

THE LITIGANT IN PERSON'S TALE: DESPAIR AND DYSFUNCTION IN THE CIVIL JUSTICE SYSTEM OF ENGLAND AND WALES

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Abstract

There is a dearth of academic literature and evidence about litigants in person (LiPs), despite their growing numbers. This article is an account of the seven months during which I was an LiP in a low-value breach-of-contract case, interspersed with reflections on the emotional impact of that experience. I hope that, by raising awareness of how LiPs are treated, and proposing some further research, the article may contribute to improving the experiences of future LiPs. Despite my extensive legal education, I found the situation enormously draining, and it resulted in one of the longest periods of stress that I have ever experienced. The intransigence of the defendant company and its legal representative paled into insignificance beside the incompetence of HM Courts and Tribunals Service, and the incomprehensibility of official forms and processes. Change is urgently needed if LiPs are not to be denied access to civil justice.

Introduction

This article is a reflective chronology of what happened when I became a user of the Small Claims Track in the civil court system in England and Wales, and the emotional effects of that experience. It concludes with some suggestions for further research into a civil justice system that appears to be in crisis.

I did not have a legal representative, so I was part of a growing trend – litigants in person (LiPs) are increasing in number, although there is little published material about them. The nature of this article necessitates its being written, contrary to normal academic convention, in the first person. Pseudonyms have been used for the defendant company, its legal representative, and the legal representative's law firm.

Literature review

The sparse literature on LiPs concerns their effect on the civil justice system, rather than their own experiences. Moorhead (2007: 405) writes from the perspective of the court, describing LiPs as posing a challenge to 'judgecraft'. Bevan (2013) adopts the perspective of a practitioner, concentrating on the pitfalls that LiPs represent.

Williams (2011) conducted a literature-search project for the Ministry of Justice, drawing on 52 sources. It aimed to examine the evidence about the number of LiPs and the cases in which they take part, the characteristics of LiPs compared with those of represented litigants (RLs), the motivation of LiPs, the outcomes in cases brought by LiPs, and 'what action works' in assisting LiPs. One key finding was that the limited evidence meant that

‘there are still a number of gaps in our understanding of this issue’. Most LiPs in civil cases tended to be younger, and to have lower levels of income and educational attainment, than RLs. LiPs’ practical problems included understanding forms, deciding which facts were relevant, and feeling ‘overwhelmed by the oral and procedural demands of the courtroom’ (*ibid*: 1–2). Court staff, legal representatives and judges felt that LiPs created extra work. In all types of case, LiPs were generally less successful than RLs.

The last of these findings is a cause for concern; as Lord Dyson wrote in his Foreword to *A Handbook for Litigants in Person* (Bailey *et al* (2012: i)):

Access to justice is a right not a privilege... Over the last ten years there has however been an increase in the number of individuals who have ... pursued and defended claims on their own behalf: they have been and are litigants in person ... It is anticipated that in the years to come the number of litigants in person will increase and perhaps will do so sharply.

The Handbook deals in detail with topics such as how to start proceedings, fees, pleadings, disclosure, hearings, remedies and appeals. It is a valiant attempt to overcome some of the myriad hurdles facing LiPs, who do not necessarily receive any procedural concessions: by a 3:2 majority, in *Barton v Wright Hassall LLP* [2018] UKSC 12, it was held that an unrepresented ‘experienced litigant’ (Lord Sumption at para 19) could not be excused from complying with The Civil Procedure Rules 1998 (CPR). Lord Briggs, with whom Lady Hale agreed, dissented, pointing out that there could be circumstances where an LiP could be deemed to have validly served a claim, despite having committed a ‘minor or technical breach ... because the relevant rule is obscure, or less accessible to a litigant in person than to an experienced and skilled lawyer’ (para 32).

Lord Dyson’s prediction about a sharp increase in LiPs in the years following 2012 was accurate, and some of the problems faced by LiPs were highlighted in an episode of *Money Box Live* (BBC, 2018). The studio guests were Nigel Smith, the Director of Litigants in Person from the University of Leicester’s *Pro Bono* Society; Lizzie Iron from the Personal and Childhood Support Unit (PCSU); and Denise Lester, a solicitor who sits on the Law Society’s Family Law Committee. Iron noted that, since 2013 – when the Legal Aid, Sentencing and Punishment of Offenders Act 2012 had come into force, imposing £350 million cuts in civil Legal Aid – the percentage of litigants who are LiPs had increased significantly and rapidly. Iron stated that 45% of the PCSU’s ‘total work’ since it opened in 2001 had taken place in the last two years (BBC (2018: 02:28)). The presenter, Louise Cooper, stated – without a source – that the percentage of litigants in private law cases who represented themselves had risen to 90% from 50% five years ago. Iron confirmed that there is a lack of firm data about how many civil cases involve LiPs, and the programme stressed the general paucity of evidence-based information on the subject of LiPs.

Lester said that the government had ‘engaged in a falsehood’ because it had thought that the cuts would save money, but the stress on LiPs and their families from non-funded actions had taken its toll on health and other publicly funded services (BBC (2018: 08:20)).

Smith observed that he finds court documents complicated, and suggested that it must be very difficult for LiPs with few or no academic qualifications to understand them. He supported Cooper’s suggestion (made without a stated source) that a project by the University of Birmingham had found that almost two-thirds of LiPs had either no formal qualifications, or qualifications at Level 2 (GCSE or equivalent) or below.

Much of the programme consisted of personal accounts from individuals who had been LiPs. Contributors described being bewildered by documents; facing specialised barristers; not being permitted to give their evidence; and being humiliated, ‘harangued and bullied’ by opponents’ legal representatives and judges (BBC (2018: 24:54)). They felt that the courts were designed to intimidate them, that the system was prejudiced against them, and that they were a burden to judges and lawyers. Even contributors who had won their cases described gruelling experiences, and two successful claimants reported having been ordered to pay part or all of the losing party’s costs, which in one case had been £50,000.

LiPs’ ignorance of the legal system, and how to mitigate its consequences, was a recurrent theme. One contributor noted the incomprehensibility of his opponent’s solicitor’s language, and said that, despite the judge’s help in interpreting this, he had needed to spend three or four hours each day reading about his legal rights. The programme reported that the closure of many court counters has made it more difficult for LiPs to obtain and file documents. Smith observed that, because LiPs are at a disadvantage in court, they may make mistakes that could render them liable for costs. Lester likened the situation of an LiP to that of David against Goliath, describing the court process as ‘intimidating’ (BBC (2018: 13:52)).

The programme consisted largely of anecdotal evidence, and had, inevitably, been edited to provide a coherent narrative. It has been described in some detail because the contributors’ stories so accurately reflect my experience and emotions.

Pywell v Opaque Windows (2017)

On 1 February 2017, my husband and I paid £645 to Opaque Windows as a deposit for a composite front door with a uPVC arch surround. The order was marked ‘Urgent, six to eight weeks’.

At 8:10 am on 15 May – after two cancelled appointments – a very embarrassed fitter from Opaque arrived at our house. His opening words were: ‘Well, I’m here, but you’re not going to like this’. I followed him to his van, and it was immediately obvious that the arch would not fit our house: it was a different shape from the plywood template that the fitter had

made. The fitter explained that the arch could not be altered without ruining its appearance. I told the fitter that, given the cancellations – the second of which had been justified by an employee of Opaque on the basis of a false assertion that the fitter was unwell – my husband and I would cancel our order and request the return of our deposit.

I was informed that the only person who could ‘authorise’ the cancellation of our order was Opaque’s Managing Director (MD) who, over the course of the subsequent three weeks, failed to respond to three telephone messages and three letters for which we had signatures confirming delivery. Our letter of 26 May stated that, if our money were not refunded by midday on 6 June, we would begin legal action. We received neither a response nor a refund.

On the evening of 6 June, I began a Money Claim Online. This cost £60, and was in my sole name, because there was no space on the online form for a second name. Two days later, the MD telephoned. He told my husband that the door and arch had been scrapped, and offered a full refund of our deposit, or £300 off the total cost of a new door and arch. My husband said we also wanted the £60 that it had cost us to persuade the MD to contact us; the MD said: ‘I’m not paying that’, so my husband said that he would have to discuss the matter with me. As we had lost all confidence in Opaque and its MD, and there was no door and arch that fitted our house, we wrote a letter requesting payment of £705.

The post on 22 June brought the first indications of the quality of service that HM Courts and Tribunal Service (HMCTS) would provide over the next six months. One letter stated: ‘Notice That Acknowledgment of Service Has Been Filed, and a copy is attached’ but lacked an attachment. Another identical letter enclosed the Acknowledgement of Service, which stated that Opaque Windows was being represented by Mr Elpeecey, an associate solicitor at Nonesuch LLP. I was shocked at the court’s incompetence, and horrified by the involvement of Mr Elpeecey; I had assumed that Opaque’s MD would capitulate when I pursued recovery of the claim fee.

After my first two case-related sleepless nights, I decided to try and settle the matter as soon as I could; I had no wish to enter into a protracted legal battle. I emailed Mr Elpeecey on 24 June, pointing out that the only disputed sum was the claim fee. I offered to split the financial difference between our positions, and settle for £675. This email was never acknowledged.

The post on 5 July included four court documents. I was relieved to see two poorly photocopied, double-sided sheets concerning mediation, and reassured that the ‘What happens next’ section stated that, if all parties agreed, we would receive emails offering a telephone appointment for mediation.

The Notice of Proposed Allocation to the Small Claims Track stated that I must download and complete a Small Claims Directions Questionnaire. I did this, ticking the box that indicated my willingness to attempt mediation, and listing my non-available dates, which included 30 November to 5 December 2017. I returned this form using Royal Mail's *Signed For* service.

The Defence and Counterclaim indicated that Opaque was suing me for £2,923.50 because 'the contract does not allow for cancellation'. There is a clause in very small print to that effect on the back of the original order form, but it had never been drawn to the attention of my husband and me, and the word 'urgent' on our order had clearly indicated, to my mind, that time was of the essence. The Counterclaim stated: 'The Claimant did not allow the Claimant (*sic*) the opportunity to return to the property to install the adjusted arch' – this apparently referred to the arch that the fitter had described as non-adjustable, and that the MD had confirmed as having been scrapped. It referred to a non-existent agreement 'that the Defendant would be allowed to return to the Claimants (*sic*) property to complete the installation. It was also agreed that an allowance of £400 would be made on the purchase price as a gesture of goodwill'. I felt devastated: although I thought that I must win the case, and knew the counterclaim was based on nonsense, I was panic-stricken at the prospect of being sued for almost the total value of the contract.

The Notice of Transfer of Proceedings stated: 'You are required to file a response using the enclosed response pack. Please be aware that if you do not dispute the counterclaim the defendant may be able to obtain judgment against you for the amount they are claiming' – but there was no 'enclosed response pack'. This further indication of HMCTS's incompetence made me feel as though I had three opponents: Opaque, Mr Elpeecey and HMCTS itself. From that point, I dreaded the arrival of the post, and my stomach lurched every time I opened my email inbox.

On 6 July, I phoned the 0844 number printed on the Notice of Transfer of Proceedings, and heard a recorded message that told me to call an 0300 number. This connected me to a call centre, and I spoke to an adviser who promised to arrange for a response pack to be sent to me. I formally complained about the duplicated Notice of Acknowledgement of Service, the lack of a response pack, and the incorrect phone number. I pointed out that I was representing myself, that I was finding the process very upsetting and anxiety-inducing, and that the inefficiency of HMCTS was making things far more stressful.

On 14 July, I rang the call centre again: I was conscious that most legal procedures are subject to a time limit, but could find no mention of the date by which I was required to submit the non-existent response pack. A helpful adviser told me that I did not need a pack: I could print my Defence to Counterclaim on plain paper, and send it to the court with an accompanying letter. My relief was tinged with irritation that I had wasted over a week of the (unspecified) allotted time waiting for an unnecessary form, but I immediately drafted a

Word document detailing the story of Opaque's non-compliance with the contract, and the MD's failure to contact my husband and me until Opaque had received my claim. The informal opinion of a friend who is a barrister was that my document would have been completely inappropriate as a Defence to Counterclaim drafted by a lawyer, but that it was entirely apposite as an LiP's response, because it gave a detailed and convincing account of a strong legal case. I posted the document, using the *Signed For* service, on 17 July. This made me feel a little better, because it seemed inevitable that Opaque would abandon its claim when it saw the details of my case. On 20 July, Mr Elpeecey sent me a copy of Opaque's Directions Questionnaire, and I noted with relief the ticked box that indicated my opponent's agreement to the case's referral to the Small Claims Mediation Service.

On 29 July, I received HMCTS's poorly written and ungrammatical response to my complaint, accompanied by the response pack that I should have received on 5 July. Several sentences began: 'I apologise if ...', followed by summaries of my complaints, and the letter included: 'I have also noted our system (*sic*) to ensure you are given the correct time to comply', though the deadline was still not specified. This annoyed me: I had done everything I could to comply with the procedural requirements, despite the barriers posed by HMCTS's incompetence, and the multiple 'if's suggested that my account was not believed. I was still feeling relatively confident about the case, and I felt that I had a moral duty to challenge a system that treated LiPs so poorly. I was very conscious of the numerous advantages that I had over many LiPs, and I resented the peremptory dismissal of the ways that the process had been made more difficult. On 1 August, I escalated the complaint to an HMCTS Operations Manager.

My relative confidence about the case was short-lived; on 4 August, I received a letter saying only: 'I would like to apologise as it seems we have misplaced your directions questionnaire. Please can you send us your directions questionnaire and I would like to apologise to you again for any inconvenience (*sic*) caused'. This re-kindled my anxiety, and it prompted me to track all the documents that I had sent to HMCTS. The Directions Questionnaire had been signed for on 12 July, which confirmed that HMCTS was responsible for its loss. Alarming, no one had signed for the Defence to Counterclaim. I went into a panic at the likelihood that HMCTS would think I had not responded to the Counterclaim. This, according to the words quoted above from the Notice of Transfer of Proceedings, could be fatal to my claim. My husband immediately enquired at the Post Office about the implications of the non-signature; he was told that a recipient is not obliged to sign for a *Signed For* letter.

We had retained a scanned copy of my Directions Questionnaire, which was fortunate, as HMCTS's letter included neither a second copy nor a reminder of how I could download one. I printed a copy of the Directions Questionnaire and a copy of the un-signed-for Defence to Counterclaim. I sent these to HMCTS with an explanatory letter dated 4 August, asking for confirmation of their safe receipt. On the same day, I wrote a second letter to the

Operations Manager, expressing my concern that I had no evidence that my Defence to Counterclaim had been received. My letter included screenshots of Royal Mail's tracking system – I felt compelled to provide proof that I had endeavoured to do everything correctly, even though I knew I was spending far longer than should be necessary to obtain a refund of a small sum of money.

This was my lowest emotional point since I had started the claim: my husband and I had been let down and lied to by Opaque, Mr Elpeecey had ignored my attempt at settlement, HMCTS's incompetence was making the process more arduous than necessary, and now we knew that our reasonable efforts to obtain signatures for intrinsically valueless letters had failed. I felt completely powerless and tremendously anxious. I developed chronic insomnia, and my hair started falling out. I felt sick every time I heard or read court-related words – which, given that I am a legal academic, was frequently. I reminded myself that my husband and I had not had the deposit for seven months and that, if everything went as badly as it could, we would be able to pay the counterclaim from our savings. Intellectually, I knew that I was getting everything out of proportion, but I had a constant feeling of anxiety that I could not rationalise out of existence. I also started to worry about LiPs for whom a court's decision could have huge emotional or financial consequences.

On 9 August, I received a courteous, detailed, apologetic response to the complaint about the complaint. This letter assured me I would not be penalised for lateness. The Operations Manager promised to monitor the amendments that she had requested, which included ensuring that future automated responses gave correct contact details, and that the necessary documents were enclosed with letters.

A letter from HMCTS dated 9 September – referring, erroneously, to my letter of 12 August – confirmed that the case had been transferred to a County Court centre about eight miles from my home, and that my Directions Questionnaire and Defence to Counterclaim had been received. My mild sense of relief was rapidly replaced by further anxiety: the Notice of Allocation to the Small Claims Track stated that the case would be heard on 4 December, one of my non-available dates. The four-sided Notice of Allocation was not user-friendly or easy to understand: the layout was illogical, some information was included twice, and several pieces of information were presented in bold type. One bold paragraph warned that, if I did not provide to the court and Mr Elpeecey all the documents on which I intended to rely, plus a trial fee of £80, by 4:00 pm on 6 November, the case would be struck out, and I would be liable for the defendant's costs. In my anxious skim-reading of the document, I could see no information about how to pay the £80. I have subsequently found this information on the last page, not adjacent to the paragraph stating that the fee is required. It is unhelpfully presented: 'Information and leaflets explaining more about how to pay a court fee or how to apply for a help (*sic*) with fees are available from the court office **or online at:** <https://www.gov.uk/court-fees-what-they-are>' [original emphasis; the sentence did not end with a full stop].

On 15 September, I emailed HMCTS requesting a new hearing date, and asking how to obtain access to mediation. I also emailed Mr Elpeecey to remind him of my offer of 24 June to settle for £675. This email was, like its predecessor, never acknowledged.

On 16 September, I received my first email from Mr Elpeecey. It requested that I send him a copy of the Defence to Counterclaim 'as we have never received one from either you or the court'. I was about to go on holiday, so I replied using my mobile phone. I explained that I would not have access to my PC for ten days, so it might be quicker for Mr Elpeecey to request a copy of the Defence to Counterclaim from HMCTS. The response, dated 27 September, advised me that HMCTS had 'so far failed' to provide a copy, and pugnaciously added: 'The fact is that it is your responsibility to provide us with a copy of any document you file with the Court and you have not done so'. I was upset by the tone of the email, but complied with the request on the day that I received it. On the same date, I re-forwarded my email offering to settle, stating that the offer remained open. I received no acknowledgement of either email.

A Notice of Trial dated 11 October stated that the hearing had been adjourned until 22 December. The accompanying letter ended: 'With regards to mediation information can be found on the internet.' After some Googling, I discovered that litigants must email the Small Claims Mediation Service to request appointments; contrary to the information that I had received in early July, a mediation appointment is not automatically 'What happens next', even if both parties are willing to go to mediation. The website stated that appointments cannot be moved because of timetabling constraints so, on 13 October, I emailed to request an appointment, and listed all the dates on which I knew I would not be available. I copied this email to Mr Elpeecey. From that point I felt anxious every time I arranged a work meeting, a social event, or a medical appointment, in case the date clashed with the putative mediation appointment. This worry was unfounded, as I never received an appointment. On the same date, I sent an email to Mr Elpeecey, reiterating my offer to settle for £675. This email was never acknowledged.

Despite the changed hearing date, I had not been notified that the deadline for providing documents to the court – and paying the £80 fee – had changed. I strongly suspected that this should have been moved to a date four weeks before the hearing, but I had no confidence that HMCTS would do this. I therefore decided that I must meet the 6 November deadline. My husband and I spent most of the last Sunday in October writing detailed witness statements, and I spent the next three evenings printing and collating three folders of all the emails and other documents to which our statements referred, indexing them against the 20 superscripts in my witness statement. This convinced me of the strength of my case: it was reassuring that I had documentary evidence for almost every assertion that I made.

On Friday 3 November my husband went to the local court to deliver two folders of documents and £80 in cash, which we thought would be the safest method of paying the fee. The security guard at the reception desk of the multi-purpose office block that accommodated the court was apologetically adamant that he was not permitted to take the money or give a receipt for it. He gave my husband a small envelope for the cash, and advised him to write the case number on it, then put the envelope and the folders in 'the postbox on Level 5'. This was just a letter box in a blank wall in an empty corridor, so my husband returned home in the late afternoon with no proof that he had ever visited the court. This was an example of *Money Box Live's* subsequent assertion that LiPs are disadvantaged by the closure of courts' counters.

This unexpected and unsatisfactory development triggered another very low emotional ebb. I hardly slept for the whole weekend, and constantly thought about the problems that would ensue if – as seemed very likely – the cash, the folders, or both were mislaid by HMCTS.

On Monday 6 November, I phoned HMCTS. I was told that there was no record of the folders or the money, but that the envelopes would definitely have been date-stamped that morning, when the postbox was emptied, and their contents would not be expected to appear on the system immediately. The adviser reassuringly said: 'I can hear the anxiety in your voice; this call is being recorded, and it'll be proof that you did what you're telling me' – but the only practical advice she could offer was that I should phone again on Thursday 9 November. When I did so, I was told that everything had now been logged as received. I also received confirmation that Opaque would have been subject to the same deadline, and had not delivered any documents to the court. This lifted my spirits considerably: it now seemed that I would win, with costs – including some for Mr Elpeecey's failure to comply with Directions, which could be considered as 'behaving unreasonably' under Rule 27.14(2)(g) CPR. My dread of the impending hearing persisted, however, and I spent two or three hours of most nights lying awake and worrying.

On 13 December, I received an email from Mr Elpeecey, offering £352.50 'in full and final settlement', and observing that: 'it makes no sense for anyone spending half a day in court both from a financial and time point of view.' I worked out my quantifiable costs, including the trial fee, and responded that I would settle for £811.07 in my bank account by 5:00 pm on 20 December, but that I was content to go to court if Opaque so wished.

At 9:53 am on 21 December, I received an email from Mr Elpeecey stating that £705 had been paid into my account, that I was not entitled to anything else, that the case was at an end, and that 'we have notified the court'. I felt bewildered and panic-stricken, since I did not believe that a defendant's solicitor could decide that a case had ended after paying a sum less than the claimant had specified for settlement. I was still shaking half-an-hour later, when I received an email from HMCTS stating that the case, which was listed for 10:00

am the following day, had been transferred to a County Court centre over 20 miles away. I suspected that Mr Elpeecey was trying to persuade me not to attend the hearing so that Opaque would get default judgment.

I spent most of the day trying unsuccessfully to contact Mr Elpeecey's mobile phone and Nonesuch LLP's landline. At 4:00 pm – just one business hour before the hearing – feeling desperate, and with no idea what to do, I phoned HMCTS. I explained my concern that Mr Elpeecey could not really have ended the case, and that I could be penalised for non-attendance at the hearing. I was told that I had the option of going to court or cancelling, but the adviser could not tell me whether the case had been cancelled by the defendant. In something close to a panic attack, and feeling under huge pressure, I cancelled, fearing that a judge might view as a vexatious litigant an obviously fairly prosperous person who was taking up the court's time for £80 on the last working day before Christmas.

The next morning, I telephoned Nonesuch LLP, intending to explain the situation to one of the partners. I thought that I had dialled incorrectly, because the call was answered with a gruff 'Hello', but the speaker said that he was the partner who deals with complaints. He refused to let me explain the situation, frequently interjecting with exclamations such as 'Let me ask the questions!' and 'It's Christmas!'. I was upset at his attitude, but my voice remained calm, and I was egregiously courteous. The phone was on its loudspeaker setting, and my husband's jaw dropped as he listened to the tirade of verbal abuse. Twenty-four hours later, the same partner sent me an email, falsely alleging that I had 'ranted' on the phone, stating that Mr Elpeecey had 'confirmed that the case was settled', and ending: 'I would now prefer to enjoy my holiday.' I did not respond.

I initially contacted the Solicitors Regulation Authority (SRA) on 30 December. The complaints in my first two emails were summarily dismissed, but I persisted, and an email that I sent on 20 February elicited a statement that: 'We will make some enquiries with the firm ...'. On 12 April, I received a letter that included:

We appreciate that [Mr Elpeecey]'s email stating that 'the case is therefore at an end' could have been clarified further to avoid uncertainty. We understand that this email may have lead you to believe the defendants had ended the case on your behalf. [Mr Elpeecey] has confirmed that he has contacted the Court and the matter is still live and therefore, did not end the case on behalf of you.

[Mr Elpeecey]'s email could have qualified his client's position further by stating that the Counterclaim had been abandoned and it considered the initial claim to have been settled due to the payment made. We do not consider that this is an issue that amounts to misconduct and requires further investigation. However, we have advised [Mr Elpeecey] that he may wish to ensure his communications are qualified in full when dealing with litigants in person.

We also note you were dissatisfied with the fact that [Mr Elpeecey] confirmed his client had transferred £705.00 into your account in full and final settlement of your claim and stated, *'you are not entitled to any further payment'*. Having contact with [Mr Elpeecey] on this matter we understand that the case was allocated to the Small Claims track and you had not claimed for statutory interests or costs. Therefore, [Mr Elpeecey]'s statement was made regarding such additional costs or costs that could only be claimed if you had won the case in Court.

However, [Mr Elpeecey] has confirmed that since reviewing the file he notes the payment to you was miscalculated and that if you paid an £80.00 Hearing fee, this should also have been refunded. Whilst we cannot compel a firm to make payment to you, [Mr Elpeecey] has stated if you can confirm the sum was paid, he was sure his client would be happy to make this payment to you to bring the dispute to an end...

I responded to the SRA on 16 April, pointing out that the sum due to me could not have been 'miscalculated', since the only email that had included my bank account details had clearly indicated that I had paid, and wished to recover, the trial fee. I pointed out that I had claimed costs, and I questioned some details in the letter which indicated that Mr Elpeecey had made statements to the SRA that were at odds with the evidence in emails that I had submitted.

On 15 May, the SRA's email to me included a PDF of a letter to another complainant. When I tried to notify the SRA of this by clicking on the address at the end of the email, I received a 'bounce' message. I phoned the SRA, and was shocked that their concern that I should immediately confirm deletion of the other person's letter exceeded any concern that they should correct the email address they were publicising, or send me my own letter. When I received my response, it was another flat refusal to investigate any further, so I have learned that a solicitor's giving incorrect information to the SRA does not necessarily constitute professional misconduct.

I abandoned the unequal struggle, and formally requested Mr Elpeecey to refund the £80. The email was never acknowledged, but the money was paid into my account on 24 May, 50 weeks after I had started the Money Claim Online.

Reflections and suggestions for research

My case was a routine small claim for breach of contract. The only unusual thing about it was that, unlike most LiPs, I am educated to PhD level, and I have a good awareness of the law, family support, financial security, and a well-equipped home office. I was fighting for something that I could afford to lose; many LiPs are fighting for things that really matter, such as their livelihoods, their homes, or access to their children. I can only imagine the

stress that they must feel when they open the envelopes containing – or not containing – repetitive, abstruse and error-strewn communications from HMCTS, or receive patronising and hostile emails from lawyers.

My experience has significant similarities with those of the contributors to *Money Box Live*, although I never attended court. The relatively user-friendly Money Claims Online service makes it easy to initiate a claim, but many aspects of the subsequent process are clearly designed by lawyers for lawyers. A systematic empirical study of LiPs' experiences and emotions is required, so that the civil claims process can be adapted to better meet their needs.

Documents that bewilder or intimidate LiPs constitute a barrier to justice, thereby generating additional work for HMCTS. A relatively quick and cheap step towards resolving these issues would be for a professional, independent copy-editor to render HMCTS's forms and standard letters accurate, clear, and comprehensible to non-legally qualified readers.

Research is also needed into the operation of the Small Claims Mediation Service, and the way in which LiPs are informed of its operation. My email to the Service was acknowledged, but no appointment was offered in the 10-week period before the scheduled hearing, indicating a system that is not fit for purpose.

In September 2016, the Lord Chancellor, the Lord Chief Justice, and the Senior President of Tribunals published their 'vision' of an investment of £700 million to modernise courts and tribunals by greatly increasing the use of technology to provide 'a system that is straightforward to use for every citizen' (The Lord Chancellor *et al* (2016: 3–4)). Although this aspiration is commendable, the fundamental errors in some of HMCTS's established documents give grounds for doubt that a tranche of new, algorithm-driven correspondence would work successfully. Such a system would require LiPs to possess technological equipment and proficiency – as well as immense determination and a high level of literacy – thereby imposing another barrier to justice.

Conclusion

My experience, supported by the scant literature, suggests that there is a crisis in the civil justice system. I forewent my day in court because I could face no more stress, and it is likely that other LiPs – browbeaten by the attitude of their opponents' lawyers, overwhelmed by the copious documentation, and despairing at HMCTS's incompetence – drop out earlier in their proceedings. If deserving litigants are effectively denied the access to civil justice that Lord Dyson described as their right, society will suffer as fraudsters and tortfeasors flourish. The civil justice system must be rendered accessible and comprehensible to citizens, rather than merely being camouflaged in technological wizardry: that would be a truly worthwhile 'vision' for the future.

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