law Unbundling Toolkit* <https://www.courthouselibrary.ca/our-programs/family-law-unbundling-toolkit>; The Law Society of British Columbia's Code of Professional Conduct for British Columbia was revised in 2013 to include rules on Limited Scope Representation to provide guidance to lawyers <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/>; FS Mosten and EP Scully, *Unbundled Services: A Family Lawyer's Guide* (ABA Book Publishing 2017); For a current operating unbundled service provider see BC Family Unbundling Roster at www.unbundling.ca

117 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 151. Other research also points to potential problems arising from the use of McKenzie Friends: T Tkacukova, 'The changing landscape of advice provision: online forums and social media run by McKenzie Friends' (2020) 32 *Child and Family Law Quarterly* 397; as well as where such problems may be overstated: L Smith, E Hitchings and M Sefton, *A study of fee-charging McKenzie Friends and their work in private family law cases* (2017) Cardiff University and University of Bristol <https://orca.cardiff.ac.uk/id/eprint/101919/1/A%20study%20of%20fee-charging%20McKenzie%20Friends.pdf>; The advent of a Practice Direction for managing LIPs in Northern Ireland's court would allow consistent procedures to be instituted, aiding not only LIPs and McKenzie Friends, but also court staff and judges

118 Women's Aid <https://www.womensaidni.org/>; La Dolce Vita Project <http://www.la-dolce-vita-project.com/>; Parenting NI <https://www.parentingni.org/>; Families Need Fathers <https://fnf.org.uk/>. See also Support Through Court, *Report and financial statements for the year ended 31 March 2022* (2022) <https://www.supportthroughcourt.org/media/2779/stc-annual-report-2022_aw_high-res_spreads.pdf>; Law for Life, *Meeting the information needs of litigants in person* (2014) <https://www.lawforlife.org.uk/wp-content/uploads/Meeting-the-information-needs-of-litigants-in-person.pdf>; G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> ch10

Descriptors of legal participation	Q statements
4. Legal representatives in cases involving LIPs accommodate LIP status i. Legal representatives practice consistent approaches based on guidelines	#16. Legal representatives should follow agreed professional guidelines on dealing with LIPs.
ii. Legal representatives adhere to their duty to court to engage with LIPs to progress the case	#17. Legal representatives should assist LIPs to progress the case as part of their duty to the court.

Statements #16 and #17 were designed to address how legal representatives can accommodate LIPs to improve their access to a court and proceedings. The factor analysis determined that statement #16 is a consensus statement in the five-factor solution, with middling importance assigned to it across the factors. This did not reveal anything to suggest descriptor 4.i's removal. Statement #17 elicited negative reactions across the factors, with the most extreme querying any requirement on legal representatives to assist LIPs due to conflict of interests. It may well be that the development of guidelines for legal representatives could set the parameters of this duty, but the principle remains that legal representatives need to take into consideration and act in accordance with LIPs' non-practitioner status. Descriptors 4.i and 4.ii are therefore amalgamated as follows:

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

While guidelines such as those developed for practice in England and Wales may inform the LIPs of what to expect, whether the professions would accept them is unknown.[119]

Attribute 2: Equality of arms – being given the opportunity to affect one's case

Descriptors of legal participation	Q statements
5. LIP feels they are treated fairly and have a perception of fairness	#18. LIPs should feel they are taken seriously, listened to and have a fair hearing.

Statement #18 was deemed important across all of the factors arising from the very different perspectives of judicial practice of fair trial principles and the bitter experience of LIPs feeling on the outside of proceedings. The broad endorsement of LIPs' sense of fair treatment encapsulated in descriptor 5 relates directly to fair treatment as an essential element of the right to a fair trial and the research on procedural justice that indicates an individual's perception of fair and just legal procedures are as (or more) important as their perceptions of a just outcome in the case.[120] Descriptor 5 needs to be included as an aspect of legal participation.

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119 The General Council of the Bar, Chartered Institute of Legal Executives and The Law Society of England and Wales, *Litigants in person: guidelines for lawyers; Notes for Litigants in Person; and Notes for Clients* (2015) <https://www.lawsociety.org.uk/topics/civil-litigation/litigants-in-person-guidelines-for-lawyers>; Resolution, *Good Practice Guide for Working with Litigants in Person* (nd) <https://resolution.org.uk/good-practice-guides-and-guidance-notes/good-practice-guide-to-working-with-litigants-in-person/>

120 E Allen Lind and TR Tyler, *The Social Psychology of Procedural Justice* (Springer 1988); TR Tyler, 'Social Justice: Outcome and Procedure' (2000) 35 *International Journal of Psychology* 117

Descriptors of legal participation	Q statements
6.The judge accommodates LIP status: i. The judge facilitates LIPs' participation	#19. When judges treat LIPs the same regardless of their reasons for self-representing.
ii. The judge adapts to the LIP	#20. Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.
	#21. Only relevant people involved in the case should be present in hearings.
	#22. The judge should see beyond the LIP's emotional state.
iii. The judge ensures comprehension	#23. In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.

Statements #19 to #23 all relate to how judges accommodate LIPs given their non-practitioner status in their role to ensure equality of arms. It is the in-court version of descriptor 2 in *Non-discriminatory access to a court*.

Statement #19 relates to when judges treat LIPs the same regardless of their reasons for self-representing. This statement was distinguishing in Factor 4 with a rank of +4. The reasons for its high rank were related to a desire to be treated with more consistency, coming from the point of view of LIPs feeling they are treated like second class citizens or there being wrong or derogatory assumptions made about their reasons for self-representing. It was included in the Q set to reflect the commonly held opinion that LIPs who cannot afford to pay solicitors' fees should be treated more sympathetically than those who self-represent due to what is seen as (or may be) mischief, vexatious behaviour or an intent to prolong abusive behaviour towards a partner.[121] The need for differential or remedial treatment in cases where there are behavioural issues or abuse is a different matter to the human rights standard of equality of treatment. This was alluded to in Factor 1 where one judge ranked statement #19 as -5 highlighting the difference between 'same' and 'equal' and the need to be aware of individual needs in pursuit of equality of treatment. If there are measures in place to manage difficult or abusive behaviour from ill-intentioned LIPs, there should be no reason to not treat all LIPs equally. This equality standard was not present in the framework as it was presumed to be a fair trial standard for all and therefore not needing to be specified for LIPs but given the need for judges to be vigilant of LIPs' individual needs, descriptor 6.i is refined thus:

> 6. The judge accommodates LIP status by:
>
> i treating all LIPs equally regardless of their perceived reasons for self-representing, unless remedial measures are required to deal with malice.

121 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 95

Statements #20 to #22 relate to descriptor 6.ii on how the judge adapts to LIPs non-practitioner status. This descriptor does not specify what or how the judge should adapt and is somewhat vague. Factor 3 more than the other factors saw the importance of the judge's role in adapting and taking into account LIPs' lack of familiarity (#20), even when LIPs may be considered an inconvenience. This role of the judge to keep the LIP on track is recognised by Factors 4 and 5 too. Statement #21 was included to elicit reactions to the practice of not clearing the court when a LIP's case is being heard, a practice known to be off-putting to LIPs.[122] Confirmation of this came from the LIPs while solicitors mentioned what an inconvenience it was to have to leave hearings when a LIP is called. If a judge is to facilitate a LIP's lack of familiarity with litigation, creating a less confusing, busy and off-putting environment is an obvious step, rather than acting for the convenience of solicitors who are present but not party to the case. Statement #22 was included to address the judge's role in being able to discern the LIP's intent when they are likely to be in a highly emotional state and possibly unable to modulate their behaviour or anxieties.[123] Dealing with LIPs as they come was recognised as important for participation by respondents in Factor 3 and 4. This descriptor of the framework highlights the judge's expertise and flexibility in switching between the conventional fully represented model and the LIP model. The wording of 6ii is expanded as follows to make it more explicit and incorporate the points about consistent practice and receiving documents in good time:

> 6.ii 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.

Finally on judicial accommodations for LIPs, statement #23 relates to their role to ensure comprehension. This statement received wide support across the factors with reasoning that while others, such as a McKenzie Friend, may provide support, making sure the LIP understands what is happening in the proceedings is an essential part of the judge's role. The descriptor benefits from being more explicit:

> 6.iii 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.

122 ibid 135
123 ibid ch 9

Descriptors of legal participation	Q statements
7. In court, the judge ensures LIP has opportunities to present their case.	#24. In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.
	#25. When judges allow the legally represented party to speak first when the LIP is the applicant in the case.
	#26. When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.

Three statements were included to convey the judge's role to ensure the LIP presents their case - #24 to #26. The responses to Statement #24 had currency with all stakeholders, singling it out as a fundamental feature of participation. Statement #25 was included to represent the practice of judges allowing the represented respondent party to speak first in a hearing where there is a LIP, contrary to established procedure. It was thought to be of less importance for conflicting reasons: it is not thought to happen; it does no harm; and it may assist the LIP to formulate their response. Yet, LIPs can be confused when standard procedure is not followed, and this can lead to resentment at not being treated according to convention.[124] This aspect of a hearing is one that may benefit from consistent practice between judges. The intent of statement #26 was to raise the prospect of a systematic process for making the LIP aware of how the case will be managed and for the LIP to raise any accommodations the court may need take into consideration. However, the statement did not court any statistical interest in the factor analysis, in that its most extreme assigned rank was -3 on Factor 4 and it was neither a distinguishing nor a consensus statement. Furthermore, the qualitative data indicated a number of different understandings of it: it already happens, the respondent had no experience of it and such case management hearings would be useful. As a means to explain to the LIP what to expect and what is expected of them, case management hearings may be considered as a safeguard to effective participation in a LIP case. In this regard, this statement attaches more saliently to the re-worded descriptor 6.iii (above) and descriptor 7 remains the same.

Descriptors of legal participation	Q statements
8. The judge accommodates absent LIPs	#27. No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.

The final descriptor of *Equality of Arms* relates to when LIPs are absent in a hearing.[125] While it may be necessary to proceed without the LIP present, standard practice would dictate that this is not done without provisions being made to inform the LIP, as a matter of course. Statement #27 probed for reactions to where practice was contrary to procedure. The litigant-centric respondents to Factor 5 regarded not being present as a barrier to participation, confirming our reasons for including it. A standard approach to absent LIPs would help to minimise barriers to participation, including a graduated response to persistent or unreasonable absences. The wording for this descriptor is currently a little vague and is expanded:

124 ibid p157
125 ibid p148. It is standard practice to not proceed with a hearing if one of the parties is unexpectedly absent, yet instances of submissions or even interim orders being made in the absence of a LIP arose in LIPNI1

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

Attribute 3: Ability to engage in adversarial proceedings

When the Framework was developed, personal attributes - abilities, characteristics and performative competence – were prominent as having an impact on LIPs' participation despite the principles of equality and non-discrimination prohibiting the right to a fair trial being contingent on them. We understood our task to frame participation in relation to personal attributes in a manner that would give meaning to participation. We developed the statements to focus on personal attributes which, if absent, may create barriers to participation, such as not understanding about litigation, not having appropriate skills and being overly stressed or emotionally invested. The rankings of these statements by stakeholders now build a convincing argument for removing the concept of ability from the Framework. While the assessment of case complexity is still relevant, there remain difficulties in knowing how to respond to this.

Descriptors of legal participation	Q statements
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.	#28. The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.

Statement #28 related to the descriptor about there being a course of action available to judges if a case is or becomes too complex for a LIP. Only middling ranks were assigned to it across the five perspectives, and a review of the qualitative data indicated a variety of viewpoints on this statement. There was recognition that there are cases where, for the judge to be able to reach an informed decision, the appointment of a registered intermediary, *amicus curiae* or a solicitor may be necessary – for example, in a situation where a psychiatric assessment determines the need for the appointment of a solicitor. Alternatively, LIPs can be encouraged to appoint a solicitor themselves. Support exists for the availability of such a measure because it may avoid lengthy proceedings, but it is difficult to see how it would be operationalised since LIPs cannot be forced to accept legal representation. Conversely, the idea was rejected by some respondents because it is not up to the court to decide what is considered too complex for a LIP as it is up to the LIP to decide how to proceed and to manage the consequences of that decision. Additionally, court-appointed assistance risks an imbalance of fairness to the other party. The judicial view was broadly in favour of statement #28 because of the imperative to reach an informed decision and the need for efficiency, but the mechanism for this was not obvious to them. More work to explore how this could be operationalised is therefore needed. As rehearsed previously, it is incumbent on the state to decide how its resources may be used to provide legal support, including to LIPs who are floundering, and from a judicial point of view, this would be a welcome intervention.[126] Descriptor 9 thus remains but as it applies directly to the judicial role in ensuring both parties have equal opportunities to present their case, it is better located under *Equality of Arms.*

126 *Airey v Republic of Ireland* (1979) Application no 6289/73. 2 EHRR 305

Descriptors of legal participation	Q statements
10. LIP has capacity to manage case and conduct self-advocacy: i. LIPs are able to manage the legal proceedings of their case	#29. When LIPs are able to apply and present relevant information to their case.
	#30. When LIPs are able to negotiate with the other party.
	#31. LIPs should follow court norms and etiquette.
	#32. When LIPs have the skills to test the evidence in their case.
ii. LIPs have certain personal characteristics	#33. When LIPs are highly educated.
	#34. When LIPs are confident in their ability to self-represent.
iii. LIPs understand their case and proceedings	#35. LIPs should understand what they are agreeing to and what they are required to do.

The ability to engage in adversarial proceedings relates directly to the individual capacity of a LIP. As we discuss in chapter 6 on the findings, any benefits to the LIPs of having a learned or innate ability to manage their case may positively contribute to their participation but it is not a reasonable expectation to impose on non-practitioners. The positive reactions to statements #29 to #35 were directed at the pragmatic benefits to the LIP, their case and the court, emphasising their autonomous decision to self-represent and the need for them to be familiar with litigation, mimicking a legal representative. This sounds like common sense and the benefits of understanding, being able to manage one's case and being schooled in litigation are clear, but they do not form a standard that LIPs can be measured against when considering how they participate. It is not individual characteristics that afford the entitlement to a fair trial (putting positive discrimination aside) but the principles of equality and universality. Participation is not afforded according to one's ability. For this reason, we decided descriptor 10 should be removed from the framework.

Descriptors of legal participation	Q statements
11. LIPs put in the time and effort to prepare their cases to a reasonable degree	#36. When LIPs put in the time and effort required to manage their case and hearings.
	#37. LIPs should take notes in their hearings.

Similar to the previous descriptor, the individual effort spent by LIPs on their cases is not a standard for determining participation that LIPs can be measured against. Judges recognised that it is difficult to assess and LIPs would not know what a reasonable amount is. Intuitively, putting in the time and effort would benefit LIPs' participation and it could form advice for those considering self-representation; however, it does not serve well as a descriptor of participation as an aspect of the right to a fair trial, and descriptor 11 is removed.

Descriptors of legal participation	Q statements
12. LIP's health and emotional involvement are suitable for self-representation	#38. LIPs should be aware of the emotional burden of self-representing.
	#39. When LIPs are able to separate their legal issues from their emotions.

The emotional burden associated with litigating in person was found to be a hugely significant barrier to participation in LIPNI1, which explains its presence in the Framework.[127] Some respondents could see the benefits of being able to separate one's emotions from legal issues, so mimicking legal representatives who are inured to this, but others understood this as being impossible. For them, LIPs being emotionally invested in their case should be accepted as part of self-representing. This view requires the system to adapt to LIPs to minimise the barriers to participation caused by the emotional burden, and is referenced in the re-worded 2.i, while descriptor 12 is removed.

Attribute 4: Being afforded respect

Descriptors of legal participation	Q statements
10. All interactions, written or verbal, are respectful and clear.	#40. LIPs should not be treated as a nuisance.

The final descriptor relates to LIPs being treated with respect and, understandably, statement #40 was ranked zero or higher across the five perspectives. Reasons for ranking statement #40 highly were related to feeling mistreated, and acceptance that LIPs should not be penalised for self-representing. Descriptor 10 recalls the human rights principle of equal respect and is still included in the framework as a reminder that it applies to LIPs who often feel disregarded.[128]

Reconfigured participation framework

The findings from the Q methodology study provided much needed ventilation to the participation framework from key stakeholders. Their reactions to the Q set provided views that helped confirm the outstanding queries, such as the status of personal characteristics, and provide more clarity to the descriptors. This has led us to the following reconfigured participation framework:

127 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> 206
128 ibid p68, p206

Non-discriminatory access to a court and proceedings
1. There are consistent approaches towards LIPs across the courts.
2. The system accommodates LIP status: i. 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. ii. Court buildings and online services are amenable to LIPs. iii. Information on how to self-represent is available, followable and good quality. iv. Support at court is available and appropriate. v. Adaptations are available and affordable for, for example, those with experience of domestic violence or non-English speaking LIPs. vi. Evidence, case papers etc are equally accessible to both parties. vii. 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.
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.
Equality of arms
5. LIP feels they are treated fairly and have a perception of fairness.
6. The judge accommodates LIP status by: i. treating all LIPs equally regardless of their perceived reasons for self-representing, unless remedial measures are required to deal with malice. ii. 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. iii. 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.
7. In court, the judge ensures 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.
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.

The thematic analysis, judicial validation exercise and the Q study have refined the Framework down to ten areas of interest within three broad attributes. These are the descriptors that can now be operationalised as audit tools, to assess the extent to which the court system meets the participative requirements of Article 6 ECHR for LIPs.

Chapter 9: **Conclusion**

This research was focused on two research questions that would help generate a better understanding of what it means to participate in court proceedings and allow us to identify positive and practical measures that could help LIPs achieve the participative potential that Article 6 grants them, as part of their right to a fair trial:

RQ1 - What are the key descriptors of legal participation?

RQ2 - What are the main elements for determining whether effective participation is reached?

As the report reflects, our planned approach to answering these questions was largely derailed by COVID-19 and subsequently by our inability to get access to family courts to observe proceedings and recruit research participants. While COVID-19 limitations were unavoidable, there were also GDPR-related restrictions on researcher access to family court hearings, which we highlight in Chapter 4. Future researchers and the NICTS could develop a co-learning exercise on applying GDPR regulations to research in the public interest, based on the exemptions that have been legislated for. A protocol for university-based researchers, framed by the protections of those institutional safeguards on ethics, could be developed to give assurances on data protection. The lesson that we were able to implement at the time, however, was that another methodological approach was possible, to tackle the research questions from a different angle

The use of Q methodology is an innovative approach for socio-legal research, but it has proved to be a robust method of interrogating the issue of participation. In setting out how we were able to apply this methodology to our investigation, we are hopeful that this report lays the groundwork for subsequent Q studies in other areas of socio-legal research.

RQ1 - What are the key descriptors of legal participation?

Having been able to map the concepts of effective participation derived from the case law on Article 6(1), to the empirical constructs of legal participation derived from the raw data on the experiences of LIPs and court actors, and tested these through our Q methods study, we can now identify the ten descriptors of participation. These reflect not just the empirically modelled descriptions of legal participation but the doctrinally required elements of the effective participation standard of Article 6. In other words, the descriptors below define the necessary conditions for participation under Article 6.

Table 10: Ten descriptors of legal participation

Non-discriminatory access to a court and proceedings
1. There are consistent approaches towards LIPs across the courts.
2. The system accommodates LIP status: i. 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. ii. Court buildings and online services are amenable to LIPs. iii. Information on how to self-represent is available, followable and good quality. iv. Support at court is available and appropriate. v. Adaptations are available and affordable for, for example, those with experience of domestic violence or non-English speaking LIPs. vi. Evidence, case papers etc are equally accessible to both parties. vii. 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.
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.
Equality of arms
5. LIP feels they are treated fairly and have a perception of fairness.
6. The judge accommodates LIP status by: i. treating all LIPs equally regardless of their perceived reasons for self-representing, unless remedial measures are required to deal with malice. ii. 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. iii. 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.
7. In court, the judge ensures 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.
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.

The ten descriptors do not cover the effective participation concept of *Being able to engage in adversarial proceedings* which relate to, for example, the individual effort spent by LIPs on their cases, or being confident. The potential of certain personal attributes to positively contribute to a higher level of enjoyment of Article 6(1) causes tension with the equality and non-discrimination principles of human rights standards, where the standard rests at personhood. It is intuitive that certain individual LIPs will fare better in the courts than others, but this advantage should not be part of the human rights analysis of participation. Instead, the focus is on when individuals, by interacting in their case, do not or cannot meet a level of participation sufficient

to enable the judge to reach an informed decision. This determination is not an assessment of ability but instead an assessment of participation.

The concept of *Being able to engage in adversarial proceedings* also initially included the construct relating to taking the complexity of the case into account. As this applies directly to the judicial role in ensuring both parties have equal opportunities to present their case, it is better located under *Equality of Arms,* as descriptor number 9.

These ten descriptors are very straightforward and there may even be an argument that they should not need to be stated, since they will represent a common-sense approach for many. 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; and they serve as salutary reminders of the base level that LIPs tend to operate at.

RQ2 – What are the main elements for determining whether effective participation is reached?

Our intended research outcome was to have developed specific audit tools – an observation schedule, a LIP questionnaire, a system checklist – that would allow for an assessment of whether, or to what extent, the conditions of participation were present or absent in a LIP's case. We have included within this report our draft observation schedule, but we were unable to test it or to develop and test a LIP questionnaire or system checklist due to methodological barriers triggered by the pandemic. Part of the testing process, however, included assessing the validity of the descriptors. Having been able to test these more robustly through Q method than would have been possible under our original methodology, we are confident that this set of descriptors can be used directly in any audit tool to assess compliance with the standard of participation required for Article 6. This means that the descriptors of participation could form part of any self-assessment process by judges involved in LIP hearings. While the descriptors are not a checklist, they could be used as an aide-memoire to help judges ground their practice in the empirical requirements of Article 6. More substantively, the state as the duty bearer – in the form of the Department of Justice, and its executive agency, NICTS – should take it upon themselves to audit the measures that are currently in place within the legal system to ensure that the standards set out in the descriptors can be met. While this is also an opportunity for further research to create and test a range of audit tools, it is for the judiciary, the NICTS and the DOJ to collectively answer the question of whether these descriptors are present in each LIP journey, and if not, what can be done to put them in place.

The descriptors set out what should be in place to for effective participation to exist in practice. Our Q study also identifies which of these descriptors was consistently ranked as the most important element of participation, which was: in court, the judge ensures LIPs have opportunities to present their case. This critical element is not merely about LIPs being allowed to speak in court, but requires preconditions to give effect to it, for example, the LIP being able to speak first when they are the applicant, being able to access the case papers and having them in good time so that the LIP can process and respond to them. We have identified this descriptor as the essential element of participation. Its absence will undermine all other efforts to ensure Article 6 standards are reached. The second most important descriptor that the research participants

agreed on is that LIPs feel they are taken seriously, listened to and have a fair hearing. This becomes the outworking of effective participation. Presenting their case, and being taken seriously when doing so, should not be challenging for courts, but where there are challenges in enabling this then concerns about Article 6 are also indicated.

We framed our research question positively – 'when is the standard reached' – rather than in its negative form – 'when is the standard breached' – to reflect our ambition that corrective action can be taken to meet the standard during the life of the case. While extremes of poor participation are easier to spot than minimum standards this invites egregious practice before a lower limit of acceptability can be put in place. Allowing and then spotting breaches is not a desirable way to protect rights. It suggests appeals are needed before breaches can be identified and acted on. The corollary, therefore, is that where an appeal is unlikely, this becomes an opportunity to ignore potential breaches. The use of self-assessment or audit can help achieve the ambition of focusing on 'reach' rather than 'breach' of Article 6.

Our Q study revealed five different subjective perspectives on what was most important to ensure that LIPs could participate in their court proceedings. Each perspective includes a mix of participants, revealing a diversity of opinion among court actors and court users:

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 cannot 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 interacting with the system and accommodations need to be made for them, so they can be supported to participate.

Given the focus is on protecting the Article 6 rights of LIPs, the second and third perspectives raise some concerns. These perspectives demonstrate an institutional or system blindness to the problems that LIPs experience, one that is well documented in our research and that of others. Maintaining the status quo, or providing only minor adjustments, means that the participative opportunities for LIPs are limited to those that already exist. Our original research was clear that the current system generates participative barriers that put Article 6 rights at risk. Factor 2 provides no acknowledgement of this, instead creating the paradoxical position that LIPs are not equipped to self-represent but when they do they must be treated as if they can represent to a professional standard. This also flies in the face of the most basic interpretation of *Airey*.[129] This seminal case on which the fair trial rights of LIPs are

129 *Airey v. Ireland* (1979), Application no. 6289/73. 2 EHRR 305.

based recognises the need for state systems of justice to adjust to a LIP's lack of knowledge of complex law and procedure. Factor 3 also sees the participation of LIPs as troublesome for court actors, but it does at least acknowledge that judges and others should facilitate LIPs to manage their cases.

The remaining perspectives, however, give us insight into what could be done to improve the participation of LIPs and it is from these that we draw our recommendations.

Recommendations

The recommendations that flow from our findings are rooted in the state's duty to protect the Article 6 rights of LIPs. They are not nice-to-have ideas but reflect the obligation on the court system to respond to the participative barriers to Article 6. Most can be implemented without the need for legislation and either at no or relatively modest costs.

1. CULTURAL CHANGE

There are two clear options to dealing with participative barriers for LIPs. The first is to provide all litigants with lawyers, which would require mandating that self-representation is not permitted, so that the model of fully represented cases is universal. The other option is to continue to allow self-representation, which requires a recognition that the model of fully represented cases is inaccurate. The first option seems highly unlikely; the second option must therefore be assumed and support should be based on this reality. This logic dictates that the central recommendation has to be for cultural change within the court system. This aligns with one of the main recommendations in LIPNI1 that has yet to be implemented:

> "For there to be acceptance of LIPs' place in the system, the expectations of all parties need to be better managed. This entails re-orienting the status quo, which currently puts legal representatives at the forefront of court procedures, to give the interests of all litigants, including LIPs, a higher profile than they currently have. The perspective of acting alone in the system needs to be brought to the forefront so that LIPs' specific needs are taken into consideration."[130]

The fear, uncertainty, bewilderment, anxiety, confusion and frustration experienced by LIPs have been consistently evidenced through empirical research in this and comparable jurisdictions, including Scotland,[131] England and Wales,[132] as well as other common law jurisdictions from Canada[133] to Australia[134] to New Zealand.[135] There

130 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf> p240

131 Scottish Civil Justice Council, *Access to Justice Literature Review: Party Litigants, and the Support Available to Them* (2014) <http://www.scottishciviljustice-council.gov.uk/docs/librariesprovider4/scjc-pubilcations/literature-review-on-party-litigants-and-the-support-available-to-them.pdf?sfvrsn=2>

132 J Mant, *Litigants in Person and the Family Justice System* (Hart 2022); KA Barry, 'The Barriers to Effective Access to Justice Encountered by Litigants in Person in Private Family Matters Post-LASPO' (2020) 42 *J. of Social Welfare and Family Law* 416; L Trinder et al, *Litigants in person in private family law cases* (2014) Ministry of Justice Analytical Series <https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases>; Civil Justice Council, *Access to Justice for Litigants in Person (or Self-Represented Litigants)* (2011) <https://www.judiciary.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf>

133 J Macfarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (2013) <https://scholar.uwindsor.ca/lawpub/85/>;

134 R Hunter, A Genovese, A Chrzanowski and C Morris, The Changing Face of Litigation: Unrepresented Litigants in the Family Court of Australia (2002) Law & Justice Foundation of New South Wales <http://www.lawfoundation.net.au/ljf/site/templates/reports/$file/Changing-face-of-litigation.pdf>

135 B Toy-Cronin, *Keeping Up Appearances: Accessing New Zealand's Civil Courts as a Litigant in Person* (2015) <https://ourarchive.otago.ac.nz/handle/10523/6003>

is a need to acknowledge that these experiences exist, particularly in family court proceedings, and particularly among those whose views align with the viewpoints above that LIPs should be treated like lawyers.

A new Practice Direction

Challenging the existing view that LIPs should be treated as if they were legal representatives could be achieved through a Practice Direction. This could build on existing resources, such as the Equal Treatment Bench Book, to ensure that there is a baseline standard across the judiciary, allowing LIPs to be aware of what to expect.[136] This would need to encompass the practice expected of legal representatives to ensure coherence between court actors:

> "I don't see why we couldn't, you know, have some kind of practice direction. ... I mean, we've got practice directions about McKenzie friends?... These kinds of projects that you're doing, you know, to make us as lawyers aware of all the things we'll have to cater for. And, but I do think, yeah, it would be wonderful actually, for me." (BAR02)

A Practice Direction for cases involving Litigants in Person could usefully focus on aspects of court etiquette, case management and party responsibilities. It might therefore cover the need to assess LIP vulnerabilities as part of the case management process; the speaking order of the parties; clearing the court room for a case involving LIPs; including LIPs in the call-over; the need for judges to be consistent across the bench in their approach to LIP cases; whether cases should proceed when case papers are late or difficult to access; how to manage case progression when LIPs are absent; resources that LIPs can be signposted to; behaviour expected of legal representatives and of LIPS. The list is not exhaustive: these are just the proposals based on the research findings.

The judicial role in protecting Article 6 rights remains paramount in the courtroom, but judges need to be supported to discharge this. A Practice Direction should therefore acknowledge that additional court time is justified where the case list includes unrepresented parties.

An Aide-Memoire

As we have noted, the descriptors of participation that this research has developed could be a standard aide-memoire for judges when dealing with LIPs. Appendix 7 contains a sample of such a tool intended for judges to have to hand when there is a case involving a LIP before them. Training, including peer-to-peer training, on how to ensure the relevant descriptors can be attended to would also help build towards a more consistent approach between judges. This ought not to be a controversial recommendation given that it mirrors the consistency argument in the Children Order Advisory Committee's (COAC) Best Practice Guidance for Northern Ireland.[137] Given the absence of any consideration for LIPs in the Guidance, however, it could usefully be updated. This would allow COAC to reflect our research which has been specifically designed to address the research gap on family law proceedings in Northern Ireland

136 Judicial College, *Equal Treatment Bench Book* (2021 Revised April 2023) <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf >

137 The Children Order Advisory Committee, (2010) Best Practice Guidance 2nd edition available at https://www.lawsoc-ni.org/DatabaseDocs/med_7204369__coac-best-practice-guidance.pdf

that existed when the Guidance was last reviewed in 2010.

The judge's involvement with the litigant from the outset, with regards to explaining the process, is crucial to identifying other needs:

> "Without sufficient information pre-proceedings it is an additional burden / challenge to a personal litigant. It is imperative the judge tries as far as possible to ascertain the personal litigant's understanding of proceedings and also encourage the person to engage and participate. This includes recognising when additional needs present and require specific attention / accommodation." (J24)

While this is necessary, it is also time consuming and competes intensely with the resources allocated to each case. Instituting reforms that deviate from the legally represented model would allow a recalibration of efficiency targets which accommodate LIPs. The recognition of additional workload is required for judges presiding over LIP cases. While these are decisions for the state party, in this case the DOJ, it cannot deviate from its duty to ensure fair trial rights for all.

Professional guidelines and code of practice

Further steps to support the dynamic needed to drive attitudinal change would be to create professional guidelines for legal representatives on how to manage cases to which a LIP is party, recognising that treating LIPs as lawyers is poor practice. This cannot simply be a restatement of the status quo: there is a need to find ways to deal with the different experiences that this form of legal representation entails, that accommodates not just professional obligations but the reality of what a LIP can be expected to do. A co-productive process could extend this to create an agreed code of practice on the expectations and behaviours of LIPs and legal representatives towards each other. These could help guide the expectations of LIPs and provide some reassurance on what the process will involve. Given the success of the human-centred design process both in shifting lawyers and LIPs' attitudes towards each other, and in creating an effective product, our strong recommendation is that this approach is used to create a code of practice.[138] Both guidelines and a code of practice could provide the foundation for continuing professional development and training.

2. FAMILY COURT SYSTEM AUDIT

It is unrealistic to expect court processes to be entirely stress free, but the multiplicity of stress-inducing elements associated with self-representing places a responsibility on the court system to minimise additional stress arising from navigating the process. Controlling the choice of support measures that can be implemented is at the state's discretion. The descriptors of participation provide the state – both DOJ and NICTS – with the framework needed to audit its support systems. 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.

Other areas of reform and modernisation that are already underway can also take account of the participation descriptors. In considering the descriptors that are directed towards ensuring non-discriminatory access to a court, the NICTS modernisation

138 G McKeever et al, 'Using human-centred design to develop empathy and supports for litigants in person' (2023) <https://www.ulster.ac.uk/empathy-for-LIPs>

plans should give full consideration to ensuring that 'evidence, case papers etc are equally accessible to both parties'. Planning for LIP inclusion from the outset will assist with breaking down some of the participative barriers, supporting judicial directions on the need for LIPs to be able to access court documents in a timely manner and underpinning the responsibility to ensure that there is no detrimental impact when documents are not received or arrive late.

Signposting

Our research has identified two specific areas of support that can aid participation. First, information that provides clear instructions and guidance to LIPs. The development of the Northern Ireland Family Court Information website that was completed as part of this research has continued to be supported by DOJ, which now sponsors Ulster University to maintain the website.[139] While the evaluation of this resource will continue, LIPs will not find it useful if they are not aware of it. Engaging court actors – judges, legal representatives and court staff – who come into direct contact with LIPs to direct them to this service is a cost-free measure. Planning for its longer-term future as part of DOJ and NICTS resources is also vital, so that the support can continue to evolve to meet identified needs. We recommend that this is considered as part of the modernisation planning for NICTS.

A LIP support service

The second area of support that has been highlighted is for more personalised advice and support, to respond to the paradox of unrealistic expectations that become the requirements of self-representation.

> "'[LIPs are] not trained. They might be passionate, and they may be articulate … but they don't have the skills to [cross] examine … Worse still is when a LIP is expected to give evidence-in-chief on their own, whereas a solicitor and barrister represent another party, they lead the other party. They can put them in the witness box, and they ask them the questions that they want answers to. Whereas a self-litigant … they can't ask themselves the same questions." (M03)

There are procedures LIPs cannot feasibility be expected to do even with all the skill in the world. While the door is wide open to litigating in person, requiring LIPs to train for the role is contradictory to the principles of access to justice. Where there are processes too difficult for a LIP to bring the facts to the judge's attention, mitigation in the form of support is required to ensure that the equality of arms principle is met.

This could be delivered through legal representatives, advice organisations, McKenzie Friends or via unbundled legal services. There is clearly a role for lawyers here to act in different capacities but a need also to extend legal services beyond their traditional boundaries. While those who support the status quo, represented in Factor 2, are resistant to this development, there is clear support for it within Factor 5 which prioritises the accommodation of vulnerabilities that LIPs experience and further support from research and professional evaluations of unbundled legal services in family law courts.[140] There are inevitably cost implications in funding an organisation

139 ibid

140 For example, Solicitors Regulatory Authority, *Unbundled services pilot: final report* (June 2023) <https://www.sra.org.uk/pdfcentre/?type=Id&data=1795725364>; Law for Life, *Research Briefing: Affordable Advice Service* (2023) Research Briefing <https://www.advicenow.org.uk/lawforlife/news/new-research-briefing-affordable-advice-service-published> see discussion in Chapter 8 for more on this

to provide advice and support – whether this is full legal advice, or procedural advice, or personal support. Even a singular focus on cost – not accounting for any benefits that would accrue – can be reconciled as proportionate to what is needed to plug existing Article 6 gaps. A full audit of existing support measures would help guide the Department on what the nature and reach of such a service might be, and the same descriptors that generate the audit could then be used to evaluate the service, to make a full assessment on cost effectiveness.

WHY ARE WE STILL TALKING ABOUT LIPS?

In 2018 we published our first report on the experiences of LIPs in the civil and family courts in Northern Ireland.[141] Part of the rationale for the report was to address the research gap that existed in relation to Northern Ireland, compared with that of other jurisdictions. Our findings often reflected those of other researchers in relation to the lack of support for LIPs, and our recommendations chimed entirely with those of recent Northern Ireland policy and judicial reviews, including the DOJ's Access to Justice reviews[142] and the reviews of civil and family justice led by Lord Justice Gillen.[143]

Our current research was designed to take forward some of the critical recommendations from our 2018 report, relating to the need to develop supports for LIPs and effect attitudinal change, informed by the development of some form of checklist that allowed those with responsibility for protecting Article 6 rights to identify and fill the gaps that jeopardised these participative rights. Our research has broken new ground in relation to the methodologies employed to tackle these recommendations and in producing practical tools that can help protect Article 6 rights and yet there is a depressing familiarity to many of the findings highlighted in this report in particular. It is now well established that there are some court actors who resent the presence of LIPs as disruptive trespassers in the legal system. We do not claim that these attitudes are widespread but their impact is pervasive. It is well established that LIPs struggle to navigate the court system, even when these attitudes are less apparent. And it is equally well established that there are numerable measures that can be taken – from sweeping change to subtle alterations – which are demonstrably required for Article 6 compliance.

We know that financial and political constraints can act as a serious impediment to implementing reform but that these do not, and cannot, negate state duties. We also know that the policy context is not unsympathetic to developing LIP supports as indicated by the funding of online information tools developed by our research, and by the stated priorities of both DOJ and the Department of Health in relation to their 2021 Action Plan for private family law.[144] The focus on early resolution of disputes and the alternatives to court are important not just for potential litigants to avoid highly stressful legal proceedings, but for system efficiency, a point that becomes more

141 G McKeever et al, *Litigants in person in Northern Ireland: barriers to legal participation* (2018) <https://www.ulster.ac.uk/__data/assets/pdf_file/0003/309891/UU-Litigants-in-Person-2018-Full.pdf>

142 Department of Justice, *A Strategy for Access to Justice: The Report of Access to Justice (2)* (2015) <https://www.justice-ni.gov.uk/publications/access-justice-review-part-2-final-report>

143 Office of the Lord Chief Justice, *Review of Civil and Family Justice in Northern Ireland. Review Group's Report on Civil Justice* (September 2017) <https://www.judiciary-ni.gov.uk/publications/review-groups-report-civil-justice> and *Review of Civil and Family Justice in Northern Ireland. Review Group's Report on Family Justice* (September 2017) <https://www.judiciary-ni.gov.uk/publications/review-groups-report-family-justice>

144 Department of Justice, *Private Family Law Early Resolution Action Plan* (2021) <https://www.justice-ni.gov.uk/publications/private-family-law-early-resolution-action-plan>

critical the more constrained resources are. And yet the system that we have places the greatest burden for protecting Article 6 rights on the most expensive part of that system. The responsibility for protecting Article 6 will always rest with the judge hearing the case. That is entirely appropriate but the absence of support for LIPs up to this point means that more work and more time is demanded of the judiciary to fulfil this duty. Instead of a system that helps LIPs understand what legal proceedings involve, how to complete court forms, what they should expect from lawyers on the other side, or what support is available to them, we have a system that leaves these gaps to be addressed by judges when confused LIPs reach their courts. We have not measured the cost implications that arise from the extended court time that LIP cases can inevitably take, but there is a logical argument that helping LIPs better prepare for their hearings will help cases run more effectively. There are a myriad of ways in which Article 6 rights can be protected, which our research (and others') has identified. There is therefore an efficiency and a rights-based argument for a system-wide audit to identify and address inefficiencies that ultimately create greater costs for the system at the same time as increasing the risk that Article 6 rights for LIPs will be breached.

Research should always seek to add value and we are privileged to have been supported to add value to this important area of research and policy and to have been able to move the DOJ's policy forward. Our concern, however, is that we will still be talking about LIPs, about the same problems, the same range of recommendations, and the same gaps that still exist long after this research has finished. While acknowledging the progress that has been made, we must also acknowledge that the pace of change is too slow to ensure that we can bridge the Article 6 gap before it is breached. The momentum for this cannot be carried by research alone: cultural and policy reform, driven by the DOJ, the NICTS and the judiciary, working with the LIP Reference Group, the Law Society and the Bar Council, now needs to accelerate.

Conclusion

There is an important task ahead of the court system if we are to ensure that LIPs are to be regarded seriously and have their Article 6 rights protected. We have identified the criteria by which the system can be audited to protect those rights and recommended clear actions that judges, professional legal bodies and court actors can take to discharge the Article 6 responsibilities that rest at their respective doors. LIPs have a role to play here too and a code of practice would be helpful in guiding them, but expecting them to play the game without any instructions is unwise and unhelpful. The rights of LIPs are a legitimate focus for reform and while the changes that need to be made will ultimately benefit the system and those who rely on it, they place first and foremost a binding legal obligation on the state which must discharge its duty to protect the Article 6 rights of all under its jurisdiction.

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Appendix 1: Evolution of the descriptors of legal participation

Attribute of effective participation	1. Initial descriptors from the first round of analysis	2. Descriptors after judicial workshop	3. Descriptors from developing q concourse	4. Descriptors after q study
Access to court and proceedings	Information on court procedure and being a LIP, and court forms are freely available and accessible	Information is accessible by LIP	The system accommodates LIP status: i. Procedures including court forms are suitable for LIPs, i.e. coherent, followable, affordable; ii. Court buildings are amenable to LIPs; iii. Information on how to self-represent is available, followable and good quality; iv. Support at court is available and appropriate; v. Adaptations are available and affordable for non-English speaking LIPs and those with experience of domestic violence; accessible to both parties; vii. Hearings accommodate LIPs. Independent support & advice for LIPs is available and affordable from various sources: Legal representatives, McKenzie Friends and others.	The system accommodates LIP status: i. 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; ii. Court buildings and online services are amenable to LIPs; iii. Information on how to self-represent is available, followable and good quality; iv. Support at court is available and appropriate; v. Adaptations are available and affordable for non-English speaking LIPs and those with experience of domestic violence; vi. Evidence, case papers etc are equally accessible to both parties; vii. Hearings, whether online or face-to-face, take account of LIPs' access issues, such as internet connectivity, availability if not resident in the jurisdiction, caring commitments. Independent support & advice for LIPs is available and affordable from various sources, legal representatives, McKenzie Friends and others.
		Information, forms and guidance are available		
	The court building is an enabling and not obstructive environment to litigants [for example, suitable signage, information, staff available to guide, space to wait, amenities]	Infrastructure and procedures are suitable for lay people		

Attribute of effective participation	1. Initial descriptors from the first round of analysis	2. Descriptors after judicial workshop	3. Descriptors from developing q concourse	4. Descriptors after q study
Access to court and proceedings	In court and outside of court, the communication between any court actor [including the judge, legal reps for opponent, court staff] and the litigant in person is polite, clear, unambiguous and in layperson's language	Communications between court staff and other court actors (including CCO) and LIPs support engagement	Legal representatives in cases involving LIPs accommodate LIP status. Legal representatives practice consistent approaches based on guidelines. Legal representatives adhere to their duty to court to engage with LIPs to progress the case.	There are guidelines for legal representatives to follow in cases involving LIPs which accommodate their non-practitioner status and promote consistent practice.
	Litigant in person has time to prepare and manage case	LIP's circumstances allow time and space for self-representation	*Now under Ability*	*Removed*
			There are consistent approaches towards LIPs across the courts.	There are consistent approaches towards LIPs across the courts.
Ability to participate in adversarial approach	Litigant has made efforts to prepare their case The litigant in person is able to communicate their needs and views to court staff and in court either directly or via a supporter, such as a McKenzie friend	LIP has prepared	LIPs put in the time and effort to prepare their cases to a reasonable degree.	*Removed*

Attribute of effective participation	1. Initial descriptors from the first round of analysis	2. Descriptors after judicial workshop	3. Descriptors from developing q concourse	4. Descriptors after q study
Ability to participate in adversarial approach	Litigant in person has the ability and confidence to self-represent	LIP understands case and self-representation LIP is able to self-represent	LIPs understand their case and proceedings. LIP has capacity to manage case and conduct self-advocacy. LIPs are able to manage the legal proceedings of their case. LIPs have certain personal characteristics.	*Removed*
	Litigant is sufficiently healthy - mentally and physically - to manage their case [for example, as indicated by GHQ12] The litigant is sufficiently emotionally detached to communicate and understand	LIP'S health and emotional state are suitable for self-representation	LIP's health and emotional involvement are suitable for self-representation.	*Removed*

Attribute of effective participation	1. Initial descriptors from the first round of analysis	2. Descriptors after judicial workshop	3. Descriptors from developing q concourse	4. Descriptors after q study
Ability to participate in adversarial approach	In court, the judge is welcoming and supportive and explains what the day's proceedings are for	Judge is supportive and ensures LIP understands the process of the hearing, depending on the type and hearing protocols	The judge accommodates LIP status: i. The judge facilitates LIPs' participation; ii. The judge adapts to the LIP; iii. The judge ensures comprehension.	The judge accommodates LIP status by: i. treating all LIPs equally regardless of their perceived reasons for self-representing, unless remedial measures are required to deal with malice; ii. 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 and adopting consistent practice with LIPs; iii. 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.
	In court, it is clear that the litigant has understood the proceedings and knows what to do next and, if relevant, is in possession of the order [for example, comprehension is established by more than saying 'yes I understand']	Judge ensures LIP understands what happened and what happens next		
	In court, the litigant is given opportunities to present their case	Judge ensures LIP has opportunities to present their case	In court, the judge ensures LIP has opportunities to present their case.	In court, the judge ensures LIP has opportunities to present their case.
			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.	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.

Attribute of effective participation	1. Initial descriptors from the first round of analysis	2. Descriptors after judicial workshop	3. Descriptors from developing q concourse	4. Descriptors after q study
Ability to participate in adversarial approach	In court, the litigant's views are taken into consideration (not necessarily agreed with)	Judge appears to take LIP's views into consideration	*Removed*	*Removed*
	The litigant is supported / enabled to communicate his or her needs and views to the opponent or their representative where appropriate, court staff and in court	Judge uses clear language	*under Equality of Arms*	*See above*
		Opposing party enables LIP to communicate views, where appropriate	*under Access*	*Under Access*
		Opposing party uses clear language	*under Access*	*Under Access*
	Litigant is able to access sufficient information and other material to prepare their case	Evidence is accessible	*under Access*	*Under Access*
	Litigant in person sees the proceedings as not biased and procedural justice as being intact	Litigant in person sees the proceedings as not biased and procedural justice as being intact	LIP feels they are treated fairly and have a perception of fairness.	LIP feels they are treated fairly and have a perception of fairness.
			The judge accommodates absent LIPs.	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.

Attribute of effective participation	1. Initial descriptors from the first round of analysis	2. Descriptors after judicial workshop	3. Descriptors from developing q concourse	4. Descriptors after q study
Being treated with respect		LIP is treated with respect by all court actors	All interactions, written or verbal, are respectful and clear.	All interactions, written or verbal, are respectful and clear.
Obsolete	In court, the judge is able to obtain a clear and full understanding of the LIP's views or case The proceedings will enable the judge to make an informed and fair decision based on the facts.			

Appendix 2: Draft hearing observation checklist used in the validation exercise with judges

LEGAL PARTICIPATION: HEARING OBSERVATION CHECKLIST WITH EXAMPLES

Article 6(1) attributes	Performative & behavioural descriptors	Examples
Being given the opportunity to present case (equality of arms)	Judge	
	Judge is supportive and ensures LIP understands the process of the hearing depending on type and hearing protocols	• Judge's approach to LIP is welcoming and inclusive to the proceedings and is sensitive to LIP vulnerability, e.g. presence of past abuser, language difficulties.. • Judge ensures the LIP is aware of the hearing's purpose and the options open to the LIP. • Judge ensures LIP understands the format the hearing will follow (e.g. review, contested, fact-finding), protocols (e.g. turn-taking, speak through the judge), legal terms and does not assume the LIP is familiar with procedures (e.g. re-words, repeats, asks LIP to explain to show understanding). • Judge's expectations of out of court actions are realistic (e.g. availability of support referred to, timeframe, LIP capacity to provide requested documents).
	Judge ensures LIP understands what happened in the hearing & what happens next	• The judge is satisfied that the litigant has understood what took place in the hearing and knows what is expected of him/her and, if relevant, is in possession of the order (e.g. asks LIP to explain back).
	Judge ensures LIP has opportunities to present case	• Judge provides LIP opportunities to communicate their views and needs, and supports LIP to express themselves if unable to do so. • Judge adopts a proactive approach in order to obtain the facts and information required if they have not already been presented. • Judge ensures interactions between LIP and other side take LIP's non-practitioner status into account and are respectful. • Judges provides LIP space and time to consider a response.
	Judge appears to take LIP's views into consideration	• Judge listens to LIP's points and views.
	Judge uses clear language	• Judge uses clear, unambiguous, audible layperson's language when there is a LIP in court.

Article 6(1) attributes	Performative & behavioural descriptors	Examples
Being given the opportunity to present case (equality of arms)	**Others: court staff, other party, Court Children's Officer, security officers, Guardian ad Litem, social worker, witnesses**	
	Communication between LIP & other people in hearing supports engagement	• Interactions between LIP and others in the hearing are clear, unambiguous and take into account LIP's non-practitioner status.
	Opposing party enables LIP to communicate views, where appropriate	• Interactions between LIP and other side do not assume the LIP is as familiar with proceedings as a lawyer would be and are respectful.
	Opposing party uses clear language	• The other party uses clear, unambiguous, audible layperson's language.
	Evidence is accessible	• Process for submitting and receiving evidence, including the CCO's oral or written report is suited to non-practitioner status of LIP.
Being treated with respect	**All court actors**	
	Attitude towards LIP is respectful and not discouraging	• LIP is made to feel their presence is as valid as other court actors'.
Access to court & proceedings	**Litigants in person / litigants**	
	Infrastructure, accessibility & procedures are amenable for LIP	• LIP can avail of special arrangements, such as interpreter or support person. • LIP has enough time to prepare and manage their case. • Accessing the court is not problematic. • Connecting in private to online hearings is not problematic. • Taking the time to attend hearings is not problematic for work, childcare or looking after other dependents

Article 6(1) attributes	Performative & behavioural descriptors	Examples
Ability to participate in adversarial approach	**Litigants in person / litigants**	
	LIP understands case & self-representation	• LIP knows practical aspects of how case will progress and attending hearings – e.g. how & when to submit documents, accessing a hearing. • LIP is aware of hearing procedures – e.g. where to sit, when to speak, when to remain quiet. • LIP understands the purpose of the hearing. • LIP has command of the relevant issues - e.g. introduces and responds to relevant issues, asks for clarification. • LIP understands the consequences of decisions or court directions. • LIP understands their entitlements under the law covering their case. • LIP understands procedural rights - e.g. disclosure of documents, adequate time to respond, challenge witness testimony.
	LIP has prepared	• LIP has prepared the paperwork and other submissions required for the hearings, as directed.
	LIP is able to self-represent	• LIP is able to follow the proceedings. • LIP takes notes of directions and other relevant points. • LIP is able to make him or herself understood. • LIP's case(s) is not too complex for self-representation.
	LIP's health & emotional state are suitable for self-representation	• LIP is sufficiently healthy in mind and body to manage the case. • LIP's confidence is sufficient to manage the case. • LIP is sufficiently emotionally detached to engage and manage the case proceedings.

Appendix 3: Pilot Q Statements

59 Q STATEMENTS IN PILOT

	Pilot Statements	Action
P1	There should be no right to self-representation.	Out
P2	LIPS are offered the choice to attend their hearings face-to-face or online.	Out
P3	In hearings, judges check LIPs can follow proceedings and know what they need to do next.	Merged with P56 to Q23
P4	The courts see LIPs as a nuisance.	Q40
P5	When evidence is being tested, the hearing is face-to-face rather than online.	Out
P6	In hearings, judges require all present to adapt to LIPs' lack of legal training. For example, by speaking in Plain English.	Q20
P7	There is inconsistent practice between judges in how they deal with cases involving LIPs.	Q1
P8	Court hearings aren't scheduled to take account of LIPs' circumstances. e.g their caring or work commitments.	Q12
P9	In hearings, judges ensure LIPs have opportunities to speak so they can present their case.	Q24
P10	The LIP has the same judge for each court hearing.	Q2
P11	LIPs can hire a solicitor or barrister to do specific pieces of legal work in their cases.	Q13
P12	In exceptional circumstances, judges are able to request that the state pays for legal representation for LIPs. e.g. when cases become too complex.	Q28
P13	Authorised court observers monitor LIPs' participation.	Out
P14	LIPs can have the support of a McKenzie Friend in their hearings.	Merged with P53 to 14
P15	Judges invite the legally represented party to speak first even when the LIP is the applicant in the case.	Q25
P16	The system is unresponsive to the high level of stress and anxiety that impact on LIPs.	Q3
P17	McKenzie Friends aren't trained to provide effective support.	Out
P18	There is a hearing to set the ground rules on what adjustments are needed for a LIP.	Q26
P19	Legal procedural rules are too complex for LIPs.	Merged with P22 to Q4
P20	Training is available for LIPs on how to carry out specific tasks in their cases.	Merged with P30 to Q15
P21	If a LIP is not allowed to cross-examine witnesses, there is agreement between the LIP and the judge about what the judge can ask on the LIP's behalf.	Out
P22	Court forms are difficult for LIPs to complete.	Merged with P19 to Q4
P23	The court doesn't check that LIPs have a suitable device and internet connection to attend their online hearings at home.	Out

	Pilot Statements	Action
P24	If LIPs are not present in their hearing for a good reason, case submissions relevant to legal arguments can still be made in their absence.	Q27
P25	The court forms, the law and procedural rules relevant to LIPs' cases are easy to find.	Q5
P26	The court service provides a private space for LIPs to attend their online hearings.	Merged with P28 & P31 to Q6
P27	Where LIPs are entitled to state-funded legal assistance, for example for public law proceedings, they are made aware of it.	Out
P28	Court buildings have safe spaces for LIPs who need them.	Merged with P26 & P28 to Q6
P29	Legal representatives follow agreed professional guidelines on dealing with LIPs.	Q16
P30	On application or receipt of a summons, LIPs can attend a free advice service to help them identify their options.	Merged with P20 to Q15
P31	Signage in court buildings is not clear for LIPs.	Merged with P26 & P28 to Q6
P32	As part of their duty to the court, legal representatives assist LIPs to progress the case.	Q17
P33	LIPs have difficulty asking and answering questions to present their case.	Merged with P36 to Q29
P34	Information on how to self-represent is difficult to find.	Merged with P37 to Q7
P35	Legal representatives do not want to deal directly with LIPs.	Out
P36	LIPs aren't able to apply relevant information to their case.	Merged with P33 to Q29
P37	Information on how to self-represent is easy to understand.	Merged with P34 to Q7
P38	LIPs feel they are taken seriously, listened to and have a fair, unbiased hearing.	Q18
P39	LIPs are able to negotiate with the other party.	Q30
P40	Court staff don't have sufficient time to deal with enquiries from LIPs.	Out
P41	LIPs are treated differently depending on their reasons for self-representing.	Q19
P42	LIPs aren't able to clarify their evidence after having been cross-examined on it.	Merged with P45 to Q32
P43	A service is on hand at the court to give procedural advice, not legal advice, to LIPs.	Q8
P44	Judges put LIPs at ease in the hearings.	Implied in Q20 & Q22
P45	LIPs lack the skills to test the other party's evidence through cross-examination.	Merged with P42 to Q32
P46	The court service, including the judiciary, accommodates the needs of LIPs who have particular vulnerabilities. e.g. experienced domestic violence, health issues or non-native English speakers.	Q9

	Pilot Statements	Action
P47	Judges' directions to LIPs take account of LIPs' personal circumstances and available support.	In Q20
P48	LIPs are highly educated.	Q33
P49	All case documents aren't equally accessible to all parties to the case.	Merged with P52 to Q10
P50	Only relevant people involved in the case are present in hearings.	Q21
P51	LIPs understand what they are agreeing to and what they are required to do.	Q35
P52	LIPs don't receive case papers in good time.	Merged with P49 to Q10
P53	LIPs can consult with their McKenzie Friend throughout their hearings, whether online or face-to-face.	Merged with P14 to Q14
P54	LIPs put in the time and effort required to prepare their case and for hearings.	Q36
P55	LIPs are able to see and hear all other participants in their hearings, whether online or face-to-face.	Q11
P56	Judges provide insufficient guidance or explanation to help LIPs understand matters relevant to their cases.	Merged with P3 to Q23
P57	LIPs don't take notes in their hearings.	Q37
P58	LIPs don't follow court norms and etiquette.	Q31
P59	LIPs trust the system.	Out

Appendix 4: Legal participation set of statements

1. Practice between judges in how they deal with LIPs should be consistent across different family courts.
2. LIPs should have the same judge throughout their case for continuity.
3. The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.
4. The legal procedures should be easy to understand and follow.
5. Court forms, the law and procedural rules should be easy to find.
6. Court buildings should be user-friendly for LIPs, e.g. safe spaces for LIPs, clear signage.
7. Information on how to self-represent should be available and helpful for LIPs.
8. There needs to be somewhere for LIPs to get support at court as and when it is needed.
9. The courts should accommodate the needs of LIPs who have particular vulnerabilities, e.g. experienced domestic violence, health issues, non-native English speakers.
10. Case documents should be equally accessible to LIPs and received in good time.
11. LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.
12. When court hearings are scheduled to take account of LIPs' circumstances, e.g. their caring or work commitments.
13. LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.
14. LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e.g. a McKenzie Friend.
15. There should be advice organisations able to offer free assistance to LIPs.
16. Legal representatives should follow agreed professional guidelines on dealing with LIPs.
17. Legal representatives should assist LIPs to progress the case as part of their duty to the court.
18. LIPs should feel they are taken seriously, listened to and have a fair hearing.
19. When judges treat LIPs the same regardless of their reasons for self-representing.
20. Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.
21. Only relevant people involved in the case should be present in hearings.
22. The judge should see beyond the LIP's emotional state.
23. In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.
24. In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.
25. When judges allow the legally represented party to speak first when the LIP is the applicant in the case.
26. When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.
27. No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.
28. The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.
29. When LIPs are able to apply and present relevant information to their case.

30. When LIPs are able to negotiate with the other party.
31. LIPs should follow court norms and etiquette.
32. When LIPs have the skills to test the evidence in their case.
33. When LIPs are highly educated.
34. When LIPs are confident in their ability to self-represent.
35. LIPs should understand what they are agreeing to and what they are required to do.
36. When LIPs put in the time and effort required to manage their case and hearings.
37. LIPs should take notes in their hearings.
38. LIPs should be aware of the emotional burden of self-representing.
39. When LIPs are able to separate their legal issues from their emotions.
40. LIPs should not be treated as a nuisance.

Appendix 5: Condition of instruction used in the study

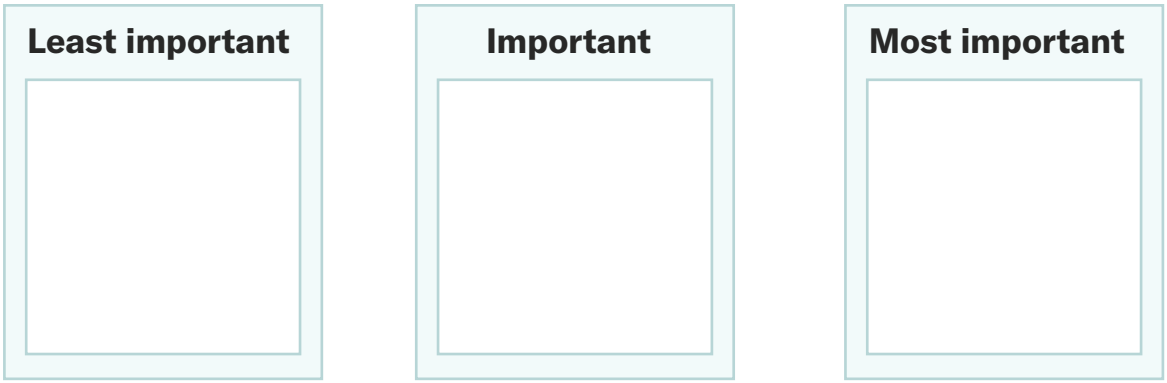
The right to a fair trial includes the ability to participate in your case, so ultimately the judge can make a fair decision.

We are interested in how people who are not represented by a lawyer participate in their court hearings. We refer to these people as litigants in person or LIPs.

Case law, lived experience and research highlight the problems LIPs face in participating in all aspects of their case. We are focussing on private family proceedings.

We are exploring views on what is important for LIPs to participate in family proceedings.

Please sort the following statements into 3 piles: most important for LIPs to participate, important for LIPs to participate and least important for LIPs to participate. Decide according to what you think is most important, important, least important for a LIP to participate in their case in family proceedings.



Appendix 6: Factor arrays for five factor solution

FACTOR 1 – CHANGE THE SYSTEM

< Least important to Most important >										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
34.When LIPs are confident in their ability to self-represent.	29.When LIPs are able to apply and present relevant information to their case.	36.When LIPs put in the time and effort required to manage their case and hearings.	13.LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.	22.The judge should see beyond the LIP's emotional state.	2.LIPs should have the same judge throughout their case for continuity.	20.Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.	18.LIPs should feel they are taken seriously, listened to and have a fair hearing.	40.LIPs should not be treated as a nuisance.	24.In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.	23.In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.
33.When LIPs are highly educated.	32.When LIPs have the skills to test the evidence in their case.	39.When LIPs are able to separate their legal issues from their emotions.	17.Legal representatives should assist LIPs to progress the case as part of their duty to the court.	3.The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.	26.When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.	16.Legal representatives should follow agreed professional guidelines on dealing with LIPs.	21.Only relevant people involved in the case should be present in hearings.	35.LIPs should understand what they are agreeing to and what they are required to do.	10.Case documents should be equally accessible to LIPs and received in good time.	27.No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.
	31.LIPs should follow court norms and etiquette.	25.When judges allow the legally represented party to speak first when the LIP is the applicant in the case.	19.When judges treat LIPs the same regardless of their reasons for self-representing.	8.There needs to be somewhere for LIPs to get support at court as and when it is needed.	7.Information on how to self-represent should be available and helpful for LIPs.	5.Court forms, the law and procedural rules should be easy to find.	9.The courts should accommodate the needs of LIPs who have particular vulnerabilities, e.g. experienced domestic violence, health issues, non-native English speakers.	4.The legal procedures should be easy to understand and follow.	11.LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.	
			30.When LIPs are able to negotiate with the other party.	12.When court hearings are scheduled to take account of LIPs' circumstances, e.g. their caring or work commitments.	15.There should be advice organisations able to offer free assistance to LIPs.	28.The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.	1.Practice between judges in how they deal with LIPs should be consistent across different family courts.			
				37.LIPs should take notes in their hearings.	38.LIPs should be aware of the emotional burden of self-representing.	14.LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e.g. a McKenzie Friend.				
					6.Court buildings should be user-friendly for LIPs, e.g. safe spaces for LIPs, clear signage.					

FACTOR 2 – TREAT LIPS LIKE LAWYERS

< Least important to Most important >										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
17.Legal representatives should assist LIPs to progress the case as part of their duty to the court.	13.LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.	8.There needs to be somewhere for LIPs to get support at court as and when it is needed.	36.When LIPs put in the time and effort required to manage their case and hearings.	38.LIPs should be aware of the emotional burden of self-representing.	16.Legal representatives should follow agreed professional guidelines on dealing with LIPs.	39.When LIPs are able to separate their legal issues from their emotions.	11.LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.	10.Case documents should be equally accessible to LIPs and received in good time.	24.In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.	18.LIPs should feel they are taken seriously, listened to and have a fair hearing.
33.When LIPs are highly educated.	34.When LIPs are confident in their ability to self-represent.	37.LIPs should take notes in their hearings.	6.Court buildings should be user-friendly for LIPs, e.g. safe spaces for LIPs, clear signage.	32.When LIPs have the skills to test the evidence in their case.	7.Information on how to self-represent should be available and helpful for LIPs.	1.Practice between judges in how they deal with LIPs should be consistent across different family courts.	23.In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.	9.The courts should accommodate the needs of LIPs who have particular vulnerabilities, e.g. experienced domestic violence, health issues, non-native English speakers.	30.When LIPs are able to negotiate with the other party.	35.LIPs should understand what they are agreeing to and what they are required to do.
	25.When judges allow the legally represented party to speak first when the LIP is the applicant in the case.	2.LIPs should have the same judge throughout their case for continuity.	12.When court hearings are scheduled to take account of LIPs' circumstances, e.g. their caring or work commitments.	26.When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.	40.LIPs should not be treated as a nuisance.	4.The legal procedures should be easy to understand and follow.	21.Only relevant people involved in the case should be present in hearings.	19.When judges treat LIPs the same regardless of their reasons for self-representing.	5.Court forms, the law and procedural rules should be easy to find.	
			15.There should be advice organisations able to offer free assistance to LIPs.	3.The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.	22.The judge should see beyond the LIP's emotional state.	29.When LIPs are able to apply and present relevant information to their case.	31.LIPs should follow court norms and etiquette.			
				14.LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e.g. a McKenzie Friend.	20.Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.	28.The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.				
					27.No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.					

FACTOR 3 – LIPS ARE AN INCONVENIENCE BUT ARE ENTITLED TO BE THERE

< Least important to Most important >										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
21.Only relevant people involved in the case should be present in hearings.	25.When judges allow the legally represented party to speak first when the LIP is the applicant in the case.	11.LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.	12.When court hearings are scheduled to take account of LIPs' circumstances, e.g. their caring or work commitments.	6.Court buildings should be user-friendly for LIPs, e.g. safe spaces for LIPs, clear signage.	37.LIPs should take notes in their hearings.	10.Case documents should be equally accessible to LIPs and received in good time.	38.LIPs should be aware of the emotional burden of self-representing.	36.When LIPs put in the time and effort required to manage their case and hearings.	23.In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.	24.In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.
33.When LIPs are highly educated.	2.LIPs should have the same judge throughout their case for continuity.	31.LIPs should follow court norms and etiquette.	14.LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e.g. a McKenzie Friend.	15.There should be advice organisations able to offer free assistance to LIPs.	30.When LIPs are able to negotiate with the other party.	26.When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.	22.The judge should see beyond the LIP's emotional state.	29.When LIPs are able to apply and present relevant information to their case.	40.LIPs should not be treated as a nuisance.	35.LIPs should understand what they are agreeing to and what they are required to do.
	1.Practice between judges in how they deal with LIPs should be consistent across different family courts.	17.Legal representatives should assist LIPs to progress the case as part of their duty to the court.	34.When LIPs are confident in their ability to self-represent.	19.When judges treat LIPs the same regardless of their reasons for self-representing.	27.No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.	16.Legal representatives should follow agreed professional guidelines on dealing with LIPs.	39.When LIPs are able to separate their legal issues from their emotions.	18.LIPs should feel they are taken seriously, listened to and have a fair hearing.	20.Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.	
			8.There needs to be somewhere for LIPs to get support at court as and when it is needed.	3.The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.	9.The courts should accommodate the needs of LIPs who have particular vulnerabilities, e.g. experienced domestic violence, health issues, non-native English speakers.	5.Court forms, the law and procedural rules should be easy to find.	7.Information on how to self-represent should be available and helpful for LIPs.			
				32.When LIPs have the skills to test the evidence in their case.	13.LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.	28.The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.				
					4.The legal procedures should be easy to understand and follow.					

FACTOR 4 – CONSISTENCY IN COURT CONTRIBUTES TO FAIRNESS

< Least important to Most important >										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
6.Court buildings should be user-friendly for LIPs, e.g. safe spaces for LIPs, clear signage.	15.There should be advice organisations able to offer free assistance to LIPs.	32.When LIPs have the skills to test the evidence in their case.	28.The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.	30.When LIPs are able to negotiate with the other party.	35.LIPs should understand what they are agreeing to and what they are required to do.	10.Case documents should be equally accessible to LIPs and received in good time.	16.Legal representatives should follow agreed professional guidelines on dealing with LIPs.	22.The judge should see beyond the LIP's emotional state.	2.LIPs should have the same judge throughout their case for continuity.	18.LIPs should feel they are taken seriously, listened to and have a fair hearing.
33.When LIPs are highly educated.	5.Court forms, the law and procedural rules should be easy to find.	26.When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.	13.LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.	12.When court hearings are scheduled to take account of LIPs' circumstances, e.g. their caring or work commitments.	29.When LIPs are able to apply and present relevant information to their case.	36.When LIPs put in the time and effort required to manage their case and hearings.	39.When LIPs are able to separate their legal issues from their emotions.	20.Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.	1.Practice between judges in how they deal with LIPs should be consistent across different family courts.	24.In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.
	37.LIPs should take notes in their hearings.	4.The legal procedures should be easy to understand and follow.	34.When LIPs are confident in their ability to self-represent.	17.Legal representatives should assist LIPs to progress the case as part of their duty to the court.	9.The courts should accommodate the needs of LIPs who have particular vulnerabilities, e.g. experienced domestic violence, health issues, non-native English speakers.	40.LIPs should not be treated as a nuisance.	27.No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.	3.The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.	19.When judges treat LIPs the same regardless of their reasons for self-representing.	
			7.Information on how to self-represent should be available and helpful for LIPs.	11.LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.	31.LIPs should follow court norms and etiquette.	23.In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.	25.When judges allow the legally represented party to speak first when the LIP is the applicant in the case.			
				21.Only relevant people involved in the case should be present in hearings.	38.LIPs should be aware of the emotional burden of self-representing.	14.LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e.g. a McKenzie Friend.				
					8.There needs to be somewhere for LIPs to get support at court as and when it is needed.					

FACTOR 5 – RECOGNISE LIPS' VULNERABILITY IN THE SYSTEM

< Least important to Most important >										
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
31.LIPs should follow court norms and etiquette.	25.When judges allow the legally represented party to speak first when the LIP is the applicant in the case.	38.LIPs should be aware of the emotional burden of self-representing.	32.When LIPs have the skills to test the evidence in their case.	6.Court buildings should be user-friendly for LIPs, e.g. safe spaces for LIPs, clear signage.	22.The judge should see beyond the LIP's emotional state.	19.When judges treat LIPs the same regardless of their reasons for self-representing.	40.LIPs should not be treated as a nuisance.	3.The court system should pay attention to the high levels of stress and anxiety that LIPs may experience.	23.In hearings, judges should provide explanations as required, check that LIPs can follow proceedings and know what they need to do next.	18.LIPs should feel they are taken seriously, listened to and have a fair hearing.
33.When LIPs are highly educated.	39.When LIPs are able to separate their legal issues from their emotions.	36.When LIPs put in the time and effort required to manage their case and hearings.	34.When LIPs are confident in their ability to self-represent.	17.Legal representatives should assist LIPs to progress the case as part of their duty to the court.	16.Legal representatives should follow agreed professional guidelines on dealing with LIPs.	4.The legal procedures should be easy to understand and follow.	10.Case documents should be equally accessible to LIPs and received in good time.	15.There should be advice organisations able to offer free assistance to LIPs.	14.LIPs should be able to have someone other than a lawyer who can support, assist and advise them during their hearing, e.g. a McKenzie Friend.	9.The courts should accommodate the needs of LIPs who have particular vulnerabilities, e.g. experienced domestic violence, health issues, non-native English speakers.
	21.Only relevant people involved in the case should be present in hearings.	37.LIPs should take notes in their hearings.	26.When there is a hearing to decide on the hearing formats and any adjustments that are needed by a LIP.	1.Practice between judges in how they deal with LIPs should be consistent across different family courts.	8.There needs to be somewhere for LIPs to get support at court as and when it is needed.	35.LIPs should understand what they are agreeing to and what they are required to do.	5.Court forms, the law and procedural rules should be easy to find.	20.Court hearings and judges' directions should take account of LIPs' lack of familiarity with litigation, and the support and resources available to them.	24.In hearings, judges should ensure LIPs have opportunities to speak so they can present their case.	
			2.LIPs should have the same judge throughout their case for continuity.	11.LIPs should be able to see and hear all other participants in their hearings, whether online or face-to-face.	12.When court hearings are scheduled to take account of LIPs' circumstances, e.g. their caring or work commitments.	13.LIPs should be able to hire a solicitor or barrister to do specific pieces of legal work in their cases.	7.Information on how to self-represent should be available and helpful for LIPs.			
				30.When LIPs are able to negotiate with the other party.	28.The court system should be able to respond when the judge decides a case becomes too complex for the LIP to litigate.	27.No case submissions relevant to legal arguments should be made when LIPs do not attend their hearing for a good reason.				
					29.When LIPs are able to apply and present relevant information to their case.					

Appendix 7: Sample of a judge's aide-memoire of the descriptors of legal participation

Non-discriminatory access to a court and proceedings
1. There are consistent approaches towards LIPs across the courts.
2. Hearings, whether online or face-to-face, take account of the LIP's non-practitioner status and access issues, such as internet connectivity, availability if not resident in the jurisdiction, caring commitments.
Equality of arms
3. LIP feels they are treated fairly and have a perception of fairness.
4. The judge accommodates LIP status by: i. treating all LIPs equally regardless of their perceived reasons for self-representing, unless remedial measures are required to deal with malice. ii. 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 the LIP has received case documents in good time and by adopting consistent practice with LIPs. iii. iensuring comprehension by explaining what is taking place in the hearing, checking the LIP can follow proceedings and know what is expected of them to manage their case.
5. In court, the judge ensures the LIP has opportunities to present their case.
6. 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.
7. 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
8. All interactions, written or verbal, are respectful and clear.

The ten descriptors of legal participation – a Q methods study

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Nuffield Foundation

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