

REPORT OF THE WORKING GROUP ON LITIGANTS IN PERSON –

FEBRUARY 2025



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Executive Summary – February 2025

1. In 2023, a Working Group was established to consider the challenges associated with litigants in person (“**LIPs**”) participating in proceedings. Those challenges may be experienced by the LIP, other parties to the litigation, the judiciary and/or the staff of the Courts Service. The Working Group comprises a group of judges drawn from the District Court, the Circuit Court, the High Court, and the Court of Appeal. Representatives of the Courts Service (Emer Darcy) and the Judicial Council (Kevin O’Neill) participated as observers. The group wishes to thank Gillian O’Hanlon BL for her contribution to this report. The members of the group were President Costello, Seamus Noonan, Charles Meenan, Niamh Hyland, Mark Sanfey, Mary Rose Gearty, Cian Ferriter, Siobhán Phelan, Eileen Roberts, Barry O’Donnell, Geoffrey Shannon and Paula Murphy. The Working Group has completed this report and made recommendations designed to address those challenges following consultation with the judiciary. The recommendations are directed at a diverse group of bodies, including the Courts Service, the Judicial Council, the Presidents of the courts, the Rules Committees, and in a small number of cases, the legislature.
2. The constitutional right to represent oneself in legal proceedings is well-established in Irish law. Access to justice is a fundamental right for every citizen. Litigation is an essential mechanism for the citizen to vindicate their rights where other measures have not succeeded. The complexity of our legal system is such that it is inevitably more difficult for LIPs to navigate it than for legal practitioners. However, for various reasons, including the cost of legal representation, litigants are not always represented,. The absence of widely available, adequately funded legal aid and assistance is by far the biggest contributing factor to the presence before the courts of an increasing number of LIPs. While the absence of legal representation is a serious issue for the LIP, cases involving LIPs also raise issues for the administration of justice extending beyond difficulties of access for the LIP. Such cases generally take significantly more court time and result in the incurring of significant additional legal costs for other parties in the proceedings.
3. In October 2020, the [Report of the Administration of Justice in Civil Proceedings Review Group](#), also known as the “Kelly Report”, made in excess of 90 recommendations aimed at reforming the process of civil justice and reducing the costs and delays which affect litigation. A relatively limited number of recommendations were made in respect of unrepresented litigants, the main thrust of which were the updating by the Courts Service of all current guides and information for LIPs in a dedicated section of the Courts Service website utilising audio-visual as well as textual formats, and the creation of a central online information hub. The [Report of the Judicial Planning Working Group](#) (the “McManus Report”) published in December 2022, made various recommendations on the administration of justice. At Chapter 6.8.2 it focused on unrepresented litigants, recommending legislative changes and court rules to streamline processes to (i) enable access to the judicial process for all litigants irrespective of their financial capacity or legal literacy; (ii) provide access to accurate and easy to understand information about court processes and appropriate tools

(e.g., self-help options) and (iii) ensure that there is an appropriate court/courtroom environment for those involved in legal proceedings. This Working Group supports those proposals but considers that further initiatives are required. For that reason, the recommendations in this Report go beyond those in the Kelly and McManus Reports. A detailed consultation took place with all judges in the context of the National Conference for judges in November 2024. Chapter 1 sets out the process used and the results of that consultation.

4. Chapter 2 is entitled “Data” and it attempts to capture some of the data in relation to LIPs in the courts. There has been extensive liaison by the authors with the Courts Service team charged with data collection and analysis, Owen Harrison and Mark Warren, who have been extremely helpful. The Working Group is very grateful for the assistance they have provided. However, that interaction has demonstrated the limits of the data available and the urgent necessity for additional data to be collected and analysed. The introduction of the unified case management system (“UCMS”) will make that task significantly easier. The UCMS is being rolled out across various jurisdictions at present. The nature of the data that requires collection is specified in the recommendations at the end of the data chapter.
5. Nonetheless, even with the very limited data available, it may be seen that LIPs constitute a considerable proportion of litigants in certain areas of litigation, ranging from 15% to 30%, depending on the jurisdiction and the subject matter. What those statistics do not describe is the additional number of time taken up by LIPs because of their lack of familiarity with the system, or the small number of LIP who take up a disproportionate amount of time because of the repetitive nature of their litigation.
6. Chapter 3 is entitled “Issuing of Proceedings and Pre-trial Procedures” and it discusses challenges faced by LIPs, particularly at the initiation and pre-trial stages of litigation. The Working Group finds that many of these challenges can be addressed by the enhanced provision of information to LIPs, and notes the extensive guides, checklists and forms available to LIPs from court websites in Hong Kong, Canada, Australia, England and Wales and Northern Ireland. The Working Group suggests that the provision of similar assistance to LIPs in this jurisdiction would assist LIPs in navigating the system. This assistance should be jurisdiction specific and should include links to all relevant sites on the Courts Service website.
7. The Working Group recommends the revocation of High Court Practice Direction 54. This PD requires LIPs to provide additional material in relation to their claim. LIPs already struggle to comply with their existing obligations in respect of pleadings and written submissions, and the widespread non-compliance with the PD suggests it has not been useful in practice.
8. The Working Group considers that the President of each court should review all court practice directions with a view to removing all out of date or irrelevant practice directions, and to ensure that all practice directions in use are dated and enforced.
9. The use of bench books throughout various U.S. states, England and Wales is examined and the compilation of a dedicated LIP bench book for the judiciary incorporating aspects of the 2014 Equal Treatment Bench Book is recommended.

10. As to the individual assistance of LIPs, the Working Group considers international research which indicates that significant barriers experienced by LIPs might be addressed through the provision of legal advice information hubs as in other jurisdictions and suggests that research should be carried out providing similar assistance in Ireland. In addition, the Working Group concludes that tailored access to support LIPs should be provided by the Courts Service.
11. Chapter 4 is entitled “LIPs in Court” and it examines the judge’s role in cases where one or both party is an LIP. The Working Group considers the appropriate approach, focusing on the principles of fairness, latitude and limited interference. It is recommended that these principles be included in an LIP bench book.
12. While no recommendation is made in respect of setting different word, evidential and time limits for LIPs compared with represented parties, it is considered that assistance to LIPs could be enhanced and court resources spared through, *inter alia*, assigning a particular judge to deal with an LIP for all their applications where appropriate, adopting a practice direction in the District Court in respect of McKenzie friends, and the provision of a transcript of the DAR of substantive judicial decisions to LIPs free of charge where the judge considers it appropriate, particularly in circumstances where LIPs may struggle to comprehend or to take note of an *ex tempore* decision.
13. The Working Group also notes the recent proliferation of McKenzie friends unlawfully preparing documents or supplying advice contrary to the provisions of the Solicitors Act 1954 and sees no utility in permitting McKenzie friends to assist LIPs for remuneration, as is permitted in England and Wales.
14. The Working Group believes that the ability of a court to exercise the power to dismiss proceedings of its own motion is unclear. To this end, it is recommended that the Rules Committee introduce a rule similar to Rule 3.3 of the England and Wales Civil Procedure Rules which explicitly provides for such a power. Recommendations are also made in respect of the adoption of express rules of court providing for cases to proceed in the absence of a party in terms similar to Order 36, Rules 28-33 of RSC and Order 33, Rules 11 and 12 CCR.
15. The Working Group recommends that the principles identified in respect of the treatment of LIPs in court should be included in the bench book discussed in Chapter 3 and taught in the course of judicial training on LIPs, with a special training programme to be designed, developed and piloted by the Judicial Council. That training should, *inter alia*, incorporate elements of judicial mental and practical preparation, active listening, courtroom control, conflict and distress avoidance strategies, training on the content of the LIP bench book and setting LIP expectations.
16. Chapter 5 is entitled “Disrupted court hearings”. This chapter focuses on and provides examples of unintended and intended disruption of court proceedings by LIPs, highlighting that mental health issues, religious and/or political beliefs, desire for publicity and a lack of recognition of judicial authority often drive this type of behaviour.

17. The doctrine of contempt, the parameters thereof and difficulties associated therewith are discussed in detail. It is indicated that further guidance and clarification would be welcomed on the extent of the behaviour to be tolerated prior to the removal of LIPs from the courtroom and as to the rules of evidence, and safeguards, that apply to contempt hearings. The Working Group recommends that the doctrine should be replaced with a statutory offence, and engages in a comparative analysis of the treatment of the doctrine in England and Wales, Kenya and Australia.
18. Other remedies available to assist in courtroom control are also discussed, including the power of An Garda Síochána (“AGS”) pursuant to s.9A of the Criminal Justice (Public Order) Act 1994 to direct a disruptive litigant to desist and/or to leave the vicinity of the courtroom.
19. The Working Group also canvasses LIP disruption as a threat to safety, and identifies potential omissions in the security policy recently adopted by the Courts Service. The Working Group recommends consultation with the judiciary in all jurisdictions with regard to security concerns.
20. With specific regard to the High Court, the Working Group notes the high levels of LIP participation in the Chancery, Debt and Non-Jury/Judicial Review divisions and highlights the practical importance of courtroom personnel in assisting with LIPs and with courtroom control. The Working Group notes that the gradual phasing out of ushers places an unfair and inappropriate burden on judges and registrars in respect of courtroom control and recommends service officers be appointed to assist in court room management in appropriate courts.
21. The chapter concludes with a comparative assessment of judicial welfare and considers that the Irish judiciary relies predominantly on the informal support of colleagues following difficult courtroom situations. It is proposed that the Judicial Council Support and Welfare Committee might consider a programme to ensure that a formal support process is available to Irish judges.
22. The Working Group also recommends that the Courts Service would continue to engage with AGS and the judiciary on security arrangements at court venues and in respect of remote facilities for litigants who have been excluded from the courtroom. The introduction of procedures to ensure that cases involving LIPs are assigned to suitable courtrooms is recommended.
23. Chapter 6 concerns repetitive litigation by LIPs and the negative impacts associated with same. An analysis of the relevant constitutional framework and the ‘Isaac Wunder’ (“IW”) jurisdiction is undertaken and the ECHR perspective is considered. The Working Group notes that the existence of an IW order is not an absolute bar to litigation.
24. The Working Group highlights that, unlike in Scotland, England and Wales, Canada, Australia and New Zealand, there is no Irish legislation regulating repetitive litigation and considers that while the Superior Courts have inherent jurisdiction to make IW orders, the position is unclear in respect of the Circuit and District Courts and this potential lacuna

could be addressed with the enactment of suitable legislation. It is considered that in the absence of legislation, practice directions, or rules of court on the subject, there is no clear procedural path to the making of an IW order and a variety of issues arise as to, *inter alia*, the test to be applied and the scope of the order that can be made.

25. The Working Group suggests that it is preferable that any extensive new regime be enacted by way of primary legislation, and identifies Rule 3.11 of the English Civil Procedure Rules as a possible legislative template.
26. The jurisdiction of judges to make orders restricting the bringing of proceedings of their own motion is also considered in detail, and it is concluded that such a jurisdiction is desirable provided procedural safeguards are observed.
27. The Working Group considers that reliance upon defendants to apply for an IW order is unlikely to be an effective method of reducing repetitive litigation where defendants may be concerned with avoiding the accrual of further costs and/or appeals. It is considered that more effort should be made to educate judges in respect of appropriately raising the question of an IW order of their own motion and observing fair procedures in such a scenario.
28. The chapter considers that without a public and/or internal register of IW orders made to date, proceedings which have been issued in breach of an IW order may go undetected by court offices and further, a unique identifier should be assigned to all litigants so that there is no risk of evading the effects of an IW order through the use of, for example, a different version of their name when issuing proceedings.
29. Chapter 7 concerns LIPs in the Court of Appeal, the common themes arising before the appellate courts and the jurisdiction to re-open/re-visit a judgment on appeal. The Working Group notes that in 2022, 27% of appeals to the Court of Appeal were brought by LIPs, having increased from 16% in 2021. It is considered that anecdotally a significant number thereof are brought by ‘serial’ appellants.
30. Concerns surrounding McKenzie friends are ventilated by the Working Group, which observes that in many cases purported McKenzie friends draft legal documents and submissions in contravention of s.58 of the Solicitors Act 1954.
31. It is considered that a unique identifier for litigants, as suggested previously, would also be useful in the context of appeals, where there is currently no liaison between the Central Office and the Court of Appeal.
32. The jurisdiction of the Directions Judge is considered in light of s.111 of the [Courts and Civil Law \(Miscellaneous Provisions\) Act, 2023](#)¹ and the Working Group considers that this may facilitate the early filtering out of appeals where appropriate.

1 <https://www.irishstatutebook.ie/eli/2023/act/18/enacted/en/print.html> accessed 21 October 2024.

33. As to compliance with directions, it is noted that LIPs often struggle with preparing booklets of appeal and that placing the burden of preparing same on the respondent's solicitors is inherently unfair and not without financial and time implications. As to legal submissions, the Working Group notes that many LIP appellants struggle with this concept and seek to read them out to the Court. The Working Group considers that these matters could be usefully addressed in a dedicated 'Court of Appeal' section on courts.ie and in a dedicated 'Court of Appeal' handbook for LIPs.
34. This chapter also examines the growing prevalence of LIPs seeking to re-open judgments before the trial judge and the burden of same on court resources. The Working Group examines the jurisprudence on this subject and notes that while relevant practice directions exist for the Supreme Court and Court of Appeal, no such practice direction has been adopted by the High Court and the adoption of same would be desirable.
35. The Working Group recommends that a handbook be made available on courts.ie for LIPs litigating in the Court of Appeal, and that the Central Office and the Office of the Court of Appeal should liaise in respect of litigants subject to IW orders/LROs.

RECOMMENDATIONS

Chapter 2 – Data

- R. 1. Recommendation: More comprehensive, robust information about the number and distribution of cases across all court levels, counties, and case types should be collected to include:
 - A record in every case (including criminal cases) in all jurisdictions of whether every party is represented or not, to include a record of where a party was represented but becomes unrepresented
 - Initial focus on collecting data from the Circuit Court and District Court in respect of above bullet point given paucity of data in those Courts
 - Remediate gaps in the available data, notably the high number of cases that have been classified as "unknown" litigant type or not given a litigant type classification code at all
 - Data to identify stage of case when final orders are made i.e. before or after trial, to allow comparison of number of LIP cases that settle prior to trial relative to cases that settle prior to trial where parties are represented.
- R. 2. Recommendation: Data recording practices to be standardised across the processing of all case types
- R. 3. Recommendation: A unique identifier to be assigned to all litigants to ensure that accurate records may be kept of the number and type of proceedings brought or defended by a litigant
Body responsible: Courts Service

Chapter 3 - Issuing of Proceedings and Pre-Trial Procedures

- R. 4. Recommendation: A detailed central online information hub (as recommended by the Kelly Review and the Minister's implementation plan (A Civil Justice system for the 21st Century)) for LIPs, designed in conjunction with the judiciary, should be available to LIPs with links to all other relevant sites on the Courts Service. The information should be jurisdiction-specific and may include handbooks, guidelines, videos, glossaries, and/or practice directions. The information should be available in soft and hard copy, and hard copies should be available in court and from the relevant court office.

Body responsible: Courts Service

- R. 5. Recommendation: Material available to LIPs should carry a legend that any person representing themselves is obliged to familiarize themselves with the appropriate material and the court will proceed on that basis.

Body responsible: Courts Service/Rules Committee of all Jurisdictions

- R. 6. Recommendation: Practice Direction HC54 on proceedings where a party is not professionally represented should be revoked.

Body responsible: President of the High Court

- R. 7. Recommendation: The Presidents of each jurisdiction should review the practice directions applicable to their jurisdictions with a view to revoking those that are out of date or no longer appropriate, revising the categories, and ensuring that the practice directions are being applied. The Presidents should ensure that practice directions are consistent where appropriate across all jurisdictions.

Body responsible: Court Presidents

- R. 8. Recommendation: The President of each jurisdiction, in conjunction with the Courts Service, should produce short "how to" guides for LIPs specific to identified subject areas/lists in respect of:

- Timing, content and format of bundles, submissions and authorities;
- Issuing, progressing and hearing of motions;
- Preparation for and conduct of trial

Body responsible: Court Presidents/Courts Service

- R. 9. Recommendation: A bench book dedicated to LIPs and the practical and legal issues associated with their participation in litigation, should be produced by the Judicial Research Office and a physical copy of same provided to each judge, as well as being made available online.

Body responsible: Judicial Research Office ("JRO")

- R. 10. Recommendation: The Courts Service should explore how they can expand the assistance currently available to LIPs, including dedicated staff and/or counter service, and/or tailored advice/assistance to improve access to justice for LIPs.

Body responsible: Courts Service

- R. 11. Recommendation: The Courts Service should research initiatives in other jurisdictions establishing advice hubs (online and in person) that provide supports to LIPs with a view to introducing similar initiatives in Ireland.

Body responsible: Courts Service

Chapter 4 - LIPs in court

- R. 12. Recommendation: The principles applicable to the treatment of LIPs in court should be included in the bench book and taught in the judicial training on the treatment of an LIP in court.

Body responsible: JRO/Judicial Studies Committee

- R. 13. Recommendation: A judicial training programme to best support the judiciary in dealing with the specific needs of LIPs should be designed, developed and piloted by the Judicial Council, to include induction training, to be provided during working hours.

Body responsible: Judicial Studies Committee

- R. 14. Recommendation: An explicit rule of court providing that a case may proceed in the absence of a party, whether plaintiff or defendant, in terms similar to Order 36, Rules 28-33 of RSC and Order 33, Rules 11 and 12 CCR, should be adopted for all jurisdictions. Rules should be drafted to specify what is required to be proven by way of service where a party seeks to proceed in the absence of a party.

Body responsible: Rules Committees of all jurisdictions

- R. 15. Recommendation: An explicit rule of court should be made for all jurisdictions in similar terms to UK Civil Procedure Rules (Rule 3.3 on case management) – court's power to make order of its own initiative.

Body responsible: Rules Committees of all jurisdictions

- R. 16. Recommendation: If not otherwise available by way of written judgment or a note of same, a party should be entitled to a transcript of a ruling made by a judge without being required to pay for same where the judge considers it appropriate in all the circumstances.

Body responsible: Courts Service

- R. 17. Recommendation: A practice direction on obligations on legal representatives (i.e. applicable to all jurisdictions) when dealing with LIPs should be adopted after consultation with the Bar Council and the Law Society.

Body responsible: Presidents of all jurisdictions

- R. 18. Recommendation: Judges should highlight to litigants alternative routes to justice, i.e. mediation, ADR, etc.

Body responsible: All judges

Chapter 5 – Disrupted Court Hearings

- R. 19. Recommendation: Consideration be given to the possibility of introducing legislation to put disruptive behaviour as a form of criminal contempt on a statutory footing.

Body responsible: Government

- R. 20. Recommendation: The Courts Service to continue with the security review in being and carry out such further risk assessments as appropriate on the safety protocols in place, developing any additional protocols required in line with set practice guidance. This review is to be carried out in consultation with the judiciary.

Body responsible: Courts Service

- R. 21. Recommendation: The Courts Service should continue to engage with AGS on the security arrangements in place in all court venues in consultation with the judiciary.

- R. 22. Recommendation: The Courts Service should continue to engage with the judiciary through the relevant Court President and the AJI in each court venue regarding:

- The expectations of the judiciary as provided for in the Policy and Procedure - Court Building Safety & Security Arrangements and what steps are in place to assist them to discharge the functions or duties they have regarding disruptive behaviour;
- What remote facilities are available in each court site to deal with litigants who have to be excluded from court (whether attendance remotely off-site or attendance remotely at a court site);
- The security arrangements in place and protocols for each court venue.

- R. 23. Recommendation: The introduction of procedures to ensure that cases are assigned to courtrooms which are appropriate in all the circumstances.

- R. 24. Recommendation: A service officer should be retained to attend in appropriate courts (to be identified in consultation with the judiciary) to oversee the attendance and provide an informal liaison with the public in general and LIPs in particular. A brief for such a role should be developed, with particular regard to the contribution of the service officer to safety of court users and staff following appropriate training.

Body responsible: Courts Service

- R. 25. Recommendation: A Garda should at all times be available to the court, ready to attend immediately if not already present in court.

Body responsible: AGS

- R. 26. Recommendation: Court Gardaí should be briefed on the provisions of s.9A of the Public Order Act 1994 inserted by s. 63 of the Criminal Justice (Miscellaneous Provisions) Act 2023
Body responsible: AGS
- R. 27. Recommendation: Signs should be erected outside every court prohibiting video recordings and photographs of court proceedings
Body responsible: Courts Service
- R. 28. Recommendation: This Working Group supports:
Any proposals to extend legal aid or assistance to potential litigants, as this could reduce disruption in court;
Any measures introduced to afford a discretion/power to the court to assign legal aid in certain exceptional circumstances (particularly in family law matters).
Body responsible: Government
- R. 29. Recommendation: Provide training to judges from external experts who train frontline staff on dealing with abusive and violent behaviour.
- R. 30. Recommendation: Provide training to judges by the Courts Service on the use of basic courtroom safety features, and safety protocols.
- R. 31. Recommendation: Provide training to judges in respect of the provisions of the current legal aid scheme (civil and criminal).
Body responsible: Judicial Studies Committee/Courts Service
- R. 32. Recommendation: Judicial Council Support and Welfare Committee to consider a programme to support judges who have experienced disruptive courtroom behaviour, to include preparation before a hearing where disruptive behaviour is anticipated and review of hearing afterwards.
Body responsible: Judicial Council Support and Welfare Committee

Chapter 6 – Repetitive Litigation

- R. 33. Recommendation: Primary legislation should be urgently introduced to give explicit power to District and Circuit Courts to make litigation restriction orders (“LROs”) given the uncertainty over their powers in this respect.
- R. 34. Recommendation: Primary legislation should be introduced to provide for LROs in all jurisdictions in similar terms to existing legislation in England and Wales, Australia, Canada and New Zealand and should at a minimum cover the topics identified in Appendix 2 to these Recommendations.
Body responsible: Government
- R. 35. Recommendation: A Practice Direction should be adopted in the terms set out at Appendix 3 or similar for the High Court and Court of Appeal pending consideration by the Rules Committee as to whether rules of court should be adopted in respect of LROs.
Body responsible: Presidents of all jurisdictions/Rules Committees

- R. 36. Recommendation: Training should be provided to all judges on proposing IW orders/LRO's of its own motion, where no application for same has been made by the parties.

Body responsible: Judicial Studies Committee

- R. 37. Recommendation: The Courts Service to provide IT system which can generate a record of all other proceedings brought by a litigant (available at present through the High Court Search) and copies of all documents identified on the High Court Search including orders (not available at present).

Body responsible: Courts Service

- R. 38. Recommendation: The Courts Service to obtain legal advice on establishing public register of litigants the subject of IW orders/LRO's and to consider the feasibility of same.

- R. 39. Recommendation: Pending the implementation of above recommendation, the Courts Service to establish a register of persons the subject of an IW/LRO to be readily accessible to judges and registrars.

- R. 40. Recommendation: The Courts Service to establish a system that automatically ensures litigant the subject of an IW/LRO is identified by the relevant court office when attempt made to issue proceedings; establishes a system that will identify whether the proceedings sought to be issued are covered by the LRO in being; if so, prevents proceedings caught by the IW/LRO being issued; and requires the person to issue a motion seeking permission from the President to issue the proceedings.

Body responsible: Courts Service

- R. 41. Recommendation: The Courts Service to establish an appropriate data collection system to ensure there is adequate data on making, variation and lifting of IW orders/LROs to permit review of system on ongoing basis.

Body responsible: Courts Service

Chapter 7 – LIPs in the Court of Appeal

- R. 42. Recommendation: Information in the form of easy to read guides in respect of bringing an appeal in the Court of Appeal should be made available by the Courts Service in consultation with the judiciary

Body responsible: Courts Service

- R. 43. Recommendation: The Courts Service to establish a system that automatically ensures litigant the subject of an IW/LRO is identified by the relevant court office when attempt made to lodge an appeal where the existing IW order prevents them from issuing proceedings

Body responsible: Courts Service

- R. 44. Recommendation: A Practice Direction should be adopted by the High Court on applications to re-open a judgment.

Body responsible: President of the High Court

Chapter 1 – Introduction

Aim of Report

1. In 2023, a Working Group was established to consider the challenges associated with litigants in person (“**LIPs**”) participating in proceedings. Those challenges may be experienced by the LIP, other parties to the litigation, the judiciary and/or the staff of the Courts Service. The Working Group comprises a group of judges drawn from the District Court, the Circuit Court, the High Court, and the Court of Appeal. Representatives of the Courts Service (Emer Darcy) and the Judicial Council (Kevin O’Neill) participated as observers. The members of the group are President Costello, Seamus Noonan, Charles Meenan, Niamh Hyland, Mark Sanfey, Mary Rose Gearty, Cian Ferriter, Siobhán Phelan, Eileen Roberts, Barry O’Donnell, Geoffrey Shannon and Paula Murphy. The Group has completed a report and made draft recommendations designed to address those challenges. The draft recommendations are directed at a diverse group of bodies, including the Courts Service, the Judicial Council, the Presidents of the courts, the Rules Committees, and in a small number of cases, the legislature. Engagement with LIPs was beyond the scope of this Report.

The place of the LIP in the Irish legal system

2. It is well-established that any natural person of full age and capacity may conduct his or her own case in both the civil and the criminal courts. The constitutional right to represent oneself in legal proceedings is well-established in Irish law. Access to justice is a fundamental right for every citizen. Litigation is an essential mechanism for the citizen to vindicate their rights where other measures have not succeeded.
3. The complexity of our legal system is such that it is inevitably more difficult for LIPs to navigate it than professionals trained in that system i.e. solicitors and barristers. However, for various reasons, litigants are not always represented. The prevalence of LIPs is a notable feature of the litigation landscape in Ireland. Factors which result in litigants appearing in person in significant numbers are diverse. While the cost of legal representation and restrictions on the availability of legal aid are primary factors, a proportion of litigants would prefer to appear in person because of their distrust of the system even if the option of legal representation were available to them.
4. It should be emphasised that LIPs are unusual in criminal cases, because of the extensive scheme of legal aid, in the criminal sphere.
5. While the absence of legal representation is a serious issue for the LIP who may be poorly equipped to present a case before the court, cases involving LIPs also raise issues for the administration of justice extending beyond difficulties of access for the LIP. Such cases generally take significantly more court time and result in the incurring of significant additional legal costs for other parties in the proceedings. Even leaving aside the pre-trial procedure, more time is required at trial to hear the LIP who not uncommonly lacks focus or coherence, is frightened or simply uncomprehending of the process. In *R.B. v. A.S.* [2002] 2

I.R. 428 Keane C.J. explained as follows:

“The conduct of a case by a lay litigant naturally presents difficulties for a trial court. Professional advocates are familiar with the rules of procedure and practice which must be observed if the business of the courts is to be disposed of in as expeditious and economic a manner as is reconcilable with the requirements of justice. That is not necessarily the case with lay litigants. Advocates, moreover, are expected to approach cases with a degree of professional detachment which assists in their expeditious and economic disposition: one cannot expect the same of lay litigants, least of all in family law cases.”

6. As observed in the Equal Treatment Bench Book 2014², LIPs are likely to have little experience to guide them in relation to what professional court users would regard as very ordinary, practical matters – where to sit in court; when to sit and when to stand; how to address the judge; and so on. They may not be skilled at expressing themselves; and they are unlikely to understand how to present evidence by the examination and cross-examination of witnesses.
7. LIPs are entitled to represent themselves regardless of their means. Even so, it is essential to identify that the reality is that the best course for any litigant is to obtain professional representation. In the same way that an individual rightly would hesitate to take on the task of diagnosing and treating their own medical issues or engaging in any other task where professional knowledge and skills are required, an individual would be wrong to assume that the conduct of litigation is straightforward or easily learned.
8. There is no one category of LIP. Experience shows that many LIPs find themselves in a position where the financial costs of litigation are not affordable, and therefore the decision to self-represent is often a last resort. Where a litigant cannot, or decides not to, access professional representation, they will face challenges in accessing justice. This raises issues about the funding of litigation for persons who otherwise do not have the means to access representation. The absence of widely available, adequately funded legal aid and assistance is by far the biggest contributing factor to the presence before the courts of an increasing number of LIPs.
9. Access to legal aid in this jurisdiction is for the most part means-tested with certain limitations on the nature of the cases covered. Where criminal offences are concerned, legal aid is granted by the courts and generally available to defendants who cannot afford representation, therefore the situation where an accused is forced to conduct their own defence does not generally arise. Conversely, in civil and family matters, many of the LIPs who appear before the courts are unrepresented, not by choice but because they do not meet the eligibility criteria, the waiting lists are too long, and/or the dispute the subject matter of their case is not covered by the scheme. Accordingly, LIPs very often end up conducting their litigation in person not from choice but because they do not have the resources to employ lawyers to work on their behalf.

2 Equal Treatment of Persons in Court Guidance for the Judiciary 2014, Committee for Judicial Studies, Ireland.

10. This Working Group fully supports the proposed reform of the Civil Legal Aid Scheme and any measures introduced to extend the relief currently available to litigants. Full representation is obviously optimal but for those who wish to represent themselves, the provision of some form of legal advice or assistance at the outset could assist an LIP in drafting pleadings and/or understanding how to conduct proceedings.
11. The Working Group is aware that there is an ongoing Civil Legal Aid Review headed by retired Chief Justice Frank Clarke and hopes that this review and actions taken on foot of same will improve the position in relation to representation. However, it is important to understand that there will always be a certain number of LIPs who either do not obtain representation or do not wish for representation.

The Kelly Report

12. In October 2020, the [Report of the Administration of Justice in Civil Proceedings Review Group](#), also known as the “Kelly Report”, made in excess of 90 recommendations aimed at reforming the process of civil justice and reducing the costs and delays which affect litigation.³
13. A relatively limited number of recommendations were made in respect of unrepresented litigants, the main thrust of which were the updating by the Courts Service of all current guides and information for LIPs in a dedicated section of the Courts Service website utilising audio-visual as well as textual formats, and the creation of a central online information hub.
14. The [Report of the Judicial Planning Working Group](#) (the “McManus Report”)⁴ published in December 2022, made various recommendations on the administration of justice. It has a section on unrepresented litigants at Chapter 6.8.2 where it is observed as follows:

“Building on the OECD’s Report⁵, and the Report of this Group, relevant options to address gaps in this area should be explored as well as any legislative changes and Court rules to streamline processes to (i) enable access to the judicial process for all litigants irrespective of their financial capacity or legal literacy; (ii) provide access to accurate and easy to understand information about Court processes and appropriate tools (e.g., self-help options) and, (iii) ensure that there is an appropriate Court/courtroom environment for those involved in legal proceedings.”

15. The following specific recommendations are made:

“Further supporting lay litigants: enhanced information availability. Continue to increase the availability and accessibility of information for lay litigants and the public generally across all Court jurisdictions, especially regarding assistance in deciding to seek an appeal.

3 Department of Justice, *Review of the Administration of Civil Justice: Review Group Report* (October 2020) <https://www.civiljusticereview.ie/en/CJRG/04112020%20FINAL%20REPORT%20WEB1.pdf/Files/04112020%20FINAL%20REPORT%20WEB1.pdf>, accessed on 21 October 2024.

4 <https://assets.gov.ie/248247/1894d424-7e23-4dc0-b6c6-3e40babe4016.pdf> accessed on 21 October 2024.

5 OECD, *Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System* (OECD Publishing, Paris 2023), 103.

Building on existing structures and by engaging through the Service Access to Justice Civil Reform User Group, consideration should be given to providing more effective support for lay litigants. As part of its modernisation programme, and building on the recommendations of the Kelly Review Group on the administration of Civil Justice, the Courts Service should continue to provide more and better information and support for unrepresented litigants across all court jurisdictions and case types (see p. 27)."

16. The recommendations in this Report go significantly beyond those in either the Kelly Report or the McManus Report, although the Working Group echoes their approach in recommending that the information available to LIPs in relation to the litigation process be substantially expanded.
17. Because the focus of this Report is to encourage meaningful change, we have identified recommendations arising out of the discussions had by the Working Group following consideration of the material in each chapter. We have also identified the appropriate body to action those recommendations in each case.

Consultation Process

18. On 22nd November 2024, the National Conference for judges from all jurisdictions took place in Dublin. There was a consultation session on the draft recommendations of the LIP Working Group. The judges were divided into groups of ten, having each been given a copy of the draft recommendations and an executive summary of the chapters of the report a week prior to the conference. A facilitator was appointed to each group, with training having been provided in advance to those facilitators. The facilitators were Elizabeth Maguire, Emily Egan, Geoffrey Shannon, Christopher Callan, Alan Mitchell, Sara Phelan, Denise Brett, Helen Boyle, Rory Mulcahy, Marguerite Bolger, Simon McAleese, David Nolan, Mary Rose Gearty, Eileen Creedon, Liam Kennedy and Roderick Maguire. Facilitators were asked to assist the groups in identifying the recommendations that they endorsed, those they did not agree with and any additional recommendations they thought desirable.
19. The consultation process worked very well. Each facilitator reported back after the conference. The consensus appeared to be that this was a very worthwhile exercise and that judges were pleased to have been consulted in relation to the draft recommendations. Additional comments were also received from individual judges including Máire Whelan, Garret Simons, John Martin and Brian O'Shea.
20. Amendments were made to a number of the draft recommendations following the consultation process. What appears below is a high level summary of the feedback and observations that came from the groups and individual judges. It does not purport to be an exhaustive summary of same for obvious reasons.

Chapter 2 – Data

In respect of Chapter 2, Data, participants observed that in respect of the recommendation for a unique identifier, sometimes the same litigant might use a number of different versions of their name and it would be useful in that respect. The recommendation that a unique identifier be assigned to all litigants was generally endorsed. It was observed that on a personal injury summons, the litigant is required to identify his or her PPS number. It was pointed out that it is not possible to buy or sell a property without a PPS Number because the Revenue requires it in respect of the stamp duty of a conveyance. Similarly, when somebody dies and a solicitor is preparing a schedule of assets in respect of gifts over €15,000 a PPS Number is required.

On the other hand, people were concerned to avoid a distinction in treatment between LIPs and represented litigants and noted that any recommendation in relation to the collection of data should apply to all litigants.

Chapter 3 - Pre-Trial Procedures

In respect of Chapter 3, pre-trial procedures, some groups observed that an unfair burden was being placed on people who are defending cases brought by litigants, in particular where the represented persons were individuals and not financial institutions or the State. They were anxious that additional burdens not be imposed on such parties. There was a strong feeling that the rules should be the same both for litigants in person and for represented litigants, both to avoid stigmatising litigants in person and to avoid placing represented litigants at a disadvantage. There was a concern that the process must not only be fair but be seen to be fair.

Most groups were keen on the idea of a bench book, although some groups felt that training alone would be sufficient. It was commented that any bench book should include the topics of bias and recusal. The recommendation on a bench book has been retained as the majority of participants felt it would be helpful and it is entirely optional for a judge as to whether they refer to it or not. There was a comment that there was insufficient screening when litigants in person issue proceedings and there was support across the board for the idea of dedicated court services staff who would assist at the counter or in some other forum. One group commented that the filtering mechanism in the Court of Appeal under s.111 whereby some cases can be dealt with by one judge rather than three judges should be replicated in other jurisdictions. No recommendation as such has been made in this respect but the Working Group indorses the general approach of filtering of litigant in person cases at an early stage to ensure that they are treated appropriately where possible. It was observed by one group that there may be learnings from the small claims court where legal representation is actively discouraged.

Chapter 4 - LIP in Court

It was recommended the judges highlight the alternative routes to justice i.e. mediation and ADR and this has been included as a new recommendation. In relation to the recommendation that there should be an explicit rule of court providing that a case may proceed in the absence of a party in terms similar to existing rules, there was strong support for this recommendation, but it was pointed out that there ought to be an additional rule identifying the nature of the service that

must be proved in order to proceed on this basis. The working group has adopted this as a new recommendation.

The recommendation that the President of each jurisdiction should consider establishing a system to allocate a designated judge to a litigant in person in respect of an identified set of proceedings to ensure consistency of approach/avoid forum shopping and repetition excited a good deal of comment in almost every group. There was strong concern about this recommendation on the basis that it might be impossible to implement in practice due to geographical constraints, it might be used strategically by litigants in person, and it might impose a disproportionate burden on individual judges. On the other hand, there was some support for the idea that consistency of approach and the avoidance of forum shopping is important. Because of the strength of opposition to this recommendation it has been decided to remove it, but nonetheless the Presidents of each jurisdiction might wish to consider whether it is something that, modified appropriately to reflect the jurisdiction, might be useful. The Working Group considers that consistency of approach and the avoidance of repetition with the inevitable waste of court time, are important principles to be observed.

In relation to the recommendation that a practice direction on McKenzie friends should be drawn up for the District Court to include a section on the family law courts, it has pointed out that there is a Department of Justice review of the in-camera rule and so any change should await this. For that reason, this recommendation has been removed and should be revisited when the review is complete.

Similarly, there was a great deal of discussion amongst almost all the groups in relation to the recommendation which identified that a litigant in person should be entitled to a transcript of a substantive ruling made by a judge without being required to pay for same. Most commentators felt that this rule should apply to all parties and the recommendation has been changed accordingly. There was concern about the cost, the impact this might have on the availability of transcripts for other purposes and the necessity to ensure that people were not given the entire DAR of the hearing. This recommendation only applies where the judge considers it appropriate in the circumstances and therefore it has been modified in the light of the comments but not removed.

There were a number of comments in relation to the question of the obligations on legal representatives when dealing with litigants in person and a new recommendation has been made to reflect these comments. Equally, there were a large number of comments on the difficulties faced by a court where a litigant in person clearly has a mental health issue and/or a disability of a psychological nature such as ASD or ADHD etc. Section 38 (13) of the Assisted Decision Making (Capacity) Act 2015 provides the court may make a decision-making order or decision-making representation order notwithstanding that an application has not been made to it for an order in that respect or in those terms. That will be highlighted in the bench book.

Chapter 5 - Disrupted Court Hearings

It is fair to say that the chapter that excited the most comment by participants was the chapter on disrupted court hearings. There was an almost unanimous feeling that judges were dissatisfied with the level of protection both for themselves and for court staff. There was substantial support for

the idea that there should always be a Garda present or nearby, in particular because Gardaí have powers of arrest that security staff do not have. A number of participants mentioned section 63 of the Criminal Justice (Miscellaneous Provisions) Act 2023 which inserts a new section 9A into the Public Order Act 1994 and a new recommendation has been made that court Gardaí should be trained in the existence of same. This provides that a Garda may direct a person who is disruptive in court to desist from the behaviour in question or to leave the court and that failure to do so is an offence.

There is also support for a person equivalent to a court usher, such as a service officer, on a full-time basis, in particular courts where their presence is warranted. There was substantial support for training in respect of dealing with abusive behaviour. It was suggested that there should be security cameras in court which would provide a live video feed from the court room to security staff in real time and it was also suggested that there would be security cameras outside the court room. A new recommendation has been made to this effect.

In relation to legal aid, there was support for increased civil legal aid and it was noted that there is an increased difficulty in respect of practitioners taking on difficult cases on the criminal side where there is legal aid. It was suggested that a guide be produced for litigants in person in the criminal process given that some of them are not taking up the offer of legal aid. This report has primarily concerned itself with material on the civil side, and it is considered that this is the priority at present given that most litigants are represented on the criminal side. However, the Working Group supports any initiatives in this regard taken by the Courts Service in relation to litigants in person in criminal proceedings. Judges were very keen on absolute clarity in respect of their powers in respect to contempt and one group suggested that, were there to be a clear series of steps to be identified, it would be very helpful to have a laminated version of same on the bench.

In relation to the recommendation in respect of measures introduced to afford a discretion to the court to assign legal aid, it was pointed out s.46B of the Domestic Violence Act 2018 provides that a court can direct the Legal Aid Board to give legal aid for cross examination by unrepresented parties. Nonetheless this recommendation remains in place since it goes beyond the situation addressed by s.46B. Reference was made to the Review of Civil Legal Aid that is being undergone by Frank Clarke SC. Generally, there was support for the idea of training in legal aid for judges.

Chapter 6: Repetitive Litigation

Most judges agree that there was a requirement for a clear jurisdiction in relation to Isaac Wunder orders for the District and Circuit Court and it was pointed out that the Supreme Court case on IW orders in family law cases (which originated in the Circuit Court) may assist in clarifying this issue.

Chapter 7 - Court of Appeal

Finally in relation to this chapter, it was noted that any practice direction adopted by the High Court on applications to re-open a judgment, would have to be carefully drafted since there is a real question mark as to whether or not there is any “Greendale” jurisdiction at all for a court that is not an appeal court.

Chapter 2 – Data

Introduction

21. This chapter attempts to capture some of the data in relation to LIPs in the courts. There has been extensive liaison by the authors with the Courts Service team charged with data collection and analysis, Owen Harrison and Mark Warren, who have been extremely helpful. The Working Group is very grateful for the assistance they have provided. However, that interaction has demonstrated the limits of the data available and the necessity for additional data to be collected and analysed. The nature of the data that requires collection is specified in the recommendations at the end of this chapter.
22. Nonetheless, even with the very limited data available, it may be seen that LIPs constitute a considerable proportion of litigants in certain areas of litigation, ranging from 15% to 30%, depending on the jurisdiction and the subject matter. What those statistics do not describe is the additional number of time taken up by LIPs because of their lack of familiarity with the system, or the small number of LIPs who take up a disproportionate amount of time because of the repetitive nature of their litigation.

Available Data

Supreme Court/ Court of Appeal

23. In respect of the Supreme Court, regarding applicants, from January – 5 September 2024, 38 case parties were LIPs (29% of case parties), whereas 92 case parties were represented by a solicitor or counsel (71% of case parties). These figures suggest that LIP represent a sizable proportion of case parties appearing before the Supreme Court.
24. Data regarding LIP who appear before the Supreme Court as respondents is not presently available, and we are unsure whether such data is recorded. Anecdotally, it is a rare occurrence for a respondent to appear before the Supreme Court without being represented by a solicitor or counsel.
25. In respect of the Court of Appeal, regarding applicants, from January - 5 September 2024, 70 case parties were LIPs (30.2% of case parties), whereas 161 case parties were represented by a solicitor or counsel (69.4% of case parties) and 1 (0.4) party was an Appellant in Custody. These figures suggest that LIPs represent a sizable proportion of case parties appearing before the Court of Appeal. Data on respondents was not available at the time of writing this report although it is understood that it will shortly be available.
26. Although we have not seen the source of this data, the McManus Report included the following in Chapter 6 under the heading “Lay Litigants” (para 6.8.2):

The proportion of lay litigants is significant. For example, while data is not available for all Courts, Civil Court of Appeal figures for 2019, 2020 and 2021 indicate lay litigants represented some 29%, 24% and 16% of all litigants respectively. In the Supreme Court,

37% of applications for leave to appeal in 2022 were filed by lay litigants. This represents an increase on the 30% figures for 2019, 2020 and 2021. The prevalence of unrepresented litigants gives rise to the need for more effective support structures to assist their participation in the Courts process.

High Court

27. At present the data available for the High Court as a whole does not permit reliable estimates of the number of LIPs. To the extent that data is available, it suggests that notable numbers of LIPs are present in chancery matters, liquidated debt, regulation of professions and judicial review.
28. Preliminary 2024 data that covers January through to 11 September are disaggregated according to whether the case parties were before the High Court as defendants or as plaintiffs. There is significantly more information in relation to plaintiffs as compared to defendants. 51.9% of defendants have been classified as “unknown” litigant type. This is a substantially higher percentage of unknown representation type classifications than present in the total 2021-2024 data. This disparity indicates the need for standardisation of recording practices across the processing of all case types.

Circuit Court

29. As part of a family law pilot project, data for cases heard at the Circuit Court level was available for a subset of case types in a selection of counties that notably did not include Dublin. In 2023, a total of 504 case parties litigated in person before the courts in Counties Cavan, Cork, and Laois for matters relating to family law. This represents about 20% of the family law cases heard before these county courts last year. In contrast, 1,164 of the family law case parties (46.7%) were represented by a solicitor or counsel, 150 were represented by a Law Centre (6%), and 42 were represented by the private practitioner legal aid scheme (1.7%). Continuing the pattern of gaps in the classification of data, 353 family law case parties were classified as “unknown” litigant category (14.2%) and 280 case parties received no litigant category classification at all (i.e. a blank in the data category, representing 11.2% of cases).
30. Of the 504 known Litigant-in-Person family law case parties before these three county courts, 317 were respondents (62.9%) and 187 were applicants (37.1%). Notably, the vast majority of these LIP cases were before the courts for divorce (416, 82.5% of cases). Of the divorce cases, 380 (91.3%) case parties appeared in Cork, far outstripping the number of case parties who litigated in person in Cavan or Laois. The numbers of LIP case parties for other case types were noticeably lower, but there was a consistent pattern that the majority of LIP cases across virtually all case and filing types were found in Cork, not Cavan or Laois. This suggests that litigating in person for family law matters is a concentrated phenomenon, but data from other counties would need to be analysed to confirm this pattern.

31. Aspects of the data provided for the 2023 family law cases in Counties Cavan, Cork, and Laois are confusing. Unlike in the High Court data, which included no information about the outcomes of the cases, the provided family court data includes the listing results of the LIP cases. This is valuable information to possess because it could help us determine whether LIPs experience significantly different outcomes in court than parties with legal representation. However, 224 cases have a blank listing result, and a further 122 cases have a result of “not specified.”
32. Finally, 157 case parties out of 847 total case parties (18.5%) litigated in person for assisted decision-making cases.
33. To expand our understanding of LIPs before the Circuit Family Court, a supplemental analysis of cases heard in one Family Law Court in Dublin during July 2024 was conducted for comparison. During this one month in one court, 122 cases involved LIPs, representing 39.5% of the total, pertinent cases heard (at total of 309). The total court time consumed by these cases in July was 41 hours, 12 minutes, 13 seconds. The LIP cases consumed 18 hours, 29 minutes, and 23 seconds, representing 44.9% of the total case processing time that month. As with the previously described supplemental analysis, this data suggest that LIPs disproportionately consume the courts’ time and resources. An accurate determination of workload allocation across LIP cases relative to cases with legal representation would require more comprehensive data.

District Court

34. No data appears to be available for the District Court although anecdotal evidence suggests that a very large proportion of some District Court litigants are not represented, such as those seeking protection orders and/or barring orders in Dolphin House in Dublin, or those before the Small Claims court.

Statistics compiled by the Judiciary

Non-Jury/Judicial Review

35. Statistics compiled by the List Judge for the non-jury and judicial review lists from October 2023 to July 2024 indicate the percentage of LIPs in cases that go to hearing is about 16.5% of the total number of litigants. It is likely that the percentage of cases involving LIPs that enter the lists is much smaller but anecdotally, because cases involving LIPs are much less likely to settle prior to trial, the percentage becomes higher when one looks only at cases going to trial. No reliable statistics were available for the number of cases coming into the lists. The LIPs may either be applicants/plaintiffs or respondents/defendants. Anecdotally, it is suggested that cases involving LIPs often take more time to case manage and to hear than cases of a similar nature where both parties are represented.

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CHAPTER 2

Week Beginning	# of LIP	# of LIP/ # of Cases	% of cases involving LIPs
16 October 2023	2	2/23	
23 October 2023	2	2/25	
30 October 2023	4	4/12	
Total	8	60	13%
6 November 2023	2	2/19	
13 November 2023	8	8/22	
20 November 2023	4	4/18	
27 November 2023	2	2/18	
Total	16	77	21%
4 December 2023	2	2/22	
11 December 2023	3	3/26	
18 December 2023	1	1/15	
Total	6	63	10%
15 January	1	1/17	
22 January	6	6/18	
29 January	5	5/21	
Total	12	56	21%
5 February	2	2/16	
12 February	2	2/13	
19 February	4	4/11	
26 February	2	2/16	
Total	10	56	18%
4 March	1	1/15	
11 March	4	4/16	
18 March	1	1/15	
Total	6	46	13%
8 April	3	3/25	
15 April	2	2/22	
22 April	1	1/15	
29 April	0	0/18	
Total	6	80	8%

Week Beginning	# of LIP	# of LIP/ # of Cases	% of cases involving LIPs
6 May	1	1/13	
13 May	3	3/18	
29 May	1	1/9	
Total	5	40	13%
3 June	4	4/12	
10 June	3	3/19	
17 June	2	2/10	
24 June	3	3/18	
Total	12	59	20%
1 July	8	8/14	
8 July	6	6/15	
15 July	1	1/15	
22 July	2	2/12	
Total	17	56	30%
Total Overall	98	593	16.5%

Snapshot of July 2024

36. A supplemental analysis of LIP cases before the High Court was conducted by one judge for the month of July 2024 in the Judicial Review / Non-jury and Hague lists.
37. Ten cases were listed and required a hearing of at least one day and a judgment. A further 20 or so were listed in the Hague list every second week, and 50 were listed formally in the PI list in Cork - none of these are included in this data, although the Hague list usually requires at least 30 minutes to explain procedure to a new respondent before lawyers are instructed. None of the PI cases involved LIPs.
38. Leaving aside the PI list, of the 10 cases that ran, 4 involved an LIP on one side only. If one considers the 2 cases that ran for a day or more in Cork, this means that 4 out of 12, or 33% of all cases that ran, involved an LIP. This is roughly the amount of time that those cases took also. Three cases were in the JR / non-jury list (repossession case, residential tenancy appeal and JR of DPP investigation), one was a Hague case.
39. Of these 4 cases, 2 of the applications by LIPs were unstateable, involving a total of approximately 20% of total court time during the month of July; both involved full hearings and written judgments. The other two had stronger cases to make but neither has concluded, one has gone to plenary hearing, and in the other, a judgment was to be delivered in September.

40. This is not a representative month as it includes two weeks of PI hearings but gives a snapshot of the usual work in the mixed lists of JR / non-jury and Hague.

Summary

41. It is clear from the work done on this chapter that there are significant deficits in relation to data on LIPs. The Working Group is conscious that the Courts Service is in the course of a 10 year Modernisation Programme and has just published its corporate strategic plan 2024 to 2027. That programme includes the introduction of a unified case management system which is intended to capture vital data. The judiciary should work with the Courts Service in relation to the type of data that is required in relation to litigants generally, including LIPs and to that end, have made some recommendations in that respect. The absence of any widespread data at District and Circuit level is of real concern and should be addressed at the earliest opportunity.

RECOMMENDATIONS

- R.1. Recommendation: More comprehensive, robust information about the number and distribution of cases across all court levels, counties, and case types should be collected to include:

- A record in every case (including criminal cases) in all jurisdictions of whether every party is represented or not, to include a record of where a party was represented but becomes unrepresented
- Initial focus on collecting data from the Circuit Court and District Court in respect of above bullet point given paucity of data in those Courts
- Remediate gaps in the available data, notably the high number of cases that have been classified as “unknown” litigant type or not given a litigant type classification code at all
- Data to identify stage of case when final orders are made i.e. before or after trial, to allow comparison of number of LIP cases that settle prior to trial relative to cases that settle prior to trial where parties are represented.

- R.2. Recommendation: Data recording practices to be standardised across the processing of all case types

- R.3. Recommendation: A unique identifier to be assigned to all litigants to ensure that accurate records may be kept of the number and type of proceedings brought or defended by a litigant

Body responsible: Courts Service

Chapter 3 – Issuing of Proceedings and Pre-Trial Procedures

Introduction

42. This chapter identifies challenges that arise for LIPs at the first stage of litigation i.e. prior to issuing proceedings and when the LIP initially issues proceedings.
43. Litigation that is commenced and progressed improperly or irregularly not only generates problems for the litigants themselves; it also impacts on the other parties by increasing their costs and exacerbating the stress of litigation, and it impacts on the availability and efficient use of scarce judicial and administrative resources. Litigation can be very complex. The complexity can arise because of the substantive legal issues, but also, and more particularly for this project, because of the need to understand and apply the rules and practices that govern the conduct of litigation.
44. The commencement of litigation and the conduct of pre-trial stages in litigation are subject to well-established rules and practices. A failure to comply with those rules and practices at an early stage in the proceedings can have very serious adverse consequences up to having proceedings or applications struck out, with potential costs consequences.
45. There are many judicial statements to the effect that the rules are the same for all parties to litigation and courts must be careful not to assist LIPs to the point where this might cause prejudice to the represented party. On the other hand, judges are required to vindicate the LIPs constitutional right of access to the courts. These competing values, namely the requirement to be independent and impartial and the requirement to uphold the constitutional imperative that LIPs benefit from effective access to the court, place judges dealing with cases involving LIPs in difficult territory. The Working Group considers that the most equitable approach is to ensure that a person contemplating acting for themselves should be able to access the necessary information to guide them through the various processes by explaining clearly what they are expected to do. Supporting the LIP in accessing the process not only benefits the LIP but also facilitates the judge in administering justice fairly and impartially and better equips the judge to “stay out of the arena”, while also being satisfied that the right to effective access to the courts has been safeguarded.
46. Our objective in this chapter is to identify measures directed to ensuring that information is available in accessible form at the early stages of litigation. The Working Group has considered steps taken in other jurisdictions to inform our recommendations.

Information available to LIPs

Comparable Jurisdictions

47. Some official court websites across the world have dedicated webpages for LIPs to access and use. These sections are solely for LIPs and provide an accessible and simpler way to understand legal content and accessing the courts. The content discussed below is not intended to be exhaustive, rather it gives an idea of the type of material that is available for LIPs in other jurisdictions.

48. Hong Kong - On the Hong Kong Court of Final Appeal website, there is a dedicated FAQ section on ‘Litigants without Legal Representation’.⁶ The FAQ section answers commonly-asked questions which could assist an LIP in the early stage of the legal process. It has the capacity to act as a form of checklist so that the LIP is aware of the legal requirements they must meet and what is expected of them in seeking an appeal to the Court of Final Appeal.
49. The Hong Kong Judiciary website also has a separate resource centre providing a more detailed, comprehensive overview of the courts system.⁷ The hyperlinking of headings, topics and questions makes use of the website seamless.
50. Interestingly, there is a [video resource centre](#) as well, featuring actors acting as solicitors, counsel, registrars and members of public. Some camera angles are from the point of view of the Judges’ Bench.⁸ The list of videos which can be watched includes an introduction to the unrepresented litigants resource centre, trial proceedings in court, how to apply for an appeal, and how to enforce a ruling.
51. Canada - The Canadian Judicial Council has a ‘[Representing Yourself in Court](#)’ section on their website with links to handbooks to make it simple for LIPs to access information for each province and territory in both English and French. These handbooks contain information on how to prepare for a hearing, the applicable rules and law, where to find free or lower cost legal assistance, etc. They are written in plain English. There are handbooks on substantive areas of the law, including a civil law handbook, a criminal law handbook and a family law handbook.
52. Australia – Similarly, the Australian Judicial Commission of New South Wales has a [comprehensive handbook](#)¹⁰ on unrepresented LIPs and how best to manage them in court. It has been produced by judges of the Courts of NSW and each judge identifies concerns from their lived experiences of LIPs in court as well as different categories of LIPs.
53. England and Wales – In England and Wales, the Courts and Tribunals Judiciary has published a very extensive document entitled “[The Administrative Court Judicial Review Guide 2024](#)”.¹¹ This guide is explicitly stated to be for both represented and unrepresented litigants. In the foreword to the 2024 edition, the following paragraph appears: “*It covers all of the stages for a claim for judicial review, good practice is identified and pitfalls foreshadowed. It is required reading for all those who conduct judicial review cases (whether or not they are lawyers)*”. This is a hugely impressive document and would be of great assistance to any LIP in a subject matter area. Detailed subject matter guides for LIPs can also be found on the Advicenow

6 <https://www.hkcfca.hk/en/faqs/litigants/index.html>, accessed 21 October 2024.

7 <https://rcul.judiciary.hk/rc/index.jsp> accessed 21 October 2024.

8 <https://rcul.judiciary.hk/rc/eng/eVideo.jsp>, accessed 21 October 2024.

9 <https://cjc-ccm.ca/en/what-we-do/initiatives/representing-yourself-court> accessed 21 October 2024.

10 https://www.judcom.nsw.gov.au/publications/benchbks/judicial_officers/managing_litigants_in_person.html accessed 21 October 2024.

11 <https://www.judiciary.uk/courts-and-tribunals/high-court/administrative-court/administrative-court-judicial-review-guide-4/> accessed 21 October 2024.

website, which is operated and maintained by a private charity named “Law for Life: The Foundation for Public Legal Education”.¹²

54. Northern Ireland – the Northern Ireland Courts and Tribunal Service has produced a guide for LIPs entitled “[A guide to proceedings in the High Court for people without a legal representative](#)”.¹³ At the beginning of the Guide is a ‘Glossary’ explaining common legal terminology such as ‘callover’, ‘guardian ad litem’, ‘close of pleadings’, ‘next friend’, ‘originating summons’ and more. The contents page of this document is set out as a set of questions and the Guide seeks to answer them as plainly and easily as possible.

Ireland

55. There is a document entitled “[Guidelines for persons representing themselves in the High Court](#)”¹⁴ on the courts.ie website. No similar document appears to exist in respect of any of the other four jurisdictions. This document is helpful up to a point, but in our view requires considerably more information, including the behaviour and conduct that is expected from LIPs in court and the consequences of failure to comply with court rules. We recommend that a similar document be provided for all jurisdictions. This will permit the court to refer to this when dealing with LIPs, including disruptive LIPs (addressed below). A better informed and prepared LIP will be less likely to misunderstand court procedures.
56. The courts.ie website also has a document entitled “[What to Expect in the Courtroom](#)”. Again, this is helpful up to a point but lacking in detail.
57. There is also a site entitled “[Most Common Forms](#)”¹⁵ and it provides quick links to commonly requested forms in each of the five jurisdictions.
58. Work is currently being carried out by the Courts Service to enhance the accessibility of the [Courts Service website](#)¹⁶. The ‘[Debt interface](#)’¹⁷ under ‘Civil Law’ is a good example of how this can be achieved. The interface is not overwhelming. It is interactive. The inclusion of icons and notably the ‘[Glossary](#)’ of commonly used debt-related terms is particularly helpful.¹⁸ This means that an LIP can access information in a digestible manner which, in turn, fosters access to justice. This project is at an early stage and the challenge is to maintain accessibility whilst making the website truly comprehensive across all areas of litigation. The family law section is another example of this approach.

12 <https://www.advicenow.org.uk/advicenow-guides> accessed 21 October 2024.

13 https://www.justice-ni.gov.uk/sites/default/files/publications/justice/personal-litigants-guide-one-seven_0.pdf accessed 21 October 2024.

14 <https://www.courts.ie/guidelines-persons-representing-themselves-high-court> accessed 21 October 2024.

15 <https://www.courts.ie/content/most-common-forms> accessed 21 October 2024.

16 <https://www.courts.ie/> accessed 21 October 2024.

17 <https://services.courts.ie/Civil-Law/debt> accessed 21 October 2024.

18 <https://services.courts.ie/Civil-Law/debt/glossary> accessed 21 October 2024.

59. There are also detailed guides on the website on various topics including, *inter alia*, how to issue, file and serve court documents, explaining the various steps arising generally in the litigation process, listing arrangements and various court lists, giving links to the rules of court and links to Citizen's Information, the Legal Aid Board and MABS.
60. There is a role for enhanced co-operation between the Courts Service and the judiciary in relation to the development of content in specific areas, with a clear focus on maintaining the simplicity and accessibility of the current format of the new approach as shown in the debt and family law websites. It is recommended that a detailed central online information hub (as recommended by the Kelly Report and the Minister's implementation plan ([A Civil Justice system for the 21st Century](#))¹⁹) for LIPs, designed in conjunction with the judiciary, should be available to LIPs, with links to all other relevant sites on the Courts Service.

Assistance in completing court forms

Comparable jurisdictions

61. Hong Kong – As already referred to above, there is a Resource Centre for Unrepresented Litigants available online. A singular document was created to explain the purpose behind creating this Centre – it states that the purpose of this Centre is “*assistance in procedural matters to unrepresented litigants who are parties to or about to commence civil proceedings in the High Court or District Court*”.
62. Canada - The Federal Court [website](#) provides for a range of checklists which are currently on the website which members of the public,²⁰ especially concerning areas on Judicial Review and Asylum/Immigration Law. This could be equally applicable to other areas of law where most LIPs are likely to be seen such as judicial review, family law and repossession matters [civil].
63. United States of America – [The New Hampshire Judicial Branch website](#) provides for the use of checklists by litigants.²¹
64. England and Wales – The *Civil Procedure Rules* (“CPR”) state that pre-trial checklists are sometimes utilised in claims having a value of £10,000 or more ([fast-track cases](#) – see CPR Part 28)²² and of £25,000 or more ([multi-track cases](#) – see CPR Part 29).²³ The pre-trial checklists are furnished to the parties by the court during the case management process. If a party should fail to file the pre-trial checklist by the date specified by the court, the court will make an order to the effect that unless the checklist is filed within 7 days of the service of its order, the claim, counterclaim or defence will be struck out without further order.

19 Department of Justice, ‘Civil Justice Efficiencies and Interim Measures: A Civil Justice System for the 21st Century’ (May 2022) <https://www.gov.ie/pdf/?file=https://assets.gov.ie/225582/f246a2cb-9282-49e9-9982-4df75937c6cc.pdf#page=null> accessed 20 October 2024.

20 <https://www.fct-cf.gc.ca/en/pages/representing-yourself/checklists> accessed 21 October 2024.

21 <https://www.courts.nh.gov/self-help/getting-started/checklists-instructions-and-other-helpful-information> accessed 21 October 2024.

22 <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part28#5> accessed 21 October 2024.

23 <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part29#29.6> accessed 21 October 2024.

65. Northern Ireland - See further samples of checklists in context of [family law proceedings divorce petitions](#).²⁴
66. Ireland - In a High Court judgment, Barrett J. identified 'A Discovery "Check-List"' for the court to apply in discovery applications in *Walsh v. The Health Services Executive & Ors* [2017] IEHC 394.²⁵ Given that the courts hear a large amount of discovery applications, Barrett J. saw fit to use a checklist-like document setting out clearly what is required.
67. The same reasoning could apply in respect of LIPs instituting proceedings. The provision of checklists in respect of a range of procedural matters could bring much-needed certainty and uniformity to the approach of LIPs to proceedings.
68. Presently there is a section on the Courts Service website containing links to [commonly requested forms by litigants](#)²⁶ relating to matters concerning the Supreme Court, Court of Appeal, High Court, Circuit Court, District Court, Refund of Court Fees and Legal Aid.
69. However, there is no guidance on this particular section of the website on the purpose of these forms nor a brief explanation on what they are used for. The Northern Ireland checklist and guide to completing the relevant forms in family law proceedings provides an excellent model of how to assist an LIP. Comprehensive directions are given on completing the form and there is a clear identification of the documents that must accompany the form.
70. Accordingly, it is recommended that the Courts Service draw up tailored assistance to be provided on the completion of frequently used court forms in conjunction with the judiciary, along with checklists of items that an LIP (or any litigant) is required to have prior to coming to court.

Glossary of legal terms/phrases

71. A glossary is a list of terms and their definitions, often found at the end of a website or other document. The purpose of a glossary is to provide definitions for words or phrases that may be unfamiliar to a litigant, or that have a specialized or technical/legal meaning within the context of the document. This Working Group believes that the provision to LIPs of a glossary identifying and explaining common terms and phrases likely to be heard in court would greatly benefit LIPs when they come across terms they are unfamiliar with. The Working Group recommends that a glossary is produced for specific subject matter areas, as has been done in respect of debt by the Courts Service under '[Civil Law](#)'.²⁷

24 <https://www.justice-ni.gov.uk/publications/forms-and-checklists-making-application-divorce> accessed 21 October 2024.

25 https://www.courts.ie/acc/alfresco/2ec2978a-33af-4cbf-b6d2-498fad9b63fe/2017_IEHC_394_1.pdf/pdf#view=fitH accessed 21 October 2024.

26 <https://www.courts.ie/content/most-common-forms> accessed 21 October 2024.

27 <https://services.courts.ie/Civil-Law/debt/support-services-all> accessed 21 October 2024.

Handbooks for LIPs

72. It is recommended that the Courts Service provide a detailed ‘one - stop shop’ handbook for LIPs (“the Handbook”) designed in conjunction with the judiciary, with links to all other relevant pages on the Courts Service website such as the details for online attendance, the conduct of a remote hearing, the High Court (or equivalent) search to permit tracking of the case, practice directions on legal submissions (if appropriate for the jurisdiction), the location where written judgments may be found on Courts Service website, etc.
73. The Handbook should be tailored so that each jurisdiction is catered for. Rules of court should be amended so that initiating documents i.e. Civil Bill/Plenary Summons/Statement of Grounds, etc. carry a legend identifying that any person representing themselves is obliged to download the Handbook and familiarize themselves with same, and that the court will proceed on that basis.
74. The Working Group does not consider that imposing this requirement on LIPs places any burden on the LIP that is not already placed on a lawyer who appears in court on behalf of a client. Lawyers are familiar with the contents of the guidelines and are conscious of the duties that they owe, as professionals, to the court. Further, a lawyer, unlike an LIP, is subject to enforceable professional standards.
75. The Handbook should address the issue of disruptive behaviour in courtrooms. A better informed and prepared LIP will be less likely to misunderstand court procedures. The Handbook should identify the behaviour and conduct that is expected from them in court, including the implications of unreasonable behaviour in court.
76. By way of example, the Northern Ireland handbook specifically states that “*Parties must remain quiet so as not to disturb the hearing. Disrupting court hearings is a contempt of court and can result in punishment*”, and further “*If the judge warns you that a certain step would be contempt of court, the warning should be taken very seriously, as it can have significant consequences for you, including the possibility of imprisonment*”.²⁸
77. The Working Group recommends that any handbook or information supplied to LIPs would include wording of a similar nature in relation to their expected behaviour in court and the implications of failing to comply with these guidelines to ensure the LIP is fully aware of the behaviour that is expected and the consequences of failure to adhere to same. It should also manage the expectations of LIPs as to the time available to the court to deal with their case and emphasise to them the entitlements of other litigants whose cases are also in the court list that day.
78. The Handbook should also include specific reference to details of the legal aid and support groups that are relevant to LIPs. Consideration could be given to providing the Handbook in a question-and-answer format, or other accessible format.

28 See Chapter 7(b).

Practice Direction HC54

79. A [High Court Practice Direction HC54](#) was introduced in 2010 which governs proceedings where any party is not professionally represented.²⁹ It requires that both parties serve a form in advance of (a) making a pre-trial application, and (b) the trial of the proceedings. The objective of the form is to ensure the LIP is sufficiently prepared for the trial and to increase efficiency of the trial hearing. HC54 does not apply to family law proceedings. The forms contained in HC54 are available on the Courts Service website and sets out what information is required at both stages.
80. The [Kelly Report](#) noted that HC54 is not being complied with by the parties and practitioners.³⁰ To combat this lack of compliance, the Review Group charged with implementing the Kelly Report has recommended that the Practice Direction be implemented by the High Court Central Office, which could mean that the Central Office will not issue pre-trial applications or facilitate trials unless the parties comply³¹. The Department of Justice has since published its Implementation Plan of the Report and commits to implementing this recommendation by 2025.³²
81. The Working Group queries the advisability of having a separate process for LIPs which may serve as an additional barrier rather than as an aid to access. Procedures which apply only to LIPs risk creating an inequality of treatment. Separately, requiring an LIP to produce more paper, when they often struggle to comply with existing obligations in relation to pleadings and written submissions, is undesirable. Moreover, the utility of the additional material they are required to produce under HC54 is questionable, given the fact that they are often unfamiliar with legal principles. The proposed approach puts an additional burden on the court offices and questions arise as to its enforceability, given the challenges the Central Office already face with LIPs. Moreover, the fact that there has been such widespread non-compliance with HC54 since its inception suggests that it was not a measure that was useful in practice. For that reason, the Group recommends that HC54 should be revoked.

Practice Directions / Notices

82. Various practice directions exist for each jurisdiction made by the President of each court. The Courts Service website records that the current version of the site where practice directions may be found for each jurisdiction is as of 12 December 2018. This is inaccurate as many practice directions available on the site are later in time than 2018. Many practice directions are out of date because of the passage of time (see for example HC09 on personal injury actions at country venues issued in February 1998) or are widely ignored (HC33 on electronic

29 <https://www.courts.ie/content/proceedings-involving-litigant-person> accessed 21 October 2024.

30 Administration of Civil Justice Review Group Report (October 2020) p. 354, <https://www.gov.ie/pdf/?file=https://assets.gov.ie/100652/b58fe900-812e-43f2-ad8d-409a86e7c871.pdf#page=null> accessed 21 October 2024.

31 *ibid.*

32 Department of Justice, Implementation Plan on Civil Justice Efficiencies and Reform Measures (2022) 44-45 <https://www.gov.ie/pdf/?file=https://assets.gov.ie/225582/f246a2cb-9282-49e9-9982-4df75937c6cc.pdf-page=null> accessed 21 October 2024.

transmission of judgments of June 2004 which requires electronic judgments produced in court to be attested by a solicitor). For some jurisdictions, the practice directions are not numbered in an accessible way and are difficult to find both for judges and for members of the legal profession/members of the public.

83. Generally, they are issued by the President of an individual court, but some practice directions are signed by the presidents of all courts, for example SC18/HC80 of 19 November 2018 on the use of cameras and electronic devices in court. We recommend that consideration be given to issuing these types of cross-jurisdiction practice directions, particularly where they address the conduct of proceedings in court.
84. The Working Group recommends that the President of each court review their practice directions with a view to revoking those that are out of date or no longer appropriate, ensuring that all practice directions are dated, ensuring that all members of the judiciary are aware of the practice directions and that they are enforced. Once this review has taken place, the practice directions should be publicized in the relevant section of the Courts Service website and a link provided.
85. There is a document entitled “[High Court President’s Notice – Guidance for litigants in person in the Non-Jury and Judicial Review Lists of 16 July 2024](#).”³³ This is presented in a question-and-answer format and is written in plain English. Consideration might be given to the Presidents of the various jurisdictions and/or judges in charge of specific lists issuing similar documents available on the Courts Service website that would identify the specific procedural steps required in relation to a specific area.

Judicial bench books

86. Resources can be developed for the judiciary to familiarise themselves with the issues that arise with LIPs. In many jurisdictions this has been achieved/aimed through the use of bench books. The difference between a bench book and a handbook is usually that the former are for judges whereas the latter are for the litigants themselves. Bench books are a familiar tool to the Irish judiciary. For purposes of comparison, the Working Group identify below various bench books from around the globe dealing with LIPs. What is common to those bench books is an approach that recognizes that LIPs require care, compassion and sensitivity.

Comparable jurisdictions

87. United States of America – A number of U.S. States have created bench books pertaining to LIPs:

33 <https://www.courts.ie/news/high-court-presidents-notice-guidance-litigants-person-non-jury-and-judicial-review-lists> . accessed 21 October 2024.

- California has adopted a [bench guide](#) for judicial officers;³⁴
 - Tennessee has a bench book entitled [Meeting the Challenges of Self-Represented Litigants](#);³⁵
 - Massachusetts has adopted Judicial [Guidelines for Civil Hearings Involving Self-Represented Litigants](#);³⁶
 - Delaware also has similar [Guidelines](#);³⁷
 - Canadian Judicial Council has adopted a [Statement of Principles on Self-represented Litigants and Accused Persons](#).³⁸
88. England and Wales – The Judicial College of England and Wales has adopted and regularly updates an [Equal Treatment Bench Book](#)³⁹ which is comparable but more extensive than the Irish version. The Equal Treatment Bench Book is aimed at increasing effective communication and case management in court. For example, in the July 2024 interim revision edition, advice is provided to the judiciary on avoiding adjournments.⁴⁰

Ireland

89. In 2014, the Committee for Judicial Studies, a body comprising only judges and created under the auspices of the Courts Service, produced an Equal Treatment Handbook (available on the judicial portal). This has excellent advice for the judiciary on the practical issues arising in cases involving LIPs (see p. 36-54). This handbook is not available for access by the general public.
90. The Working Group recommend that a bench book dedicated entirely to the involvement of LIPs in litigation be produced. This would mirror the approach taken in California, where a bench book has been developed for judges on the topic of LIP involvement in litigation.⁴¹ This [bench book](#) was developed by the Judicial Council of California in consultation with court service staff, legal aid officials, family law facilitators, behavioural health organisations,

34 Judicial Council of California, 'Handling Cases Involving Self-Represented Litigants - A Bench guide for Judicial Officers' (SJI, April 2019) https://www.courts.ca.gov/partners/documents/benchguide_self_rep_litigants.pdf accessed 21 October 2024.

35 https://www.tncourts.gov/sites/default/files/docs/final_pro_se_benchbook_-_may_2013.pdf accessed 21 October 2024.

36 <https://www.mass.gov/guides/judicial-guidelines-for-civil-hearings-involving-self-represented-litigants-with-commentary> accessed 21 October 2024.

37 <https://www.srln.org/system/files/attachments/DE%20Judicial%20Guidelines%20for%20SRLs%20in%20Civil.pdf> accessed 21 October 2024.

38 <https://cjc-ccm.ca/sites/default/files/documents/2020/Final-Statement-of-Principles-SRL.pdf> accessed 21 October 2024.

39 <https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/> accessed 21 October 2024.

40 <https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf> accessed 21 October 2024.

41 Judicial Council of California, 'Handling Cases Involving Self-Represented Litigants - A Bench guide for Judicial Officers' (SJI, April 2019) https://www.courts.ca.gov/partners/documents/benchguide_self_rep_litigants.pdf accessed 21 October 2024.

law libraries, court interpreters, and other stakeholders. It covers a range of topics including: Self-Represented Litigants: Who Are They and What Do They Face When They Come to Court?; Expanding Access to the Court Without Compromising Neutrality; The Law Applicable to a Judge's Duties in Dealing with Self-Represented Litigants; Solutions for Evidentiary Challenges; Caseload Management; Courtroom and Hearing Management; Settling Cases; Appeals by Self-Represented Litigants; Special Due Process Considerations; Communication Tools; Avoiding Unintended Bias; Addressing Litigant Mental Health Issues in the Courtroom; and Judicial Leadership in Access to Justice.

91. The Working Group recommends the inclusion of aspects of the 2014 Equal Treatment Bench Book as part of an updated and comprehensive bench book for Irish judges on LIPs. There is a live question as to whether this bench book should be a public document, as is the case in England and Wales. The current Irish Handbook is not a public document. The Working Group recommends that a decision on this question be deferred until the content of the bench book is finalized.

Individual assistance to LIPs

92. International research shows that LIPs experience isolation, segregation, tokenism and obstruction in the legal system.⁴² In seeking to address these barriers to accessing the legal system for LIPs, initiatives have been taken in other jurisdictions to provide legal advice through information hubs. One such initiative is the legal information hub operated by "AdviceNow" in the UK. The AdviceNow service is described on its website as a public facing hub and "a one-stop-information-shop for litigants in person." AdviceNow provides practical support and information including by establishing duty schemes to enable LIPs to access assistance from a lawyer on the day of the hearing.⁴³
93. As part of empirical research carried out over a two-year period in Northern Ireland by the University of Ulster in conjunction with the Northern Ireland Human Rights Commission, it was found that there was a clear need for a cultural change in the legal system towards LIPs resulting in a suite of recommendations. One of the recommendations made was that an information hub be established near the courts to provide advice and information, as opposed to representation. The recommendation was that the hub should be staffed by a qualified lawyer who could provide procedural advice as early as possible in the process to help people who go to court without a lawyer to participate effectively in their court proceedings. This recommendation was based on a limited pilot project operating over a number of months. Commenting on the report and its findings, its lead author (Professor Grainne McKeever) observed that:

42 See McKeever, Royal Dawson, Kirk & McCord "The Snakes and Ladders of Legal Participation : Litigants in Person and the Right to a Fair Trial under Article 6 of the European Convention on Human Rights" [2022] *Journal of Law and Society*, 71.

43 See www.advicenow.org.uk/going-to-court accessed 21 October 2024.

“although the help of the advice clinic was not enough to help litigants in person match the advantages of legal representation in most cases, there is clear evidence that improved access to legal services, better information on court procedures and relevant law, as well as guidance on how to complete court forms and documents would remove many of the barriers that threaten the right to a fair trial.”

94. The Working Group is aware that the Courts Service staff already provide some over the counter assistance to LIPs, most notably to victims of domestic abuse seeking court protection in the District Court. Support is not, however, routinely provided across all areas and in relation to all types of litigation. The Working Group consider that access to such support should be more systemic.

RECOMMENDATIONS

- R. 4. Recommendation: A detailed central online information hub (as recommended by the Kelly Review and the Minister’s implementation plan (A Civil Justice system for the 21st Century)) for LIPs, designed in conjunction with the judiciary, should be available to LIPs with links to all other relevant sites on the Courts Service. The information should be jurisdiction-specific and may include handbooks, guidelines, videos, glossaries, and/or Practice Directions. The information should be available in soft and hard copy, and hard copies should be available in court and from the relevant court office.

Body responsible: Courts Service

- R. 5. Recommendation: Material available to LIPs should carry a legend that any person representing themselves is obliged to familiarize themselves with the appropriate material and the court will proceed on that basis.

Body responsible: Courts Service/Rules Committee of all Jurisdictions

- R. 6. Recommendation: Practice Direction HC54 on proceedings where a party is not professionally represented should be revoked.

Body responsible: President of the High Court

- R. 7. Recommendation: The Presidents of each jurisdiction should review the practice directions applicable to their jurisdictions with a view to revoking those that are out of date or no longer appropriate, revising the categories, and ensuring that the practice directions are being applied. The Presidents should ensure that practice directions are consistent where appropriate across all jurisdictions.

Body responsible: Court Presidents

R. 8. Recommendation: The President of each jurisdiction, in conjunction with the Courts Service, should produce short “how to” guides for LIPs specific to identified subject areas/ lists in respect of:

- Timing, content and format of bundles, submissions and authorities;
- Issuing, progressing and hearing of motions;
- Preparation for and conduct of trial

Body responsible: Court Presidents/Courts Service

R. 9. Recommendation: A bench book dedicated to LIPs and the practical and legal issues associated with their participation in litigation, should be produced by the Judicial Research Office and a physical copy of same provided to each judge, as well as being made available online.

Body responsible: Judicial Research Office (“JRO”)

R. 10. Recommendation: The Courts Service should explore how they can expand the assistance currently available to LIPs, including dedicated staff and/or counter service, and/or tailored advice/assistance to improve access to justice for LIPs.

Body responsible: Courts Service

R. 11. Recommendation: The Courts Service should research initiatives in other jurisdictions establishing advice hubs (online and in person) that provide supports to LIPs with a view to introducing similar initiatives in Ireland.

Body responsible: Courts Service

Chapter 4 – LIPs in court

Introduction

95. This chapter will examine the judge's role in litigation involving LIPs through the following prisms: the inherent functions of a judge; the principles to be applied by the courts when dealing with LIPs; the principles of fairness, latitude and interference; the practical application of the principles; and recommendations including the requirements for continuing judicial training and guidance regarding McKenzie friends.

The inherent functions of a judge: reality and LIP expectations

96. Former Chief Justice Finlay outlined the functions of a judge as follows:
- To do justice between the parties;
 - To ensure that, to a reasonable observer, justice appears to be done;
 - To have regard to the immediate and the long-term consequences of the order made (this includes the public, in the context of criminal cases);
 - To decide without regard to political, religious or social issues.⁴⁴
97. The experience of LIPs in courts varies dramatically. The approach of the judge in litigation involving LIPs is critical. As discussed below, this approach should be informed by the principles of fairness, latitude and limited interference, having regard to the right of effective access to the court under the Constitution, Article 6 of the Convention and Article 19 of the Treaty on the Functioning of the European Union.

Principles

98. There is currently no statutory guidance on the functions of a judge in cases which involve LIPs. Bell's article, *Judges, Fairness and Litigants in Person*, has been cited with approval in the High Court by Clarke J.⁴⁵ and in the Court of Appeal.⁴⁶ Bell highlights three principles applied by the judiciary in England and Wales when dealing with LIPs and which represent best practice: fairness, latitude, and limited interference. The extent to which a judge can manage a case where a party is not represented is identified in *Tracey t/a Engineering Design & Management v. Burton*⁴⁷, where the Supreme Court observed that:

“Subject to the Constitution, the administration of justice in public does not debar a court from assisting litigants, and their advisors, by considering the papers in a case beforehand; by sifting through the documentation in order to see what is relevant and what is not; by identifying the issues which truly fall to be decided; and by directing whatever written

44 Tom Finlay, 'The Role of the Judge' (2005) IJSJ 1.

45 *ACC plc v. Kelly & Anor* [2011] IEHC 7.

46 *Rippington & Ors v. Cox & Anor* [2017] IECA 331 and *Donlon v. Burns* [2022] IECA 159.

47 [2016] IESC 16.

submissions may be necessary in order to ensure justice is done, effectively and efficiently. Litigants, and their legal representatives, must abide by rulings as to the apportionment of time, or length of submissions, and other matters identified herein, or run the risk of the imposition of proportionate conditions on the litigation, or more radical sanctions, such as wasted costs orders, adjourning proceedings until proper procedures have been carried out, or, in extreme cases, actually striking proceedings out for abuse of process.”⁴⁸

Fairness

99. LIPs often perceive an inequality of arms in proceedings against represented parties. The principle of fairness includes a duty to ameliorate any potential disadvantages faced by an LIPs. It should not, however, go so far as to confer a positive benefit on the LIP at the expense of his or her represented opponent.⁴⁹ The principle of fairness is mutually inclusive in this way.
100. The mutual inclusivity of the fairness principle is also evident in the Irish court’s treatment of serial LIPs. Given the fact that court time is a “*scarce public resource*”⁵⁰ which should not be “*unnecessarily wasted*”,⁵¹ the Issac Wunder order has been used to require a serial LIP to apply for the consent of the court before he or she can institute future proceedings against the State or a party to proceedings (see further discussion below at Chapter 6).

Latitude

101. Despite the importance of the principle of latitude which entitles judges to be flexible in the strict application of discretionary rules, where appropriate, in cases involving LIPs, the courts in this jurisdiction have warned against conferring special status on an LIP. The ultimate goal is to promote the objective of balance between the parties, with reminders that all parties are bound by the same rules, including LIPs.⁵²

Limited interference

102. A measure of judicial interference often proves essential to maintain balance between the parties. This may involve case management and flexibility in interpreting pleadings or submissions so that the real matters in dispute are identified. Notwithstanding this requirement to be flexible, the neutrality of the court as the ultimate arbiter of fact and/or law should always be preserved. The role of a judge in litigation which involves LIPs is to “*keep*

48 [2016] IESC 16, [48].

49 *Rajski v. Scitec Corporation Pty Ltd* (New South Wales Court of Appeal, unreported Samuels JA 16 June 1986).

50 *Tracey v. Burton* [2016] IESC 16, [45].

51 *Tracey v. Burton* [2016] IESC 16, [45].

52 See, for example, the dicta of Barr J. in *Reidy v. An Bord Pleanála* [2020] IEHC 423, 45 and Clarke J. in *Burke v. O’Halloran* [2009] IEHC 343, para. 5.5.

in the ring, not to enter the fight".⁵³ The court must not give legal advice but may, for example, refer the LIP to the appropriate rule or statutory provision and invite them to address it.

103. The following principles should be included in a bench book:

- Judges should apply the principles of fairness, latitude and limited interference when dealing with LIPs.
- While fairness requires that potential disadvantages faced by LIPs are ameliorated, the judiciary should not confer a positive benefit on the LIP at the expense of their represented opponent.
- When showing latitude to LIPs, an assessment should be carried out on a case-by-case basis of LIP needs measured against surrounding circumstances such as: the nature of the case and issues arising, the LIPs understanding of the case and their individual circumstances.
- Judges should not confer a special status on an LIP. They are bound by the same rules and procedures that bind represented litigants but may be flexible in favour of LIPs in the principled application of discretionary rules where the interests of justice so require.
- When practicing the principle of limited interference, judges should avoid any taint of partiality. Intervention should be kept to what is strictly necessary to administer justice.
- Judges should engage directly with LIPs when adjournments or case management events arise.
- Case management hearings should follow best practice suggestions to bolster LIP comprehension and bring clarity to LIP capabilities and intentions.
- The rules pertaining to court procedure may be relaxed in favour of the LIP where they do not frustrate the progress of litigation and/or create unfairness between the parties.
- Latitude should be given to LIPs in witness handling. While a judge may assist the LIP in making general suggestions about possible avenues of questioning for example, she must not conduct the examination-in-chief or cross-examination on the LIPs behalf.
- Rules of legal drafting should be relaxed for LIPs, where required and in line with the principles of fairness, latitude and limited interference, particularly where this is necessary to identify the real issues in the case.
- It is for the judge to decide what are the issues in the case rather than the parties.
- There is a strong presumption in favour of allowing an application for a McKenzie friend in litigation, subject to compliance with the existing practice directions on McKenzie friends and the discretion of the presiding judge.

53 Sir Gerard Brennan, 'The Role of the judge' (National Judicial Orientation Programme, Wollongong, 13 October 1996) https://www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj_wollong.htm accessed 21 October 2024.

Judicial Training

Comparable Jurisdictions

104. United States of America - In the USA, the National Judicial Council in 2023 ran a course entitled, '[Best Practice in Handling Cases with Self-Represented Litigants](#)' which was designed for judges who decide on civil and criminal cases involving LIPs and who require information about issues dealing with management of those cases involving LIPs (LIPs are referred to therein as "SRLs" – Self-Represented Litigants in the USA).⁵⁴
105. From a pre-trial/proceedings perspective, the seminar's aim was to help participants move a self-represented party civil docket expeditiously; use settlement techniques in cases involving self-represented litigants; recognise the limits on assisting self-represented parties; and apply innovative methods and strategies to ensure that these litigants have proper access to the justice system.⁵⁵
106. England and Wales – The [Equal Treatment Bench Book](#) states that it is used in the extensive training provided to the 24,000 judicial office holders in England and Wales, and that it is an invaluable resource for LIPs also. The prospectus identifies the scope of that training. In previous years, the topics included fact-finding hearings and the business of judging, which includes how to deal with unrepresented litigants.

Ireland

107. The Judicial Studies Committee was established in 2020 following the commencement of the Judicial Council Act 2019. It has been actively involved in providing training to judges through workshops which include role playing by the judges to practice skills. At present judges receive training relevant to LIPs through induction workshops, and workshops on courtroom control (including dealing with disruptive behaviour in court) and unconscious bias created by the Director of Judicial Studies.⁵⁶
108. Many of the issues which arise in practice are rarely referred to in case law or in academic texts. These are matters which are experienced by all sitting judges who have dealt with one or more LIPs in the course of a list, or sometimes just in the course of one hearing. The practical steps discussed by colleagues in these courses have been recorded by the relevant judicial trainers and can be summarised as follows:⁵⁷

(a) Mental preparation. This is encapsulated by the reminder: it is not personal;

54 <https://www.judges.org/courses/srls-2023/> accessed 21 October 2024.

55 National Judicial College, 'Best Practice in Handling Cases with Self-Represented Litigants' <https://www.judges.org/courses/srls-2023/> accessed 21 October 2024.

56 Induction has, since 2021, been attended by all new judges. Courtroom Control is not mandatory but has been attended by over 30 new and serving judges at all court levels.

57 The suggestions at (o) are more appropriately the subject of the chapter on belligerent LIPs, but are included here for completeness.

- (b) Practical preparation requires daily contact with clerk/registrar or a system whereby the judge is advised in advance if there is an LIP in the list;
 - (c) Opening comments often set the tone: keep it professional and courteous;
 - (d) Speak with the Digital Audio Recording (“DAR”) in mind: it helps to remember that audio recording is on;
 - (e) Ensure that the checklist has been given to the LIP and has been signed by them;
 - (f) Practice active listening, reflect back to the parties a summary of what was said;
 - (g) Explain, if applicable, when it is a case management hearing and not a hearing;
 - (h) Set out the court practice in terms of who will address the Court, etc.;
 - (i) Consult with the parties and state the time that will be allocated to each speaker;
 - (j) Legalistic language can lead to a loss of control and often leads to confusion;
 - (k) Sarcasm leads to a loss of control, as does appearing condescending to the LIP;
 - (l) The DAR audio is not generally made available. In respect of avoiding abuse of recording in court, see Practice Directions [SC18](#),⁵⁸ [CA11](#),⁵⁹ [HC80](#),⁶⁰ [CC20](#),⁶¹ and [DC10](#),⁶²
 - (m) The appointment of a lawyer may resolve issues, but is not always feasible;
 - (n) There are a number of solutions to genuine distress: a break, a glass of water, etc.;
 - (o) There are remedies for aggression before turning to contempt, for instance:
 - (i) Putting a case to the end of the list / next day (this also removes an audience);
 - (ii) Taking a break to restore order / calmer conditions;
 - (iii) Adjourning to a video court;
 - (iv) Asking a person to leave the court, with the assistance of a guard if necessary.
109. It is recommended that a specific session on LIPs should be provided to all judges as a mandatory part of the induction training. That training should ensure new judges are familiar with the material in the LIP bench book: the website resources available to LIPs, the principles applicable to LIPs, attitudinal issues such as unconscious bias and the case law on areas such as McKenzie friends, Isaac Wunder Orders, contempt of court and re-opening judgments.

58 <https://www.courts.ie/content/use-cameras-and-electronic-devices-court> accessed 21 October 2024.

59 <https://www.courts.ie/content/use-cameras-and-electronic-devices-court-0> accessed 21 October 2024.

60 <https://www.courts.ie/content/use-cameras-and-electronic-devices-court-3> accessed 21 October 2024.

61 <https://www.courts.ie/content/use-cameras-and-electronic-devices-court-2> accessed 21 October 2024.

62 <https://www.courts.ie/content/use-cameras-and-electronic-devices-court-1> accessed 21 October 2024.

110. Specific training should be given to judges dealing with lists, as this is usually the first time an LIP comes into contact with the court. Many of the difficulties identified above, i.e. failure to comply with court rules, applications for adjournments, unstateable arguments, documents that do not disclose a cause of action, failure to attend court, deficient papers etc. are usually apparent from the very start of the LIPs engagement with the court. Therefore, list judges should be highly trained and should obtain specific training on dealing with LIPs before taking up their position. This will also promote consistency of approach. The Judicial College of England and Wales, in its [Equal Treatment Bench Book](#), provides a useful list of best practice suggestions as to how to conduct a case management hearing to optimum effect.⁶³
111. Some of its recommendations are paraphrased below:
- The court should begin by explaining that the case management hearing is not a hearing to decide the case itself;
 - The court should explain every direction to the LIP clearly, avoiding jargon and anticipating any common misunderstandings;
 - The court should involve the LIP in the process of giving directions by inquiring from them how much time they need to comply and why;
 - The court should verify LIP comprehension by asking him/her to feedback what he/she must do and on what date. This should be done in a way that avoids the perception of criticism;
 - Where appropriate, the court should engage the help of the represented party e.g. in making the first draft of a list of issues.;
 - At the end of a case management hearing, all key dates and actions should be repeated to ensure the LIP has written them down;
 - Key directions/orders should be confirmed in writing as soon as possible after a case management hearing by way of letter. This letter should also include key points of explanation or advice on procedure;
 - Reasonable adjustments should be made if the LIP is disabled or if English is not the LIPs first language.
112. When the bench book on LIPs is completed, the Working Group recommends that every judge be trained on the content of the bench book.
113. The Working Group notes that its recommendations in relation to judicial training accord with the recommendation of the McManus Report which recommends, *inter alia*, that judicial training should be given in dealing with LIPs,⁶⁴ as well as training for staff carrying out quasi-judicial functions, judicial support staff and Courts Service staff.

63 <https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf> accessed 21 October 2024.

64 See p. 29.

Word limits, evidential limits and time limits

114. While limitations exist on the material to be accepted by the courts (e.g. submission word limits in the High Court and Court of Appeal),⁶⁵ the Organisation for Economic Co-operation and Development (OECD) [suggests further restrictions](#):

“Submission requirements could be part of an early screening process, ensuring that those who do not comply are rejected and increasing incentives for compliance. Considering that appeal court judges in Ireland are regularly faced with reviewing several boxes of evidence for individual cases, there still appears room to review options to further streamline submissions and oral proceedings. Such adjustments may require revisions to legislation and supporting court rules that lay out limits to evidence and supporting documents that will be accepted for consideration at appeal.”⁶⁶

115. However, we do not recommend different limits for LIPs as opposed to represented parties. Rather, we recommend active case management in all cases to include word, evidential and time limits. Detailed consideration of this topic is beyond the scope of this report, but we consider it to be an important part of regulating access of LIPs to the Court.

Witness handling: inquisitorial or adversarial?

116. The Judicial Working Group on LIPs in England and Wales made recommendations on procedural change, including reform of CPR Rule 3.1 on case management to allow judges to make proceedings more inquisitorial where an LIP is involved.⁶⁷ The approach in England and Wales is to provide “*significant latitude*”⁶⁸ to LIPs in the exercise of witness handling, be that examination-in-chief or cross-examination.
117. The case of *Couwenbergh v. Valkova* [2008] EWHC 2451 (Ch.) provides authority for the proposition that LIPs may be permitted to lead their witnesses if this is in furtherance to the pursuit of justice.⁶⁹ In *Donoghue v. Connolly* [2022] IEHC 226, Gearty J. ruled that there was no requirement for an LIP to formally put the case to his accuser in a civil hearing, where the witness was the complainant in a sexual assault context.

65 Court of Appeal Practice Direction CA06 <https://www.courts.ie/content/submissions-books-appeal-and-authorities-civil-appeals#:~:text=Save%20in%20complex%20appeals%2C%20it> accessed 21 October 2024.

66 OECD, *Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System* (OECD Publishing, Paris 2023), 103. <https://www.oecd.org/publications/modernising-staffing-and-court-management-practices-in-ireland-8a5c52d0-en.htm> accessed 21 October 2024.

67 *ibid*, 8.

68 Bell, ‘Judges, Fairness and Litigants in Person’ (2010) 10(1) *Judicial Studies Institute Journal* 1, 23 <https://www.ijsj.ie/assets/uploads/documents/pdfs/2010-Edition-01/article/judges-fairness-and-litigants-in-person.pdf> accessed 21 October 2024.

69 *Couwenbergh v. Valkova* [2008] EWHC 2451 (Ch.), 46.

118. The Equal Treatment Handbook of 2014 offers this assistance at s. 4.6.15:

“Lay litigants may phrase questions wrongly and may find it hard not to make a statement when conducting a cross-examination. Explain the difference between evidence and submissions, and help them to put across a point in question form. The core judicial obligation is to attempt to understand the arguments being made by a litigant in person. Where a lay litigant has difficulty in expressing his arguments in strictly legal terms, the court may endeavour to assist him to do so.”

119. The reader is then referred to the case of *McMullen*.⁷⁰

Applications for adjournments

120. A common feature of LIP-led litigation is the late application to adjourn proceedings. This creates serious issues for the courts as these applications are often made at the last minute, or without sufficient notice, or without sufficient grounds. As was recognized in the [Equal Treatment Bench Book 2013](#), *“It is a common misconception that no more than a day’s notice of such a request is required”*.⁷¹ This phenomenon has huge resource implications.
121. In *O’Mahony v. Start Mortgages Designated Activity Company*⁷² Heslin J. recognised that fairness might require that a court proceed in the absence of an LIP.⁷³ In the English case of *Decker v. Hopcraft* [2015] EWHC 1170 (QB),⁷⁴ the claimant LIP applied for an adjournment on the grounds of ill health but was refused. That Court emphasised the nature of the evidence required to support such an application, drawing together principles on expert evidence and the importance of attending at court even if, for instance, a litigant might not be fit for work.
122. It has been noted that LIPs *“may not appreciate the need to obtain an adjournment”*⁷⁵ and may be left guessing when an adjournment is granted (either on foot of an application by the other side or on the court’s own volition) as to *“whether they have done something wrong or whether something has been done wrong to them”*.⁷⁶ McKeever et al underscore the need

70 *McMullen v. Clancy* (No. 2) [2005] 2 I.R. 445.

71 Judicial College, ‘Equal Treatment Bench Book’ (November 2013) <https://www.sentencingcouncil.org.uk/wp-content/uploads/equal-treatment-bench-book-2013-with-2015-amendment.pdf> accessed 21 October 2024, p.4-8.

72 [2022] IEHC 595.

73 Heslin J. dealt with a factual situation which could not justify an adjournment in that the application was manifestly unfounded. The *Sfar* judgment (of Binchy J.) and the *Sutton* judgment are just two examples of the same phenomenon i.e. an adjournment sought and a decision of the relevant courts to proceed nonetheless, in the absence of the applicant if necessary. In *Sfar*, the District Court decision to proceed despite a medical certificate was upheld and Gearty J. refused to entertain an application to prohibit a retrial after the Court of Appeal had pronounced sentence in the absence of the applicant and had subsequently ordered a retrial.

74 [2015] EWHC 1170 (QB).

75 Judicial College, ‘Equal Treatment Bench Book’ (November 2013) <https://www.sentencingcouncil.org.uk/wp-content/uploads/equal-treatment-bench-book-2013-with-2015-amendment.pdf> accessed 21 October 2024.

76 Gràinne McKeever et al, ‘Litigants in Person in Northern Ireland: barriers to legal participation- summary report’ (Knowledge Exchange Seminar Series 2017-2018, May 2018), 115 http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series7/mckeever090518.pdf accessed 21 October 2024.

to “engage more directly with the litigant in person cases when adjournments or other case management events arise” to ensure that they understand the reasons and implications of the adjournment granted.⁷⁷ While this is undoubtedly correct, the case law in the Superior Courts supports the conclusion that judges at all levels are conscious of these issues and make consistent efforts to ensure that LIPs are aware of the relevant rules and understand what is happening in court.

Non-attendance of LIPs

123. LIPs are sometimes reluctant to appear at the substantive hearing of their case, whether they are a plaintiff or defendant. That may be because they are not well organized, or apprehensive, or seeking to defer the hearing date. Unfortunately, a significant amount of time is wasted, and costs incurred, by parties not appearing on a hearing date that has been allocated to that case. Often, once a case is assigned to a judge on a given day, and the case does not go on, the judge cannot take up another case on the day of hearing.
124. There are important provisions in the Rules of the Superior Courts 1986 (as amended) (“RSC”) that address the position when a litigant does not turn up to a hearing. [Order 36, Rules 28 to 33 RSC](#)⁷⁸ explicitly permit a judge to dismiss a claim where the plaintiff does not appear at the hearing or for the plaintiff to proceed where the defendant does not turn up.⁷⁹ There are safeguards for the party who does not appear, as the party who obtains an order must serve a copy of the order on the party not appearing and there are provisions to permit an application for set aside (of course, the judge must be satisfied that the person not appearing has been properly served and there are no circumstances that would justify an adjournment). There is also an important procedural safeguard in that the RSC require that the person who did not appear be served with the Order and can seek to set it aside within a specified period.
125. It is important that judges are aware of this rule and ensure that the party who has obtained a judgment complies with the service requirement. It is recommended that similar rules be introduced for other jurisdictions to the extent that they do not already exist.

Use of ‘Unless Orders’ and striking out claims

126. Frequently, especially where there has been a history of default or non-conformity, the court uses “unless” orders to dismiss matters if there is non-compliance with court procedure.⁸⁰

⁷⁷ Ibid.

⁷⁸ <https://courts.ie/rules/trial> accessed 21 October 2024.

⁷⁹ As amended by S.I. 606/2023. See also, Order 52, Rule 12 RSC for similar provisions in respect of a motion. The rules in relation to non-appearance of parties in the Circuit Court are provided at Order 33, Rules 11 and 12 of the Circuit Court Rules.

⁸⁰ OECD, Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System (OECD Publishing, Paris 2023), 102 - <https://www.oecd.org/publications/modernising-staffing-and-court-management-practices-in-ireland-8a5c52d0-en.htm> accessed 21 October 2024.

127. Order 19, Rules 27 and 28 RSC govern the High Court and the Circuit Court, there being no corresponding powers explicitly provided in the Circuit Court Rules. These rules of court allow a judge to strike out a case in certain circumstances. The High Court enjoys inherent jurisdiction to dismiss if proceedings are deemed to be frivolous or vexatious or are doomed to fail. This inherent jurisdiction is to be exercised “*sparingly and only in clear cases*”.⁸¹
128. It is not entirely clear whether a judge can exercise the power to dismiss if no application is made in that respect by the opposing party. It is recommended that the Rules Committee introduce a rule similar to that in England and Wales whereby the court may propose making an order of its own initiative. Of course, any such action should only be taken after proper notice has been provided to the parties, so that all parties are aware of the proposed course of action and are fully heard. It is unlikely to be used frequently by the court. Nonetheless it seems to us an important part of ensuring that the court has the power to act where the opposing party either is not able to, or has not brought, an appropriate application.

England and Wales

129. The English rule is in the following terms.

Court’s power to make order of its own initiative 3.3

(1) Except where a rule or some other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(Part 23 sets out the procedure for making an application)

(2) Where the court proposes to make an order of its own initiative –

(a) it may give any person likely to be affected by the order an opportunity to make representations; and

(b) where it does so it must specify the time by and the manner in which the representations must be made.

(3) Where the court proposes –

(a) to make an order of its own initiative; and

(b) to hold a hearing to decide whether to make the order, it must give each party likely to be affected by the order at least 3 days’ notice of the hearing.

(4) The court may make an order of its own initiative, without hearing the parties or giving them an opportunity to make representations.

(5) Where the court has made an order under paragraph (4) –

(a) a party affected by the order may apply to have it set aside(GL), varied or stayed(GL); and

(b) the order must contain a statement of the right to make such an application.

81 *Barry v. Buckley* [1981] IR 306.

- (6) *An application under paragraph (5)(a) must be made –*
- (a) within such period as may be specified by the court; or*
 - (b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.*
- (7) *An application under paragraph (5)(a) shall be considered at an oral hearing unless the court decides and states in an order that the application is totally without merit.*
- (8) *If the court decides under paragraph (7) that the application is totally without merit, an application under paragraph (5)(a) may be made for reconsideration without an oral hearing.”; and*
- (9) *If the court of its own initiative strikes out a statement of case or dismisses an application, (including an application for permission to appeal or for permission to apply for judicial review) and it considers that the claim or application is totally without merit –*
- (a) the court’s order must record that fact; and*
 - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.”⁸²*

Allocation of one judge to an LIP

130. The case law discloses that much judicial time is spent by an individual judge being obliged to familiarize themselves with a complicated history of litigation. Often many different judges will have dealt with the same LIPs and on each occasion the LIP presents themselves to a new judge, the judge will spend considerable time reviewing the history of the proceedings. Allocating a particular judge to an LIP, who is required to make all applications in any given set of proceedings to that judge, is likely to save a good deal of judicial time and ensure consistency of approach. The list judge who first encounters the LIP will usually be best placed to decide whether it is appropriate to allocate a designated judge.

McKenzie friends

131. In *AIB Plc v. Aqua Fresh Fish Ltd* [2017] IECA 77 the Court of Appeal discussed the role of the McKenzie friend as follows:

“The McKenzie friend must perform his function in a manner consistent with accepted court practice and procedure and must show due respect for acknowledged court decorum; further, he must remain fully detached from the opposing parties, their witnesses and all persons present in support of them. Overall he is expected to behave in such a manner as reflects the mutuality of respect essential for all players participating in the administration of justice.

82 <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03#3.1> accessed 21 October 2024.

Permission to be assisted by such a friend can only result from a successful application to that end. This will always be a matter of discretion for the judge in charge, who may decline or accede to such request, either unconditionally or subject to such conditions as the circumstances may require, an example of which could perhaps be the preservation of the in-camera rule. Such permission may be withdrawn at any time. The requesting party must demonstrate that the application is bona fide and genuinely made: if there is evidence to the contrary at that time, the request should be refused ab initio; moreover, if subsequent events should establish such evidence, or if an ulterior motive should become apparent, any such permission previously granted should be immediately terminated.”⁸³

132. Bell notes that in many cases, McKenzie friends provide a valuable service to both the LIP and the court, by identifying relevant issues and streamlining the overall presentation of law and fact.⁸⁴ Where a McKenzie friend is of little or no assistance, however, they may impair the fairness of a hearing. This may happen when the McKenzie friend “*misunderstands his role or has an agenda of his own.*”⁸⁵ In this way, the conduct of said McKenzie friend may give rise to a significant disadvantage to the LIP depending on their calibre of assistance. In *Fennell v. Collins*,⁸⁶ for example, the court highlighted the activity of “*unscrupulous individuals*” in encouraging LIPs to put forward baseless arguments at trial and supplying them with copies of documents from unrelated proceedings.⁸⁷
133. In 2017, the presidents of the Court of Appeal, High Court and Circuit Court published Practice Directions which dictate the extent and scope of assistance that McKenzie friends are permitted to give LIPs at hearing.⁸⁸ The Practice Directions provide that McKenzie friends may:
- a) Provide moral support for litigants;
 - b) Take notes;
 - c) Help with cases, subject to the provisions of s. 58 of the Solicitors Act 1954 (as amended);
 - d) Quietly give advice on any aspect of the conduct of the case.⁸⁹
134. The parameters are circumscribed further by a common list of explicit behaviour which McKenzie friends are not entitled to engage in. According to this list, they may not:
- a) Address the court, make oral submissions or examine witnesses;
 - b) Receive any payment for their services;

83 [2017] IECA 77, 15-16.

84 Evan Bell, ‘Judges, Fairness and Litigants in Person’ (2010) 10(1) Judicial Studies Institute Journal 1, 36 <https://www.ijsj.ie/assets/uploads/documents/pdfs/2010-Edition-01/article/judges-fairness-and-litigants-in-person.pdf>, accessed 21 October 2024.

85 *Butler v. Nelson & Co. Solicitors* [2017] IECA 149, [13].

86 [2019] IEHC 572.

87 *ibid*, 7.

88 Practice Directions CC19, HC72 and CA07.

89 Practice Directions CC19, HC72 and CA07, [2].

- c) Act as litigants' agent in relation to the proceedings;
 - d) Manage litigants' cases outside court, for example by signing court documents.⁹⁰
135. The functional purpose of a McKenzie friend is to provide moral support and basic assistance. An appointed McKenzie friend may take notes and make silent suggestions but, ordinarily, cannot address the court.⁹¹
136. The Practice Directions state that only one McKenzie friend may assist an LIP in court⁹² and that while an LIP may receive "reasonable assistance"⁹³ from McKenzie friends, the court has the power to refuse to allow such assistance and regulate how assistance is provided, including withdrawing the permission to have a McKenzie friend assist the LIP.⁹⁴ Withdrawal of permission may occur if it appears to the court that the administration of justice is being frustrated by the McKenzie friend.⁹⁵ Practice Directions CA0896 of the Court of Appeal and HC7797 of the High Court stipulate that:
- "Former solicitors who have been struck off the Roll of Solicitors because of professional misconduct and former barristers who have been disbarred for professional misconduct may not act as McKenzie friends in either the Court of Appeal or the High Court."*⁹⁸
137. While no corresponding Practice Direction exists in respect of the District Court, the District Court Rules 1997 state at [Order 6, Rule 2](#) that:
- "Save where otherwise provided by statute or by rules of court, the father, mother, son, daughter, husband, wife, brother or sister of any party may appear on behalf of that party provided that any such person has the leave of the Court to appear and be heard and that the Court is satisfied that the party is, from infirmity or other unavoidable cause, unable to appear."*⁹⁹
138. Given the number of LIPs in the District Court, it is recommended that a Practice Direction be adopted for the District Court governing McKenzie friends. Any practice direction should reflect the text of similar practice directions in other courts.
139. The Practice Directions of the Circuit Court,¹⁰⁰ High Court,¹⁰¹ and Court of Appeal,¹⁰² all

90 Practice Directions CC19, HC72 and CA07, [3].

91 *R.D. v. McGuinness* [1999] 2 IR 411.

92 *Ibid*, [5].

93 *Ibid*, [4].

94 *Ibid*.

95 *Ibid*, [4].

96 <https://www.courts.ie/content/mckenzie-friends-0> accessed 21 October 2024.

97 <https://www.courts.ie/content/mckenzie-friends-3> accessed 21 October 2024.

98 Practice Directions CA08 and HC77.

99 <https://www.courts.ie/rules/right-audience>.

100 CC19.

101 HC72.

102 CA07.

provide that McKenzie friends have no entitlement to payment for their services. These Practice Directions also cite [s. 58 of the Solicitors Act 1954](#) which makes it a criminal offence for an unqualified person to “draw or prepare a document relating, *inter alia*, to any legal proceedings either directly or indirectly for or in expectation of any fee, gain or reward”.¹⁰³ Notwithstanding this, there has been a recent proliferation in the number of groups and individuals advertising professional assistance to LIPs as McKenzie friends. Noonan J. commented on this development in *Bank of Ireland Mortgage Bank v. Martin* [2017] IEHC 707,¹⁰⁴ noting that:

*“particularly since the economic collapse, there has been a sea change in the prevalence of litigants in person assisted by agenda driven pressure groups and individuals providing McKenzie friend services for reward.”*¹⁰⁵

England and Wales

140. The Lord Chief Justice of England and Wales recently published a revised Practice Note 3/2012 in respect of McKenzie friends.¹⁰⁶ In contrast to the Irish position, at paragraph 19 thereof it is suggested that McKenzie friends can enter lawful agreements with parties for remuneration for their reasonable assistance both in and out of court. At paragraph 21 thereof, it is stated that “Fees claimed to have been incurred by McKenzie Friends for carrying out the conduct of litigation after the court has granted such a right are in principle recoverable from the personal litigant for whom the work is carried out.”¹⁰⁷ The Working Group is not in favour of such an approach.

Record of decisions

141. Following a hearing, the decision of the judge may be provided in different ways. In the Superior Courts, judgments will often – though not always – be reserved and provided in writing sometime after the hearing. Sometimes a judgment will be given *ex tempore* (i.e. will be read out). The vast majority of decisions in the District and Circuit Courts are delivered *ex tempore* and the parties will not receive a written note of the decision.
142. If the parties are represented, their lawyer can take a note of the decision as it is being delivered and can explain and discuss it afterwards. LIPs do not have this advantage and often will find it difficult to process the decision as it is being given. They may wish to have a note in writing of the decision to reflect on same and/or to consider whether to appeal it. Sometimes a judge may be able to provide a note of the judgment afterwards from their own notes. If one party is represented, the judge can ask that the notes of the represented party be provided to him

103 <https://www.irishstatutebook.ie/eli/1954/act/36/section/58/enacted/en/html>.

104 [2017] IEHC 707.

105 [2017] IEHC 707, 5.

106 <https://www.judiciaryni.uk/files/judiciaryni/2024-06/Practice%20Note%20003-12%20%28Revised%207%20June%202024%29%20-%20McKenzie%20Friends%20%28Civil%20and%20Family%20Courts%29.pdf> accessed 21 October 2024.

107 Of relevance also is the Legal Services Act 2007 (as amended).

or her, and these may be provided by the judge to the LIP as a note of the decision. However, a note of the decision will not always be available to an LIP by those means. The judge can of course order a transcript of his or her decision to be prepared from the DAR, but usually when such an order is made, the LIP is required to pay for the costs of the transcript, which may be reasonably substantial depending on the length of the decision.

143. The Working Group considers that in circumstances where a substantive decision is delivered following a hearing, an LIP should be entitled to a transcript of a substantive decision made by a judge without being required to pay for same where the judge considers it appropriate in all the circumstances. It should be stressed that the Group is not recommending that the judge make either the audio recording of the decision or a transcript of the hearing available.

RECOMMENDATIONS

- R. 12. Recommendation: The principles applicable to the treatment of LIPs in court should be included in the bench book and taught in the judicial training on the treatment of an LIP in court.

Body responsible: JRO/Judicial Studies Committee

- R. 13. Recommendation: A judicial training programme to best support the judiciary in dealing with the specific needs of LIPs should be designed, developed and piloted by the Judicial Council, to include induction training, to be provided during working hours.

Body responsible: Judicial Studies Committee

- R. 14. Recommendation: An explicit rule of court providing that a case may proceed in the absence of a party, whether plaintiff or defendant, in terms similar to Order 36, Rules 28-33 of RSC and Order 33, Rules 11 and 12 CCR, should be adopted for all jurisdictions. Rules should be drafted to specify what is required to be proven by way of service where a party seeks to proceed in the absence of a party.

Body responsible: Rules Committees of all jurisdictions

- R. 15. Recommendation: An explicit rule of court should be made for all jurisdictions in similar terms to UK Civil Procedure Rules (Rule 3.3 on case management) – court's power to make order of its own initiative.

Body responsible: Rules Committees of all jurisdictions

- R. 16. Recommendation: If not otherwise available by way of written judgment or a note of same, a party should be entitled to a transcript of a ruling made by a judge without being required to pay for same where the judge considers it appropriate in all the circumstances.

Body responsible: Courts Service

R.17. Recommendation: A practice direction on obligations on legal representatives (i.e. applicable to all jurisdictions) when dealing with LIPs should be adopted after consultation with the Bar Council and the Law Society.

Body responsible: Presidents of all jurisdictions

R.18. Recommendation: Judges should highlight to litigants alternative routes to justice, i.e. mediation, ADR, etc.

Body responsible: All judges

Chapter 5 – Disrupted Court Hearings

Introduction

144. In this chapter we deal with disrupted court hearings involving LIPs.¹⁰⁸ We describe the experience of such disruption in all courts and some suggested strategies to manage it. We set out a summary of the current law in relation to contempt in the face of the court and the practical difficulties exercising the power of the court. We also consider the impact of disruptive behaviour on the safety and welfare of judges and court staff, and we suggest possible steps to address the problems identified. Our recommendations in relation to all of these issues are set out at the end of this chapter.
145. Most of the LIPs coming before the courts are well behaved and well intentioned; any disruption of hearings by them tends to be unintentional, and a result of their lack of knowledge of the appropriate procedures.

Unintended disruption

146. Many LIPs are representing themselves because they have either fallen out with their legal representatives or they can no longer afford to pay them. In these cases, disruption in court tends to be caused primarily because the LIP is simply out of their depth, navigating procedures and proofs that are unfamiliar to them and dealing in issues which may be personally or emotionally fraught for them. As a result, these LIPs often present before the courts with issues such as the following, all of which can give rise to a disrupted hearing:-
- Incoherent pleadings;
 - Mental and physical breakdown and obvious distress;
 - Claims that are essentially a legal nonsense;
 - No idea as to proofs or the concept of them;
 - No appreciation of the difference between giving evidence and cross examination;
 - No idea of when to sit or stand or whether they are in court for a plea or a date for hearing;
 - No appreciation of the need for or the role of experts;
 - Repeatedly seeking assistance and advice from the court.
147. Generally, the court can overcome any difficulties by explaining the appropriate procedure carefully. It is important to make sure the LIP understands that they are respected, that they will get a full opportunity to make their arguments and that the court will listen to them carefully.

¹⁰⁸ For a comprehensive and perceptive analysis of the law and the difficulties arising from contempt of court and disrupted hearings, see Charleton & O'Connor, "Try Something Else: Contempt and Confusion"(2024) 8(1) Judicial Studies Journal 44.

Intentional disruption

148. It can however be the case that LIPs, albeit in the minority, behave in such a way as to disrupt hearings in pursuance of a predetermined objective or agenda or a simple refusal to accept any ruling other than one they insist on. In the recent past, the Superior Courts have experienced disruption by LIPs motivated by a variety of concerns including far-right nationalism, anti-immigrant beliefs, extreme religious views and opposition to government policies. One example of an ideology well known to the courts which has been the source of disruption in the past is the so-called “freemen of the land”, which has been the subject of much academic writing and debate.¹⁰⁹
149. The District and Circuit Courts also routinely encounter a significant number of LIPs who are there by way of protest. This category of LIP presents the greatest challenges. They generally expressly state that they do not recognise the judge or the court, and they tend to be resistant to any measures designed to assist them. Their primary motivation is to generate as much publicity as they can in support of their own agendas. A well-intentioned LIP will generally heed court directions after the relevant process or the point made has been explained to them. By way of contrast, an LIP who does not recognise the court’s authority may avail of court directions or rulings as an opportunity to make allegations against the judge or the opposing party’s lawyer or may insist on reading out a pre-prepared statement on their cause or campaign.
150. Examples of disruptive conduct not infrequently experienced by judges in all courts include the following:
- Refusing to be quiet when requested to do so by the court;
 - Talking or shouting over the judge and refusing to listen;
 - Shouting at the judge;
 - Refusing to follow simple procedural requests or directions ;
 - Bringing friends in with phones, recording or threatening to record proceedings;
 - Interrupting opposing counsel;
 - Interrogating opposing counsel during the course of argument;
 - Accusing the judge of dishonesty or bias;
 - Inciting or encouraging “supporters” in court to disrupt hearings;
 - Making threatening or aggressive remarks to the judge or opposing counsel;
 - Refusing to recognise the court’s authority;

109 See Barry & O’Drisceoil, “Constitutional Right to Protect and the Freemen on the Land Movement”(2017) 1 Irish Judicial Studies Journal 40.; Keys “Freemen on the Land and Other Organised Lay Litigant Groups -Part 1” (2014), 21(10) Commercial Law Practitioner 230 and “Freemen on the Land and Other Organised Lay Litigant Groups -Part 2” (2014), 21(11) Commercial Law Practitioner 256. See also the seminal Canadian case of *Meads v. Meads* [2012] ABQB 571.

- Alleging that the judge is not properly appointed;
 - Insisting on reading out pre-prepared statements;
 - Refusing to leave the courtroom when requested.
151. An issue unique to the District Court is the number of applications brought by LIPs as “common informers” under the Petty Sessions Act 1851. These applications involve seeking leave from the court to issue a summons or a warrant for the arrest of a party who they claim has committed an offence or who they believe has perjured themselves in separate proceedings (often in which they are a party). These applications are brought *ex parte* without any notice to the judge or registrar and without any regard to whatever matters are scheduled in the list for that day.
152. A major area of challenge for all courts - but which disproportionately impacts the day-to-day workings of the District Court – is the number of litigants that come before the court suffering from mental health issues. This is a function of numbers as well as case profile. The District Court is the first point of contact that most citizens have with the courts system. A significant part of the District Court’s caseload is taken up with public order matters and other more minor matters that may not warrant a solicitor. This presents challenges when the litigant is an LIP who can present before the court, for instance, in a contested bail application or public order hearing where the stakes are particularly high for the LIP as their liberty may be in issue.

Disruption or a challenge to the court’s authority

153. The problems caused by the disruption of proceedings by LIPs, and the necessity to deal with disruption effectively, have been succinctly expressed by O’Donnell J. (as he then was) in *Walsh v. The Minister for Justice & Equality & Ors.* [2020] 1 IR 488:

“The disruption of proceedings, the refusal to accept court rulings, and an insistence on continuing to speak when a matter has been determined by the judge, should not be mischaracterised as speaking truth to power, or merely challenging authority. A judge sitting in a crowded courtroom has little power other than respect for the law itself. The refusal to accept rulings and decisions, the constant interruption of court proceedings, and the making of offensive interjections and comments is at best rude and inconsiderate to all other court users who are obliged to accept the necessity for calm in court proceedings, but more often amounts to simple bullying. When carried out in a concerted manner, it is, and is often intended to be, menacing and intimidatory. These are serious concerns which should not be ignored or lightly dismissed. Disruption of proceedings attacks the very essence of a fair hearing which it is the court’s obligation to provide, and every litigant’s right to obtain.”¹¹⁰

110 *Walsh v. The Minister for Justice & Equality & Ors.* [2020] 1 IR 488.

Practical steps to deal with disruptive behaviour in court

154. As to addressing courtroom disruption, O'Donnell J. in *Walsh* considered:

*“Every situation is different. There is no prescriptive or definitive method in dealing with disruption in court. The powers which the court has to deal with disruption must be brought to bear in a tactful and considered way, bearing in mind the individual circumstances and personalities involved. This may well require the court to “pick its battles” in terms of choosing when to intervene decisively.”*¹¹¹

155. In *Tracey v. District Judge Aeneas McCarthy* [2019] IESC 14, O'Donnell J. summarised the steps open to the court to deal with disruptive behaviour, as follows:

(a) where a person is behaving in a disruptive manner, a judge should warn him or her that the court has power to remove him or her from the courtroom;

(b) if the conduct persists, the judge should explain to the person what it is that he or she has done that is considered disruptive, and give the person the opportunity of saying anything they wish to by way of explanation, excuse, and apology, and, if so, an undertaking not to repeat the behaviour in question;

(c) where an apology and undertaking (and, where appropriate, a satisfactory explanation) is forthcoming, it will normally be appropriate to take no further steps;

(d) if no apology and undertaking, or satisfactory explanation, as the case may be, is forthcoming, a judge may order the person to leave the courtroom and, if necessary, direct the removal of him or her from the courtroom. It may be necessary to arrange for the attendance of the gardaí for this purpose;

(e) where there is more general disturbance, a judge may order that the court is cleared. While any court will be reluctant to take this course, it may nevertheless be necessary. In such cases, members of the public may still be entitled to enter the courtroom, if they agree to sit quietly during proceedings. Bona fide members of the media and members of the legal profession should be permitted to remain on the same basis.

(f) where the person engaging in disruptive behaviour is a party to the proceedings, a court should be correspondingly slow to take the step of removing them from the courtroom, particularly when they are dealing with the substance of the dispute, rather than procedural issues such as those involved in the present case. Some issues may require the presence of the

¹¹¹ As O'Donnell J. remarked in *Walsh*, “[26]...there is often merit in not reacting to every slight and each instance of bad behaviour. Court can be a stressful experience for all participants – particularly for those are attending for the first time, or those whose home, livelihood, family structure, or some other important aspect of their life may be threatened in the proceedings. It is often wise to allow some things to pass. In my view, Irish courts do this regularly. There are, I suspect, many more contempts of court committed than are ever raised by a court, let alone pursued beyond the point of apology and resulting in imprisonment. Where, however, behaviour cannot be ignored, or it is a threat to the conduct of the proceedings being heard – and the presiding judge is really the only judge of this – a court has full power to address the matter, and if necessary order that a person who will not desist from such conduct is removed from the court. If he or she persists, and seeks to re-enter the court, then such conduct would constitute a breach of the order and would give rise to the possibility of further proceedings and sanction.”

party, and in other cases it may be preferable to adjourn the proceedings. Nevertheless, the judge may still order the removal of a persistently disruptive party. In such circumstances, the party should be informed that arrangements will be made to make available a copy of the relevant extract from the digital audio recording ('DAR'), if that is possible. If facilities are at hand to allow the person to continue to observe and participate remotely through videolink, these may also be availed of.”¹¹²

156. These steps do not involve the court exercising a contempt jurisdiction, and as O'Donnell J. pointed out, the making of an order for removal “*does not involve a finding of contempt or require the procedural safeguards necessary before the trial and conviction of a criminal offence*”. O' Donnell J. also commented that the steps suggested were “*not a checklist to be followed slavishly*”; each situation would require careful consideration of what action is appropriate.
157. Practically, it is important to remain calm and try not to take the disruptive behaviour personally. All efforts should be focused on de-escalating the situation – listening actively and reflecting back what is said by the LIP; trying to explain and reassure the LIP and maintaining a balanced approach to both sides, respectful and patient. Taking a break to allow reflection or putting a disruptive LIP to the end of the list or a short adjournment or moving to a remote hearing are alternative options.

The law relating to disrupted court hearings

Contempt jurisdiction – a summary of the caselaw

158. Disruptive behaviour in a courtroom continues to be governed in Ireland by the common law doctrine of contempt.¹¹³ Contempt in the face of the court (*in facie curiae*) occurs where words are spoken or an act is committed that obstructs or interferes with the due administration of justice. This could include an assault on a judge or judicial officer or threatening or disruptive behaviour. Contempt of court is not an offence against the personal dignity of judges but rather is the type of wrongful conduct which consists of interference with the administration of justice. The power to adjudicate and punish such conduct is considered essential to the rule of law¹¹⁴ and an inherent aspect of the authority of judges to control the proceedings before them.

112 [2019] IESC 14, para. 14.

113 In Ireland, there are older legislative provisions relevant to contempt in the District Court contained in s.6 of the Summary Jurisdiction (Ireland) Amendment Act 1871 (applying only to courts within the Dublin Metropolitan District) and s.9 of the Petty Sessions Act 1851 which applies to courts outside of Dublin. Both provisions envisaged removal of persons from the court or taking them into custody and at any time before the rising of the court by warrant to commit such person to jail for a period not exceeding 7 days or fining them a sum not exceeding forty shillings. If the court considers imposing a punishment under this older legislation the decision of the Supreme Court in *Tracey* confirms that it is appropriate to proceed under the common law jurisdiction.

114 The Supreme court said in *Walsh v. Minister for Justice* [2019] IESC 15 at paras 7 and 8 that “*..it is central to a court's capacity to administer justice that it should be capable of maintaining order.....Disruption of proceedings attacks the very essence of a fair hearing which it is the court's obligation to provide and every litigant's right to obtain.*”

159. The jurisdiction of the courts in matters of contempt derives from Article 34 of the Constitution which provides that justice shall be administered by the courts. The courts' power to try summarily for contempt has also been found to derive from Article 35 of the Constitution which guarantees the independence of the judiciary. The Supreme Court noted in *The State (DPP) v. Walsh and Conneely* [1981] IR 412, that if courts did not have the power to try summarily for contempt, this would mean that the courts would not have authority to protect their own proceedings. In those circumstances, the Court questioned how the independence of the judiciary could be maintained.
160. Disruptive behaviour, if sufficiently serious or persistent, is potentially capable of constituting criminal contempt which is a common law misdemeanour, punishable by both imprisonment and fine at the court's discretion. Such contempt can be tried summarily by all courts. For the purposes of safeguarding the rights of the alleged contemnor and ensuring fairness, certain procedural safeguards and guarantees are afforded in the case of contempt in the face of the court, including the requirement that judges should only determine such proceedings arising out of events in their court where it is necessary and where there are no other effective means to deal with the disruption. It is not necessary at common law to prove that a person intended to interfere with the administration of justice. Instead, the law requires only that the person voluntarily committed the act that constituted the breach.
161. All courts have jurisdiction to control their court space, including requesting people to leave the courtroom or having them removed if they fail to leave when requested.
162. In the decisions of the Supreme Court in *Walsh* and in *Tracey v. District Judge Aeneas McCarthy* [2019] IESC 14, the Supreme Court drew a distinction between disciplinary measures which allow a court to proceed and the sanctioning of conduct capable of constituting contempt. The decisions confirm that the removal of a person from a courtroom does not attract the procedural protections of Article 6 of the [European Convention on Human Rights](https://www.echr.coe.int/documents/d/echr/Convention_ENG) ("ECHR"),¹¹⁵ the Constitution or the common law because such action is akin to the exercise of disciplinary powers by the court. However, the nature and severity of a penalty imposed for contempt can result in the application of Article 6 of the ECHR to a conviction for contempt of court, with the attendant procedural requirements. In addition, given the constitutional protection of personal liberty, fair procedures are required for a committal order.
163. The Supreme Court guidance provided in *Tracey* makes clear that before invoking the contempt jurisdiction, a person must be warned, told in simple terms that their conduct is considered capable of constituting contempt, and must be given the option of obtaining legal representation (including legal aid if their means are insufficient). Although the contempt hearing can proceed immediately where lawyers are available or where an individual refuses legal representation, in most cases it may be necessary for the hearing to be postponed for a short period to allow arrangement of legal representation. An adjournment may allow time for reflection.

115 https://www.echr.coe.int/documents/d/echr/Convention_ENG.

164. The accused must be informed clearly of the time and date fixed for the contempt hearing which should proceed within a short period of the original incident. While the court has power to detain a person temporarily pending the hearing this power should be exercised with restraint and the period of detention should not exceed more than one day. Production of the DAR is all that should be necessary to establish the basic facts in most cases at the committal hearing and evidence from the judge should be unnecessary. The accused must be given a fair opportunity to defend themselves, the criminal standard of proof applies, and the accused has the same rights of appeal as for any other court decision. A judge's power to commit summarily for contempt should be exercised sparingly and only where the contempt is clear and it is urgent and imperative to act immediately.
165. In *Kyprianou v. Cyprus* App no 73797/01 (ECtHR, 15 December 2005), the European Court of Human Rights held that the judge who presided at the original hearing cannot determine the case where that judge was personally insulted rather than justice or courts in general being attacked.
166. An order of incarceration for criminal contempt is designed to punish the offender. In those circumstances any sentence of imprisonment must be for a definite period. This distinguishes it from civil contempt (not dealt with in this chapter) where a party can be imprisoned for an indefinite period until their contempt is purged and the court's order is obeyed.
167. From the perspective of the District Court, the judges would welcome greater clarity and guidance as to the extent of the behaviour that should be tolerated before an LIP is removed from the court. This is a significant challenge particularly in criminal cases where the LIP is not there by choice and their liberty may be at stake. By way of example, see *O'Brien v. DPP* [2019] IEHC 415 where the conviction of a disruptive litigant was ultimately quashed in a judicial review on fair procedures grounds. The case emphasises the dangers of proceeding with a case in the absence of an accused, particularly where they have no lawyer present in court. In *O'Brien*, the LIP was removed from the courtroom on account of his disruptive conduct. He was allowed back into court to hear the evidence of the complainants and to cross-examine witnesses. Ultimately, the High Court concluded that he was deprived of fair procedures as he did not have the opportunity to challenge all of the evidence given by a particular witness. As a result, his conviction for harassment of a number of individuals was set aside.

Other options available to courts to deal with disruption

168. In practice it is quite rare for courts to resort to their contempt jurisdiction for cases of disruptive conduct. This is for good reason, including both the uncertainty around the procedure itself but also how this formal procedure is often more than is required and may not at all address the longer-term issues with the behaviour and/or assist in advancing the case before the court. Courts regularly decide not to exercise contempt powers, particularly if they believe that the conduct is casual, accidental or unintentional. The vast amount of disruptive behaviour in court is managed by the judge through a variety of approaches seeking to de-escalate the situation and restore order.

169. A point may be reached whereby a litigant may shut themselves out from a remedy through conduct which fundamentally abuses the nature of the process which a court seeks to engage in. In *Burke v. Adjudication officer and WRC* [2023] IEHC 560, Bolger J. dismissed a judicial review application brought by an LIP where her conduct made it impossible to continue with the hearing of her case, holding that the court had an inherent jurisdiction to dismiss proceedings where a litigant's conduct amounts to an abuse of process. Bolger J. held that "A person's obligation to respect a court and its important processes go hand in hand with their rights to litigate..." This decision was upheld by the Court of Appeal.¹¹⁶ Before the Court of Appeal, the appellant also engaged in disruptive behaviour rendering it impossible to continue the hearing in court. Rather than dismissing the appeal however, the Court determined the appeal upon the books of appeal lodged by the parties, having advised the appellant that this course would be adopted if she persisted with the disruption.

Options to deal with disruption that are not instigated or managed by the judge

170. It is an offence under s. 6 of the [Criminal Justice \(Public Order\) Act 1994](#) (the "1994 Act")¹¹⁷ for any person in a public place to use threatening, abusive or insulting words or behaviour with the intention of causing a breach of the peace or being reckless as to whether a breach of the peace may be occasioned.¹¹⁸ S. 63 of the Criminal Justice (Miscellaneous Provisions) Act 2023 inserts a new s. 9A into the 1994 Act which empowers a member of An Garda Síochána ("AGS") who suspects, *inter alia*, that a person is obstructing court proceedings to direct the person to desist and/or leave the vicinity.
171. This legislative provision is expressly stated to be without prejudice to the power of the court in respect of such behaviour.
172. In *Michael Murray v. Governor of Midlands prison* [2024] IECA 42 the Court of Appeal confirmed that a convicted person is liable to disciplinary offences and sanctions under the [Prison Rules 2007](#) (S.I. 252/2007)¹¹⁹ in respect of their misconduct in a courtroom during their sentencing hearing. The Court of Appeal held that there can be no objection in principle to the co-existence of the contempt power of the judge and the disciplinary power of the prison Governor, provided they are exercised appropriately in their different contexts and there is no unfairness or oppression in a particular case.

Difficulties with the present law

173. Because contempt of court in Ireland remains almost entirely based on the common law, it is open to the challenge that it is unclear and difficult to understand.¹²⁰ In its 1991 [Consultation](#)

¹¹⁶ *Burke v. an Adjudication Officer & Anor* [2024] IECA 136.

¹¹⁷ <https://revisedacts.lawreform.ie/eli/1994/act/2/revised/en/html> accessed 21 October 2024.

¹¹⁸ In two cases prosecuted in relation to disruption in Ennis District Court, the Judge was not called as a witness – see <https://www.irishexaminer.com/news/arid-20377318.html>; <https://www.irishexaminer.com/news/arid-20382592.html> accessed 21 October 2024.

¹¹⁹ <https://revisedacts.lawreform.ie/eli/2007/si/252/front/revised/en/html> accessed 21 October 2024.

¹²⁰ The Supreme Court decision in *Irish Bank Resolution Corp Ltd v. Quinn* [2012] IESC 51, noted that the Irish law on contempt of court is "amorphous" and "difficult to understand even among lawyers and judges themselves" (Hardiman J).

[Paper on Contempt of Court](#),¹²¹ the Law Reform Commission (“LRC”) observed that the current law on contempt in the face of the court is imprecise and uncertain – so much so that it may be seen as “*inherently unfair and constitutionally questionable*.”

174. The problems with the existing law may be summarised as follows: There is a lack of clarity about what amounts to contempt in the face of the court, in particular, the law is not settled as to what mental element is required to commit contempt in the face of the court; it is not clear which rules of evidence apply to a contempt hearing and how to ensure that proper safeguards are applied at all stages; and, there may also be questions of consistency over how different courts deal with an alleged contempt.

Should contempt in the face of the court be put on a statutory footing?

175. In its [1994 Report on Contempt of Court](#),¹²² the LRC concluded that contempt is an offence of a special category (*sui generis*) that is within the inherent jurisdiction of the courts. The majority of the LRC did not recommend any new legislation in respect of contempt in the face of the court. It considered that this would improve the legitimacy of such powers. Accordingly, the minority recommended that the common law offence of contempt in the face of the court should be replaced by a statutory offence containing the following elements:

- It should embrace any disruptive or other conduct which threatens the orderly, efficient and dignified conduct of court proceedings;
- The procedure should be summary in nature;
- The court should have the power to order the removal and/or detention in custody of the offender for a period of not more than one month, subject to the general principle that any sanction should be no more than is necessary to enable the court to continue proceedings in an orderly manner.

176. There was an attempt to put contempt of court on a statutory footing in Ireland with the [Contempt of Court Bill 2017](#) introduced in October 2017.¹²³ This was a private member’s bill, now lapsed, which covered various aspect of contempt of court including contempt in the face of the court and “*disruptive behaviour in court*”. It provided that such behaviour may be dealt with “*summarily and immediately by the courts*” where the conduct has occurred in the presence of the judge; and the judge considers that the conduct presents an immediate threat to the authority of the court or the integrity of the proceedings then in progress unless dealt with in a summary manner. In such a case the Bill required that certain safeguards be afforded to the accused as set out in s. 7.¹²⁴ The Bill also provided that if a contempt in the

121 <https://www.lawreform.ie/fileupload/consultation%20papers/cpContempt.htm> accessed 21 October 2024.

122 <https://www.lawreform.ie/fileupload/Reports/rContempt.pdf> accessed 21 October 2024.

123 <https://data.oireachtas.ie/ie/oireachtas/bill/2017/117/eng/initiated/b11717d.pdf>.

face of the court is not dealt with summarily by the judge, “*the judge shall be immune from giving evidence unless they choose to do so*”. The Bill specifically provided that “*A court shall at all times have power to order someone removed from the body of the court.*”

177. Contempt of court has been on a statutory footing in Britain since 1981. In England and Wales, the courts may punish contempt in the face of the court where a person “*wilfully insults*” a judge, witness or counsel during proceedings or where they are going to or from the court, or where the person “*wilfully interrupts the proceedings of the court or otherwise misbehaves in court*”.¹²⁵
178. Another example of contempt of court being put on a statutory footing is in Kenya, where the Contempt of Court Act of 2016¹²⁶ came into force on 13th January 2017.
179. In its [2020 Report on Contempt of Court](#),¹²⁷ the Victorian Law Reform Commission recommended that contempt in the face of the court should be retained and restated in legislation. The Commission recommended that an exhaustive list of conduct that can constitute contempt by interfering with a court proceeding should be included in legislation. The recommended fault element is that a person should be liable for contempt by conduct that interferes with a court proceeding where such conduct was intentional. The Commission also recommended that an actual interference must take place and that a risk of interference was not sufficient.
180. While legislation might well bring clarity to the current areas of uncertainty in the law of contempt in the face of the court, putting the offence on a statutory basis may reduce the flexibility of a judge to ignore or manage poor behaviour and could unwittingly increase contempt prosecutions with little overall positive results on the cases before the court. Legislation would however bring clarity to the elements of the offence, the 2017 Bill being a fairly straightforward template. We could find no legislation that suggested anything different by way of enforcement than a fine/imprisonment.

Disruption as a threat to safety

181. When a hearing before a court is disrupted by an LIP, the judge will be concerned to establish their authority and restore order as soon as possible. Judges are mindful of the safety of persons attending the court, and in particular court staff, including the judge themselves. The courts have over the past number of years experienced a number of serious incidents where

124 Where the court acts under subsection (2) the court shall: (a) inform the accused of the nature and particulars of the charge; (b) allow the accused a reasonable opportunity to apologise to the court; (c) allow the accused a reasonable opportunity to seek legal advice, to be heard and to call witnesses and, if necessary, grant an adjournment for any of those purposes; (d) after hearing the accused, determine the charge and give reasons for that determination; and (e) make an order for punishment or discharge of the accused.

125 S.12(1) of the Contempt of Court Act 1981.

126 <http://kenyalaw.org/8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/C/Contempt%20of%20Court%20Act%20-%20No.%2046%20of%202016/docs/ContemptofCourtAct46of2016.pdf> accessed 21 October 2024.

127 <https://www.lawreform.vic.gov.au/publication/contempt-of-court-report/> accessed 21 October 2024.

a judge's safety has been compromised and further incidents of this nature cannot be ruled out. While they can occur in any court, the District Court is particularly vulnerable given the number of litigants coming before it and the architecture of many of the courtrooms.

182. The Courts Service has recently reviewed and updated their "[Policy and Procedure - Court Building Safety & Security Arrangements](#)" ("the Policy").¹²⁸ While the Working Group welcomes the fact that a security policy has been adopted, it has concerns that the Policy is theoretical and aspirational in nature and appears to have been prepared without prior consultation with the judges and only circulated to the Presidents and the Association of Judges of Ireland ("AJI") after its initial development. By way of example, Clause 8.2.1 of the Policy provides:-

"If inappropriate conduct by an individual, for example, a court user, party to proceedings or another occurs in a court room causing disruption and the behaviour is not deemed to place the safety of others at high risk, the judge or County Registrar may ask a member of An Garda Síochána, if available, to request the individual(s) to desist". (emphasis added)

183. Where there is no Garda present the Policy provides that the judge should "*press the panic button where available, and/or contact someone outside the court room for immediate assistance e.g. AGS or Security personnel.*" (Clause 8.26 emphasis added).
184. Clause 8.3 provides that where a Judge (and stated others) has a concern or is made aware that the behaviour of individual(s) in the courtroom pose(s) an immediate and serious threat to the safety of others, she should:

"Alert a member of An Garda Síochána if close by". (emphasis added)

185. Violence and aggression in the courtroom is identified as a hazard but is assessed as "low risk". Included in the list of recommended controls are on-site security checks, panic buttons, staff training and the "removal of projectiles". However, there is no reference to:-

- What the current on-site security for each court venue consists of;
- Whether there are working panic buttons in each court venue and particularly those outside of Dublin;
- What the protocols are for the use and maintenance of panic buttons, and are staff aware of them;
- What the protocol is if an alarm is pressed, particularly who should stay in the courtroom, what the response time is, who is responsible for responding to this alarm and where they are based;
- Whether there are panic alarm drills in the same way as fire alarm drills;

128 <https://courtsservice.cloud.gov.ie/KnowledgeBase/HealthandSafety/Shared%20Documents/Security%20Management/POL-14-10%20v1.0%20Court%20Building%20Safety%20%26%20Security%20Arrangements%20v1.2.pdf#search=Policy%20and%20Procedure%20for%20Court%20%20%20Building%20Safety%20%26%20Security%20Arrangements>.

- The procedure(s) in place to assess daily risks and suitability of court venues for certain cases;
 - The types of “projectiles” which the Policy suggests should be removed (as likely projectiles such as bibles and chairs are in common use), when this is intended to take place, and whether this includes possible projectiles brought by the individual to court such as the files for their case, a personal water bottle or their laptop;
 - Whether there are security - focused inspections and risk assessment across all locations and in particular, car parking facilities for judges at provincial locations, particularly noting the obligation in the Policy for Judges “*to avoid routes, where possible, of interfacing with the public when in and around court buildings*”;
 - The number of staff who have received the training referred to and whether this has been extended to the judiciary.
186. We understand from the Courts Service that it is their intention to build on the Policy. This will involve carrying out site - specific risk assessments across the estate, implementing where necessary any required control measures to include the installation of panic alarms where absent and working with AGS to develop a standardized panic alarm response process across the organization. There is also planned engagement with AGS and the Irish Prison Service to agree a protocol to identify and address security risks as they arise.
187. We further understand that following engagement between the Courts Service, the AJI and AGS, the Garda Technical Advisory Group will reassess the Four Courts complex (and surrounding areas) and AGS will include the Four Courts in the Garda beat to create a more visual presence.
188. The Working Group welcomes all of the above and recommends that court Presidents and the AJI be consulted on all reviews carried out and protocols developed. We further recommend that there be a specifically designated person within AGS to whom the Presidents may bring any security concerns.
189. Finally, Clause 7.5 of the Policy provides that the judiciary and Quasi-Judicial Officers:
- “Have a duty to bring any security concerns in relation to a court user or party to proceedings to the attention of the local office manager.*
- Have a duty to support colleagues and Courts Service staff in complying with this policy and procedure “*
190. The judiciary are very mindful of the security and safety concerns in their courtrooms. However, the Working Group is unaware of how stated duties have come to be allocated by the Courts Service to the judiciary or the basis for allocating such duties to them.
191. We believe that there needs to be much improved consultation with the judiciary in all courts to cover security concerns and the allocation and assignment of suitable courtrooms for a given case, for example where it is expected that a litigant or an accused may bring a

large group of supporters with them into the courtroom or where there is the likelihood of disruption and removal of parties based on past experience. Such cases require appropriately sized and located courtrooms with appropriate access and egress for the judiciary and court staff, as well as appropriate and functioning security arrangements and personnel.

192. Furthermore, judges also need to be apprised as to what remote facilities are available to deal with litigants who have to be excluded from court. The necessary courtroom and personnel resources need to be put in place and communicated to judges so that the practical option of excluding disrupters becomes more readily achievable. There are obvious resource implications which need to be addressed, including the costs of additional security personnel and Gardaí to police the remote-hearing room and/or to accompany excluded litigants in and out of court. It cannot be left to judges or registrars to enforce exclusion orders from court.

The High Court: Assistance from Gardaí / Service Officers

193. In the High Court, the Non-Jury/Judicial Review, Chancery and Family divisions in particular experience high volumes of LIP participation. In our view, the procedures in these courts in particular for dealing with LIPs require to be reviewed as a matter of urgency.
194. As things stand in those divisions, discipline and order are entirely matters for the presiding judge. If a disrupted hearing is anticipated, it is possible to procure the attendance of a member of AGS, and on occasion it may be necessary to secure the attendance of several Gardaí to ensure that order is maintained. However, it is not always possible to ensure the attendance of Gardaí to deal with unruly situations, nor is it always possible to anticipate when disruption will occur.
195. The judge in charge of the Chancery list has at present the assistance of a tipstaff. The judge in charge of the Non-Jury list previously had that assistance but it is no longer available following the retirement of the tipstaff assigned to that courtroom. While it is difficult to establish what the official duties of a tipstaff are, in practical terms the tipstaff often provides a liaison between members of the public who enter the courtroom and court staff. An experienced tipstaff will have a sense of when an LIP will require assistance in relation to where to sit in the court, how to find out when an LIPs case will be heard, whether they are in the right courtroom, etc. Tipstaffs, through ample experience of courtroom situations, are often able to provide a level of calm and helpful assistance to persons who are not familiar with court and may be extremely nervous and unsure of their surroundings. Likewise, tipstaffs often have a sense of when a difficult situation may be likely to arise and can advise the judge or the courtroom staff who may be able to take steps to deal with the situation.
196. Where there is no tipstaff, discipline in the courtroom is entirely a matter for the judge. While a judicial assistant provides an invaluable service to a judge, it is no part of a judicial assistant's function to deal with the public or to take any action to ensure order in the courtroom. Likewise, a registrar of a court is there to perform specific duties, but not to regulate or influence the behaviour of visitors to the court.

197. We consider that tipstaffs (or an equivalent) provide an invaluable and underappreciated service, particularly in courtrooms where LIPs are prevalent. They provide a service similar to that provided by a “jury keeper”, i.e. the official tasked with looking after juries in criminal trials. In our view, it is essential that each court which has a preponderance of LIPs should have a dedicated official who provides a point of contact for those unfamiliar with the courts system, who can answer simple queries, encourage appropriate behaviour and be in a position to anticipate trouble where it may be bound to occur.
198. Unfortunately, tipstaffs in courts are being phased out. In the [Report of the Special Group on Public Service Numbers and Expenditure Programmes](#) (2012)¹²⁹ it was recommended that the tipstaffs grade should be abolished and “*replaced with clerical and other staff from within the Courts Service who can provide the necessary stewarding and support functions to the judiciary*”.¹³⁰
199. With respect to the authors of the report, there is no recognition in the report of the important role that tipstaffs play in relation to the conduct of court proceedings. If tipstaffs (or an equivalent) cease to operate in courts in which LIPs are prevalent, there will be no liaison between LIPs and the court staff. It is unfair and inappropriate to expect judges and registrars to be entirely responsible for discipline in the courtroom and dealing with straightforward matters which could easily be dealt with by an official specifically designated to act as a liaison for people who are unaware of how the courts system operates. There is a grade described as a service officer and appointing people at that grade to carry out work formerly carried out by a tipstaff is recommended by the Working Group.

Judicial welfare

200. It is an unfortunate reality that frontline workers are experiencing increasing levels of aggression, hostility and disruptive and threatening behaviour while carrying out their roles. Public order offences are also now more common occurrences. We can expect that judges will continue to encounter challenging behaviours in court and that such activities may become more frequent and more organized.
201. Empirical research from Australia describes a judicial system not yet in mental health crisis but under considerable stress.¹³¹ One study carried out in the US on a single jurisdiction of judges found that safety concerns stemming from workplace conflict may be contributing to work-related burnout and highlighted the risk that a judge may subconsciously be inclined to modify their decision based on a perceived threat from one of the parties in a case.¹³² Another

129 Report of the Special Group on Public Service Numbers and Expenditure Programmes (2012) <https://www.drugsandalcohol.ie/12259/2/Volume2.pdf> last accessed 21 October 2024.

130 *ibid*, p.163.

131 C Schrever, C Hulbert and T Sourdin, ‘The psychological impact of judicial work: Australia’s first empirical research measuring judicial stress and wellbeing’ 28 JJA 141 https://www.judcom.nsw.gov.au/publications/benchbks/judicial_officers/psychological_impact_of_judicial_work.html last accessed 21 October 2024.

132 Jared Chamberlain and Monica K. Miller, ‘Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogenous Group of Judges in a Single Jurisdiction’ (2009) *Journal of the American Academy of Psychiatry and the Law Online* June 2009, 37 (2) 214-224, <https://jaapl.org/content/37/2/214> last accessed 21 October 2024.

piece of US research states that “*frequent experiences with such stressors could be detrimental and could lead to mental-health issues or desensitization*” and suggests post-trial debriefings for judges following difficult encounters to help manage stress levels amongst the judiciary arising from exposure to disruptive or challenging behaviour in courtrooms.¹³³

202. The California judiciary has developed a series of short mindfulness exercises that some judges may find useful.¹³⁴
203. At present, judges who face difficult courtroom control situations are supported on an ad hoc basis by colleagues who become aware of such situations. While the support of colleagues is invaluable and impactful, we believe there should also be a more formal process around support for judges who encounter difficult experiences in dealing with disruptive behaviour in the courtroom. The Judicial Council Support and Welfare Committee might consider a programme aimed at ensuring there is a process for judges to support them in that regard and to encourage judges to report and reflect on any difficulties they experience.

RECOMMENDATIONS

- R. 19. Recommendation: Consideration be given to the possibility of introducing legislation to put disruptive behaviour as a form of criminal contempt on a statutory footing.

Body responsible: Government

- R. 20. Recommendation: The Courts Service to continue with the security review in being and carry out such further risk assessments as appropriate on the safety protocols in place, developing any additional protocols required in line with set practice guidance. This review is to be carried out in consultation with the judiciary.

Body responsible: Courts Service

- R. 21. Recommendation: The Courts Service should continue to engage with AGS on the security arrangements in place in all court venues in consultation with the judiciary.

- R. 22. Recommendation: The Courts Service should continue to engage with the judiciary through the relevant Court President and the AJI in each court venue regarding:

- The expectations of the judiciary as provided for in the Policy and Procedure - Court Building Safety & Security Arrangements and what steps are in place to assist them to discharge the functions or duties they have regarding disruptive behaviour;
- What remote facilities are available in each court site to deal with litigants who have to be excluded from court (whether attendance remotely off-site or attendance remotely at a court site);
- The security arrangements in place and protocols for each court venue.

133 David M. Flores, Monica K. Miller, Jared Chamberlain, James T. Richardson, and Brian H. Bornstein, ‘*Judges Perspectives on Stress and Safety in the Courtroom: An Exploratory Study*’ (2009) The Journal of American Judges Association <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1295&context=ajacourtreview> last accessed 21 October 2024.

134 California Judges Association, <https://www.caljudges.org/mwp/> last accessed 21 October 2024

R. 23. Recommendation: The introduction of procedures to ensure that cases are assigned to courtrooms which are appropriate in all the circumstances.

R. 24. Recommendation: A service officer should be retained to attend in appropriate courts (to be identified in consultation with the judiciary) to oversee the attendance and provide an informal liaison with the public in general and LIPs in particular. A brief for such a role should be developed, with particular regard to the contribution of the service officer to safety of court users and staff following appropriate training.

Body responsible: Courts Service

R. 25. Recommendation: A Garda should at all times be available to the court, ready to attend immediately if not already present in court.

Body responsible: AGS

R. 26. Recommendation: Court Gardai should be briefed on the provisions of s.9A of the Public Order Act 1994 inserted by s. 63 of the Criminal Justice (Miscellaneous Provisions) Act 2023

Body responsible: AGS

R. 27. Recommendation: Signs should be erected outside every court prohibiting video recordings and photographs of court proceedings

Body responsible: Courts Service

R. 28. Recommendation: This Working Group supports:

Any proposals to extend legal aid or assistance to potential litigants, as this could reduce disruption in court;

Any measures introduced to afford a discretion/power to the court to assign legal aid in certain exceptional circumstances (particularly in family law matters).

Body responsible: Government

R. 29. Recommendation: Provide training to judges from external experts who train frontline staff on dealing with abusive and violent behaviour.

R. 30. Recommendation: Provide training to judges by the Courts Service on the use of basic courtroom safety features, and safety protocols.

R. 31. Recommendation: Provide training to judges in respect of the provisions of the current legal aid scheme (civil and criminal).

Body responsible: Judicial Studies Committee/Courts Service

R. 32. Recommendation: The Judicial Council Support and Welfare Committee to consider a programme to support judges who have experienced disruptive courtroom behaviour, to include preparation before a hearing where disruptive behaviour is anticipated and review of hearing afterwards.

Body responsible: Judicial Council Support and Welfare Committee

Chapter 6 – Repetitive Litigation

Introduction

204. This chapter addresses the issue of what will be described as repetitive litigation, where the initiating party litigates the same - or essentially the same - issue on multiple occasions in an unmeritorious fashion, sometimes in varying forums. Common characteristics of such litigation were first identified in the Canadian case of *Re Lang Michener and Fabian* (1987) 37 DLR (4th) 685 at 691 and were referred to by Ó Caoimh J. in *Riordan v. Ireland* (No. 5) [2001] 4 I.R. 463 as follows:

- “(a) *the bringing up on one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;*
- (b) *where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;*
- (c) *where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;*
- (d) *where issues tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;*
- (e) *where the person instituting the proceedings has failed to pay the cost of unsuccessful proceedings;*
- (f) *where the respondent persistently takes unsuccessful appeals from judicial decisions.”*¹³⁵

205. Repetitive litigation, and how the courts should respond to it, engages the question of a litigant’s right of access to courts, weighed against another litigant’s right not to be subject to vexatious litigation, as well as the question of most appropriate allocation of court resources.

206. Such litigation results in an inappropriate use of court resources including those of judges, registrars, court support staff and administrative staff. This problem not only adversely affects those who administer justice and those who support them, but also an invisible category: those litigants who are not the subject of the repetitive litigation, but whose cases are displaced or delayed because of such litigation. The proper administration of justice requires, *inter alia*, that scarce court resources are not diverted away from deserving litigants.

207. Repetitive litigation may also have a very negative impact on the other party or parties; they are obliged to use their time and incur costs to respond to cases that may be vexatious and harassing in nature. In the majority of cases encountered by this group, litigants who engage in repetitive litigation of this type generally are not persons of means and therefore it is unlikely that parties who obtain a costs order will recover those costs.

¹³⁵ See also the comments of Butler J. in *Scanlan v. Gilligan* [2021] IEHC 825 where she highlights certain characteristics of repetitive litigation.

208. Although this is more difficult to quantify, it may also be the case that permitting litigants to continually engage in repetitive litigation negatively affects them, as it prevents them from moving on from the issue that motivated them to first litigate.
209. Some litigants who engage in repetitive litigation are represented; the problem is not limited to LIPs. However, LIPs are disproportionately represented in the group of persons who engage in repetitive litigation, probably because represented litigants will usually be discouraged by their lawyers from litigating issues that have already been decided (often both by first instance courts and on appeal). For this reason, the topic of repetitive litigation has been included in this report.

Identification of the scale of the problem

210. Anecdotal evidence from judges, along with decisions of the courts, suggest that there is a significant problem with litigants repeatedly running what is effectively the same argument, either against the same party or different parties, after the issues have been heard and determined at first instance and on appeal.

Summary of existing state of law in Ireland

211. The Constitution provides, as a corollary right arising out of the personal rights guarantees under Article 40.3, for citizens to have access to the courts, including recourse to the Superior Courts to question the validity of any law having regard to the provisions of the Constitution. The constitutional framework means that individuals enjoy the right to have access to courts and to have recourse to the courts for the redress of their grievances, for the settlement of their disputes and the vindication of their legal rights.¹³⁶ Article 6(1) of the ECHR similarly guarantees a right of access or recourse to the courts.¹³⁷
212. This right of access to courts to address grievances is not an absolute right. An individual may be denied their access to courts and their right of access be justifiably limited, as the right of access to courts is subject to judicial power to protect the judicial processes from abuse. Contrary to the position in other jurisdictions, that has been achieved in Ireland exclusively by judge - made law as opposed to rules of court or legislation.
213. Following the decision in *Wunder v. Irish Hospitals Trust* (Unreported, SC, 24 January 1967), a judge of the Superior Courts may, pursuant to the inherent jurisdiction of the court, make an IW order. An individual does not have a right “to reopen issues already determined or to pursue groundless and excessive vexatious litigation.”¹³⁸ IW orders generally restrain a litigant from instituting any further proceedings against the parties to those earlier proceedings without first obtaining the leave of the court.¹³⁹ However, each order is tailor made and may extend beyond the parties to particular litigation. The order may include actions against the

136 *Macauley v. Minister for Posts and Telegraphs* [1966] IR 345.

137 *Tolstoy Miloslavsky v. United Kingdom* (1995) 20 EHRR 442.

138 *Riordan v. Ireland* (No 4) [2001] 3 IR 365, 370.

139 *Riordan v. An Taoiseach* (No 5) [2001] 4 IR 463.

members of a firm of solicitors and counsel or other incarnations of a party previously sued. Alternatively, it may restrain the applicant from acting in relation to a particular subject matter i.e. from issuing proceedings in respect of an identified plot of land without first obtaining leave from the President. A judge may also strike out or stay an action if it is clear that a plaintiff's claim must fail or that he or she can derive no tangible benefit from the litigation.¹⁴⁰

214. IW orders will only be justifiable when they are made against applicants whose repeated vexatious litigation impacts the private rights of the defendants/respondents or impacts the resource management of the courts. While a person may have a right of access to the courts, they must also have regard to the private rights of defendants to be protected from the stress of harassment and the expense of excessive vexatious litigation being brought against them,¹⁴¹ and the important public interest of the finality of litigation.¹⁴² As noted in *Irish Aviation Authority v. Monks* [2019] IECA 309, in addition to the private rights of persons to be protected from vexatious claims, any right to litigate must be construed in light of the obligation of the courts to use resources prudently, as there is an important public interest in avoiding limited court resources being taken up in dealing with such claims.

Nature/purpose/scope of orders that can be made

215. In recent years, the Court of Appeal have cautioned against the use of IW orders except in unusual and rare circumstances. In two recent Court of Appeal decisions, *Monks*¹⁴³ and *Kearney v. Bank of Scotland*,¹⁴⁴ the Court was at pains to emphasise the “exceptional” nature of the jurisdiction and the necessity to use that jurisdiction “sparingly”. As observed in *Monks*, the court must “*anxiously scrutinise*” whether the grounds presented for making an order meet the necessary threshold to make an order. Identifying in *Monks* that a court should be “*extremely reluctant*” to make an order restraining the access of any citizen to the courts, Collins J. referred back to the decision in *Riordan* (No. 4) (and to that of Costello J. in *O'Malley v. Irish Nationwide* (HC, 21 January 1984)), where an IW order was referred to as an order made in “*very rare circumstances*”.
216. One might question whether the circumstances that prevailed in 1984 and 2001 when *O'Malley and Riordan* (No. 4) were decided are the same as those that prevail in 2024 in terms of the volume of litigants engaging in repetitive litigation. The lack of any accurate data identifying precisely how much court time such litigation is absorbing makes it difficult to identify the scale of the challenge. However, the experience of judges in both the High Court and the Court of Appeal is that repetitive litigation is taking up considerable judicial time at present.

140 Gerard Hogan, Gerry Whyte, David Kenny and Rachael Walsh, *Kelly: The Irish Constitution* (5th ed., Bloomsbury Professional, 2018) at para. 7.3.194.

141 *Riordan v. Ireland* (No 4) [2001] 3 IR 365, 370.

142 *Houston v. Doyle* [2020] IECA 289; *London and Global Limited in Liquidation v. Lambe* [2004] IEHC 358.

143 *Irish Aviation Authority v. Monks* [2019] 309, para. 7.

144 *Kearney v. Bank of Scotland* [2020] IECA 92, para. 132.

217. When deciding whether to grant an IW order, a court should have regard to a broad range of circumstances and take a view of the whole history of the case, not merely whether the litigation at present is vexatious. In *London and Global Limited in Liquidation v. Lambe* [2004] IEHC 358, Peart J. notes that the granting of an IW order may require more to be established than merely whether the litigation is vexatious or has no prospect of success or even is an abuse of process.
218. In *Kearney*, Whelan J. at para. 132 outlines a broad range of circumstances which the court will have regard to, and notes that an order shall only be made where a clear case has been made out that demonstrates the necessity of making an order as follows:

i. Regard can be had by the court to the history of litigation between the parties or other parties connected with them in relation to common issues.

ii. Regard can be had also to the nature of allegations advanced and in particular where scurrilous or outrageous statements are asserted including fraud against a party to litigation or their legal representatives or other professionals connected with the other party to the litigation.

iii. The court ought to be satisfied that there are good grounds for believing that there will be further proceedings instituted by a claimant before an Isaac Wunder type order restraining the prosecution of litigation or the institution of fresh litigation is made.

iv. Regard may be had to the issue of costs and the conduct of the litigant in question with regard to the payment and discharge of costs orders incurred up to the date of the making of the order by defendants and indeed by past defendants in applications connected with the issues the subject matter of the litigation.

v. The balancing exercise between the competing rights of the parties is to be carried out with due regard to the constitutional rights of a litigant and in general no legitimate claim brought by a plaintiff ought to be precluded from being heard and determined in a court of competent jurisdiction save in exceptional circumstances.

vi. It is not the function of the courts to protect a litigant from his own insatiable appetite for litigation and an Isaac Wunder type order is intended to operate preferably as an early stage compulsory filter, necessitated by the interests of the common good and the need to ensure that limited court resources are available to those who require same most and not dissipated and for the purposes of saving money and time for all parties and for the court.

vii. Such orders should provide a delimitation on access to the court only to the extent necessitated in the interests of the common good.

viii. Regard should be had to the fact that the right of access to the courts to determine a genuine and serious dispute about the existence of a right or interest, subject to limitations clearly defined in the jurisprudence and by statute, is constitutionally

protected, was enshrined in clause 40 of Magna Carta of 1215 and is incorporated into the European Convention on Human Rights by Article 6 to which the courts have regard in the administration of justice in this jurisdiction since the coming into operation of the European Convention on Human Rights Act 2003.

ix. The courts should be vigilant in regard to making such orders in circumstances where a litigant is unrepresented and may not be in a position to properly articulate his interests in maintaining access to the courts. Where possible the litigant ought to be forewarned of an intended application for an Isaac Wunder type order. In the instant case it is noteworthy that the trial judge afforded the appellant the option of giving an undertaking to refrain from taking further proceedings which he declined.

x. Any power which a court may have to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional. It appears that inferior courts do not have such inherent power to prevent a party from initiating or pursuing proceedings at any level.

xi. An Isaac Wunder order may have serious implications for the party against whom it is made. It potentially stigmatises such a litigant by branding her or him as, in effect, “vexatious” and this may present a risk of inherent bias in the event that a fresh application is made for leave to institute proceedings in respect of the subject matter of the order or to set aside a stay granted in litigation.

xii. Where a strike out order can be made or an order dismissing litigation whether as an abuse of process or pursuant to the inherent jurisdiction of the court or pursuant to the provisions of O. 19, r. 28, same is to be preferred and a clear and compelling case must be identified as to why, in addition, an Isaac Wunder type order is necessitated by the party seeking it.”

Nature of the Order

219. Should an IW order be granted, the courts have adopted a careful approach whereby the order will be framed as narrowly as practicable “consistent with achieving the order’s objective.”¹⁴⁵ The courts will be conscious that the ambit of the order be as narrow as possible, to ensure that the principles of proportionality are applied against the constitutional right of access to the courts. In *Kearney*, Whelan J. varied the nature of an IW order to be less restrictive on the applicant, rather than vacating the order completely.¹⁴⁶ IW orders should always be drafted so as to clearly identify the litigation or stages in litigation which are prohibited or restrained and also the person or persons against whom such litigation must not be pursued.¹⁴⁷

¹⁴⁵ Para. 7.

¹⁴⁶ [2020] IECA 92.

¹⁴⁷ *Mullen v. O’Sullivan* [2015] IEHC 72; *Gunning v. Brian Sherry Solicitors* [2015] IESC 76.

Restriction of litigants under the ECHR

220. Insofar as the ECHR is concerned, the cases of *Golder v. United Kingdom* (1975) 1 EHRR 524,¹⁴⁸ *Ashingdane v. United Kingdom* 528 (1985) 7 EHRR 528,¹⁴⁹ and *Tolstoy Miloslavsky v. United Kingdom* (1995) 20 EHRR 442 identify that the right of access to the courts may be subject to limitations in the form of regulation by the state, so long as two conditions are satisfied:
- (i) the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired; and (ii) a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.
221. As observed in *Bhamjee v. Forsdick* [2003] EWCA Civ.1113, in *H v. United Kingdom* (1985) 45 DR 281, the ECHR applied the above principles when it decided that an order refusing the applicant leave to bring an action by virtue of an earlier order made against him under the [Vexatious Actions \(Scotland\) Act 1898](#)¹⁵⁰ did not constitute an arguable violation of his Convention rights. Indeed, the ECHR said at p.285 that “*some form of regulation of access to court is necessary in the interests of the proper administration of justice and must therefore be regarded as a legitimate aim.*”

Application for leave to bring fresh proceedings

222. It is important to emphasise that the existence of an IW is not an absolute bar to litigation. Rather than preventing a litigant from issuing proceedings completely, it imposes a permission hurdle in relation to the institution of any further litigation, either generally, or more narrowly, against a given party or in respect of an identified subject matter. It has been described as a “controlling device,”¹⁵¹ or a “filtering” mechanism,¹⁵² that restrains unmeritorious or vexatious litigation.
223. Further litigation may be permitted when the applicant shows *ex parte* that there is merit in such a course. In *Riordan (No. 5)*, O’ Caoimh J. applied a test of whether the intended proceedings could succeed and whether a reasonable person could reasonably be expected to obtain the relief sought. In doing so, the court may consider the “*whole history of the matter and is not confined to a consideration as to whether the proceedings disclose a cause of action.*” In that case, he concluded that the cause of action had no prospect of success, that no reasonable person could reasonably expect to obtain relief and took the view that the proposed action was vexatious and had an improper purpose, namely the harassment and oppression of the parties referred to in the proceedings determined by the Supreme Court as opposed to the assertion of a legitimate right. He therefore refused leave to institute proceedings.

148 (1975) 1 EHRR 524, 536 – 537.

149 (1985) 7 EHRR 528, 546.

150 Vexatious Actions (Scotland) Act 1898, <https://www.legislation.gov.uk/ukpga/Vict/61-62/35/enacted> last accessed 21 October 2024.

151 *SP v. UG* [2016] IEHC 693, para. 23.

152 *Scanlan v. Gilligan* [2021] IEHC 825, para. 113.

224. In *Kenny v. Trinity College* [2008] IEHC 320, Clarke J. followed *Riordan (No. 5)* and explained the test as being whether, on the basis of the information available at the early stages of an application for leave, it can be said that the proceedings contemplated were frivolous and vexatious.
225. In *Daire v. Wise Finance Co. Ltd* [2018] IECA 126, Peart J. considered an appeal from the decision of Baker J. to refuse permission to bring fresh proceedings following an IW order made by Laffoy J.¹⁵³ He identified the bar that a plaintiff must surpass as being whether the new issue that the plaintiff wishes to obtain leave to litigate is one that is stateable, and therefore not frivolous and vexatious and an abuse of process in that sense. Citing *Kenny*, he observed that although it is a new issue sought to be litigated, some view as to the merits of the intended issue can be explored in order to prevent an abuse of process where such an issue is unstateable.¹⁵⁴

Inherent jurisdiction of superior courts

226. There is no legislation in Ireland regulating repetitive litigation. This is in marked contrast to the situation in Scotland, England and Wales, Canada, Australia and New Zealand, all of whom have legislation in this respect, as identified in summary at Appendix I. Interestingly, legislation designed to restrict such litigation was passed for England and Wales in 1896, and for Scotland in 1898. The Vexatious Actions Act 1896 provided for the Attorney General to apply to the High Court for an order in the following terms:

“It shall be lawful for the Attorney General to apply to the High Court for an Order under this Act, and if he satisfies the High Court that any person has habitually and persistently instituted vexatious legal proceedings without any reasonable ground for instituting such proceedings, whether in the High Court or in any inferior Court, and whether against the same person or against different persons, the Court may, after hearing such person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by that person in the High Court or any other Court, unless he obtains the leave of the High Court or some judge thereof, and satisfies the Court or Judge that such legal proceeding is not an abuse of the process of the Court, and that there is prima facie ground for such proceeding.”¹⁵⁵

227. That Act was never extended to Ireland. Instead, as has been identified above, the Superior Courts were considered to have an inherent jurisdiction to make IW orders fully or partially restraining litigation.¹⁵⁶

153 Laffoy J. observed in *Daire v. Wise Finance* [2013] IEHC 337 as follows: “Even if strictly speaking there have not been ‘repeated attempts’ to re-open litigation, taking an overview of the matter, I am of the view that the Court would be failing in its duty, if it allowed its processes to be repeatedly invoked in order to re-open issues already determined...accordingly I propose making an order in the terms sought...such an order will not preclude Mr. Daire bringing proceedings which are not an abuse of process and for the initiation of which he obtains the leave of the High Court”.

154 Para. 17.

155 Vexatious Actions Act 1896.

156 *Riordan v. Ireland (No. 4)* [2001] IR 365.

228. In *Riordan* (No.4) Keane C.J. observed:

*“It is, however, the case that there is vested in this court, as there is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens, including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens. This court would be failing in its duty, as would the High Court, if it allowed its processes to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation.”*¹⁵⁷

229. The Circuit and District Courts, being creatures of statute, exercise only limited and local jurisdiction and do not enjoy inherent jurisdiction. There is authority for the exercise by the High and Supreme Court of the inherent jurisdiction to restrain a sustained unmeritorious litigation in respect of the Circuit and District Courts and for their benefit (see Hardiman J. in *Shannon v. Judge Moran*, Unreported, Supreme Court, 9 December 2004 and *Burke v. Fullam* [2010] IEHC 448 (paragraph 82). Similarly, Clarke J. in *Kenny* notes that “*the whole purpose of the jurisdiction of the court to make an IW order is to protect persons from being the subject of frivolous or vexatious litigation.*”¹⁵⁹ Such orders usually cover the issuing of proceedings either in the court that makes the order, or the courts of a lower jurisdiction i.e. the High Court can make orders that apply also to the institution of proceedings in the Circuit and District Courts.

230. However, it should be observed that in *SP v. UG*,¹⁵⁸ Abbot J. noted the power to make an IW order comes from the implied power that arises from the duty of all courts to supervise and control their own procedures so as not to be oppressive or to allow parties to be endlessly subject to vexatious applications and litigation being repeatedly brought before the courts.

231. Recently, in *Morgan v. Labour Court* [2022] IEHC 362, Ferriter J. held that the High Court had a jurisdiction to grant IW type orders in respect of the institution of proceedings before non-court statutory tribunals such as the WRC and he restricted the litigant from issuing any further proceedings before the WRC without prior leave of the High Court.¹⁶⁰

Circuit and District Courts

232. As the Circuit and District Court are courts of local and limited jurisdiction, they do not share the inherent jurisdiction of the Superior Courts. There are no rules of either the Circuit or District Court that allow a judge to make an IW - type order. In the recent decision of *M v. M* [2023] IEHC 95 where Simons J. considered an application to set aside a grant of leave

¹⁵⁷ *Riordan v. Ireland* (No. 4) [2001] IR 365, 370.

¹⁵⁸ [2016] IEHC 693.

¹⁵⁹ Para. 2.4.

¹⁶⁰ Bolger, Bruton & Kimber, *Employment Equality Law* (2nd ed, Round Hall 2022) 16-85 note that other statutory adjudication bodies, such as the Workplace Relations Commission, do not possess the jurisdiction to restrain a complainant from submitting repeated complaints.

on the basis of failure to disclose material facts, he highlighted that the question has yet to be clearly answered, observing:

“it is unnecessary, for the purpose of resolving the procedural objection raised in the present case, to determine whether the Circuit Court possesses its own independent jurisdiction to make a restraining order in respect of proceedings before it. Whatever the precise position may be in this regard, the Circuit Court most certainly does not have jurisdiction to impose a restriction on the right of access to the High Court.”¹⁶¹

On appeal, the Court of Appeal upheld the set aside of leave in respect of the majority of grounds, but the Court granted leave to judicially review the IW order of the Circuit Court.¹⁶² Woulfe J. indicated that a supplemental hearing could address whether the issue of the validity of the IW order made by the Circuit Court should be remitted to the High Court for determination, or in the alternative, the Court could quash the IW order and entertain an application for a fresh IW order. The parties agreed to the latter course of action, which resulted in the imposition of a fresh IW order.

The applicant sought leave to appeal to the Supreme Court concerning the issue of whether an IW order could ever be made in respect of applications for access and maintenance by parents in respect of a child, and if so, the circumstances in which such an order could be made.

The Supreme Court granted leave ([GM v IM \[2024\] IESCDT 117](#)). In its determination, the Court noted that the appeal concerned an issue of general public importance never before considered by the Supreme Court and granted leave to appeal on four issues, including whether a court is entitled to make an IW order in child access and/or child maintenance proceedings, and the powers which a court may generally exercise when presented with a serial litigant or someone who prolongs or disrupts proceedings repeatedly, including by way of misrepresenting what occurred in court on a previous occasion.

233. However, there is a judgment of Abbot J. where he opined that:

“There is clear authority following the judgment in the Supreme Court in the case of O’Riordan v. Ireland [2001] I.R. 365, and other authorities for asserting the power of the courts to make Isaac Wunder orders the purpose of which is to restrain fully or partially litigation in circumstances where the same may be vexatious and oppressive. The source of such power to make an Isaac Wunder order comes from the implied power that arises from the duty of all courts to supervise and control their own procedures so as not to be oppressive or to allow parties to be endlessly subject to vexatious applications and litigating being repeatedly brought before the courts. The usual practice is as noted in the case of O’Riordan v Ireland for the order to direct that no litigation is to be pursued or initiated without the leave of the President of that court or some judge appointed by the President.”¹⁶³ (emphasis added)

¹⁶¹ Para. 16.

¹⁶² *GM v. IM* [2024] IECA 45; *GM v. IM* [2024] IECA 169.

234. The position is therefore somewhat uncertain and this uncertainty is undesirable. For that reason, we recommend that legislation be enacted to put the position beyond doubt and ensure that District and Circuit judges have the power to make restriction orders.

Judges making orders of their own motion

235. A judge, of their own motion, may restrict the bringing of future proceedings, or vary the terms of an IW order sought by a party to the proceedings. In *Houston v. Doyle* [2020] IECA 289, Collins J. observed as follows:

*“Typically, Isaac Wunder orders are made on the application of a party, normally by way of motion. In such circumstances, the person against whom the order is sought will be on notice of the order being sought and the stated basis for it and will have an opportunity to provide evidence and/or make submissions in rebuttal. However, there may be circumstances where, absent any such application, a court considers that it may be appropriate to make such an order. As already explained, the rights and interests which the jurisdiction seeks to protect extend beyond the private rights of the parties and, in my opinion, the power (and duty) of a court effectively to protect its processes from abuse would be significantly undermined if the exercise of that power were in all circumstances to be contingent upon the court being invited to act. Furthermore, on a practical level, a court may have more knowledge of the litigation history of a party appearing before it than the other parties have. Having said that, it appears to me that courts should tread very cautiously in this context, lest their fundamental role as impartial decision-makers be blurred and the court is perceived, however unfairly, as having “entered into the ring”. It seems to me that the circumstances in which it may be necessary or appropriate for a court to consider making any form of Isaac Wunder of its own motion are likely to be rare indeed. Where such circumstances appear to arise, that context makes it particularly important that the party that would be affected by any such order is given an adequate opportunity to be heard before any decision is made”.*¹⁶⁴

236. In fact, most of the case law about judges making such orders of their own motion is concerned with the procedural guarantees that must be afforded to the proposed subject. In *Houston*, the Court of Appeal overturned an IW order made by the High Court judge of her own motion on the ground that the plaintiff did not have the opportunity to be heard, either as to the making of the order or as to the breadth of the order.
237. Judges may also, of their own motion, vary the breadth of an IW order to make it more expansive than originally applied for. *Sfar* was an appeal against an order made by a judge in the High Court where the breadth of the IW order was extended beyond that sought. While the jurisdiction of the court to vary an order sought was approved of, McCarthy J. struck down the order on grounds that the trial judge had not allowed the affected person a right to be heard in relation to the expanded order.

163 *SP v. UG* [2016] IEHC 693.

164 [2020] IECA 289, para. 69.

238. Similarly, in *Rippington v. Duffy* [2021] IECA 97, the Court of Appeal overturned restriction orders made in favour of defendants who had not sought IW orders. Accordingly, the plaintiff in that case was not on notice or did not have the opportunity to be heard in relation to those orders. The Court of Appeal upheld those orders that had been made on notice.
239. In *Monks*, Collins J. in the Court of Appeal was satisfied that McGovern J. in the High Court had acted lawfully in granting an order which was broader in scope than was originally applied for by the plaintiff, where the plaintiff was made aware that an extended order was being sought and availed of his opportunity to argue against it.
240. In summary, the case law makes it clear that, providing procedural safeguards are observed, the court may make an IW order, or variation of an application for same, of its own motion.

Security for costs in the context of repetitive litigation

241. Twomey J. recently opined on the utility of ‘security for costs’ orders in the context of repetitive litigation in [*Ulster Bank DAC & Ors v. McDonagh & Ors \(No.3\)* \[2024\] IEHC 609](#). The defendants had litigated extensively with Ulster Bank and various other parties over a ten-year period in respect of the repayment of a €22 million loan with which they had purchased a site in Co. Wicklow for the purposes of development.
242. An IW order had been imposed by the High Court in 2024 preventing the defendants from issuing new proceedings concerning the same dispute. To evade the effect of the IW order, the defendants issued a motion to set aside the principal judgment in the case, which had already been unsuccessfully appealed to the Court of Appeal and the Supreme Court. The defendants contended that they had ‘new’ evidence which had not been before the trial judge.
243. Twomey J. found that the defendants were effectively asking the Court to overturn the decisions of the Court of Appeal and Supreme Court by which it is bound, remarking that “*If the matter were not so serious, it would be funny that anyone could think that this is a reasonable course of action. However, as already noted, it is very serious and far from funny, for the other party to the litigation...This is because the bringing of this hopeless and vexatious application by the McDonaghs involves the infliction of irrecoverable legal costs on Ulster Bank by the McDonaghs once again and also involves a waste of taxpayers’ funded court resources, by this Court having to hear this application.*”
244. The High Court considered that vexatious litigants without the funds to discharge costs orders are “*able to make a mockery of the courts system by using it, not to administer justice, but to inflict injustice on their opponents (by inflicting irrecoverable legal costs on them)*”, noting that “*The fact that these individual litigants do not pay their opponent’s legal costs means that the only effective disincentive to a person taking hopeless or vexatious claims (i.e., the financial detriment of a costs order) is, in fact, absent.*”
245. As a potential resolution to this issue, Twomey J. suggested that the jurisdiction usually reserved for ordering security for costs as against corporate litigants should be extended to require security for costs from individual litigants, particularly serial litigants who pursue hopeless or vexatious cases, “*the most effective deterrent against hopeless and vexatious*

claims is the actual payment, upfront in security for costs, even of a relatively minor amount of money, before they can proceed with the litigation.”

246. The High Court stated that security for costs may be the only way to prevent further abuse of the courts system by litigants such as the defendants and to prevent the ‘infliction’ of further injustice on innocent parties, reflecting that “*Ulster Bank might still suffer one injustice, of a further delay in the enforcement of the judgment until the appeal is dismissed, but at least they would not suffer a second injustice, and so a double injustice, of spending their own money to have, what this Court regards as, a hopeless/vexatious appeal dismissed. Of course, if this Court is wrong and the McDonaghs were successful on the appeal, they would recover the money they paid as security for costs, so they would not be out of pocket.*”

Problems with existing approach and proposed changes

247. Before discussing some of the issues arising, it may be worth observing that arguably there is an insufficient acknowledgment in the case law that IW orders do not prevent persons from litigating but condition the bringing of proceedings.¹⁶⁵
248. In 2023, over 1,550 judicial review applications were brought in the Judicial Review list (including asylum, immigration and citizenship but excluding planning and environment cases). In every one of those, permission (leave) was required from the court. The making of an IW order puts the person subject to the order in the same position as a person seeking leave i.e., they can only bring proceedings where they obtain leave of the court (usually on an *ex parte* basis). In other words, the procedural burden that is imposed is no greater than that imposed on a party who wishes to bring judicial review proceedings.
249. Of course, there are substantial differences: the permission requirement imposed following an IW order is an individualised response to previous conduct and the conditions that must be met if leave is to be given differ from those in judicial review. In *Kearney*, Whelan J. observed that an IW order potentially stigmatises a litigant by branding them as vexatious and this may prevent a risk of inherent bias in the event that a fresh application is made for leave to institute proceedings pursuant to the order.
250. Nonetheless, the essence of an IW order i.e. the removal of the entitlement to litigate without permission from a court, imposes no more than the same procedural burden on a litigant as a person seeking to judicially review a decision.
251. Turning to the issues with the existing regime, the most glaring problem is that, first, as

¹⁶⁵ That an analogy may be drawn with judicial review was recognised by Collins J. in *Monks* where he observed: “...an Isaac Wunder order is not absolute in its effect and the party subject to it can apply to the court for leave to issue proceedings. That is obviously an important protection for the person subject to such an order but the order nonetheless imposes on that person a restriction on their access to the courts that is not applicable to the general body of litigants. True it is that in certain areas of litigation, leave to institute proceedings is a requirement. Order 84 judicial review proceedings are perhaps the paradigmatic example. However, the Order 84 procedure is not exclusive, at least in the absence of a statutory provision mandating its use: see *O'Donnell v. Dun Laoghaire Corp* [1991] ILRM 310. More importantly, in this context, the requirements of Order 84 apply generally (within its area of application), whereas an Isaac Wunder order imposes on its subject requirements that are not applicable to litigants generally.”

discussed above, there is no obvious jurisdiction for Circuit and District Court to make IW orders, despite the evidence that in family law proceedings, most of which takes place in those courts, repetitive litigation can present very significant problems.

252. Second, the onus is on a defendant to seek such an order, and this may present a very significant burden for a defendant who has already been subject to excessive litigation. At the conclusion of a hearing, a defendant will often not wish to incur further costs and time by looking for an IW order, especially where the making of such an order is likely to provoke an appeal. Moreover, often persistent litigants will bring proceedings against various parties at different times. In those circumstances, relying upon defendants to bring applications as a way of controlling repetitive litigation is unlikely to reduce such litigation.
253. It is proposed an effort should be made to educate judges about how they can raise the question of an IW order (or permission order) where no application has been made by the parties, if the judge considers it appropriate. It is vital that judges understand how to ensure procedural fairness when proposing to make an IW order. Equally, judges need to understand their obligations if they wish to extend the order sought by the parties to cover additional matters.¹⁶⁶
254. Judges also need to consider what evidence should be identified where they are considering making an IW order of their own motion. That is a difficult issue since there is no obvious way of the judge assessing the previous history of litigation in circumstances where the defendant may not know the entire picture. To address these issues, a draft practice direction has been included in the recommendations below.
255. Third, because this is a procedural remedy that is entirely judge made and is not reflected in practice directions, rules of court or legislation, there is no clear procedural path for making such an order. A range of issues arise including:
- The procedural protections to be applied when a person is proposed to be the subject of the IW order, particularly, as identified above, if the judge is the person who has raised the making of the order;
 - The test to be applied when deciding whether to make an IW order, including whether persistent litigation is required, whether the applicant for the IW order needs to have been the defendant in previous proceedings, and the necessary proofs in respect of same;
 - The scope of the order that may be made, i.e. whether the order can apply to the existing proceedings (for example to restrict a re-opening of the IW judgment), proceedings of the same type, proceedings raising the same issues, proceedings against particular parties, or proceedings generally (i.e. the “gradation of restrictions”);
 - Whether the order can only be imposed at the end of proceedings, or can it be imposed during the course of proceedings to prevent or limit further steps being taken in those proceedings (as is the case in other jurisdictions);

¹⁶⁶ *Sfar v. Minister for Agriculture* [2020] IECA 206; *Houston v. Doyle* [2020] IECA 289 and *Irish Aviation Authority v. Monks* [2019] IECA 34.

- The matters to be considered when deciding the appropriate duration of the IW order;
- The test to be applied by a judge where a person seeks permission to issue new proceedings;
- The entitlement, if any, to seek variations/modifications to the IW order due to changed circumstances.

256. This leads to a potential lack of fairness for persons who may be subject to an IW order as the law is neither readily accessible to them, nor clear in its ambit. Even the language describing the order – “*an Isaac Wunder order*” – has no relationship to the effect of the order and is opaque and inaccessible.
257. This lack of transparency also gives rise to difficulties for judges making such an order as they may fail to address the totality of the matters they should consider when making an IW order. Indeed, as identified above, in both *Sfar* and in *Heuston*, the decision of the High Court making such orders was overturned on the basis that the judges in question had not put in place adequate procedural safeguards. The existence of greater clarity would minimise such risks.
258. Fourth, there is no public register of the IW orders made to date and/or register available to judges/registrars and offices where proceedings are issued. The result is that proceedings can be issued in breach of existing IW orders without obtaining leave entirely unbeknownst to the relevant issuing office. Anecdotal evidence suggests that litigants who have IW orders against them have nonetheless managed to issue proceedings.¹⁶⁷ Where the defendant is already aware of the IW order, they can bring it to the attention of the judge but where litigation is issued against a new defendant in respect of the same subject matter, they may not be aware of the existence of any previous order. In either case a defendant who ought to have been protected from the expense of engaging in further litigation (absent the consent of the court) and the court itself is required to engage with new litigation, thereby frustrating the order of the court.
259. In a very small number of cases, litigants with IW orders may use a different version of their name in order to avoid having to seek permission from the President of the relevant Court to issue proceedings. To avoid this, we recommend that a unique identifier be provided for all litigants. Equally, we recommend that the Courts Service establish a system that automatically ensures that litigants the subject of a LRO are identified by the relevant court office when attempting to issue proceedings. At present, it is not necessarily clear to Courts Service staff in the Central Office whether or not an IW order is in existence, and anecdotal evidence from judges suggests that each year a small number of litigants the subject of an IW order manage to issue proceedings without the permission of the President.
260. Fifth, unlike the position in other jurisdictions, there is no role for the Attorney General to bring applications.

¹⁶⁷ See the comments of Twomey J. in *Sheehan v. Talos Capital Ltd.* [2018] IEHC 361, where he observed that one of the flaws with IW orders is that there is currently no public register of litigants (or McKenzie friends) against whom such court orders have been made (paragraph 167).

261. Finally, the existing law does not address how a court should address repetitive litigation in the context of an application for leave for judicial review.
262. These concerns form the basis for the recommendations below. However, careful thought needs to be given as to how the various steps are most appropriately achieved. In short, where the courts have already identified that steps may be taken pursuant to its inherent jurisdiction, it is suggested that those steps should be identified in a practice direction, as this will improve accessibility for the public. To this end, we have identified a draft practice direction that reflects existing law. However, where measures recommended go beyond existing case law, legislation may be required to achieve it. As identified above, this has been the approach taken in a number of jurisdictions, such as Australia, Canada and New Zealand.
263. Alternatively, rules of court could be used to provide for permission orders as they have in England and Wales (albeit in conjunction with an [extensive practice direction](#)).¹⁶⁸ The relevant section of the CPR is set out below:

“Part 3 – The Court’s Case Management Powers

Orders restraining civil proceedings

3.11

- (1) *A “civil proceedings order” and an “all proceedings order” under section 42(1A) of the Senior Courts Act 1981 shall include provision for applying to begin, continue or make any application in any civil proceedings.*
- (2) *A practice direction may set out –*
- (a) *the circumstances in which the court has the power to make a civil restraint order against a party to proceedings;*
 - (b) *the procedure where a party applies for a civil restraint order against another party; and*
 - (c) *the consequences of the court making a civil restraint order.”*

264. Any such rules of court in this jurisdiction would likely be based on s.36 of the Courts of Justice Act 1924 (as amended) insofar as the High Court is concerned, which permit rules to be made in respect of pleading, practice and procedure generally. It may also be possible to make rules of court in respect of the District and Circuit Court. Alternatively, the Presidents could adopt Practice Directions pending the making of rules of court.
265. However, if an extensive new regime is to be put in place in respect of restriction orders, it may be preferable to do so by way of primary legislation, as has been done in other jurisdictions. Accordingly, where our recommendations go significantly beyond the scope of existing case law, we recommend making provision by way of primary legislation.

RECOMMENDATIONS

¹⁶⁸ ‘Justice on GOV.UK’, <https://www.justice.gov.uk/courts/procedure-rules/civil/rules> last accessed 21 October 2024.

R. 33. Recommendation: Primary legislation should be urgently introduced to give explicit power to District and Circuit Courts to make litigation restriction orders (“LRO’s”) given the uncertainty over their powers in this respect.

R. 34. Recommendation: Primary legislation should be introduced to provide for LRO’s in all jurisdictions in similar terms to existing legislation in England and Wales, Australia, Canada and New Zealand and should at a minimum cover the topics identified in Appendix 2 to these Recommendations.

Body responsible: Government

R. 35. Recommendation: A Practice Direction should be adopted in the terms set out at Appendix 3 or similar for the High Court and Court of Appeal pending consideration by the Rules Committee as to whether rules of court should be adopted in respect of LRO’s.

Body responsible: Presidents of all jurisdictions/Rules Committees

R. 36. Recommendation: Training should be provided to all judges on proposing IW orders/LRO’s of its own motion, where no application for same has been made by the parties.

Body responsible: Judicial Studies Committee

R. 37. Recommendation: The Courts Service to provide IT system which can generate a record of all other proceedings brought by a litigant (available at present through the High Court Search) and copies of all documents identified on the High Court Search including orders (not available at present).

Body responsible: Courts Service

R. 38. Recommendation: The Courts Service to obtain legal advice on establishing public register of litigants the subject of IW orders/LRO’s and to consider the feasibility of same.

R. 39. Recommendation: Pending the implementation of above recommendation, the Courts Service to establish a register of persons the subject of IW/LRO to be readily accessible to judges and registrars.

- R. 40. Recommendation: The Courts Service to establish a system that automatically ensures litigant the subject of an IW/LRO is identified by the relevant court office when attempt made to issue proceedings; establishes a system that will identify whether the proceedings sought to be issued are covered by the LRO in being; if so, prevents proceedings caught by the IW/LRO being issued; and requires the person to issue a motion seeking permission from the President to issue the proceedings.

Body responsible: Courts Service

- R. 41. Recommendation: The Courts Service to establish an appropriate data collection system to ensure there is adequate data on making, variation and lifting of IW orders/LROs to permit review of system on ongoing basis.

Body responsible: Courts Service

Chapter 7 – LIPs in the Court of Appeal

Introduction

266. Every party to proceedings in the High Court has, subject to some statutory exceptions, an unfettered constitutional right of appeal to the Court of Appeal. Unlike in the Supreme Court, there are in general no threshold requirements to be met in order to pursue an appeal before the Court of Appeal. In England and Wales, appeals to the Court of Appeal can only be brought with the leave of that court and this has the effect of greatly reducing the incidence of LIP appeals.

LIPs in the Court of Appeal

267. The Courts Service Annual Report for 2022¹⁶⁹ suggests that in that year, 27% of appeals to the Court of Appeal were brought by LIPs, up from 16% in 2021.¹⁷⁰ Although up to date figures are not available as yet, the anecdotal evidence suggests that currently, LIP appeals are running at somewhere in the order of 40% of all appeals. The experience has been that the overwhelming majority of these appeals are unsuccessful. However, given their sheer volume, a great deal of the court's time is occupied with such appeals. As with the High Court, a significant number of these cases are brought by serial appellants.

268. Many of the LIPs bringing appeals are 'assisted' by outside unqualified advisors. Sometimes such persons appear in court with the litigant as a McKenzie friend and as such, are subject to Practice Direction CA07 which mirrors that of the High Court. It is an ongoing concern, given the emphasis in many judgments of the Superior Courts, that unqualified advisors frequently encourage the bringing of hopeless appeals with inevitable detrimental consequences for the parties they purport to assist. Equally damaging are the consequences for respondents who will normally have to incur significant costs in defending appeals where such costs are likely irrecoverable.

269. The consequences for the administration of justice are also serious with so much of the court's time being taken up with ill-advised appeals. It is clear that in many such cases, court documents including notices of appeal and written legal submissions are drafted by unqualified advisors for reward despite this being a criminal offence under s. 58 of the Solicitor's Act, 1954, as noted in the relevant Practice Direction.

270. Unlike the High Court, from the moment a notice of appeal is served, the matter comes into a case management stream and a return date is given for a directions hearing before a single judge of the Court of Appeal. Until recently, the purpose of a directions hearing was usually confined to fixing a trial date and times for the lodgment of submissions and Books of Appeal. On occasion it was possible to filter out appeals brought where a court had no

169 Courts.ie, Courts Service Annual Report 2022 <https://www.courts.ie/news/courts-service-annual-report-2022-published> last accessed 21 October 2024.

170 See p.104.

jurisdiction to entertain them, for example in a Circuit appeal to the High Court which by law cannot be appealed further.

271. While it might be argued that such an appeal ought not be accepted by the Court of Appeal Office, it can be difficult for hard - pressed office staff to deal with assertive and sometimes aggressive LIPs who are insistent on getting a listing for their appeal. In practice, it is easier for the Directions Judge to deal with such matters. In addition to the fixing of times for taking steps in the appeal process, the Directions Judge is frequently called upon to deal with interlocutory applications, most commonly in the form of applications for a stay on the order of the High Court or to adduce new evidence. LIPs not infrequently bring the latter type of applications usually premised on a misunderstanding of the function of the Court of Appeal, which is in the normal way to correct error in the judgment of the High Court rather than afford a *de novo* hearing on the merits.
272. Consequently, on occasion LIPs seek to introduce additional evidence on the basis that their case failed in the High Court because they overlooked it. In this regard, it is pertinent to observe that while the Courts Service website contains guidelines for LIPs representing themselves before the High Court, there is no equivalent guidance in respect of the Court of Appeal and we recommend that this should be rectified.
273. Another matter that sometimes arises at the directions stage is applications by LIP to take up a transcript of the digital audio recording in the High Court. It is normally a pre-condition to any such application that the applicant must undertake to be responsible for the costs of taking up the transcript, which can be significant in themselves. However, the practice has evolved that where the High Court has given an *ex tempore* oral judgment, that a transcript of the judgment will be taken up for the benefit of the appellant without the necessity for payment.
274. Some LIP appellants seek to take up the entire DAR transcript of the High Court hearing, even where a written judgment has been delivered, but unless it is clearly established that this is necessary for the purposes of conducting the appeal, such applications will frequently be refused - see for example *Gaultier v. Revenue Commissioners* [2020] IECA 88.
275. As suggested in earlier chapters, it would be helpful if LIPs had unique identifiers that would assist in determining, for example, litigants who are subject to IW orders. Currently there is no direct liaison between the Central Office and the Office of the Court of Appeal in this respect and we recommend that this should be implemented.
276. Until recently, the Directions Judge was limited to dealing with applications of the kind already described so that even appeals which were bound to fail or were otherwise an abuse of process had to go before a panel of three judges. The position has now been ameliorated to a degree by s. 111 of the [Courts and Civil Law \(Miscellaneous Provisions\) Act, 2023](#)¹⁷¹ which provides for different categories of case in which a judge sitting alone may make final orders. These include:

171 <https://www.irishstatutebook.ie/eli/2023/act/18/enacted/en/print.html> accessed 21 October 2024.

- applications to dismiss an appeal on the basis that it is an abuse of process, frivolous or vexatious or without substance or foundation;
 - an appeal against an order for costs;
 - an appeal made against an order made pursuant to the slip rule;
 - an appeal against an order made in respect of matters connected with the case management of proceedings.
277. In addition, the new section provides for the Rules Committee to prescribe interlocutory orders that may be dealt with by a judge sitting alone and these include appeals relating to matters such as discovery, particulars, interrogatories, interlocutory injunctions, security for costs and the amendment of pleadings together with any further interlocutory matters which the Rules Committee considers appropriate. These powers can be utilised by the Directions Judge in an appropriate case where time permits but otherwise, can be assigned to a single judge of the Court of Appeal for determination. It is to be hoped that this will give rise to the early filtering out of appeals falling within these categories brought by LIPs in particular.
278. When it comes to enforcing compliance with directions, the Directions Judge can and frequently does make “unless” orders providing for the dismissal of an appeal in the event that the relevant direction, usually concerning the delivery of submissions or books of appeal, is not complied with within a certain period of time. One of the most difficult areas for LIPs is the preparation of books of appeal. While Court of Appeal Practice Direction CA06 sets out in clear terms what is required to be included in books of appeal, LIP frequently struggle with compiling these books, and books of authorities, which can be quite an onerous task even for practicing lawyers. LIPs will often include material in the books of appeal that is inadmissible or was not before the High Court.
279. The Directions Judge will often invite respondents’ solicitors to undertake the duty to prepare the books of appeal which most willingly do. The majority of LIPs will agree to this as it relieves them of a difficult and time-consuming task but having said that, some LIPs are naturally so suspicious of lawyers, and in particular respondents’ lawyers, that they will refuse to avail of this facility. Experience has, however, shown that where the LIP prepares their own books of appeal, these can be in a high degree of disarray and it is frequently a very time consuming task for the panel hearing the appeal to sift through and attempt to order the relevant material. It must be said that it is inherently unfair to respondents’ solicitors to have to undertake this task at not insignificant cost, particularly in circumstances where if the LIP is unsuccessful in the appeal, as most are, respondents are often unlikely to recover any costs even where awarded.
280. Once an appeal hearing commences, the presiding judge will determine how long each party will have to make oral submissions, although where parties are represented, this is usually agreed in advance. Where one of the parties is an LIP, the presiding judge will normally take a little time to explain the procedure and emphasise the fact that, unlike the High Court, the members of the panel will have read all the papers, including the written submissions, in advance. The court will also emphasise the importance of adhering to the allotted time and, perhaps surprisingly, once parties know this from the outset, and in particular LIPs, there is rarely a complaint that they were not given enough time.

281. While the court will routinely advise LIPs that there is no necessity to read their submissions out to the court as they will have been considered in advance, many and perhaps even most LIPs will insist on reading them out. In reality this is because the submissions in effect constitute their script or speaking note and absent that, they may not have a great deal to say. The court will encourage LIPs to engage with the submissions of the opposing party but the reality is in many cases, they are simply unable to do so.
282. These are the sort of matters that might usefully be addressed by a dedicated section on the Courts Service website focused on the Court of Appeal.

Disrupted hearings

283. In general, disrupted appeal hearings involving LIPs are an unusual event, but where that occurs, the court can if necessary consider an appeal on the papers lodged where an oral hearing is realistically no longer possible – see, for example, *Burke v. An Adjudication Officer* [2024] IECA 105. The Court of Appeal enjoys the same contempt powers as the High Court, but has rarely had occasion to resort to them. If difficulties arise the Court of Appeal has normally adopted more pragmatic, less coercive solutions. On occasion where an LIP has previously engaged in disruptive behaviour, the LIP has been refused permission to be present in the courtroom and obliged to participate remotely. If the LIP continued to engage in disruptive conduct and refused to accept the rulings of the court, the court has directed the registrar to mute the LIPs microphone and continued to deal with the directions hearing on this basis.
284. In general, given the layout of the Court of Appeal building, the members of the Court of Appeal are not normally exposed to harassment outside of court. While the members of the Court of Appeal are less protected while sitting in the Four Courts Gandon Building, it is usually possible to arrange for appeals which potentially could give rise to disruptive conduct for the Court of Appeal to sit in a courtroom which minimises the risk of disruptive conduct outside of the courtroom. An example of this occurred in the High Court during the contempt hearings involving water protestors which were heard in the Criminal Courts of Justice because of security concerns.

Re-opening a judgment

285. There is a growing tendency by a very small number of LIPs to seek to re-open judgments before the judge that heard the case (usually in the High Court) rather than appealing them to the Court of Appeal. This can result in an inappropriate use of court time where the LIP is, in substance, looking to appeal the result but has failed to use the appeal mechanism. For that reason, the law in this area is briefly reviewed below to emphasise the very narrow jurisdiction of a judge in any court, but particularly courts of first instance, to re-open their judgments.

Jurisdiction to reopen a judgment

286. The legal test to be applied in an application to reopen or revisit a judgment is frequently cited as being set out in the decision of Clarke J. (as he then was) in *Re McInerney Homes Limited* [2011] IEHC 25 where he stated:

*“... in order for the court to exercise its jurisdiction to revisit a question after the delivery of either an oral or written judgment, it is necessary that there be ‘strong reasons’ for so doing.”*¹⁷²

287. Clarke J., in reaching this conclusion, relied on a number of English decisions and quoted a lengthy passage from the decision of the English Court of Appeal in *Paulin v. Paulin* [2010] 1 WLR 1057 as representing the law in Ireland.¹⁷³

288. In *HKR Middle East Architects Engineering LL v. English* [2021] IEHC 376, McDonald J. helpfully summarised the relevant principles cited by Clarke J. in *McInerney* at para. 6 as follows:

“(a) A reversal by a judge of a decision is to be distinguished from an amplification of the reasons given for that decision. Where the reasons are allegedly inadequate, a party should invite the court to consider whether to amplify them before complaining about their inadequacy on appeal. Wilson L.J. stressed that a judge has ‘an untrammelled jurisdiction to amplify’ the reasons for a decision at any time prior to the perfection of the order to be made on foot of a judgment;

(b) The same cannot be said to apply where a party seeks to persuade a court to correct an error in its decision at least where the ‘correction’ would involve a reversal of the decision. [In Re Barrell Enterprises [1973] 1 W.L.R. 19], it was held that, save in ‘most exceptional circumstances’, the successful party ought to be entitled to assume that the judgment given is a valid and effective one.”

289. In the Supreme Court, O’Donnell J. (as he then was) upheld the decision of Clarke J. to revisit his judgment in *McInerney*. Although O’Donnell J. did not express a view on the criteria set out in *Paulin* as summarised above, he applied an “exceptional circumstances” test:

*“It is only in exceptional circumstances where justice requires that course that the Court should reopen proceedings after the delivery of judgment and before the formal order is made.”*¹⁷⁴

290. Similarly, in *SZ (Pakistan) v. Minister for Justice and Law Reform* [2013] IEHC 95, Hogan J. held that *McInerney* is “authority for the proposition that the courts cannot lightly and without grave reason re-open a final judgment”.¹⁷⁵

172 *Re McInerney Homes Limited* [2011] IEHC 25, para. 3.7.

173 *Ibid*, para. 3.6.

174 *Re McInerney Homes Limited* [2011] IESC 31, para. 74.

175 *SZ (Pakistan) v. Minister for Justice and Law Reform* [2013] IEHC 95, para. 41.

291. In reviewing the jurisdiction to revisit a judgment, Simons J. expressed similar thoughts about the importance of upholding the exceptionality of the jurisdiction to revisit a judgment given by a court of first instance:

“A party who is dissatisfied with a written judgment should not normally be entitled to reargue their proceedings before the court of first instance. Were this to be allowed to happen, it would, in effect, insert an additional layer of judicial decision-making, whereby a party would seek to have the judgment revisited by the trial judge, as a prelude to an appeal if unsuccessful. This would add to delay and involve the parties incurring further costs. The proceedings would, in effect, be subject to three hearings: (i) the initial hearing; (ii) the hearing of the application to the court of first instance to reopen its judgment; and (iii) the hearing of the appeal.”¹⁷⁶

292. Simons J. went on to acknowledge that there are limited circumstances in which it may be appropriate to invite a court of first instance to review its own judgment, such as “*where the alleged error falls at either end of a spectrum of significance*”; at one end being a minor error which may be legitimately corrected by way of revision of the judgment, or at the other end being an obvious and more serious error which would inevitably result in a successful appeal and a remittal to the court of first instance for rehearing (such as where parties have failed to bring a crucial precedent to the attention of the judge at the initial hearing).¹⁷⁷

293. In a separate judgment on the matter, Simons J. noted that:

“The exceptional jurisdiction to reopen a written judgment does not exist to allow a party to seek to reargue or to elaborate upon points which were or might have been made at the original hearing.”¹⁷⁸

294. Cregan J. acknowledged the above in dismissing an application to revisit a judgment as, he found, it amounted to “*an impermissible collateral attack*” against a Supreme Court decision and the arguments advanced were therefore “*not only wrong in law and misconceived, they are also an abuse of process.*”¹⁷⁹

Appellate courts

295. In a recent ruling of the Court of Appeal (O’Moore J.), the Court considered an application to revisit its judgment prior to the order being perfected.¹⁸⁰ The Court ultimately found that the applicant had failed to advance any coherent reason to revisit the earlier judgment, no matter what standard is applied.¹⁸¹ The Court referred to *Bailey v. The Garda Commissioner* [2018] IECA 63 wherein Finlay Geoghegan J. found that there is an “*an exceptional jurisdiction*

¹⁷⁶ *G. v. DPP* [2023] IEHC 139, para. 8.

¹⁷⁷ *G. v. DPP* [2023] IEHC 139, para. 9.

¹⁷⁸ *G. v. A Judge of the District Court and Others* [2023] IEHC 386, para. 16.

¹⁷⁹ *Gaultier & Anor v. Reilly & Ors (No. 1)* [2023] IEHC 558, para. 45.

¹⁸⁰ *Moyne v. Todd & Ors* [2024] IECA 172.

¹⁸¹ *Ibid*, para. 25

*to revisit a judgment of [the Court of Appeal] which is otherwise entitled to finality where it is considered necessary to do so to comply with the constitutional imperative to administer justice”.*¹⁸²

296. The possibility of revisiting a judgment of the Supreme Court was first considered by Denham J. (as she then was) in the Supreme Court in *In the matter of Greendale Developments Ltd* (No. 3) [2000] 2 I.R. 514, wherein Denham J. identified what is often referred to as the *Greendale* jurisdiction:

*“The Supreme Court has a jurisdiction to protect constitutional rights and justice. This jurisdiction extends to an inherent duty to protect constitutional justice even in a case where there has been what appears to be a final judgment and order. A very heavy onus rests on a person seeking to have such jurisdiction exercised. It would only be in most exceptional circumstances that the Supreme Court would consider whether a final judgment or order should be rescinded or varied. Such a jurisdiction is dictated by the necessity of justice. A case will only be reopened where, through no fault of the party, he or she has been subject to a breach of constitutional rights.”*¹⁸³

297. As per the decision in *Nash v. Director of Public Prosecutions* [2017] IESC 51, “notwithstanding the apparently all-embracing terms of Art. 34.4.6”¹⁸⁴ this jurisdiction empowers the Supreme Court to revisit one of its judgments which is otherwise entitled to finality.

298. The exceptional nature of the *Greendale* jurisdiction has been addressed by the Supreme Court in other cases, for example *Bula Limited v. Tara Mines Limited* (No. 6) [2000] 4 I.R. 412. Murray J. in the Supreme Court effectively summarised the position following *Greendale* as follows:

*“The judgments of this court in In re Greendale Developments Ltd. (No. 3) [2000] 2 I.R. 514 and Bula Ltd. v. Tara Mines Ltd. (No. 6) [2000] 4 I.R. 412 establish that a final order may be rescinded or varied where a party discharges the burden of establishing that there are exceptional circumstances showing that such a remedy is necessitated by the interests of constitutional justice.”*¹⁸⁵

299. The Supreme Court in *Nash* explained the rationale for characterising the jurisdiction to revisit a judgment as exceptional:

*“First, the revisiting of old ground inevitably adds to the costs incurred by and the stress imposed upon all the parties involved. It also requires the allocation of scarce time and resources which are therefore necessarily denied to litigants who have not yet had their case heard or considered on appeal... More importantly again, such an application in principle runs directly counter to an important value which the law, and it should be added justice, accords to finality”.*¹⁸⁶

182 *Bailey v. The Garda Commissioner* [2018] IECA 63, para. 35

183 *In the matter of Greendale Developments Ltd* (No. 3) [2000] 2 IR 514, 544.

184 *Nash v. Director of Public Prosecutions* [2017] IESC 51, para. 10.

185 *L.P. v. M.P.* [2002] 1 IR 219, 229.

186 *Nash v. Director of Public Prosecutions* (n 14), para. 7.

300. The *Greendale* jurisprudence paved the way for the introduction of Practice Direction SC17 by Clarke C.J. in 2018. The Practice Direction provides the basis for an application to vary or rescind a final judgment or order made by the Supreme Court and sets out the procedure to be followed in such an application.

Practice direction CA14

301. A similar Practice Direction exists in the Court of Appeal, being CA14 relating to applications to vary or rescind a final judgment or order made by the Court of Appeal (“review applications”), or to correct a judgment or order (“correction applications”).
302. The Practice Direction refers to Articles 34.4.3 and 34.5.3 of the Constitution and acknowledges the finality of a decision of the Court of Appeal and the appellate jurisdiction of the Supreme Court from a decision of the Court of Appeal where the decision involves a matter of general public importance and an appeal is necessary in the interests of justice.
303. The Practice Direction then states:
- “(b) The Court of Appeal...following case law of the Supreme Court...has determined that review applications will be considered by it only in the most exceptional circumstances;*
 - (c) Those circumstances are that, through no fault on the applicant’s part, the order or judgment made operates both to deny the applicant justice and clearly to breach the applicant’s constitutional rights (see Greendale);*
 - (d) A party intending to bring a review application (in this practice direction ‘intending applicant’) bears a very heavy onus of establishing that such circumstances exist;*
 - (e) An intending applicant must show cogent and substantive grounds which are objectively sufficient to enable the Court to determine that a hearing of a review application on the merits is justified;*
 - (f) It is desirable, in the interests of finality and certainty, that any review application to the Court be initiated as soon as possible and within the general period of time allowed by the Rules of the Superior Courts for seeking leave to further appeal to the Supreme Court (under RSC Order 58, r.16(1) or shortly thereafter;”¹⁸⁷*
304. The Court of Appeal (O’Moore J.) made reference to this Practice Direction in *Moyne*. Although the Court did not apply the Practice Direction due to a number of circumstances,¹⁸⁸ it was noted that this was not to create a precedent in such an application.¹⁸⁹

187 Practice Direction CA 14, available at <https://www.courts.ie/content/applications-vary-or-rescind-final-judgment-or-order-made-court-appeal-%E2%80%9Creview-applications%E2%80%9D> accessed 21 October 2024.

188 The applicant therein, an LIP, had not addressed the Practice Direction in his submissions to the Court other than to state that it did not apply; the Court did not wish to seek further submissions from the applicant as to do so would further delay the case which had originated in the Circuit Court some nine years previous; it was possible to apply a much lower standard in the case, namely whether the applicant had raised any reason to revisit or review the main judgment.

189 *Moyne v. Todd & Ors* [2024] IECA 172, para. 7

305. In summary, the jurisdiction to revisit a judgment of a court of first instance or an appellate court is to be used only in exceptional circumstances where there are strong reasons for doing so. As noted by Simons J. in *G. v. DPP*, “*the appropriate avenue of redress for a person aggrieved by a judgment is to exercise their right of appeal*”.¹⁹⁰
306. The Working Group considers a Practice Direction should also be adopted by the High Court in relation to any applications to re-open a decision, adapted in light of the fact that parties enjoy an appeal from the High Court to an appellate court.

RECOMMENDATIONS

- R. 42. Recommendation: Information in the form of easy to read guides in respect of bringing an appeal in the Court of Appeal should be made available by the Courts Service in consultation with the judiciary

Body responsible: Courts Service

- R. 43. Recommendation: The Courts Service to establish a system that automatically ensures litigant the subject of an IW/LRO is identified by the relevant court office when attempt made to lodge an appeal where the existing IW order prevents them from issuing proceedings

Body responsible: Courts Service

- R. 44. Recommendation: A Practice Direction should be adopted by the High Court on applications to re-open a judgment.

Body responsible: President of the High Court

¹⁹⁰ Para. 7.

Appendix I

Litigation Restriction Orders in Common Law Jurisdictions

	<i>England and Wales</i>	<i>Victoria</i>	<i>New South Wales</i>	<i>Queensland</i>	<i>New Zealand</i>
<i>Nature of Orders that may be made</i>	‘Civil Restraint Orders’ (“CROs”) can prevent the issuing of civil proceedings and the making of applications in existing proceedings in specified courts without first obtaining the permission of a judge identified in the order.	‘Litigation Restraint Orders’ (“LROs”) can restrain the making of interlocutory applications without leave of the court prohibit the commencement or continuing of proceedings without leave, or prohibit the taking of proceedings generally in Victorian Courts. ‘Acting in Concert Orders’ permit the court to apply an LRO to a party to prevent circumvention of the LRO.	‘Vexatious Proceeding Orders’ (“VPOs”) can stay all or part of proceedings already instituted, prohibit the institution of new proceedings without leave of the court, or take the form of any other order the court deems necessary.	Vexatious Proceeding Orders can stay all or part of extant proceedings, prohibit the institution of proceedings without leave of the court, or take the form of any other order the court considers appropriate.	New Zealand allows for ‘limited effect orders’, ‘extended effect orders’, and ‘general effect orders’. Each of these orders may restrain a party from commencing or continuing civil proceeding relating to a particular matter, without first obtaining leave of the High Court

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APPENDIX I

	<i>England and Wales</i>	<i>Victoria</i>	<i>New South Wales</i>	<i>Queensland</i>	<i>New Zealand</i>
<i>Party who can apply</i>	CRO applications may be made by the parties or the court of its own motion.	A person subject to a vexatious application, the Attorney General, anyone else with a sufficient interest.	A person who has been subject to vexatious proceedings, the appropriate registrar for the court, the Attorney General, the Solicitor General, a person who the court deems has sufficient interest in the matter.	A person who has been subject to vexatious proceeding, the appropriate registrar for the court, the Attorney General, the Solicitor General, a person who the court deems has sufficient interest in the matter.	A party to any proceeding may apply for a limited order or an extended order. Only the Attorney-General may apply for a general order. A judge of the High Court may make a limited order, an extended order, or a general order either on application or on his or her own initiative.

	<i>England and Wales</i>	<i>Victoria</i>	<i>New South Wales</i>	<i>Queensland</i>	<i>New Zealand</i>
<i>When can restriction order be brought?</i>	CROs must be considered on strikeout of case as totally without merit. Limited CROs applications may be made in proceedings where two applications have been deemed totally without merit. Extended and general CROs have no limitation.	Where person's litigation history and pattern of behaviour is deemed vexatious. A limited LRO requires two vexatious interlocutory orders made. Extended and general LROs have no procedural bar. Acting in Concert order requires the institution of proceedings by a third party. A restraint of appeal order requires a number of vexatious appeals.	Application can be made any time before, during, or after the relevant proceedings. Orders may be made where court is satisfied that a person has frequently instituted or conducted vexatious proceedings or has acted in concert with someone (a) the subject of an order or (b) that has frequently instituted or conducted vexatious proceedings.	An application can be made any time before, during, or after the proceeding. Orders may be made where court is satisfied that (a) a person has frequently instituted or conducted vexatious proceedings or (b) have acted in concert with someone subject to a vexatious proceedings order or who satisfies (a).	Once proceedings have been instituted. Depending on which order is required, a judge will be satisfied to make an order if the proceedings were or are totally without merit.

	<i>England and Wales</i>	<i>Victoria</i>	<i>New South Wales</i>	<i>Queensland</i>	<i>New Zealand</i>
<i>What courts can make restriction orders?</i>	CROs may be made by judges of the Court of Appeal, judges of the High Court, and senior judges of a particular county court or district registry. An order by an inferior court can only apply to itself and not to proceedings in courts above it.	Limited and Extended LROs, Appeal Restriction Orders and Acting in Concert Orders can be made by the Supreme Court, the County Court and the Magistrates Court. General LROs may only be made by the Supreme Court.	Either by the Supreme Court of NSW or by the Land and Environment Court of NSW. The Supreme Court can make orders applicable to all courts in NSW, the Land and Environment Court orders only apply to itself.	VPOs are made by the Supreme Court of Queensland.	High Court Judges can make restriction orders. District Court Judges have jurisdiction in relation to certain family law matters.
<i>Legal basis for restriction orders</i>	Part 3.11 of the Civil Procedure Rules and Practice Direction 3C (see Appendix 2 to this document).	Vexatious Proceedings Act 2014 and inherent jurisdiction of the courts.	Vexatious Proceedings Act 2008 and the inherent jurisdiction of the courts.	Vexatious Proceedings Act 2005 and inherent jurisdiction of the courts.	Senior Courts Act 2016 and inherent jurisdiction of the courts.
<i>Revoke or amend order</i>	Limited CROs confined to life of proceeding Extended/ General CROs must not exceed three years. Subjects are entitled to apply to vary or discharge orders.	The subject of an order can apply for variation or revocation of an order, and the court can vary and revoke where it is in the interests of justice to do so.	An authorised court can, on application or of its own motion, vary or set aside the vexatious proceedings order.	An application can be made to the Supreme Court to vary or set aside an order, or it may do so of its own motion.	The party subject to the order may appeal to the Court of Appeal or the Supreme Court.

	<i>England and Wales</i>	<i>Victoria</i>	<i>New South Wales</i>	<i>Queensland</i>	<i>New Zealand</i>
<i>Public register of persons subject to restriction order</i>	Yes.	No.	Yes.	Yes.	No.
<i>Duration of Order</i>	CPOs can be made for a specified time, or indefinitely. Limited CROs are tied to the life of particular proceedings. Extended and General CROs are limited to three years at most but are renewable.	Limited LROs are tied to the length of the proceedings themselves. Extended and General LROs, and Appeal Restriction orders can be made for a specified period or indefinitely.	No limitation.	No limitation – it appears from the legislation that an order will be indefinite if not revoked.	Any order has an effect for a period of up to three years as specified by the judge, but this can be extended to a period not exceeding five years.

	<i>England and Wales</i>	<i>Victoria</i>	<i>New South Wales</i>	<i>Queensland</i>	<i>New Zealand</i>
<i>Breach of Order</i>	Under CRO regime, all further applications and issued proceedings are dismissed.	For a limited LRO, extant applications are stayed and any further applications in contravention of the LRO are of no effect. Extended and general LRO stay any extant proceedings and any further proceedings instituted in contravention are of no effect. An Appeal Restriction Order stays any extant appeal applications, and attempt to appeal is of no effect.	Proceedings issued without leave are automatically stayed for a period of 28 days at the expiry of which deemed dismissed. Within that period the court can make (i) an order confirming the expiry at 28 days, (ii) an order dismissing the proceedings before the 28 day period, (iii) any other order including an order for costs.	Any application or attempt to institute proceedings made without leave is permanently stayed and the court may (i) confirm that permanent stay by order or (ii) make any other order in relation to those stayed proceedings including an order for costs.	A party who any such order is made against may not initiate any further proceedings without leave of the court.

	<i>British Columbia</i>	<i>Manitoba</i>	<i>Nova Scotia</i>	<i>Ontario</i>	<i>Alberta</i>
<i>Nature of Orders that may be made</i>	Order that legal proceedings must not be instituted without leave of the Court.	Order that a person may not institute further proceedings, and that any proceeding already instituted must not continue without leave of a judge.	Order restraining the person from starting a proceeding on the own person's behalf or on behalf of another person, or conducting a proceeding without leave of the court.	Order that no further proceedings may be instituted by the person in any court or that an ongoing proceeding may not be continued except by leave of the Superior Court of Justice.	Order that a person shall not institute further proceedings or institute proceedings on behalf of another person, or that a proceeding instituted by a person may not be continued.
<i>Party who can make the application</i>	Any person.	By the party against whom the allegedly vexatious proceedings have been instituted, or any other person.	By the party against whom the vexatious litigation have been instituted, a clerk of the court, or any other person.	An order will typically be made on the Judge's own initiative.	By the party against whom vexatious proceedings are instituted, a clerk, court, minister, or with the permission of the Court, any other person may make an application.

	<i>British Columbia</i>	<i>Manitoba</i>	<i>Nova Scotia</i>	<i>Ontario</i>	<i>Alberta</i>
<i>When can a restriction order be brought?</i>	At any stage in vexatious proceedings. An order may be made if the Court is satisfied that a person has habitually, perpetually and without reasonable grounds instituted vexatious legal proceedings.	At any stage during proceedings. An order may be made if the court is satisfied that the relevant person has persistently instituted vexatious proceedings or conducted proceedings in a vexatious manner.	At any stage during proceedings. An order may be made where a court is satisfied that a person has habitually, persistently and without reasonable grounds started or conducted a proceeding in a vexatious manner.	At any point during proceedings. An order may be made where a judge is satisfied that a person has persistently and without reasonable grounds instituted vexatious proceedings in any court or conducted a proceeding in any court in a vexatious manner.	An application can be made when a party is instituting or conducting proceedings. The court will make an order if it is satisfied that a person is instituting vexatious proceedings.
<i>What courts can make restriction orders?</i>	An order can be made in the Supreme Court in relation to proceedings in the Supreme Court of Provincial Court.	An order can be made by a judge sitting in court or in chambers of the Court of Appeal or the Court of King's Bench.	An order can be made by the Supreme Court or Court of Appeal.	An order can be made in the Superior Court of Justice (name given to the provincial court in Ontario).	An order can be made in the Court of Appeal, the Court of King's Bench, or the Court of Justice.
<i>Legal basis for restriction orders</i>	The Supreme Court Act, RSBC 1996 and the limited inherent jurisdiction of the courts.	The Courts Modernisation Act (Various Acts Amended) 2019 and the inherent jurisdiction of the courts.	Judicature Act (Amended) 2009 and the limited inherent jurisdiction of the courts.	Courts of Justice Act, RSO 1990 and the inherent jurisdiction of the courts.	Judicature Act 2000 and the inherent jurisdiction of the Courts.

	<i>British Columbia</i>	<i>Manitoba</i>	<i>Nova Scotia</i>	<i>Ontario</i>	<i>Alberta</i>
<i>Revoke or amend order</i>	The party subject to the order must apply for the order to be lifted.	The party subject to the order must apply for the order to be lifted.	The party subject to the order may appeal to the Court of Appeal.	The individual subject to the order must apply to the court for leave to lift the order.	The subject of an order may appeal to the Court of Appeal.
<i>Public register of persons subject to restriction order</i>	No.	No.	No.	No.	No.
<i>Duration of Order</i>	No specified time limit.	No specified time limit.	No time limit is specified.	No time limit is specified.	No specified duration.
<i>Breach of the order</i>	A party against whom a vexatious litigant order is made must not initiate any proceedings without leave from the court.	A party against whom an order is made must not initiate any proceedings without leave from the court.	A party against whom an order is made must not initiate any proceedings without leave from the court.	A party against whom an order is made must not initiate any proceedings without leave from the court.	Applications must be made with leave, and if the applications are filed without leave, the Court will strike out proceedings.

Appendix II

1. Consideration should be given to introducing primary legislation that would:
 - a) Give power to the District and Circuit Courts to make litigation restriction orders (“LRO”)
 - b) Specify the precise circumstances in which a LRO may be made by a court, including:
 - i. Threshold for the making of orders;
 - ii. Threshold for grant of permission for further litigation where order made;
 - iii. Specify nature of hearing required (oral hearing or paper based);
 - iv. Imposition of conditions;
 - v. Lifting or varying orders;
 - vi. Entitlement of the court to make graduated orders i.e. within the proceedings, in respect of related proceedings, in respect of all proceedings;
 - vii. Entitlement of court to specify length of time of order;
 - viii. Entitlement of court to make appeal restriction orders;
 - ix. Entitlement of court to make variation or revocation orders and entitlement to restrict such applications;
 - c) Promote transparency by following measures:
 - i. Requirement for written decision to enhance transparency;
 - ii. Provision for standard wording for order to ensure litigant understands nature of restriction;
 - iii. Where a judge makes a RO/IW order or an order modifying or lifting same, provision should be made requiring that reasons for the decision be identified in the order;
 - iv. Establishment of register of litigants the subject of a LRO;
 - d) Make provision for applications by the Attorney General:
 - i. Conferral of right of application on the Attorney General representing the public interest to seek LROs;
 - ii. Entitlement of Attorney General to seek access to files from previous litigation for the purposes of considering whether to bring a LRO;
 - iii. Entitlement of judges to recommend to AGO that application be brought .
 - e) Make provision for access to information by potential applicants for LROs including:
 - i. Entitlement of defendant to bring an application, whether they were previously the subject of the repetitive litigation brought by the litigant or not;
 - ii. Entitlement of a defendant to seek access to orders/files from previous litigation for the purposes of considering whether to bring a LRO.

Appendix III

DRAFT PRACTICE DIRECTION – 17 September 2024

1. This Practice Direction is intended to apply to all applications made for an order requiring a litigant to seek permission of the High Court prior to issuing proceedings, and to all orders made requiring a litigant to seek permission of the High Court prior to issuing proceedings (frequently described as “Isaac Wunder” orders and hereafter described as “litigation restriction orders/ “LRO”) pursuant to the inherent jurisdiction of the High Court to regulate its own procedures.
2. This Practice Direction will come into operation on [] and is issued in accordance with the general authority of the President of the High Court.
3. Where an application for an LRO is made by a party to proceedings against another party to those proceedings, the application shall be made by way of Notice of Motion and Grounding Affidavit to the person intended to be the subject of the LRO.
4. The relief sought in the Notice of Motion shall specify precisely the nature of the proceedings for which permission is required, and the time period for which the order is sought. The Grounding Affidavit shall set out the grounds upon which the application for relief is sought and exhibit any evidence to be relied upon in this respect.
5. Where a judge hearing an application for an LRO considers of his or her own motion that relief other than that which is sought in the Notice of Motion may be appropriate, he or she must identify the nature of the modified relief proposed to the party the subject of the proposed LRO and the other parties to the proceedings. All parties must be given an opportunity to be heard on the proposed modified relief, including by way of affidavit where the judge considers it appropriate.
6. Where a judge seised of a case considers of his or her own motion that a LRO in respect of a party to those proceedings may be appropriate, he or she must identify to the proposed party, and to the other parties to the proceedings, the nature of the proposed order and the material that the judge considers relevant to the proposed order. The proposed party, and all other parties to the proceedings, must be given an opportunity to be heard on the proposed order, including by way of affidavit where the judge considers it appropriate.
6. Where a person the subject of an LRO seeks liberty to issue proceedings pursuant to the terms of that order, he or she shall do so by way of *ex parte* application to the President of the High Court or such judge as the President may delegate for that purpose.
7. In respect of any such *ex parte* application, the person subject to LRO order, or his or her legal representatives, are required to file a Notice of Motion and Grounding Affidavit and complete a stamped *ex parte* docket to be handed into the Registrar. The Notice of Motion will be given a nominal return date by the Central Office. A copy of the proposed proceedings should be exhibited to the Grounding Affidavit.

