The Birmingham Chancery Bar Litigant in Person Support Scheme

(“B-CLIPS”)

Q&A for Participants

Thank you for volunteering. Those thanks come from the judges of the Birmingham Business and Property Courts.

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

* the Protocol;
* the Explanatory Note (given to those attending the B-CLIPS Court in the Birmingham Civil and Family Justice Centre 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 ([www.probonodutyschemes.org.uk](http://www.probonodutyschemes.org.uk)) and will shortly be on the website of the Midland Chancery and Commercial Bar Association.

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 B-CLIPS scheme is only for LIPs intending or due to appear before the B-CLIPS Court on nominated Fridays. Cases listed onto the B-CLIPS List will include applications, injunctions, Part 8 Directions/Disposal Hearings and FDRs. The list will not include Final Hearings, Trials, or CCMCs. 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.
* Solicitor Participants must be employed by a firm of solicitors with appropriate insurance. They will volunteer under the licensed access auspices of Advocate.

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

* A B-CLIPS 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 on the 2nd floor of the Civil Justice Centre at **09:30am** on your duty days. Please make yourself known to the Usher as soon as you arrive.
* The Usher will direct the Participant to the conference room(s) reserved for the B-CLIPS List that day.
* The Participant should be available for any LIPs until the Court sits at **10:00** and thereafter (unless the Participant is in Court) until **11:00**. The Participant should return at **13:45** for the afternoon list and be available for any LIPs until **14:30**. Between **11:00** and **13:45** and between **14:30** and **16:15**, if there are no LIPs requiring assistance, the Participant may return to their Chambers but should be available to return at short notice within those times if required.
* You may receive a call from Advocate or the Court staff at any time between 10am 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 any litigant in persons. When you report to the Usher on your duty day, they will direct you to the Conference Room(s) reserved for the day.
* The Usher or Associate 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.
* Please give all unrepresented parties a copy of the Explanatory Note. The litigant may have difficulty reading and digesting the whole of the note, but please draw their attention to at least the boxed text.

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.

What type of help am I expected to give?

* 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.
* You should not in any event assist unrepresented persons who do not intend or are not due to appear before the Business and Property Court B-CLIPS 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?

* 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 birminghamprobono@weareadvocate.org.uk.**
* After you have given the client the Concluding Letter and provided a copy to the LIP 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.
* Once you sign up for a shift with B-CLIPS, you will also receive an email prompting you to complete a ‘Impact Form’ at the end of that shift. This will be a short online form where you will need to provide brief details of the type of assistance you have provided that day. It is vital that you complete this form at the end of each day on which you have volunteered, as this allows Advocate to track the work being carried out by volunteers.

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 BLIPS 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.
* In a complex case you may sometimes conclude that the merits and suitability of seeking an adjournment will need to be considered.

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 B-CLIPS 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 birminghamprobono@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.