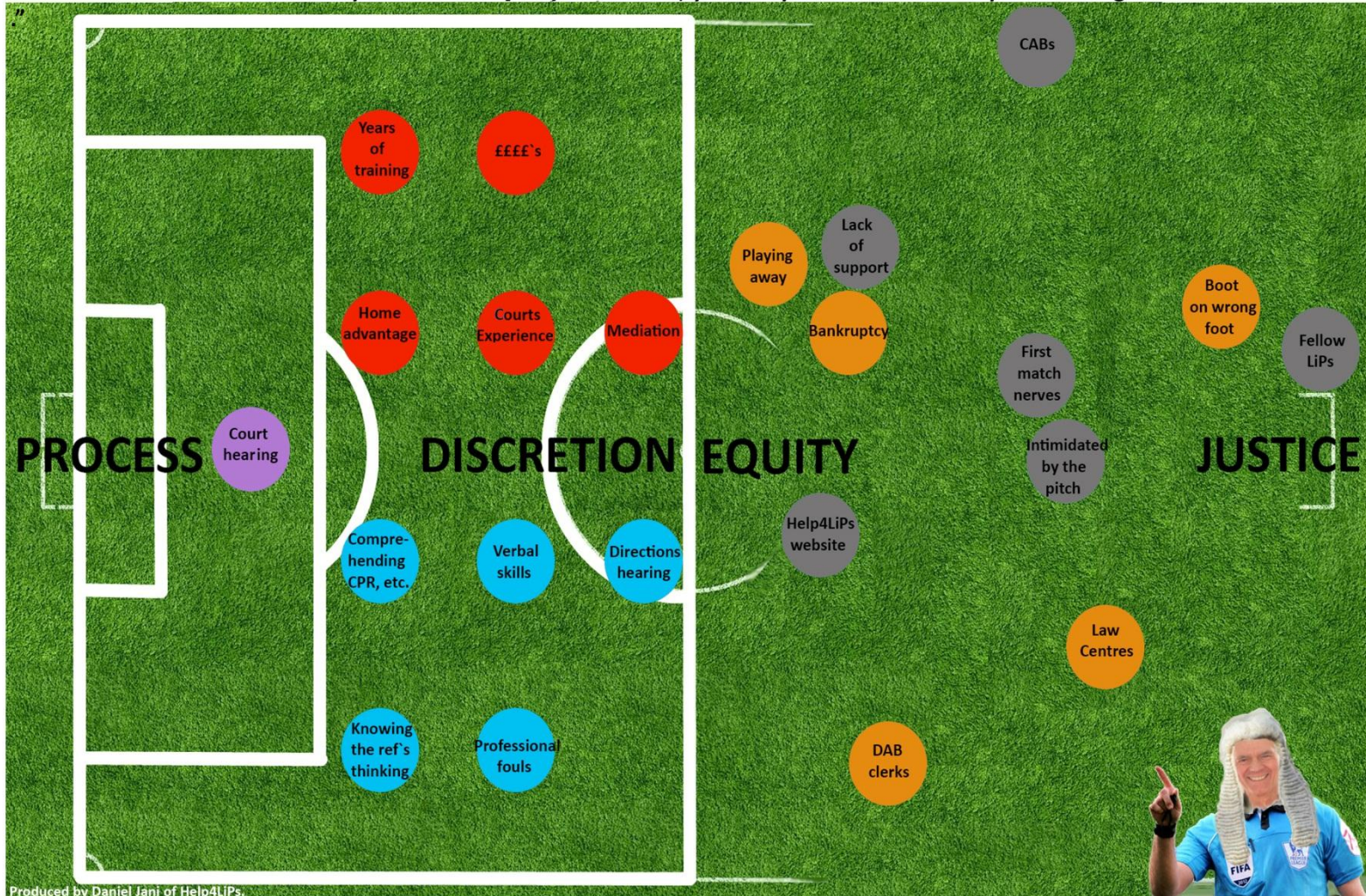


For a LiP: PROCESS DEFEATS JUSTICE!

“A litigant in person going into court is a little bit like someone who is a great athlete taking on United or City... No matter how good of an athlete you are or how just your cause is, you really do not know what you are doing”.



Produced by Daniel Jani of Help4LiPs.

An Interview on You and Yours of BBC Radio 4 about Litigants in Person

with Nicholas Lavender QC, Chairman of the Bar Council, Caroline Newman of Atticus Law Advocates and Jeff Lampert of Help4LiPs on Monday, 3 November 2014.

Interviewer: More people are representing themselves in the civil courts in England and Wales. It is because you can no longer claim Legal Aid for lots of civil cases that include cases in the Family Courts and disputes about immigration, housing and debt, welfare benefits, clinical negligence and employment. The changes came into effect in April of last year and since then, as you would expect, more people are appearing in court and speaking for themselves, rather than having solicitors and barristers speak for them. The Bar Council, the body that represents barristers in England and Wales has published a guide for people it calls "litigants in person". Nicholas Lavender QC chairs the bar council. Nicholas Lavender, it was predicted that there would be a huge rise in the numbers people who are unrepresented in the Family Courts in particular. What's happened in practice?

Nicholas Lavender QC: Well, the effects of the cuts have been much greater than expected. The government said they expected to see a 65% fall and in fact we have seen more like 80%. The other thing that has taken everyone by surprise is that the safety net which the government put in place, exceptional case funding, was intended to sweep up several thousand cases where otherwise there would be an injustice. In fact, it is only providing help in a handful of cases; 9 family cases a quarter.

Interviewer: Why is that?

Nicholas Lavender QC: Partly it's because the government has applied too high a test, as a High Court judge decided recently. Partly it's because the test, even when correctly interpreted, was made too tight and it needs to be relaxed.

Interviewer: I have read a couple of cases in the newspaper over the weekend of people with learning disabilities representing themselves in the Family Court where their children are going to be taken into care. I mean those cases surely should be in the safety net, should not they?

Nicholas Lavender QC: Well, absolutely and we are seeing particularly in family cases that the cuts are biting. The government's figures show that if you compare the number of grants of legal aid after the cuts came in with the numbers before, there are about 5,000 husbands and wives or mothers and fathers, 5,000 a month, who used to receive legal aid, but now do not.

Interviewer: Well, earlier this morning, I spoke to two people who tried to help people representing themselves in court. Jeff Lampert appeared in court on ten different occasions in a case about his company going into receivership and he lost. Caroline Newman represented herself when her house was going to be repossessed, but she won. Here they are.

Caroline Newman: This program is about DIY Justice, but I have to give your listeners the bad news. There is no DIY Justice I am afraid and something needs to change.

Jeff Lampert: I have learned that the law is not so much about justice. It is more about process. I have learned that you really should not start it unless you absolutely need to. I have learned that the judiciary is fair.

Caroline Newman: The judges are fair. They do what they can, but if you are the litigant, the self-representing litigant and you are against a qualified barrister, then it is unlikely that you are going to win. I think if you are against another self-representing litigant, where the judge probably has a little more autonomy, then I think you might get something like fair justice.

Jeff Lampert: A litigant in person going into court is a little bit like someone who is a great athlete taking on United or City. You go onto a football field and you may be a great athlete, but you do not even know where to start. You do not know what the white lines are for, you never understand the offside rule. No matter how good of an athlete you are or how just your cause is, you really do not know what you are doing.

Interviewer: How did you win then?

Caroline Newman: Just by being determined and not going away. The thing dragged on for about three years and I turned up at every hearing. I did a lot of research on the internet. I came with all sorts of arguments. I made complaints to the Financial Services Authority, but the other good thing as well is that the mortgage company had actually been dragged to the Financial Services Authority and had been fined something like about 900,000 pounds for doing exactly the same things to other people that they were doing to me.

Jeff Lampert: Our organisation presented to the judiciary last year and expected to be thrown out of the meeting. We were not and they accepted it and so they do understand the problem. I do not know what the solution is, but everybody does know about the problem.



Interviewer: Jeff Lampert and Caroline Newman and their organisation is called Help4LiPs, where LiPs stands for litigants in person. Nicholas Lavender from the Bar Council, realistically can the courts change to allow genuine access to justice for people who can not pay solicitors and barristers to represent them and no longer get legal aid?

Nicholas Lavender QC: Well, the difficulty that we face and the Lord Chief Justice referred to this in a speech earlier this year is that our entire legal system is based on what we call the adversarial process where the courts rely on the parties and the parties' lawyers to identify the issues, to do the legal research and so on and so forth. Different countries have different systems, but they require a massive structural change. Germany for example, has 19,000 professional judges. We have 2,000 because we have a different system.

Interviewer: So you have produced your own guide as I said which gives advice. What is the single most important thing then to bear in mind if you are going to court representing yourself?

Nicholas Lavender QC: Preparation. I think as Mr. Lampert said, do not start unless you need to and Ms. Newman talked about doing lots of research. Before you even start a case, you need to prepare well, to research the law and see how the law fits to the facts of your case and also, and Mr. Lampert made a very good point about this, to identify the procedure. Suppose you come to the conclusion that your rights have been infringed, how do you go about enforcing your rights? You need to know the rules of the game. As he said, it's no good turning up to play against United or City if you do not know the offside rule.

Interviewer: Nicholas Lavender, Chair of the Bar Council. Thank you very much for coming on.

ABOUT HELP4LIPS

Help4LiPs (H4L) was conceived of by a couple of Litigants in Person over lunch and then ratified as a concept in an informal meeting at the RCJ with Directors of the CAB, PSU and High Court. Since that time, with early seed money from the London Legal Trust and a few private individuals and continuous loans from the co-founders Brad Meyer and Jeff Lampert, H4L has been attracting, capturing, simplifying and re-presenting (via the web) some of the expert knowledge of legal professionals.

www.help4lips.co.uk