The Leeds Business and Property Court Litigant in Person Scheme

(“Leeds B&PC LIP Scheme”)

Q&A for Participants

Thank you for volunteering. Those thanks come from His Honour Judge Malcolm Davis-White KC, previously one of the Business & Property Judges for Leeds, District Judge Bond, one of the Business & Property District Judges for Leeds, Advocate and Support Through Court.

In addition to this note, please do make sure you read:

* the Protocol;
* the Explanatory Note (the Companies Court Winding-up List and the District Judges’ Business & Property Applications List at Leeds without representation); and
* the Concluding Letter given to unrepresented parties at the conclusion of a day’s assistance.

These are all available through the Advocate duty schemes website at [www.probonodutyschemes.org.uk](http://www.probonodutyschemes.org.uk).

Am I obliged to provide assistance in every case?

* You must always take into account your professional obligations and your competence when deciding what assistance you are able to offer, and it is your responsibility to satisfy yourself it is appropriate to act.
* You are free to decline to provide assistance, and to decide the scope of any assistance you do provide. The Court will respect your decision in these matters, and although the decision will be at the discretion of the Court, you are also free to make reasonable requests (for example, that the Court takes a matter further down the list in order to give you sufficient time to consider the case).
* The Leeds B&PC LIP Scheme is only for LIPs intending or due to appear in the Companies Court Winding-up List and the BPC District Judges’ Applications List. Any hearings in the Applications List are likely to be listed for no more than 30 minutes. You are not able to provide assistance to other persons under Advocate’s licensed access.

What about insurance?

* Barrister Participants must be tenants at a set of chambers (or practicing on their own account) with insurance cover under the Bar Mutual Insurance scheme. They will volunteer under the licensed access auspices of Advocate.
* Employed barristers must be covered by their own insurance, or that of their employers, and provide evidence of such. If they have any questions, they should contact the Barrister Lead for the Scheme (duncanheath@enterprisechambers.com) or Advocate (leedsbpc@weareadvocate.org.uk) to discuss further.

What if I find that I am no longer available on a day for which I have volunteered?

* A Leeds B&PC LIP Scheme shift constitutes a professional commitment, and must be treated as such.
* You should withdraw only in exceptional circumstances, and you are responsible for providing a replacement.

On my duty days am I on standby or do I turn up outside the Court?

* You must be at Court at 9.00am on your duty days. Please make yourself known to Court Staff at Counter 7 at the Leeds Combined Court Centre or Reception on the Fourth Floor at West Gate as applicable as soon as you arrive.
* When the list is called on at 10.00am please go into court whether or not any litigant in person has already contacted you. There may be a person without representation inside whom you can assist, or the Court may know that one is due to appear later.
* You must then remain outside the Court until 11.00am but if there is no one who requires your assistance you may return to Chambers / your place of work. You must return at 1.45pm for the afternoon list (which may be before a different judge from the morning’s list) but you are free to return to Chambers/work after 2.30pm if assistance is not required. However, you are on duty until the end of the Court day, and you do need to be by a telephone in Chambers / at work.
* You may receive a call from the Court at any time between 9.30am and 4.30pm asking you to attend the Court. You should then attend as soon as possible, and in any event no more than 30 minutes should elapse between the call and your attendance at Court.

What should I do to prepare?

* Please read the Protocol, Explanatory Note and Concluding Letter in order to inform yourself about the scheme.
* In advance of attending Court, please print off sufficient copies of the Explanatory Note and Concluding Letter to hand to any litigants in person on your duty day. We recommend taking at least five copies of each document.
* When attending Court, please bring with you any standard practitioner’s texts (such as the White Book) which you would normally take to Court.

What practical steps should I take on the day?

* A Conference Room will be set aside for you for the purpose of speaking confidentially to the litigant. The Court Staff at Counter 7 (or Reception if at West Gate) will direct you to the conference room.
* The Court Staff and Support Through Court will, if they can, refer parties without representation to you, but you should also keep an eye out for individuals who may need the scheme’s assistance.
* At the end of the day, leave the Leeds B&PC LIP Scheme File with the Court Staff.
* Please give all unrepresented parties a copy of the Explanatory Note. There is a number of laminated copies of the Explanatory Note in the Conference Room.

What about the question whether the person seeking help could afford to pay?

* For practical reasons please simply assume that the unrepresented person is unable to afford legal representation. If in doubt, you may contact Advocate at leedsbpc@weareadvocate.org.uk and ask for their assistance.

What type of help am I expected to give?

* You are able to assist in any case listed in the Companies Court Winding-Up List or the District Judges’ Business & Property Applications List.
* You are under no obligation to provide any, or any particular, assistance. (See “Am I obliged to provide assistance in every case?”, above.)
* There are 3 types of help you might provide: (a) advice (b) representation and (c) providing details (if needed) for an application to Advocate for further assistance at a later date.
* You should always try, if appropriate, to advise. It is understood that you are new to the case, that the conditions are not ideal and that time is limited. Please offer such immediate advice to the unrepresented person as is possible in the circumstances.
* The scheme also contemplates that you will be ready, if requested and if proper to do so, to appear for the unrepresented person on that day’s hearing.
* At the end you should (so far as possible) advise the unrepresented person what to do next.
* If an unrepresented person does not have a case listed that day, you should decide whether it is appropriate for you to assist, and you may decide that they should instead be referred to the Advice Bureau. There will be referral cards available for you to give the unrepresented party.
* You should not in any event assist unrepresented persons who do not intend or are not due to appear in the Companies Court Winding-Up List or the District Judges’ Business & Property Applications List. Such assistance would not be covered by Advocate’s licensed access.

Can I act for a party that is not an individual?

* Yes. LIPs can be entities as well as individuals.

What if there are several points but I consider one to be a hopeless point or one that I consider may not properly be advanced?

* You should inform the unrepresented person that you are prepared to make only part (rather than all) of the argument. You should explain why.
* If they insist that the point is advanced, you should say that they will have to advance that point themself, and you should ask the Court to hear both you and the unrepresented person, on the basis that you will make part of the argument and the unrepresented person will make the remainder of the argument.
* You should inform the unrepresented person that they will not (usually) be asked to comment on or add to any arguments that you have presented to the court.
* If the LIP’s case is hopeless or an unarguable case, please do not suggest that the unrepresented person seek (further) advice from Advocate.

What if I am concerned that the unrepresented person maybe a vexatious litigant?

* There will be a list of any unrepresented parties who have made excessive and repeated use of the Scheme available (once run long enough to establish).
* You are free to decline to provide assistance, and to decide the scope of any assistance you do provide for these unrepresented persons.

What if the matter is nearing the limit of my competence or too complicated to be able to manage on the day?

* As explained above, you are responsible for ensuring it is professionally appropriate and within your competence to assist. However, please do not be deterred from providing assistance where you can, because the unrepresented person will often be better placed with what help you can give, than without that help.
* Consider whether it may be in the interests of the unrepresented person if the matter could be adjourned, with an application then made to Advocate to bring in a more experienced advocate or one with specific expertise (if appropriate) on a future occasion or to arrange detailed advice.
* Where any application to Advocate for assistance may be involved please remember to make clear to the unrepresented person that the application requires a means test and may not be successful and that it will take some time to be processed except in cases of real emergency.

What about costs?

* In appropriate circumstances, you should consider making an application for a pro bono costs order under s. 194 of the Legal Service Act 2007 and CPR 46.7. The effect of a pro bono costs order is that the paying party must make a payment of a sum no greater than the party with pro bono representation would have been entitled if representation had not been provided free of charge to a charity, The Access to Justice Foundation.
* Further information about pro bono costs orders is available in Conference Room 18 and can be found at [www.ATJF.org.uk](http://www.ATJF.org.uk). The notes in the White Book to CPR 46.7 and at PD46 4.1 are also helpful.
* Although a written statement of costs is usually required (PD44 9.5) the failure of a party to provide a written statement will only be taken in account by the court if there is no reasonable excuse for the failure (PD44 9.6). Obviously the provision of a written statement will not be possible where you first became involved with the case on the day you are volunteering (rather than having received papers ahead of time). In those circumstances, you might consider reminding the Court that you were engaged only that day and that the requirement for a written statement is in Practice Direction 44 and is not a Rule. You could inform the Court orally of the time you have spent and your hourly rate (or if you consider the case could have been handled by someone significantly junior to you, suggest an appropriate hourly rate).

What should I do at the end of a case?

* At the end of a day’s work for an unrepresented party, you must complete a Concluding Letter, which will summarise what happened and what needs to happen.
* One copy of the Concluding Letter should be given to the unrepresented person. If it is not possible for the unrepresented person to wait for you to complete the letter, you could consider taking an email address so that you can send a copy to the unrepresented person on your return to Chambers or (if you are comfortable that you have the appropriate level of security on your phone) you could consider taking a photograph of the Concluding Letter.
* **The copy of the Concluding Letter for Advocate should be emailed to Advocate at leedsbpc@weareadvocate.org.uk.**
* After you have given the LIP a copy of the Concluding Letter and provided a copy to Advocate, your involvement in the case under the licensed access provided by Advocate is at an end. If the LIP requires further pro bono assistance, they should be directed to either Advocate directly, or another local service who can help them apply to Advocate. If you wish to volunteer to assist on the case going forward on a pro bono basis please let the Advocate know.

What if the unrepresented party is struggling to cope with the stress of the occasion and might benefit from some trained (non-legal) company?

* The unrepresented person may be accompanied by a “McKenzie Friend” who they wish to provide support. If that is the case please respect the choice, but in case of difficulty contact the Barrister Lead or Advocate.
* You should also have access to a range of signposting resources that can be used to direct the unrepresented party to find alternative, non-legal assistance.

What if the unrepresented person or the other party has a “McKenzie Friend”? Is the “McKenzie Friend” entitled to speak in court?

* Litigants have the right to have reasonable assistance from a lay person (“McKenzie Friend”) to i) provide moral support for litigants; ii) take notes; iii) help with case papers; iii) quietly give advice on any aspect of the conduct of the case. A McKenzie Friend may not: i) act as the litigant’s agent in relation to the proceedings; ii) manage litigants’ cases outside court, for example by signing court documents; or iii) address the court, make oral submissions or examine witnesses.
* Useful guidance on the exercise of the right to have assistance of a lay person is contained in *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 W.L.R. 1881.
* The court may grant a right of audience to a McKenzie friend on a case-by-case basis but the *Practice Note* states that “Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a MF. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline”.
* The unrepresented person may find the court is unwilling to grant their McKenzie Friend permission to address the court if a volunteer is available.
* Some McKenzie Friends charge fees for their assistance. The extent to which such fees may be recovered from the litigant or from the other side is dealt with in the *Practice Note*.

What if I need more time on the day to read the papers or to take instructions or to research a point?

* You could consider asking the Judge or the Associate or Usher (involving the other side if present) whether the matter can be taken at a later time that day (by asking for it to be mentioned at a convenient moment) or at a lower point in the list. The judge will usually accept such a request.
* In a complex case you may sometimes conclude that the merits and suitability of seeking an adjournment will need to be considered.

What resources are available within the Civil and Family Couts and Tribunals Centre to help me prepare for a hearing?

* Please bring your own procedure books, and any texts that are known to be needed from any pre-reading in a listed matter.

What should I do once I have gotten on top of the matter?

* It may be that there are copies of documents that need to be made available to the Judge , e.g. an application notice that you have helped to complete, or a witness statement or supporting documents, or even a note summarising the points that arise.
* Although your primary duty is to the unrepresented litigant, you are also there to help the court to serve the interests of justice, so please consider how you can help the Judge and the court staff to deal with the application most effectively.

As a barrister, am I entitled to act alone, without a solicitor? Or what if the matter is of a complexity or nature that more assistance is needed?

* Barristers participating in the Scheme are entitled to act alone, without a solicitor, because they are acting under the auspices of Advocate, which has a license from the BSB.
* Where the matter is of a complexity or nature that the assistance of a solicitor as well as the barrister is necessary you are not required to appear (although you may consider whether an application for an adjournment to enable the unrepresented person to take further advice is appropriate) and the unrepresented person should be referred to Advocate for further assistance.
* You should never act in circumstances or to an extent where your own competence will be exceeded. Examples of a matter of this complexity might be (a) the case where an unlisted matter needs both a statement to be taken there and then and advocacy prepared; or (b) the case where a detailed record and note of advice about the giving of a cross undertaking in damages, or the giving of undertakings in place of an injunction, needs to be taken at the same time as the advice is actually given rather than by a note to be prepared afterwards.
* If you are yourself in any doubt please refer to Advocate before proceeding further.

I understand that 3 weeks’ notice is required for an application for further assistance from Advocate. What if the case needs further assistance within a shorter period?

* Please contact Advocate at leedsbpc@weareadvocate.org.uk and explain the situation to them, including whether or not you are willing or able to provide the required emergency assistance. They will then be able to consider whether or not an application is suitable.

What about GDPR?

* The Explanatory Note given to unrepresented persons to read contains a data protection notice. The notice states that duty advocate will have a privacy notice on their chamber’s or firm’s website. If this is not the case you should tell the litigant where they can find your privacy notice.