



BIRMINGHAM CITY
University

**LANGUAGE OF
DIY JUSTICE
PROJECT**

LANGUAGE OF DIY JUSTICE PROJECT

LANGUAGE OF DIY JUSTICE: COMMUNICATION IN COURT

Presenting the project

This online exhibition presents the project 'Language of DIY Justice' led by Dr Tatiana Tkacukova, Senior Lecturer at Birmingham City University, and funded by the Arts and Humanities Research Council. The project explores the experiences of people who represent themselves in court. Since 2013, due to cuts to legal aid, more people have had to represent themselves in family and civil courts if they cannot afford a lawyer. Yet, we do not know much about the experiences of people who go through court proceedings on their own.

The term used for people who represent themselves in court is **litigants in person** or **self-represented litigants**. When exploring their experiences, we are specifically interested in challenges they encounter with legal language and communication during court hearings and pre-hearing stages. Our focus can be broken down into these areas:

- (1) self-represented litigants' reflections on interacting with judges;
- (2) self-represented litigants' reflections on interacting with lawyers representing the other party;
- (3) difficulties self-represented litigants might have with understanding court forms, legal language or court processes;
- (4) difficulties self-represented litigants might have with filling in court forms, preparing witness statements or any other written documents;
- (5) communication challenges self-represented litigants might have during court hearings and negotiation stages.



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SURVEY AND INTERVIEWS

To explore the experiences of self-represented litigants with court hearings, we surveyed and interviewed over 100 participants. Most of our participants (55%) were in court regarding child arrangements (contact with children and custody of children). The other reasons for court attendance included financial matters related to a breakdown of a relationship (10%) and divorce proceedings (9%). Further 9% attended court because of an injunction or non-molestation order (orders protecting, for instance, domestic violence victims and limiting what alleged offenders can do). The other participants were in court due to housing issues, general financial disputes, bankruptcy or other disputes.

This is how our survey participants ranked the difficulty of language related tasks they had to perform:

Task	Easy			OK			Difficult		
Answering judge's questions			•						
Finding the right court forms			•						
Filling in court forms						•			
Understanding guidance or information leaflets			•						
Collecting evidence			•						
Interacting with the judge			•						
Putting forward your evidence			•						
Searching for information and guidance			•						
Writing a witness statement						•			
Writing a skeleton argument or summary of the case						•			
Putting forward your side of the story						•			
Understanding what is required for court hearings						•			
Search for legal advice						•			
Understanding what law applies						•			
Interacting with the other party's lawyer									•
Responding to other party's claims									•
Negotiating with the lawyer representing the other party									•
Negotiating with the other party									•



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OVERALL EXPERIENCES OF SELF-REPRESENTATION

Our participants had diverse experiences with representing themselves. Around 37% of you found the process to be manageable, often thanks to the previous experience with court hearings or their work experience.

“I didn’t understand some things, that had to be repeated towards me, so yes, a bit different but I managed all right.”

“I come from working at the magistrate’s court. So, for me, a lot of the terminology and formats of forms and stuff isn’t unknown. If I think of a normal person going in to do that, I could imagine that it would be really alien for them.”

“It’s not nice for the first couple of times, but to be honest, you pick up a lot from listening to the other lawyers.”

But 30% found going to court on their own intimidating, scary, or nerve wrecking. Further 15% felt that they hadn’t been heard and 10% noted specific difficulties understanding the language.

“It’s a bit scary, to be honest, because you don’t know if you say the right things or if it’s going to go against you.”

“The feeling, it’s unexplainable, really. The anxiety on the court date and my emotions were all in the air.”

“I mean, just the fact that you’re going in there and you haven’t got a clue what to expect when you get in there, is worrying enough and challenging and stressful enough. So, obviously, there’s all that on top of the fact that you’re having to speak for yourself as well and you’re not always understanding the terminology they’re using for things.”

TIP: On the last page, we provide tips on sources of support, legal information and advice.



www.bcu.ac.uk/research/stories/language-of-diy-justice-communication-practices-processes

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REASON FOR SELF-REPRESENTING

80% of our participants cited the high cost of legal representation as the main (or a contributing) reason for representing themselves, often combined with the unavailability of legal aid. Overall, around 15% of participants felt that not having a lawyer put them at a serious disadvantage and many wished they did have a lawyer.

“It’s virtually impossible to get legal aid for family court at the moment and because I’m not working at the moment, it’s just not affordable.”

“I’ve struggled along but it’s getting to the more complicated stage now where I could really do with some help. But there is no help.”

“I think the way the system works, I just felt it was a bit unfair with a lot of things. I think next time I probably would look at taking up legal advice and then perhaps getting somebody to represent me.”

But in 12% of cases, self-represented litigants felt that they could put their own case better than a lawyer because they felt they could represent the facts and/or their side of the story, which would be missing from a lawyer’s account.

“I felt that I could probably tell my own story the best.”

“It’s difficult really, but I feel that you get to put your side across more than them [lawyers] just speaking for you.”

And in a handful of cases our participants felt that the case was very straightforward, so a lawyer simply was not required. These were predominantly people who were facing less complicated legal matters, such as agreeing on contact with children (as opposed to challenging an injunction or challenging the proposed child arrangements).

“I just didn’t feel I needed representation, because I thought it was straightforward.”

TIP:

It is important to understand what law is relevant to your case and what judges would typically be considering when deciding similar cases. Legal advice in the early stages can help you work this out. On the last page, we provide tips on how to access legal information and advice for free or on a one-off basis.



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SOURCES OF SUPPORT

Participants in our study relied mostly on websites and friends and family for advice and moral support.

“The only people I had supporting me was my family. They’ve given me advice. My sister’s friend had been through a similar situation before.”

Nearly half of the people we talked to did not know where to search for legal information and advice. Those who searched for information online, generally felt the internet was a good source of information, but some felt that the advice available online is patchy.

“I’m a layman, I didn’t know anything about the law. Having even pamphlets on how to present the bundle, how to present your witness statements, that would come in handy. And having people that volunteer, with legal experience.”

“I’ve read a whole lot of help on the internet.”

“I’m always on the lookout for anything that applies to my case specifically if possible. But it’s a minefield, isn’t it? You’re not quite sure who to trust, and you’re not quite sure how applicable it is.”

Only around a fifth of the people we talked to accessed support available in the court building or a charity organisation. Half of them were happy with the support they received, while others felt they did not get enough guidance. This is mainly because some advice organisations, such as Support through Court, cannot provide legal advice and their services are limited to specific tasks, such as information provision, moral support and support with filling in court forms and preparing documents.

“I find Support Through Court extremely helpful. They have been absolutely amazing up there for me, and I can’t sing their praises enough. They have been phenomenal.”

“You could spend the best part of a week trying to get through to [Citizen’s Advice Bureau] trying to get answers, but there’s nothing really. Nothing viable.”

TIP: When looking for information online, be vigilant and use reliable sources of information. The same applies to advice from online forums – some of the advisers are providing biased advice and it is important to verify any online advice with reliable sources of information.



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PREPARING WRITTEN DOCUMENTS

Preparing written documents presented the widest range of challenges to people representing themselves in court. Some of the difficulties reported include:

- not understanding the language in the forms or not knowing how to present something:

“Very hard [to understand]. I’d look at answering it one way and look at it from a different way and I can answer it in a different way and I’m like, “Oh, well, which way they want me to answer it from?” Fortunately, I did it right in the end.”

“Even when the judge said, “You need a witness statement,” I actually thought, “It’s about witnesses, not about myself.” I did not, you know... It’s understanding legal terms.”

- preparing paperwork due to formatting or procedure:

“that’s the most difficult thing to begin with, preparing all the documentation in the right order, collating all the evidence together, doing it in a way that it’s acceptable for court.”

“A lot of [the evidence] is all text message [in my case], so it’s printing off any text messages, anything like that, that I’d prepared myself, but I don’t know what’s correct in court.”

Yet some did not find this to be a problem:

“The court do give you an example, a template to work to, how it should be set out and as long as you follow that, to be honest, there’s no major issues with it.”

TIP: If you need help with filling in court forms, Support through Court, can offer assistance with this (<https://www.supportthroughcourt.org/>).

Witness statement is a document setting out your evidence (what you want to tell the court and what evidence you have to support your story). It is important to keep witness statements factual and link them to the evidence you have. Ask the court if they have a template for witness statements or any other documents you need to submit – this would help you organise your text.

Remember that witness statements need to have numbered paragraphs to make it easier to refer to them in court. Likewise, court bundles need to include documents with page numbers.

You may be asked to ‘serve’ and/or ‘file’ documents. Serving documents means sending them to the other party and filing means sending them to court. Always ask the court staff or judge if there is something you do not understand during the hearing.



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TALKING TO JUDGES

Talking to judges is another area in which self-represented litigants can have very mixed experiences. The people we spoke to were split more or less evenly into:

- (a) people who had a good experience of judges and felt that judges showed patience and understanding:

“Both the judges were really, really good. They explained things so clearly and were really patient.”

“Although I might not know the legal terms, the judges were helpful and they did turn around and say, ‘Well, we can’t do exactly what you’re saying, but you could do this’.”

- (b) people who had a less positive experience of judges and found them unsympathetic:

“He wasn’t very helpful. He’d fire a question at you and, because you didn’t come back with a specific answer quickly, he moved to the other person and fired them a question.”

“I just felt as though she’s put me in the same category [as parents in previous cases] and not seen me as an individual.”

- (c) people who had a mixed experience of judges:

“Sometimes you get judges that are quite understanding and good and sometimes you get some that don’t really seem to care and just want you in and out and it resolved.”

TIP:

Judges tend to be very patient and understanding of the challenges self-represented litigants experience, but they are often pressed for time as there are usually at least several cases they need to hear during the day. They will give you an opportunity to say your side of the story, but will define when it is your time to speak. It is important you are well-prepared for hearings, so consider writing up a summary of points that you would like to raise and ensure you have all the documents with you.

Bring a pen and paper so that you can make notes and refer to them later. Contact Suport through Court if you would like someone to join you for the hearing and help you take notes.



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TALKING TO LAWYERS REPRESENTING THE OTHER PARTY

Nearly everyone who interacted with a lawyer representing the other party found it difficult and described it as by far the most difficult task that they had to perform. Many people found communication with the opposition lawyers to be problematic due to the complex language their use, seemingly manipulative strategies, or general lack of communication. Many did not know how to negotiate with the other party through lawyers or were suspicious and did not want to enter negotiations.

“Rather than fighting on the merits of the case, they try to pin me down in technicalities.”

“The lawyer was obstructive and refused to pass correct information on before the hearing, ignored questions and emails.”

“That [negotiating] was terrible. That was not productive in the slightest for anybody because I don’t know how to do it. They’re not straight talking, so you can’t really get the answers you want and I’d get quite frustrated.”

“she came and spoke to me outside the courtroom, to get an agreement prior to going into the courtroom, I didn’t realise it was a tactic to get their point across, whereas, you know, without going to the judges.”

Being cross-examined by the lawyer for the other party was reported to be a stressful experience as well.

“I was actually cross-examined by her lawyers. And repeatedly... they tried to put a word in my mouth that has never been in the case... And what was so unfair was, obviously, I’ve got no choice, to not have a lawyer, I could not cross-examine and ask the right questions.”

Some even felt it was easier when both parties are unrepresented as that meant they did not have to deal with a lawyer and the interaction in court was more balanced.

“when the other party wasn’t represented I feel they gave us each proper time to speak and respond.”

TIP:

It is standard practice for lawyers to try and identify common ground and any outstanding issues before the hearings and/or inbetween hearings. There is usually no reason to be worried about the process and you can try and engage with them to see what their client would be agreeable to or what their position is – this in fact may help you prepare for the hearing more efficiently.



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SPEAKING DURING COURT HEARINGS

On balance our participants found speaking during court hearings to be a difficult and daunting experience. Some found the language of the court difficult to understand and were not always sure how to address the court. Some found it hard to know when it was their turn to speak and/or did not feel that they were given time to speak. This was made more difficult in some cases by lawyers using their knowledge of court procedure and turn taking to interrupt self-represented litigants. Overall, this led to some feeling that they had not been heard.

“you have to not only represent yourself, but you have to act like a lawyer and a barrister, which is very, very difficult.”

“I wanted to raise a lot of issues that I wasn’t able to raise up with the courts, because I just wasn’t given time to raise up any kind of an issue.”

“my son and partner didn’t know when they could speak, when they couldn’t speak, what they should say, what they shouldn’t say. They weren’t really asked anything. The decisions were kind of made for them. It just felt a little bit like it wasn’t very inclusive.”

“You know what I would like to see? To have the opportunity to express yourself...I found that they did not allow you to think, let alone speak. Straightaway, you are shut up in the sense of, “No time, not now.”

However, around a quarter (26%) of our participants had a good experience speaking in court. This seems to have been in part a matter of confidence and in part their understanding of how things work in court. Interestingly, people found follow-up hearings to be easier, even if they had difficulty in their first appearance in court.

“I don’t feel as sad as I did last time because, obviously, I sort of know what to expect a little bit.”

“Court procedures fine, really. But I mean, no-one really explained it to me.”

“It’s fine, no problem at all. I’m fairly confident kind of guy.”

TIP:

In advance of hearings, prepare a summary or bullet points covering what you want to say and any issues you want to raise. Having something in front of you will help you be better organised and ensure you do not forget something important. It is a good idea to bring several copies of the important documents you want to rely on as the court and the other party will each need a copy for their records, especially if those documents are not in a court bundle. Bear in mind that the court bundle should contain the important documents and these are usually submitted (filed) in advance of the hearings.



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WHERE TO GET INFORMATION AND ADVICE

There are a number of options for obtaining legal and procedural information and advice for free or at a lower cost:

- Some solicitors provide initial information for free.
- Some solicitors offer 'unbundled' services and can provide initial advice and help you with a witness statement, preparing a court bundle or managing other important tasks for a set fee.
- Some barristers offer public access services, which means you can approach them directly without going through a solicitor, which would make the process cheaper. Direct access barristers can represent you during the hearing, but you would need to manage your case independently.
- Search for university law clinics at universities near you, some law clinics offer advice even for family cases – such as Birmingham City University law clinic (bculawclinic@bcu.ac.uk).
- Search for pro bono services that may be available in your area – Pro Bono Legal Services UK.
- Search for support offered through Law Centres Network, Citizens Advice Bureau, LawWorks or other charities.
- Contact the charity 'Support Through Court' – their centres are based in some court buildings and they provide information and moral support as well as help with filling in court forms or preparing court bundles.
- Read 'AdviceNow' guides on www.advicenow.org.uk.
- Search for information on official websites, such as Cafcass or your local social services' websites.
- If you search for information online, make sure you use reliable sources of information (for instance, AdviceNow guides).
- Be vigilant about the information and advice you read online and especially online forums and social media groups as these may sometimes contain biased advice, so it is important to verify information with reliable sources.



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