



Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland



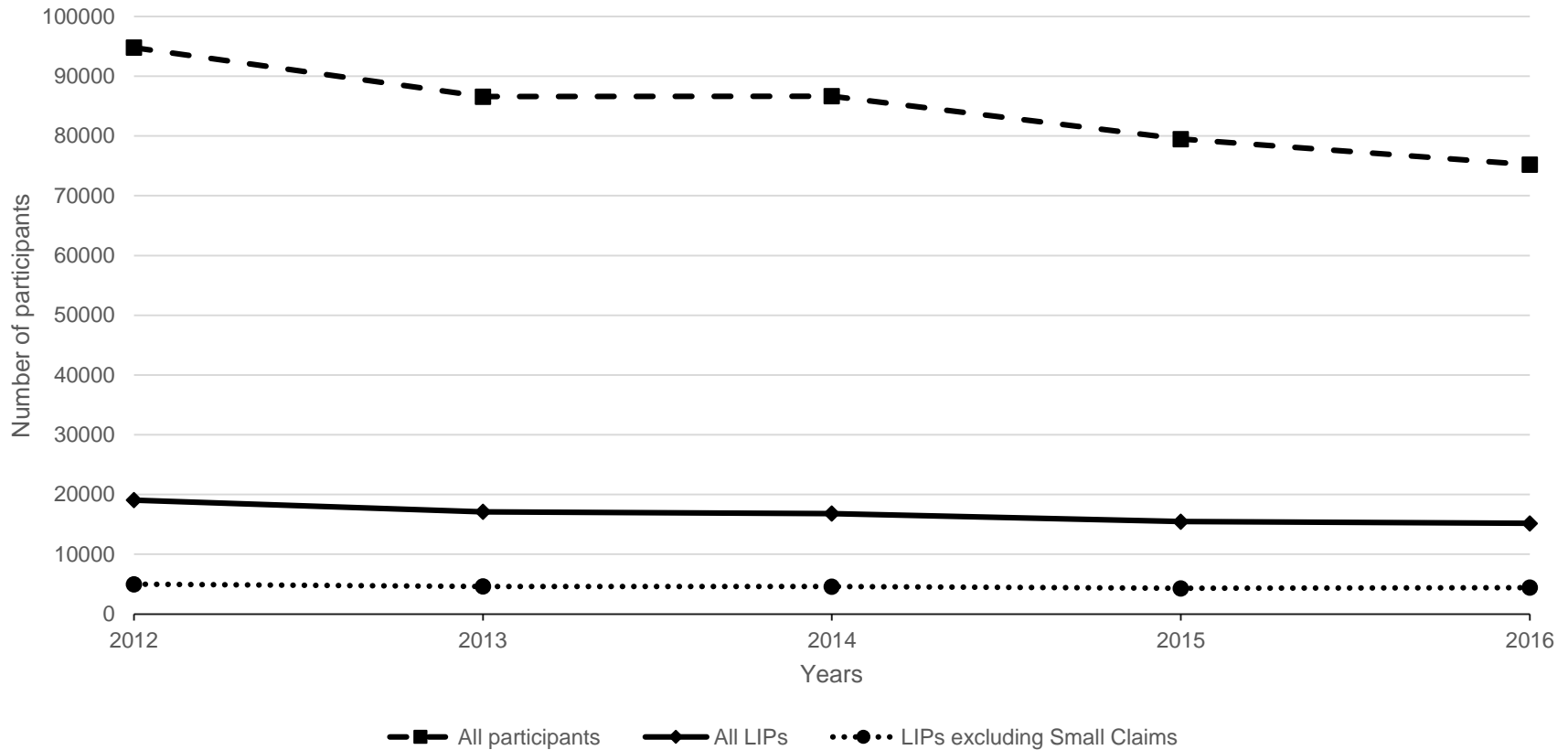
Litigants in person in Northern Ireland: barriers to legal participation

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9 May 2018

Prevalence of LIPs



Jane

No single **reason to self-represent**

Had a legal representative before.

Felt she was paying her solicitor to keep the other party, who not represented, up to date on the case.

Costs became too great after a year.

As a full-time working mother, she did not have time for appointments with a solicitor.



Information barriers

Efforts to prepare blocked by scant information:

“incredibly difficult, like trying to find a needle in a haystack”

“I just find that any information that’s available on the court website is quite limited, and very difficult to navigate.”

“The information that went out with the summons was very limited... a bit too summarised ...there’s an expectation that you would have a legal background in order for it to make sense.”

Aware of her own lack of knowledge



Procedural barriers

Lack of continuity in judge hearing the case – off-balancing, didn't know whether to recall past Orders

Never felt she got her points across:

“I get cut short at some point, and that's been my experience in every hearing. So, I don't always get the opportunity to be able to share the information.”

Feared irritating the judge:

“that's been a major challenge, and I think that's because my understanding is, that part of the role that I would play of a solicitor in my place is through, to potentially jog the judge's memory, but whenever I do that the judge was frustrated with me.”

Uncertain about cross-examining the Children's Court Officer



Emotional barriers

“I was reasonably confident during the first few months. I, kind of, felt as if there was a lot more scope to be heard in relation to some of the concerns that I had, but it hit a certain point after a few months, and I feel quite despondent going into it.”

GHQ12 = 3



Jane's wish-list

“It would certainly be an emotional support, because obviously representing yourself, you're trying to set aside any personal impact that it's having on you.”

“the process of the case hasn't been explained. It's just show up at the next one... I'm quite surprised that we're still here a year later.”

“there could be a lot more information available on the website, and... if there was somebody within the court system that could potentially help and advocate through or answer questions in relation to a case... I think there would maybe need to be a point of contact for self-litigants.”



Challenges to the norm

“Just, everything is just ruined by a personal litigant.” (LR13)

“Just because I’m representing myself, does that mean I can be ignored? If I’m not a solicitor, does that mean you don’t have to reply to my email within five days, because I make sure I reply to your email within five days. So, I think that’s rude ... and marginally unprofessional, and disrespectful for people that don’t want to use a solicitor.” (AR06)



Impact of LIPs on the court

Time

We did not compare LIPs' proceedings with fully represented cases, but court actors reported they take longer.

“[Judges] take things very, very slowly. They explain everything ... You know, a five-minute adjournment could take fifteen minutes when it's a personal litigant.”
(LR13)



Impact of LIPs on the court

Different attitudes to Inquisitorial approaches

“[I]f arguments are not raised in the pleadings then it's not for the Court to go off and raise those points generally. Now, sometimes the Court can raise a point that is missed but the onus is on the parties to bring to the Court the issues they want to be adjudicated upon and if the parties don't bring a matter to the Court then it's not the role of the Court to have an inquisitorial role to find out what the issues may be ...” (JU07)

“It's an almost unconscious use of it, frankly, with litigants in person, because that's almost irreparably where you end up. You are going to be more involved in the process, rather than sitting and allowing things to play out, to a degree, and keeping control, and making sure that what needs to be done is done. You have to be more in the arena.” (JU11)



Impact of LIPs on the court

Absent LIPs

Specific issues arise when LIPs are absent. There is no systemic way to inform them of the outcome or next date. LIPs cannot test evidence presented in their absence.

Court Children's Officers

The neutrality they need to assess family situations is threatened if they are called upon by the judge to explain proceedings to the LIP.

McKenzie Friends

They are valued by some court actors, but not all. There is no conformity in how they are permitted entry to court, and no means of assessing their value to a LIP.



Recommendation

The court system needs to be reoriented to accommodate LIPs and needs to include LIPs in that re-design process.



LIPs and policy initiatives

Our findings fall on well-raked ground

A Strategy for Access to Justice 2015

20. Whatever happens to legal aid, the courts need to continue to adapt to become more accessible to unrepresented litigants, who should no longer be seen as a “problem” for the justice system.

Recommendations

There should be a statement and action plan to support litigants in person across all court levels (7.34)



Family Justice and Civil Justice Reviews 2017

Recommendations: FJ148-FJ167 and CJ70-CJ93

In common:

Case-management hearings

Reference to Equal Treatment Bench Book

Consideration of inquisitorial approaches

More and better information

Simplification of language

Central hub for information, NICTS dedicated staff member

Training for court staff, lawyers and judges on dealing with LIPs

Court-appointed mediators to assist LIPs

Collect more data about LIPs



Change is needed

Not just a means of making the system more tolerable, but of giving effect to a litigant's right to access justice.

Final recommendations and report will be launched on 14 September 2018 – conference to present the report will be open to all.





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