

1 CROWN OFFICE ROW

Presents

“An Essential Guide to dealing with Litigants in Person” Discussing the court’s approach to Litigants in person and the application of the Supreme Court decision in *Barton v Wright-Hassall LLP* [2018] UKSC 12 and related cases.

“Top Tips: Preparing the Brief to Counsel” A one-stop shop for information and guidance about how to prepare the brief/instructions to counsel on a range of matters.

27th June 5pm

1 Crown Office Row Chambers, 119 Church Street, Brighton BN1 1UD

Speakers

Kate Richmond

Kate was called to the Bar in 2011. Before joining chambers Kate was a solicitor's agent representing individuals, companies, banks and other financial institutions in property matters and other civil claims. Since joining chambers Kate acts for a wide range of clients including private individuals, companies, insurers, charities and finance companies in contractual and tortious disputes concerning the sale or land, mortgage possession, residential and commercial landlord and tenant matters.

Kate acts for parties to Road Traffic and other negligence claims in the County Court which means she does appear against litigants in person regularly. Kate also appears for clients at applications to set aside judgment, for relief from sanctions and summary judgment before Judges who comment on the strengths and weaknesses of the applications before them.

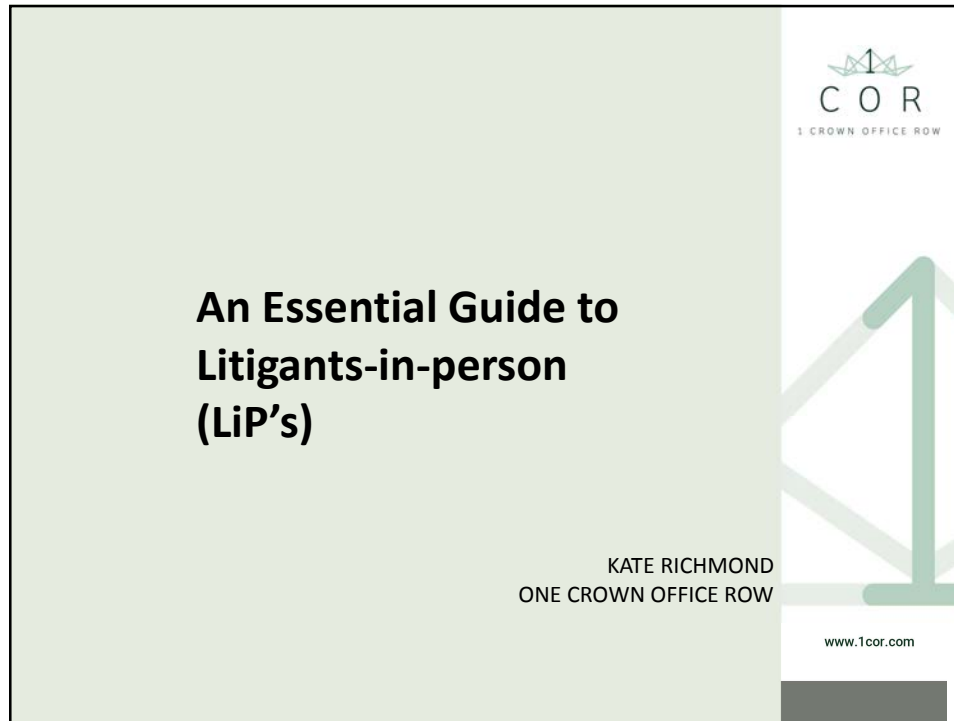
Kate is also regularly instructed in private family law matters such as applications for child arrangements orders along with trusts of land and cohabitation disputes. These applications can often involve unrepresented parties given the cuts to legal aid funding in this area.

Scott Storey

Scott was called to the Bar in 2015. Before pupillage Scott worked as a paralegal in public law, specialising in mental capacity proceedings in the Court of Protection and judicial review concerning health and social welfare. Scott also worked as a paralegal in civil actions arising from sexual and physical abuse.

Scott undertakes the full range of Chambers' work, with a particular interest in public law and civil proceedings against public bodies. In respect of Scott's public law practice, he regularly appears in the Court of Protection acting in matters ranging from deputyship applications to best interests proceedings. Scott has also appeared in the First-tier Tribunal (Special Educational Needs and Disability) and the Coroner's Court. Scott is often against litigants in person in public law cases.

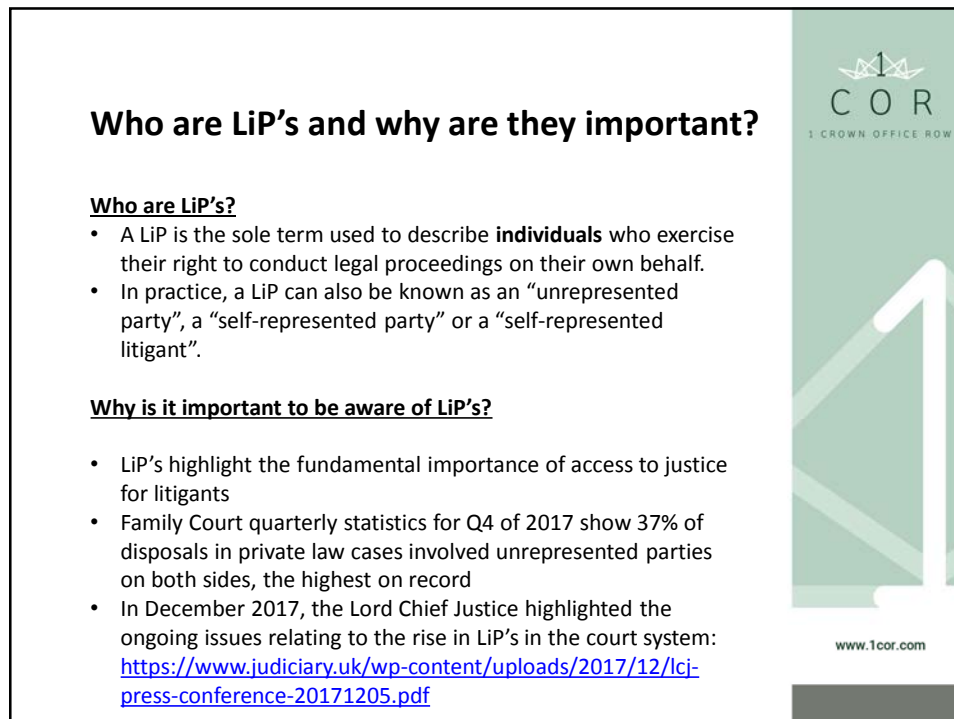
Scott's general civil practice encompasses a range of proceedings in the County Court, including personal injury, landlord/tenant and breach of contract. Scott has also appeared in the Employment Tribunal and more recently in the Queen's Bench Division for an assessment of damages hearing concerning a sexual abuse claim. Scott has appeared against litigants in person in both the County Court and the Employment Tribunal.



**An Essential Guide to
Litigants-in-person
(LiP's)**

KATE RICHMOND
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Who are LiP's and why are they important?

Who are LiP's?

- A LiP is the sole term used to describe **individuals** who exercise their right to conduct legal proceedings on their own behalf.
- In practice, a LiP can also be known as an “unrepresented party”, a “self-represented party” or a “self-represented litigant”.

Why is it important to be aware of LiP's?

- LiP's highlight the fundamental importance of access to justice for litigants
- Family Court quarterly statistics for Q4 of 2017 show 37% of disposals in private law cases involved unrepresented parties on both sides, the highest on record
- In December 2017, the Lord Chief Justice highlighted the ongoing issues relating to the rise in LiP's in the court system:
<https://www.judiciary.uk/wp-content/uploads/2017/12/lcj-press-conference-20171205.pdf>

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The law before *Barton*

- **Mole v Hunter** [2014] EWHC 658 (QB), Tugendhat J commented at [107] that reform of the rules was unnecessary to deal with the effect that litigants in person were increasingly having on the courts.
- **CPR 3.1A** – ‘Case Management - unrepresented parties’ came into force on 1 October 2015.
- ***Akcine Bendore Bankas Snoras (in Bankruptcy) v Yampolskaya*** [2015] EWHC 2136 (QB), Green J at paragraph 25:

*“It is accepted that in principle a court might well take the fact that a litigant in person is indigent or impecunious, or unable to speak the language into account... **Not every litigant in person is to be treated as the same.**”*

- ***Agarwala v Agarwala*** [2016] EWCA Civ 1252 – Lady Justice King:

- *‘Whilst every judge is sympathetic to the challenges faced by litigants in person, justice simply cannot be done through a torrent of informal, unfocussed emails, often sent directly to the judge and not to the other parties...**In my view judges must be entitled, as part of their general case management powers, to put in place, where they feel it to be appropriate, strict directions** regulating communications with the court and litigants should understand that failure to comply with such directions will mean that communications that they choose to send, notwithstanding those directions, will be neither responded to nor acted upon.’*

Barton v Wright Hassall LLP [2016] **EWCA Civ 177**

- Mr Barton applied for an order under CPR 6.15(2) that steps he had taken to bring his claim form to Wright Hassall's attention should count as good service.
- At first instance, the district judge concluded that there was **no "good reason" to exercise discretion** under CPR 6.15 to permit service by alternative means.
- Mr Barton's appeal was dismissed, the judge finding that there was **no good reason why Mr Barton had not served the claim form** during its validity.
- Mr Barton appealed to the Court of Appeal who considered:

'The mere fact that a party is a litigant in person cannot on its own amount to a good reason, although it may have some relevance at the margins' [19]



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Clarity in light of *Barton v Wright-Hassall LLP [2018] UKSC 12*

- The standard of compliance with rules or orders of the court are the same for litigants-in-person as they are for represented parties [18];
- However, the court may make allowances for litigants-in-person when it comes to **case management decisions** and how **hearings** are conducted;
 - Examples include:
 - longer time limits for compliance with directions; or
 - The court assisting unrepresented parties to present their evidence during trial.
- Litigants-in-person are expected to know the rules unless they are **"particularly inaccessible or obscure"** [18];



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A tougher approach in *Reynard v Fox* [2018] EWHC 443 (Ch)


- HHJ Matthews applies the principles in *Barton* to strike out an LiP's claim which had already been decided in April 2015.
- An issue for the court was whether it was unjust to strike out the claim because he had not brought it under the relevant section of the Insolvency Act 1986 because he was a litigant in person and did not have a detailed knowledge of insolvency regulations.
- On the case law, HHJ Matthews found **the fact that a litigant had been acting in person was not of itself a reason to dis-apply procedural rules, orders or directions, or excuse non-compliance with them.**
- The exception was that a special indulgence to a litigant in person might be justified where a rule was **hard to find, difficult to understand, or ambiguous...** [44], [45].

Best practice when dealing with LiP's


- Use clear, concise language – make it “**google-able**”;
- Explain any necessary legal jargon;
- Recommend to a LiP that they seek **independent legal advice** – identify relevant advice or support agencies (CAB, Shelter, Bar pro bono centre, LawWorks);
- Refer LiP's to **CPR, FPR or Crim PR** at the earliest opportunity;
- Set **clear parameters** about email & telephone communication with each party & the court at the outset of the matter;
- Explain at the outset the **extent and limits to the assistance** that you can provide to LiP's;
- Be **flexible** – not all LiP's are the same;

Further information

- “Litigants in person: guidelines for lawyers” on the Law Society website: (<http://www.lawsociety.org.uk/support-services/advice/articles/litigants-in-person-new-guidelines-for-lawyers-june-2015/>)
- Practice Guidance from the Master of the Rolls on LiPs – March 2013: **Practice Guidance (Terminology for Litigants in Person)** 11 March 2013 [2013] 2 All ER 624
- Litigants in Person Guidelines for Lawyers - **A Selection of Relevant Cases** on the Bar Council website: http://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/a_selection_of_relevant_cases_-_1_june_2015.pdf



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Top Tips: Preparing the Brief to Counsel



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THE BUNDLE OF DOCUMENTS

What to include?

- The order listing the hearing
- Updating documents
- Issued and served versions of documents
- Limit to what is relevant and necessary for the specific task
- Photos or plans with colour
- Schedule of costs if applicable

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THE BUNDLE OF DOCUMENTS



Correspondence

- Chronological or reverse chronological order
- Separate or flag without prejudice correspondence

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THE INSTRUCTIONS



Introductory matters

- Set out who you act for
- Relevant details about the client – date of birth, etc.
- Your contact details and availability – if you will not be available the contact details of a colleague

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THE INSTRUCTIONS



Background information

- Summary of the key facts
- Try to avoid *'counsel will note from the enclosed papers the background to the case'*
- Have directions been complied with?
- Other proceedings counsel should know about?

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THE INSTRUCTIONS



Position and issues

- Has the client been spoken to recently?
- Is the client's position up-to-date?
- What is in dispute? Is anything agreed?
- Anything the client particularly might want to discuss with counsel?
- What approach and orders are sought?
- Your view on any issues?

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THE INSTRUCTIONS



Preparation

- What requires immediate attention and what can wait?
- Any deadlines upcoming?
- What does counsel need to prepare in advance of the hearing – position statement, draft order, etc.?
- Try to avoid *'advise generally'*

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THE INSTRUCTIONS



Other issues

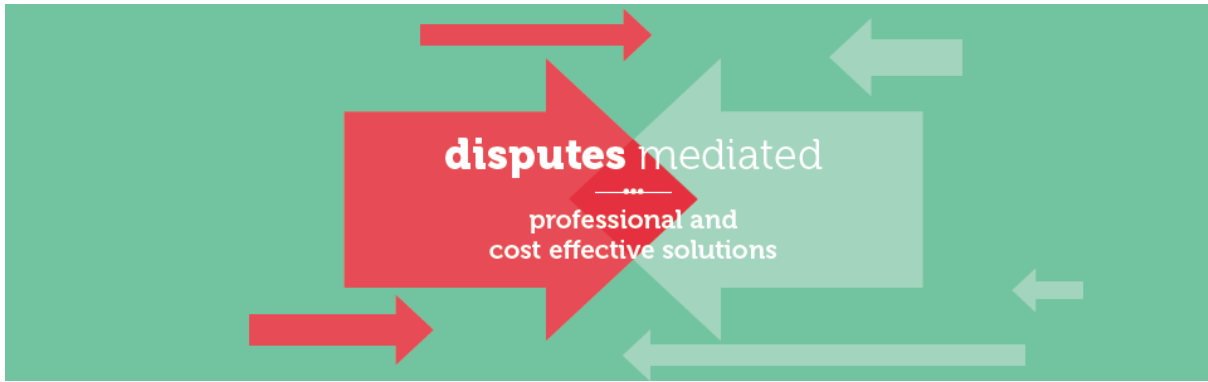
- Hearing details – time, venue, etc.
- Who will be attending court with counsel?
- Any leave upcoming that may impact on ability to complete statements, etc.?

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SENDING THE BRIEF

- Send in good time if possible
- Hard copy or electronic copy?
- If electronic – try to avoid very large bundles or many separate documents



ALTERNATIVE DISPUTE RESOLUTION At Crown Office Row

- Mediation (Civil & Family)
- Arbitration (Family)
- Early Neutral Evaluations and Private FDR

More people are turning to alternative forms of dispute resolution as the most cost effective method of resolving disputes, particularly as pressure mounts on the Court Service. We thought that we would write to advise you of the additional services Chambers offers:

Civil and Family Mediation: Since launching in 2014, our mediators have assisted many clients to reach a mediated agreement in both Civil, encompassing Commercial, Property disputes and Private disputes, and in Family with Children Act and Financial Remedy disputes. These cases are often referred to our mediators by solicitors who instruct Chambers in other matters, and frequently when there are ongoing Court proceedings.

Civil Mediators

HH Keith Hollis
James King-Smith
Stuart Wright
Lauren Godfrey

Family Mediators

David Balcombe QC
Timothy Bergin
Rachael Claridge
Jane Peckham
Eleanor Battie
Anita Mehta

Further information can be found at www.disputesmediated.com

Family Arbitration: We are pleased to inform you that we have Arbitrators available to accept instructions in both Children and finance disputes

Children Arbitrators

Timothy Bergin
Julie Stather
Eleanor Battie

Finance Arbitrator

David Balcombe QC

We also have David Balcombe QC who has been an arbitrator for many years in Financial Remedy Disputes.

Early Neutral Evaluation: A number of members of Chambers offer Early Neutral Evaluations in disputes involving children, property disputes and financial remedy where it may encompass a private FDR.

The solicitors are able to agree on the barrister, the process is confidential and is an effective way of both sides hearing the most likely outcome on the evidence.

We hope to work with our Instructing Solicitors and compliment the work they do by offering these services. If you would like to discuss what we may be able to do for your clients please do not hesitate to get in touch.

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