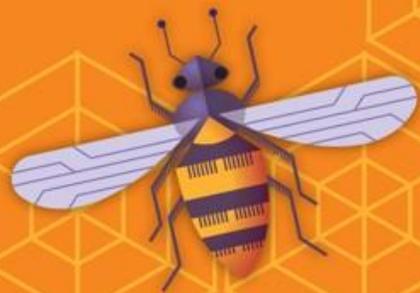




# ALARM

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## ALARM CONFERENCE 2019

#alarmrisk2019



# Litigants in Person: Tips, Tricks and Compliance

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# Litigants in Person (LiP)

Gov.uk:

*“You have the right to speak for yourself in Court without a solicitor or other legal professional.*

*You may choose to do this because:*

- *You think it is better to talk directly to the Judge, Jury or Magistrate yourself*
- *You cannot afford to pay legal fees”*

There has been an increase in LiP largely caused by:-

- Lack of legal aid
- Rise in the small claims limit [up to £10,000.00 for non-PI) and proposed increase to £5,000.00 for RTA and £2,000.00 for no RTA, from April 2020
- Changes in funding (lack of success fees)
- FD issues, prior to or following discontinuance
- There has been (likely to continue) a significant increase in LiP



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## LiP: Issues

- LiP - potential lack of familiarity with process and proceedings
- The Court is required to strike a fair balance between parties
- Lack of understanding in relation to denial/defence (e.g. s58 Highways Act defence)

# Dealing with LiP (1)

**Guidance is provided to lawyers by the Law Society, including:**

- Not taking an unfair advantage
- Not bullying/being aggressive
- Not misleading
- Note: solicitors' duty to the Court and the importance of the administration of justice

**However:**

- There is no obligation to help the LiP run their case or advise



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## Dealing with LiP (2)

### Communication:

- Keep it professional
- Within boundaries, be cooperative
- Remember, correspondence (save for WP) can be seen by the Court
- In initial contact, recommend the LiP seeks independent legal advice and issue reminders
- Be clear: avoid jargon



We play nicely

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## Dealing with LiP (3)

### Relevant Issues:

- A LiP is less likely to be familiar with the law and procedures
- Make sure correspondence is fair and clear
- Consider content and nature of any telephone conversations (should it be in the presence of a colleague to confirm what was said – to avoid being misquoted at a later stage?)
- Without prejudice negotiations? It might be necessary to try and settle. Consider whether you can speak with the LiP on a WP basis. This should be a genuine attempt to settle

## Case Law (1)

- Sang Kook Suh v Mace (UK) Limited [2016] EWCA Civ 4
  - A landlord and tenant dispute in relation to a lease.
  - The tenant was the LiP
  - LiP had a meeting with solicitor and made various disclosure/admissions
  - The solicitor stated that the purposes of the meeting was not to settle and therefore, Claimant could not say the content of meeting was WP
  - Court of Appeal took a broad brush approach to what constituted a WP meeting. Considered that it was to seek solution to litigation and thus, it was WP
  - As such - content of the meeting should be kept silent from the Court

### Issues

- Evidencing what has been said during a meeting/conversation

## Case Law (2) - Compliance/Procedure

- Barton v Wright Hassall LLP [2018] UKSC 12
- Should LiP be granted special status? Related to Claimant's failure to comply with Court rules relating to service of proceedings upon the Defendant's solicitors
- LiP attempted to serve Claim Form by email without D's sols' confirmation that they would accept service. Claimant failed to serve within the prescribed deadline and was struck out
- *"lack of representation that often justifies making allowances in making case management decisions and in conducting Hearings. But it will not usually justify applying to [LiP] a lower standard of compliance with rules or Orders of the Court... the rules do not in any relevant respect distinguish between represented and unrepresented parties"*
- It is reasonable to expect LiPs to get to know procedure of what they are doing and they do not have a lower standard of compliance with the rules/Orders
- Availability of CPR/guidance

## Case Law (3) - Compliance/Procedure (cont'd)

- Reynard v Fox [2018] EWHC 443
  - The Claimant (LiP) bought a claim under the incorrect section of the Insolvency Act 1986
  - The LiP was described as being “*an intelligent and articulate*” individual. The claim was struck out
  - “*You cannot successfully claim that an apple is an orange on the grounds that you do not know the difference because you are a litigant in person. Defendants also have rights, including the right not to be made liable for causes of action that do not lie against them*”
  - Thus, the Courts have again not allowed a LiP to continue in a mis-pleaded case, due to lack of legal representation



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## Pre-action Protocol

Note section 1.7:

*“If a party to a claim does not have a legal representative they should still, in so far as reasonably possible fully comply with this protocol. Any reference to a Claimant in this protocol will also mean the Claimant’s legal representative”*

## The Wheat from the Chaff

- Many LiPs will present legitimate claims but struggle to obtain funding
- **However**, some might be time wasters and not prepared to listen to reason

## Vexatious Litigant

- A litigant who persistently takes legal action without any merit (list on gov.uk showing vexatious litigants who are forbidden from commencing proceedings!)

## Strike out

- Pursuant to CPR 3.4 can apply to strike out the claim, if there are no reasonable grounds for bringing the claim
- The Claimant has to:
  1. Set out the facts of the case;
  2. Set out a legal recognisable claim;
  3. Specify a remedy

## Case Study 1: Vexatious Litigant (JK)

- Pre-litigation correspondence
- Proceedings: £200k
- First glance – what are we missing?
- Action?
- Result

## Case Study 2: The “straight bat” approach (SC)

### Tactics:

- Despite of the lack of particularity with LiPs case, early decision making to press ahead to a SCT hearing

### NB:

- Despite the limited value, note potential adverse publicity. An important case to succeed with (see headlines in local paper!).
- Tactics were to allow the Claimant his “day in Court” but prepare the case well to ensure maximum prospect of success

## Case Study 3: Fraud (JK)

- Ongoing case against LA, union led. EL claim for occupational asthma, up to £25k.
- Directions: FT, medical + occupational hygienist evidence = £££
- Over-embellishing a Schedule of Loss – Part 18 Request for details
- Trial?
- Upon the LiP filing a Notice of Discontinuance, further information available re losses
- QOCS exception for FD – apply to have FD issues heard, despite discontinuance
- Preparation for FD hearing with LiP
- To be continued.....

## Close, Questions and Thanks

- Any questions?

## Close

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