Placing LIPs at the centre of the post-LASPO Family Court Process

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Abstract

The reforms to legal aid eligibility under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 have had significant implications for the accessibility of advice and representation in private family law. In addition to exacerbating several existing problems within the family justice system, LASPO has resulted in an increased number of litigants in person (LIPs), including many who are now ineligible despite being on the lowest incomes. This article argues that, in amplifying these problems so significantly, LASPO can be thought to offer an opportunity to reflect on the well-documented problems that LIPs face in the family court, and to start learning from the diverse range of LIPs who are using this process. The article uses an analytical lens drawn from feminist legal theory to draw together existing literature with the findings of a recent small-scale research project, which involved interviews with LIPs after LASPO. In doing so, this article contributes new empirical data, building upon the existing evidence base on LIPs, and provides an explicitly feminist analysis of this evidence, which reveals fresh insights into self-representation after LASPO. Using this lens, it explores LIPs' experiences and perceptions in relation to two key elements of the legal process: advice-seeking and advocacy. This analysis provides important insight into the different ways that LIPs respond to the challenges they face within this process, how these responses may be bound up in broader experiences of social inequality within society, and how this might inform the diversity of support needs that LIPs have when they arrive at the family court.

Keywords

LASPO, Litigants in Person, Family Court, Access to Justice, Family Justice

Introduction

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 has received a great deal of attention in the fields of family law and access to justice. This statute almost entirely removed legal aid funding for advice and representation in relation to private family law, save for those cases where applicants can corroborate that they have experienced domestic abuse through prescribed forms of evidence.[1] This exacerbated several existing problems regarding already-limited eligibility for legal aid and concerns about the availability of advice and support for people trying to

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[1] See Civil Legal Aid (Procedure) Regulations 2016; Legal Aid Agency, *The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 – Evidence Requirements for Private Family Law Matters* (LAA, 2016). In practice, even this limited legal aid has been difficult for survivors of abuse to access, and many end up resorting to self-representation. See Rights of Women, *Evidencing Domestic Violence: Nearly 3 Years On* (Rights of Women, 2015); J Harwood, 'We Don't Know What it is We Don't Know: How Austerity Has Undermined the Courts' Access to Information in Child Arrangements Cases Involving Domestic Abuse' [2019] 31 CFLQ 321.

resolve these disputes.[2] One of the most prominent implications of LASPO, the focus of this article, has been an exponential increase in the numbers representing themselves in the family court as Litigants in Person (LIPs).[3] Instructing a lawyer is beyond the financial means of the vast majority.[4] However, while LIPs have traditionally been those who fall into the gap of failing to meet the financial threshold for legal aid eligibility yet being unable to afford their own lawyer[5], LASPO removed the safety net of legal aid for those on the lowest incomes. Many of those individuals are now pursuing their disputes through the family court process.

LASPO has therefore been described as a 'critical watershed' and even a 'disaster' for family justice.[6] The purpose of this article is to build upon current understandings of self-representation and LASPO in order to suggest that this reform also provides a much-needed turning point for academics, practitioners and the third sector to think more creatively about how they may begin to learn from LIPs' experiences, and start to address some of the tensions in the family court process.

While self-representation was already common before LASPO, the number of private family law cases involving LIPs increased from 43% to 74% over the year following the reform, and since then has remained steady at about 81%.[7] This increase in LIPs since LASPO is considered to be cause for concern because a significant amount of research indicates the strain that large numbers of LIPs can place on the court system. First, the presence of LIPs has for decades been linked to increased work for others within the court process, owing to the problems that LIPs have in completing and submitting paperwork, the additional time that is required to explain things to them,

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[2] These included, for instance, increased bureaucratisation and limited renumeration of legal aid work and reductions in the legal aid budget, combined with continued emphasis on diverting parents towards private settlement and mediation and away from the court process. For a useful summary of the implications of pre-LASPO legal aid policies, see S Moore and A Newbury, *Legal Aid in Crisis: Assessing the Impact of Reform* (Policy Press, 2017) 21-29; M Maclean and J Eekelaar, *After the Act: Access to Family Justice After LASPO* (Hart, 2019). For an overview of the problems relating to the emphasis on mediation, see: A Barlow *et al*, *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* (Palgrave, 2017).

[3] Ministry of Justice, *Family Court Statistics Quarterly: January – March 2020* (MOJ, 2020), 7, Fig. 4.

[4] J Dewar et al, *Litigants in Person in the Family Court of Australia* (Family Court of Australia, 2000), 33-34; R Moorhead and M Sefton, *Litigants in Person: Unrepresented Litigants in First Instance Proceedings* (Department for Constitutional Affairs, 2005), 16-17; J MacFarlane, *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* (University of Windsor 2013), 12; L Trinder et al, *Litigants in Person in Private Family Law Cases* (Ministry of Justice, 2014), 12-13; R Lee and T Tkakucova, *A Study of Litigants in Person in Birmingham Civil Justice Centre* (CEPLR Working Paper Series, 02/2017); G McKeever et al, *Litigants in Person in Northern Ireland: Barriers to Legal Participation* (University of Ulster, 2018), 84-87.

[5] Dewar et al, ibid, 34; R Hunter et al, *Legal Aid and Self-Representation in the Family Court of Australia* (National Legal Aid, 2003). Additionally, it should be noted that some LIPs may simply have no other option but to self-represent, owing to the unsuitability of mediation for many couples, see E Hitchings et al, 'Assembling the jigsaw puzzle: understanding financial settlement on divorce' (2014) 44 *Family Law* 309; R Hunter, 'Inducing demand for family mediation – before and after LASPO' (2017) 39 *Journal of Social Welfare and Family Law* 189.

[6] H Sommerlad and P Sanderson, 'Social Justice on the Margins: The Future of the Not for Profit Sector as Providers of Legal Advice in England and Wales' (2013) 35 *Journal of Social Welfare and Family Law* 305, 306; J Robins, 'The Idea of Law Students Filling the Legal Aid Gap Makes My Heart Sink' [2012] *Guardian Law Online* Available at: <www.theguardian.com/law/2012/dec/13/law-students-legal-aid-gap> last accessed 1 September 2020.

[7] Ministry of Justice, n 3 above.

and the frequency with which hearings have to be adjourned.[8] Secondly, when facing a LIP, lawyers and judges encounter difficulties in performing their traditional roles in the court process. Lawyers are frequently required to take on the extra work of preparing trial bundles and helping the LIP whilst also maintaining their ethical obligations and confidence of their own clients.[9] Judges are also often compelled to change the way that hearings are managed – taking time to offer assistance ranging from basic signposting and giving procedural leeway to LIPs, to acting on behalf of LIPs during key tasks like cross-examination, and even sometimes managing hearings in an entirely inquisitorial way.[10]

These problems are exacerbated by the reality that the population of LIPs has always been disproportionately characterised by people in difficult and vulnerable circumstances, such as experience of domestic abuse, physical or mental health problems, language difficulties and learning difficulties.[11] LASPO added to this a 'new' category of the LIPs with very limited financial resources who are now excluded from legal aid.[12] Unsurprisingly, the post-LASPO LIP group therefore features a greater prevalence of those with vulnerable characteristics and circumstances, as well as low levels of income and education.[13] The availability of support and assistance for these individuals is therefore a key concern – the widespread removal of legal aid has had significant implications for the ability of lawyers and the third sector to continue to provide advice, let alone meet the substantially increased demand for free or specialised advice after LASPO.[14] As such, LIPs now commonly arrive at court with variable levels of prior advice, if any.

LASPO has therefore worsened several existing tensions in the family court process and evoked significant concerns about the continued sustainability and accessibility of family justice and its processes. In this article, however, I argue that we should move beyond conceptualising LASPO as a crisis for family justice. Instead, I suggest that, in exacerbating the problems so far, LASPO also poses an opportunity to begin reflecting constructively in the current situation upon the well-documented problems

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[8] Dewar et al, n 4 above, 48-50; Moorhead and Sefton, n 4 above, 111-112; M Maclean and J Eekelaar, 'Legal representation in family matters and the reform of legal aid: a research note on current practice' [2012] 24 CFLQ 223, 228-29; Trinder et al, n 4 above, 70; McKeever et al, n 4 above, 153.

[9] E Kelly et al, 'Litigants in Person in Civil Proceedings: Part VI Barristers' Perspectives' (2006) 36 *Hong Kong Law Journal* 519; C Bevan, 'Self-Represented Litigants: The Overlooked and Unintended Consequence of Legal Aid Reform' (2013) 35 *Journal of Social Welfare and Family Law* 43, 44-8; Trinder et al, n 4 above, 62; McKeever et al, n 4 above, 117-18.

[10] Dewar et al, n 4 above, 63-64; Moorhead and Sefton, n 4 above, 181-87; Trinder et al, n 4 above, 57, 62-5, 70; N Corbett and A Summerfield, *Alleged Perpetrators of Abuse as Litigants in Person in Private Family Law: The Cross Examination of Vulnerable and Intimidated Witnesses* (Ministry of Justice Analytical Series, 2017), 26-7.

[11] Moorhead and Sefton, n 4 above, 70, Trinder et al, n 4 above, 27.

[12] Trinder et al, n 4 above, 102-5.

[13] Lee and Tkakucova, n 4 above; CAFCASS and Women's Aid, 'Allegations of Domestic Abuse in Child Contact Cases' [2017] Available from: <www.cafcass.gov.uk/wp-content/uploads/2017/12/Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf> last accessed 1 September 2020; J Birchall and S Choudhry, *"What About My Right Not to be Abused?" Domestic Abuse, Human Rights and the Family Courts* (Women's Aid, 2018).

[14] L Trinder, 'Taking Responsibility? Legal Aid Reform and Litigants in Person in England' in M Maclean et al (eds) *Delivering Family Justice in the 21st Century* (Hart, 2015), 236; Maclean and Eekelaar, n 2 above, 135.

and concerns amplified by this reform. Specifically, I argue that this is a chance to begin learning from the diverse range of LIPs who are using the court process and thinking carefully about how future reforms designed to combat the disadvantages faced by some LIPs, may also have the unintended effect of further entrenching difficulties faced by others. Placing the experiences and perceptions of LIPs at the centre of debates about the future of this process further complicates current understandings about self-representation but provides a vital starting point for informing future reforms.

Several studies from multiple jurisdictions provide useful data for understanding some experiences and perceptions that LIPs may have of the family court. I develop the arguments in this paper by drawing on both this extensive literature and findings from my own small-scale study, which comprised 23 interviews with LIPs about their experiences of representing themselves in child arrangements proceedings after LASPO. The LIPs in this study were recruited through social media and face-to-face advice services.[15] They were asked semi-structured questions relating to their experiences of the court process, as well as the kinds of resources they relied upon for support during their time in court.[16] The sample included more mothers than fathers – 16 LIPs identified as female and seven identified as male. Most were in their 30s and 40s, apart from two very young mothers aged 18 and 20. Like other post-LASPO studies, the LIPs in this sample also had disproportionately low levels of education, often precarious employment contracts, and were contending with several different circumstances of vulnerability.[17] Twelve interviewees explained that they had experienced domestic abuse, six had learning difficulties, one had a chronic physical health condition and ten were contending with mental health issues.

This article explores the different experiences and perceptions of LIPs through an analytical lens drawn from feminist legal theory. By using an explicitly feminist lens to examine LIP experiences after LASPO, I seek to provide a fresh perspective on self-representation, building upon and deepening current understandings of the challenges that LIPs face and emphasising the importance of "complicating" these understandings. Feminist legal theory has been selected because it is an instrumental resource for exposing the hidden complexities of the ways that people engage with law. In particular, it is useful for understanding how law – or indeed, the legal system and court process – may operate to exclude and marginalise certain experiences, and even facilitate disadvantage when it fails to account for these hidden perspectives.[18]

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[15] Nine LIPs volunteered for the study through face-to-face services and 14 accessed the website through links posted in forums and social media.

[16] The means whereby interviewees were recruited generated a broad geographical spread of LIPs across England, but the sample disproportionately included people who identified as both white and British. One man identified as black African, one woman identified as white Romanian, and two women identified as South Asian; English was a second language for the latter three LIPs.

[17] In terms of employment and education levels, nine LIPs were unemployed, four were employed part-time and ten were employed full-time. Three had a higher education qualification, four had a further education qualification, ten had completed secondary school education, and six had no formal qualifications. This aligns with earlier studies including Dewar et al, n 4 above, 38-41; Moorhead and Sefton n 4 above, 153.

[18] For example, scholars have used this lens to argue that legal distinctions between public and private law operate as a refusal to recognise the specific ways that women experience and respond to

It therefore provides a useful means of exploring the various and complex ways in which LIPs may perceive, understand and respond to the challenges they experience within the court process, and acknowledging how these experiences may be framed by broader structures of inequality. The article begins by outlining the key tenets of feminist legal theory that provide the basis for this analytical lens. It then uses this framework as a means of examining the experiences and perceptions of LIPs in relation to two key elements of the court process.

First, it explores experiences of advice-seeking, where concerns have conventionally centred around the limited availability of legal help, given the increased demand for support after LASPO. Here, it builds upon existing understandings about how LIPs may attempt to seek help from traditional sources of assistance, such as unbundled legal services and pro bono advice, by reflecting upon the structural barriers that may frame experiences of advice-seeking. It also suggests that, in light of these experiences, some LIPs may respond by actively seeking support from non-traditional sources, such as social media. By exploring the perceptions and motivations that underpin experiences of advice-seeking, this discussion creates both important insights into how options may be particularly constrained for LIPs in certain circumstances, and deeper understanding of the kinds of support that LIPs perceive as valuable, and how they may respond if unable to access advice in the manner that they require or expect. These insights are crucially important for considering what might be learned from the different kinds of motivations, perceptions and experiences that underpin advice-seeking after LASPO, and how this may affect the different support needs that LIPs may have when they arrive at the family court.

Second, the article explores this latter point in more depth by considering the experiences of communication within the court process. The process has previously been conceptualised as a 'performance', owing to the highly patterned and scripted way in which parties are expected to convey information and submissions during proceedings.[19] It is also well-established that LIPs face challenges in complying with procedural elements of this performance, such as submitting the correct paperwork and undertaking advocacy.[20] This discussion elaborates on these understandings by exposing the different ways that LIPs conceptualised and approached the challenge of conveying and raising important information within proceedings. It highlights that difficulties with advocacy may elicit a 'fight or flight' response among some LIPs, in which they may attempt either to exploit their opportunities to speak in hearings by

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domestic violence in the family context: N Naffine, 'Sexing the Subject (of Law)' in M Thornton (ed) *Public and Private: Feminist Legal Debates* (OUP, 1995); or that legal discourses surrounding female juvenile delinquency operate to pathologize women as defective or dysfunctional, without accounting for the complex realities of their lives: A Worrall, 'Governing Bad Girls: Changing Constructions of Female Juvenile Delinquency' in J Bridgeman and D Monk (eds) *Feminist Perspectives on Child Law* (Cavendish, 2000). Most recently, Liza Thompson has drawn upon the work of feminist scholars to demonstrate how the child protection and family court systems marginalise and facilitate disadvantage for mothers by subjecting them to impossible expectations: L Thompson, 'Impossible Expectations? Abused mothers' Experiences of the Child Protection and Family Court Systems' (2020) 32 CFLQ 31.

[19] Trinder et al, n 4 above, 53.

[20] Dewar et al, n 4 above, 45; Moorhead and Sefton, n 4 above, 131-32; Trinder et al, n 4 above, 36-42, 70.

taking an adversarial approach to advocacy, or give up on the prospect of advocacy entirely and invest all of their effort into written forms of communication, namely court paperwork. By exploring these experiences of taking 'fight or flight' responses to the challenge of advocacy, this analysis deepens existing understandings about how LIPs perceive and approach different aspects of the court process, by suggesting that adversarial attitudes or over-preparation may, for some LIPs, be a conscious attempt to mitigate their own experiences of disadvantage. Importantly, this involves appreciation that LIPs' responses are likely to be framed by structural barriers and recognition of their conscious attempts to mitigate their impact. This perspective helps us to reflect on how constraining the manner in which LIPs are expected to communicate at particular stages of the court process has exclusionary implications and provides a starting point for thinking about how LIPs might be better supported to participate in hearings.

The final substantive section of this article reflects on what can be learned from LIPs' experiences, and how LASPO may in practice provide an important opportunity to focus more closely on these experiences. It will emphasise that LIPs have always been characterised by a diverse range of characteristics and circumstances, but note that post-LASPO, the difficulties that LIPs face at court are more unpredictable. Further, the fact that LIPs may respond to these difficulties in different ways further complicates the task of thinking about how to support them. Placing LIPs at the centre of these debates in therefore centrally important post-LASPO, mandating a fresh approach to reform within the court process itself.

Feminist Legal Theory

Feminist legal theory encompasses a broad and diverse literature, offering a range of insights into how law may operate to marginalise, exclude or disadvantage women. Rather than describing a uniform approach to studying law, a feminist approach encompasses several different perspectives which are united by their underpinning objective of revealing and developing understandings of the conditions of women's lives, and suggesting how these conditions may be improved.[21] This rich history of feminist work has helped to achieve a great deal of substantive legal and political reform. It encompasses liberal claims for formal equality within law, radical calls for more focused attention on the relationship between sexual difference and oppression, understandings of how men and women are constructed differently on the basis of gender, and the specific ways in which law unevenly reinforces and reproduces these constructions.[22]

A feminist lens offers an alternative perspective from the narrower focus on institutions, structures and laws, by exposing and exploring the complicated and diverse realities of women's lives, and how they are produced by and within such structures. For example, within family law, feminist legal scholars have drawn attention

[21] J Bridgeman and D Monk, 'Introduction: Reflections on the Relationship Between Feminism and Child Law' in J Bridgeman and D Monk, n 18 above, 7; C Smart, *Feminism and the Power of Law* (Routledge, 1989).
[22] H Barnett, *Introduction to Feminist Jurisprudence* (Cavendish, 1998), 5-8.

to the gender-specific harms that law can perpetuate or even facilitate through legal concepts and statutes. Since family law tends to be designed around the idea of a 'non-gendered, non-differentiated legal subject'[23], this scholarship argues that law frequently fails to acknowledge the complex network of regimes and discourses that regulate the possibilities and opportunities available to wives and mothers during relationships or the process of family breakdown.[24] This lens of critique is broad enough to include other structures and institutions that interact with law, such as the family, the labour market, or the tax and benefit system, which all form the backdrop to a society structured in a way that omits the concerns and realities of women's lives.[25] To this end, feminist legal theory provides a means of challenging ideas that are presented as objective, rational or impartial, by exposing the perspectives, experiences and understandings that are otherwise omitted from current understandings or debates. Two main tenets of feminist legal theory are used as analytical tools in this paper to explore the experiences and perceptions of LIPs.

The first is the feminist commitment to asking questions about the world that seek to expose hidden and marginalised perspectives, sometimes referred to as asking 'the woman question'.[26] In practice, this involves questioning, identifying, exploring and understanding the implications of practices that otherwise appear to be neutral or objective, and reflecting on how dominant understandings may compare to the lived realities and experiences of those affected by such practices.[27] Applying this commitment to the issue of LIPs and the family court means considering alternative understandings of the court process – focusing more closely on how LIPs may perceive and understand particular requirements of this process, and how they may respond to the challenges that they experience.

The second tenet is the way in which modern feminist scholarship, particularly that geared towards achieving legal and political reform, is attentive to the different structures of inequality that shape people's lives and advocates an intersectional understanding of their experiences.[28] The idea that multiple forms of oppression or

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[23] R Hunter, 'The Gendered 'Socio' of Socio-Legal Studies' in D Feenan (ed) *Exploring the 'Socio' of Socio-Legal Studies* (Palgrave Macmillan, 2013).

[24] For example, S Thompson, *Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice* (Hart, 2015); Barlow et al, n 2 above.

[25] A Diduck and K O'Donavan, 'Feminism and Families: Plus ça Change?' in A Diduck and K O'Donovan, *Feminist Perspectives on Family Law* (Routledge, 2006), 5; J Conaghan, *Law and Gender* (OUP, 2013), 103.

[26] K T Bartlett, 'Feminist Legal Methods' (1990) 103 *Harvard Law Review* 829, 837.

[27] Ibid.

[28] The use of intersectionality as an analytical framework is largely attributed to Kimberlé Crenshaw, see: K Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1 *University of Chicago Legal Forum* 139; K Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43 *Stanford Law Review* 1241. It has been taken forth by feminist scholars in relation to a broad range of issues, see: D Ashiagbor, 'The Intersection Between Gender and 'Race' in the Labour Market: Lessons for Anti-Discrimination Law' in A Morris and T O'Donnell (eds), *Feminist Perspectives on Employment Law* (Routledge, 1999); E Grabham, 'Taxonomies of Equality: Lawyers, Maps and the Challenge of Hybridity' (2006) 15 *Social and Legal Studies* 5; J Conaghan, 'Intersectionality and UK Equality Initiatives' (2007) 32 *South African Journal on Human Rights* 317; E Grabham et al (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge, 2009).

marginalisation can intersect and produce specific experiences of disadvantage has provided an important resource for feminist legal theory: despite traditionally focusing on the experiences of women, it is not limited to examining the impact of law on women. Rather, feminist scholars have argued that a feminist approach can and should be used to expose and explore the implications of multiple different and overlapping structures of inequality, such as gender, race and class, which all work together to frame the conditions in which people experience society. Bringing the intricacies of everyday life to the fore in this manner usefully challenges the legitimacy that law derives from its supposed objectivity, and further complicates our understandings of the lives of those who are governed by its rules and processes.[29]

Through the concept of intersecting structures of inequality, we can appreciate the task of exposing hidden and marginalised perspectives as one that involves asking questions that do more than identify *how* women are oppressed. Rather, we need to interrogate how legal discourse may operate to exclude the experiences and perspectives of a broad range of people who are differently affected by other inequalities, which may intersect in ways that cannot be disentangled.[30] Applying these ideas to this research means acknowledging that LIPs occupy a diverse range of social positions, have distinctive social, cultural and economic resources to draw upon when navigating the court process, and are likely to have different perspectives and experiences of it.

These two tenets are now used as guiding principles to expose and explore the experiences of the LIPs who were interviewed for this research. This will provide an insight into the different kinds of experiences LIPs may have of the family court, and the significance of these perspectives for understanding the potential utility of reform to the court process.

Advice-Seeking: 'Signposting Cycles' and 'The Secret Mummies'

As discussed above, LASPO exacerbated existing problems regarding the availability of advice and support. The removal of eligibility caused a huge increase in demand for both affordable and free advice, which was already under strain owing to the limited viability of legal aid work. Additionally, studies pre-LASPO consistently demonstrated that LIPs who cannot afford to instruct a lawyer privately take different approaches to seeking advice about family law problems: some access legal advice sporadically through unbundled legal services, some use free support from services like Support Through Court, and others try to do independent research about their legal position.[31] In order to begin thinking about how best to support LIPs post-LASPO, it is useful to consider what might be learned from the different kinds of motivations, perceptions and experiences that underpin advice-seeking in this context, and how this may affect the different experiences and needs that LIPs may have when they arrive at the family court.

[29] J Conaghan, 'Intersectionality and the Feminist Project in Law' in E Grabham et al (eds), ibid.
[30] E Grabham, 'Intersectionality: Traumatic Impressions' in E Grabham et al (eds), ibid; Conaghan, n 25 above, 74.
[31] Moorhead and Sefton, n 4 above, 54-7, 197-212; Trinder et al, n 4 above, 21-2, 37.

Evidence suggests that there is an increasing demand for unbundled advice post-LASPO.[32] Earlier studies have demonstrated that accessing advice in this way can make an enormous difference for LIPs because, even when advice is intermittent, lawyers can provide important 'reality checks' at key stages of the case, ensuring that LIPs are aware of their legal position and possible outcomes.[33] However, the ability to access and use these legal services in this way is inextricably bound up in wider, intersecting experiences of gender and class. For example, only two LIPs in my study were able to pay sporadically for legal advice – 'Joan' and 'John'. Joan was a single mother, working full-time, who experienced several years of domestic abuse before child arrangements proceedings were initiated by her ex-husband. Joan described her solicitor as a 'last resort', which she would use only when she had exhausted all other means, such as free advice and online research. She explained that she would maximise the amount of advice she could receive for her money by accumulating all of her queries over a period of weeks and then sending a single, longer email, rather than being charged for the time it would take for her lawyer to open several smaller emails. In contrast, while cost was also a big concern for John, he did not conceptualise unbundled advice as a last resort – rather, he would use his solicitor as a means of checking the accuracy of his research before each hearing.

A feminist lens helps us to see how the accessibility of affordable advice is crosscut by issues of gender and class. For example, post-LASPO, there is likely to be a proportion of LIPs on very low incomes, for whom unbundled services may be entirely inaccessible or something they can only use as a last resort.[34] However, several factors suggest that economic barriers to paid legal services may be especially prevalent for women. The fact that caring responsibilities for both children and dependent adults disproportionately fall to women[35] is a major factor in the broader economic disparity between men and women within society; most carers are female, of working age, and experience significantly higher rates of poverty than people without caring responsibilities.[36] When relationships break down, there are therefore often stark differences in the levels and kinds of resources that mothers and fathers are able to draw upon in order to obtain legal advice. This is further compounded by domestic abuse, as women leaving abusers frequently have limited access to resources under their ex-partner's control.[37]

While circumstances vary between different LIPs, the broadly unequal distribution of economic resources between mothers and fathers indicates that the increased use of unbundled advice is likely to be particularly gendered. As the experiences of John and

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[32] S Wong and R Cain, 'The Impact of Cuts in Legal Aid Funding of Private Family Law Cases' (2019) 41 *Journal of Social Welfare and Family Law* 3.
[33] Trinder et al, n 4 above, 23.
[34] ibid 104-5.
[35] H Fisher and H Low, *Financial Implications of Relationship Breakdown: Does Marriage Matter?* (Institute of Financial Studies, Working Paper W12/17, 2012); ONS, 'Women shoulder the responsibility of unpaid work' *ONS Digital* [2016] <www.visual.ons.gov.uk/the-value-of-your-unpaid-work/> accessed 1 September 2020.
[36] Carers UK, *Facts About Carers* (Carers UK, 2015).
[37] Birchall and Choudhry, n 13 above, 42-3. For the significance of economic power within relationships more generally, see C Vogler and J M Pahl, 'Money, Power and Inequality within Marriage' (1994) 42 *Sociological Review* 263.

Joan indicate, this is not simply a case of fathers being more able to use these services than mothers, but also a sign of important differences in how mothers and fathers may access and use these services – for instance, seeking them at different stages of the process and in relation to different aspects of the problem. This has important implications for the kinds of understandings that LIPs may have of their own legal position by the time they arrive at the family court.

The majority of LIPs who participated in my study were unable to pay for any legal advice. This aligns with other post-LASPO studies, which have also found that an increasing number of LIPs need to rely on free advice and support.[38] However, accessing free advice is far from straightforward. Even before LASPO, restrictive eligibility requirements for legal aid and diminishing numbers of legal aid providers meant that LIPs have often had to navigate multiple different sources in order to find free assistance.[39] This is problematic, because as Trinder *et al.* explain, many LIPs tend to take a 'reactive' approach to advice-seeking: they respond well to instructions or suggestions about the steps they should take, but are often unable to act without comprehensive and clear guidance.[40]

Post-LASPO, options for free advice are even more limited and difficult to find; while many firms offer pro bono services, these are frequently overwhelmed and cannot meet post-LASPO levels of demand.[41] This is especially the case outside large cities, where much less face-to-face advice provision is available.[42] In this study, for instance, there were stark differences between those who were able to access and make meaningful use of free advice and support from multiple sources within cities, and those who struggled to find any at all. In response to the increased demand post-LASPO, services such as Support Through Court and Citizens Advice Bureaux have established local networks in several cities with law firms in several cities offering pro bono services, such as free advice evenings. LIPs in my study were referred between different services through these networks, accessing free support and advice from multiple sources. Importantly, being brought into these 'signposting cycles' was extremely helpful for some LIPs, not only informing them about other sources of free support but providing guidance about next steps in preparing for their forthcoming court hearings.

However, even in cities, the ability to make use of signposting cycles may be contingent on how people are positioned within society. As 'Ikraa', explained:

> 'There is some help, but you really have to push to find it, it isn't readily available – like it doesn't come with the court papers. You have to go find it yourself, and the face-to-face advice you get is limited to the odd half hour or just 20 minutes.'

[38] Lee and Tkakucova, n 4 above.
[39] Dewar et al, n 4 above, 43; Macfarlane et al, n 4 above, 85-7.
[40] Trinder et al, n 4 above, 87-88.
[41] Maclean and Eekelaar, n 2 above, 46-59.
[42] National Audit Office, *Implementing Reforms to Civil Legal Aid* (Ministry of Justice and Legal Aid Agency, 2014); Wong and Cain, n 32 above, 11-12.

Ikraa was a single mother living in temporary accommodation with her three children and contending with the implications of obtaining an Islamic divorce within her religious community. Moving between multiple organisations and services requires significant time and energy, both of which are in short supply for LIPs contending with other legal problems, caring responsibilities, precarious working arrangements or limited economic resources to facilitate travel between these different services. So although signposting cycles give useful guidance, the onus is on LIPs to 'push' to access the next advice service, by navigating a fragmented network of appointments, opening hours and office locations over the course of several days and weeks. For Ikraa, advice-seeking was a complex and convoluted experience, where it was impossible to maximise the benefit of these signposting cycles given the simultaneous demands of going to work, attempting to secure permanent accommodation, and childcare. Instead, she found herself relying on some advice, but then being unable to reinforce this by accessing the next service or following up on the guidance she had received.

The extent to which LIPs can use signposting cycles is therefore also likely to hinge upon the kinds of resources they can draw upon. Despite the fact that this form of advice is free, the requirement to invest significant amounts of time into advice-seeking has significant economic implications, whether arising from the cost of travelling between different services, missing work, or delaying action in relation to related problems, such as welfare or housing. Investing these efforts also requires a basic level of social resource, such as personal support networks able to assist with things like childcare. However, the multiple constraints that prevent LIPs like Ikraa from navigating available sources of support are, of course, distinctly absent from the narratives that have informed and justified reforms like LASPO.

Notions of responsibility have increasingly underpinned government policies geared towards promoting greater self-management by separating parents, such as by reaching their own agreements about their children without help or through mediation.[43] These policies typically present a narrative where norms such as co-operation and agreement are conceptualised as universally applicable, and the minority who cannot embrace these norms are constructed as failing or somehow 'lacking' in their ability to operationalise these norms.[44] This dominant narrative crudely effaces the often-chaotic realities in which many parents who need to represent themselves attempt to seek support. Further, this suggests that even free forms of advice are likely to come with significant barriers, especially for mothers and those from marginalised groups who are likely to struggle at the intersection of multiple structures of inequality.

Viewing advice-seeking through a feminist lens provides insight into the invisible struggles that frame people's experiences of law. However, it is also a means of

[43] See National Audit Office, *Legal Services Commission: Legal Aid and Mediation for People Involved in Family Breakdown* (HC 245, 2014); Ministry of Justice, *The Government Response to the Family Justice Review: A System with Children and Families at its Heart* (The Stationery Office, 2012); Barlow et al, n 2 above.

[44] F Kaganas, 'Domestic Violence, Men's Groups and the Equivalence Argument' in A Diduck and K O'Donovan (eds) n 25 above; J Wallbank, 'Universal Norms, Individualisation and the Need for Recognition: The Failure(s) of the Self-Managed Post-Separation' in J Wallbank and J Herring (eds) *Vulnerabilities, Care and Family Law* (Routledge 2014), 80; F Kaganas, 'Justifying the LASPO Act: Authenticity, Necessity, Suitability, Responsibility and Autonomy' (2017) 39 *Journal of Social Welfare and Family Law* 168.

exploring the diverse ways in which people may perceive and respond to these experiences. For example, studies have consistently identified a proportion of LIPs who do not seek advice or support at all before their hearings.[45] Explanations for why people might not seek advice when they are self-representing have ranged from arguments about a lack of available services, to a lack of understanding about where to go, or a lack of empowerment or capability to take proactive action.[46] The proportion of LIPs who are not seeking advice at all appears to be increasing post-LASPO; in a recent survey of LIPs at Birmingham Civil Justice Centre, only half had accessed 'some advice' before their hearing, and 37.5% reported not knowing that they needed to seek advice, which led the authors to reflect upon that this might not simply be a case of LIPs being unable to access resources, but one in which LIPs may face barriers to understanding what they do not know about their cases and so to perceiving the need to seek help in the first place.[47]

The findings of my study suggest that it is also possible that people may actively choose alternative sources of support that more readily recognise and accommodate their circumstances. In this study, nine LIPs did not access any formal advice or support at all, and five of these turned instead to social media as their sole source of information.[48] Some – particularly those with learning difficulties – explained that they used social media because they could not access face-to-face advice and were unable to use of information found on self-help websites.

The prevalence of support groups on social media has also been found by other emerging research projects.[49] The internet has been described as 'a new social space inhabited by communities in which experiences, ideas and relationships are shared and constructed' – particularly among forums that speak to particular family identity groups, such as mums, dads or grandparents.[50] A clear concern about this development for those seeking support in relation to family disputes is that increased reliance on the experiences of other LIPs through social media may perpetuate misunderstandings and polarised views about the family court, exacerbating the difficulties that LIPs face when attempting to navigate the court process.[51]

Exploring the motivations and experiences of those who used social media for advice, however, can provide an important insight into the kinds of support that LIPs in particular circumstances may find extremely valuable. For instance, for mothers – especially those who had experienced abuse – social media groups provided access

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[45] Moorhead and Sefton, n 4 above, 45-6; Trinder et al, n 4 above, 89; Lee and Tkakucova, n 4 above.
[46] Trinder et al, n 4 above, 89-90; P Pleasence and N Balmer, *How People Resolve 'Legal' Problems* (Legal Services Board, 2014); I Pereira et al, *The Varying Paths to Justice: Mapping Problem Resolution Routes for Users and Non-users of the Civil, Administrative and Family Justice Systems* (Ministry of Justice Analytical Series, 2015).
[47] Lee and Tkakucova, n 4 above.
[48] Twenty LIPs used social media altogether – this was commonly used in conjunction with other sources of support or advice where possible.
[49] see: T Tkakucova, 'Legal advice on online forums and social media' *Transparency Project* [2019] Available from: <www.transparencyproject.org.uk/legal-advice-on-online-forums-and-social-media-part-i/> last accessed 1 September 2020. Note for copy editor to add ref to article in same issue.
[50] L Smith, 'Representations of Family Justice in Online Communities' in M Maclean and B Dijksterhuis (eds) *Digital Family Justice: From Alternative Dispute Resolution to Online Dispute Resolution?* (Hart, 2019), 157-8.
[51] ibid 158.

to important communities through which they could access continuous support from those who, in their view, really understood their circumstances and what it is like to represent themselves in the family court. As 'Cheryl' explained:

> 'I found my way onto a couple of websites – we call it the secret mummies group, but it's basically women in the same situation. And so, some advice I got from there. To be honest, I found the secret mummies group more helpful than the legal advice because it's ongoing.'

Cheryl lived in a large city and was able to access advice from multiple face-to-face services in her local area. Nevertheless, she still felt more supported by the 'mummies', because the support from this group was continuous. This highlights an important distinction in LIPs' perceptions of the relative utility of advice from different sources. Advice accessed through unbundled legal services or signposting cycles is experienced as sporadic and requires LIPs to navigate convoluted relationships and locations in a way that does not account for the difficult circumstances in which LIPs are frequently self-representing. By contrast, support from social media is not only easier to access, but also facilitates ongoing personal relationships and offers bespoke forms of advice that may actually be geared towards these difficult circumstances.

Research into advice-giving from both third sector advisors and family solicitors has identified that there is more to advice-giving work than simply translating the law into lay terms for clients. Rather, those giving advice also take an active role in helping clients to identify the legal consequences of given problems, to prioritise actions to deal with the most urgent aspects of those problems, and to adjust their expectations so that they have a realistic view of what can be achieved through legal action.[52] Effective and meaningful experiences of advice, therefore, are not so much exchanges of information as they are a bespoke and personal process of gaining empowerment within an often unintelligible network of legal options.[53] Given the barriers discussed so far in relation to both affordable and free forms of advice, it is unsurprising that some LIPs may seek this kind of empowerment through the continuous and bespoke relationships that they can find in social media groups. Further, as I have already emphasised, these people are disproportionately likely to be those who are marginalised by broader structures of inequality, such as gender, race and class, but are nevertheless subjected to unrealistic expectations of self-management that do not account for the conditions in which they are seeking support.

Focusing on mothers who have experienced abuse opens up a deeper understanding of how and why some LIPs may actively choose to seek advice through social media. For instance, the other 'mummies' in Cheryl's group were able to provide ongoing support in relation to the specific experiences and challenges that came with being a mother facing an abusive ex-partner in the family court. This extended beyond practical or legal assistance into the realms of emotional and personal support and friendship, based on their shared experiences of feeling marginalised within the court

[52] R Ingleby, *Solicitors and Divorce* (Clarendon, 1992), 135-140; J Eekelaar, M Maclean and S Beinart, *Family Lawyers: The Divorce Work of Solicitors* (Hart, 2000), 81-88.
[53] E Kirk, 'Justice and Legal Remedies in Employment Disputes: Adviser and Advisee Perspectives' in S Kirwan (ed) *Advising in Austerity: Reflections on Challenging Times for Advice Agencies* (Policy Press, 2017).

process. Viewing this through the feminist lens, this can be understood as an active response to the omission of their experiences from the gender-neutral narratives that inform family law and legal aid policy. The fact that this group was for the 'secret' mummies, for example, was indicative of the mistrust among these mothers towards both men and family justice professionals. This was a common sentiment among several female LIPs whom I interviewed for this project. For example, almost all female interviewees expressed their concerns for my safety as a result of my decisions to include my photograph on the website I used to recruit participants, and to interview male LIPs alone in unfamiliar locations. These conversations left me with the impression that women would not have been so well represented in this sample had the project been conducted by a researcher who presented as male. Similarly, it may be possible that my own gender presentation led to my receiving fewer male volunteers, because some male LIPs may have been less likely to perceive me as open to their perspectives and motivations.[54]

An extensive literature explores the different ways that, despite the existence of professional training and guidance[55], concerns from abused mothers are frequently minimised or dismissed by family justice professionals and in child arrangement proceedings, owing to a historical emphasis on promoting contact between children and both parents.[56] For example, feminist scholars have argued that taking a 'gender-free' approach to defining the interests of children in these cases means that the interests of parents and children remain conceptually separate.[57] As Adrienne Barnett explains, this governing logic has the effect of constructing a 'space' between contact disputes and domestic abuse, and professional attitudes have inevitably shifted to fit around this space. She argues that this space frames mothers who resist the prospect of contact as irrational or unreasonable, and simultaneously erases the relevance of any violence perpetrated by fathers.[58] As such, there is a concerning amount of

[54] This is a well-documented issue within qualitative sociology, see: M Schwalbe and M Wolkomir, 'The masculine self as problem and resource in interview studies of men' (2001) 4 *Men and Masculinities* 4; C Vogels, 'A feminist and "outsider" in the field: Negotiating the challenges of researching young men' (2019) 18 *International Journal of Qualitative Methods* 1.

[55] Guidance on recognising and managing allegations of abuse within child arrangements proceedings was first introduced following the case of *Re L, V, M, H (Contact: Domestic Violence)* [2001] Fam 260, and subsequently incorporated into Practice Direction 12J, which was revised in 2014 and 2017, and is currently under review again following the publication of R Hunter, M Burton and L Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report* (Ministry of Justice, 2020).

[56] See, for example: M Hester and R Radford, *Domestic Violence and Child Contact Arrangements in England and Denmark* (Policy Press, 1996); M Coy et al, *Picking Up the Pieces: Domestic Violence and Child Contact* (Rights of Women, 2012), 35; R Hunter and A Barnett, *Fact-Finding Hearings and the Implementation of the President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm* (Family Justice Council, 2013); Women's Aid, *Nineteen Child Homicides* (Women's Aid, 2016), 27-28; Birchall and Choudhry, n 13 above, 23-26; R Hunter, M Burton and L Trinder, ibid. This emphasis on contact was enshrined in the presumption of parental involvement under the Children and Families Act 2014, which came into effect just after LASPO. In response to the *Assessing Risk of Harm* report, which drew a significant amount of this literature together, the government has recently committed to reviewing this presumption in light of this evidence – see Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Implementation Plan* (Ministry of Justice, 2020).

[57] C Smart and S Sevenhuijsen, *Child Custody and the Politics of Gender* (Routledge, 1989); M Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* (Routledge, 1996).

[58] A Barnett, 'Contact and Domestic Violence: The Ideological Divide' in J Bridgeman and D Monk (eds), n 18 above, 141.

evidence to show that, often, the concerns of mothers who have experienced abuse are not taken sufficiently seriously within the court process or by legal professionals.[59]

The specific value of these online communities, therefore, is that they may provide a form of 'collective consciousness' for mothers who share similar concerns and experiences. As Rachel Treloar has noted, the ways in which people are positioned within power relations such as gender, class and culture all shape the personal meanings and experiences that people have of family law problems, as well as the possibilities of positive change as they move forward with their lives.[60] Meeting others who face similar challenges can therefore provide epistemic resources that can empower LIPs to face the court process, in the sense of feeling validated within their collective experiences of disadvantage or marginalisation.[61]

As Leanne Smith has argued, deeper understanding is needed of the social exchanges and processes that occur in online discussion forums, because the ways that people participate and identify with others within these forums are 'usually hidden but highly important in the context of family dispute resolution'.[62] Reflecting on the value of this form of support, particularly for those LIPs who experience marginalisation or exclusion in relation to traditional forms of advice, may therefore be a useful starting point for thinking about advice provision in the post-LASPO context. For example, this suggests that there are certain elements of advice-giving, such as bespoke and continuous support, that are perceived as important, especially for LIPs whose broader struggles are not necessarily accounted for within legal processes or government policy.

Advocacy: 'The X Factor' and the 'fight or flight response'

Existing studies demonstrate that LIPs frequently experience difficulties complying with the procedural requirements of the court process, such as submitting correct paperwork and engaging in tasks such as advocacy or cross-examination. For example, Trinder *et al* used the metaphor of a 'performance' in order to reflect on the 'scripted' roles that are traditionally played by parties, judges and lawyers in hearings. As they explain, the fully represented hearings they observed were:

> 'highly patterned and predictable in format. There was a clear, established way of doing things that was so familiar to the lawyer/actors and judge/directors that they did not need instructions or explanations to come in prepared to put on a fairly polished performance.'[63]

The authors raised important concerns about how the court process is supposed to work if these roles are not fulfilled, or if LIPs are expected to play multiple roles of lawyer and party. In particular, they asked: 'does the whole production break down, or can a performance where both actors are amateurs work satisfactorily?'[64]

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[59] A Barnett, 'Contact at all Costs? Domestic Violence and Children's Welfare' [2014] 26 CFLQ 439.
[60] R Treloar 'High-Conflict Divorce Involving Children: Parents' Meaning-Making and Agency' (2018) 40 *Journal of Social Welfare and Family Law* 340.
[61] Ibid 350; Bartlett, n 26 above, 837.
[62] L Smith, n 50 above, 163.
[63] Trinder et al, n 4 above, 53.
[64] Ibid 54.

While it is not possible to answer this question fully using the findings of this study, I argue that a key component an answer entails understanding the diverse ways in which LIPs may respond and behave when faced with some of the specific tasks involved in this performance. Further, these different perspectives are likely to reveal a more nuanced understanding of how various elements of the court process may need to adapt to better support LIPs to communicate within this process, particularly post-LASPO. This section therefore explores some of the experiences that LIPs may have of communicating in the family court process through a feminist lens. In doing so, it will expose and explore the different ways that LIPs conceptualised and approached the challenge of conveying and raising important information within proceedings.

The task of communicating via advocacy was challenging for most LIPs in this study. As 'Maxine' explained:

> 'It's like a circus act – you've got the judge there judging how well we're all performing, it's like the X factor…the barrister does this all the time, he's been put in situations like this load of times, he knows how to act, but your performance is judged to the same standard.'

Aligning with Trinder *et al.*'s performance metaphor, Maxine's description highlights that a major source of disadvantage for LIPs can be the unfamiliarity of specific court procedures that continue to function on the basis of a 'full-representation model', despite the increased presence of LIPs.[65] The literature provides several instances of evidence suggesting that judges do often adapt the format of hearings involving LIPs in order to provide more opportunities for LIPs to speak, to spend more time explaining law and procedure in lay terms, or even to flip the format of hearings into one which is entirely inquisitorial.[66] Such adaptations are, however, employed inconsistently because they are frequently time-consuming, which can make them inconceivable when cases are part of a long list. Ultimately, judicial approaches are inevitably also contingent on the views and anxieties of judges, who may be reluctant to step too far beyond their traditional roles.[67]

Building upon this, the findings of this study suggest that an important factor in supporting LIPs to communicate successfully is an appreciation of the different ways that they may interpret and respond to this task, and how these different perceptions may relate to the broader conditions in which people are self-representing. In this study, there were two clear ways in which LIPs responded to the challenge of advocacy, which I have termed 'fight or flight'.

For some LIPs, advocacy was conceptualised as part of a larger 'fight' in which LIPs were fighting for their children. As 'Kate' told me:

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[65] Ibid.
[66] Dewar et al, n 4 above, 63-64; Moorhead and Sefton, n 4 above, 181-187; Trinder et al, n 4 above 62-3; Corbett and Summerfield, n 10 above, 26-27.
[67] Moorhead and Sefton, n 4 above, 183-185; R Moorhead, 'The Passive Arbiter: Litigants in Person and the Challenge to Neutrality' (2007) 16 *Social and Legal Studies* 405.

> ‘If you do good in your speech, you win. Simple. So, I did, I kept fighting, because I haven’t got any other options. I had to fight, because I had no one to fight for me like [my ex-partner] did, and that’s my child, I had to fight for her.’

On this view, advocacy was a struggle for LIPs, but one that was necessary in order to ensure that others in the court process were able to understand and take seriously what they believed to be the most important and relevant information about their case. Rather than a predictably scripted performance, this perception of advocacy was premised upon the idea that they would have limited opportunities to speak, and that they should make the most of this time to get their points across. This was particularly important for those LIPs who struggled with court forms and paperwork, owing to learning difficulties or English being a second language.

In contrast to this, the study also exposed that some LIPs respond to the requirement of advocacy in an entirely different way – which I have labelled ‘flight’, to demonstrate the polar-opposite attitude of these LIPs to those who conceptualised advocacy as a ‘fight’. Instead of maximising their opportunities to speak during hearings, the LIPs who took a ‘flight’ response entirely gave up on attempts to advocate for themselves orally and instead channelled their efforts into written forms of communication. ‘Ama’ explained that:

> ‘I write very well. I can speak very well as well, but when I write the statements, they’re all solid, concise, they make the points that I want to make. I can compartmentalise it on paper, whereas in the court they want me to talk in a way that they decide on the day, but I’ve not been to that law school class. Writing I can do very well, because I can get all my points across.’

Importantly, this suggests that some LIPs may use their court bundle to go some way towards mitigating the disadvantage that they expect to experience during advocacy. These LIPs often regarded the other side or their representation with mistrust but viewed court bundles and paperwork as an extremely important tool that they could use to get their points across and communicate with judges, who were (rightly) perceived as the ultimate arbiters of proceedings.

Communication in the family court proceeds by way of a combination of oral and written methods that dictate the scope and extent to which LIPs are able to convey information at particular stages of the court process. The constraints upon what kind of information can be communicated, as well as the method by which parties may convey it, support the conventional ‘script’ of the court process. For instance, expectations about how to speak and what to say during hearings, combined with pre-determined forms and paperwork ensure that only legally-relevant information is extracted from the complex social and emotional context to a family law problem. This ensures that all relevant information is at hand during proceedings, which can then remain focused upon the goal of reaching a resolution.

However, these constraints on the format by which information can be conveyed at particular stages of the process may have exclusionary implications for LIPs who struggle with either oral or written communication. Further, as these polarised responses indicate, LIPs may respond to these challenges by focusing their efforts on the form of communication that is more accessible to them. While some LIPs may

maximise their opportunities to convey information through advocacy, others may attempt to compensate for their own disadvantage by investing huge efforts into their paperwork and court bundles. This perception embellishes existing evidence that LIPs struggle to advocate for themselves and tend not understand the procedural significance of court bundles by suggesting that, for at least some LIPs, the way that communication within the court process is currently governed requires them to make conscious decisions about how to participate in light of their own circumstances. Further, this emphasises an important way in which the design of this process currently fails to account for the diverse communication needs that are likely to be experienced by even more LIPs post-LASPO.

Building on this, it is useful to reflect on the success of these 'fight or flight' efforts. Confidence was an important asset for the LIPs who adopted a 'fight' response, because these LIPs could express themselves when called upon during hearings, and mostly felt as though they had made important contributions to discussions. In practice, however, this assertiveness was frequently detrimental to their ability to communicate effectively with judges and opposing lawyers and resulted in protracted court cases with multiple hearings. These LIPs frequently used words and phrases such as going to 'fight' in court, and 'fighting' for children when describing their experiences of presenting their position and responding to the position advocated by the other side. This approach prevented them from meaningfully engaging in negotiations with the other side.

The family court process is designed so that, at every stage, parties are encouraged and given every opportunity to agree on an arrangement for their child for themselves, if possible.[68] However, existing research has consistently found that, for LIPs, there is a stark contrast between this ethos of family law and the way in which family hearings are actually experienced. For example, studies have demonstrated the difficulties that lawyers have in facilitating negotiations with LIPs in semi-represented cases, where LIPs are often unwilling to engage in discussions for fear of being taken advantage of or pressured into unfair agreements, or because they do not appreciate the benefit of talking to the other side before court hearings.[69] In a similar vein, this finding suggests that, for some LIPs, this sense of mistrust may extend into experiences of advocacy. The consequence of this is not merely that the scripted performance of court hearing falls apart for the other actors, but that these LIPs are excluded from meaningfully contributing to the decision-making processes that occur in hearings. As such, assertive approaches to advocacy often had negative implications for LIPs in terms of further entrenching conflict and mistrust between parents and drawing cases out into long and complex proceedings.

Those LIPs who took a 'flight' response, however, appeared to have more mixed experiences. Producing a well-organised and coherent bundle was an achievement of which several were extremely proud. 'Grace' told me:

> 'I think that made the judges like us more, or at least they were more patient with us generally, and helped us probably do better than some of the other LIPs that you might have spoken to. They were definitely relieved to have someone

[68] See Practice Direction 12B.
[69] Dewar et al, n 4 above, 52-3; Moorhead and Sefton, n 4 above, 163-4; Trinder et al, n 4 above, 72.

> who had done all the right things, handed it all in on time, put it all together neatly. One of the male judges said it was one of the best bundles he'd seen from a LIP, and we should be pleased with ourselves, which was nice.'

It was clear that LIPs felt they were treated favourably if they were able to meet administrative and procedural expectations when it came to paperwork, even if they struggled to communicate at other stages of the process. Grace, for example, felt that she had received recognition from judges in terms of her organisation, and that her success in this regard distinguished her from other LIPs.

However, the enormous efforts that these LIPs invested into their paperwork were not always effective in terms of compensating for the challenges they experienced with advocacy. Rather, most of these LIPs had 'over-prepared' their bundles, including far more than enough examples of information requested by the court, and/or a wealth of documents with no bearing on the legally-relevant issues in the case. This causes significant difficulties for others in the process. For instance, owing to the time constraints of the justice system, judges may not have time to read the whole bundle or are frustrated in their task of doing so in the depth required. This is especially likely to be the case post-LASPO, where the court process is contending with delays and additional burdens.

Despite their efforts, LIPs were frequently disheartened that judges did not read all of this information before their hearing. They were also taken aback when they found that judges appeared to be frustrated with *them*. 'Catherine', for example, explained:

> 'I don't know if I did something to make them dislike me, I'm not cocky but I was prepared... It was like I got slandered for doing too much homework.'

In McKeever *et al*'s recent research in Northern Ireland, the authors found evidence that judges could sometimes resent the additional burden of work that fell to them owing to LIPs' failure to provide the court with all (and only) the necessary paperwork.[70] The experiences of LIPs like Catherine similarly suggest that over-preparation may also cause difficulties for relationships with judges. While it is unlikely that Catherine's judge considered her lacking in dedication, if over-preparation makes the job of hearing a case more arduous, LIPs are unlikely to achieve their aim of effectively communicating important information to judges and may disadvantage them further in these efforts. Further, viewing this through the feminist lens means we are able to gain a more informed perspective as to *how* and *why* LIPs over-prepare, and how this may have specific consequences for particular population groups.

The rationale behind over-preparation for these LIPs was rooted in fear that the court might miss important information that they would be unable to articulate on the spot if asked during a hearing. There are several reasons why a LIP may be unable to communicate their points orally: earlier studies have identified various factors including learning difficulties, mental health problems, being intimidated by their ex-partner, or simply feeling overwhelmed by the court process.[71] The experiences of LIPs in this study suggest that there may be specifically gendered barriers to

[70] McKeever et al, n 4 above, 105-6.
[71] MacFarlane et al, n 4 above, 8; Trinder et al, n 4 above, 67-68; Birchall and Choudhry, n 13 above, 23-24.

participating in advocacy. All 12 LIPs in this study who had experienced domestic abuse alongside their child arrangement disputes explained that the prospect of speaking in court in front of their ex-partner was not merely challenging but intimidating and frightening, and four of these LIPs produced enormous bundles of evidence to substantiate their concerns about future contact arrangements between their children and their ex-partners. As many as 49% of child arrangements proceedings involve allegations of domestic abuse, disproportionately made by women.[72] Combined with experiences of limited economic resources, difficulties accessing legal advice, and the stress and mental health problems that commonly intersect with these experiences,[73] the expectation to operationalise norms such as independence and objectivity during advocacy is arguably inappropriate and unrealistic for LIPs in these circumstances. This approach to communication is therefore likely to be compounded by the barriers that survivors experience at the advice-seeking stage of the process, where they may be unable to obtain adequate advice or guidance on the procedural expectations regarding paperwork.

By exploring these experiences of taking 'fight or flight' responses to the challenge of advocacy, this analysis deepens existing understandings about how LIPs perceive and approach different aspects of the court process, suggesting that adversarial attitudes or over-preparation may, for some LIPs, be a conscious attempt to mitigate their own experiences of disadvantage. Additionally, when LIPs struggle with either paperwork or advocacy, a specific part of the scripted performance that traditionally underpins the court process falls down, and there is a risk that, despite the other actors' best efforts, important and relevant information may be lost from the decision-making process. Importantly, there are potential consequences of taking either a 'fight' or 'flight' response to these challenges, and certain groups may be at greater risk of experiencing further disadvantage in the proceedings if they take an adversarial approach to advocacy or over-prepare bundles such that they cannot be read properly by others in the process. Moreover, it should be noted that a proportion of LIPs coming to court after LASPO may struggle with both oral and written forms of communication, and as such may have even more limited options in this process. Taken together, these experiences expose multiple important ways in which the court process as it is currently designed may fail to account for the various needs and circumstances of the LIPs who are attempting to use it.

Placing LIPs at the Centre

So far, I have used a feminist approach to expose and explore some of the different experiences and perceptions that LIPs may have of the court process post-LASPO. This final substantive section builds on this in order to reflect upon the value of learning from these kinds of experiences in a post-LASPO context, the need for further research that explores the perspectives of court users in this way, and the significance of LASPO as an opportunity to be more creative in response to the well-documented problems that LIPs experience within the family court.

[72] M Harding and A Newnham, *How Do County Courts Share the Care of Children Between Parents?* (Nuffield Foundation, 2015).
[73] SafeLives, *Safe and Well: Mental Health and Domestic Abuse* (SafeLives, 2019).

For decades, LIPs have been a consistent feature of family court proceedings, and as a population they have always had a diverse range of characteristics and circumstances. For example, they have disproportionately been represented by vulnerable populations, such as those contending with mental health problems, learning difficulties, or domestic abuse. As several studies drawn upon throughout this paper demonstrate, these circumstances and characteristics have left LIPs historically facing significant challenges. These challenges include struggling to find legal advice in a diminishing landscape of legal aid providers and increasingly stringent eligibility requirements, as well as difficulties complying with procedural requirements, usinglegal knowledge, and understanding the purpose and nature of proceedings once they arrive in court.

The widespread removal of legal aid by LASPO exacerbated this already-complicated context in several ways. First, it further impaired the viability of legal aid work at the same time as inducing greater demand for free advice and support.[74] Second, owing to LASPO's effect on other areas of law, such as social welfare and employment law, the not-for-profit advice sector has struggled to expand to provide family law advice; pro bono advice services alone simply cannot meet the level of need for this form of support.[75] Third, by removing legal aid eligibility even for those on the lowest incomes, it has generated a significant increase in the number of LIPs, which is likely to include even greater proportions of individuals with vulnerable characteristics and circumstances who are, in turn, likely to face significant challenges in accessing advice and support within this diminished context.[76] As a result, LASPO has been conceptualised by many scholars, practitioners and activists as 'flying in the face'[77] of evidence about the problems that LIPs experience in the court process, and as marking a watershed for family justice – the beginning of a new era in which few are able to effectively access and use family law, and in which the family court in particular is struggling under the strain of increased numbers of LIPs who lack the necessary skills, resources and attributes to participate in the court process.[78]

However, by causing such extensive strain on the family court, LASPO has amplified the importance of finding solutions to many of the problems that had, in fact, already characterised the family court process for LIPs before the legal aid reforms. For example, although many continue to advocate for the reinstatement of legal aid in these cases,[79] this seems unrealistic in the current political and economic climate. Indeed, in its post-implementation review of LASPO, the government reiterated that 'access to a lawyer is not always the correct or most affordable answer', indicating the

[74] See n 2 above.
[75] Trinder, n 14 above, Maclean and Eekelaar, n 2 above, 46-59
[76] Trinder et al, n 4 above, 102-5.
[77] Barlow et al, n 2 above, 205.
[78] Citizens Advice, *Standing Alone: Going to the Family Court Without a Lawyer* (Citizens Advice, 2016); The Bar Council, 'LASPO Has Failed' *The Bar Council* [2018] Available from: <www.barcouncil.org.uk/resource/bar-council--laspo-has-failed.html> last accessed 1 July 2020; J Organ and J Sigafoos, *The Impact of LASPO on Routes to Justice* (Equality and Human Rights Commission, Research Report 118, 2018).
[79] The Bach Commission, *The Right to Justice: Final Report of the Bach Commission* (The Fabian Society, 2017); Legal Aid Practitioners Group, *Manifesto for Legal Aid* (Legal Aid Practitioners Group, 2nd ed, 2017) 44; E Marshall et al, *Family Law and Access to Legal Aid: Briefing Paper* (Public Law Project, 2018).

unwillingness to consider this option.[80] Nevertheless, the government has acknowledged that LIPs require more support than is currently available, and that more is needed to enable the justice system to function with increased numbers of LIPs. They have accordingly committed to offering slightly more financial support to improve non-legal support and information services over the next two years.[81] While this falls short of acknowledging the historical and systemic nature of the tensions that have characterised LIPs' experiences of the court process, this does suggest that there may now be some impulse to begin addressing these problems.

LASPO is therefore by no means the end of the story of legal aid reform, but marks a turning point at which people are finally asking questions about what might come next if legal aid is no longer available.[82] Although it may be a controversial position to advocate, LASPO may in practice provide both the opportunity and the impetus to respond more creatively to the tensions that had already characterised the family court process. Anticipating the devastating impact that was expected of LASPO, several scholars had already begun to lay the foundations of this task. For example, when LASPO was implemented, Trinder *et al* advocated the importance of considering ways in which the court process might need to adapt to become more accessible to the newly-diverse range of LIPs who were likely to be using it post-LASPO, and reflected on the different kinds of support and advice that people might require when they did so.[83]

This paper contributes to this burgeoning debate by suggesting that it is useful for such consideration to begin by learning from the range of different perceptions that LIPs may have of the court process. For instance, I have explored the different ways in which LIPs' experiences of self-representation are inextricably bound up in their broader experiences of inequality within society, and demonstrated that there are many ways in which LIPs may understand and approach the challenges they face during their time in the court process. These responses, behaviours and perceptions not only help further inform current understandings of the barriers that LIPs face at these stages, but also suggest that the task of supporting LIPs post-LASPO is likely to be even more complicated than is currently anticipated. For example, as the polarised ways in which LIPs approached the task of advocacy suggest, adaptations designed to combat the disadvantages faced by some LIPs, may unintentionally reiterate or even exacerbate difficulties faced by others. Similarly, the possibility that some groups of LIPs may actively choose to access non-traditional forms of support raises important concerns about the efficacy of future attempts to improve advice provision. Of course, there is likely to be a far broader range of responses to other challenges that LIPs face within the court process, besides those identified in this paper. These findings are drawn from a small-scale study, with a large representation of female LIPs. As such, this paper has been well-positioned to explore some of the particularly gendered implications of the court process. However, future research that explores the experiences of LIPs from other population groups is likely to emphasise

[80] Ministry of Justice, *Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)*, Cm 37 (Ministry of Justice, 2019), 153.
[81] Ministry of Justice, *Legal Support: The Way Ahead: An Action Plan to Deliver Better Support to People Experiencing Legal Problems* (Ministry of Justice, 2019), 26.
[82] Kaganas (2017), n 44 above, 181.
[83] Trinder et al, n 4 above, 11-20. The importance of adapting the court process has also been explored in Northern Ireland by McKeever et al, n 4 above, 204.

different understandings and responses to barriers within this process. The task of learning from LIPs is therefore of central importance post-LASPO, where there is not only a renewed appetite for reform within the court process, but where the challenges that LIPs face and the ways in which they may understand and respond to these difficulties are likely to be even more unpredictable.

F: Conclusion

The implementation of LASPO has marked a significant shift for private family law. By removing the safety net of legal aid eligibility even for those on the lowest incomes, this reform has generated a huge increase in the numbers self-representing in the family court, as well as further impaired the availability and accessibility of legal advice and support. While LIPs are not a new feature of the court process, the addition of a 'new' category of LIPs, characterised by an even greater prevalence of vulnerable characteristics and circumstances, has placed significant strain on the process and those working within it. LASPO has therefore exacerbated several tensions in the family court process and generated significant concerns about the future sustainability of its processes and the accessibility of family justice. This article contributes to ongoing debates about LASPO and the family court by arguing that, in exacerbating these issues to such a degree, this reform provides an important turning point for learning from the experiences of LIPs and thinking carefully about how better to support them in this process.

The article has drawn together existing studies on self-representation with the findings of a recent empirical project and examined these through an analytical lens of feminist legal theory. It has built upon current understandings of the problems that LIPs experience by providing an insight into the motivations and perceptions of LIPs who may respond to these challenges in different ways, and it has reflected on how these responses are often bound up in broader experiences of inequality and intersecting circumstances. In doing so, the article provides a fresh perspective on self-representation by deepening current understandings of the challenges that LIPs face and emphasising the importance of complicating these understandings. In the unpredictable and uncertain post-LASPO era of family law, this article argues that it is surely right to place these lived realities at the centre of arguments for reform, and to commit to the task of highlighting and addressing the incongruences that exist between LIP experiences and how LIPs are depicted in law and policy.