

CEPLER 2014 Essay Competition

Runner-up Entries

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CEPLER Working Paper Series

Paper 06/2014

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CEPLER 2014 Essay Competition

Runner-up

In an age of austerity, access to justice is a luxury

By Salmaan Hassanally, Birkbeck, University of London

Introduction

On 30 July 1949, Legal Aid was born - to the delight of its proud parents, members of the Labour party. The conception itself took place at the time of the Rushcliffe Proposals in May 1945, and the long-awaited birth was widely rejoiced. For the first time in the history of the English Legal System, the ordinary was able to engage the aristocracy on almost equal termsⁱ.

Legal Aid's elder brother, born of the same Labour party parents, was called National Health Service. Together, the two battled to ensure access to justice and healthcare to those who needed it most.

2012 was the year in which 'Legal Aid, Sentencing and Punishment of Offenders Act', the legal equivalent of cancer, was first detected. Now, with the year 2015 on the horizon, having recently turned 65, Legal Aid's prognosis looks far from favourable.

This essay begins by deconstructing each of the terms used in the title and examining the relevant issues at hand, before turning to consider whether access to justice may be considered a luxury.

Age of Austerity

The scarcity of resources is inextricably inherent in the world in which we inhabit. Nothing is limitless - especially money. It is therefore clear that expenditure on one venture necessarily leaves less in the pockets to spend on other services. This is just as true in times of austerity as it is in times of abundance. It is, however, important to note that the "age of austerity" that has descended upon us is entirely artificial. Money, whilst not limitless, can always be found, or printed, if the cause is considered worthy enoughⁱⁱ. 'Age of austerity' is nothing more than a euphemistic way of stating that those in power no longer consider the same causes meritorious and wish spend less than they have historically done. The remit of this essay does not permit a critique of the underlying economic policy - suffice it to say however, that there are those who believe it to be fatally flawedⁱⁱⁱ.

What can be said, is that government cuts by definition discriminate against the poor, with 36% of the cuts falling on the poorest 20% of the population^{iv}. It is they who rely on the provision of such public services as state education and healthcare. It is they who were hit the hardest with the recent

rise in university fees. Unsurprisingly, then, it will once again be the poor who must bear the brunt of any reduction in, or removal of, access to justice.

Just as there are some human rights which are non-derogable under any circumstances, so too are there some absolute principles which should not be comprised whatever the financial forecast. For example, it would be unconscionable for the government to impose a blanket ban on putting out fires on Saturday on the grounds of budgetary constraints. Access to justice is one such principle. That impecuniosity alone is not sufficient to warrant large-scale deprivation of justice should come as a shock to none.

Access to Justice

“It would seem to be an obvious implication of the principle that everyone is bound by and entitled to the protection of the law that people should be able ... to go to court to have their ... rights and claims determined. An unenforceable right or claim is a thing of little value to anyone”^v. If there exists a primary right, without a corresponding secondary right to access to justice through which to uphold the primary right, it is questionable whether the primary right does anything more than pay lip service to the notion of justice^{vi}.

Access to justice encompasses a wide range of themes, some of which are incorporated into Article 6.3 of the ECHR^{vii}. In particular, Article 6.3(c) provides that “everyone charged with a criminal offence has the ... [right] if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”. This positive obligation on the state is fulfilled by legal aid, which funds legal advice and proceedings for those unable to afford it.

When it comes to access to justice, children are also a vulnerable group. Almost a quarter of young offenders have learning difficulties^{viii}. As a result, they may have trouble ascertaining exactly what is being asked of them in the courtroom, and may attempt to simply appease the questioner. Children with learning difficulties are an often overlooked demographic, whose ability to access justice in a meaningful manner is severely undermined by the lack of acknowledgement of the issue and assistance provided^{ix}.

Over time, the scope of legal aid and those eligible to use it has diminished greatly. More recently, there have been proposals to reform judicial review, the process by which citizens may hold the state to account^x. With the deficiencies in our system becoming increasingly apparent, it may be argued there is little left to cut.

Luxury?

The first question we must address is: luxurious in whose eyes? Certainly, through the eyes of those who depend on it in order that they may be vindicated, access to justice is a necessity - as essential as sustenance and shelter. As highlighted above, it is also a necessary obligation under Article 6 of the ECHR.

Many of the readers of this essay are likely to be fortunate: they will live their entire lives without ever requiring recourse to legal aid funds. They may even navigate through life without ever visiting a courtroom. It is this that makes access to justice seem less pertinent than it actually is. Why should the provision of healthcare be deemed more socially utilitarian and a better use of public money than the facilitation of a court system which is both just and accessible? Although legal aid and the national health service are two limbs of the same welfare state, they operate in very different ways. Curing a patient of cancer is of no avail to another patient suffering from cancer, for cancer cannot be cured vicariously. In stark contrast, in the legal arena, resolving a case regarding discrimination in the workplace sets a precedent for all those who may be suffering in a similar manner.

It is because of the few individuals who do fight for their rights, that these rights are then extended and bestowed upon the rest of us. The vindication of the rights of the few has evolved into a body of law that has come to protect all members of society. Without legal aid, cases such as the murder of Stephen Lawrence, which prompted the Macpherson inquiry and subsequent reforms in the police force, may never have taken off^{xi}.

Cuts to legal aid have already seen the closure of a foremost human rights chamber^{xii}, Tooks Chambers, involved with the investigation of the Hillsborough tragedy and clearing the names of the Birmingham Six and Guildford Four.

Conclusion

Lady Justice is traditionally depicted wearing a blindfold: she is blind not only to those who stand before her, but also to the financial state of affairs around her. Lord Atkins said of law that it “speak[s] the same language in war as in peace”^{xiii}. It is just as imperative today that the justice system remains independent of the changing whims of the executive. This should be clear to all - even those fortunate to have not witnessed the ordeal of litigation.

The idea that we ought to regard as a luxury the already watered-down rights of the underprivileged and disadvantaged - and furthermore, to divest them of these rights - is an affront to the notion of equality. All the more so in an age of austerity, which disproportionately affects the poor. Access to justice is so fundamental to the rule of law that maintaining it greatly surpasses as a priority the reduction of our levels of national debt.

In his now much celebrated speech^{xiv}, Lord Hoffmann warned of the dangers of allowing the government to pass legislation under the guise of protecting us from terrorism. It is with equal caution, that we must approach any measure ushered in to boost the economy, but which actually serves to decrease access to justice for the most vulnerable in society. We must, at all times, consider what more can be done to achieve a more equitable society and should be wary of any who attempt to persuade us otherwise.

Access to justice is “one of the core judicial values that legitimises any credible judicial system”^{xv}: a luxury, it is not.

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- ⁱ Lady Hale, *Equal Access to Justice in the Big Society* (Sir Henry Hodge Memorial Lecture 2011), 27 Jun 2011
- ⁱⁱ For example, the widespread bailout of banks in 2008, or funding the Olympic Games in 2012.
- ⁱⁱⁱ Will Hutton, 'Osborne wants to take us back to 1948. Time to look forward instead', *The Observer*, 7 January 2014
- ^{iv} Simon Duffy, 'Counting the Cuts: What the Government Doesn't Want the Public to Know', Centre for Welfare Reform, p14
- ^v Lord Bingham, *The Rule of Law* (Penguin 2011), page 85
- ^{vi} "There is no point in enacting endless conventions and covenants promoting and protecting these rights if the means of enforcement and redress are denied to the ordinary citizen because it cannot be afforded". Michael Mansfield, *Closing the Justice Gap*, *Solicitors Journal*, page 8
- ^{vii} *Convention for the Protection of Human Rights and Fundamental Freedoms*
- ^{viii} Bromley Briefings Factfile, Prison Reform Trust, June 2011, page 42
- ^{ix} *Not Making Enough Difference: A Joint Inspection of Youth Offending Court Work and Reports*, HM Crown Prosecution Service Inspectorate, 31 March 2011
- ^x The implications for access to justice of the Government's proposals to reform judicial review, Joint Committee on Human Rights, HL Paper 174/ HC 868
- ^{xi} Hugh Muir quoting Imran Khan, Lawrence family lawyer Imran Khan: 'We see what the state is capable of', *The Guardian*, 25 March 2014
- ^{xii} Tooks Chambers dissolved on Friday 27th December 2013.
- ^{xiii} *Liversidge v Anderson* [1942] AC 206
- ^{xiv} *A v Secretary of State for the Home Department* [2004] UKHL 56; [2005] 2 AC 68
- ^{xv} Peter Jamadar, *Access to Justice, Pathway to Peace*, CJEI report, Winter 2010

CEPLER 2014 Essay Competition

Runner-up

In an age of austerity, access to justice is a luxury

by Amelia Skelding, University of Durham

Austerity is the difficult economic situation created by government measures which attempt to reduce public expenditure. During austere periods, SHOULD access to justice become an inessential but desirable item which is difficult to obtain? No. Access to justice is a right. It is an absolute necessity in a free and civilised society. However, in reality, when considering whether it DOES become an impossible indulgence, the answer is unfortunately: yes. Justice is about fairness and reasonableness. There is nothing fair or just about making this principle, which is central to our legal practice, an inaccessible luxury.

Access to justice is an integral part of the British justice system. Lack of access to justice undermines both democratic governance and poverty reduction. Being poor and marginalised deprives people of choices, opportunities, and a voice in decision-making. If access to justice becomes unattainable, it limits the effectiveness of poverty reduction and democratic governance programmes by restricting participation, transparency and accountability.¹

Many different types of institutions are involved in creating a sustainable environment which ensures equal access to justice. Informal and traditional mechanisms of justice are often more accessible to poor and disadvantaged people. Although these may have the potential to provide speedy, affordable and meaningful remedies, they are not always effective and do not necessarily result in justice. Traditional systems need to evolve in order to fully respect international human rights standards, such as gender equality, non-discrimination for reasons of age or social status, respect for life and due process guarantees for criminal defendants.²

Legal aid, which is an essential part of access to justice, was first introduced in the Legal Aid and Advice Act 1949; as a principal pillar of the welfare state. Legal aid assists people otherwise unable to afford legal representation and access to the court system. It plays a key role in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. Legal aid is governed by the Access to Justice Act 1999 and supplementary legislation, most recently the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. LASPO significantly reduced the legal aid budget and encouraged the use of alternative dispute resolution procedures, such as

¹ UN Practice Note 2004, *Access to Justice*, accessed 11 August 2014.

<<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/ACCESSTOJUSTICEUNDPRACTICENOTE.pdf>

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² *Ibid*, pages 3-4.

mediation, in an attempt to lessen costs. However, the government's austerity drive may have been counter-productive.³

People are always going to need access to justice. Where legal aid has been removed, individuals have increasingly become self-represented; the adverse impact upon courts' administration and efficiency has therefore been considerable. LASPO has ensured that individuals without legal aid funding face an uneven playing field, as untrained litigants in person, unlikely to be familiar with the law or with procedure, attempt to fight their cases against professional lawyers. Wealthy individuals and organisations are able to spend more on fees and expert evidence; consequently, there is a legitimate concern that many cases in the United Kingdom can now be influenced by the parties' bank balances, as well as the relevant facts.

Context needs to be considered when assessing the apparent savings accrued by reducing the legal aid budget as it often leads to increased costs in another part of the court system; for example, cases take longer. It has produced a false economy, where expensive court time is wasted and unsatisfactory verdicts end up being appealed, unnecessarily moving cases to higher courts. The country's most senior judges have blamed cuts in legal aid for a surge in unrepresented claimants, outbreaks of courtroom violence, additional litigation and increased costs.⁴

The chaos in the courtrooms creates serious concerns about access to justice. If it becomes an unfeasible option to the general public, access to justice will develop into a privilege only the rich can afford. There is significant tension between the allocation of resources and the respect for the right of access to justice. Legal aid remains available for mediation, intended to be the saving grace of the budget cuts, but the challenge is getting people to explore it.⁵ Mediation is often more successful, less expensive and less stressful than going to court. Legal aid needs to be used to bring lawyers and mediators together; it is currently driving them apart.

Allowing 'ordinary' people to seek redress in court is vital to ensure universal access to justice. Mainly two groups of the population are affected. Firstly, members of the middle class who lack the resources to afford full legal representation, but do not qualify for publicly-funded legal services. Middle class families tend to face cases involving landlord-tenant, family, and consumer issues.⁶ Secondly, many of those that lose out are the most vulnerable. Threats to the legal aid system affect many areas of criminal and civil law, with family law being one of the worst affected.⁷ The cuts put many criminal barristers in uneconomical situations; this outrage has been voiced in unprecedented walk out protests. Cases that do not cover the barristers' external costs mean low value cases are not taken on. The creation of 'advice deserts', a phrase coined by Chris Grayling, could mean criminal law becomes an unsustainable profession.⁸ It would become a problem for everyone, not

³ Owen Bowcott, 'Judges Criticise Impact of Legal Aid Cuts' *The Guardian* (14th May 2014) <<http://www.theguardian.com/law/2014/may/14/judges-legal-aid-cuts>> accessed 11 August 2014.

⁴ Ibid.

⁵ Emily Dugan, 'Cuts to Legal Aid Force Parents to Defend Themselves in Family Court Cases' *The Independent* (16 July 2014) <<http://www.independent.co.uk/news/uk/politics/cuts-to-legal-aid-force-parents-to-defend-themselves-in-family-court-cases-9608175.html>> accessed 12 August 2014.

⁶ D Meadows, 'Justice as a Luxury? The Inefficacy of Middle Class Pro Se Litigation and Exploring Unbundling as a

Partial Solution', [2013] New York State Legislative Bill Drafting Commission, 6.

⁷ Samira Shackle, 'How Legal Aid Cuts are Harming the Voiceless and Most Vulnerable' *New Statesman* (13 January 2014) <<http://www.newstatesman.com/politics/2014/01/how-legal-aid-cuts-are-harming-voiceless-and-most-vulnerable>> accessed 12 August 2014.

⁸ Ibid.

just lawyers. Cumulatively, the double impact of not being entitled to legal aid and the creation of 'case deserts' would severely restrict access to justice.⁹

It is arguable that the inability to afford counsel harms society as a whole as 'civil justice problems are everybody's problems'.¹⁰ If all citizens do not have the means to litigate their claims, then individuals can take advantage of one another without fear of recourse, resulting in an inequitable and immoral society. Access to legal services both helps to 'prevent erroneous decisions' and 'affirms a respect for human dignity and procedural fairness that are core democratic ideals'.¹¹

The effect on both civil cases (eg. family law and immigration) and criminal cases (eg. assault or theft) is devastating. Some of the groups worst affected – young people in care, the homeless, migrants – are also society's most voiceless. People will be put off taking action against state abuses. At the moment we have justice by geography, but by inhibiting access to justice, it will become justice by wealth.

Furthermore, the government's plan to cut £220m every year until 2018 demonstrates that this is just the beginning of the road for legal aid reform. Many lawyers working in legal aid – both civil and criminal – say that this is a "tipping point" and that the system could soon become almost entirely unsustainable. We have moved from a legal system based on wise and considerate discretion to one based upon a rule book dictated by financial motives. The government will have to answer politically for the destruction of a system which was once admired throughout the world.¹²

In conclusion, while it is unrealistic to expect any legal system to function perfectly, the pursuit of justice is such a strong value in our society that the system must provide as much equity as possible. Reducing access to justice is not the answer to solve budget issues. Many courts are already struggling to meet a proliferation of cases and many tightened budgets. There is no doubt that LASPO has made accessing justice far more difficult for lawyers and members of the public. In an age of austerity, access to justice should not be a luxury but regrettably, this is often the case as cuts constrain the legal aid system and result in access to justice being an unattainable privilege only the wealthy can afford. The full impact of changes will become evident in the future, but already there is less of a level playing field. There is definitely a fight on our hands to preserve access to justice.

⁹ Ibid.

¹⁰ R Sandefur, 'The Fulcrum Point of Equal Access to Justice: Legal and Nonlegal Institutions of Remedy', [2006] Loy LA L Rev, 952.

¹¹ D Rhode, 'Access to Justice: Connecting Principles to Practice', [2004] 17 Geo J Legal Ethics, 376.

¹² (n 6).

CEPLER 2014 Essay Competition

Runner-up

In an age of austerity, access to justice is a luxury by Jill Wong, University of London

Life's luxuries belong only to those who can afford them. The notion of access to justice as a luxury breaches the principles of fairness and impartiality inherent in our common law system. In Lord Bingham's words, "The rule of law plainly requires that legal redress be an affordable commodity."¹

The government accepts that its commitment to the rule of law means the responsibility of providing legal aid and advice to the public falls squarely on its shoulders. As Lord Bingham rightly put it, "Denial of legal protection to the poor litigant who cannot afford to pay is one enemy of the rule of law."

In the case of *R(Daly) v Secretary of State for the Home Department*², Lord Bingham distinguished three distinct rights within the common law right of effective access to justice – the right of access to a court³, the right of access to legal advice and the right to communicate confidentially with a legal adviser.

The essay title is an acknowledgement of the challenges faced by a government on a tight budget in its attempts to balance economic and justice objectives. Austerity measures are a hard-to-swallow bitter pill that the government is compelled to dispense in order to sustain an economic recovery. An ailing economy will provide the state with politically legitimate reasons for cutting legal aid as part of the overall reduction in public services. In Greece, for example, austerity measures have resulted in "nearly a million people with no access to healthcare, leading to soaring infant mortality, HIV infection and suicide"⁴. A financially strapped government will no doubt be forced to dispense with the high ideals of justice in order to deal with the more pertinent social and economic needs of its people.

The deeper issue here hinges on the high litigation costs and cumbersome procedures that characterize the adversarial court process of the common law system. The quip by Sir James Mathew (1830-1908) that "In England, justice is open to all – like the Ritz hotel" comes up whenever cuts to legal aid are proposed. Yet, it is not a problem unique to England. The World Justice Project (WJP) Rule of Law index⁵ shows that many countries around the world fail to live up to expectations when it comes to accessibility and affordability of their civil justice systems. In the 2014 WJP Rule of Law

¹ Lord Bingham, "The Rule of Law" 6th Sir David Williams Lecture, November 2006

² [2001] 2 AC 532

³ The common law has long recognized the right of effective access to court as a fundamental human right. See the case of *Witham* [1998] 2 WLR 849

⁴ *The Independent* Monday 28 July 2014 <http://www.independent.co.uk/news/world/europe/tough-austerity-measures-in-greece-leave-nearly-a-million-people-with-no-access-to-healthcare-leading-to-soaring-infant-mortality-hiv-infection-and-suicide-9142274.html>

⁵ World Justice Project <http://worldjusticeproject.org/what-rule-law>

index, the UK ranks 14th amongst 99 jurisdictions around the world for the quality of its civil and criminal justice systems. Even civil law jurisdictions are not spared the austerity pinch. France is embroiled in a controversy over legal aid cuts where lawyers went on a national strike in June 2014 to protest against significant reductions in legal aid fees resulting from a budget cut of 32 million euros announced in October 2013.

In the UK, the need to save money on the justice system resulted in the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) that took effect in April 2013. The Act, which has outraged the legal community, withdraws support for most civil and family cases including those affecting the most vulnerable groups, cuts criminal legal aid fees and aims ultimately to reduce the government's legal aid spend by £270 million. It is estimated that around 623,000 people who would otherwise have been legal aid recipients would be denied this form of support under the Act. The UK government has argued that legal aid is not an inherent component of access to justice, although it accepts that there is a common law right of access to the court. The government in its memorandum dated 27 September 2013 said, "We do not consider that there is any basis at common law that a litigant is in general entitled to a state subsidy in respect of lawyers' fees. The legal aid reforms do not involve any fundamental right of access to the courts, rather the question of whether a person should receive legal aid funding."

In response, the Joint Committee on Human Rights said in its Seventh Report of Session 2013-14: "We are surprised that the Government does not appear to accept that its proposals to reform legal aid engage the fundamental common law right of effective access to justice, including legal advice when necessary. We believe that there is a basic constitutional requirement that legal aid should be available to make access to court possible in relation to important and legally complex disputes, subject to means and merits tests and other proportionate limitations."⁶

Nine leading UK academics, in a letter to *The Times* on 7 May 2013, expressed their "grave concern about the potentially devastating and irreversible consequences if the government's plans to cut criminal legal aid and introduce a system of tendering based on price are introduced... This is not about 'fat cat lawyers' or the tiny minority of cases that attract very high fees. As we know from the experiences of people like Christopher Jefferies, anyone can find themselves arrested for the most serious of crimes. No one is immune from the prospect of arrest and prosecution."⁷

With the high expense, complexity and delays of the English civil justice system proving intractable problems, reforms aimed at simplifying procedures and providing accessible and affordable justice will continue to dominate the judicial agenda in England and other common law jurisdictions. It is not heartening that the Woolf reforms, which set out 15 years ago to make civil justice quicker and cheaper for litigants, were dealt a double whammy in its failure to contain costs. In the words of Professor John Sorabji, "Cost is the embarrassment of English civil justice. The failure, over a historically long period of time, to reform costs effectively is an even greater embarrassment."⁸

The Jackson costs review, conducted by Lord Justice Jackson in response to concerns about spiraling costs post-Woolf reforms, announced an ironic finding in 2010 – the Woolf reforms were one of the causes of rising costs. It was revealed that the additional work introduced by the Woolf reforms,

⁶ Joint Committee on Human Rights, "The implications for access to justice of the Government's proposals to reform legal aid" Seventh Report of Session 2013-14

⁷ The full text of the letter can be found at www.lawsociety.org.uk/news/stories/leading-academics-warn-legal-aid-cuts-could-have-devastating-effects/

⁸ Professor John Sorabji "Prospects for proportionality: Jackson implementation" (2013) 32(2) CQJ 213-30

including pre-action protocols, had added significantly to the procedural burden, resulting in a ‘front-loading’ of legal costs. Lord Justice Jackson laid out several significant reforms aimed at reducing litigation costs, and the full impact of these remains to be seen. The Law Society’s recent assessment is that the reforms are likely to have the effect of a decreased rather than increased access to justice: “The sheer tidal wave of reforms designed to reduce solicitors’ costs in order to lessen the burden on the public purse, liability insurers and other compensators has also had the effect of reducing access to justice, increasing the number of litigants in person and swelling the already overburdened court waiting lists.”⁹

A contentious side-effect of the lack of legal aid support, particularly since the implementation of LASPO 2012, has been a marked increase in litigants-in-person (LIPs). The Lord Chief Justice, Lord Thomas, has singled out the growth in LIPs as a major justice system issue, and attributed the problem to the loss of legal aid and high legal fees charged by lawyers. In a speech in March 2014, Lord Thomas said, “We have to keep an open mind even on radical options. For example, to some a change to a more inquisitorial procedure seems like the obvious or the only solution to the present situation we find ourselves in with the increase in litigants-in-person and the need to both secure a fair trial for all whilst doing so within limited and reducing resources that have to be distributed equitably amongst all those who need to resort to the courts.”¹⁰

The increased prevalence of self-representation in court has been seen across common law jurisdictions around the world. LIPs pose problems for judges in court because these are people who do not have legal training and do not understand how court processes work. A Judicial Working Group on LIPs has recommended that courts modify adversarial procedures and develop a more ‘inquisitorial’ approach when dealing with LIPs¹¹.

Professor Dame Hazel Genn noted, “We are moving into a new era of diminished support for citizens seeking to vindicate or defend their rights in civil, family and tribunal proceedings. To a significant extent, we are following in the footsteps of other jurisdictions that have historically provided modest or minimal provision for access to justice. That we are beginning the task of developing measures to support self-representing parties considerably later than elsewhere gives us the opportunity to learn from the experience of others.”¹²

The English justice system must now face up to the challenge of making its procedures more accessible to the public and developing mechanisms to accommodate the varying levels of competence of LIPs. The consequences for not taking concerted action will be grave. This will extend beyond messy courtrooms to situations whereby citizens are forced to abandon their legal rights and either live with the injustice done to them, turn to private settlement processes¹³, or even more worryingly, take the law into their own hands.

⁹ The Law Society, ‘The impact of the Jackson reforms on costs and case management’ Civil Justice Council Conference 21 March 2014

¹⁰ Lord Thomas CJ, ‘Reshaping justice’ (JUSTICE Lecture) 3 March 2014

¹¹ ‘The Judicial Working Group on Litigants in Person: Report’ Judicial Office, July 2013

¹² Genn, H. ‘Do-it-yourself law; access to justice and the challenge of self-representation’ (2013) 32(4) CJK 411

¹³ The extent to which alternative dispute resolution (ADR) processes contribute to the concept of access to justice is a contentious issue. While the government and many commentators argue that ADRs increases access to justice, Genn questions this view. See Genn, H., S. Riahi and K. Fleming ‘Regulation of dispute resolution in England and Wales: a skeptical analysis of Government and judicial promotion of private mediation’, Chapter 7 in F. Steffek et al (eds) *Regulation dispute resolution: ADR and access to justice at the crossroads*. (Oxford: Hart Publishing, 2013)