



RESHAPING CIVIL JUSTICE - ENHANCING THE INQUISITORIAL SYSTEM

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reshaping civil justice chaired by Phillip Taylor MBE

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EXECUTIVE SUMMARY

1. The SCL full proposals should wait until the Ministry of Justice (MoJ) has properly researched the impact of greater numbers of litigants-in-person (LIPs) in Civil Courts. It is currently impossible to assess whether the overall costs to the civil justice system of LIPs assisted through an interventional judge - including more and longer delays in proceedings as LIPs have no advice outside the court, longer hearings as judges lead LIPs through them, and potentially more appeals - outweighs the savings in legal aid in not funding individual representation.
2. The SCL should encourage further academic and practical research including public legal education to assess the costs and benefits to principles of justice (rather than finances) of the greater number of LIPs.
3. In the interim, the first step to a greater inquisitorial system is to give greater latitude to the judiciary to act in an inquisitorial way without impacting on the separation of the powers in the court. The Hickinbottom analyses of amendments to the CPR at Chapter 5 are a good place to begin.

FORMATION OF WORKING PARTY

1. The Lord Chief Justice, Lord Thomas of Cwmgiedd, delivered an address on “Reshaping Justice” to the organisation “Justice” at Freshfields on 3 March 2014ⁱ. Following this address, the Society of Conservative Lawyers established a working party research group to review the reshaping of civil justice in March 2014.
2. Lord Thomas asserted that a reduction in legal aid following the coming into force of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (‘LASPO’) has caused a substantial increase in litigants in person (‘LIPs’ - self-represented persons) before the courts, and that the courts needed to “simplify” the civil justice system in part by adopting a more inquisitorial approach.
3. There is a residual and automatic rejection of inquisitorial proceedings by common lawyersⁱⁱ. Adversarial practitioners tend to see inquisitorial proceedings as reducing the potency and reach of lawyers, particularly barristers, from putting their client’s case at its highest before a judgeⁱⁱⁱ. The adversarial system itself assumes the use of lawyers in the achievement of justice and thus, to a degree, aside from the considerations of justice, there is considerable self-interest and self-service in this perspective. But it has a long reach: some trace adversarial proceedings back to Magna Carta^{iv}.
4. Many contemporary judicial comments on the preference for the adversarial over inquisitorial approach stem from a rejection of the power of the court to act independently to the parties^v or inquire behind the facts presented in court and take proceedings down a route other than one preferred by at least one of the parties^{vi}.

5. However, even without the introduction of a specific inquisitorial mechanism in civil justice, there has been a shift in recent years away from a purely adversarial legal system through, for instance, increased arbitration in commercial disputes, mediation in family disputes, less formal procedures for small claims for damages, and greater judicial powers over case management and costs (e.g. the costs budgeting system). Lord Thomas' call for reconsideration, however, has been viewed as a "philosophical change of approach signalled at the very highest judicial level"^{vii}. This is reflected in the Family Courts, where the Family Justice Modernisation Programme has introduced a new procedural system that will enable judges to adopt an inquisitorial approach in family law cases^{viii}. The emphasis in the Family Courts is on welfare, "a full inquisitorial approach with the court in the driving seat in relation to the issues to be tried and the evidence which is necessary for that hearing to be conducted fairly", limiting the use of expert evidence, for instance^{ix}.

WHAT HAS THE EFFECT OF LASPO ON LIPs ACTUALLY BEEN?

6. The House of Commons Public Accounts Committee ('PAC') very recently found that, although there has been a 30% increase in LIPs in the Family Courts, there is no "reliable data" on whether there has been an similar increase in other areas of non-family civil justice ('Civil Courts') affected by the cuts, e.g. personal injury and some employment, clinical negligence, immigration and housing cases, nor whether court hearings have lengthened and become delayed because of the LASPO reforms^x. No data exist to show whether there has been an increase in LIPs due to LASPO or whether the recession or other causes are to blame, or whether the Jackson reforms have reduced lawyers' costs and thus the numbers of LIPs. The PAC recommended that the Ministry of Justice ('MoJ') "should routinely collect reliable data on the operations of the court service, for example on hearing length, use of other court resources, types of case, and representation, and use this to better understand and manage the impact of LIPs".

First Initial Recommendation:

The SCL full proposals should wait until the MoJ has properly researched the impact of greater numbers of LIPs in Civil Courts.

It is currently impossible to assess whether the overall costs to the civil justice system of LIPs assisted through an interventional judge - more and longer delays in proceedings as LIPs have no advice outside the court, longer hearings as judges lead LIPs through them, and potentially more appeals, and so on - outweighs the savings in legal aid in not funding individual representation.

WHAT ARE THE DIFFICULTIES OF MORE LIPs?

7. It is not difficult to assume that there has been an impact of greater numbers of LIPs in Civil Courts and that proceedings have been delayed and hearings lengthened because of the unfamiliarity of LIPs with procedural and substantive law and court practice. One barrister was quoted as saying it was like "the frustration a surgeon would feel watching somebody try to take out their own liver with a spoon"^{xi}.
8. In a recent paper in the Civil Justice Quarterly, its editor, Professor Adrian Zuckerman, identified "causes of concern" for the rise in litigants in person. The first he identified as the "efficiency deficit", arising because "lay persons are not familiar with the substantive law and court procedure, they have difficulty to prepare adequately and to comply with rules and court orders, with the result that the court is forced to devote disproportionate time and effort". The second problem he calls the "justice deficit": "the disadvantage that unrepresented litigants suffer as a result of their unfamiliarity with the law and court procedure."^{xii}
9. As Sir James Munby has explained, the greater numbers of LIPs "potentially creates at least three major problems: first, the denial of legal advice and of assistance in drafting documents; second, and most obvious, the denial of professional advocacy in the court room; third, the denial of the ability to bring to court a professional witness whose fees are beyond the ability of the litigant to pay."^{xiii} The essential question is whether a greater inquisitorial system solves these difficulties.

Second Initial Recommendation:

The SCL should encourage further academic and practical research including public legal education to assess the costs and benefits to principles of justice (rather than finances) of the greater number of LIPs.

WHAT WOULD AN INQUISITORIAL SYSTEM LOOK LIKE? THE CONTINENTAL APPROACH

10. Before any proposals regarding a future inquisitorial element to proceedings in the UK are considered (or solely to the English and Welsh jurisdiction), serious thought must be given to what form the inquisitorial aspects of proceedings should take. There is a popular misconception that civil code (e.g. Continental) legal systems use a purely inquisitorial rather than adversarial system. This is wrong: the civil system can only be described as ‘more’ inquisitorial. No modern legal system goes as far as having a “process in which the court of its own initiative decides how to define the issues, what evidence should be called, tests such evidence and investigates the conflicting allegations by considering arguments for and against”^{xiv}.
11. Continental European systems – including Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Holland, Portugal and Spain^{xv} - consider legal representation essential and mandatory in all but the smallest civil claims, because there is a limit on the ability of the judge, who is both inquisitor and arbitrator to protect the interests of opposing parties. On the whole, the inquisitorial system is similar to the British in that
 - (a) the parties define the issues,
 - (b) the court cannot decide what to investigate,
 - (c) the litigation process is carried out by lawyers and not clients,
 - (d) although the court can elicit witness testimony (witnesses are questioned by the court and not by the parties’ advocates), it does not seek witnesses of its own motion, and
 - (e) both allow expert witnesses albeit the court appoints in a civil system to help it decide.Written arguments and evidence play a greater role in many civilian legal systems, which means that the court procedure is often comparably more complicated than in the UK and even more inaccessible to lay clients.^{xvi}

DOMESTIC CONSIDERATION OF GREATER INQUISITORIAL PROCEEDINGS

12. There have been three reports since 2011 on LIPs in the civil justice system^{xvii}. The most recent (referred to as the Hickinbottom report), recommended that further work should “urgently” be done to assess three proposals in relation to inquisitorial justice:
 - a. The Civil Procedure Rules (‘CPR’) should be amended to introduce “a dedicated rule that makes specific modifications to other rules where one or more of the parties to proceedings is a litigant in person”.
 - b. A specific power should be introduced into the court’s general case management powers that would “allow the court to direct that, where at least one party is a litigant in person, the proceedings should be conducted by way of a more inquisitorial process”.
 - c. The introduction of a new Rule or accompanying Practice Direction (‘PD’) “that would, without creating a fully inquisitorial form of procedure, address the needs of litigants in person to obtain access to justice while enabling court to manage cases consistently with the overriding objective”^{xviii}.
13. Heeding Lord Thomas’ call for further investigation on the role of an inquisitorial system in the civil justice system, University College, London’s Faculty of Laws held a special one-day colloquium in June 2014, entitled ‘Litigants in Person: What can courts do?’. One of the topics considered was whether there was a need for more inquisitorial proceedings and, if there was such a requirement, what that would involve and what skills the judiciary would need to develop^{xix}.
14. What can be said of the inquisitorial process intended by the Hickinbottom Report is that it is not like non-adversarial proceedings for concerning the care of children. The Children Act 1989, as amended, obliges the court to investigate relevant matters and come to a decision that is most likely to safeguard the interests of the child. This allows an investigation by the judge that does justice by taking account of different sides, rather than necessarily adjudicating between them. Thus, it seems most likely that the Family Court model is not the likely guide for the Civil Court, but that an amendment to the CPR and/or PD to guide judges as inquisitors when faced with LIPs as necessary. Improved case management that simplifies the ways in which parties can engage with the justice system.
15. An example of an inquisitorial process in a defamation case is the judgment of Tugendhat J in *Mole v Hunter* [2014] EWHC 658 (QB), an excerpt of which is appended to this Note. This demonstrates the shifting of the burden of the case from lawyers to the judge, and the judge’s attitude to adapting the Civil Procedure Rules as the Hickinbottom report suggests. Had Mr Justice Tugendhat not been a very experienced libel barrister and judge, he doubts whether he could have attempted to do justice in the case.

Third Initial Recommendation:

The first step to a greater inquisitorial system is to give greater latitude to the judiciary to act in an inquisitorial way without impacting on the separation of the powers. The Hickinbottom analyses of amendments to the CPR at Chapter 5 are a good place to begin. However, great care should be taken not to adversely impact the separation of roles: the Civil Court judge is tasked with deciding between alternative cases argued by the parties rather than the Family Court judge who seeks a sui generis third way. Both sides in a family dispute may be in the 'right' whereas a compromise in a civil dispute may water-down the remedy deserved by one party and give an undeserved benefit to another.

SOME ADVANTAGES AND DISADVANTAGES

16. Without defining the form of inquisitorial system, what are the specific qualitative advantages and disadvantages of any increased emphasis on an inquisitorial approach? As Lord Thomas asked of the inquisitorial process, “What effect would that have on the ability to give other cases their fair share of the court’s time and resources? What consequences would it bring to, for instance, the efficient use of judicial time? Would an increased workload mean we would need more judges, or need to introduce a new cadre of junior judges? What effect would it have on the structure of our courts, and courts administration? What would be its cost?”^{xx} It is clear that much more research needs to be done on identifying the factors to be taken into account and weighing them up in a balancing exercise.

Duplication of workload

17. The adversarial system duplicates workload: each side appoints a legal advisor and someone to frame their case for presentation to the tribunal, which is costly and a burden on legal resources (especially in areas like immigration). The inquisitorial system dispenses with lawyers and associated costs. But the use of solicitors and counsel has obvious advantages, as by its very nature the law tends to be complex and in numerous fields inaccessible to persons without expert knowledge.

Assisting the LIP in Court

18. A greater inquisitorial approach may address the second and third problems identified by Munby P above. Within the courtroom, an active judge can explain to the LIP the procedural requirements of his case and advise him on courses of action, and assist the LIP with putting his case at its highest, effectively acting as his advocate. However, this is without the benefit of privileged advice and the judge is limited in the advocacy role he or she may perform. It is simply harder for judges to identify pertinent facts and present them openly when the judge does not have the advantage of preparing for trial, and the judge must be wary of being imbalanced in their investigations between the parties.

Cross-examination

19. A serious problem in the Family Courts caused by the increase in LIPs occurs in cases where a person, usually a father, is accused of a sex offence in proceedings. In criminal proceedings a defendant is not permitted to cross-examine in person child witnesses or alleged victims of sex offences, and judges have retained this prohibition in family proceedings^{xxi}.

20. Judges are in a difficult position as they cannot effectively cross-examine on the father’s behalf in family proceedings: in such “grave and forensically challenging” cases, “questioning by the judge may not be appropriate or, indeed, sufficient to ensure compliance with Articles 6 and 8 [of the European Convention on Human Rights]”^{xxii}. This problem may be solved, as with privileged advice, through the occasional use of counsel or other representation ordered by the court and paid for by the state. Nonetheless, this is a limitation on judicial inquiry.

Privileged advice

21. The first problem identified by Munby P cannot be solved by a judge in a courtroom, who can only give the barest legal advice in the full publicity of the court, without the benefit of any privilege and with scarcities in time and information. As he put it in relation to privilege and the need for advice on cross-examination, there are matters which “the judge conducting the fact-finding hearing can determine without the benefit of legal argument on both sides. If the judge is deprived of adversarial argument, and if the father is denied access to legal advice both before and during the hearing, there must, in my judgment, be a very real risk to the father’s rights under Articles 6 and 8 of the ECHR.”^{xxiii}

Pre-hearing preparation

22. In family matters, the court has the benefit of preparations made by institutions dedicated to child protection, such as social services: “Local authority social services possess the legal knowledge, are vested with the requisite authority, and may obtain information in confidence. The court in care proceedings will have the benefit of expert reports compiled by specially trained persons. In the absence of input from such sources, the court would lack the information necessary for deciding what is in the best interests of a child.”^{xxiv} These advantageous resources are missing in Civil Courts. LIPs in Civil Courts do not have assistance outside of courts unless they approach a pro bono organisation or the Citizens Advice Bureaux.

Access to Information

23. Parties define the controversy, present proof in support of their allegations, and test each other’s evidence and arguments. Judges have the limited role of deciding between competing cases that the parties have presented. The scope of judicial inquiry is limited, and judges cannot, for instance, consider the wider scope of disclosure (including whether document requests are ‘fishing expeditions’) in a privileged setting with the lay party.

Increased emotion in court

24. Judges decide on the information presented to them, not that which they have themselves obtained, as a means of keeping distance from the source of the information, giving them time to consider and weigh up the information rather than judging prematurely. Judges keep order, parties do not. Parties and their representatives are partial and heated. The role of the representative here is to put their client’s case at its highest and portray their position in the best possible light. More LIPs means that judges have to deal directly with lay parties who are emotionally tied to the dispute, without the buffer of dispassionate professional lawyers.

Allegations of bias

25. Both civilian and common law systems safeguard the integrity of the fact-finding process via adversarial proceedings in order to guard against confirmation bias (the tendency to seek evidence supporting the hypothesis that the investigator has formed and to ignore evidence or explanations that undermine this hypothesis), magnified by background assumptions linked to personal experience and beliefs, moulded by class, gender, age, ethnicity, nationality and religion.

Fairness

26. If only one party is an LIP, there will be an obvious inequality in arms. The represented party will likely seek to exploit their advantage, e.g. via procedural applications, which judges are usually aware of when they guide respondent LIPs. However, it may be a breach of human rights or undermine the fairness of the proceedings if the state denies legal assistance to indigenous litigants in civil litigation: *Steel v United Kingdom* (2005) 41 EHRR 22 (the ‘McLibel’ case, in which the Strasbourg Court considered the human rights implications of the Administration of Justice Act 1999, that introduced a scheme for legal funding which potentially offered the defendants legal aid in a defamation suit after the original claim was heard). In both *H v L*^{xxv} and *Q v Q* it was recognised that the absence of legal assistance in criminal proceedings would be a fundamental breach of due process which could not be cured by judicial assistance during the trial.

Progress of the common law and the maintenance of the rule of law

27. Inquisitorial justice may make it easier for LIPs to engage with the courts, but if there is a shift to a more inquisitorial process, it is possible that the development of the common law is hindered: with a rise in LIPs, “there will be fewer and fewer cases sufficiently well argued on both sides to warrant treating the court’s decision as binding new law”^{xxvi}.

CONCLUSION

28. It is likely that a proper inquisitorial structure would be a systemic shift in the civil justice system that would not be undone by future governments of any hue. What is also clear is that the need to adapt the civil justice system to ever decreasing amounts of money is obvious. The Shadow Justice Minister admitted that, if they had won the General Election in May 2015, Labour would not have reversed the legal aid cuts (although restrictions to judicial review would be eased)^{xxvii}. What the view of the new Labour shadow cabinet will be towards legal aid remains unknown since the Election.

29. A great deal more research needs to be done by the MoJ into the costs of LIPs on the civil justice system, so a cost-benefit exercise may properly take place. Adversarial systems load the costs onto lawyers and ease the burden on judges; inquisitorial systems reverse the loads.
30. There is a need for further investigation into the Hickinbottom proposals. For any serious consideration of an inquisitorial process to be made, there need to be more concrete proposals for what any scheme would look like. The Hickinbottom Report is too vague in its suggestions that the CPR and PDs should be amended without any specific proposals on this point.
31. A greater role for the inquisitorial judge will be through small steps, not giant leaps, and there will always be a role for advocates. The limitations of inquisitorial justice must be recognised early on. As a leading civil justice expert noted in the case of both cross-examination of allegations of sex offences and access to privileged legal advice, the Court of Appeal has “recognised that there are situations where it is impossible to do justice without an adversarial process in which all parties are legally represented. No increase in the inquisitorial nature of the proceedings can make up for the adversarial deficit in such situations.”^{xxviii} The need for privileged advice and specialist advocacy may, of course, be made up through the provision of state assistance, and is not an insurmountable hurdle.
32. Another way of easing the difficulties faced by LIPs lies in greater alternative dispute resolution (‘ADR’), including facilitated mediations. This has been a principal route taken by the Family Courts, along with forced representation paid for by the Attorney-General or by HM Courts and Tribunals Service.

Appendix

Extract from the decision of Tugendhat J in Mole v Hunter [2014] EWHC 658 (QB)

THE PROCEDURE ADOPTED

107. It is not uncommon for there to be defamation actions in which both sides are litigants in person, as in this case. And in such cases the litigants normally have great difficulty in complying with the requirements of the CPR.
108. Ms Hunter and Ms Mole each presented their cases to me with care and restraint. They have been more successful than many litigants in person in what they have each been attempting to achieve. In many cases the procedural history is much worse than it is in the present case.
109. In the present case it appears that each party has received some advice from someone with legal knowledge, and that too is not uncommon. But that is no substitute for representation by a lawyer competent to give advice in the field of defamation.
110. One of the reasons why claimants bring actions in person is that it is easy for disgruntled individuals to post defamatory allegations on the internet. These publications can be very damaging if the person making the allegation succeeds in attracting any viewers. In the past it was more difficult for disgruntled individuals to be able to inflict serious damage to the reputations of those with whom they were in dispute.
111. Because both sides were litigants in person, I conducted the hearing by asking first Ms Hunter and then Ms Mole about each of the matters complained of in the counter claim. I then gave each of them an opportunity of asking questions of the other. Ms Mole chose to ask no questions. I then went through the chronology of events as I understood them to be, inviting each of them to correct or complement the understanding I had formed on my own reading of the papers and to make their submissions. Before doing this I invited each party for their consent to the procedure I proposed to adopt, although in my view CPR r.3.1 (2) (m) is sufficiently wide to make such consent unnecessary. I also indicated that I also proposed to hear both applications before me before making a ruling on either of them.
112. This procedure may be an example of what Lord Thomas CJ referred to in a lecture to Justice the week after this hearing (on 3 March 2014) when he cited The Judicial Working Group on Litigants in Person: Report at paras 2.10, 5.11 and page 33. This Report recommended that there be consideration of:

“Introduction of a specific power into CPR Rule 3.1 that would allow the court to direct that, where at least one party is a litigant in person, the proceedings should be conducted by way of a more inquisitorial form of process in civil proceedings where both or at least one party is represented”

113. If so, then such form of process is already used by judges and Masters in this field of the law, pursuant to the general powers under CPR r.3.1 (2)(m). But the introduction of a specific power into CPR r.3.1 would not suffice by itself to resolve the problems.
114. Litigation between two litigants in person places great demands upon the court. Some of the reasons are referred to in the Report at para 3.14ff. As is commonly the case (Report para 3.17), the papers in this case were presented to me in four separate bundles in no chronological order. In addition I had to search the court file for documents which the parties had not themselves produced or included in the bundles prepared for the hearing, but which were obviously relevant. This is work which is normally done by lawyers representing the parties, and it is usually done by junior lawyers.
115. But if the work is not done by or for the parties, it still has to be done by someone in order for the case is to be tried justly. Masters and judges have no legally qualified assistants, and so in practice they must do the work themselves, if they can.
116. However, it is a waste of resources for this elementary work to be done by judges and Masters. One of the reasons why in England and Wales there are relatively few judges compared with the numbers in civil law jurisdictions is that the courts are administered on the assumption that necessary preparatory work will be done by or on behalf of the litigants and at their expense. If it is not done at the expense of the litigants, then it must be done, if at all, at the expense of the state.
117. There will be significant budgetary and resource implications if the courts are to provide, free of charge to the litigant, and through the costly time of Masters or Judges, services to those who cannot, or who choose not to, instruct solicitors and barristers that they would receive at a small fraction of the cost from lawyers of the junior level appropriate for such work. The Report refers to the issue of resources (paras 2.4, 2.12 and 4.11), but records at para 3.49 that this is a matter for Her Majesty’s Courts and Tribunal Service and the Ministry of Justice.
118. To understand and decide this case I have not only had to devote to this case a disproportionate amount of the resources of the court. I have also had to deploy experience gained from practice at the Bar in this field of the law. Defamation is a specialist area of the law with which very few judges have any familiarity. The Masters acquire some experience in the course of their work, and, when they are able to do so, they give to litigants such prompting as they are able to give consistently with their duty to maintain judicial impartiality. But in practice any judge who was not a specialist in the field could not realistically be expected to attempt to do justice in a dispute such as the present one. Such a judge would require significantly more time to do the preparatory work, and would be likely to require more knowledge of the law and practice in this field than could be acquired in the time available.
119. I record that this case is one three consecutive cases which have been conducted before me by litigants in person. One of these, *Abbas v Shah*, was also a libel action with a lamentable history of delay, and the other, *Mensah v Darroch*, was in substance a claim for breach of confidence. Only in the last of these has the defendant submitted that the claims should be struck out as totally without merit.

The Society of Conservative Lawyers is an association of lawyers who support or are sympathetic to the aims of the Conservative Party. Members hold a range of different views within those parameters and the views expressed in this paper are not necessarily held by all members of the Society or by the Conservative Party.

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END NOTES

- i Reshaping Justice, www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Speeches/lcj-speech-reshaping-justice.pdf, 3 March 2014, at [25] to [33].
- ii As Lord Thomas noted in his speech at [27], a previous Master of the Rolls, Lord Evershed, had, in the 1950s, considered an inquisitorial system in his report into civil justice, but rejected it out of hand: “having looked at it briefly in the context of carrying out some comparative work on how a number of continental justice systems operated, they were sure it couldn’t simply be picked up and adopted over here. It was like other aspects of those systems, as they put it, in “no sense adapted” to our way of doing things.”
- iii The background of the historical use of the inquisitorial system and the preference for an adversarial system in English law is complicated, but see http://en.wikipedia.org/wiki/Inquisitorial_system.
- iv Article 38 of which says: “In future, no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.” See www.bl.uk/magna-carta/articles/magna-carta-english-translation.
- v E.g. *Air Canada and others v Secretary of State for Trade* [1983] 2 AC 394 at 438-439 per Lord Wilberforce.
- vi E.g. *Dyson LJ in Al-Medenni v Mars UK Ltd* [2005] EWCA Civ 1041 at [21].
- vii www.iclr.co.uk/end-road-common-law/.
- viii See *Judicial Proposals for the Modernisation of Family Justice*, 30 July 2012, www.judiciary.gov.uk/publications/family-modernisation-final-report/ although the Report itself makes no mention of the model of inquisitorial judges.
- ix Per *Ryder J* in 4th Update to the Family Justice Modernisation Programme.
- x Implementing reforms to legal aid, 19 January 2015. Available at www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/808/808.pdf: “The Ministry acknowledged in 2012 that the number of LIPs was likely to increase as a result of the reforms. Yet it has still not improved its ability to monitor the impact of LIPs on the courts. It does not collect reliable data on how long individual court hearings take, and its recently published analysis of court hearing durations was based on inadequate information. It is therefore not able to say whether hearings in which people represent themselves are longer or shorter than those in which legal representatives are present and it will not accept the anecdotal evidence provided by the judiciary.”
- xi ‘Austerity and the law’, *The Economist*, 1 November 2014, www.economist.com/news/britain/21629527-cuts-take-effect-justice-system-struggling-adapt-justice-cold-climate.
- xii ‘Editor’s Note: No Justice Without Lawyers – The Myth of an Inquisitorial Solution’, (2014) 33 *CJQ* Issue 4, pp.355-474, at 355-356.
- xiii *Q v Q* [2014] EWFC 31 per *Munby P* at [43].
- xiv *Zuckerman* at p.357.
- xv *Zuckerman*, at p.361, considers that “legal systems such as the French, the German or the Italian are no more inquisitorial than the English system”.
- xvi *Zuckerman* at p.360-361.
- xvii Access to Justice for Litigants in Person (Civil Justice Council, November 2011); *Judicial Proposals for the Modernisation of Family Justice* (Judiciary of England and Wales, July 2012); and *Judicial working Group on Litigants in Person Report* (Mr Justice Hickinbottom et al, July 2013). A Royal Commission considered it in relation to criminal proceedings in 1993 (at [11] to [15] here: www.gov.uk/government/uploads/system/uploads/attachment_data/file/271971/2263.pdf).
- xviii At 2.10, 5.11 and proposal (vii), *The Judicial Working Group on Litigants in Person: Report*, 5 July 2013, www.judiciary.gov.uk/publications/judicial-working-group-lip-report/
- xix Dr John Sorabji, the Principal Legal Officer to the Lord Chief Justice and Master of the Rolls, prepared a number of background papers to aid debate on this matter, available at www.laws.ucl.ac.uk/wp-content/uploads/2014/08/litigants-in-person-what-can-courts-do-june-2014.pdf.
- xx *Ibid*, At [31].
- xxi S.34A Criminal Justice Act 1988 and Youth Justice and Criminal Evidence Act 2005, s.35.
- xxii *Q v Q* per *Munby P* at [76].
- xxiii *Q v Q* at [85].
- xxiv *Zuckerman* at p.369.
- xxv *H v L* [2006] EWHC 2099 (Fam) per Roderic Wood J.
- xxvi www.iclr.co.uk/end-road-common-law/.
- xxvii www.theguardian.com/law/2015/mar/02/labour-cannot-reverse-tory-legal-aid-cuts-sadiq-khan-says.
- xxviii *Zuckerman* at p.367.