Date 7 July 2015
Publication Solicitors Journal
Type of publication Legal

SOLICITORS JOURNAL

The litigants in person who are playing a game

Nicholas Heaton and **Giles Hutt** advise on whether to assist unrepresented opponents and when to detect foul play

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The question of how to accommodate the ever-growing number of litigants in person (LiPs) within a court system designed for legal professionals has taken on a greater urgency in recent times.

Earlier this year, a parliamentary report was produced on 'Litigants in person: the rise of the self-represented litigant in civil and family cases', citing statistics issued by the Office for National Statistics on the increase of LiPs, especially in the Family Court, and exploring the reasons for that. Whatever the reasons, support is certainly needed for everyone concerned.

To that end, the Law Society, Bar Council, and the Chartered Institute of Legal Executives (CILEx) have just published guidelines for lawyers which attempt to draw together all the relevant rules and general principles in the various codes of conduct, the Civil Procedures Rules (CPR), and the authorities. Helpfully, separate notes are also provided for lawyers to hand to clients and opponents on the implications of a party representing themselves.

Setting out limits

The guidelines are helpful in drawing attention to the limits of what is expected of a legal representative. Some assistance given to an LiP serves the overriding objective of the CPR, in particular by 'ensuring that parties are on an equal footing' (CPR 1.1(2)(a)), and may save the represented party time and money in the long run. For example, reminding LiPs of approaching deadlines and explaining the consequences of missing them can make it more difficult for them to obtain a time extension or escape the relevant sanction if they still fail to comply.

None of this means, however, that there is anything improper in 'knowing and using law and procedure effectively against your opponent', whether an LiP or not, and lawyers are generally 'under no obligation to help an LiP to run their case or to take any action on an LiP's behalf'. Indeed, doing so might mean 'failing in your duties to your own client'.

Clients should be kept informed of where their interests are being overridden by a duty to the court, and therefore the LiP (outcome 5.5 in the Solicitors Regulation Authority handbook), and sometimes the court should be told, frankly, to reconsider requests that are too accommodating to an unrepresented opponent, or at least make a suitable interim costs order.

It should be possible to deal with some LiPs more robustly than is currently the case

Tactical reasons

One question the guidelines do not address, which is of particular concern to lawyers conducting commercial litigation, is how to deal with a party who has dismissed their legal representatives for tactical reasons. There are a number of reasons why a party might do this. For example, it is difficult to argue that one lacks funds, and providing security for the defendant's costs might stifle your claim, if you are represented by a silk every day in court.

On a more basic level, a wealthy individual might find it expedient to become an LiP if they do not speak English well and (supposedly) have no knowledge of UK legal culture, let alone court procedure. The fact that everything said or written has to be translated into or out of a foreign language not only slows everything down and adds to the opponent's costs, but also provides an invaluable ongoing excuse for failure to comply with rules and orders and for general inefficiency.

These LiPs may be far less common than the vulnerable tenant or unrepresented mother trying to retain custody of her children, but in a different way they also undermine the effective operation of the court system, and it should be possible to deal with them more robustly than is currently the case. Unfortunately, the guidance does not encourage lawyers or judges to take a tougher line or suggest how that might be done. **SJ**

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