Litigants in Person and the Family Court: The Accessibility of Family Justice after LASPO

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The candidate confirms that the work submitted is his/her own and that appropriate credit has been given where reference has been made to the work of others.

Abstract

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 marked a significant shift in the way in which people are able to access and use private family law, by exacerbating several historical problems relating to the availability of advice and representation and reserving legal aid for a minority of 'vulnerable' individuals. This thesis contributes to a growing body of literature which examines the experiences of litigants in person (LIPs) who are now self-representing in these cases, in order to consider the potential implications of the post-LASPO family justice system. The thesis utilises a unique theoretical framework derived from feminist theory, Bourdieusian class theory, vulnerability theory and Actor-Network Theory. This is used as a lens through which to explore the accounts of 23 LIPs who were interviewed for this project. Through this analysis, the thesis identifies and evaluates the resources that LIPs may use for support and considers aspects of the court process which may be problematic for those without advice or representation. It also considers the ways in which these experiences are perceived – for instance, it identifies some of the factors that LIPs believe to be relevant to their ability to self-represent, and the extent to which they view the family court process as accessible without representation. The thesis concludes that the family justice system has specific exclusionary implications for those who attempt to self-represent, and these disproportionately affect those contending with a diverse range of circumstances falling outside the definition of vulnerability which has informed this reform. By providing this important insight into the experiences of LIPs, this thesis sheds critical light on the implications of this reform for the broader accessibility of family justice.

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ANT	Actor-Network Theory
CAB	Citizen's Advice Bureaux
CAFCASS	Children and Family Court Advisory and Support Service
CJC	Civil Justice Centre
CLOCK	Community Legal Outreach Collaboration Keele
DRA	Dispute Resolution Appointment
ECF	Exceptional Case Funding
ECHR	European Convention on Human Rights
FFH	Fact-Finding Hearing
FHDRA	First Hearing Dispute Resolution Appointment
GDPR	General Data Protection Regulations
HMCTS	Her Majesty's Courts and Tribunals Service
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LIP	Litigant in Person
LIPSS	Litigant in Person Support Strategy
MIAM	Mediation Information and Assessment Meeting
FPR3A	Part 3A of the Family Procedure Rules
PD3A	Practice Direction 3A
PD3AA	Practice Direction 3AA
PD12J	Practice Direction 12J
PIR	Post-Implementation Review of LASPO
PSU	Personal Support Unit
STC	Support Through Court

1. Introduction: Context, Motivations and Objectives

1.1 Introduction

The legal aid reforms introduced under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 have been subject to a great deal of attention and criticism within the fields of family law and access to justice. Under this statute, legal aid funding was withdrawn for several legal problems including almost all of those relating to welfare benefits and employment law, and several issues relating to immigration, clinical negligence, debt and housing law. It also entirely removed legal aid funding for advice and representation in relation to private family law, which involve disputes over children and finances after relationship breakdown. The only cases that remain within scope for funding after LASPO are those where domestic abuse can be corroborated through prescribed forms of evidence. While some have described the statute as marking 'a period of significant change', others have declared LASPO a 'critical watershed' or even a 'disaster' (Buck and Smith 2013, p.95; Sommerlad and Sanderson 2013, p.306; Robins 2012). However, amongst the noise of academic criticism, barrister walk-outs and media campaigns, it can be difficult to unravel the voices which govern these different accounts of LASPO. This thesis provides a starting point for this purpose. It draws together an emerging body of literature and research to: firstly, identify some of the impact that LASPO has had on the accessibility of family justice; and secondly, reflect upon the accounts that are being relied upon to define and understand the post-LASPO context. It will then provide a situated account of the post-LASPO family justice system, which focuses on the experiences of people who are representing themselves in these cases as litigants in person (LIPs).

In unravelling the impact of LASPO on family law, it is important to note that this statute was just one of several reforms introduced around this time, which changed the ways in which people access and use family law. For instance, 2011 saw the implementation of Practice Direction 3A (PD3A), which imposed an expectation that those applying to court would first attend a Mediation Information and Assessment Meeting (MIAM), at which they would be required to consider avoiding court altogether and instead resolving their disputes through mediation.[1] In 2014, Practice Direction 12B extended this emphasis on private settlement even

[1] Although note that this was already a requirement for legal aid clients under s 29 Family Law Act 1996 but was extended to all parties making court applications from 2011. This Practice

to the court process itself, by introducing obligations for judges to consider at every stage whether non-court dispute resolution is possible. At the same time, the Children and Families Act 2014 introduced a controversial presumption that parental involvement in a child's life will further the child's welfare unless this would put them or the other parent at risk of abuse (Wallbank 2014, p.86-8). Practice Direction 12J (PD12J) has also been revised multiple times to provide guidance to judges on how to identify these situations and to manage allegations of domestic abuse - including coercive control - within hearings.[2] However, there continue to be significant concerns about the effectiveness of this procedure in practice, due to the limited understanding of domestic abuse held by judges and professionals, and the pressure to promote private settlement and child contact with both parents. Alongside the huge reductions in legal aid under LASPO, therefore, there have been a myriad of changes geared towards diverting most people away from courts and constructing domestic abuse as the exceptional circumstance which warrants judicial attention. Although it is common for socio-legal researchers to find themselves in shifting research environments, this means that researching LASPO is akin to 'researching a moving target' (Hunter *et al*. 2015 p.147; Barlow *et al.* 2017, p.58).

Given this complex context of reform, a useful starting point is to consider why LASPO itself has accrued this reputation as a defining moment within family law and access to justice. In an earlier article, Hilary Sommerlad (2004) also uses the phrase 'watershed' to describe the original implementation of the legal aid scheme in 1949. She argues the establishment of legal aid marked 'the beginning of a new stage in the relationship between law and society', in which legal aid played a key role in ensuring equality of access to justice (p.348). Does LASPO, therefore, also signify the start of a new period of relations? Perhaps – but to understand these two reforms as the main turning points of family justice would be to simplify the complicated history of the legal aid scheme and family law reform which occurred in the lead-up to LASPO, as well as the shifting political backdrop to these changes.

I will therefore begin this chapter by drawing together a wide range of literature to identify what is already known about LASPO, including the context in which it was implemented, and to

Direction was later enshrined under s 10 Children and Families Act 2014. Additionally, a MIAM is not required for those who have experienced domestic abuse, see: PD3A.

[2] Guidelines were first introduced following *Re L, V, M, H (Contact: Domestic Violence)* [2001] Fam 260, and subsequently incorporated into the Family Procedure Rules 2010 as PD12J, which underwent notable revisions in 2014, and again in 2017, which provides the current version of PD12J.

explain the difference that it made to family justice. In doing so, I will provide a basis for the thesis that follows, by framing the project within existing concerns about the experiences and perceptions of LIPs who are accessing the family justice system after LASPO. By reflecting on these concerns and current literature, I will then outline the original contribution of the project as a situated response to the existing accounts which currently govern our understanding of LASPO and its implications. I will conclude this chapter by setting out the definitive research questions that underpinned this research project and outlining the structure of the thesis.

1.2 The Road to LASPO

In describing the establishment of the legal aid system as a watershed, Sommerlad (2008, p.179) is careful to warn researchers against presuming that this brought about a 'golden age' of comprehensive access to law. In practice, the legal aid scheme never achieved the ambitious aspirations of state-funded legal advice and representation for all who require it (Hynes and Robins 2009). Funded legal advice, for instance, was not introduced until the 1960s, and was arguably regarded as a 'marginal extra' for the purposes of access to law (Sommerlad 2004, p.355). In addition, the expense of providing advice and representation under a judicare model meant that the legal aid scheme was a common target for cost-saving measures. A major part of this involved multiple reforms from successive governments to limit eligibility for the scheme through increasingly strict means testing, meaning that even those who were eligible for legal aid have often been excluded from its benefits because they were expected to pay expensive and sometimes unaffordable contributions towards the cost of legal services (Cretney 2005; Hynes 2012).

Beyond limiting eligibility of individuals, however, these cost-saving measures were also targeted at the providers of legal services themselves, because the cost of the scheme was inextricably linked with the growing demand for legal advice and representation. Taken within the developing context of family law, it is unsurprising that demand for family legal aid increased over subsequent decades. With greater complexity of the law and growing numbers of separated parents managing childcare across different households, came more need for family dispute resolution and orders under the Children Act 1989 (Maclean and Eekelaar 2019, p.10-11). However, this increased demand for legal aid also raised concerns about 'supplier-induced inflation' (Moorhead 2004, p.177). These concerns indicated a shift in the relationship between lawyers and the state, in which government policy became geared towards promoting efficiency

and greater scrutinization of firms working in legal aid, as well as limiting renumeration for legal aid work.[3]

While some of these policies did improve the efficiency and standards of legal aid provision, these managerialist and bureaucratic procedures were widely cited as reasons for lawyers moving away from legal aid work (Moorhead 2004, p.161, 168-175; Davis *et al.* 2002; Legal Aid Practitioners Group 2017, p.27-34). For example, by the early 2000s, the legal aid budget was subject to an overall cap, and providers were required to competitively bid for contracts to undertake work for legal aid clients. Consequently, it was frequently unviable for small providers to rely on legal aid work, and even larger firms were required to diversify their practices (Moore and Newbury 2017, p.27-8). Cumulatively, this meant that there were a reduced number of solicitors able to provide services through legal aid, and those that remained were overburdened and poorly remunerated. As a result, legal aid clients often had to be delegated to more junior colleagues, who were often overwhelmed and less experienced, and smaller firms who had traditionally specialised in legal aid work struggled to keep pace with private practice (Moorhead 2004, p.160).

As briefly outlined in the introduction to this chapter, this complex history of legal aid was also compounded by a range of reforms aimed at diverting people away from court, and instead towards reaching private agreements through mediation. Mediation is a form of dispute resolution which provides a structured but informal process for parties to reach their own agreements and work through the emotionality of family breakdown (Barlow *et al.* 2017, p.122-124). Although other forms of dispute resolution exist, mediation has for decades been promoted as a 'one size fits all', cheaper, quicker alternative to going to court which minimises conflict between parties (National Audit Office 2007; Ministry of Justice 2012; Barlow *et al.* 2017). However, despite introducing compulsory MIAMs for people considering applying to court, take-up has been consistently low (Barlow *et al.* 2017, p.11-2). There are a range of reasons why the emphasis on mediation has continually fallen short of expectations. For example, mediation requires both parties to co-operate, so even if one is willing to try negotiations, the other cannot be compelled to attend or to meaningfully participate (Dingwall 2010; Barlow *et al.* 2017, p.34-5). Research also indicates that mediation is often impossible if

[3] For a useful summary of these policies and legislative changes introduced under the Legal Aid Act 1988 and the Access to Justice Act 1999, see: (Moore and Newbury 2017, p.21-9).

parties are not yet emotionally ready to discuss these issues or reach compromises (Hitchings *et al.* 2013; Barlow *et al.* 2017, p.89-91).

Additionally, attempts to emphasise the value of mediation involved significant misunderstandings about the way that solicitors were often key facilitators in referring clients to mediation, providing an important framework of legal advice to inform negotiations, and even supporting clients themselves to negotiate private settlements outside of court (Eekelaar *et al.* 2000, p.183-7; Maclean 2016, p.201; Maclean and Eekelaar 2016; Walker *et al.* 2004, p.132). However, the effectiveness of this was hampered by the insufficient support for legal services and a restrictive climate of legal aid provision. In practice, the settlement-oriented benefits of lawyers were only available to those who could afford to privately instruct lawyers. Due to the pressures that had been placed on legal aid lawyers, the service that legal aid clients received was often reactive and tended to 'drift' towards adjudication, due to the way in which their lawyers were frequently inexperienced and overwhelmed. Many solicitors began to offer 'unbundled' legal services in which clients would pay fixed fees for help with specific tasks, in innovative attempts to sustain their businesses and make legal services more accessible despite restrictions to legal aid, sometimes even offering these services online (National Audit Office 2014, p.38; Webley 2015, p.316-7; Maclean 2015a). However, this format of providing sporadic support was not always enough to help people avoid adjudication where possible. In contrast, firms were under greater pressure from private clients to be more proactive and provide effective and efficient resolutions, which often meant avoiding court and providing greater access to a range of dispute resolution options (Davis *et al.* 1994, p.138; Eekelaar *et al.* 2000, p.57).

This meant that even before LASPO was proposed, there were already significant problems in terms of the accessibility and quality of family law advice for those who could not afford to pay privately. However, aside from being required to consider mediation, the ability to choose between the various options of dispute resolution services, solicitor-led negotiations and court adjudication remained largely unchanged for those who can afford to pay for their own legal services (Eekelaar 2015, p.348).

As Tom Cornford (2016, p.33) poignantly summarises, within the history of legal aid policy and family law reform, there is 'interestingly little discussion about the fact that people's ability to...use law is allowed to differ in accordance with their income'. The context in which LASPO

was implemented was not only complex, but also characterised by a host of existing problems, including limited eligibility for legal aid, reduced numbers of legal aid providers, and a problematic push towards private settlement and away from legal services. However, a less vocalised reality is that the brunt of this was experienced by those who have been forced to navigate the family justice system without support. An important question, therefore, is the extent to which this has been exacerbated by LASPO, and how LASPO has further impacted upon the accessibility of family justice for these individuals.

1.3 The Impact of LASPO on Family Law

In many ways, the legislative objectives of LASPO mirrored those of previous reforms. The four aims stipulated in the government consultation were to discourage unnecessary litigation, target legal aid at those who need it most, make significant savings to the cost of the legal aid scheme, and deliver better overall value for money for the taxpayer (Ministry of Justice 2010). In many ways, therefore, the further removal of funding for private family law under LASPO was merely an extension of previous reforms. For example, existing limitations on eligibility, renumeration for providers and pushes towards mediation were all inherently linked to making savings and delivering value for money. However, the way LASPO was implemented was problematic. In removing private family law from scope of legal aid, the government stated that legal aid should instead be reserved only for the 'most vulnerable' (Ministry of Justice 2010, p.3, 6). The assessment of who would fall into this category involved a consideration of several factors, including the importance of the legal issue, litigants' ability to present their own case, the availability of alternative sources of funding, and the availability of other routes to resolution (Ministry of Justice 2011, p.11-2). Under this assessment, litigants are only considered to fall into this category of 'most vulnerable' if they are able to provide specific forms of evidence to prove that they have experienced domestic abuse, or if they have applied for 'exceptional case funding' (ECF) on the basis that denying them legal aid would contravene the state's obligations under the European Convention on Human Rights (ECHR)[4]. This is, therefore, an extremely narrow conception of vulnerability, which implicitly categorises the majority of people contending with family breakdown as capable of either resolving their problems privately, privately funding their own legal advice and representation, or presenting their own case to court.

[4] See: s 10 (3) LASPO 2012.

While LASPO did make significant savings to the legal aid budget, the government is still unable to demonstrate that any of the other aims have been achieved (House of Commons Justice Committee 2015). Importantly, LASPO has been accused of several 'unintended consequences', including a failure to provide legal aid even to those intended to be eligible, and creating a false economy in which other government departments and the family court have felt additional costs as a result of the cuts (Cookson 2013; Low Commission 2014; National Audit Office 2014; Richardson and Speed 2019). In 2019, the government published its long-awaited post-implementation review (PIR) of LASPO, along with an action plan setting out commitments to improve the delivery of support (Ministry of Justice 2019a; 2019b). However, this report does not fully address the current or long-term consequences of LASPO. This chapter will now explore these consequences in order to unravel the implications that LASPO has had for family justice.

1.3.1 Exceptional eligibility

As discussed at the beginning of this chapter, LASPO's reputation as a turning point for family law and access to justice stems from the fact that it removed entire areas of law from the scope of legal aid funding. It was structurally different to prior reforms in that rather than specifying areas to be excluded from legal aid, LASPO created a default of non-provision, and instead specified exceptional circumstances under which legal aid may be available (Cobb 2013, p.6). Within private family law, eligibility for legal aid is now limited to either cases which involve domestic abuse, or cases where individuals have applied for ECF. These individuals have been described as the 'most vulnerable' throughout the LASPO consultations, and this has continued in the future commitments made under the PIR (Ministry of Justice 2010, p.70-1; Ministry of Justice 2011, p.4; 2019a, p.276; Ministry of Justice 2019b, p.6). The aim of targeting legal aid at those who need it most is not unique to LASPO[5], but the extent to which legal aid has been removed, and the way in which this is predicated upon the idea of vulnerability, is problematic.

Firstly, the accessibility of legal aid for survivors of domestic abuse continues to be limited. The definition of abuse now contained within LASPO reflects a relatively progressive cross-governmental definition, which incorporates psychological, financial, emotional and sexual abuse as well as coercive control.[6] However, survivors of abuse have had significant difficulties establishing that they fall within this definition, due to restrictive evidential requirements which

[5] This was also an aim of the Access to Justice Act 1999, which established the Community Legal Service, and introduced ECF. This has also been an aim underpinning legal aid reform in other jurisdictions; see: (Treloar 2015).

[6] Although initially this definition was proposed to be limited only to physical abuse; see: (Hunter 2011).

must accompany legal aid applications. The accepted forms of evidence originally included written evidence from medical professionals, refuges, police officers or prior domestic violence injunctions ordered by a court, from within the previous two years.[7] In 2015, Rights of Women released a report which indicated that 37% of women who used their services were unable to provide these forms of evidence due to the way in which they prioritised physical incidents of abuse and were often subject to financial barriers (2015, p.1). In the same year, the organisation launched a successful appeal against these evidence criteria, establishing that they effectively excluded many survivors who were intended to be included within scope for legal aid. Following this, the government expanded the evidence criteria to include broader forms of evidence to account for other kinds of abuse, as well as lifting the time limit requirements entirely in 2018.[8]

While these expansions are likely to make a significant difference for many survivors of domestic abuse attempting to access legal aid, the approach remains restrictive. The prevalence of abuse in child arrangements cases as well as the difficulties that survivors have in establishing their abuse has already been demonstrated by a wide body of literature spanning over decades before LASPO was proposed. For example, lawyers, mediators and judges have struggled to consistently identify or respond appropriately to historical abuse, non-physical abuse, or abuse which has 'only' been perpetrated against the other parent, rather than the child. In many of these cases, even where abuse has been identified, research has found that survivors have often nevertheless been pressured into participating in mediation and even agreeing to unsafe contact arrangements which facilitate further harassment and intimidation from perpetrators (Hester and Radford 1996; Hester *et al.* 1997, p.15-8; Coy *et al.* 2012, p.35; Hunter and Barnett 2013; Morris 2013; Barnett 2014, p.442; 2015, p.51; 2016, p.228-9; Women's Aid 2016, p.27-8; Thiara and Humphreys 2017).

These problems will inevitably persist post-LASPO and are arguably exacerbated by the difficulties of being able to provide prescribed evidence of the cumulative and coercive nature of emotional and psychological abuse (Stark 2009a; Barnett 2017). This could have been mitigated, for example, by marrying up the mediation screening process with legal aid eligibility, but now many survivors are at risk of being financially pressured into mediation or having to self-represent in court if their abuse is not identified at an early stage (Hunter 2011, p.356-7;

[7] See: Civil Legal Aid (Procedure) Regulations 2012, Reg. 33.
[8] See further: Civil Legal Aid (Procedure) (Amendment) Regulations 2016, Reg. 33; Civil Legal Aid (Procedure) (Amendment) Regulations (No 2) 2017, Reg. 33; *R (on app of Rights of Women) v The Lord Chancellor and Secretary of State for Justice* [2015] EWHC 35 (Admin).

Birchall and Choudhry 2018, p.28). Given the barriers to legal aid for survivors, there is concern that many of those who are supposed to fall within the restrictive category of 'most vulnerable' litigants may be unlikely to do anything about their legal problems. Research from both before and after LASPO has identified an important link between the availability of legal aid and the willingness of survivors to take action, in which survivors are unlikely to take action without this support, and may not apply for legal aid if they assume it is not available (Hunter *et al.* 2003; De Simone and Hunter 2009, p.265-6; MacFarlane *et al.* 2013, p.42; Speak Up for Justice 2016, p.13). Concerningly, the Ministry of Justice does not collect data on how many applications are rejected for insufficient evidence, nor on how many private family cases involve allegations of abuse, so it is difficult to quantitatively compare the situation before and after LASPO (Speak Up for Justice 2016, p.26-8).

Secondly, there has been limited success for those who may have benefitted from the ECF scheme. The intention is that this scheme should cover cases where individuals would be unable to represent themselves effectively, for instance due to a disability or learning difficulty. However, an onerous application process and low success rates have deterred family lawyers from attempting to access this funding to support clients through legal aid. As a result, only eight private family law cases were funded through this route in the year following LASPO (Ministry of Justice 2014). Despite improvements to guidance and procedure, the success rate for family law remains low, with just 27% of applications approved in 2017 (Public Law Project 2018, p.2).[9] The government has acknowledged these barriers and committed to considering how this procedure may be simplified following landmark judicial reviews[10] and the PIR, but improvements to the scheme may be undermined by the fact that many individuals are unable to find a provider willing to apply for this funding (Marshall *et al.* 2018, p.2-4; Ministry of Justice 2019a, p.136-7; Ministry of Justice 2019b, p.14).

1.3.2 Barriers to legal aid

Along with LASPO came a further 10% reduction to the fees that lawyers could claim for legal aid work. The Ministry of Justice acknowledged that this would impact upon the provision of family legal aid but reiterated that this would still be sustainable (2011, p.58-9). However, this failed to account for the impact that removing entire areas of law would have on legal aid

[9] For the implications of this, see: *Re H* [2014] EWFC B127.

[10] See: *Gudanaviciene and others v Director of Legal Aid Casework and the Lord Chancellor* [2014] EWCA Civ 1622; *IS (by way of his litigation friend, the Official Solicitor) v Director of Legal Aid Casework and the Lord Chancellor* [2016] EWCA Civ 464.

providers. Immediately following LASPO, legal aid work for private family law fell dramatically by 60%, and currently sits at about a third of pre-LASPO levels (Ministry of Justice 2014; Ministry of Justice 2019c). While a fall in legal aid work is to be expected given the extent of the cuts introduced by LASPO, these figures are indicative of the loss of income that has been felt by legal aid providers since the reforms. Across civil legal aid, providers have decreased by a third since LASPO (Ministry of Justice 2019c). The Ministry of Justice does not collect data on what proportion of these providers were for family law, but there is a wealth of evidence to suggest that providers in this area has been disproportionately affected. For example, in observations of a range of family firms after LASPO, Mavis Maclean and John Eekelaar (2016, p.44-68) provided an insight into some of the impact that LASPO has had on family law practice. Although firms were already under pressure from pre-LASPO reforms, smaller firms and those relying mostly on legal aid clients are facing significant challenges to their ability to sustain their businesses after LASPO. Due to this shortfall, many more firms have had to diversify by either moving away from legal aid work and taking on more private clients, or by moving into other services like mediation (Marshall *et al.* 2018; Russell 2019; Wong and Cain 2019).

As with previous legal aid reforms, there is a continued reliance on the not-for-profit sector to provide legal advice where firms are struggling. However, unlike previous reforms, there was no attempt under LASPO to redirect funding to ensure that this would be effective.[11] The impact that LASPO has had on other areas of law has meant that the number of third sector providers has more than halved since 2013, but demand for help has increased by as much as 400% in some areas (Law Centres Network 2018; Low Commission 2014). As a result, they have also been under similar pressures and constraints since before LASPO, which have only been exacerbated in the current context. These legal aid cuts have coincided with an already tenuous funding environment, in which local authorities were already under pressure to limit funding to not-for-profit organisations and charities (Buck and Smith 2013; Morris and Barr 2013). Additionally, given that family assistance was generally provided by law firms, these services have traditionally felt little demand for family law advice (Trinder 2015, p.236). As such, they are very unlikely to be able to stretch to the additional challenge of providing family law help (Maclean and Eekelaar 2019, p.135).

[11] Under s 4 Access to Justice Act 1999, there were specific objectives to promote the availability of legal aid and secure that individuals have access to services that meet their needs. However, s 1 LASPO 2012 limits the Lord Chancellor's responsibilities simply to ensure that legal aid is available. See: (Maclean 2016, p.199).

While many solicitors and barristers are offering some pro bono support alongside their paid services, these services have been overwhelmed since LASPO, and cannot meet the current level of demand (Maclean and Eekelaar 2019, p.46-59, 82-92). As a result, 'advice deserts' are now regarded as common – the latest tendering process demonstrated that there are some geographical areas where there are no organisations at all willing to take on a legal aid contract (Marshall *et al.* 2018). Further, these areas are disproportionately likely to be post-industrialist or deprived areas where people are heavily reliant on welfare and public service employment and have been hit hardest by austerity (Wong and Cain 2019, p.11-2).

A major impact of LASPO, therefore, is that even those who fall within these limited parameters of eligibility are faced with significant barriers to accessing legal aid, ranging from restrictive evidence requirements to simply being unable to find a provider. As such, there is concern that even those who are recognised as vulnerable under the government's assessment, are expected to navigate the family justice system in the same way as the majority who have been excluded from this assessment. The Ministry of Justice has come under significant criticism for failing to collect sufficient data in order to establish whether it has met the aims of targeting legal aid at those who need it most, because it is still unknown whether legal aid is actually being accessed by those who are entitled to it (National Audit Office 2014, p.35; House of Commons Justice Committee 2015, p.10-20). Underpinning all of this, is a failure to justify how many other individuals who can no longer access advice or assistance are excluded from the particular construction of 'most vulnerable' which has informed the LASPO reform.

1.3.3 A strained family justice system

As part of the aim to discourage unnecessary litigation, the restrictions on eligibility were combined with a renewed attempt to divert people to mediation. To this end, legal aid funding for MIAMs and subsequent mediation was retained under the logic that this would encourage people to seek resolutions outside of court. However, this was implemented without sufficient understanding of how this would work in practice, and without proper consideration of why previous attempts to promote mediation had been unsuccessful.

Despite the government's expectations that more people would use mediation, it was not surprising that mediation take-up significantly decreased after LASPO, and still only sits at around half of pre-LASPO levels (Hamlyn *et al.* 2015; Hunter 2017a). In fitting with the fact that

most people are not making use of mediation, the number of people representing themselves in court as LIPs has increased exponentially. Self-representation was already common before LASPO, but the number of cases involving LIPs increased from 43% to 74% over the year following the reforms, and for the last four years, this number has remained steady at around 81% (Ministry of Justice 2019d). For most parents, therefore, MIAMs may simply act as a gateway to the court process, and people may be even more inclined to use adjudication to resolve their disputes without the benefit of advice and support to reach their own resolutions. Others may simply have no other option but to self-represent, due to the unsuitability of mediation for many couples. As a result, LIPs within the family court are now 'the rule rather than the exception' (Civil Justice Council 2011, p.8).

In the PIR, the government has acknowledged that restricting funding to mediation has failed to discourage litigation (Ministry of Justice 2019a, p.142). However, the statistics outlined above also indicate that many people are now placed in a situation where representing themselves in court may be their only option. As a result, LASPO has made a major difference to the system in which these cases are heard. There is a significant amount of research to indicate the ways in which increased numbers of LIPs are putting the family justice system under strain. Firstly, the presence of LIPs has for decades been linked to increased work for others within the court process, due to the problems that LIPs have in completing and submitting paperwork, the additional time that is required to explain things to LIPs, and the frequency with which hearings had to be adjourned (Dewar *et al.* 2000, p.48-50; Moorhead and Sefton 2005, p.111-2; Maclean and Eekelaar 2012, p.228-9; Trinder *et al.* 2014, p.70; McKeever *et al.* 2018, p.153). Secondly, when facing a LIP, lawyers and judges encounter difficulties in performing their traditional roles within the court process. For example, lawyers are frequently required to take on the extra work of preparing trial bundles and extending help to LIPs whilst also maintaining their ethical obligations and confidence of their own clients (Kelly *et al.* 2006; Williams 2011; Bevan 2013, p.44-8; Trinder *et al.* 2014, p.62; McKeever *et al.* 2018, p.117-8). Judges also sometimes change their approach, ranging from basic signposting, 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 (Dewar *et al.* 2000, p.63-4; Moorhead and Sefton 2005, p.181-7; Trinder *et al.* 2014, p.57, 62-5, 70; Corbett and Summerfield 2017, p.26-7). The inconsistency of this support stems from judicial anxiety about maintaining their traditional position of impartiality (Moorhead and Sefton 2005, p.183-5; Moorhead 2007). In terms of the court

process, therefore, literature tends to emphasise that the presence of LIPs within court hearings places significant demands on other parties, and that this increase in LIPs is unsustainable.

In addition to the strain that LASPO is placing on the court system, it is important to note that several of these LIPs are those who were supposed to fall within the category of vulnerable people who were the intended targets of legal aid after LASPO. For many survivors, there is no option of inaction, as they are frequently compelled into the court process by perpetrators who initiate child disputes as a means of continuing their control and abuse (Birchall and Choudhry 2018, p.42). Despite the emphasis that has been placed on discouraging unnecessary litigation, there has been limited attention on the way in which serial or vexatious applications provide an opportunity to further harass the other party, who in turn are often LIPs themselves as any funds become exhausted (Hunter 1998; Dewar *et al.* 2000, p.34; Trinder *et al.* 2014, p.31-2; McKeever 2018, p.84).

A range of existing literature already demonstrates the problems that arise when survivors face their perpetrators in court, and the difficulties they have establishing their abuse within the court process. For example, in addition to providing guidance to assist judges in identifying signs of domestic abuse within court proceedings, the 2014 revision of PD12J also set out clear expectations that judges 'should' direct parties to participate in Fact-Finding Hearings (FFHs) in which parties are cross-examined in order to establish the factual basis of any abuse allegations and their relevance to any decisions made in relation to the child, and if judges direct that a FFH is not necessary, they are required to record the reasons why not. This was reiterated in the 2017 revision of PD12J, which clarified these requirements by replacing the instruction 'should' with 'must'. However, despite this clarification and improved guidance on how to recognise domestic abuse[12], FFHs have always been relatively rare, due to a lack of understanding about abuse combined with mounting pressure on judges to promote contact with both parents (Hunter and Barnett 2013; Barnett 2014, p.443-54; 2015, p.52-3; Hunter *et al.* 2018). For many women, this is linked with limited awareness of gender equality issues, in which judges often have underlying preconceptions of abused mothers as 'being difficult' or standing in the way of contact, and men with a history of aggressive behaviour being treated with leniency because

[12] In 2014, PD12J was revised to incorporate the cross-governmental definition of domestic abuse including coercive control, and in 2017 this was widened again to include culturally specific forms of abuse such as forced marriage and honour-based violence.

they want to play a role in their child's life (Birchall and Choudhry 2018, p.30-32).[13] As part of this, even when FFHs are held, judges have been observed to disaggregate violent incidents from broader patterns of abuse (Barnett 2017). However, without these hearings, evidence suggests that allegations tend to disappear altogether, as the focus of court hearings turns to ensuring contact and potentially unsafe arrangements are made without all of the facts (Barnett 2015, p.67; Birchall and Choudhry 2018, p23-6).

One of the most controversial problems which has been exacerbated by LASPO, is the way in which judges handle the process of cross-examination now that many more parties are unrepresented. The categorical exclusion of private family law means that in cases involving abuse, even if survivors are successful in obtaining legal aid, their perpetrators are often unrepresented. Some judges may take control of the questioning process in order to protect survivors, for example by approving questions in advance, or relaying the questions on behalf of the LIP (Corbett and Summerfield 2017, p.16-8). However, others have expressed unease about impairing the 'right' of LIPs to conduct the cross-examination themselves, even when abuse was identified (Trinder *et al.* 2014, p.70; Corbett and Summerfield 2017, p.15-6). As a result, Women's Aid (2015) found that a quarter of women had been directly cross-examined by abusive ex-partners, and the All Party Parliamentary Group on Domestic Violence described this as a 'routine' experience of survivors within the court process (2016, p.4).

The government have made a long-standing commitment to introduce legislative protections for survivors modelled on those that apply in the criminal courts.[14] These provisions would introduce a specific ban on cross-examination between alleged perpetrators and survivors of abuse, but due to ongoing parliamentary disruption this is still yet to be implemented.[15] Due to the latency of the government's response to this issue, mechanisms to prevent cross-examination by abusers have been limited to case management practices. For example, the 2014

[13] This approach often conflicts with the expectations set in other legal contexts, where mothers are expected to protect their children from perpetrators rather than ensure contact with them. See: (Hester 2011).

[14] See: Youth, Justice and Criminal Evidence Act 1999, s 36.

[15] These were originally proposed under the Prison and Courts Reform Bill 2016-7, which fell due to the dissolution of Parliament in 2017. They were then proposed under Part 4 of the Domestic Abuse Bill 2017-2019, which fell due to the proroguing of Parliament in 2019. The government pledged to re-introduce this legislation within the current Parliament, see: (Prime Minister's Office 2019, p.79-80), and has now reintroduced this legislation under Part 5 of the Domestic Abuse Bill 2019-2021, which had its first reading in the House of Commons in March 2020.

revision to PD12J recommended that judges should be prepared 'where necessary and appropriate' to conduct the questioning on behalf of parties. Additionally, on the recommendation of the Children and Vulnerable Witnesses Working Group, Part 3A of the Family Procedure Rules (FPR3A) and Practice Direction 3AA (PD3AA) were introduced in 2017 to tackle the way that the family court was lagging 'woefully behind the criminal justice system' in terms of its ability to recognise and support vulnerable parties.[16] These procedural provisions require judges to consider the potential vulnerability of parties and facilitate any measures that might support them to participate. This may include, for instance, special measures like screens, video links and separate waiting rooms to help victims participate. PD3AA also requires the court to consider whether the questions to be put in cross-examination should be agreed in advance, and whether it would be appropriate for the questions should be put to the witness by the judge. However, despite recommendations that PD12J should also explicitly instruct judges not to permit cross-examination between survivors and abusers, this was not incorporated within the 2017 revisions – potentially because of the lack of primary legislation to provide this authority (Cobb 2016, p.18).[17]

Further, although there is no routinely collected data on how many cases arise where a LIP may be able to cross-examine a vulnerable or intimidated witness, recent research continues to reiterate concerning trends that have characterised survivors' experiences of the family court process, including the reality that FFHs are still rarely ordered, and that when they have been ordered, 24% of women were directly questioned by their perpetrator (CAFCASS and Women's Aid 2017, p.8-10, 20; Birchall and Choudhry 2018, p.24-7; Lefevre and Damman 2019, p.17). Interestingly, a recent small-scale of lawyers in the south-east of England has suggested that compliance with PD12J may also vary according to the tier of judge who hears the private family case. In Michelle Lefevre and Jeri Damman's study, only 26% of lawyers felt that PD12J was followed the majority of the time by the family magistrates, as compared with 52% and 49% who felt that it was followed by district and circuit judges, respectively (2019, p.11). For example, in addition to reiterating the rarity with which FFHs are ordered, over half of these lawyers stated that judges consistently failed to sufficiently recite their reasons for deeming FFHs unnecessary, and 46% noted that judges had not made any directions to prevent cross-examination of survivors by perpetrators (2019, p.18). Additionally, in a recent project

[16] See: (Courts and Tribunals Judiciary 2014; Judiciary of England and Wales 2015).
[17] For judicial commentary on this, see: *Q v Q; Re B (A Child); Re C (A Child)* [2014] EWFC 31; *Re K and H (Children: Unrepresented Father: Cross-examination of Child)* [2015] EWFC 1 and [2015] EWCA Civ 543.

undertaken for the Ministry of Justice, Natalie Corbett and Amy Summerfield asked judges to provide information about how they had approached cases involving cross-examination in cases involving self-represented alleged perpetrators. On the basis of this, the authors estimated that perpetrators either directly or indirectly cross-examined survivors in approximately 27.4% of cases (2017, p.6).[18] During interviews with judges, this research found that despite the encouragement to take inquisitorial approaches in PD12J and PD3AA, some judges are often reluctant to do so because of the challenges that it poses to their traditional position of impartiality (Corbett and Summerfield 2017, p.17). Additionally, this research found that although there were positive judicial attitudes to the use of special measures such as video links and screens, there is often inconsistent access to special measures, due to limited availability of resources within courts themselves (Corbett and Summerfield 2017, p.24-6; Birchall and Choudhry 2018, p.27). This demonstrates concerningly little change from earlier findings. Unfortunately, despite the promise of the ban on cross-examination that may come with the re-introduced Domestic Abuse Bill, the draft version of this Bill does not extend automatic eligibility for special measures to the family court in the way that it does for survivors of domestic abuse in the criminal court. Taken together, this suggests that there will still be an enduring disconnect between the protections available to survivors in criminal and family proceedings.[19] The pre-existing problems around stereotypes and attitudes and towards domestic abuse are therefore a substantial barrier to the success of revisions to PD12J and future legislation, and the willingness of judges to use the range of measures available to them (Birchall and Choudhry 2018, p.36). In addition to the increased strain that has been placed on the court system, therefore, LASPO has exacerbated existing barriers and problems within the court process even for those who are identified as 'most vulnerable' under the reforms.

While LASPO certainly did not create all the issues facing family law, it has nevertheless marked an important shift in the context in which people are now able to access and use family justice. By restricting legal aid funding to mediation, the reforms have not only increased the number of LIPs in court but have also done significant damage to the resources and support that may have gone some way to supporting them. This chapter will now draw together existing literature on

[18] 34 out of 124 cases in the sample. It should also be noted that in this study, the most common type of abuse was physical, and therefore this may implicitly reiterate existing findings that cases involving other types of abuse are unlikely to progress to the stage of cross-examination in the first place.

[19] See: Part 5 of Domestic Abuse Bill 2019-2021.

what is already known about LIPs and their experiences in the family court, to provide a basis on which to reflect on what self-representation is like after LASPO.

1.4 Experiences of Self-Representation

1.4.1 Profile of LIPs

Given the impact of LASPO that has been outlined so far in this chapter, it is useful to consider how this may also have marked a shift in what self-representation is like. For instance, existing literature identifies a wide range of reasons why people come to court in person. Some LIPs prefer to manage their own case due to the personal issues involved (MacFarlane *et al.* 2013, p.48-50; McKeever 2018, p.84). Others believe they can manage without a lawyer to act for them, although this is far less common in family law and sometimes attributed to an underestimation of the complexity of the family court process (Genn 1999, p.22; Moorhead and Sefton 2005, p. 16-7; Lee and Tkakucova 2018). Mistrust of lawyers is another frequently cited reason for self-representation – this can be because of previous negative experiences with the profession, or concern about the quality of the lawyer they would be able to afford (Dewar *et al.* 2000, p.33-4; MacFarlane *et al.* 2013, p.36, 43-8; Trinder *et al.* 2014, p.16-7; McKeever *et al.* 2018, p.84-8). However, for the majority, these reasons are often mixed with concerns about the unaffordability of good legal representation, and most LIPs indicate that they would prefer to be represented (Trinder *et al.* 2014, p.13; McKeever *et al.* 2018, p.84-5).

Cost, therefore, is by far the most common reason that people self-represent (Dewar *et al.* 2000, p.33-4; Moorhead and Sefton 2005, p.16-7; MacFarlane *et al.* 2013, p.12; Trinder *et al.* 2014, p.12-3; Lee and Tkakucova 2018; McKeever *et al.* 2018, p.84-7). For the vast majority of people, instructing a lawyer is beyond their financial means. As such, LIPs tend to be those who fall into the gap of being unable to afford to afford their own lawyer but are still ineligible for legal aid because they are over the financial threshold (Dewar *et al.* 2000, p.34; Hunter *et al.* 2003). Pre-LASPO studies already indicate that LIPs tend to have lower levels of education and to come from lower socio-economic backgrounds (Dewar *et al.* 2000, p.38-41 Hunter *et al.* 2002, p.58-9; Moorhead and Sefton 2005, p.153).

Despite the restrictive definition of 'most vulnerable' used under LASPO, studies also demonstrate that LIPs frequently come to court with vulnerable characteristics. For example, Moorhead and Sefton (2005, p.70) found that 15% of LIPs in child disputes had a vulnerability, such as having experienced domestic abuse, or having physical or mental health problems. Just before LASPO was implemented, Trinder *et al.* (2014, p.27) found that approximately half of LIPs

had vulnerable characteristics, including these but also learning difficulties, extreme nerves and anxiety and language barriers.

However, an important consequence of LASPO is that it adds to this profile a 'new' range of people who are categorically excluded from legal aid because their cases are no longer in scope for funding. By removing private family law from scope, the government drew a distinction between eligibility within private and public family law, in which funding for the latter cases is justified because they involve serious issues of child welfare. However, it is well-documented that there is also a high prevalence of abuse and other serious safety concerns in private family law (Hunter 2003, p.166; Humphreys and Harrison 2003; Hunt and Macleod 2008; Cobb 2013, p.4-7; Maclean 2016, p.200).

As a result, Trinder *et al.* (2014, p.102-5) argue that post-LASPO LIPs are likely to include even greater numbers of people who have experienced domestic abuse, and individuals with mental health problems and substance abuse issues. This has been reiterated by a range of studies and reports emerging post-LASPO, which have identified the prevalence of low levels of education and income, and high proportion of domestic abuse and mental health problems among LIPs coming to court (Lee and Tkakucova 2018; CAFCASS and Women's Aid 2017; Birchall and Choudhry 2018; Leader 2017, p.120). As such, the post-LASPO context is not simply one in which more people are using the court as LIPs, but rather about a new stage of family justice in which few have practical access to legal aid, and LIPs have a newly diverse range of circumstances and vulnerabilities which are not factored into the eligibility criteria.

1.4.2 Resources

The categorical removal of funding for private family law also has implications for the kinds of resources that LIPs are likely to have access to. The most basic definition of a LIP is someone who comes to court without legal representation. However, across the literature, studies frequently emphasise that this definition does not account for the fact that many LIPs may have access to legal advice behind the scenes or may have even been represented at previous hearings (Dewar *et al.* 2000, p.7, 34; Hunter *et al.* 2002, p.77; Mather 2003, p.143; Moorhead and Sefton 2005, p.29-30; MacFarlane *et al.* 2013, p.26-9; Trinder *et al.* 2014, p.23; McKeever *et al.* 2018, p.124-5). This sporadic use of legal services has often been due to delays obtaining legal aid, or finances running out before a case is completed. However, accessing services on an unbundled or fixed-fee basis can also be a strategic approach used by LIPs who are completely excluded from legal aid, and know they can only afford a certain amount of assistance (Trinder

et al. 2014, p.13-5). Now that the majority of people are categorically excluded from legal aid, there is evidence to suggest that there is an increasing demand for these unbundled services (Wong and Cain 2019, p.7-11).

However, there are also now likely to be a range of LIPs from extremely deprived backgrounds who cannot afford to pay for any help at all and will be entirely reliant on free assistance. This is because even those who would previously have met stringent means tests are now excluded on the basis of the type of case they are pursuing, rather than their income. In a recent survey of LIPs at Birmingham Civil Justice Centre, only half had accessed 'some advice' before their hearing, and most who had been unable to access any advice attributed this to cost (Lee and Tkakucova 2018). In reflecting on changes in their client base since LASPO, Support Through Court (STC) – previously known as the Personal Support Unit (PSU) – has reported that almost a quarter do not speak English as a first language, and many are contending with literacy issues and do not have access to a phone or the internet (Personal Support Unit 2018, p.4). While unbundled legal services may meet some needs of LIPs after LASPO, there is therefore a concern about what free advice and support is available for those who cannot afford to pay anything, and the implications of many LIPs having access to no advice at all.

A great deal of non-legal help is provided in court by student-led advice clinics, and STC – which provides practical support to LIPs, including assisting with paperwork and helping with court forms (Maclean and Eekelaar 2019, p.105; Personal Support Unit 2018). Demand for family law support from STC increased more than 40% in the year following LASPO, and now almost half of their work relates to private children cases alone (Marsh 2014; Personal Support Unit 2018). These services are likely to be offering a great deal of valuable help for many of the new LIPs who are unable to afford any help at all and who may potentially also be coming to court with a variety of mental health issues or low levels of education and literacy which may prevent them from being able to research the law or prepare paperwork. However, these services cannot themselves provide legal advice, and now struggle to refer individuals elsewhere because there are so few options available (Personal Support Unit 2016, p.2).

Another important resource that LIPs continue to draw upon are McKenzie Friends. For decades, LIPs have had a long-standing right to reasonable assistance in presenting their cases from those

who act as court supporters.[20] Traditionally, these individuals have been friends, family members or support workers, but as legal assistance became more limited, there has also been a gradual increase in 'professional' McKenzie Friends (Legal Services Consumer Panel 2014, p.9; Smith *et al.* 2017, p.5-6). They are explicitly not allowed to act in place of a lawyer[21], but given the limited availability of legal aid, they can provide essential support to LIPs by helping them to prepare paperwork and providing emotional and practical support in the courtroom. Across the literature, there is evidence of the overwhelmingly positive benefits of this support and assistance for LIPs and those working within the court process (MacFarlane *et al.* 2013, p.79-81; Trinder *et al.* 2014, p.96). There is some indication that some may even be ex-legal aid lawyers or social workers who have been forced out of work, but are still able to offer a wealth of experience and knowledge that LIPs are unable to access from non-legal support services (Smith *et al.* 2017, p.18). Importantly, research continues to indicate that this support is overwhelmingly perceived as valuable by LIPs themselves, to the extent that it enables some LIPs to continue with cases that may have otherwise collapsed (Trinder *et al.* 2014, p.96; Legal Services Consumer Panel 2014, p.3; McKeever *et al* 2018, p.93).

However, there is also evidence to suggest that a minority of McKenzie Friends may sometimes breach perceived boundaries of acceptability within court by seeking to act for LIPs, such as by negotiating or calling the court on their behalf (Moorhead and Sefton 2005, p.57-8; Legal Services Consumer Panel 2014, p.26). Additionally, given their lack of legal expertise, there is also the risk that McKenzie Friends will offer misguided advice on how to proceed with a case, or even attempt to 'egg LIPs on' or 'stir things up' within proceedings in order to pursue their own agendas through the cases of others (Moorhead and Sefton 2005, p.172-3; MacFarlane *et al.* 2013, p.78; Legal Services Consumer Panel 2014, p.19-21; Trinder *et al.* 2014, p.49-50, 96-8). These McKenzie Friends have been regarded with scepticism and even resentment by lawyers, court staff and the judiciary (Moorhead 2003; Moorhead and Sefton 2005, p.57). While some of this may have stemmed from the further threats that McKenzie Friends posed to the role of the legal profession, it is also rooted in concern for the many LIPs who are ill-placed to judge the quality and reliability of their McKenzie Friends. Within the literature, there is evidence that LIPs – particularly those in vulnerable circumstances who have little recourse to other sources of help

[20] See: *McKenzie v McKenzie* [1970] 3 WLR 472.

[21] For example, they are not permitted to undertake restricted activities under s 12 (1) Legal Services Act 2007 such as advocacy or conducting litigation. See further: *Practice Guidance (McKenzie Friends: Civil and Family Courts)* [2010] 1 W.L.R. 1881.

– can assume that McKenzie Friends are knowledgeable and proficient, and are satisfied with their advice even when it is incomplete or incorrect (Trinder *et al.* 2014, p.112; Barry 2019, p.79-81).

Suggestions for reform aimed at protecting LIPs have included calls for greater professional regulation or preventing McKenzie Friends from claiming remuneration for their services (Legal Services Consumer Panel 2014, p.13-4; Hunter 2017b, p.17).[22] However, it is not yet clear how this debate will develop given the newly diverse range of LIPs coming to court after LASPO. With even fewer advice options available, there is suggestion that the use of McKenzie Friends may be increasing after LASPO, and that professional McKenzie Friends may be expanding further into offering services which are geared more towards giving advice and doing out-of-court work, or even being granted rights of audience and conducting cross-examination when judges have few other options (Caplen 2016; Corbett and Summerfield 2017, p.22-3; Hunter 2017b, p.17). In many ways, therefore, McKenzie Friends may be playing an even bigger role in helping those who cannot access lawyers, especially as many altruistically pitch their services at those on very low incomes (Barry 2019, p.85; Smith *et al.* 2017, p.35). However, given that a new category of LIPs may be unable to afford these professionals, further research is needed to investigate the practice of McKenzie Friends who offer their services for free, the kind of assistance that they may be offering, and how these services fit into the advice-seeking strategies of LIPs. Additionally, this will require examining assistance which goes beyond fee-charging McKenzie Friends, who may no longer be the only ones at risk of providing misguided advice and information. Rather, negative experiences of the court process can mean that agenda-driven advice or 'conspiracy' myths may be circulated among LIPs themselves through social media and other informal networks (Leader 2017, p.208-11; Melville 2017).

Further, the accessibility of any of these resources depends entirely on the ability of LIPs themselves to seek them out. Research has consistently demonstrated that information about law and the court process is often only helpful for those who already have a basic understanding of the relevant issues, and that populations from disadvantaged backgrounds experience

[22] In 2016, the Judicial Executive Board launched a consultation on how the courts should approach McKenzie Friends, seeking specific views on whether McKenzie Friends should be able to charge fees. The complexity of this issue meant that a response was not published until 2019, where the Board recommended an update to the practice guidance but referred the consultation evidence to the Lord Chancellor in emphasising that this was just one dimension of the problems relating to the provision of support after LASPO. See: (Lord Chief Justice of England and Wales 2016; 2019).

disproportionate difficulty in navigating assistance from multiple sources (Pleasence and Balmer 2014; Maclean and Eekelaar 2019, p.110-111; Leader 2017, p.165). For example, 37.5% of the LIP respondents in the Birmingham survey reported not knowing that they needed to seek advice, which led the authors to reflect upon the reality that this might not simply be a case of being unable to access resources, but that LIPs may actually face barriers to understanding what they do not know about their cases, in order to seek this help in the first place (Lee and Tkakucova 2018). This reiterates suggestions that LIPs may struggle to proactively seek advice without support after LASPO, and that LIPs may be unaware of the limits of their own knowledge (Trinder *et al.* 2014, p.105-6; McKeever *et al.* 2018, p.106-8). Taken together, this means that it can no longer be assumed that all LIPs have a baseline level of resources to draw upon in order to seek help or make use of the court process.

Given the likely profile of many LIPs after LASPO, an important consequence of LASPO is a newly diverse spectrum of LIPs, ranging from those who have continuous legal advice behind the scenes, those who can afford to use some unbundled legal services, those who have accessed McKenzie friends, to those who have access to extremely limited resources, and may be unable to access very much help at all before their hearings. Consequently, court staff have reported that a noticeable difference after LASPO is that it is now common for LIPs to arrive at court with limited understanding of the law, and no prior advice as to how best to conduct their case (House of Commons Justice Committee 2015, p.39-42; Speak Up for Justice 2016, p.16, 24).

1.4.3 Problems in the court process

In terms of the court process itself, research has consistently emphasised that a lack of legal representation has a negative impact on the outcomes of cases, such as making it more likely that cases are abandoned or unable to reach settlement (Hunter *et al.* 2002, p.103; Moorhead and Sefton 2005, p.221). As such, there is an extensive amount of literature which explores the problems that LIPs experience without representation. For example, the majority of LIPs before LASPO were conceptualised as existing on a spectrum from 'apparently competent', and 'procedurally challenged' to 'vanquished', relating to their ability to navigate the court process (Trinder *et al.* 2014, p.25-6).[23]

Before court, LIPs consistently experience difficulties complying with paperwork requirements, often struggling to understand legal terminology or translate their problems into the categories

[23] See: (Hunter *et al.* 2002, p.103-5) for the original conceptions of these categories.

used within forms (Dewar *et al.* 2000, p.45; Moorhead and Sefton 2005, p.131-2, 212; Williams 2011; Trinder *et al.* 2014, p.36-42; Leader 2017, p.144). These requirements are often experienced as exclusionary barriers even for LIPs with high levels of education, due to the specialised nature of legal language and administrative customs within the court process (MacFarlane *et al.* 2013, p.58-60; Trinder *et al.* 2014, p.24). Additionally, within court hearings, LIPs struggle with 'legal' tasks which require specialist training and experience, such as advocacy and cross-examination (Trinder *et al.* 2014, p.70). For example, during hearings, LIPs are required to present their arguments in a coherent speech to others in court. However, LIPs often give long and unfocused presentations, which centre around 'social interpretations' of their dispute rather than legal issues (Conley and O'Barr 1998; Moorhead and Sefton 2005, p.163; Trinder *et al.* 2014, p.71-2; Leader 2017, p.137). Similarly, LIPs struggle to pose relevant questions in a way that effectively tests the evidence of witnesses or responds to the arguments of the other side during cross-examination (Hunter 1998; Moorhead and Sefton 2005, p.162; Williams 2011; Trinder *et al.* 2014, p.70; Leader 2017, p.164). These technical difficulties are obviously compounded by the increased concern about cross-examination in cases involving domestic abuse, given that the majority of perpetrators are now categorically excluded from legal aid.

Since 2017, FPR3A and PD3AA have provided guidance to assist judges in identifying vulnerable litigants and providing assistance to them where their participation is likely to be diminished by way of their vulnerability. However, these provisions are premised upon recognising litigants with particular characteristics, such as mental health problems, disabilities, and domestic abuse. They do not, therefore, extend far enough to recognise that LIPs often face difficulties participating in the court as a result of their lack of legal training. Given the inconsistency of judicial approaches to managing hearings involving LIPs, and the strain that increased numbers of LIPs is placing on the court system, there is an important need for further research to continue the task of exploring the diversity of experiences that LIPs have of the court process, and the extent to which this process is capable of accommodating LIPs, especially after LASPO.

Additionally, experiences of LIPs are often shaped by who they are self-representing against. The majority of cases both before and after LASPO involving LIPs are those in which the other party is represented either by way of legal aid or because they have been able to afford their own lawyer (Ministry of Justice 2019d). As a result of the help that lawyers often extend to LIPs and the additional work they take on, the presence of a lawyer can make a hugely positive

difference to the conduct and progression of cases and prevent them escalating unnecessarily (Maclean and Eekelaar 2012; Trinder *et al.* 2014, p.62).

This does not, however, mean that lawyers are always positively perceived by LIPs. Rather, LIPs are keenly aware of the power imbalance that exists between them and the lawyers they face, and this can often lead to negative views of lawyers who may be able to take advantage of them during the court process. Existing studies have already indicated that negative views of lawyers or perceptions of their own vulnerability may deter LIPs from entering into productive negotiations (Moorhead and Sefton 2005, p.172-3, Trinder *et al.* 2014, p.45-50; Lee and Tkakucova 2018). For many LIPs, lawyers attempting to negotiate can instead be perceived as attempts to use their legal knowledge and experience in order to intimidate them and pressure them into disadvantageous agreements. There is some evidence that this may be even more difficult after LASPO, as lawyers are becoming more cautious about the possibility of LIPs making complaints against them, and more are expressing a preference for conversations to take place 'on the record' instead of outside the courtroom (Ridley 2014; Richardson and Speed 2019, p.141).

Similarly, research suggests that relationships between judges and lawyers can be experienced as exclusionary. LIPs can feel marginalised by a range of practical barriers, but also by the social and cultural differences, such as when they observe informal or social interactions between legal professionals (Dewar *et al* 2000, p.52-9; McKeever *et al.* 2018, p.120) Even in a professional capacity, some judges may change their approach in LIP cases by relying more heavily on lawyers to set the focus of hearings, but this can give LIPs the impression that lawyers are receiving favourable treatment from judges or permitting them to control proceedings (Moorhead and Sefton 2005, p.189-90; Moorhead 2007, p.411; MacFarlane *et al.* 2013, p.91-2; Trinder *et al.* 2014, p.80-2). While it may be tempting to attribute these problems to LIPs failing to appreciate the ways in which professionals are trying to help them within the process, these perspectives are crucial to assessing the accessibility of the system. As research demonstrates, experiences of court cases significantly affect the extent to which LIPs feel that they have been able to access justice and shapes their perspectives of others within the process (Tyler and Ho 2002, p.54-7; Zimmerman and Tyler 2009, p.480; McKeever *et al.* 2018, p.67).

While an obvious barrier to using the family court without a lawyer is the reality that LIPs rarely have access to legal knowledge, the majority of problems that they experience relate to a lack

of familiarity with procedure and customs of the court process. To this end, Rebecca Sandefur (2010) has gone as far as to suggest that the positive impact that lawyers make to court hearings can be largely attributed to their procedural knowledge. Rather than their legal expertise, it is the familiarity that lawyers have with the court system which enables parties to navigate relationships with legitimacy and achieve better outcomes. Without this support, it is essential that research helps to provide an understanding of how LIPs themselves understand and perceive this system and those who work within it, so it is possible to appreciate not just what impact LIPs have on the court system, but the impact that this system has on LIPs themselves.

While LASPO has taken a categorical approach to recognising certain individuals as vulnerable, this does not account for the ways in which vulnerabilities are often inextricably tied up in their experience of the court process (Leader 2017; McKeever *et al.* 2018, p.48). For example, interviews with Citizens Advice advisors demonstrate that the experience of self-representation itself can exacerbate or trigger mental health issues, have a detrimental impact on physical health, and place individuals in financially precarious positions due to the costs involved and the requirement to miss work for court hearings (Citizens Advice 2016, p.16-8). When reflecting upon the characteristics and needs of LIPs therefore, it is important not to dismiss them as pre-existing problems that LIPs bring into the court system, but rather to consider on how the system itself can either make these problems worse, or sometimes be a key factor in causing them.

What can be taken from the existing literature is that many problems encountered in the court process have been experienced by LIPs throughout decades of fluctuating legal aid funding. However, research which has been conducted after LASPO also suggests that the legal system is struggling to respond and adapt to the diverse range of LIPs who are now accessing court with varied levels of assistance. There is an important need, therefore, for further research which explores the ways in which these problems are developing or are potentially exacerbated after LASPO. However, in doing so, it is also important to reflect upon the impact that systematic barriers can have on the perceived accessibility of family justice. In looking forward, therefore, it is key that any further reforms to legal aid or the family justice system are made in view of the ways in which people themselves evaluate their experiences, so as to appreciate the potential implications that these changes may have for the trust that people have in this process (Zimmerman and Tyler 2009, p.485).

1.5 Thesis Objectives

In the pre-LASPO literature review undertaken by the government, it was noted that there was a lack of robust evidence from which to assess the impact of self-representation on the efficacy of the court process, and on the outcomes that LIPs receive (Williams 2011, p.8). However, as demonstrated by this chapter, there is a wealth of knowledge about existing problems which have been exacerbated by LASPO, which should not be dismissed because they explore qualitative experiences of family justice, rather than quantitative statistics. The implementation of LASPO has been accused of flying in the face of this existing evidence (Barlow *et al.* 2017, p.205). However, arguably, it is only now that the failures of LASPO are manifesting in quantitative statistics – low take-up of mediation and high numbers of LIPs – that the government is beginning to seek solutions to the pre-existing problems which were exacerbated by LASPO (Ministry of Justice 2019a). Therefore, LASPO is by no means the end of the story of legal aid reform, but now marks a turning point in which people are finally asking what will take the place of legal aid (Kaganas 2017, p.181). Rather than scrutinising LASPO as a crisis point, therefore, the purpose of this thesis is to make a thoughtful contribution to the debate about what happens next.

As discussed at the beginning of this chapter, it is important to remain mindful of whose voices and perspectives dominate this debate. Of course, the loudest calls remain those who continue to advocate for the reinstatement of legal aid for private family law (Low Commission 2014; Bach Commission 2017; Legal Aid Practitioners Group 2017, p.44; Marshall *et al.* 2018). While this is of course compelling, it is unlikely to be realistic within the current political and economic climate. There is also the possibility that continued clashes with government over funding for welfare services may be counter-productive, as it may in practice facilitate further cuts. For example, Peter Harris (2015) warns against condemning ECF rather than working with government on how to improve it, for fear of it being abolished entirely.

In the PIR, the government reiterated that 'access to a lawyer is not always the correct or most affordable answer', indicating their unwillingness to consider this option. However, they did acknowledge that LIPs require more support than is currently available, and that more was needed to enable the justice system to function with increased numbers of LIPs (Ministry of Justice 2019a, p.153). As part of this, they have committed to offering slightly more financial support to the Litigant in Person Support Strategy (LIPSS), with the view of improving non-legal support and information services over the next two years (Ministry of Justice 2019b, p26). Although it may be a controversial position to advocate, one of the truly unintended

consequences of LASPO may be that in practice it provides both an opportunity and the impetus to be more creative in response to the tensions which have characterised the family justice system for decades. A firmer starting point after LASPO, therefore, may be to consider ways in which the court process could and should be adapted to be more accessible to the range of people now making use of it, and what kinds of support and advice people in different circumstances require when they do (Trinder *et al.* 2014, p.119-20; McKeever *et al.* 2018, p.204).

Additionally, it is important not to conflate a crisis of access to justice this with a crisis of legal professionalism, in which lawyers have been excluded from work and are facing challenges to the assumption that they are needed within family law (Leader 2017, p.43). Reinstating legal aid to pre-LASPO levels, therefore, would not address the pre-existing problems that characterised the legal aid scheme – the reality that many people were practically excluded from it, and that there was never equal access to legal help. As Richard Abel (1985, p.598) noted more than 30 years ago, 'legal aid is a social reform that begins with the solution – lawyers.' It is not the absence of legal advice and representation which is causing barriers for access to justice. Rather, it is the system that exists without this support (McKeever *et al.* 2018, p.153-6). By cutting off access to advice and representation, LASPO has not created barriers to the family justice system – instead it has exposed the disadvantages that people experience within it due to the way that the system works.

However, to be effective, systemic reform would require a 'wholesale cultural shift' in the way LIPs are understood and conceptualised within the legal system (Bevan 2013, p.51-2). The approach taken by the government is significantly limited in this regard – firstly, because in emphasising that lawyers are 'not always' the answer, they have failed to sufficiently recognise that they will always be needed by some litigants (Trinder *et al.* 2014, p.121). Secondly, because the approach taken to improving the system for LIPs has been restricted to marginal improvements, rather than system-wide reform. Lastly, the government has fundamentally failed to account for the extent of the damage that has been caused to the infrastructure of advice by both LASPO and previous reforms.

The challenge, therefore, is to find a way of informing the trajectory of future reform. Despite its limited approach, the government has indicated its openness to improve the evidence base on LIPs (Ministry of Justice 2019b, p.26). For example, the Ministry of Justice recently opened a call for evidence to help improve understandings of the experiences that survivors of abuse have

in private law children cases, and review the court's application of PD12J. Importantly, they specifically invite evidence from people who have direct experience as parties themselves (Ministry of Justice 2019e). Despite earlier resistance to research that explored qualitative experiences, it is possible that in the aftermath of LASPO, there is some scope to reorient conversations about the family justice system in a way which incorporates the voices of those who have been directly affected by legal aid reform, and highlights the extent to which vulnerabilities are experienced within the court process as it currently operates. In the course of this thesis it will be argued that this is not only a valuable but an essential way to approach potential reform.

The underpinning objective of this research project is to provide a situated account of the family justice system after LASPO from the perspectives of LIPs. In doing so, it builds upon existing literature by considering the ways in which pre-LASPO problems have been exacerbated or developed, as well as reflecting on the ways in which LIPs themselves conceptualise the court process and others within it.

As such, the overarching research question which underpinned this project was: How do LIPs experience the family court process after LASPO?

This was broken down into five sub-questions, which are as follows:

1. What are some of the factors that LIPs believe to be relevant to their ability to self-represent?
2. How is vulnerability experienced outside of the definition used within LASPO?
3. To what extent do LIPs view the processes of the family court as accessible?
4. What resources, if any, do LIPs make use of, and to what extent do they find them useful?
5. What, if any, aspects of the family court process do LIPs find problematic?

In order to address these questions, I drew on the accounts of 23 LIPs who represented themselves in disputes under s 8 of the Children Act 1989 after 1st April 2013. Over the course of this thesis, I use a theoretical framework in order to explore their experiences of the family court process and reflect upon the ways in which these experiences shaped their perspectives of the family justice system. In doing so, I also highlight how the findings of this project reinforce and deepen existing knowledge about LIPs and provide an important contribution to post-LASPO debates within family law and access to justice.

1.6 Thesis Structure

Over the next two chapters, I outline the theoretical framework and methods which shaped this research project. In chapter two, I outline the four different approaches which were drawn together into the theoretical framework. These consist of feminist theory, Bourdieusian theory, vulnerability theory and Actor-Network Theory (ANT). This chapter discusses the rationale for drawing on each of these approaches and highlights the different theoretical tools that they provide in combination. In doing so, this chapter also reflects upon the inevitable tensions and challenges that came with combining the former three structuralist theories with the traditionally anti-structuralist approach of ANT and discusses how this was reconciled within the project. Having outlined this framework, chapter three brings these approaches through to outline how they influenced the methodological approach and the process of research design. Within this chapter, I provide details of how LIPs were recruited for interviews, the final sample of interviewees, how interviews were designed and conducted, and the process of data analysis. Throughout, these theoretical approaches are used to reflect upon the different empirical and analytical decisions that were made over the course of the project, and how these decisions fit with those made in similar studies.

Following these descriptive chapters, the findings of the project will be set out over chapters four, five and six. Reflecting the journey that LIPs take through the court process, chapter four will explore the experiences of LIPs before their court hearings. This chapter begins by discussing the problems that LIPs experienced in terms of locating court forms, understanding the language of court forms, and identifying the legally relevant information that needs to be included in these forms. This chapter also discusses the experiences that interviewees had of preparing for court hearings, and of locating and making use of the limited resources which are now available to assist with these preparatory stages. Here, I also highlight the ways in which this gave rise to specific challenges for those with learning difficulties and mental health issues and reflect upon the diversity of support that interviewees received via the Internet, social media and McKenzie Friends.

In chapter five, the thesis turns to consider the experiences of LIPs within court hearings. This chapter explores problems with the court process which were emphasised by interviewees, such as advocacy and cross-examination. It also describes other factors that interviewees felt were relevant to their ability to self-represent, such as the physical environments of hearings, and the approaches taken by judges and legal professionals in response to their self-represented status.

This chapter builds upon the previous chapter by describing the ways in which barriers were often exacerbated by failures of the court process to adapt to the numbers and variety of LIPs that are coming to court after LASPO.

Chapter six moves beyond identifying barriers and problems with the court process, in order to consider how these influenced LIP perceptions of the accessibility of the family justice system. It explores the different perceptions that interviewees had of their relationships with others within different court hearings and reflects upon the ways in which they perceived themselves within this process. Through doing this, it is demonstrated that interviewees not only struggled to participate in individual court hearings, but also experienced various difficulties which prevented them from meaningfully participating in the court process as a whole.

The thesis will conclude with chapter seven, which draws together the key findings and final conclusions of the project, by specifically addressing the research questions outlined above. It also provides a short reflection on the original contributions that are made by this research, and the future directions that may be possible for family law and access to justice after LASPO.

2. Theoretical Framework

2.1 Introduction

The purpose of this chapter is to outline the theoretical framework which underpins this thesis. As discussed in chapter one, LASPO has compounded several existing problems within the family justice system and had multiple unintended consequences for how people access family justice. One of the most significant examples of this is the increased number of LIPs who are now attempting to use the court process without legal representation. As highlighted so far, the combination of limited legal aid eligibility and significant barriers to advice and support mean that even more LIPs are now expected to represent themselves whilst also contending with a range of different circumstances like domestic abuse, learning difficulties, mental health issues, as well as limited access to resources. However, the family justice system itself has undergone no wholesale systematic reform in order to accommodate this. Therefore, the experiences of LIPs after LASPO are likely to be far more complicated than the picture which is currently painted by government policy or even the accounts of legal professionals who have been affected by legal aid reforms. For this thesis, it is therefore important to draw together a framework of theoretical resources that will assist me in designing and approaching this project in a way that provides a rich insight into the experiences and perspectives of LIPs. Importantly, this means employing theoretical tools which will help me to understand how these different circumstances affect their experiences and may result in disadvantage within the family justice system.

However, in making these decisions about what theories to use, it is also useful to reflect on what this account of the family justice system is for. On one hand, it is important to produce evidence that can be used to argue for short-term policy changes, such as specific forms of assistance for LIPs after LASPO. On the other, it is also essential for this research to be critical of how the family justice system may function, both practically and culturally, to exclude and marginalise LIPs rather than to accommodate them, and to highlight the case for more meaningful and long-term change.[24]

By drawing multiple theoretical approaches into a framework, it is possible to do both of these things. Importantly, by bringing together theories from different traditions and disciplines, it is

[24] This tension is commonly experienced in socio-legal studies, and particularly in family law. See: (Maclean 2015b).

possible to look beyond law, and find innovative and critical tools with which to expose, understand and explore the experiences shared with me by the LIPs who were interviewed for this project. It also provides the opportunity to move away from traditional ways of thinking about the legal system, and instead challenge assumptions about how LIPs are being positioned within this context. To this end, this theoretical framework is made up of four different approaches, which each provide distinct resources for understanding how LIPs are positioned differently in relation to broader inequalities, and how this may result in specific forms of disadvantage when they are expected to navigate an unchanged family justice system.

The first approach is drawn from feminist theory – specifically, feminist legal scholarship. This approach is useful because it draws attention to the way in which law and legal scholarship is often formulated in a way that is blind to marginalised experiences and the implications of structural inequality. In relation to feminist scholarship, I outline firstly the usefulness of feminist theory for understanding the relationship between law, inequality and disadvantage, and secondly, the value of asking the 'woman' question in order to expose hidden, diverse and intersectional perspectives which can be used to inform future reform and think about the family justice system.

The second approach is Pierre Bourdieu's theory of social class. This theory provides three key concepts which are useful for understanding how class is not merely about socio-economic resources, but also about cultural inequality. Building on feminist theory, this theory can be used to trace the classed experiences of the legal system which are otherwise absent from law and policy. Although not originally designed to address inequalities relating to differences other than class, these concepts are also useful for exploring other forms of structural inequality, such as gender. I explain that by using Bourdieu's theory in an intersectional way, it is possible to use these concepts to trace multiple and overlapping structural forms of inequality and understand how these may intersect to produce unique experiences of disadvantage.

The third approach is vulnerability theory. This theory reinforces feminist theory and Bourdieusian theory by providing an alternative lens which does not focus on categories of difference, such as class and gender. Instead, vulnerability theory shifts the focus of inquiry to the institutional context of the family justice system, by asking how disadvantage may be experienced simply because of how the legal system itself operates. In this section, I discuss a conflict between vulnerability theory and intersectional applications of Bourdieusian theory.

While Bourdieusian theory is useful for asking questions about how certain groups experience disadvantage, vulnerability theory points in the other direction, by suggesting that disadvantage should be understood in relation to the institution, rather than in relation to categories like class. However, I argue that there is value in asking questions about both categories and the institution. Using these theories in partnership provides me with the tools to be able to account for the complex effects of inequality, and to also go a step further by also considering how people may be disadvantaged *as a result of the way in which institutions are designed*. Using these theories together aligns with feminist theory, because it provides a way of producing research which not only exposes marginalised experiences of law, but also reflects on how the legal system is implicated in this process of marginalisation.

The final approach is Actor-Network Theory (ANT). While the first three approaches provide different ways to think through the structural context of difference and inequality, ANT provides a more pragmatic tool for examining the material ways in which LIPs may experience disadvantage 'on the ground'. This involves tracing the detail of the interactions that LIPs have with other people, objects and environments in the family justice system. This reinforces the value of the other three theories, because it allows me to explore the specific practices which mean that inequalities and difference manifest in disadvantage within the legal system. However, because this approach advocates understanding social arrangements empirically, ANT theorists have traditionally rejected theoretical understandings of structure. This creates an important challenge for combining ANT with the other three theories in this framework. In discussing this conflict, I argue that it is possible to use ANT without adhering to anti-structuralism – rather, ANT can be used as a set of sensibilities which can orient structural theory. Further, by taking this approach, ANT can actually be used as a means of reflecting on the importance of using theory in a way that does not ignore empirical experiences. In this way, I argue that it further reinforces feminist objectives by elevating the importance of researcher reflexivity in research.

2.2 A Feminist Approach

Feminist theory, and particularly feminist legal scholarship, is an instrumental resource for exposing and scrutinising the hidden complexities of the ways in which people engage with law. It encompasses a broad and diverse literature which offers a range of insights into how law can operate to exclude and marginalise women, facilitate and contribute to their experiences of wider inequalities, and omit their subjectivities whilst presenting male subjectivities as objective, legitimate, or simply as common sense. This rich history of feminist perspectives have

been useful for achieving a great deal in terms of substantive legal and political reform, as well as informing how scholars think about the basis upon which such claims should be formulated (Barnett 1998, p.8). Often conceptualised as 'waves' of feminism, these have ranged from liberal claims for formal equality within law, radical calls for more focused attention on the relationship between sexual difference and oppression, to constructivist understandings of how men and women are constructed differently on the basis of their gender, and the specific ways in which law unevenly reinforces and reproduces these constructions (Barnett 1998, p.5-8).

In all forms, feminism seeks to reveal and develop an understanding of the conditions of women's lives and suggest how these conditions may be improved – either by undertaking a broader critique of the structures that produce those conditions, or advocating specific reforms within those structures (Bridgeman and Monk 2000, p.7). Importantly, both tasks involve telling stories that account for the diverse experiences of women – paying careful attention to different perspectives, definitions and meanings which have otherwise been omitted or silenced within law. To this end, feminist theory is a particularly useful starting point for thinking about how to provide an insight into LIP experiences, because it provides a means of exposing the complex range of circumstances and inequalities – including, but not limited to gender – which may frame the experiences and perceptions that LIPs have when they use the family justice system. It also provides an important means of reflecting on the narrative that is relied upon in the post-LASPO era of family law.

I will now outline these important contributions in the following sections – firstly addressing the usefulness of feminist theory for understanding the relationship between law, inequality and disadvantage, and secondly outlining the value of asking the 'woman' question in order to expose hidden and diverse perspectives which can be used to inform future reforms and think about the family justice system.

2.2.1 Law, Inequality and Disadvantage

By rendering the concerns of women both visible and valuable, feminist theory provides a resource for exposing how law is both actively and passively implicated in experiences of inequality and disadvantage. For instance, feminist legal scholarship has been key in campaigning for equality *within* law, and against the explicit and overt ways in which law may treat men and women differently. An early goal of feminism, therefore, was to secure formal equality – to argue that law should treat people the same regardless of their gender. However,

more recently, feminists have moved beyond this in order to expose the more subtle ways in which law is complicit in conditions of inequality (Diduck and O'Donovan 2006, p.2-3).

Here, feminist legal scholars have drawn attention to the problematic implications of formal equality within law. For instance, statutory provision in family law is gender neutral. While this may give equality in terms of legal entitlements, it also demonstrates a failure of law to acknowledge the important ways in which the conditions of men and women's lives differ, or go far enough to recognise that different treatment may sometimes be required in order to achieve a more substantive reality of equality (Diduck and O'Donovan 2006, p.9). Even if law does not discriminate between men and women, its failure to incorporate the understandings, experiences and perceptions of women within its legal definitions and rules is a cause of harm in and of itself (Bridgeman and Monk 2000, p.7). This is because in practice, women's experiences of harm and disadvantage are only recognised within law if those harms are also suffered by men. When gender-specific harms arise, women experience inequality in multiple ways – both by way of the harm itself, and also by way of law's failure to recognise and respond to it (West 1988). In other words, law is designed around the idea of a 'non-gendered, non-differentiated legal subject', and this has important consequences for the role that law can play in ignoring, facilitating and reiterating the material inequalities that women experience within society (Hunter 2013).

Further, the gender-neutral formulation of law in practice plays an important role in obscuring the way in which law itself can operate as a gendering strategy (Diduck and O'Donovan 2006, p.6). Family law in particular draws enormous legitimacy from the idea that it can provide an objective, impartial or even common-sense intervention into people's personal lives. However, a key benefit of looking at law through a feminist lens is to understand that this by no means impartial – in reality, law draws understandings together from multiple disciplines, and the supposed objectivity of law is predicated upon its capacity to selectively recognise certain aspects of people's lives whilst deeming other aspects irrelevant. For example, 'best interests' is a legal concept which is central to private family disputes concerning children. However, this legal concept is constructed and interpreted within a context of psychological and emotional factors, which is not just 'legal', and which is inherently gendered (Diduck 2000, p.253-4). Rather, 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 (Smart and Sevenhuijsen 1989; Fineman 1996; Barnett 2000). A consequence of this separation is that any assessment of best interests inevitably fails to incorporate the realities of mothers' lives. As a result, Adrienne

Barnett argues that the law has constructed a 'space' between contact disputes and domestic abuse, and professional attitudes have shifted to fit around this space (2000, p.141). An important effect of this is that without a proper consideration of the relevance of domestic abuse to decisions about contact, mothers who resist contact are inevitably constructed within legal discourse as irrational and unreasonable. At the same time, this discourse has the effect of erasing the relevance of any violence perpetrated by fathers, and instead presents fathers who seek contact as 'safe family men'.

In practice, law is capable of recognising a broad range of legitimate factors in constructing this concept, but the specific construction that is used and applied in these cases is one that results from a particular moral and ideological choice about what aspects of parenting should be recognised and promoted (Barnett 2000, p.148). In particular, these decisions are often justified by reference to abstract principles such as equality or justice, which in turn make it far more difficult to use these principles as a basis for rectifying law's limitations (Hunter 2008). For example, traditionally feminist concerns of equality have frequently been co-opted to further non-feminist agendas, such as the claim that men are equal victims of domestic abuse, or that encouraging self-sufficiency and reducing eligibility for legal aid is a way of promoting the agency and autonomy of parents on relationship breakdown (Kaganas 2006; Wallbank 2014). In practice, both of these examples fail to recognise the broader inequalities which characterise the conditions of women's lives. Instead, aspects of people's lives which are not accommodated within legal discourse are reduced to emotional and selfish disputes which are invariably private, and not of major concern or relevance during the decision-making process (Smart and Neale 1999).

While family law may be formally described as a collection of statutes and case law, a feminist approach demonstrates that this is a limited view of the rules and ideas that contribute to the regulation of the family. In practice, family law also employs a range of informal regulation, which enables it to constitute individuals in particular ways, as well as determine which aspects of family life are worthy of public scrutiny and attention (Diduck and O'Donovan 2006, p.6-7). Therefore, for many feminist legal scholars, law is important, but in practice forms only one part of the regimes and discourses which work to regulate the lives of women. As such, a feminist approach advocates expanding the lens of critique to include other structures and institutions which interact with law, such as the family, the labour market, or the tax and benefit system,

which all form the backdrop to a society that is structured in a way that omits the concerns and realities of women's lives (Diduck and O'Donovan 2006, p.5; Conaghan 2013, p.103).

Despite the diverse range of perspectives which come under feminist theory, the 'greatest legacy' of feminist scholarship is to expand both what can be known about the world, and what can be asked about the world (Diduck and O'Donovan 2006, p.7). The 'modern challenge' for feminist family lawyers is to 'reveal the ways in which law is implicated…in all of these complicated, sometimes sophisticated, but always resolute structures of gender' (Diduck and O'Donovan 2006, p.6). In other words, a feminist approach emphasises the importance of drawing out the ways in which a failure to account for difference can have the consequence of perpetuating inequality, and how inequality can manifest in specific experiences of disadvantage. To this end, it provides a means of challenging ideas which are presented as objective, rational or impartial, by exposing the important perspectives, experiences and understandings which have been omitted and hidden by the process of their construction.

2.2.2 Asking the 'Woman' Question

Using feminism to expose these perspectives involves asking what is often referred to as the 'woman' question. In practice, this involves asking several different questions, all of which are geared towards identifying, exploring and understanding the implications of rules and practices which otherwise appear to be neutral or objective (Bartlett 1990, p.837). For example, two key questions which underpin the feminist approach are: firstly, what kind of assumptions, descriptions, assertions or definitions underpin the law's approach to private family disputes? Secondly, how do these compare to the lived realities and experiences of women? By asking these questions, it is possible to challenge the rules and practices which are presented as neutral or objective, by revealing the kinds of interests which are at the centre of law and demanding justification for the inequalities and disadvantages that this disparity perpetuates (Barnett 1998, p.23).

In recounting women's experiences and demanding justifications, a feminist approach renders these experiences both visible and valuable. Several feminist legal scholars have emphasised that this visibility is important for women, because it raises 'collective consciousness' among women who recognise and relate to the experiences which are exposed through this activity (Bartlett 1990, p.863-7). For example, there are some concerns which are common among women, such as the way in which structures like law operate to define the meaning of concepts like motherhood and mothering (O'Donovan and Marshall 2006). Similarly, in their research into

the legal aid system in Australia, Hunter and De Simone found that although eligibility policy did not overtly distinguish between men and women, women were disproportionately disadvantaged by the fact that applications for family legal aid were afforded lower priority than those for legal aid in criminal matters, because the latter cases were presented as objectively more serious (2009, p.161-2). Consciousness raising among women is therefore a means through which individual experiences of harm can be translated into collective experiences of oppression, which can in turn be used as an evidence base and an impetus to dismantle systems and structures which perpetuate inequality (Barlett 1990, p.837). However, while this has obvious and significant value, feminist scholars have drawn attention to the important limitations of research that claims to expose the experiences and perspectives of women, without accommodating the diverse and intersectional ways in which different women experience law.

Modern feminist scholarship, particularly that which is geared towards achieving legal and political reform, is intersectional. Intersectionality is a concept originally developed within critical race theory and is largely attributed to the ground-breaking work of Kimberle Crenshaw (1989; 1991). It is derived from arguments that mainstream feminist discourse was unable to account for the unique form of disadvantage which are experienced by women of colour, who exist at the intersection between racism and sexism (Crenshaw 1989). The idea that multiple forms of oppression or marginalisation can intersect and produce specific experiences of disadvantage has been notably taken up by feminist legal scholars who seek to avoid producing research which claims to speak for all women.[25] In doing so, they recognise the value of raising collective consciousness, whilst also challenging the notion that women have a collective set of interests, or that there is 'some "essential woman" imbued with the characteristics and needs of every woman, irrespective of age, race or class' (Conaghan 2007; Grabham 2006; Barnett 1998, p.7-8, 19-21).

Through the metaphor of an intersection, it is possible to appreciate the complexity of inequality, and what this means for how to ask the 'woman' question. In this sense, asking the 'woman' question means asking questions that reach beyond issues of gender, and also scrutinising how legal discourse excludes the experiences and perspectives of those who are affected by other inequalities (Bartlett 1990, p.837). As Joanne Conaghan explains:

[25] See, for example: (Grabham *et al.* 2009.)

> '…a tendency to view gender as part of a much more complex matrix of interlocking inequalities encompassing race, class, disability, religion, and so on, has widened the cast of gender as an analytical frame well beyond a focus on women's disadvantage or gender injustice' (2013, p.74).

Further, rather than someone experiencing multiple forms of disadvantage at once, this metaphor allows researchers to appreciate the ways in which people can be marginalised as a result of different kinds of disadvantage, which intersect in ways that cannot be untangled from one another (Grabham *et al.* 2009, p.1). A feminist approach which is intersectional, therefore, seeks to expose the *complexity* of experiences that are omitted from law and legal practice, by telling stories that account for diverse experiences – including but not limited to gender – and resisting the temptation to explore just the aspects of people's lives that the law determines to be relevant or important (Conaghan 2013, p.12-4).

By locating law within its historical, social and ideological context, and tracing how it operates to serve only particular interests, it is possible to create the space for 'oppositional meanings' to emerge (Bartlett 1990, p.857; Barnett 2000, p.132). However, it is essential that the oppositional meanings produced through research do not only reflect those of particular groups, but instead allow an insight the complex range of understandings, definitions and experiences which are omitted from law. To this end, a feminist approach is also useful for appreciate the political implications of *how* research is done. For instance, feminists have emphasised that theoretical approaches to law are just as capable of perpetuating inequality by omitting certain perspectives from their analyses. As Hilarie Barnett explains:

> 'The Western liberal tradition, the laws which serve that tradition, and legal theory which presents analyses of law, portray themselves as class-, age-, race- and gender-neutral. It is this well sustained myth of law's neutrality to gender (in particular) which feminist legal theorists seek to unmask and bring into the clear light of day in order to bring about societal change.' (1998, p.19)

It is not enough, therefore, to simply expose the diverse range of perspectives which are omitted from law and legal discourse. It is additionally and equally important to question the very process by which these definitions and understandings are formulated in the first place. The notion of intersectionality is extremely useful for appreciating how law responds differently in different circumstances, and how even when progressive reforms are made, it advances protections unevenly. By asking questions that expose the diversity of possible experiences, perceptions and understandings, it is possible to 'build an account of the world as seen from the

margins, an account which can expose the falseness of the view from the top and can transform the margins as well as the centre' (Hartsock 1990, p.170-1).

Asking the woman question, therefore, can broadly be understood as a commitment to constructing a narrative which is not built out of abstract principles but is instead built 'from the ground up, out of concrete, specific practices' (Barnett 2000, p.133). Fundamentally, this involves acknowledging the constructed nature of knowledge, and recognising that forms of oppression can be rendered invisible not only by other dominant structures of power, but also by the efforts of researchers who attempt to address these structures (Bartlett 1990, p.848). In other words, a failure to acknowledge different and intersectional experiences, perceptions, definitions and understandings within research can have the consequence of actually colluding with law in producing disadvantage for particular groups and individuals who are excluded from the analysis (Hunter 2013). In order to produce an account which can expose the complexity of LIP experiences, it is therefore useful to reinforce a feminist approach with other theories which help me to understand aspects of difference which may be rendered invisible within law.

On this basis, I have drawn together theoretical tools from three other approaches, which, combined with feminism, allow me to gain a deeper understanding of how different forms of structural inequality may shape the experiences of LIPs, and how these broader inequalities may play out for individuals in the specific environment of the family court process.

2.3 Bourdieusian Theory

The second component of the framework is a Bourdieusian theory of social class. In this section, I will firstly discuss why a theory of class was particularly useful for this project. Following this, I will go on to outline the central tenets of Bourdieu's theory, and highlight how these can be used to understand the broader structural context of difference and inequality which frames the experiences that LIPs may have within the family justice system.

2.3.1 A Theory of Class

When I began to select theoretical tools for this project, it was immediately obvious that this should include a theory of class. This was for two key reasons. Firstly, there are clearly established links between economic inequality and the likelihood of experiencing legal problems. In terms of family law specifically, relationship breakdown is a process in which the socio-economic position of the individual is transformed, and which frequently coincides with or triggers other legal issues such as housing, immigration and welfare issues (Pleasance *et al.*

2006, p.55-6, 75). Additionally, the ability to access quality legal services has always been more challenging for those with fewer economic resources. However, this not simply a case of whether someone can afford to pay for good quality advice or representation. Rather, the ability to navigate the various aspects of the family justice system also requires other kinds of resources, such as knowledge about the options available, capability to locate assistance, as well as the time and skills required to make meaningful use of these options. Taking legal action therefore requires a host of socio-economic resources which are not evenly distributed throughout society. As a result, it is common for people to lack the resources to cope with the costs of resolving these legal problems (Genn 1999, p.168-9; Pleasance *et al.* 2006, p.30, 53).

Secondly, this is even more important in the post-LASPO context. As discussed in chapter one, people are now expected to find their own information by navigating a fragmented network of advice and support, and most people are now categorically excluded from accessing any funded advice or representation, regardless of quality. However, this is exacerbated by the fact that LASPO coincided with a host of other reforms to state-funded support which were implemented by the 2010 coalition government.[26] According to the Joseph Rowntree Foundation (2018), 22% of UK families are recognised as living in poverty.[27] Families with children have always been at greater risk of financial insecurity, but this is now playing out against a context of increased housing costs, precarious employment conditions and weakening state support. For example, before 2013, there had been a significant reduction in the number of families living on these low incomes due to steady levels of state support through the benefit and tax credit systems. However, since 2013, these statistics have started to reverse as these forms of support have been the targets of austerity measures (Tinson *et al.* 2016, p.100-8; Joseph Rowntree 2018, p.12-3, 33-5). An increasing number of people – particularly lone and working parents – are therefore contending with circumstances in which they have limited access to the vital economic and social resources which enable them to participate fully in society (Tinson *et al.* 2016, p.74-81). The LASPO reform therefore has an important class dimension, because it has not only withdrawn legal aid for most cases, but it has also not accounted for how the effects of austerity measures are likely to further compound the ability of people to navigate the legal system.

[26] See, for instance: Welfare Reform Act 2012.

[27] The definition of poverty used here is where a family has an income of 60% less than the median income for their family type, however these statistics are used here to illustrate a more general trend towards economic insecurity in the UK since 2013.

As a result, experiences of the family court process are likely to be significantly shaped by experiences of broader socio-economic inequality. However, as demonstrated through feminist theory, law and legal scholarship has not traditionally accounted for inequalities such as class. It is therefore useful to draw on a Bourdieusian theory of class which can be used to provide an insight into how socio-economic inequality may frame experiences of disadvantage within the family justice system.

2.3.2 Bourdieusian Concepts

Bourdieusian theory is particularly useful for this, because it provides three central concepts which can be used as tools to explore the ways in which inequality is reproduced through culture - capital, field, and habitus. In discussing these concepts, I will first demonstrate that they provide useful ways of understanding how socio-economic inequality affects the experiences that people have of the legal system, as well as how the legal system itself is set up in a way that discounts the relevance of this structural context. I will then discuss how these concepts are also useful for highlighting how this can occur in relation to different kinds of structural inequality apart from class, and the importance of using Bourdieu's concepts in a way that accounts for how these inequalities may intersect with each other to produce complex experiences of disadvantage.

2.3.2.1 Capital, Field and Habitus

The first foundational Bourdieusian concept is 'capital'. Economic capital is a resource that can be exchanged for benefits or used as a means of influence. However, for Bourdieu, capital also comes in three additional forms – cultural, social and symbolic. Cultural capital refers to the skills, knowledge and dispositions that people gain during their life, the form of which depends on the interactions and experiences they have within society (Bourdieu 2005, p.211). Similarly, social capital refers to the social networks that people can draw upon for support during these interactions and experiences. Therefore, both forms of capital are accumulated through life experiences – they differ according to the people that an individual has met and formed connections with, as well as what they have learned, been exposed to, and taken interests in throughout their lives. In practice, both function as tangible resources which can be exchanged or used to gain advantages in different contexts.

Symbolic capital, however, operates slightly differently. This type of capital refers to things like authority, reputation and prestige, which can easily be used to accrue other forms of capital. Education is an important example of symbolic capital, because it is something that can be exchanged for other forms of valuable capital in a variety of different contexts (Bourdieu 1986,

p.55; 1987, p.812). By distinguishing between these different kinds of resources, it is possible to understand how people from different social origins have different opportunities and possibilities available to them. However, rather than just signifying differences between people, the concept of capital can be used to expose the different value that is attributed to different kinds of capital within society.

This leads to Bourdieu's second concept – field. Bourdieu argued that society is made up of several overlapping fields which all have their own practices and hierarchies of value. If capitals are synonymous with wealth, then fields are the marketplaces in which those capitals are spent and exchanged. Through the notions of capital and field, it is possible to appreciate that class is more nuanced than economic disadvantage. While employment and income are useful markers of inequality in society, focusing on these alone does not give a full insight into how people may experience disadvantage within specific contexts like the legal system. As Lisa McKenzie explains:

> 'class has value attached to it. It can be read on the body through the way you walk, talk, or the clothes you wear. It can also be read through what you do, where you go, and what you enjoy in life' (2016, p.25).

Within each field, therefore, capitals are assigned value which determines how they can be used and the extent to which people can succeed in each context. In this sense, fields are sites of competition in which people struggle against each other in order to establish their 'cultural competence' within any given arena (Bourdieu 1984, p.86-7). In other words, the capitals that are useful within one field may be completely different from those that are valuable in another.

However, there are some kinds of capital – such as the skills and confidence that may come from a University education – which are valuable across several fields. McKenzie provides a useful illustration of this through her study of a Nottingham council estate. Here, she describes the ways in which local dialect and certain clothing brands were privileged as valuable cultural markers within the local community, even though they were actively de-valued and stigmatised outside of this context. People who accumulated and displayed these markers were able to assert power and authority within the confines of this field, but then lost those advantages when they attempted to engage with other fields which were characterised by different hierarchies of value. In McKenzie's example, those who enjoyed advantages within the council estate were ultimately limited in their broader interactions with other fields, because their capital was not symbolical capital; it had no 'exchange value' outside of that context (2016, p.30-1).

This raises an important point about the historical dimension of privilege, and the ways in which people with certain kinds of capital can travel easily between different fields, and others cannot. The opportunities to access, accumulate and use those capitals which are widely valued are by no means open to everyone. Rather, the distribution of symbolic capital follows broader patterns of how resources are distributed within society. This is because the hierarchies of value which work to structure fields are by no means neutral. In practice, Bourdieu argues, there are overlaps between fields relating to law, politics and economics, because the holders of symbolic capital across each of these fields have 'kindred world views' (Bourdieu 1987, p.842). In other words, those who hold power within society generally have a greater capacity to continually influence the shape and structure of official fields, and inevitably do so in their own interests.

In relation to law, Bourdieu extensively discussed that one way of doing this is by privileging unique practices and hierarchies which characterise the 'juridical field' (1987). Here, he explains that law is a field with its own culture. By culture, he means an underpinning set of protocols and assumptions, as well as its own internal social, psychological and linguistic codes which all frame the way that law is practiced and negotiated but are never specifically recorded or acknowledged (Bourdieu 1987, p.806). For example, valued capitals in the juridical field include knowledge of and familiarity with legal rules, as well as specific ways of behaving and communicating which are perceived as authentic to law. These unique forms of cultural capital enable those who are initiated in law to 'explore and exploit the range of possible rules and use them effectively as symbolic weapons to argue a case' (Bourdieu 1987, p.827). Similarly, within the juridical field, certain forms of speech and written text have greater meaning and value than they do outside of this context. For example, when giving legal judgments, the act of speaking has the specific power of making something true. Additionally, the written formalisation of text in a court document gives those words power in ways that would not be possible if they were simply said aloud (Bourdieu 1987, p.809-10).

In this sense, the value that is placed on juridical capital within the juridical field has a distinctly exclusionary effect for those who have not been initiated through legal education and training. In theory, the legal system is an arena where people can contest different arguments and versions of truth, but the elasticity of law is realistically only open to those who know how to appeal to its recognised and valued rhetorical devices (Bourdieu 1987, p.827). These exclusionary practices enable the juridical field to set its own parameters of what is 'legally'

relevant and important, and to dismiss and devalue other skills and perspectives (Bourdieu 1987, p.828-9).

This provides an extremely useful understanding of how and why law operates in a way that is blind to difference and structural inequalities like gender or class. By discounting these important differences, the authority and legitimacy of law can be derived from the supposed objectivity of legal rules and practices. However, through Bourdieu's theory, it is possible to expose that this is by no means objective – rather, the juridical field operates to selectively recognise certain capitals, and to discount capitals which do not fit neatly into the structure of this field. He described this as a form of symbolic violence, because it is imposed on those who have little choice about whether to accept or reject these hierarchies of value (Bourdieu 1987, p.812). Through the concepts of capital and field, therefore, it is possible to understand how broader patterns of inequality within society has the potential to shape experiences of disadvantage within specific contexts like the legal system.

Bourdieu's final concept is the habitus. The habitus is the internal mechanism through which people accumulate different kinds of capital, and also develop their own sense for which capitals are useful for them when they engage with different fields. It is a useful concept for understanding the subjective ways in which people interpret their own position within the structure of different fields and respond to experiences of disadvantage. Taken together with capital and field, the concept of habitus requires researchers to consider how people perceive the context in which they find themselves, and how their responses can in turn further shape their experiences.

Returning to McKenzie's example, for instance, residents of the council estate were able to invert the dominant narrative and create their own alternative structure of value within the confines of the local community, even at the cost of facing disadvantage when they engaged with other fields. Similarly, in his recent survey-based study into the British class system, Mike Savage noted that despite making up 15% of the population, the most disadvantaged and marginalised groups in the UK only made up 1% of his survey sample. To explain this, Savage drew on Bourdieusian theory to explore the reasons why these people were less likely to participate than others, and emphasised that it was important for researchers to remember that when people recognise the odds against them, they can be tempted to withdraw from the struggle altogether (2015, p.333).

This provides an important insight into not only how LIPs may respond when they are faced with aspects of the family justice system, but also into how LIPs may be less willing to engage with this research project if they have already experienced disadvantage within the family justice system as well as in society generally. However, by exposing the way that class can influence responses and perceptions, and the extent to which people may be willing to engage with certain fields, Bourdieu's theory also demonstrates how crucial it is to draw upon these missing perspectives. As Savage explains, 'it is one thing to point to growing economic inequalities, but we need to see how people themselves see these divisions' (2015, p.1). An important benefit of exploring experiences through the habitus, therefore, is to gain an insight into the subjective ways that people themselves perceive the legal system.

2.3.2.2 Applying Bourdieu's Concepts to Other Inequalities

Taken together, Bourdieu's concepts are extremely useful for reinforcing the feminist objectives of exposing not only the hidden narratives of law, but also the implications of law's blindness to inequality and difference. In relation to socio-economic disadvantage, they can be used to demonstrate that people can be prevented from participating in certain fields not only because of a lack of economic resources, but also by hierarchies of cultural value, which deny people appropriate recognition within certain contexts. Bourdieu's theory is therefore useful for understanding the important links between economic and cultural forms of subordination.

However, this is not to say that a lack of cultural recognition is always dependent on a lack of economic resources. Fraser argues, for instance, that although inherently linked with economic inequality, there are many other ways in which people can be oppressed or disadvantaged on the basis of who they are, and their status within other structures in society, like gender and race (2008, p.10-16; 2013 p.193-4). Although Bourdieu did not explicitly discuss this, the flexibility of his concepts means that they are useful for addressing these other structures of inequality because they account for the historical reiteration of both unequal outcomes and the processes by which these outcomes are produced (Sommerlad and Sanderson 1998, p.29, 37).

The task of extending these concepts to address other forms of disadvantage has been taken forward by a new generation of Bourdieusian researchers (Burke *et al.* 2016, p.1). Approaching these concepts from very different academic backgrounds to Bourdieu, these scholars have been able to develop concepts like 'black' cultural capital, and drawn links between the habitus and the concept of 'respectability' in order to address the ways in which structures of value are

racialised and gendered as well as classed (Skeggs 1997; Rollock 2007; Wallace 2016; McKenzie 2016).

In relation to law, Hilary Sommerlad and Peter Sanderson (1998, p.17) argue that the juridical field facilitates a culture which is specifically exclusionary to women. In their work, Sommerlad and Sanderson use the concept of field to demonstrate how legal rules are gender blind, and therefore do not account for structural constraints like caring responsibilities or other social arrangements which disproportionately affect women. As such, the inequality that women experience across society is constructed as irrelevant within the juridical field (1998, p.2). Additionally, through the concept of capital, they explore the ways in which women can be ascribed certain characteristics based on their sex or gender, which are then devalued within the juridical field. In their work, capitals associated with femininity or motherhood were ascribed to women by others in the field, and these were then undermined, misrecognised and devalued in ways that those held by men were not (Sommerlad and Sanderson 1998, p.28-9, 37-8). In this sense, Bourdieusian concepts can be used to understand how gender-based inequality can produce disadvantage which is different to the disadvantages which stem from socio-economic inequality, and that both of these structural inequalities these can compound and intersect each other within the lived experiences of women.

However, when using Bourdieu's theory to understand how different structures like gender, class and race operate, I also need to understand how they intersect with each other, and how this makes experiences of disadvantage even more complex. In other words, what is also needed is an understanding of how categories like class and gender work *together* to produce unique experiences of disadvantage. To this end, it is useful to explicitly draw Bourdieusian concepts together with feminist ideas and use them in an intersectional way. A major benefit of doing this is that it will enable my analysis to move beyond talking about categories like gender, race and class as if they are mutually exclusive. Instead, an intersectional application of Bourdieusian theory provides an imperative to 'complicate our understanding of the social dynamics of inequality' by embracing the complex and overlapping ways in which these categories may operate (Grabham *et al.* 2009, p.13). In doing so, it is possible to recognise not only the cumulative ways in which people may be affected by different structures of inequality, but also the unique and complicated ways in which individuals experience disadvantage as a result of their different social positions. Used in this way, Bourdieu's concepts are extremely useful and versatile tools which can be used to expose a rich understanding of how LIPs may experience

disadvantage in the legal system, and how law operates to cut through these lived realities. However, this is only useful for understanding the effects of inequality which relate to specific structural categories. It is also useful to go further and consider how the legal system itself may be implicated in experiences of disadvantage.

2.4 Vulnerability Theory

This leads to the third component of the framework – vulnerability theory. Although the concept of vulnerability has been explored extensively by philosophers and political scholars, this theory has most prominently been developed in relation to law by Martha Fineman (Goodin 1985; MacKenzie *et al.* 2014; Fineman 2008; 2011; 2016; 2017). The basis of Fineman's vulnerability thesis is that using approaches like Bourdieu's theory in an intersectional way, does not go far enough to provide a full picture of disadvantage. Instead of attempting to map the intersections between different forms of inequality, she argues that it is more useful to understand disadvantage through a lens of vulnerability. Under this view, disadvantage is not only related to structural categories, but also to the extent that the state and its institutions operate to provide citizens with appropriate support.

The basis of this approach centres around the idea that legal culture and discourse is designed around the 'liberal legal subject'. Through this, the subject of law is always presumed to be able to function fully, autonomously, independently and responsibly, without the need for state support or intervention. This construction does not take account of the different ways in which people experience disadvantage or rely on one another or the state for support at various points in their lives (Fineman 2008; 2016, p.17). It is this legal and political logic of self-sufficiency which has informed several reforms to family law and legal aid policy in recent years, such as increased emphasis on mediation and the stigmatisation of people who need to take their family cases to court. It has also provided a justification for the way in which legal aid was reformed under LASPO – by reserving legal aid only for the 'most vulnerable' citizens, the government has constructed the majority of people as self-sufficient and responsible for resolving their own family law problems.

In this way, vulnerability theory shares a clear epistemological foundation with feminist theory, which seeks to expose law's blindness to difference and experiences of structural inequality. However, through vulnerability theory, Fineman argues that researchers should move away from this categorical approach to inequality, and instead consider how the liberal legal subject might be replaced with the 'vulnerable subject' (Fineman 2011). The vulnerable subject, she

argues, more accurately reflects the extent to which we are all in need of support at various points during our lives, and the ways in which we are all dependent on others within society for the resilience to be able to cope with particular circumstances of hardship, or avoid them altogether. To this end, the vulnerable subject acknowledges that vulnerability is a universal and constant part of being human – we are all vulnerable to disadvantage, but we have differing levels of resilience to cope with the situations that we face within society (Fineman 2016, p.20-1). Further, the state of vulnerability fluctuates – it is not a fixed characteristic that can be neatly assigned to certain categories or groups of people but can be exacerbated or facilitated by different contexts and experiences. This understanding of vulnerability exists in stark contrast to the construction of vulnerability which has been used by the government in relation to LASPO. Rather, this construction is under-theorised and insufficiently defined, because it does not account for experiences of vulnerability which fall outside of ECF or domestic abuse which can be corroborated through prescribed forms of evidence. Further, this notion of vulnerability fails to account for the structural context of inequality which is likely to frame the experiences that people have of the family justice system.

The vulnerable subject therefore provides an opportunity to consider what law and state institutions might be like if they were not designed around the liberal legal subject but were instead structured in a way that acknowledged the inherent and inevitable nature of vulnerability, as well as the responsibility of state institutions to go some way to ameliorating that vulnerability. Therefore, instead of focusing on the individual and their different identity categories, this approach directly emphasises the important role that institutions themselves may play mitigating the effects of inequality or facilitating experiences of disadvantage. This also provides an important opportunity to challenge the construction of 'most vulnerable' which is being used in LASPO policy, by exposing the different and diverse ways in which people may be vulnerable to disadvantage within the legal system.

This approach reinforces the theoretical tools already assembled through feminist theory and Bourdieusian theory, because it means that I am not limited to understanding disadvantage through class or identity categories. Instead, it enables me to also be open to other fluctuating and situational ways in which people may experience disadvantage outside of these categories, as a result of how the legal system itself operates. This is because our resilience is not simply linked to the social positions we are born into, but rather derived from the relationships with have with state institutions, and the extent to which they provide us with support and resources

(Fineman 2016, p.24; 2017 p.143). For example, the kinds of resources that institutions can provide range from physical and material resources which determine quality of life, human assets such as skills and abilities through education and employment opportunities, and social relationships and networks (Fineman 2016, p.22-3). In this sense, vulnerability theory runs parallel to Bourdieusian theory, because it emphasises the important ways in which specific contexts like the legal system have an important role in determining the prospects of those who attempt to succeed within it. Whether through providing people with different levels of resilience or attributing different kinds of value to their capitals, it is the structure of the legal system itself that produces experiences of disadvantage. However, where vulnerability theory departs is where it emphasises that institutions have an underpinning *responsibility* to rectify these inequalities and ensure parity of participation.

This is something which Fineman argues is not possible through an intersectional use of social theory. Importantly, she argues, focusing on categories of identity like gender, class and race as a means of understanding disadvantage 'distorts our understanding of a variety of social problems and takes only a limited view of what should constitute governmental responsibility' (2016, p.15). This highlights a conflict between vulnerability theory and the other approaches in this framework, but not one that is irreconcilable. This criticism of an intersectional approach is not unfounded. Feminist scholars in particular have argued that by focusing on these categories, research can have the unintentional effect of further masking the important role of the legal system in producing those disadvantages. By focusing on categories which relate to individual circumstances, researchers may in practice simply be 'supporting the law's propensity to classify' (Grabham 2009, p.186). For example, in their research, Hunter and De Simone found that identity categories were only one part of women's experiences of disadvantage. Rather, disadvantage was overwhelmingly attributable to the institutional context of the legal aid system – the eligibility guidelines and practices of different legal aid offices, as well as the matters raised in legal aid applications were all issues that cut across identity markers (2009, p.161-2, 169-176).

However, vulnerability theory alone would not be able to provide the valuable insight into the effects of inequality which have been outlined so far in this chapter. So far, both Bourdieusian and feminist approach provide me with a way of unravelling the significant implications of historically reiterated structures such as gender, class and race. This is important because these categories reveal how LASPO is likely to have different implications for different people. For

instance, in justifying their focus on gender-based disadvantage within the legal system, Sommerlad and Sanderson explained that gender is a 'principal determinant' in the experience of women as a group, due to the history and significance of this category (1998, p.4). To this end, it is important to be conscious that any reforms or interventions which are employed to support some LIPs, may in practice have the effect of producing disadvantage for others in different social positions. Rather than rejecting the usefulness of intersectional feminism or Bourdieusian concepts on this basis, it is more useful to draw all three of these structural approaches together. In doing so, it is possible to account for the complex effects of inequality, whilst also considering another dimension of disadvantage - how people may *also* be disadvantaged as a result of the way in which institutions are designed, rather than because they fall into particular categories relating to gender, class and race. Further, the practice of using these theories together provides a way of producing research which not only exposes marginalised experiences of law, but also reflects on how the legal system is implicated in this process of marginalisation.

Taken together, all three theories discussed so far provide a broad range of theoretical tools which I can use to gain a deep and meaningful understanding of the ways in which experiences of the legal system may be importantly shaped by different kinds of structural inequality as well as the legal system itself. However, they are not only useful for this theoretical understanding. Rather, they also provide a methodological orientation, because they emphasise the importance of how I should draw this understanding together. For example, it is clear from the theories outlined that in order to challenge ideas like the liberal legal subject, it is important to unravel the specific ways in which the legal system itself may operate in an exclusionary way for people in these different social positions. To this end, it is useful to draw on one final approach which can be used as a pragmatic method of exploring the material ways in which LIPs experience the family justice system – ANT.

2.5 Actor-Network Theory

Despite its name, ANT is best understood as an analytical method that can be used to explore social arrangements, rather than a theory through which to understand or explain them. This approach was developed within the field of science and technology studies and is commonly attributed to the work of Bruno Latour (2005). Taking inspiration from the scientific tradition, ANT is an approach which advocates examining social arrangements on a micro scale – paying attention to seemingly small moments and documenting the detail of how people and objects are arranged in those moments (Law 2004). While the other approaches in this framework are

useful for asking questions about the structural context in which LIPs are navigating the legal system, ANT is useful for documenting the specific and material ways in which these experiences actually play out in the court process. However, because of its explicit focus on the micro-scale, there are also some important difficulties inherent in combining structural theories with this anti-structuralist approach. I will begin by outlining the ANT approach and the resources that this held for the project, before reflecting on this challenge and the possibilities for drawing these theories together.

2.5.1 The ANT Approach

There are two central tenets of ANT. The first is that everyone and everything is both an actor within a network, and a network in itself. The second is that actors can be both human and non-human. The family court, for example, can be understood as one actor within the network of the family justice system or even the legal system. However, if analytically useful, it can also be examined as a network which can be broken down into its own constituent actors; LIPs, judges, lawyers, as well as courtrooms and paperwork. In turn, these actors can also be deconstructed and examined, and there is no limit to how far any object of analysis can be broken down into its constituent parts. By breaking a network down, it is possible to explore in detail the relationships between its actors, and specifically trace *how* certain actors are able to influence others and shape the network. While some actors may be able to translate the objectives of others into those that mirror their own, others may have difficulty negotiating some of these relationships (Buzelin 2005, p.196-7). For example, the success of a LIP may depend on their ability to make use of courtrooms and paperwork, or to convince judges and lawyers. Therefore, ANT is extremely useful for unpicking exactly how LIPs may face specific problems at various stages of filling out paperwork, navigating court buildings, and constructing legal arguments, where their success depends on their relationships with other actors. Taking an ANT approach to this project involves carefully documenting the interactions that LIPs have with different aspects of the court process and paying specific attention to the material detail of those interactions.

In this sense, ANT requires researchers to describe the material manifestations of social arrangements, as well as the detailed process by which social arrangements come to be (Cloatre 2013; Cloatre 2018, p.659; Baiocchi *et al.* 2013, p.330). This commitment of ANT has been particularly useful for socio-legal researchers who are interested in unravelling how law operates within society (Cloatre 2013; Hunter 2016; Cowan and Carr 2008). As I have highlighted through Bourdieusian theory, the legal system is often conceived as an arena with its own

culture, assumptions, codes and practices. These all operate as internal sources of legitimacy for the juridical field but are never specifically recorded or acknowledged (Bourdieu 1987, p.806). Several scholars have already demonstrated the value of providing this sort of detailed account of legal culture in order to challenge these underpinning assumptions and draw attention to how law is understood and experienced.[28] However, it is the combination of this commitment to detail with an attentiveness to materialism, which distinguishes ANT from other approaches, and makes it a particularly useful tool for this project (Cloatre 2018, p.659).

The materialist focus of ANT means that it asks questions about how non-human actors can play important roles and have significant effects for social arrangements. For example, Annelise Riles has used ANT to explore the role that documents play within the legal system (2000; 2006). Legal documents, she argues, have the power to foreclose important and contentious debates. A document can be used as a means of rendering complex discussions as 'a matter of settled history', because in practice the act of recording something in a document erases any record of the oral discussions that took place to produce that document. In this sense, she argues, documents are artefacts of a prior struggle, which themselves provide sources of further authority which can be drawn upon at a later stage by those who were able to influence the record in the first place (Riles 2006, p.76-8; 83). By tracing the specific role of the document within law, therefore, Riles is able to disrupt our thinking about how law operates – how it is able to function and reinforce itself.[29] Focusing on the micro scale through ANT therefore also means having to re-engage with the very nature of law as a social category, discipline, institution, and label. Importantly, and in alignment with vulnerability theory, this ensures that the family justice system itself is subject to critical scrutiny, in terms of the extent to which it is able to accommodate the diverse range of LIPs coming before it after LASPO. Rather than conceiving of law as something which is already made, ANT requires researchers to provide a detailed account of law in the making – *how* specific interactions and relationships work together to produce outcomes like disadvantage (Cloatre 2018, p.657-8; Levi and Valverde 2008, p.822).

[28] An important example is legal consciousness scholarship, see: (Ewick and Sibley 1998).

[29] This is further reinforced by the work of other non-ANT scholars who focus more generally on the materiality of law. These researchers have emphasised that the power of law is exercised not only through material objects and physical environments but also through spatial and temporal dimensions (Jacob 2017; Mulcahy 2010; Grabham 2014; 2017).

2.5.2 Combining Structural and Anti-Structural Approaches

Taken together, the tenets of ANT require researchers to avoid taking social arrangements for granted, and instead to scrutinise the relationships that make those arrangements possible. In a way that clearly overlaps with feminist objectives, ANT is therefore underpinned by a commitment to a 'bottom-up' approach to understanding social arrangements. However, by advocating that social arrangements should be examined in such an empirical way, ANT is epistemologically and ontologically distinct from all three of the other theories in this framework. While the other three theories all provide different resources for understanding how disadvantage may relate to structural inequality and difference, ANT has traditionally been critical of these kinds of theoretical explanations. For ANT theorists, using social theory to frame research findings is to take a shortcut – to treat inequality as an explanation for disadvantage, rather than to see disadvantage an effect of a social arrangement that needs to be explored (Baiocchi *et al.* 2013, p.336). It was on this basis that Latour originally went so far as to argue that social theory such as Bourdieusian theory should be 'jettisoned' (2005).

For this project, what this means is that by using structural theories, I am going into this research with a pre-supposed view of what LIP experiences are going to be like, and then effectively erasing the reality of their experiences by translating their accounts into academic terms like capital and field, without actually scrutinising the detail of how disadvantage comes about. This raises an important concern about the usefulness of social theory for understanding the experiences of LIPs. For instance, it would be particularly detrimental to the aims of this project if I were to use theory in a way that simply reiterated theoretical presumptions about LIPs and failed to extend current understandings of the post-LASPO family justice system or incorporate first-hand experiences of LIPs.

However, while this is an important criticism of how researchers may use sociological theory, this also exposes a key weakness of the ANT approach. By advocating a 'flat' ontology, in which researchers may only explore what they find during their empirical investigations, ANT does not pay attention to the deeper and historically reiterated structures of inequality that provide the context within which these social practices unfold. In this sense, ANT may be interpreted as rejecting analyses which account for categories such as gender or class, or the historical dimensions of these structures. This scepticism of social theory has been heavily criticised. Feminist scholars in particular have argued that without a theoretical understanding of the ways in which macro structures and categories have historically reiterated arrangements of

inequality, it is impossible to fully understand the relationships and interactions which take place on a micro scale (Cloatre 2018).

By focusing only on the interactions that happen on the ground, ANT risks being 'an apolitical strategy that effectively effaces the violent histories and embedded power imbalances that constitute social relations' (Cloatre 2018, p.653). In other words, while ANT theorists may criticise structural approaches for explaining without describing, ANT is also at risk of describing without explaining (Levi and Valverde 2008, p.822). For this project, failing to take account of structural context when analysing the experiences of LIPs, would prevent my findings from being useful for thinking about potential meaningful and long-term change within the family justice system. This poses an important challenge to my ability to draw ANT into this theoretical framework. However, it is possible to use ANT in a way that is sensitive to this structural context for two reasons.

Firstly, it is possible to use ANT without adhering to anti-structuralism. Reconciling an anti-structuralist approach with structural approaches is by no means simple, but it is still possible to use these approaches concurrently by following the example of other scholars who have explicitly rejected the anti-structuralist ontology which underpins traditional ANT approaches. As ANT has been applied in multiple disciplines, researchers have confronted these important 'blind spots', and instead recommended using ANT as a set of sensibilities which can be used more productively than traditional applications of Latourian ANT. For example, within law, Emilie Cloatre has most prominently mitigated these blind spots by taking the benefits of ANT's micro approach, whilst rejecting ANT's scepticism of structural theory. She argues that it is instead far more progressive to draw ANT together into theoretical frameworks with other theories that provide a proper account of how power and inequality operate on a structural scale (2018, p.660). In doing so, Latour's view of social theory has often been resigned to 'classical' or 'purist' forms of ANT, and is generally regarded as at best problematic, and at worst dangerous (Levi and Valverde 2008, p.811; Cloatre 2018, p.653; 658).

Secondly, rejecting anti-structuralism does not mean that ANT's concerns about theory are discounted. Instead of 'jettisoning' theory, researchers are encouraged instead to use ANT as a broad set of sensibilities which can be used as pragmatic guides through which to 'orient' social theory (Law and Singleton 2013, p.485-6). Emilie Cloatre has described this method of using ANT 'as a matter of care' (2018, p.660-1). As discussed so far in this section, these sensibilities include

an attentiveness to the relational and material nature of social arrangements, as well as *how* particular social arrangements come to produce effects like disadvantage (Baiocchi *et al.* 2013, p.335). By using ANT in this way, concepts which have classically been used to 'explain' social relations, become instead the very substance of what needs to be explained through a renewed attention to the micro-connections that form entire social arrangements (Cloatre 2018, p.653). Although it is unlikely that he would have embraced ANT, Bourdieu himself actually advocated the idea that researchers should be open to different approaches. He recommends, for instance, that researchers should 'mobilise all the techniques that are relevant and practically useable, given the definition of the object' (Bourdieu and Wacquant 1992, p.227). Similarly, as part of the next generation of Bourdieusian scholars who have developed and refined his concepts, Will Atkinson explains that this task involves working with and against Bourdieu, and that researchers should not be afraid of deviating from him when the research demands it (2011, p.344). Instead of undermining the structural understandings I gain from the other theories, it is possible to use ANT as a resource for asking more questions about how disadvantage is experienced on the ground, rather than closing down questions about how that disadvantage is rooted in broader structures of inequality.

ANT – used as a sensibility – can therefore be combined with the structural theories in this framework in a way that actually elevates feminist concerns and objectives, because it helps researchers reflect on the constructed nature of knowledge, including their own role within the research process. In producing an account of the different kinds of experiences that LIPs may have within the legal system, ANT indicates that I need to remain open to experiences which do not fit with the ideas that underpin the structural theories. Even more importantly, ANT can be used in a way that holds me accountable to using theory in a way that helps to gain a deeper understanding of the experiences that LIPs have in the family justice system. It is also a means of reflecting on how these theoretical tools influenced the methodological and analytical decisions which were taken during the research process, and the implications of these for the usefulness of the research that is produced. Interpreting ANT in this way and combining it with other theories therefore means that it does not have to be an apolitical strategy. Rather, it can actually be used to elevate the inherently political nature of the questions asked by the other three theories in this framework.

2.6 Conclusion

Taken together, these four approaches each provide distinct resources for understanding how LIPs are positioned differently in relation to broader inequalities, how this may shape specific

forms of disadvantage, and how this plays out on a material level in the family justice system. Drawing all four of these approaches together is by no means a simple task – there are several moving parts which work together in different ways. It is therefore understandable and common for researchers to shy away from this kind of challenge. However, there are important benefits for this project of working with different approaches which ask slightly different questions about how inequality, difference and disadvantage may play out for LIPs within the legal system.

Additionally, in order to produce an account which can be useful for informing post-LASPO debates, it is imperative that this account does not reiterate the blindness of traditional legal scholarship. As Margaret Davies explains, within the discipline of law, there is a deep-running preference for an 'aesthetic of coherence'. Arguments and findings are naturally more convincing if they present logical conclusions and do not draw attention to other elements that do not quite fit. But, she argues, there is 'no logical reason for theory to insist upon purity and neatness, especially if it means excluding or foreclosing the intrinsic complexity of its objects…' (Davies 2017, p.4-5). In this sense, embracing complexity and working through and with the tensions between these approaches is itself productive, because this ultimately also requires me to engage critically with all of these theories, and put them to use in a way that is careful and attentive to the obligations I have to those participating in the project, as well as the political implications of the final account that I produce. The next chapter will discuss how this theoretical framework provided an essential underpinning for the methodological approach taken to this project, and how these theoretical understandings influenced the research design.

3. Methodology and Research Design

3.1 Introduction

This chapter will draw upon the theoretical framework outlined in the previous chapter, in order to set out the methodology and research design of this project. It will begin by sketching out the methodological approach, which will involve discussing the epistemological and ontological positions that underpinned the decisions made during the process of designing and implementing the selected research methods. It will then outline the specifics of the project design. This will involve discussing how interviewees were recruited for the project and reflecting on the final sample of LIPs who were interviewed, as well as the approach taken to designing and conducting interviews. This chapter will then go on to explain how these accounts were coded and analysed in order to produce the findings which respond to the research questions outlined in chapter one. Finally, the chapter will conclude by reflecting on how particular ethical implications of the research were managed – specifically, it will discuss the concerns and approach taken to ensuring the confidentiality and anonymity of accounts, the informed consent of interviewees, and the importance of protecting interviewees from harm during the research process. Throughout, this chapter will reflect on the reasons for the decisions made during the research process, how these decisions were informed by the theoretical underpinnings outlined in chapter two, and the implications of these decisions for the findings that emerged from this project.

3.2 Methodological Approach

The premise of traditionally scientific and positivist methodologies is that good research is that which produces a true picture of reality (Arksey and Knight 1999, p.14). However, this relies upon two problematic assumptions. Firstly, the ontological suggestion that there is an objective 'truth', which exists in the form of tangible, pre-existing data waiting to be excavated or discovered by researchers. Secondly, the epistemological suggestion that the most effective means of revealing this truth can be identified by reference to scientific measures, such as reliability and generalisability. Before I go on to outline the specific aspects of my research design, it is therefore useful to reflect on the epistemological and ontological positions that underpinned this project, and how this influenced the methodological approach that was taken throughout the research process.

In the previous chapter, I highlighted four different theoretical approaches which framed this research project. Together, these approaches provide a nuanced means of understanding the experiences that LIPs have of the family court process, especially those which contrast with the picture that is painted by government policy or other accounts of the family justice system. However, the suggestion that other perceptions, experiences, definitions and meanings may exist and be obscured or not taken into account, is itself a position that has clearly been influenced by the ontological ideas which underpin my theoretical framework. For instance, this suggestion is largely irreconcilable with the positivist idea that there is an objective truth or reality to be uncovered about the experiences that LIPs have within the family justice system, or that the accounts of LIPs simply exist and are waiting to be uncovered. Instead, these theories suggest that experiences, perceptions and understandings are constructed. For example, while feminist theory raises awareness as to the potential ways in which several different experiences may be concealed within the current order of the family justice system, Bourdieusian theory and vulnerability theory both provide theoretical tools for mapping how broader structures of inequality can frame these different experiences, and ANT provides a pragmatic means of tracing the material dimensions of disadvantage within these experiences. Together, these theories provide an important insight into a range of different ways in which LIPs may experience inequality and disadvantage within the family justice system, as well as an ontological understanding that these experiences exist within a structural context. This project was conducted, therefore, on the basis that the possible perceptions, understandings and interpretations of those experiences are constructed, always partial, in flux, and continually shaped through this complex web of structural forces.

In turn, these theories have also had an important impact on the epistemological position of this project. In other words, these theories have not only influenced my conception of what the world is like, but also what constitutes valid knowledge about the world, as well as the best ways to study it. Feminist theory and vulnerability theory, for instance, have played an important role in informing my understanding of how to assess the validity of knowledge and hold my findings accountable. This is because by emphasising the value of asking the woman question, this scholarship draws attention to the political nature of the process by which definitions and ideas come to underpin the form and function of law. Taken more broadly, this means that the processes by which knowledge is produced and evaluated, are inevitably also political. By drawing attention to the political nature of both knowledge and the process of knowledge production, this approach demonstrates that academic research is equally capable of ignoring

and reproducing the blindness to inequality and difference which problematically characterises law and legal discourse. Therefore, feminist theory in particular advocates the importance of choosing methods which are capable of incorporating alternative views and experiences into traditional ways of knowing law (Barnett 1998, p.25; Conaghan 2013, p.12-3).

Importantly, this methodological approach is a divergence from the 'textbook paradigm' of positivist methodologies (Oakley 1981, p.47-8). Instead of attempting to comply with scientific measures like reliability and generalisability, a feminist methodology exposes some key problems with this paradigm. Firstly, a positivist approach is largely unsuitable for examining human interpretations and experiences, which are far too complex and individualised to be verified in this way. Secondly, positivist methodologies rest upon the presumption that research methods do not themselves have substantive content – for instance, suggesting that effective research methods are supposed to protect findings from bias, which is constructed as something external to the research process. Under this view, asking the woman question is easily constructed as problematic, because it is a 'loaded' activity which has overtly political objectives, and clearly demonstrates a lack of researcher neutrality. However, this criticism fails to appreciate the ways in which *all* research methods shape the substance of findings – even those that do attempt to reflect scientific norms like reliability or generaliseability (Bartlett 1990, p.844). As Bartlett explains, the claim that it is necessary to ask the woman question is inevitably political, but only to the extent that the idea that it is *not* necessary, is also political (1990, p.844-6).

Further, it is not the case that feminist methodologies simply disregard the value of traditional approaches nor the need for accountability within research. In contrast, a feminist methodology acknowledges the constructed nature of knowledge and therefore advocates a reflexive approach. Reflexivity involves tracing the process of knowledge production, and this enables researchers to take an innovative and arguably more comprehensive approach to holding themselves accountable. Moreover, by taking this approach, researchers are keenly attuned to the ethical implications of how research is done, as well as the political implications of the knowledge that is produced. On the basis that research methods are in practice inseparable from the social and political conditions in which research is conducted, an important part of being reflexive involves taking the time to identify the imbalances of power which exist within the various stages of the research process (Bentz and Shapiro 1998, p.14).

To this end, the other elements of my theoretical framework were also useful for appreciating how broader structures of inequality may have shaped the account which is presented within this thesis. For example, the Bourdieusian concepts of habitus and field are useful for reflecting on how social positions can affect understandings and perceptions of particular contexts. It is not only the legal system which should be conceived of in these terms, but also academia itself. As Bourdieu himself explained, the academic habitus allows researchers to see certain things and not others, and as such it is imperative that researchers attempt to unravel their own assumptions and pay attention to the politics of representation within their research (1987, p.808). Particularly in relation to law, he argued, academics are 'party to the progress of the juridical field', because they can choose to either correspond with the accepted view and thus reiterate the structure of the field, or to oppose it by incorporating alternative meanings (1987, p.822). However, through the habitus, it is possible to appreciate that this choice is not necessarily an easy task – this is because 'the mysteries of social existence are densest…in our own everyday usages' (Bourdieu 1987, p.810-11). Despite my working-class origins, this project was conducted at a point where, through my own legal education and experiences of working in academia and teaching law, I was already immersed in both the academic and juridical fields. I therefore had to be extremely careful in order to retain a critical perspective, and not assume particular interpretations which align with the structures of value that underpin these fields, and ultimately collude with law in failing to incorporate the diversity of perspectives that emerged during interviews.

Despite the important conflicts between structural and anti-structural theories that were discussed in chapter two, the ANT approach is also helpful for the task of reflexivity. While Bourdieusian concepts are a useful way of tracing the structural context in which the process of knowledge production occurs, ANT provides a way of ensuring that these structural concepts are not used as explanatory shortcuts. For example, through an ANT sensibility, attributing experiences of disadvantage to the structure of the juridical field is not enough – it is also important to trace the specific and material means by which this disadvantage is experienced. In this sense, ANT provided a source of accountability during the research process that served as an important reminder of my own entanglement in the academic and juridical fields. In addition, this approach reiterated the strength of the ethical obligations that I owed to interviewees, not only through the use of structural theory, but also through the material aspects of the research process. For instance, an ANT sensibility draws explicit attention to the role of physical environments and tangible actions in facilitating experiences of exclusion or

disadvantage. Given that empirical research involves delving into people's personal lives, ANT is also a useful means of thinking about *how* research is done, and how particular actions or settings may act to mitigate or exacerbate the power imbalance which exists between myself and interviewees.

Epistemologically speaking, this project is therefore premised upon the idea that valid knowledge is that which seeks to make *more* sense of human experience by incorporating perspectives and understandings which may otherwise have been omitted. Further, it is posited that this can be achieved through a reflexive approach, where I can hold myself accountable by openly reflecting on the ways in which these theories have informed my approach, stating explicitly which moral and political choices underlie that partiality, and recognising the implications of my research for the distribution and exercise of power (Bartlett 1990, p.857-8). In the context of this project, this means not only documenting but also reflecting on my own location within the process of knowledge production, including my methodological approach, my relationships with LIPs who participated in the project, and the analytical choices involved in producing this thesis (Bentz and Shapiro 1998, p.4). By carefully outlining the decisions that were made along the way, it is possible to hold these findings accountable to both the LIPs who contributed to the project, as well as future researchers who may wish to expand upon the findings presented over the next three chapters of this thesis (Sibley 2013).

3.3 Interviewing LIPs

Having outlined the methodological approach of the project, this section will outline the pragmatic approaches that were taken to interviewing LIPs, while evaluating upon the implications of approaching interviews in this way. Firstly, it will review the strategy that was taken to locating and recruiting interviewees. Secondly, it will reflect on the form of the final demographic sample of LIPs who were interviewed, and the extent to which this sample was able to provide different perspectives of the court process. Finally, this section will discuss how the methodological approach influenced the design of interviews themselves and describe how these were conducted.

3.3.1 Recruiting LIPs

The major challenge to conducting research with LIPs is that it is often impossible to identify and locate LIPs outside of court. For this reason, most research studies to date which have drawn

upon interviews with LIPs involved researchers approaching participants at court.[30] In order to be sensitive to the emotional and practical strain on LIPs within the court environment, many researchers have avoided requesting interviews at the court itself, and have instead made contact with LIPs in the waiting area with a view to following these contacts up to arrange an interview at a later date (Dewar *et al.* 2000, p.30; Hunter *et al.* 2003; Moorhead and Sefton 2005, p.23; MacFarlane *et al.* 2013, p.20-21; Lee and Tkakucova 2018; McKeever *et al.* 2018, p.46-7). However, some researchers taking this approach to recruitment have reflected on the reality that LIPs frequently do not participate in these interviews, even if they express interest when talking to researchers (Lee and Tkakucova 2018; McKeever *et al.* 2018, p.47). This high drop-out rate is unsurprising. Existing research has already indicated the extent of social, emotional and practical upheaval and potentially chaotic circumstances that LIPs are often dealing with when they get to the point of taking legal action (Pleasance *et al.* 2006, p.60-4). In addition, the result of court hearings can further compound this complexity, for example by leaving people waiting for subsequent hearings, or with an outcome which is different to that which they expected or hoped for. In other words, LIPs may simply not be in a position – either practically or emotionally – to continue with the research whilst dealing with the aftermath of their court hearing.

Despite this being the most common and pragmatic way of making contact with LIPs, it is therefore by no means an easy task. To this end, it was both more practical and appropriate to take an opportunistic, 'opt-in' approach to recruiting interviewees, which was not based at court. This decision was made for two reasons. Firstly, the limited time and resources available for the empirical stage of this doctoral project would have quickly been exhausted by the high drop-out rate of a court-based recruitment strategy. Secondly – and most importantly – due to the circumstances that many LIPs contend with whilst attending their court hearings, there is always a risk that LIPs may feel pressured into agreeing to participate when they are approached face-to-face in the court environment. Given that the purpose of doing interviews in this project was to explore different perspectives and build a narrative of what the court process is like, it was particularly important that interviewees were fully comfortable and engaged with the research process. Recruiting away from court was therefore a way of minimising this risk and ensuring as far as possible that interviewees were not only able but also emotionally ready to discuss their thoughts, feelings and perceptions of the court process.

[30] Including, for example: Dewar, *et al.* 2000; Hunter *et al.* 2003; Moorhead and Sefton 2005; Trinder *et al.* 2014; Lee and Tkakucova 2018.

This is not to say, of course, that recruiting LIPs outside of court was straightforward. Rather, it required an approach through which I publicised details of the research in places that would be seen by LIPs, so that LIPs could then contact me in order to volunteer for the project. However, the existing literature about LIPs discussed in chapter one indicated that LIPs are frequently also contending with circumstances like domestic abuse, mental health problems, and simultaneous legal problems like debt and housing issues. Additionally, given that many LIPs are likely to have limited access to time and resources, it was also likely that many potential interviewees may not have access to the Internet. Therefore, although this approach was opportunistic, it was still important that the research was publicised in multiple different formats and locations, so as to reach LIPs in a variety of different circumstances, who may have very different perspectives to offer. To this end, I developed a hard-copy information sheet **(Appendix 1)** and a mobile-friendly website **(Appendix 2)**, both of which detailed in lay terms the aims, methodology, purpose and timescale of both interviews and the wider project, as well as my contact details. These were then advertised to LIPs through two different means between June and October 2017 – firstly, through face-to-face advice services, and secondly, through online forums and social media. A combined total of 23 interviewees were recruited through these means.

The first means of advertising was through face-to-face services. In preparation for the recruitment stage of the research, I attended several practitioner events, training sessions with Women's Aid and Keele University's Community Legal Outreach Collaboration (CLOCK) and spent three days per week undertaking court marshalling and shadowing STC volunteers, between March and May 2017. This provided an opportunity to establish contacts within the not-for-profit advice sector who provide free assistance to LIPs. Several of these organisations were able to assist by advertising my information sheet to their clients. Specifically, the project was displayed on or near advisor's desks within Citizens Advice Bureaux (CABx) in Newcastle-upon-Tyne, Leeds, Bradford and Bristol, as well as STC offices in Leeds and Manchester, which each have court-based offices. It was also mentioned to LIPs making use of a housing and debt support service which specialised in supporting those with mental health issues in Leeds, and female survivors of domestic abuse who attended local community groups by Women's Aid in Leeds and a women's centre in Hull. Each service was provided with a number of hard-copy information sheets that could be taken away by potential interviewees, so that they could contact me directly without the need for the organisation to liaise with me on their behalf. In total, nine interviewees were recruited through this advertising strategy – five within the Leeds and Bradford area, one from Hull, one from Manchester, and two from Newcastle-upon-Tyne.

The second means of advertising the project was through online forums and social media. Specifically, the research website was publicised on MumsNet, Facebook and Twitter. Through this approach, one interviewee volunteered through MumsNet, and 13 interviewees contacted me through Facebook. These interviewees were spread across England, and although several had also accessed face-to-face services, these also included some who lived in more rural areas where it may have been more difficult to recruit LIPs through face-to-face services, or by approaching LIPs at court (McKeever *et al.* 2018, p.61). As a result, these 14 interviewees included five living in cities - one from Exeter, another from Manchester, one from London, one from Portsmouth, and another from Newcastle-upon-Tyne. The other nine were from smaller towns and more rural areas, including one from Essex, one from Wiltshire, one from Gloucestershire, one from Shropshire, two from Yorkshire, one from Devon, and two from Kent.

Christine Bhutta argues that Facebook is one of the best suited network sites through which to reach research participants, due to its size and the intensity of use by the majority of the population (2012). Indeed, in relation to LIPs, the popularity of Facebook has already been established by emerging post-LASPO research, which has found that Facebook is frequently used by LIPs as a way of communicating with other LIPs, and as a means of McKenzie Friends advertising their services (Tkakucova 2019; Slingo 2019). This approach to recruitment has also been used in earlier studies, albeit in combination with approaching LIPs at court (MacFarlane *et al.* 2013, p.20-4). On reflection, Facebook was a particularly useful tool for publicising the research, due to the 'Facebook group' facility. Through this, individuals can establish virtual communities on the basis of shared interests, attributes or causes. These groups can be either public or private, the latter of which are not discoverable through Facebook searches, and require invitations from group administrators in order to view posts of other group members and publish posts themselves. Public searches revealed two large groups within which LIPs at various stages of the court process were providing virtual support to each other. These two groups had a combined membership of approximately 8000 (2000 and 6000), although they were likely to have had an even broader reach than this, because Facebook users did not need to be members to access them.

Within these groups, it was possible to post links to the research website. In doing so, I provided the information and means to engage with the project but placed no obligations or pressure on group members to do so. In a practical sense, this took an adapted form of 'snowball' sampling,

because after responding to these public posts, two interviewees circulated my link within two private groups, although they did not permit me to join these groups myself (Arksey and Knight 1999, p.4). In my conversations with these interviewees, it was revealed that the purpose of each of these private groups was to create a separate, virtual space for LIPs who shared their specific circumstances – one was a private group for young Mums (the 'Mummies' group), and the other was for survivors of domestic abuse. The value of these groups for these interviewees was to provide a distinct and safe space to support each other whilst going through the court process, away from fathers, professionals working for the Children and Family Court Advisory and Support Service (CAFCASS) and other family law professionals. As a result, through these groups it was possible to reach several interviewees who were more isolated in that they did not make use of either face-to-face support or public online spaces.

The decision to circulate my research within these groups was only taken by these interviewees after they had been interviewed themselves, and spent time discussing my background, understandings and motivations with me. Immersing myself within the research in this way was a decision specifically influenced by the feminist theory that framed this research, as many feminist scholars have argued that this is an important means of rejecting the positivistic ideal of an objective, detached researcher, and recognising the important role that emotion plays within the research process (Blakley 2007, p.60; Wincup 2001). A major part of recruiting LIPs in this way, was therefore the ability to build trust and to be as open as possible with interviewees, in order to allow them to make their own assessments about whether or not they should share details of my research with others. During these discussions, these interviewees explained that they had passed on the details of my research website to the women in their groups because they felt that their members would find participation to be a useful outlet through which to reflect upon their own experiences, and a valuable way for survivors of abuse to feel believed beyond the confines of their private virtual communities.

That said, an underpinning risk of employing an 'opt-in' recruitment strategy was that access to LIPs was almost entirely contingent on the support of mediating parties, or 'gatekeepers'. Organisation representatives were responsible for deciding whether and how to assist with advertising the project, and access to private Facebook groups entirely depended on administrators approaching me and expressing interest in the project. It is certainly possible – and likely – that some advisors chose not to pass on information to particular clients, and that other group administrators chose not to engage with or pass on details of my research to others.

While this is a limitation of this strategy, especially compared with the more conventional method of approaching LIPs at court, the presence of gatekeepers in practice operated as a kind of safety measure for ensuring that potential interviewees were emotionally ready to participate in the research.

For example, in deciding whether to assist with the project, organisation representatives would often seek permission from their head offices and would sometimes express preferences or conditions for advertising the project in ways that they believed would minimise pressure and distress to their clients. While Women's Aid and the women's centre were happy to directly distribute this information to clients, larger face-to-face services like CABx and STC preferred to display the information sheet on walls or desks, to avoid the risk of the research being conflated with the advice and support being offered by volunteers. Due to the fact that volunteers working for these organisations were most familiar with the circumstances of LIPs who use their services, leaving the decision about how to advertise the information sheet to their discretion aligned well with my ethical justifications for recruiting away from court. Similarly, the caution exercised by Facebook administrators of private groups was also a useful safety net, due to their greater familiarity with the specific and sensitive nature of the experiences that they shared with their members.

Nevertheless, the presence of gatekeepers did not appear to hinder the task of recruiting LIPs in practice. On the subject of gatekeepers, Arksey and Knight explain that if referring individuals believe that the study will serve some interest, either in a wider sense, or in having a positive influence on the life of the potential participant, then the issue of gatekeepers should not pose too much of a problem (1999, p.64). While Facebook administrators were more cautious about circulating my research, organisation representatives, were generally keen to assist, and often allowed me to use their contacts at other organisations in order to publicise the research further. Given that I was conducting research in the lead-up to the long-awaited PIR of LASPO, many organisations were compiling their own evidence to indicate the disproportionate impact of LASPO on their clients. In my conversations with representatives, it was clear that their enthusiasm for the project was often rooted in our shared objectives of producing evidence which spoke to the experiences of LIPs.

The interviews were conducted over a period of five months, before the decision was taken to stop recruiting further interviewees, on the basis that the interviews had reached a point of data

saturation. Generally speaking, in qualitative research, data saturation is understood as the point at which no new data is emerging (Kvale 1996, p.101-3). However, the decision to stop interviewing was particularly difficult, because as outlined at the beginning of this chapter, this project was undertaken from the epistemological position that it would only ever be able to provide a partial and located account, and therefore this could not be judged in relation to artificial standards like representativeness. Therefore, I had estimated that I would need to conduct between 20 and 25 interviews to get to the point where I had explored a range of perspectives that would allow me to provide an insight into different experiences of the court process, depending on the location and circumstances of interviewees who were recruited using the above strategy. In many ways, all 23 accounts were unique, and interviewees had different ways of articulating and expressing similar experiences, feelings and perceptions. Nevertheless, by the 21st interview, the main discussions within interviews began to feel very familiar, and interviewees would raise similar if not the same points that had already been covered in earlier interviews. Given that interviews had already taken place across a variety of locations and interviewees had been recruited through different services and forums, I therefore decided to conduct two further interviews, in order to feel more secure that the point of saturation had been reached.

3.3.2 Sample of LIPs

As discussed above, the sample of 23 LIPs was by no means intended to represent the experiences of all LIPs, nor was it intended to essentialise the experiences of particular groups such as women, survivors of abuse, or those with learning difficulties or mental health problems. Nevertheless, in order to provide an insight into some of the possible experiences that LIPs may be having of the family court process, it was imperative to draw on the perspectives of those who occupied a range of different positions, both within the court process as well as within society more generally.

3.3.2.1 Experiences of the Court Process

Although all interviewees self-represented in child arrangements disputes, there were still important differences in terms of the perspectives they were able to contribute during their interviews. For instance, three interviewees went through the court process more than once, due to ex-partners making counter-applications for variations to existing orders. As a result, these interviewees had experiences of acting as both applicant and respondent in relation to the same case. Further, it was also common for parties to begin proceedings with legal representation, and then become unrepresented later on in the process. This meant that 17

interviewees had experiences of facing both legal representatives and other LIPs during their time in the court process. Additionally, the remaining six interviewees stated that they had only self-represented against another LIP. While this meant that no interviewees had faced only legal representatives, the sample of interviewees were nevertheless able to draw upon different experiences of the court process, as reflected in the table below **(Fig. 1)**.

Acted as respondent	Acted as applicant	Faced only legal representatives	Faced only LIPs	Faced both LIPs and Legal Representatives
14	12	0	6	17

Fig. 1 Experiences of the court process

From this table, it is evident that most interviewees drew on experiences of facing legal representatives. This proportion of 'unbalanced' hearings generally mirrors that which is indicated by current court statistic (Ministry of Justice 2019d). However, the six interviewees who faced other LIPs were able to provide a useful contradictory insight into the ways in which this third party impacted upon their experiences of the court process. For example, in Trinder *et al*.'s study, the presence of a lawyer representing the opposing party was often a beneficial resource for LIPs, because they were able to provide essential structure and information before and during hearings (2014, p.62-3). However, in this study, it was also noted that this largely depended on the attitude and circumstances of the LIP they face – as many other studies have noted, the assistance of lawyers is often impeded by the resistance of LIPs to their attempted negotiations and conversations, especially when approached in the waiting area before hearings (Moorhead and Sefton 2005, p.173; Trinder *et al.* 2014, p.45-50; 64; Lee and Tkakucova 2018). The perspectives of these interviewees were therefore extremely useful for deepening the current understandings about how LIPs may perceive and respond to opposing legal professionals before and during these hearings.

Interviewees were also able to draw upon multiple experiences from the different kinds of hearings they had attended during the court process. In order to elaborate on the implications of this for the sample, it is useful to briefly outline the court process itself.[31] The first hearing in

[31] It should be noted that the format of this court process is currently under consultation – see: (Private Law Working Group 2019). The current procedure is contained under the Child Arrangements Programme, contained in Practice Direction 12B.

child arrangement proceedings is always a First Hearing Dispute Resolution Appointment (FHDRA). The purpose of this initial hearing is to determine whether cases can firstly be resolved by agreement. If this is not possible, the case will progress to a substantive hearing known as a Dispute Resolution Appointment (DRA), where relevant issues are discussed further. Over the course of a case, there may be multiple DRAs, all of which require LIPs to prepare different kinds of information each time in advance of going to court. Usually, this can involve composing arguments which are supported by relevant law, writing statements that give accounts of particular past incidents which are relevant to the court's consideration, or give crucial information about the needs of both parents and children when the court is making these considerations. At each DRA, judges will continue to ascertain if there are any aspects of a potential arrangement on which the parties can agree. If a judge decides that resolutions cannot be achieved through these hearings, the case will culminate in a 'final hearing', where an order will be made for the parties. Additionally, if allegations of harm are made against one parent during proceedings – usually during the FHDRA – parties are directed to attend a FFH before they continue to subsequent DRAs. The purpose of this hearing is to establish the truth of such allegations, for the purpose of them being considered in the future deliberations of judges – although as discussed in chapter one, there is a great deal of research from both before and after LASPO which indicates that these hearings are frequently not held, or the findings not adequately considered during subsequent hearings.[32] Both final hearings and FFHs involve cross-examination, and a definitive judgment at the end of proceedings.

All interviewees experienced both FHDRAs and DRAs. However, as can be seen from the table below **(Fig. 2)**, the amount of DRAs that interviewees attended was variable. While seven interviewees attended three DRAs, 12 interviewees attended between four and six DRAs, and four interviewees attended eight or more DRAs – specifically, one interviewee attended eight, two interviewees attended 10, and one interviewee attended 17 hearings.

[32] See 1.3.3.

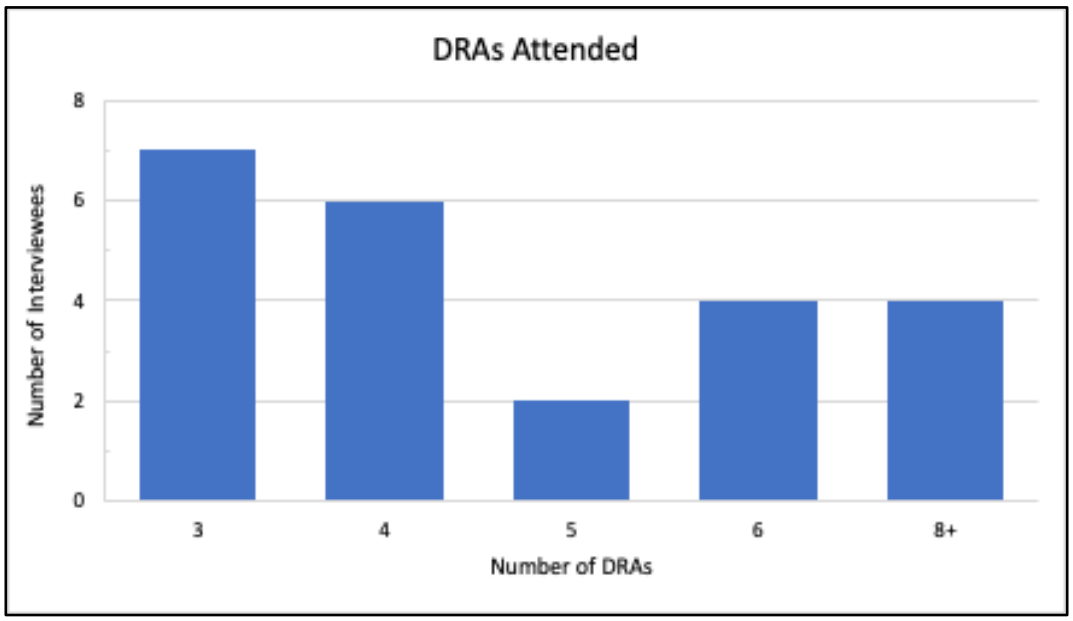

Fig. 2 DRAs Attended

Overall, existing research indicates that cases tend to take longer to resolve, and involve more court hearings, where there is a legal representative present, as opposed to cases where both parties are represented or neither party is represented. Possible explanations for this may include the fact that cases progress more quickly where there are lawyers acting on both sides, and that cases without any lawyers tend to be characterised by high rates of withdrawal or dismissal, often due to the difficulties that LIPs experience in the court process without advice or representation (Hunter *et al.* 2002; Moorhead and Sefton 2005, p.100; Trinder *et al.* 2014, p.58-60). Nevertheless, the sample of LIPs interviewed for this research appeared to attend a high number of DRAs compared to those in earlier studies. For example, in Trinder *et al*.'s research, the median number of hearings attended by LIPs was three for semi-represented cases and two for unrepresented cases (2014, p.58). In this project, the median number of DRAs that interviewees attended was four. In particular, the fact that four interviewees attended eight or more hearings is unusual, and unlikely to be representative of all LIPs.

A possible explanation for this is that 13 interviewees were recruited through social media groups, which Tkakucova has suggested is an environment that can foster problematic attitudes and misunderstandings about the family court, and potentially hinder the progress of cases (2019). While it is not possible to determine the role that social media played in this, all four of these interviewees were dealing with chaotic circumstances and protracted disputes. However, this means that their experiences are nevertheless extremely useful for gaining an insight into the problems that may be occurring for a minority of LIPs who spend a great deal of time in the

court process in the post-LASPO context. For instance, a feminist critique of traditionally scientific methodological approaches is that they '[rely] on the assumption that phenomena are regular and unchanging' (Arksey and Knight 1999, p.54). Rather, experiences and understandings of events fluctuate significantly over time. Though it was not an intentional aspect of the recruitment strategy, the greater levels of experience of these interviewees meant that it was possible to draw on the experiences of those who had not only faced more challenges during the process but also had more time to reflect on their own feelings about the family justice system.

Related to this, there were also an unusually high number of interviewees who attended final hearings and FFHs. Within the sample, seven had cases which escalated to the point of a final hearing, and 13 were diverted to attend FFHs. Existing research already indicates that it is not unusual for child arrangements disputes to involve multiple applications and higher rates of final orders than other kinds of dispute (Moorhead and Sefton 2005, p.224). Given that the sample contained a high number of protracted disputes, it is unsurprising that this number of interviewees experienced a final hearing, as it is likely that they were unable to reach agreements earlier in the process as many family litigants are encouraged to do.

More atypical, however, was the number of FFHs, given the extensive literature which indicates that it is relatively rare for FFHs to be ordered. One possible explanation may be that survivors may be more likely to voice allegations if they are unrepresented, especially if they have had access to support from other survivors through the Facebook groups discussed above. Existing research has found some evidence to suggest that when domestic abuse survivors are represented, their lawyers sometimes advise them not to bring up allegations of abuse, to avoid perpetuating underlying preconceptions of abused mothers as 'being difficult' or standing in the way of contact (Birchall and Choudhry 2018, p.24; 30-32). However, voicing allegations does not necessarily mean that FFHs will be directed, and therefore it is also possible that the experiences of these LIPs were simply anomalous in that they may have encountered judges who were more significantly influenced by the attempted improvements to PD12J than the national picture indicated by other studies (Birchall and Choudhry 2018). Nevertheless, the high number of interviewees who were able to discuss FFHs, combined with those who attended final hearings, was extremely useful for gaining an insight into how LIPs may experience the process of cross-examination. This is especially important and valuable, considering the controversial findings in recent years about how judges conceptualise and manage the situation of potentially allowing

perpetrators to cross-examine survivors of domestic abuse (Trinder *et al.* 2014, p.70; Corbett and Summerfield 2017, p.15-8).

3.3.2.2 Demographics and Vulnerabilities of Interviewees

Although it was useful to consider the different experiences that interviewees had of the family justice system, these experiences were of course not only located within the court process. Rather, as explored through Bourdieusian theory and vulnerability theory in chapter two, the accounts of interviewees were also framed by the broader structures of inequality which influence the opportunities and resources they can access, as well as the intersectional ways in which these structures are experienced. It is therefore useful to discuss the demographic diversity of this sample, in order to reflect upon the range of possible perspectives that LIPs drew upon during interviews.

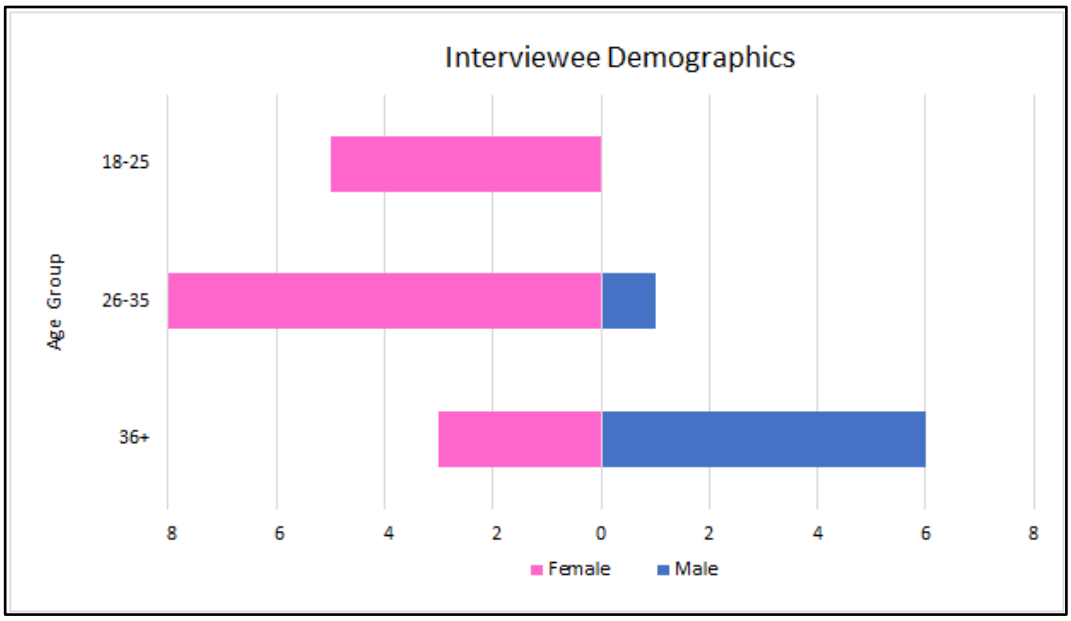

Fig. 3 Interviewee Demographics

As the table above demonstrates, the majority of interviewees identified as female. This is unusual, as previous studies have tended to recruit either more male LIPs, or a relatively even split between male and female interviewees (Dewar *et al.* 2000, p.38; Moorhead and Sefton 2005, p.67; MacFarlane *et al.* 2013 p.23; Trinder *et al.* 2014, p.12). Additionally, within the public Facebook groups I used to advertise the project, there appeared to be no shortage of male LIPs – indeed, their voices tended to overwhelm these groups, due to the high numbers of posts which related to father's rights groups.[33] The fact that only seven volunteered to be interviewed

[33] The prevalence of these groups on social media has also been demonstrated elsewhere, see: (Tkakucova 2019).

by me may therefore have been an interesting consequence of the recruitment strategy. While people participate in research for a range of reasons, an inevitable aspect of this decision involves balancing the perceived benefits of participation and judging the trustworthiness of the researcher. To an extent, the large proportion of women in the sample may therefore be attributable to how I was perceived by potential interviewees online, through the descriptions of gatekeepers, or during our initial phone calls and meetings. For example, several female interviewees who had negative experiences of the court process were cautious of men who were also involved in the court process. Almost all female interviewees expressed their concerns for my safety as a result of my decision to include my photograph on the research website, and to interview male LIPs by myself 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 male researcher. Similarly, it may be possible that due to my own presentation, some male LIPs were less likely to perceive me as open to their perspectives and motivations. Nevertheless, the gender distribution of the sample did align with earlier studies in relation to their status as applicants or respondents, in that all of the male interviewees were applicants, whereas only five of the female interviewees had made applications (Moorhead and Sefton 2005, p.67; Trinder *et al.* 2014, p.12).

Although family breakdown can occur at any point, this age distribution of interviewees was unsurprising. The age groups outlined above **(Fig. 3)** broadly reflect the stages at which individuals in England and Wales are parents to children under 18, and the fact that women tend to have children at a younger age than men (Office for National Statistics 2014). Nevertheless, the sample did include two particularly young mothers – aged 18 and 20, which may also have been a consequence of my own age, and how I was perceived during the recruitment stage of the project. Further, the oldest interviewee was a 45-year-old male. Emerging research indicates that a growing proportion of LIPs now include several grandparents seeking to re-establish relationships with grandchildren during conflicts with their children (Rudgard 2018). As a result, this project unfortunately cannot speak to the likely different dynamics and experiences of these LIPs who are self-representing against adult children rather than ex-partners. However, it can provide a foundational insight into some of the barriers they may also experience.

In addition to the large number of female LIPs, the sample was also disproportionately represented by people who identified as both white and British. Within the sample, there was one man who identified as black African, one woman who identified as white Romanian, and

two women who identified as South Asian. English was a second language for the latter three interviewees. One concern which has also characterised other studies which employed a similar opt-in recruitment strategy, was the way it may have potentially excluded some LIPs who are not able to reach out to others for support relating to their family breakdown (MacFarlane *et al.* 2013, p.23). The perceived privacy of family problems and particularly the stigma surrounding family breakdown may be a barrier to reaching individuals from cultural backgrounds who, if they have gone through the court process, may be less willing or able to discuss this with a stranger. The perspectives of these four interviewees may be a useful starting point for reflecting on any additional barriers that may stem from the family court process failing to account for language barriers and the complex implications of family breakdown that come with different cultural, ethnic or religious backgrounds.

Beyond these demographics, it is also essential to reflect upon class. However, class is not something that can easily be categorised for the purpose of detailing demographics of the interviewee sample. Traditional conceptions of social class have focused on identifying traditionally 'working class' communities within society and distinguishing them from more affluent groups in order to reflect upon how the working class and their interests are consistently dominated and exploited by the class structure. As such, professional occupations and income have primarily been used as measures of socio-economic status within society. However, at least since the rise of neoliberalism in the 1980s, understandings of class and how it operates to structure society have become far more nuanced. Rather, sociologists began to draw attention to the way that the class system itself was becoming less cohesive, and sociological accounts of class began to take account of the more nuanced connections between culture and class (Bennett *et al.* 2009, p.195). Although class is inextricably linked with economic conditions, Bourdieusian theory in particular draws attention to the ways that identities and individual social positions in practice revolve around different kinds of cultural, social and symbolic capital which are related to, but not dictated by, economic position and professional occupations (Bennett *et al.* 2009, p.196-7). Under this view, structures of class play a significant role in shaping the experiences and opportunities that people have within society, but at the same time, class as an identity is relatively fluid. While the upper class may be defined by privileges of birth and their own terms of social etiquette, 'the terms in which the middle and working classes understand themselves are more fluid and contested' (Savage 2015, p.26).

Bourdieusian theory has been specifically selected for this project because this theory goes beyond purely structuralist understandings of class and proposes an understanding of society's structures in which men and women are also agents. In other words, their opportunities and capitals are shaped by broader structures of inequality, but not deterministically so. Rather, people themselves have an active role in how society is structured, because society is also shaped by the perceptions and understandings that people have of their contexts and their own positions. Class, therefore, cannot be measured from the perspective of an observer, and should instead be approached 'through the natives' eyes', as they interpret their own position through the habitus (Fowler 1997, p.2).

However, as discussed in chapter two, the interpretations and perceptions of society which are formed through the habitus are not always conscious. Rather, people internalise a host of different subconscious understandings about society which then go on to shape the experiences they have in certain fields. For example, a major strength of Bourdieu's work is that he insisted on a 'duality of structure', which means that people play an active role in transforming or reproducing social structures, but they do so within specific social conditions, including those that are internalised as part of their habitus. As Fowler explains, 'domination, therefore, occurs through a variety of means, from the economic operations of the market, to symbolic intimidation' (1997, p.23). Further, research which has sought to understand how people perceive their own class positions has consistently demonstrated that many people do not have particularly strong ideas about whether they belong to a specific social class. For example, studies have demonstrated that even as early as the 1960s, half of the British population did not perceive themselves as belonging to any specific social class, and that within the last 20 years this has become even less clear cut as communities have diversified (Savage *et al.* 2001; Meath *et al.* 2007; Devine and Snee 2015).

The task of categorising class is therefore extremely complicated because, from a Bourdieusian perspective, the structure of society is not only fluid and contested but is also formulated on the basis of how individuals consciously and unconsciously interpret and perceive their own position and environment. Under this view, it would have been reductive and limiting to attempt to identify social class by collecting data about interviewees' professional occupations or their income. Moreover, financial information is often sensitive, and it is difficult to gain an accurate

picture of an individual's income and assets at the point of family breakdown.[34] An additional concern was that requesting these details would have significantly impaired the rapport and trust that had been built with interviewees during the process of recruitment and detracted from the deep and personal discussions that we had during interviews. Drawing on the ethical attentiveness exemplified in feminist approaches to research, an underpinning commitment of this research was the need to respect the understandings and experiences of interviewees, and explicitly avoid any actions that may go some way towards disempowering them within the interview dynamic (Ramazanoglu and Holland 2002, p.155).

Instead of collecting income information or attempting to otherwise categorise interviewees in terms of class, therefore, it was more valuable to hold initial conversations that would enable me to gain a contextual understanding of interviewees' circumstances, as well as the kinds of resources that they had access to and felt were important for their experiences of court. During these conversations, I asked interviewees to talk generally about their circumstances, for example whether they had other children, where they were living, whether they had any other legal problems, and any other issues that came up naturally in conversation. These details were noted and then used to aid the process of data analysis later in the project. Within these conversations, two things that were consistently raised was whether they were currently working, their level of education, and why they had represented themselves in court. The answers to the first two questions are reflected in the table below **(Fig. 4)**.

Employment Status

Unemployed	Part-time Employment	Full-time Employment
9	4	10

Education Level

No formal qualifications	GCSEs or Equivalent	A-Levels or Equivalent	Undergraduate Degree	Postgraduate Qualification
6	10	4	2	1

Fig 4. Employment Status and Education Level

[34] For instance, Trinder *et al.* were also unable to provide income data for the LIPs who participated in their study because this information was not reliably available from the court files (2014, p.12).

By taking this approach, it was possible to have open conversations with LIPs about the kinds of circumstances that they felt were important factors in how they experienced the court process. For example, four of the unemployed interviewees were single parents to young children or caring for older relatives, and six more were working part or full-time alongside their caring responsibilities. All felt that, as a result, they did not have enough time to put in the work and research required to be a LIP. In contrast, five of the unemployed interviewees felt that although they had enough time to prepare for court, they could not afford the financial costs of accessing support. Similarly, the three interviewees who were educated to degree level and above felt that their education and professional connections were useful resources for understanding complex documents and language. In this sense, the sample is useful for considering the implications of different kinds of resources – not just financial, but also the social connections they could draw upon and the amount of time they were able to spend preparing for court.

However, an important consequence of not collecting income information, is that this thesis is unable to comment on specifically how many of these interviewees may fall into the category of 'new' LIPs, who are newly ineligible as a result of LASPO. As such, it is possible that some interviewees would have been ineligible for legal aid even before LASPO was implemented. However, these interviewees were still able to contribute an important insight into how LIPs may experience the post-LASPO family justice system. As highlighted in the literature reviewed in chapter one, the implications of LASPO are not limited to the fact that more people are ineligible for legal aid. Rather, LASPO has in practice exacerbated existing problems relating to the entirety of the family justice system. Specifically, post-LASPO literature has indicated the ways in which LASPO has placed additional pressure on already-strained service providers, and that the family justice system is struggling to respond and adapt to the increasing numbers and diverse range of LIPs who are now accessing court with varied levels of assistance. In other words, the presence of 'new' LIPs within the system has created even greater demand for advice and support, as well as exposed existing fragilities within the family court process. Therefore, regardless of whether these interviewees would have been ineligible before LASPO, their experiences of navigating the justice system after LASPO are central to gaining an insight that will inform my overarching research question – what the post-LASPO family justice system may be like for LIPs, and the extent to which the problems identified in existing literature are playing out in the post-LASPO context.

Within these conversations, interviewees also discussed their reasons for self-representing. A significant majority of interviewees, 21, explained that they could not afford legal representation and had either been unable to obtain legal aid or had not applied due to believing it would not be available. Two interviewees had paid for some legal advice from lawyers but explained that they could not afford to instruct them formally. This aligns with existing studies before and after LASPO, where researchers have found that cost is disproportionately given as the reason for self-representation (Dewar *et al.* 2000, p.33-4; Moorhead and Sefton 2005, p.16-7; MacFarlane *et al.* 2013, p.12; Trinder *et al.* 2014, p.12-3; Lee and Tkakucova 2018; McKeever *et al.* 2018, p.84-7). Additionally, although several interviewees were mistrustful of lawyers, no interviewees said that this was their reason for self-representing. This also mirrors existing studies, which indicate that mistrust of lawyers is often a factor, but usually one that is combined with unaffordability of legal services (Trinder *et al.* 2014, p.13; McKeever 2018, p.84-5).

Within these conversations, it was also possible to identify the presence of vulnerabilities which existing research has already indicated are often experienced by LIPs. These are reflected in the following table **(Fig. 5)**.

Domestic Abuse	Learning Difficulties or Disabilities (e.g. Dyslexia)	Physical Health Conditions or Disabilities	Mental Health Issues (e.g. Anxiety)
12	6	1	10

Fig. 5 Interviewee Vulnerabilities

Given that the definitions and boundaries of characteristics such as health conditions are often nebulous, it was similarly sufficient for interviewees to explain that they had experienced one of these characteristics. For instance, while some talked about their formal diagnoses of learning difficulties like dyslexia, others simply explained that they had difficulties processing information or reading large amounts of text. While it is not possible or desirable to essentialise these experiences according to these broad categories, by asking interviewees to raise factors that they felt were relevant to their experiences of the court process, the sample is capable of speaking to at least some of the ways that the system may fall short of accommodating these vulnerabilities. Further, these conversations were extremely useful for gaining a sense of how these characteristics may intersect and manifest within the institutional context of the legal system. For example, existing research indicates that those with mental health problems are

almost three times more likely to suffer abuse, due to the greater extent to which they rely upon others for help and assistance (Mind 2018, p.13). Among interviewees, however, the experience of mental health issues was disproportionately associated with and triggered by the court process itself. In particular, eight of the 12 interviewees who had experienced domestic abuse also self-declared that they suffered from depression, anxiety and post-traumatic stress disorder relating to their experiences of court.

As discussed so far, the approach taken to recruiting LIPs, and therefore the sample that was achieved, were inevitably subject to some limitations. Nevertheless, these limitations were outweighed by the assurances of promoting informed participation and the wellbeing of interviewees.[35] In addition, by allowing interviewees to describe their own circumstances according to their own terms and understandings, this approach provided productive opportunities to build trust with interviewees. This not only ensured that these relationships were managed with care, but also had the benefit of opening up deeper and more personal conversations with several interviewees about their perspectives, thoughts and feelings, which may not have been possible with a more conventional approach to recruiting and ascertaining information about them.

3.3.3 Conducting Interviews

Having reflected upon the sample of interviewees, it is now important to detail how interviews themselves were designed and conducted. In terms of their design, interviews were semi-structured. This design was chosen because the literature discussed in chapter one emphasised several key issues that tend to be important for LIPs during the process – for example, it identified the difficulties that LIPs have complying with court procedure, concerns relating to the accessibility of advice and support, and the importance of the relationships that LIPs have with legal professionals. It was important to frame interviews in a way that allowed for discussion of these issues, so as to consider how they may be playing out in the post-LASPO context. However, given that I was also interested in learning about how these issues were perceived and experienced, it was also important to provide interviewees with maximum scope to express their thoughts and feelings, as well as enable them to introduce new and contradictory topics of discussion which they felt to be important. To this end, I developed a schedule of broad questions **(Appendix 3)** which were designed to guide the interview, but also provided space and flexibility for interviewees to shape the course of our conversations.

[35] These concerns are discussed further in the final section of this chapter.

Additionally, interviews were audio-recorded to aid the flow of conversation and took place at times and locations chosen by interviewees.

In terms of actually conducting interviews, my approach was usefully informed by ANT. As discussed in chapter two, the ANT approach advocates carefully documenting the micro detail of social arrangements and paying particular attention to the specific ways in which those arrangements may give rise to disadvantage. This central tenet of ANT was helpful for thinking about how to frame the interview in two main ways – firstly, in terms of how questions were asked, and secondly, in terms of how to foster an environment which helped to contest the traditional hierarchical relationship between interviewer and interviewee.

My approach to asking questions was influenced by the emphasis that an ANT approach places on detail. For researchers who use ANT in combination with structural theories, broader structural inequalities are not denied – rather, it is simply that the macro-scale is inevitably present within the micro-scale, and the implications of structure can therefore be more deeply understood by also examining the material detail of how these forces manifest in specific situations. Therefore, it was helpful to frame the interview as a conversation in which interviewees were invited to share control of discussion by telling detailed stories, rather than simply answering my questions. In order to encourage interviewees to give detailed descriptions, it was useful to draw inspiration from the notion of 'ethnographic interviewing' which has been developed by James Spradley (2016). Spradley argues that social scientists conducting interviews can gain a great deal from drawing inspiration from the approaches of anthropologists – who traditionally make use of ethnographic observations – because interviews are often the only means through which researchers can study other cultures from the perspectives of those who inhabit and create them. Although this research project was not 'ethnographic', Spradley's suggestions were extremely useful for thinking about how to conduct interviews in a way that would provide detailed insight into people's lives, experiences and perspectives.

One such suggestion is that Spradley encourages interviewers to 'ask for use' – to ask interviewees to describe their experiences in order to illustrate how they thought and felt about them (2016, p.58-9). In doing so, it was possible to remain open to both new topics of conversation and a sufficient level of detail that could further illustrate the meanings, interpretations and perceptions given by interviewees during interviews. In practice, therefore,

the broad questions which comprise the interview schedule operated as guiding themes, which were used as starting points for discussions rather than definitive questions. Importantly, these discussions were not simply answering these questions, but an opportunity for interviewees to talk, often at length, about different stages or aspects of the court process. In doing so, interviewees frequently drew on examples of specific interactions or situations and described how they felt about what had happened and how they felt others had behaved during those events.

Spradley also explains that this approach to interviewing is most effective when researchers are able to position themselves as 'learners', in that they are asking interviewees for help in understanding a particular culture or social phenomenon (2016, p.57-9). In order to do this, it was important to reflect with interviewees on how much I knew about the court process, and what I was hoping to learn about from them through interviewees. As discussed above, in preparation for the recruitment stage of the research, I spent three months shadowing judges and STC volunteers. This was extremely useful for gaining a first-hand insight into the kinds of language, acronyms and paperwork that LIPs were expected to contend with, as well as the process of arriving at court and attending hearings. Of course, it is important to emphasise that the purpose of this was not to claim any degree of understanding of what it is like to go to court, nor an attempt to corroborate the experiences of interviewees. Rather, the benefit of gaining this experience was to accumulate contextual knowledge which enabled me to connect more sensitively and productively with interviewees. This contextual knowledge allowed me to follow up on points and visualise the experiences that LIPs described, which – on reflection – often eased the task of constructing shared understandings and building rapport with interviewees. This was particularly useful when interviewees were describing specific aspects of the court process. Here, they would often ask me if I had ever seen a particular court form, or knew what a section 37 report was, and then use this as a foundation from which to explain their experiences.[36] Ramazanoglu and Holland suggest that having this contextual experience and knowledge can have the benefit of reassuring interviewees that researchers are credible (2002, p.136). The fact that I had physically been to court before was therefore an invaluable resource during interviews, as it provided a starting point of shared ground from which LIPs could discuss their experiences of particular processes.

[36] A report produced by CAFCASS into the welfare of the child upon instruction of the family court under s 37 Children Act 1989.

An additional effect of this, however, was that it marked important parameters around my own understandings of what the court process is like for someone who is experiencing it as a LIP. The fact that I did not have personal experience of self-representation actually meant that it was possible to have open and frank conversations about all of that which I did not yet understand – including how interviewees felt and responded when they encountered barriers, and the implications that these had for how they experienced other aspects of the court process. In these conversations, interviewees were the experts, and I was the one learning from their experiences (Spradley 2016, p.3). By treating the first two interviews as 'pilot' interviews, it was possible to reflect upon the efficacy of these questions for achieving this balance, as well as my own responses during discussions. Although not all interviewees were comfortable discussing their experiences in detail or at length, this was generally an extremely useful way of fostering an environment in which interviewees felt able to control the topic of conversation and introduce new ideas. For instance, Fiona Poland explains that the most valuable information for feminist researchers is often 'that which is not happening, rather than that which is happening' (1990, p.166). By conducting interviews in a way that encouraged interviewees to tell detailed stories, it was possible to be guided by the interview schedule, but also to consider things that I had not thought to ask.

The second way in which the theoretical framework influenced my approach to interviews was in considering the extent to which it was possible to conduct interviews in an egalitarian way and foster an environment in which interviewees felt able to speak openly about their experiences and introduce new topics of conversation. For instance, by drawing attention to the constructed and political nature of knowledge and research, feminist researchers have also emphasised the imbalance of power that is inherent in the interviewer-interviewee relationship, and the problematic consequences for research that does not seek to address or mitigate this (Oakley 1981). After all, holding interviews in the first place involves creating a largely artificial environment in which the researcher actively sets parameters of what is relevant and important during their conversations with interviewees. Although it is never possible to entirely alleviate this power imbalance, according to Holstein and Gubrium, the ideal interview dynamic to aspire towards is one in which researcher and interviewee are redefined as equal 'collaborators' in research (2003, p.19). Framing interviews as opportunities for me to learn from interviewees and encouraging interviewees to tell their own stories in a detailed way, went some way to address this power imbalance. However, another important part of doing this was to pay specific attention to both the environment of the interview and my relationships with interviewees.

As discussed in chapter two, the materialist focus of ANT means that it requires researchers to account for the implications of non-human actors when they are studying social arrangements. This idea was useful for considering the important ways in which the location of interviews may in practice influence how interviewees felt during interviews. For example, while it would certainly have been more cost-effective, efficient, and arguably safer for me to have interviewed LIPs in an office environment, this would have likely framed the interview as a more formal or business-like interaction than if interviewees were able to decide for themselves when and where they would like to meet me. Moreover, given the number of interviewees who identified that they had limited time and financial resources, it would not have been ethically appropriate for me to dictate the location of interviews. Rather, by asking interviewees to choose the time and place, it was possible for interviewees to share control over the interview environment – to dictate the material context in which they would feel most comfortable and in control. For example, interviewees often found it easier to talk leisurely over lunch or whilst walking, rather than face-to-face over a table. One interviewee even asked if we could meet in a local pub, so that he could settle his nerves with a pint of beer. The presence of food and drink at interviews was often a useful way for interviewees to talk about their thoughts and feelings whilst not feeling as though they were being formally questioned, although this did vary from person to person. By remaining flexible and prepared to adapt the setting and format of interviews, it was therefore possible to minimise the emotional distress experienced by interviewees during these conversations, as well as strive for an environment which at least went some way to facilitating their own sense of control within the interview conversation.

As part of this, it was also important to be open and honest with interviewees about my own background and motivations, in order to build trust in the same way that I did during the recruitment stage. As Ann Oakley explains, the most meaningful interactions are only possible when researchers are prepared to let interviewees 'in' on their identity and personality – namely, who they are and why they are interested in conducting their research (1981, p.41-6). By allowing interviewees to get to know me and immersing myself in the relationship in the same way that I was asking them to do, it was possible for us to build trust and share responsibility for checking understandings within the interview. For instance, although I did not have any personal experience of motherhood, the majority of mothers were more interested in asking me about my experiences of being a child affected by family breakdown, in order to gain an insight into the potential implications of this for their own children. Although I did not expect

this to be a shared experience that would be discussed during interviews, it appeared to be a useful lens through which we could compare perspectives, and I could actively check my own understanding and interpretation of what interviewees had described. Additionally, interviewees were encouraged to contact me after the interview if they felt that it was important to add or change anything that we had discussed – while the majority did not do this, three interviewees did maintain contact and provide further thoughts via phone calls. As a result, it appeared that allowing interviewees 'in' on these aspects of my own background, made it far easier for both of us to explore the meanings of the descriptions and stories that were given during interviews, as well as for me to reflect on the constructed nature of the knowledge that was ultimately produced through the research process (Brenner *et al.* 1985, p.3).

3.4 Data Analysis

In turn, the theoretical framework was also extremely useful for thinking about how to analyse the accounts of interviewees once interviews had concluded. In reality, there are several stages of data analysis that exist between an interviewee giving their account, and the ultimate translation of that account into the 'data' that is captured and analysed and then presented within this thesis. These stages can broadly be categorised as transcription, coding and developing themes.

After each interview, audio-recordings were transcribed. Though transcription is often regarded as a clerical task, it is itself the beginning of the process through which data is interpreted (Kvale 1996, p.160). During the transcription process, I also began to reflect upon the implications that the process of data analysis would have on the meaning conveyed within these accounts. For example, through ANT, it was possible to think about the implications of the act of transcribing itself. In chapter two, I explained that ANT is useful for deconstructing social arrangements in order to understand how power is exercised on a material level. For example, by tracing the ways in which certain actors have been able to influence the form and role of other actors, it is possible to work backwards and consider how this has enabled them to shape the network according to their own objectives. This notion of deconstructing arrangements is also useful for thinking about the transcription process itself. For instance, as ANT theorists John Law and John Hassard note, 'to translate is also to betray' (2004, p.1). Through the process of transcription, therefore, these accounts were inevitably transformed as they were translated from oral explanations into artificial written constructions – transcripts are devoid of emotional tone, body language, and the material context of the interview environment which all operated together to produce the account given by interviewees.

Nevertheless, transcription was necessary in order to be able to view all of these accounts together and draw connections between them. A way of acknowledging this limitation, therefore, was to take steps to ensure that I was deeply familiar with the meanings and interpretations that emerged during interviews. For instance, transcribing these interviews involved listening back to the conversations I had with interviewees. As discussed in the previous section, these interviews were not simply detached conversations, but rather conversations in which interviewees were frequently emotional, and both interviewees and I had personally invested ourselves. As a result, listening back to these conversations during transcription involved not only remembering what people had said, but also reliving the stories that had been shared with me. During this process, I was able to take preparatory steps to help me to remember important aspects of context or emphasis that would not be obvious from the written form of interviewee accounts. For example, it was common for interviewees to tell me when they raised something that they felt was very important for me to understand. When transcribing I would make a note of this by placing asterisks beside important passages. Additionally, I retained the audio-recordings of interviews throughout the research process, so that they could be revisited at later stages of analysis.

Once all interviews were transcribed, I employed a thematic approach to analysis. Firstly, this involved developing codes which could be used to categorise different aspects of the data. In order to develop codes, I began reading and re-reading hard copies of the transcripts and highlighting important aspects of the data which were likely to assist with responding to the sub-questions which informed my overall research question. These decisions about which aspects of the data were relevant for my research questions were influenced in two main ways. Firstly, those experiences or perceptions which related to the findings of existing research – this included data that reiterated existing knowledge about self-representation, as well as that which deepened, expanded upon, or even contradicted current understandings about what it is like to self-represent. For example, a major concern identified in chapter one from both before and after LASPO was the extent to which people are able to access legal advice and practical support during their time in the court process. It was therefore important to highlight experiences that interviewees had attempting to access support, as well as any barriers they experienced to accessing this support.

Secondly, I also coded aspects of the data which my theoretical framework indicated were important for appreciating the structural context of barriers within the family justice system. Through Bourdieusian theory, I have considered how structural inequality is reproduced through culture – the ways in which different capitals are valued within different environments, as well as the ways in which people interpret and understand their own positions within society. Consequently, in order to reflect upon the implications of parts of the court process for people in different social positions, it was also important to consider how interviewees made use of culture when talking about their experiences. Spradley explains that 'both tacit and explicit culture are revealed through speech, both in casual comments and lengthy interviews' (2016, p.9). How people understand and make use of culture to understand and explain their experiences, therefore, is not always obvious from the specific words that they say. That said, there certainly were several occasions during interviews where interviewees made explicit reference to cultural understandings when explaining things to me – feelings of being underappreciated or not listened to within the court process were often explicitly linked to the 'attitude' of the family court, as interviewees felt a general sense of dispassion from those working within it.

There were, however, many more tacit ways in which structural inequality came into the accounts of interviewees when they described their experiences. Here, it is useful to reflect on constructed nature of the accounts that LIPs provided during interviews. For instance, the main critique of using interviews as a research method is that they frequently leave researchers at the mercy of their participants – inevitably, interviewees will forget things when recounting events, make mistakes or simply not tell the truth about events that they may wish to remember in a different light. While forgetting aspects of events or making mistakes is an unavoidable reality of learning about events that have happened in the past, there is also likely to be a degree to which interviewees may narrate a particular version of these events during interviews, which is influenced by the broader structural inequalities that framed their experiences.

Through Bourdieusian theory, it is possible to understand the ways in which structural inequalities can operate to repress and devalue the meanings, perceptions and interpretations that people have of their own circumstances. Through the concept of habitus, for example, people make informed assessments of their chances of success in particular fields based on the capitals they are able to put to use within those contexts. Further, in making these assessments, people respond to their circumstances in particular ways. In chapter two, I drew on two

examples of this - McKenzie's research, where the council estate residents resisted their broader subordination by creating their own alternative structures of value, and Savage's suggestion that people may respond by withdrawing from participation altogether. An important part of how people respond to circumstances of disadvantage, therefore, is how they talk about those circumstances and the experiences that stem from them.

In her seminal article, Lucie White explains three key themes of which are useful for appreciating how structural inequalities can shape the ways in which people tell stories about their disadvantage. Firstly, accounts may be affected by the *intimidation* that people experience, which stems from both the historical exclusion of and violence towards particular social groups such as race or gender, as well as present day threats to their security and welfare from state institutions (1990, p.33-5). The family court process is of course the means through which arrangements for children in these cases are ultimately decided, and as such is likely to be perceived as an institution capable of inflicting serious consequences for LIPs who contest its processes. The impact of intimidation on interviewees was immediately apparent even at the point of recruitment – where, as discussed above, it was important for several interviewees that I outline my background and motivations for conducting the research in order to demonstrate the fact I was not a family law professional.

Secondly, they may frame their stories in a way that avoids *humiliation* (1990, p.37-8). Given the political narratives of responsibility that have underpinned representations of people relying on state-funded support like legal aid, it is possible that LIPs may seek to distinguish themselves from stigmatised tropes of welfare recipients. They may also be attuned to the particular expectations that the institution of the family court has of them as parents and frame their stories around the damaging constructions of hostile mothers and violent fathers which characterise legal discourse in this area. In this sense, vulnerability theory is useful for appreciating how narratives are not only shaped by the experiences of historical and structural inequalities like class or gender, or even experiences at the intersections of these structures. Rather, LIPs may be influenced by the institutional context of the family justice system, and the ways in which they may wish to avoid aligning themselves with particular constructions which they have experienced as giving rise to further experiences of disadvantage.

Related to this point is White's final theme, which indicates that narratives may also be influenced by the ways in which people are *objectified* by their experiences (1990, p.39-43).

Legal concepts such as the principle of 'best interests' operate to set particular parameters of what is relevant and important during the court process, and these may also frame the ways in which people describe their experiences during interviews. For instance, despite some confusion over the meaning of this principle, the phrase 'best interests' frequently came up during conversations with interviewees who were unhappy with hearing outcomes. In explaining their reasons for disagreeing with their outcomes, interviewees would describe instead how the outcome was not in their child's 'best interests'.

The ways in which interviewees presented their accounts, therefore, often contained tacit remnants of structural inequalities. For example, when interviewees discussed problems which they had experienced within the court process, they did not always connect these difficulties with their own position or circumstances, nor the failure of the court system to accommodate their needs. One mother, for example, spent time comparing two judges who had heard her case – one female and one male. She discussed several ways in which she felt that the male judge could not understand her point of view regarding motherhood and refused to take her seriously. She directly compared this judge to the female judge, by explaining that the female judge had simply 'got it'. When asked why she thought the judges had been so different, this interviewee said that she did not know, but guessed that it was most likely a difference in personality. However, the ways in which she had distinguished between these judges was through the binary of male judge/female judge and rooted in the different extents to which she perceived them to understand the demands of motherhood. This is an example of how cultural dimensions of structure like gender inequality were present at the tacit level of knowledge. As discussed above in relation to White's article, structural context can therefore have an important influence on how people present their own experiences of disadvantage. As Spradley explains, people do not express these aspects of culture easily – in fact they may even deny the connections between their experiences and broader structures - but nevertheless use them to organise their understandings and interpret their own experiences (2016, p.187-8). To this end, the process of coding also involved highlighting examples of these important connections, to allow for a deeper understanding of how structural forms of inequality may shape experiences of the family justice system.

Similarly, ANT also influenced the coding stage, because it reiterates the importance of appreciating the specific and material means by which social arrangements come to produce disadvantage. As discussed in chapter two, ANT was employed as a sensibility in order to 'orient'

my use of structural theory (Law and Singleton 2013, p.485-6). Using ANT in this way does not mean that theory cannot be used to analyse accounts in the manner described above, but it does provide an additional obligation to consider how inequality is experienced 'on the ground'. As Cloatre argues, using ANT as a sensibility means going a step further than identifying the aspects of structural inequality that shape experiences – in addition, it means exploring the specific and material processes by which this occurs (2018, p.335). For example, when interviewees drew on examples of situations or interactions in order to make a broader point about the court system, they would often describe where they were, or what other people looked like. These aspects of accounts were also coded, to allow me to consider how these material dimensions related to the experience that they were describing and identify any material aspects of the court process which were commonly brought up by interviewees.

These theoretical approaches were useful for thinking about how to code aspects of interviewee accounts which were helpful for developing an understanding of how structural context or material environment may shape the experiences described by LIPs. However, it was also essential to ensure that drawing upon this framework did not lead to me to lose or omit important perceptions, thoughts and meanings that did not neatly fit with these theoretical understandings. To this end, I also coded the passages that had been identified as particularly important to interviewees during transcription, as well as parts of interviews where interviewees had expressed thoughts and feelings about specific aspects of the process, even if these were not already coded under other labels.

Following this stage of coding using hard copies, the transcripts were then transferred into NVivo software and re-coded according to these labels. Repeating this process was a way of revisiting the original transcripts and ensure that I had not missed or mis-coded any important passages. A limitation of using this sort of software is that it can 'further a neglect of the contextual base of interview statements in the narratives of lived conversations' (Kvale 1996, p.174). However, the process of re-coding was also an opportunity to reconnect with the stories told by LIPs in their entire form and reflect on the extent to which I had managed to retain the meanings, interpretations and perspectives of interviewees within the coding process. NVivo software was subsequently used as a tool within which to store and organise interviewee accounts according to these codes. By looking at each code within this software, it was then possible to reflect on how these codes may develop into themes.

At this stage, it was possible to look at accounts alongside each other in relation to specific codes. While coding was a way of identifying where interviewees had raised similar issues or held common positions, this was the stage of the process where it was possible to consider aspects of their accounts that differed. For example, by looking at the different parts of transcripts which had been coded under 'experiences with lawyers' and 'perceptions of lawyers', I was able to distinguish between positive and negative experiences that interviewees had with lawyers and think more deeply about how and why these perceptions related to the accounts of other interviewees, that which was indicated within existing literature, or the structural context of these experiences. In doing so, it was often extremely useful to look back at the original un-coded transcripts and sometimes even listen back to the audio-recordings of interviews in order to consider this within the context of entire accounts. Throughout this stage of the process, codes were refined, expanded and merged in order to develop them into the final themes which provide responses to my research sub-questions, and are presented chronologically over the next three chapters.

3.5 Specific Ethical Considerations

Throughout this chapter, I have reflected upon the motivations and reasoning for each decision that was made during the research process, as well as the ways in which my approach to making these decisions were influenced by the theoretical framework which underpinned the project. However, due to the sensitive nature of these interviews, particular attention is required to ensure confidentiality, informed consent and protection of interviewees from lasting harm. The last section of this chapter will therefore conclude by outlining some of the additional practical steps through which these aspects can be managed.

3.5.1 Confidentiality and Anonymity

Due to the nature of the topics explored during interviews – not only emotional experiences but also often intimate details about children and domestic abuse – the confidentiality and anonymity of interviewees was paramount. Given the high levels of trust required in order to facilitate these sorts of conversations, and the broader attempts to break down hierarchical relationships with interviewees, it was helpful to explicitly involve interviewees in the process of implementing measures that ensured their confidentiality and anonymity. For instance, the main means of anonymising accounts was by using pseudonyms. At the end of each interview, interviewees were asked to choose a pseudonym which would be used throughout the project, from the point of transcription to final versions of findings contained in conference presentations, publications and this thesis. While several interviewees were indifferent to the

pseudonym assigned to their accounts, the selection of a pseudonym was important to the majority – two interviewees, for example, requested additional time after their interviews to decide on a pseudonym which they felt appropriate to represent their accounts. To an extent, this seemingly simple aspect of anonymising data was one way in which interviewees were encouraged to have a continuing degree of control over their accounts, and to help interviewees feel enabled to contact me even after interviews had concluded.

As discussed earlier in this chapter, several services, organisations and charities assisted with the recruitment stage of the research by advertising the project to their clients. However, due to the recruitment design, these organisations were not aware of whether their clients actually went on to participate in an interview. At the beginning of interviews, I assured interviewees that their identities would not be shared with any organisations or individuals, and that the decision to inform these services was left to each individual interviewee. Given the relatively small sample size, it was essential to take extra steps to ensure that interviewees could not be identified by the accounts used in this work (Arksey and Knight, 1999, p.9). In addition to anonymising the names of interviewees, therefore, the names of organisations, other individuals and geographic locations were not recorded during the process of transcription.

One problem with this was that it was often necessary to include relevant details where to remove them would distort the analysis of accounts, such as the presence of a learning difficulty, or to indicate that the interviewee lived in a rural area with limited access to face-to-face services. In these situations, interviewees and I would work together in order to retain their meanings and interpretations whilst also preserving their anonymity. For instance, where it was necessary to substitute a name or place, interviewees would be asked at the end of interviews to suggest appropriate alternatives or general phrases like ‘anxiety’, to reflect essential aspects of their experiences without using potentially identifiable details. Involving interviewees in this process was a useful means of making sure that the anonymisation process did not distort their accounts, as well as checking that the standards of anonymity employed for the project were also satisfactory for the interviewees whose identities required this protection.

By involving interviewees in this way, it was also possible to explain the limitations of the assurances I made in relation to confidentiality. At the beginning of each interview, it was explained that the only situation in which I would breach their confidentiality would be if it had been necessary to prevent criminal activity or harm to themselves or another person. The

practical aspects of ensuring confidentiality were also explained – although hard-copies were destroyed, scanned copies of consent forms which identified interviewees and their selected pseudonyms were stored securely on the University server. It was also necessary to store the audio-recordings and anonymised transcripts of interviews on the University server, but for security purposes, these were also password-protected and stored on a separate drive. In accordance with the eight principles of the Data Protection Act 1998, the University of Leeds Guidance and the General Data Protection Regulations (GDPR), throughout the project I was the only person able to access these files, and thus every possible step was taken to secure confidentiality in line with the consent given by interviewees. However, there were stages at which this information was unavoidably more vulnerable – for instance, whilst travelling back from interviews with hard-copy consent forms and a voice recorder. As part of their informed consent, therefore, interviewees were made aware that confidentiality could not be entirely guaranteed, but that these security measures would be employed as soon as possible once interviews had concluded. Although the issue of security breaches did not arise during the project, discussing these issues was a hugely beneficial means of involving interviewees in the research process. Working with interviewees in this way was also essential in order to navigate the important issue of informed consent.

3.5.2 Informed Consent

An essential ethical requirement of any research project is that interviewees fully and freely consent to take part in the study. However, Arksey and Knight explain that the nature of consent required differs very greatly for a qualitative interview, due to the inevitably greater level of energy, interest and commitment required. Consequently, they argue, it is essential for researchers seeking such interviewees to consider and understand why people may be reluctant to participate in their projects (1999, p.8). In acknowledging the ways in which these interviews would at times be stressful, emotionally difficult as well as practically taxing, it was therefore imperative that interviewees were fully able to appreciate the implications of what participation would involve and mean for them as individuals.

To address this, I worked with interviewees in order to incorporate several safeguards into the recruitment and interview processes. For instance, after potential interviewees contacted me for further information about the project, a preliminary meeting or phone call would be arranged in order to introduce myself and the project on a more personal basis. During these initial conversations, I would use the Information Sheet and research website as resources through which to ascertain the level of understanding that individuals already had about the

research and encourage them to ask questions. These conversations also focused on discussing the kinds of themes that would frame the interview, and the largely open and conversational format that these interviews would take. This involved explaining that I was interested in hearing about their thoughts and feelings about the court process, as well as what happened in their cases.

By talking about the interviews before they took place, it was possible for interviewees to emotionally prepare for these sorts of conversations and consider the potential implications for them of taking part in this sort of project. This was also an opportunity to reiterate that interviewees were under no obligations to continue and were able to withdraw from the project at any point. Although several interviewees were contending with mental health conditions, this research only involved individuals who had capacity to consent to participation. In preparing for this eventuality, the ability of interviewees to consent to interviews was assessed in line with the functional test of capacity outlined in the Mental Capacity Act 2005 – namely, their ability to understand the information, as well as retain and use it for the purposes of communicating their decision and participating in these conversations about interviews. In taking this approach, it was possible to ensure that interviewees were fully aware of what to expect from an interview, and continually involved in the process of establishing informed consent.

Additionally, immediately before interviews took place, a copy of the information sheet was used as a physical prompt through which we were able to revisit these issues. This was an additional opportunity to assess the understanding of interviewees and ensure that individuals were participating in interviews with full awareness of what this meant, as well as how their accounts would be used once the interview had concluded. In line with the University of Leeds Informed Consent Protocol, this consent was formally confirmed by interviewees using a written consent form, contained in **Appendix 4**. However, informed consent is a process, and as such it was reiterated to interviewees that this could still be withdrawn even after this acknowledgement had been recorded. For example, many interviewees were not able to fully appreciate the sensitive or emotional nature of our discussions until interviews were well underway. As Julie Wallbank explains, 'we cannot capture subjectivity, put it in a cage and expect it to remain the same, for the action of capture will change the woman's view of her world' (1995, p.213). For interviewees, the process of discussing experiences was also transformative, in the sense that feelings inevitably became more distinctly felt and understood once they were verbalised during interviews. The emotions that arose were impossible for interviewees to

predict, but by discussing the nature of the questions and subjects due to be covered during interviews, it was possible to at least in part prepare interviewees for this possibility. In circumstances where unexpected emotions did arise, it was necessary to take practical steps in order to minimise and protect interviewees from lasting emotional harm.

3.5.3 Protection from Harm

All interviewees were at some point affected by emotions when discussing their experiences of the court process. Although the topics discussed were sensitive and personal, another dimension of being interviewed is that individuals rarely have the opportunity to talk uninhibited about their thoughts and feelings to a sympathetic audience. As such, within the feminist literature, there are several examples that suggest even when interviews do give rise to deep emotional reactions, many interviewees may experience the interview process as cathartic (Oakley 1981, p.50; Kitson *et al*. 1996, p.184). As discussed earlier in relation to gatekeepers, the administrators of the private Facebook groups as well as other survivors of domestic abuse who were interviewed expressed that the value of interviews for them was feeling believed beyond these online spaces.

However, verbalising these thoughts and feelings sometimes resulted in unexpected emotional distress, and there were a number of ways in which it was possible to prepare for when this happened. Appropriate responses ranged from giving interviewees space and reassurance to collect themselves, to taking proactive actions such as suggesting a break or offering to make them a drink. While the interview schedule was consciously prepared so that interviews would last for approximately an hour, in practice the majority of interviewees volunteered for the research project because they valued the opportunity to talk to someone at length about their experiences. As a result, it was often beneficial for both the research and the wellbeing of interviewees to take our time discussing these topics, and often taking regular breaks for drinks and lighter subjects of conversation. However, many survivors of domestic abuse who participated in interviews were living in long-term distress and chaotic circumstances as a result of their experiences and the outcomes of their cases. Although the risk of emotional harm for these individuals was not caused or exacerbated by the interviews themselves, it was helpful to research various support services before each interview and provide contact details to these interviewees.

3.6 Conclusion

Within this chapter, I have drawn upon the theoretical framework in order to outline and reflect upon the methodological underpinnings of the project. In doing so, I have demonstrated the ways in which this approach influenced the research design and the selection of research methods, as well as reflected on the ways in which these methods were practically put to use during the project. By using aspects of the theoretical framework in this way it was possible to consider the various ways in which interviewee accounts were constructed by both wider structural forces as well as specific decisions made within the research process itself, and to therefore hold the research accountable through an approach of reflexivity. This chapter has also highlighted the potential opportunities and limitations of these methodological choices for the experiences of doing research and producing research findings. This thesis will now progress to outline these findings over the next three chapters, which reflect the journey that interviewees took through the court process.

4. Before Court

4.1 Introduction

This first findings chapter focuses on the experiences that interviewees had of the court process before their court hearings. It will begin by outlining the difficulties that interviewees had in relation to court forms, and reflecting on how LIPs in particular circumstances may struggle with accessing, submitting and understanding these forms, as well as face challenges when it comes to identifying the legally relevant information that needs to be included in court forms. It will then discuss how interviewees prepared for their court hearings, including the extent to which they were able to seek advice between hearings, and how they approached the task of preparing bundles and statements. Lastly, the chapter will explore the implications of alternative sources of support, including the Internet, social media and McKenzie Friends, which were all frequently used by interviewees. In presenting these findings, the chapter will reflect upon the extent to which they reiterate, contradict or deepen existing understandings about how LIPs experience these stages of the court process.

4.2 Court Forms

As the first stage of the court process for interviewees who had made applications, the experiences of accessing, submitting, understanding and completing court forms were discussed extensively during interviews. To date, existing studies from both before and after LASPO have indicated that LIPs frequently face difficulties when it comes to filling out court forms (Dewar *et al.* 2000, p.43-5; Moorhead and Sefton 2005, p.131; Williams 2011, p.5; Trinder *et al.* 2014, p.36-40; Lee and Tkakucova 2018). As a result, these studies also indicate that LIPs frequently have their applications rejected, or experience delay and additional expense in having to re-complete their forms (Moorhead and Sefton 2005, p.131; MacFarlane *et al.* 2013, p.60). In this section, the chapter will deepen current understandings of these barriers by exploring precisely which aspects of court forms were problematic for interviewees, and reflecting on how these problems may be experienced differently by people in different social positions, as well as how LASPO may have affected or exacerbated these barriers. It does this by considering three specific issues that arose in relation to court forms – accessing and submitting forms, understanding the language used in forms, and distinguishing the legally relevant information which is required by forms.

4.2.1 Accessing and Submitting Court Forms

Child arrangements proceedings are started by submitting a 'C100' application, along with supplementary paperwork. In terms of accessing the C100, seven interviewees relied upon the STC office in their local court. This is a relatively high proportion compared to existing research – for example, in Trinder *et al.*'s sample of 131 LIPs, only three used STC services (2014, p.93). This is an indication that the service may be more widely used by LIPs for support with forms after LASPO, as the STC organisation has rapidly expanded since 2014 (Support Through Court 2019, p.6). However, STC offices are not available to all LIPs, because firstly, due to the design of being situated around or inside courthouses, they are concentrated within large cities. Secondly, due to the stark impact in demand for their assistance that came with the implementation of LASPO, the service is still expanding and does not yet exist within all courthouses in England and Wales. To this end, 11 interviewees did not have access to an STC service because of where they lived – and indeed, had never heard of the organisation. As a result, five interviewees had to locate the C100 by themselves, either online or in person at court. While online access to forms has improved since LASPO, there appear to be enduring problems which affect LIPs attempting to access and submit their forms at court.

In terms of accessing court forms online, at the time interviews were conducted, Her Majesty's Courts and Tribunals Service (HMCTS) had an online form directory called 'Form Finder', through which individuals were able to locate and download their own forms. This, along with other court websites, was criticised after LASPO for failing to adapt to the obvious and anticipated change of users that would come with this reform (Tkakucova 2016, p.442). Eventually, in June 2018, the Form Finder was migrated into a government webpage which also provides links to self-help resources for those representing themselves in court (Gov.UK, 2018). In doing so, the government reformed the search procedure with the aim of simplifying search terms and enabling users to browse court forms by categories. In 2019, this was also updated to allow people living in certain geographical areas to make applications online. These are important and positive steps towards ensuring the online accessibility of the C100 form, which align with existing recommendations as to how to improve the barriers which characterise this stage of the court process for LIPs (Zorza 2009, p.72; McKeever *et al.* 2018, p.225).

Nevertheless, during interviews, it was clear that interviewees still experienced confusion when it came to accessing and submitting forms in person at court. Existing research already indicates that LIPs often struggle due to not knowing which form they need to use, and that the help they

receive with forms at court is often variable (Dewar *et al.* 2000, p.43-4; MacFarlane *et al.* 2013, p.58-60). Trinder *et al.* found, for example, that different court counters had different policies about whether they provide physical copies of forms for LIPs and differed in terms of the extent to which staff would indicate which forms a person might need. Based on this, the researchers in this study argued that a failure to provide physical court forms at court counters can cause significant barriers for LIPs who have limited access to the Internet or printing equipment (2014, p.40). This inconsistency was also present for interviewees in this project, who explained that some counters would provide them with the correct form, others would not help at all, and the majority (three) were directed towards a public display containing printed copies of civil and family court forms with no guidance as to which one they should choose.

In addition to this, however, all three of these interviewees explained that their main problem with locating forms in person was that they did not know the name of the form, and their experiences indicated that an important factor in identifying the correct form was knowing the terminology that is used by others in the process.

> You have to understand what forms to use and blah blah blah. But we spent loads of time researching it and we still got loads of things wrong because we didn't know the codes or the names of the forms we needed, and when you're there they just say the letters and numbers instead of what the forms are for.
>
> **Grace**

In order to find the form they needed, interviewees searched for forms in public displays that contained terms like 'residence', 'access' or 'contact'. These terms were replaced and amalgamated under the phrase 'child arrangements' with the enactment of the Children and Families Act 2014, yet interestingly they still formed the basis of many of my conversations with interviewees. One potential explanation for their use of this terminology may be that they had accessed sources of information which were not necessarily up to date. However, this was compounded by the way in which court staff would often simply refer to court applications as 'the C100', and supplementary forms by their own respective codes.[37] Taken together, this meant that neither LIPs nor court staff were using the term 'child arrangements'.

[37] In turn, a potential explanation for this may be that the C100 form is used for prohibited steps and specific issue orders as well as child arrangements, and that these three orders are frequently dealt with together by court staff.

Examined through the lens of the theoretical framework, it is possible to appreciate that the difficulties these interviewees had in finding the C100 were specifically facilitated by the institutional context of the family justice system. For example, vulnerability theory indicates that disadvantage can be experienced not only in relation to historically reiterated structural categories, but also from the way in which the legal system itself operates (Fineman 2016, p.24). In relation to this, Fineman argues that law operates according to the underpinning idea that people are autonomous and self-sufficient in their engagements with law, despite the reality that the ability of people to act autonomously depends on the extent to which people are supported to do so by the legal system.

This is particularly crucial because alongside the C100 form, there are several other supplementary forms with their own specific names and codes which LIPs may need. For example, the court fee for making a C100 application is set at £215, but this is waived for individuals on low incomes. In order to apply for this waiver, 20 interviewees also had to complete 'fee remission' form EX160, and therefore needed to know both that this form exists, and how to find it. Beginning in Birmingham, and now extended across courts with STC offices, the EX160 is gradually being reformatted under the new name 'help with fees'. While this simplification should be celebrated, many LIPs may still be disadvantaged if court staff refer to these forms by their codes rather than names. Further, where this form and others are called different names across different courts, this serves only to further complicate the geographical inconsistencies that characterise the provision of support at court. The terminology which is used by court staff is an inevitable part of the institutional culture – for those working within the system, the C100 is a familiar and convenient way of referring to a document with multiple functions. However, the failure to use consistent terminology and explain this to LIPs is an example of how the family court process itself may facilitate disadvantage for LIPs who cannot access their court forms. In practice, therefore, this means that the gains that have been made in terms of ensuring that the C100 is accessible online have not filtered down to the institutional reality of the family court.

Additionally, for certain groups, these experiences are also disproportionately related to broader structures of inequality – specifically, class and gender. Firstly, as discussed in chapter two, the implementation of LASPO coincided with a variety of other reforms to state support which have exacerbated the number of families living in poverty or with very limited access to resources. As a result, experiences of the family court are now even more likely to be

significantly shaped by broader structures of socio-economic inequality. While the improved accessibility of court forms online may do a great deal for simplifying the application process, this does not account for the likelihood that several LIPs may not have access to resources like the Internet in order to make applications. Consequently, those who may try to access and submit court forms in person may face significant difficulties because their backgrounds and circumstances are not accounted for within technology-based solutions and reforms.

Secondly, the institutional barriers to accessing and submitting forms also have disproportionate implications relating to gendered inequality. For example, LIPs who are declaring allegations of abuse must also use supplementary forms 'C1A' and 'C8' form to ensure that current addresses and contact details are not shared with the responding perpetrator.

> Despite how fearful I was of it, I was made to give my address to him at the time, because I didn't know I didn't have to, but to be fair I don't know if I would have done that, cos I wouldn't want the judge to think I was messing about or being difficult.
>
> **Maxine**

Drawing on Maxine's experience, the barriers to making an application for survivors of abuse are not simply limited to the bureaucratic way in which these forms are dispensed. Rather, the ability to access and submit these additional forms also hinges upon the specifically gendered expectations that exist for women in the family court. From Maxine's perspective, she felt pressured into jeopardising her own safety in order to avoid being perceived as 'difficult' within the court process. As discussed in chapter one, there is a plethora of existing literature which indicates that women struggle to demonstrate the relevance and importance of their abuse to child arrangements, due to a limited awareness of abuse and the prevalence of gendered views about mothers and fathers relating to contact (Barnett 2013; 2014; 2015; Birchall and Choudhry 2018, p.23-6). Within this research, three interviewees including Maxine explained that they did not submit this supplementary paperwork when they first made an application.

Building upon this literature, therefore, this finding suggests that women who have experienced abuse may also experience multiple barriers to submitting applications, which stem from both the institutional requirements of the application process as well as the gendered expectations of women which characterise the family court process. Moreover, these challenges are likely to be experienced intersectionally, in that many survivors may lack the resources that would enable them to access and submit forms online and may be in greater need of support from court staff. Here, Maxine was disadvantaged both by a lack of information about the different

court forms which were required, and her concern about how she would be perceived by others if she were to take advantage of those options. Given that many more people with limited resources are self-representing after LASPO, it is unlikely that these Internet-based innovations will go far enough to ameliorate the barriers that may exist for those who need to access and submit court forms in person.

4.2.2 The Language of Forms

Following LASPO, there have also been recent efforts to make the language of court forms more accessible and understandable for LIPs. A recent example of this is the divorce petition D8 form, which was revised in September 2017. In a similar vein to the improvements to the online Form Finder, this revision was primarily driven by a desire to move divorce proceedings online.[38] Nevertheless, the opportunity was also taken to simplify the layout and minimise the amount of 'legalese' in the document, in recognition of the reality that is frequently used by lay people (Allum *et al*. 2017). This is another important step towards making court forms more accessible, as existing research has already identified the difficulties that LIPs experience when attempting to navigate court forms which are long and use complex language, and advocated the need for standardised forms which employ plain English (Zorza 2009, p.68; MacFarlane *et al.* 2013, p.58-60; McKeever *et al.* 2018, p.104-5).

The C100 form contains minimal reference to law, and as such is considered to be relatively user-friendly. Interviewees, however, appeared to diverge on this point and this raised important implications about the linguistic accessibility of the form for those with learning difficulties or limited degrees of literacy.

> I mean I didn't need to ask an awful lot of advice, the forms were quite direct and to be honest I felt like, without being unsympathetic to anybody else, you'd have to be a bit of a div to not understand what the forms were saying.
>
> **Cheryl**

> … I was filling out an application that made no sense, using words that made no sense that I didn't understand, with something at the top of the paper that said C100 which doesn't mean anything. And then underneath, it has three or four instances where you can use that to go to court…remember, the same form is given to Mum's solicitor – if you have a team of solicitors they're filling these out on a daily basis and you're scratching your head next to this old guy on question one.
>
> **Chris**

[38] As of January 2020, divorce petitions may now be completed entirely online.

Cheryl and Chris, for instance, appeared to have very different experiences of reading and interpreting the C100. Chris explained during our initial conversations that he was dyslexic, and that he often struggled to understand written information unless it was explained to him verbally. As a result, we spent additional time discussing the research Information Sheet and his participation in the project before his interview took place. Cheryl did not have assistance from STC, but she was able to make use of a specialised form service offered by a local family law firm. Through this service, she was walked through each stage of the form and assisted with completion. Although Chris' STC volunteer undoubtedly had prior experience of the form, volunteers are not required to have any particular qualifications, and their support is limited to assistance, in the sense that they are not allowed to give advice or complete these forms on behalf of clients.

Here, it is useful to consider these different experiences through a Bourdieusian lens. While Bourdieu wrote extensively about the forms of capital which are unique to the juridical field, he also drew attention to certain forms of capital which are valuable across fields – symbolic capital (1986, p.55). This concept is useful for appreciating the ways in which several fields operate according to broadly similar hierarchies of value, because they all privilege skills which tend to be accumulated in similar life trajectories. For example, further and higher tiers of education tends to provide individuals with opportunities to develop skills such as written eloquence or a wide vocabulary, which are both useful across fields like law and politics (Bourdieu 1977, p.842). These capitals, therefore, are important symbolic resources which can be drawn upon in order to navigate things like bureaucratic paperwork and forms. However, the opportunities to accrue these capitals are disproportionately classed, and therefore may be out of reach for several LIPs who are coming to court from low socio-economic backgrounds after LASPO.

Even with the support of his STC volunteer, Chris explained that both he and the volunteer struggled to understand the language and structure of the form. This meant that initially, his application was rejected and returned to him for containing errors and insufficient detail. Cheryl, however, did not face these problems. Though it cannot be drawn conclusively, one interpretation of this is that the language and the requirements of the forms may have been explained more clearly or effectively by a solicitor, as opposed to the volunteer. Although the C100 may not contain much law in terms of references to statute, this suggests that written proficiency and the ability to draw upon and understand complicated forms of language are nevertheless important prerequisites for navigating court forms.

For Chris, the C100 was difficult to navigate due to the specialist and complex way in which its instructions are worded and the way in which it frames information. Additionally, one of the interviewees in this research – Kate – was Romanian, and although her spoken English in the interview was excellent, she explained that she required help from her English friends in order to understand the complex way in which written information was presented in the C100. This suggests that the language of court forms may be specifically challenging for those with learning difficulties, or those who do not speak English as a first language, who may require additional assistance in understanding complex sentence structures as well as the language used. In her linguistic analysis of applications for financial relief on divorce, Tkacukova has highlighted the significance of specific syntactical constructions used in court forms – for example, subordinate clauses such as 'if' and 'once', and double-negative determinants such as 'other than' and 'unless' (2016, pp. 441-2). During my time spent shadowing STC volunteers, I noted that the use of these constructions is common in the C100, as it has to accommodate a great deal of complex and variable information. As a result, the form is also relatively long – at the time this thesis was written it consisted of 24 pages, not counting supplementary forms. This complexity requires users to be highly proficient in terms of literacy and vocabulary, as well as to spend a great deal of time and energy in order to navigate and understand the requirements of the document.

This finding aligns with the concerns of existing research which indicates that understanding court forms is often difficult, especially for those with language barriers (De Simone and Hunter 2009, p.256). However, by highlighting the specific class-based inequalities that characterise this aspect of using court forms, it is also possible for this research to suggest that these problems are likely to be more widely experienced after LASPO. Given the fact that most people are now excluded from legal aid regardless of their socio-economic backgrounds, there are likely to be many more people attempting to complete these forms who do not necessarily possess attributes like written proficiency and the ability to digest complicated forms of language. In fact, according to a survey of adult skills undertaken by the Cameron-Clegg coalition government in 2012, 15% of the population of adults in England have a primary education level of literacy, with an average reading age of nine years old (Department for Business Innovation & Skills 2012, p.33). The Literacy Trust has collected similar data and evidenced that this is also the case in Wales, with 12% of the Welsh population lacking these basic literacy skills (2017). Another disproportionately represented characteristic of this low-literacy group, are those whose first language is not English (Department for Business Innovation & Skills 2012, p.127). While this

may not seem like a great proportion of the general population, access to these educational opportunities is deeply related to historically reiterated class inequality. As such, this proportion of the population is likely to be disproportionately represented among those who cannot afford legal representation and who may be unable to access legal aid after LASPO.

4.2.3 Identifying Legally Relevant Information

Another challenge at this stage of the court process was the ability to complete these forms in the manner that was expected. Research has already indicated that LIPs are frequently unable to translate their experiences into specialist or legal terms, and this can often foster a feeling that they are unable to communicate the parts of proceedings they feel to be important (Leader 2017, p.144-5). This was also true for interviewees within this research. Each case that was described to me during interviews came with a chaotic and emotional context which had built up over several years before they began self-representing in court. In some interviews, these stories took hours to tell, and several breaks for cups of tea and tissues. However, when LIPs submit these applications, they are faced with the task of translating their lives into a stringently prescribed written format and extracting the legally relevant aspects of these experiences.

Specifically, interviewees struggled to distinguish between information that they felt was important and information that was legally relevant to their applications. The fact that LIPs have difficulties identifying legally relevant information has already been demonstrated by similar studies (Moorhead and Sefton 2005, p.155-6; Trinder *et al.* 2014, p.71). However, by talking about this with interviewees, it was possible to deepen this current understanding by reflecting on how this may be perceived by LIPs. In the previous section, I discussed the ways in which interviewees may be disadvantaged for the task of understanding the language of court forms if they have not had access to capitals which can be accrued through certain educational opportunities. When it came to identifying legally relevant information, however, it appeared that even this was not always enough to successfully complete court forms.

> It's impossible to know what to write and what they wanna know. It was hard enough for me, with my mother by my side who is a graduate, to try and get it right. Then, how does anybody who left school with no qualifications on their own get it right? And you know, they've lost their voice.
>
> **Grace**

> I was probably very privileged in the sense that I had a solicitor in the first place, and on self-representing I requested copies of my files, so all the previous applications I had

> copies of, which was extremely helpful, and enabled all my second lot of applications to go through first time.
>
> **John**

While some interviewees perceived understanding the language of court forms and completing court forms as one problem, three interviewees who either had University-level or professional qualifications themselves, or were helped by someone who did, distinguished between these tasks. These interviewees explained their frustration at finding this task difficult and emphasised how they felt that this task ought to be achievable given their levels of education but did not. For instance, Grace placed significant emphasis on the importance of education for success within the legal context. As a young school-leaver being helped by her mother, who was educated to University level, she felt that having this education at her disposal was a significant advantage which distinguished her from other LIPs. However, even with this help, she described the process of extracting legally relevant information from her own understanding of her circumstances and problems as 'impossible'. Similarly, John was someone who had gone through his own course of professional training in order to qualify as an accountant but described his lack of confidence when it came to completing court forms.

The concepts of capitals and field can be used to appreciate the different starting points that people occupy when they are required to establish their 'cultural competence' within a given context (Bourdieu 1984, p.86-7). However, while symbolic capital such as written eloquence and a wide vocabulary may help LIPs to get as far as navigating court forms, this does not necessarily extend to understanding what the form is implicitly asking for and what details are expected to be included. Rather, there is a limitation even to the value of symbolic capital when fields like law place the greatest value on capitals which are specific to that profession and environment. Specifically in relation to law, Bourdieu argued that cultural competence is demonstrated by drawing upon a range of internal rules and codes which are never explicitly recorded or acknowledged within the juridical field (1977, p.806). This means that within this field, certain forms of language have greater meaning and value than others, and that there are specific ways of behaving and communicating which are perceived as authentic to law. However, the ability to access and use these understandings is restricted to those who have had the means and opportunity to accumulate these capitals through professional training and experience.

Education, and the symbolic capital that comes along with it, therefore does not appear to be a useful resource for the task of navigating the requirements of identifying that which is legally

relevant. Despite having access to symbolic forms of capital, Grace and John were unable to draw upon these field-specific capitals in order to provide all the details that were required in their court forms. Rather, John attributed his success with court forms to the fact he was able to recycle the field-specific capitals of his ex-solicitor, thus pushing him over the limitations that Grace and other LIPs may face when they have access to education, but not the advantage of familiarity with the complex, definitive and rational modes of expression used in the legal context. The value of distinguishing between symbolic and field-specific capitals here, is that it is possible to appreciate that LIPs with access to higher education may have specific expectations about the barriers they are likely to face as a LIP, which may play an important role in shaping their perceptions of the family justice system.

This distinction between education and familiarity with the legal system was also an important conclusion drawn by Trinder *et al.*, where researchers found that beyond the ability to navigate written and oral communication, there was no clear link between educational attainment and the ability to identify legally relevant issues, as even the highly educated and professional LIPs who participated in their research struggled to do so (2014, p.24; 83). The experiences of these interviewees therefore reiterate this finding and indicate that identifying legally relevant information is likely to endure as a problem for LIPs who are not legally trained. Moreover, it deepens this understanding by providing an insight into how the task of identifying legally relevant information may differ for some LIPs from the tasks of accessing or understanding court forms and emphasising that each of these tasks poses specific barriers for people in different circumstances.

4.3 Preparing for Hearings

This section will focus on the experiences that interviewees had when they were preparing for court hearings. As discussed in chapter three, interviewees participated in a variety of different hearings, but all were required to do some form of research before each hearing, and at some point all were asked to prepare bundles of required information as requested by each judge, as well as write position statements to outline their proposed arguments for each hearing. These pre-hearing preparations are of crucial importance to each court hearing, because the substance and outcome of each hearing is largely determined by the new information which is presented, and each time this provides the opportunity for final resolutions. As Trinder *et al.* noted, 'much of the work on a case occurs before the courtroom' (2014, p.35). Similarly, Tkacukova argues that the ability of LIPs to prepare for hearings can sometimes be even more crucial than their

ability to advocate within proceedings themselves, because while LIPs may be forgiven for being inarticulate in their oral presentations, a failure to prepare the evidence and paperwork for a hearing may make it impossible for cases to continue (2016, p.435). Within interviews, experiences and perceptions of preparing for court centred around two main issues – firstly, the availability of advice and support that could assist LIPs with understanding what they needed to prepare for court, and secondly, the ways that they approached the task of preparing bundles and writing position statements.

4.3.1 The Availability of Advice and Support

In chapter one, I discussed how the gradual erosion of legal aid eligibility has had a significant impact on the availability of legal services. The combination of policies which made legal aid work less viable and appealing for lawyers over the past few decades meant that even before LASPO, those with limited access to resources have frequently struggled to access quality legal advice. However, LASPO has exacerbated this even further. As highlighted earlier, existing literature indicates that the 'new' LIPs after LASPO are likely to include far greater numbers of people with extremely limited access to resources who have been categorically excluded from legal aid eligibility. This change has meant a huge increase in demand for both affordable and free advice and support. For instance, emerging research from Maclean and Eekelaar suggests that in the absence of legal aid, some firms are offering pro bono services, but that these are frequently overwhelmed and cannot keep up with post-LASPO levels of demand (2019, p.46-59). Therefore, while it is not possible to distinguish whether interviewees fall into this category of 'new' LIPs, their experiences are useful for reflecting on the challenges that people may face seeking advice and support after LASPO as a result of both this increased demand and the specific circumstances of some of these 'new' LIPs.

4.3.1.1 Unbundled Advice

Existing research has already drawn attention to the increasing prominence of LIPs accessing legal advice and representation on an unbundled or fixed-fee basis, and literature suggests that the demand for advice on this basis is likely to have increased even further after LASPO (Moorhead and Sefton 2005, p.54; Trinder *et al.* 2014, p.21-2; Leader 2017, p.118-20; Wong and Cain 2019). The ability to access a solicitor outside of court has already been noted as an important asset for the task of preparing for court. Trinder *et al.* found that LIPs with access to this support had fewer difficulties in preparing paperwork, initial legal advice and an expert assessment of the merits of their case (2014, p.23). Importantly, they argue, a benefit of

accessing legal advice even on an unbundled basis is that lawyers can help provide a 'reality check' at key stages of the case, ensuring that LIPs are aware of the possible outcomes and do not confuse legal and moral notions of justice (2014, p.36).

Two interviewees reported that they had instructed solicitors on an ad-hoc basis. However, the different ways in which they made use of these services provides a useful insight into how LIPs may be using unbundled services in the future.

> if you're paying for any advice, make sure you put everything in one email to your solicitor, don't send loads of small ones because they measure their costs in time, so if you save it for one, they might just charge you for an hour rather than the time it takes for them to open five small ones.
>
> **Joan**

Joan was a single mother, working full-time, who had experienced several years of domestic abuse before her proceedings began. She described her solicitor as a 'last resort', which she would use only when she had exhausted all other methods of trying to answer certain questions through online research. In appreciating that the amount of advice she could afford was limited, Joan explained that she had learned to adapt her methods, and maximise the amount of advice she could receive for her money by saving up all of her queries over a period of weeks and then sending a single email containing all of these enquiries. John also made use of this approach, but rather than relying upon his as a last resort or employing strategies to keep costs down, he regularly instructed his solicitor before each hearing to check the accuracy of his research.

By using Bourdieusian concepts to reflect upon the intersection between class and gender, it is possible to appreciate the gendered way in which LIPs may make use of limited economic resources in order to access the benefits that can come with unbundled legal services. Feminist scholarship has emphasised that an important way in which women experience structural disadvantage is through the failure of law to recognise the gendered realities of society. Caring responsibilities, for instance, disproportionately fall to women, but this is rarely recognised within family law and policy. In addition to caring for children, five mothers who were interviewed for this research explained they were also taking care of elderly parents. According to research undertaken by Carers UK, one in eight people in the UK currently care for an adult other than their spouse. The majority of these carers are female, working-age, and experience significantly higher rates of poverty than people who do not have caring responsibilities (2015).

Another way in which the use of economic resources is gendered, is that this disparity of resources is also a particular issue within the breakdown of abusive relationships, where women leaving the family home are unlikely to have access to previously shared resources. This came across in the different ways in which Joan and John made use of the solicitors they instructed. Joan treated her solicitor as a source of resilience to sustain her progress through the court system, whereas John used his as a means of seeking to gain advantage in that context. In this sense, John was able to be more reflexive in his use of capitals – he was able to rely both on his education and his access to economic resources and use each of these selectively as appropriate. While this finding cannot be drawn conclusively, by considering the ways in which class and gender intersect, it is likely that fathers will tend to have greater access to financial resources than mothers, who disproportionately contend with other constraints on their time and finances. As such, this finding indicates that is possible that the increased use of unbundled services after LASPO may be gendered, and that mothers and fathers who are self-representing may use these services in different ways.

This is not, however, to say that John did not also experience vulnerability while preparing for his hearings. In fact, to different extents, Joan, John and three other interviewees were forced into high-interest short-term loans in order to fund the various financial costs of preparing for hearings. After LASPO, unbundled services are likely to be an even more important source of support for those LIPs who can access some economic resources but cannot afford to instruct a lawyer. However, despite falling into the category of LIPs who are able to make use of unbundled legal services, John and Joan both experienced vulnerability in ways that are not accounted for under the construction which has been used to inform and justify the removal of legal aid eligibility under LASPO. In practice, even those who can use unbundled services, therefore, may in fact be contending with various kinds of financial insecurity.

However, unbundled services are unlikely to be of use to the proportion of 'new' LIPs who are now categorically excluded from legal aid even though they would have fallen under the already restrictive means test that applied before LASPO. Joseph Rowntree, for instance, explain that the poorest sections of society are characterised not only by limited financial resources but by financial insecurity, which can arise from circumstances such as precarious employment contracts and a lack of savings – meaning that when it comes to unforeseen emergencies such as having to go to family court, there are simply no economic resources to fall back on and use for this sort of approach to seeking advice (2016, p.11). As such, there has also been a steadily

increasing demand for free or pro bono advice, and it is useful to consider the experiences that interviewees had of accessing these services in order to reflect on the resources that may be used by those who cannot afford to pay anything towards the cost of legal advice.

4.3.1.2 Free Advice

Nine interviewees explained that they had accessed free face-to-face advice to aid their preparations for court. Although it is impossible to determine whether they form part of this category of 'new' LIPs who may need to rely exclusively upon free advice, their experiences of seeking free advice are useful for appreciating the specific barriers that may exist for those who need to rely on free sources of advice after LASPO.

> 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.
>
> **Ikraa**

> So, what we did was – lucky enough, I got on quite well with the lady solicitor and there was a couple of things that I wasn't sure about and I rung her later and she did give me the advice over the phone. And then I went to CAB and they give me another free half an hour because I'd got myself in a bit of a muddle. And it was the same solicitor! She worked for the CAB so that was actually a complete coincidence and I didn't know that, but it worked out that I'd seen the same person that I knew, so we could just carry on from where we left off.
>
> **Cheryl**

Existing research has already indicated that even before LASPO, LIPs tended to struggle to access free advice, and often had to seek advice from multiple different sources. However, this always included a proportion of legal aid-funded support (Dewar *et al.* 2000, p.43; MacFarlane *et al.* 2013, p.85-7). Further, this literature has argued that the diminishing capacities of lawyers to provide pro bono services means that the fragmented network of free and pro bono advice that remains after LASPO is likely to be limited even in combination (Trinder *et al.* 2014, p.115). The concerns implicit within this literature are that LIPs may struggle to access support after LASPO due to this increased demand, but the findings of this research indicate that the barriers to accessing legal advice after LASPO are more complex than simply a lack of capacity.

For example, many law firms around England and Wales offer pro bono drop-in services, such as free advice evenings, and in many cities, CABx and PSU services have established local networks through which LIPs can be referred between these services. This local level ingenuity is an incredible achievement in the face of stark funding cuts. It is also extremely beneficial for

giving LIPs an indication as to where they may be able to go next for advice. In Trinder *et al*.'s research, for example, the majority of LIPs were described as 'reactive' in that they responded to instructions or suggestions to proceedings but were not often able to act proactively due to a lack of options or guidance (2014, p.87-8). The benefit of being caught up in a 'signposting cycle' therefore, is that LIPs have the opportunity to piece together advice from various different sources, and many LIPs living near cities may be able to access a solicitor for at least a brief conversation about their case. It should be noted, however, that a potential consequence of this is that at least four of these interviewees did not distinguish between help they had received from a solicitor and help they had received from non-legal advice services, nor appreciate that there was a difference in the kind of advice that would be provided by either. Moreover, the experiences of interviewees indicate that availability of services is only one part of the problem – rather, the accessibility of both pro bono and non-legal advice depends almost entirely upon the time and energy that LIPs are able to invest in the task of accessing these services.

For these interviewees, it was certainly possible to access advice, but they explained that doing so required a significant amount of time and energy, and that the amount of advice they received from one solicitor was rarely enough. As Ikraa explains, the onus is placed on LIPs to 'push' to access advice, and effectively jumping between different services. For several interviewees who took this approach, this meant taking time away from work and finding childcare in order to be able to try and access several different face to face services and piece together the advice they received over the course of several days and weeks. The extent of support that they were able to access therefore appeared to hinge upon the amount of time, energy and resources that they were able to invest in the task of navigating a fragmented network of advice.

Here, it is again useful to return to the theoretical framework. Through vulnerability theory, it is possible to appreciate that reduced eligibility for legal aid – including, but not limited to the restrictions introduced under LASPO – has been premised upon specific expectations of family litigants. By critiquing the 'liberal legal subject', for instance, Fineman emphasises that legal discourse fails to account for the vulnerability and disadvantage that can stem from both socio-economic inequality as well the way that the institutional context of law itself operates (2016, p.17). Rather, LIPs are expected to access advice either by paying privately, or by relying on other resources that would enable them to navigate this fragmented network of support. These

resources are, however, not distributed evenly throughout society, and thus there are a variety of different positions from which people may attempt this task of seeking ad-hoc advice.

Most basically, the concept of capital is useful for understanding that many LIPs are unable to afford to pay a lawyer for legal advice. Further, even if free advice is available, they will still require economic capital in order to access these services if they are provided through multiple different services and only at specific times. While the cost of public transport to the nearest advice centre may not seem a great deal of money on its own, this cost is likely to accumulate if several of these journeys are required. In Lee and Tkakucova's recent survey of LIPs, the authors found that 61% of LIPs could not access advice because of cost (2018). Given that several LIPs may struggle to distinguish between legal advice and non-legal advice when navigating face-to-face services, it is important to note that the ability to access free advice in any form also requires a basic level of economic resources.

Further, these economic costs must be read within the context of the financial precarity which is likely to be experienced by many LIPs who are no longer eligible for legal aid after LASPO. For example, the Joseph Rowntree Foundation have indicated that in 2016, 13 million people were living on incomes well below £178 per week – the minimum required for a single, working-age person to participate in society (p.6, 20). Additionally, recent figures released by the Trades Union Congress suggest that despite the different ways in which governments and organisations define poverty, the number of working-age parents living around the markers of poverty has increased exponentially in light of the policies that have been implemented since the 2010 general election and that this trend is set to continue (Klair 2018). The basic level of economic capital required to access several different services may, therefore, be simply out of reach for an important proportion of LIPs after LASPO.

In addition to economic capital, however, the experiences of interviewees in this research are useful for reflecting on the importance of social capital for this task. In chapter three, for example, it was outlined that several interviewees within this project were contending with unemployment or precarious working arrangements, unpaid caring responsibilities and ill health stemming from their family breakdown which impaired their ability to work. Social capital is an important resource through which people can draw upon support from others – through this, it was possible for some interviewees to obtain free childcare that permitted them to travel around their city seeking advice. Similarly, this was also extremely useful for building

relationships with advisors or other LIPs and hearing about different services which were offering free advice, as these services were not always widely advertised. Cheryl, for instance, built a sufficient rapport with the solicitor she saw through a pro bono scheme which meant that she felt able to call and ask further questions, despite this being outside of her allotted timeslot.

Additionally, Cheryl was also able to access multiple appointments in the same day from the same solicitor, which meant that she was able to access a much greater depth of advice. This indicates that success in navigating a fragmented network of free advice not only depends on the resources that people are able to invest in this task but is also wholly unpredictable. Cheryl was very fortunate in that as a result of her jumping between services, she managed to achieve a degree of continuity to the legal advice she received. This meant she was able to obtain more in-depth legal advice without having to waste time explaining her circumstances to different professionals. Ikraa, however, was living in temporary accommodation with her three children. As a result, she did not have access to the same kinds of social capital, and struggled to spend a similar amount of time accessing different sources of assistance, because she was also contending with simultaneous demands of going to work, attempting to secure permanent accommodation, and did not have anyone to look after her children while she did this. When Ikraa was able to set aside some time to seek assistance, she explained that it was frustrating for services to place limitations on the amount and type of advice she could access.

In a similar way, the time limits on free legal advice are also inevitably problematic for many LIPs who may require more time or continuity of professionals in order to achieve the same amount of help. Grace, for example, had learning difficulties which meant that she required more time when processing both written and oral information, to which end she invited me to spend the day with her instead of the usual research interview format so she could tell me about her experiences without unnecessary time pressures. As a result of this, she explained that she had made initial attempts to gain advice in her nearest city but had quickly decided not to engage with local advice services, because she would have struggled to make use of the limited time that was available. For LIPs with mental health problems or learning difficulties, therefore, this method of accessing free advice may be entirely inappropriate. As such, the construction of LIPs which underpins current legal aid policy neglects the vastly different positions from which LIPs may now be attempting to navigate this fragmented network of advice.

This finding further reiterates the concerns of existing research from before and after LASPO, which has critiqued the diminishing availability of legal advice and identified the prevalence of people arriving in court with limited or even no advice at all (Speak Up for Justice 2016, p.16; Lee and Tkakucova 2018). However, it deepens these current understandings by exposing the specific ways in which LIPs are expected to jump between different services in order to access advice, considering how some LIPs may approach this task differently, as well as identifying some specific circumstances in which LIPs are likely to particularly struggle with this task.

4.3.2 Preparing Paperwork and Bundles

In advance of each hearing, LIPs are also expected to prepare a court bundle which consists of a position statement that sets out their main arguments, as well as other documents they have been directed to provide. For FFHs and final hearings, this bundle may also include a proposed list of questions to ask the other party or any witnesses during cross-examination. Existing literature indicates that LIPs frequently struggle to collate and prepare bundles, meaning that bundles prepared by LIPs are commonly either incomplete or 'chaotic' (Trinder *et al.* 2014, p.69). As a result of these difficulties, it is not uncommon for judges to ask lawyers in semi-represented cases to take over responsibility for preparing the bundle, but even then there is evidence that LIPs do not always bring them to court (Trinder *et al.* 2014, p.62-9; McKeever *et al.* 2018, p.117-8).

Earlier in this chapter, I have already emphasised the different ways in which LIPs may struggle to understand specialist terminology, complex language, and appreciate what is expected from them when it comes to completing court forms. These barriers are also likely to affect the ability of LIPs to prepare bundles in the manner expected by the court. However, the task of preparing a court bundle is itself a distinctly legal task, and as such, Kate Leader has drawn attention to the reality that the notion of a bundle is often confusing for LIPs who are not initiated in the processes of the legal system. Leader notes that in attempting to follow instructions about what to include and what to prepare, LIPs only ever deal with the physical bundle, and are rarely privy to the significance of these documents within the wider court process (2017, p.168). The experiences of interviewees reiterate the findings of existing research, as well as offer a valuable insight into specifically how and why LIPs may under or over prepare their bundles, and how this stage of the court process is perceived.

For example, for all interviewees, both bundles and the position statements within them were of great importance during the preparatory stages of the court process, due to the ways in which they enabled communication with judges outside of the hearing.

> 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 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.
>
> **Grace**

Aside from actually speaking in court, the bundle is the main way in which LIPs were able to communicate with judges, and as a result, ten interviewees talked about how important they felt the bundles were for making a good impression and influencing their judge before the hearing. Grace, for example, felt that she and her mother had received recognition from judges in terms of their organisation, and that their success in this regard distinguished them from other LIPs.

In chapter two, I noted that the materialist focus of ANT means that it is useful for asking questions about how non-human actors can play important roles within social arrangements. Therefore, by scrutinising the detail of how court bundles are used by different actors within the court process, it is possible to gain a deeper insight into how this produces specific effects for the relationships between actors who rely on these bundles. The traditional role of the court bundle, for instance, is to convey information required by the judge for the purposes of the hearing. However, for interviewees, the task of preparing the court bundle provided the opportunity to influence and adapt this traditional role. Rather than simply a device through which to convey information, the court bundle was also a material means of presenting themselves in a good light to judges in advance of the hearing, so that when they came to directly interact with each other, this relationship would begin from a solid starting point.

A well-organised bundle, therefore, was a useful resource for Grace. While existing literature indicates that LIPs may not always appreciate the procedural significance of the court bundle, this suggests that LIPs do still appreciate the significance of the bundle for the potential impact it can have on their relationships with judges. Pleasing judges with organised bundles was identified as extremely important for almost half of interviewees, who were keenly aware of the ways in which the bundle could affect how they would be perceived once they arrived in the

courtroom. However, attempts to present themselves positively to judges using court bundles did not always go to plan for other interviewees.

> 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.
>
> **Catherine**

> One of the female judges scowled at me when I got there, saying she didn't have time to read it all and that I'd submitted too many papers.
>
> **Ama**

Nine interviewees explained that they had 'over' prepared their bundles, in terms of including far more than sufficient examples of information requested by the court. This aligns with the findings of earlier research, which has indicated that sometimes the difficulties LIPs face in preparing bundles can lead them to preparing too much information, as well as too little (Moorhead and Sefton 2005, p.153; Trinder *et al.* 2014, p.42; 64-5). Returning to the theoretical framework, this suggests that the ability to gain this recognition from judges through the device of the court bundle is contingent on the ability to be selective and concise when preparing this content. However, this precision is again dependent on the ability to be reflexive in the use of capitals such as familiarity with the conventions surrounding court bundles, and professional training in how to selectively use legal knowledge, which is rarely accessible to LIPs.

Riles' use of ANT is particularly useful for exploring the role that legal documents can play within these arrangements, because it draws attention to the ways in which a document can act as an artefact of a conversation, and effectively close down other avenues of debate which are not immortalised within the final form of the document in question (2000, p.76-80). While court forms are an example of how documents may be used to constrain LIPs to providing 'legally relevant' information, court bundles do not have the same material constraints. Rather, they provide a less rigid format in which LIPs actually have a relative degree of control over the format and content.

By understanding the significance that interviewees attributed to the court bundle as a means of impressing their judges, it is possible to understand how in the absence of access to field-specific capitals, many LIPs may, in their attempts to use the court bundle as a material resource, provide as much information as possible in an attempt to appear organised and dedicated. However, a consequence of this, as in Ama's case, is that due 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. In McKeever *et al.*'s research, the authors found evidence that judges could sometimes resent the additional burden of work that fell to them as a result of failure of LIPs to provide the court with all the necessary paperwork (2018, p.105-6). In a similar way, therefore, the experiences of Catherine and Ama suggest that over-preparation may also cause difficulties for relationships with judges. While it is unlikely that their judges considered Catherine or Ama not dedicated, if over-preparation makes the job of hearing a case more arduous, LIPs are unlikely to achieve similar aims of making a positive impression or influencing judges in the manner intended.

This indicates that the perceptions that LIPs have of their court bundle may differ from the reality of how bundles are received in court. This reinforces and deepens Leader's argument that a lack of understanding about the significance and role of the court bundle can mean that LIPs struggle to understand why their efforts are ineffective (2017, p.168). However, it also sheds light on the ways in which LIPs may attempt to use court bundles as a tool with which to overcome aspects of the process which they perceive themselves to be disadvantaged for.

For example, the position statement is the central focus of the court bundle, and all interviewees invested a great deal of effort into preparing their position statements for each hearing. In contrast to court applications and other documents requested in the court bundle, this was a document over which interviewees had total control and could use as a means of directly communicating with judges in writing.

> 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 it presented 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.
>
> **Ama**

> Well you're in a nerve-wracking situation in court, and you've got allegations flying at you left right and centre, whereas you've just got more time to be calm and answer questions and get everything you want to say on the paper.
>
> **Sarah**

From Ama and Sarah's perspectives, the statement was an opportunity to convey their arguments in a context that was less emotionally charged, and in which they had some control over how they expressed themselves. This indicates just one way in which interviewees struggled to communicate effectively within the courtroom itself, but also suggests that they

attempted to use the statement as a tool to mitigate the disadvantage they experienced in relation to the requirements of advocacy.

Thinking about this through Bourdieu's habitus, it is possible to understand that when individuals engage with unfamiliar fields like the legal system, they continually assess their own possibilities and opportunities within those contexts. This means that they subjectively recognise the way in which they are recognised by others, as well as how they may be able to respond to the requirements of the field in which they find themselves. Here, Ama and Sarah were pre-empting the vulnerability they anticipated that they were going to experience once they faced their ex-partners in the courtroom. They recognised that given the emotional nature of the issues at hand, they were unlikely to be able to draw upon capitals like eloquence and vocal authority in that environment. As such, they both exercised their abilities to make use of the capitals they had access to whilst outside this environment – high levels of literacy and written communication, as well as the time, distance and flexibility which enabled them to compartmentalise these emotions on paper. In addition to the ways that LIPs may try to use court bundles as a means of influencing judicial perceptions of them in advance of the hearings, some LIPs may also attempt to use the position statement to maximise the benefit of the skills they perceive themselves to have, and mitigate the effect of anticipated disadvantage.

Of course, the opportunity to use position statements in this way is unlikely to be an option for all LIPs. As discussed in relation to the barriers that some interviewees faced in understanding the language of court applications, many LIPs coming to court are likely to come from backgrounds characterised by low levels of literacy, and in which English as a second language is also disproportionately represented. The opportunity to predict and mitigate future experiences of disadvantage may therefore be out of reach for many LIPs, such as those with learning difficulties, who experience additional difficulties using written forms of communication. Therefore, while the court bundle and the position statement may provide an opportunity for some LIPs, others may be limited entirely to their ability to advocate for themselves during hearings.

4.4 Alternative Sources of Advice and Support

So far, this chapter has explored the ways in which interviewees experienced the various stages of preparing for court and reflected upon the extent to which they were able to access advice and support that would assist them with these tasks. However, given the difficulties and barriers

that several interviewees faced during these stages, it was also apparent that they frequently relied upon alternative sources of support. Specifically, interviewees frequently used the Internet and social media, as well as McKenzie Friends in order to access advice and information that would assist them with the task of preparing for court.

4.4.1 The Internet and Social Media

As stated in chapter three, face-to-face services tended to be located within and around large cities. As a result, while some interviewees were often overwhelmed by the task of having to 'jump' between several different services, others who lived in small towns or rural areas had completely opposing experiences and were faced with a distinct lack of available services in the areas that they were able to travel to. Significant attention has been drawn to the increasing prominence of legal aid 'advice deserts', which refer to geographic areas where there are little to no solicitors undertaking legal aid work as a result of the gradual erosion of legal aid (National Audit Office 2014; The Law Society 2017; Wong and Cain 2019, p.11-2). Additionally, the Bach Commission have criticised the current government's 'inadequate investment in advice' and statistics released just after LASPO indicate that the amount of not-for-profit legal advice centres in England and Wales has almost halved since 2005 (Ames *et al*. 2015; Bach Commission 2016, p.11-2). For people living within rural areas, or who are otherwise unable to spend the resources required to actively seek face-to-face support, options are therefore extremely limited. Additionally, research has already indicated that regardless of availability, some LIPs may not seek any help due to either not appreciating that they should, or not knowing where to begin (Trinder *et al.* 2014, p.88-9).

In this project, nine interviewees did not access any face-to-face advice at all. Of these, four interviewees relied upon self-help resources they found on the Internet, such as the series of government-funded self-help guides (AdviceNow 2018a).

> Basically, the Internet, you can put in 'Children's Act' or 'Social Work Code of Conduct' – the internet has been a godsend because literally anything you want is instant…but you keep getting Canadian or American law when you google so you have to know what the law looks like.
>
> **Edie**

The Internet was frequently cited as the most helpful resource during the court process. In particular, the Internet was extremely useful for mothers with limited access to time, and who explained that the only time they were able to do research was late into the evenings after their

children had gone to bed. In one sense, therefore, the provision of online assistance may go some way to providing a safety net to those who are excluded from face-to-face help by their geographic location or inability to draw on the economic and social capital required to navigate a fragmented network of advice.

However, there are also concerns with the effectiveness of using the Internet as a sole source of information. Trinder *et al.*, for instance, demonstrate that LIPs may struggle to gauge the accuracy of different websites, and that people may draw upon information which is either out-of-date or relates to different jurisdictions (2014, p.90). As evidenced above, the latter was also raised by Edie during her interview. However, in doing so, Edie explained that she felt reasonably confident that she could distinguish between accurate and inaccurate sources. During her research, she drew upon the knowledge and experience she had to date – for instance, she had completed a social work qualification, and so knew that her arguments should be rooted in the best interests of her children. As such, she drew heavily upon resources like the Social Work Code of Conduct as official sources to build an evidence base to suggest that her children should live with her.

This raises an important point about how LIPs do research online. As Trinder *et al.* have already noted, when LIPs do research, the emotional reality of their situations can often – understandably – cloud their judgement. As a result, the researchers in this study explained that LIPs can sometimes end up searching only for legal information which supports their point of view, and neglect information which presents an opposing view (2014, p.37). Although it cannot be determined for certain whether this was the case for Edie, her experience does suggest the possibility that LIPs who cannot access face-to-face advice and are limited to doing Internet-based research, may easily fall into the trap of selectively researching.

Additionally, given the increased numbers of LIPs who are likely to lack the vital resources that would enable them to navigate the fragmented network of advice described above, this may be a particularly important concern for the effectiveness of Internet-based research after LASPO. Recently, Lee and Tkakucova found that 20% of LIPs were satisfied with the information that they found through the Internet, but due to the survey-based nature of their research, it is not possible to determine the sources that LIPs used, nor the extent to which it may have informed them of their options or simply further entrenched their position (2018). As Buck *et al.* argue,

the usefulness of such resources can realistically only be measured by the 'circumstances and abilities' of those attempting to engage with them (2009, pp. 26-7).

The risk that Internet-based resources can spread misinformation is a particular concern when it comes to LIPs accessing unofficial websites and social media, which are frequently easier for people to use than official websites (Trinder *et al.* 2014, p.37; Leader 2017, p.208-10). In this project, for example, most interviewees (20) used social media as a means of obtaining information and advice about their case. Even more crucially, five interviewees used Facebook as their sole resource for information and advice.

Existing research has already emphasised the growing role that social media is playing as a resource for information and support, especially after LASPO (Leader 2017, p.210; Tkakucova 2019). However, the interviewees in this project provided a useful insight into how and why people use online forums. For some interviewees, the choice to use social media was due to necessity - for example, none of those interviewees who declared that they had learning difficulties made use of self-help resources, and instead were restricted to the support they could obtain through social media. For others, social media provided an important source of community through which they could access continuous support from people who they felt understood their circumstances.

> Well 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**

As discussed above, Cheryl was able to access advice from multiple face-to-face services in her local area, yet she still felt more supported by the 'secret mummies group'. As discussed earlier in this chapter, many services limit their assistance to short periods of time, and so interviewees using these services often saw many different professionals in their attempts to gain as much support as possible. The benefit of social media for these interviewees was that in contrast to the sporadic experiences that they had of accessing other resources, the support they were able to obtain from other LIPs was often continuous and individualised. For example, the 'mummies' in this group were present with Cheryl – albeit virtually – throughout her experience of the court

process and provided ongoing advice which extended beyond information and into personal realms of support.

As a result, many of these interviewees emphasised that they would have been unable to get through their court hearings without these online communities. An increased use of these resources may therefore be incredibly positive considering the limitations of other resources – for instance, by demystifying the administrative barriers of court forms, or providing each other with examples of position statements. However, given the difficulties that many interviewees had in identifying legally relevant information and successfully navigating the court bundle, a concern is that this reliance on the experiences of other LIPs may also perpetuate misunderstandings about the court process, and exacerbate the vulnerability that LIPs already experience because the family court process is not designed according to their knowledge, understandings and perspectives. Additionally, the kind of support that Cheryl emphasised as being most valuable to her, was the emotional and practical support she received from other mothers further on in the process. This indicates that LIPs may *choose* to rely on social media not only because it is easier to access, but rather because it is preferable, and provides forms of support that are not available from official sources of help.

As discussed in chapter three, Facebook was a particularly popular resource due to the Facebook group facility. According to marketing statistics, Facebook is the most widely used social media platform in the UK, particularly by women aged 25-34 (Statistica 2018). This corresponds to the general age range of the young parents most involved in child disputes and those who participated in this research, but there is also a distinctly classed and gendered element to the use of social media. Beverley Skeggs has written widely on the way in which working class women in particular seek value within society by attempting to distinguish themselves from what they are not – demeaning stereotypes of the working-class such as lazy, tacky, or unintelligent (1997, p.74-97). Throughout this research, interviewees explicitly made representations which distanced themselves from these labels, either through explaining the great efforts they went to in preparing bundles, how they dressed for court, and the level of education they had or had access to. This process of distinction is, Skeggs argues, a key element of how class operates to delineate and distinguish between individuals when they compete for value or recognition in a given context like the family justice system (1997, p.3-4).

Social media, and Facebook in particular, is a prime way for people to distinguish themselves from working-class stereotypes by asserting themselves to have certain middle-class markers, such as having nice clothes, going out for nice dinners, or going on holiday. In her more recent research, Skeggs argues that this classed use of Facebook is capitalised upon by companies pursuing 'big data', in that these individuals are far more heavily targeted by advertisers, due to being far more likely to consume their products which contain these markers of luxury or high-taste (2014). It is possible, therefore, that the turn to Facebook as a source of non-legal support for LIPs is bound up in the reality that the platform is widely used by those who already feel positioned by the judgement of others, and who seek to distinguish themselves from popular representations of the working-class. The support obtained from these groups can therefore also be understood as a sense of community. While the Mummies provided Cheryl with a continuous source of information and emotional support, they also integrated her into a community of mothers contending with the same social, cultural and practical demands of being a young, working-class mother going through the family justice system.

This sense of community was extremely important for survivors of abuse, who were often socially isolated and among those least able to access face-to-face resources. These interviewees, however, had starkly different experiences based on whether they made use of private or public Facebook groups. While private groups had the potential to facilitate safe spaces for survivors, a particular concern that arise during interviews was the specific danger encountered by survivors while they sought assistance from others within larger, public support groups on Facebook.

> It's a space where women can feel safe, where they know they are always going to be believed. That's why I was so cautious about letting you into the group, because we all trust each other.
>
> **Erica**

> It's just control beyond belief, he's been monitoring my Facebook and the groups I use. He's looking not just at my posts but to see if I've commented on things as well. I know he is because there's no mutual friends, there's no reason for him to join these groups as he's represented and the resident parent, so it's just intrusive and harassing.
>
> **Edie**

Within public groups, Edie and three other interviewees explained that perpetrators were able to continue methods of intimidation. Women's Aid have already established the prevalence with which perpetrators are now able to use online tools such as social media in order to perpetuate ongoing abuse or stalk ex-partners even after those relationships have ended (2014). However,

the growing use of online communities potentially provides new opportunities for perpetrators to do this – through monitoring Edie's use of these groups, her ex-partner was able to gain information about the arguments she was compiling for upcoming hearings, as well as gain insight into her general activity and routine offline. As part of this, she explained that he would occasionally send her threats or intimidating messages to suggest that he could use her online activity against her when they got to their court hearings. In terms of her ability to self-represent, this contributed to existing feelings of isolation and apprehension for upcoming hearings and reiterated the already inherent power imbalances she felt within their relationship.

In contrast, the group for survivors administered by Erica was private, in that mothers had to request to become members. Both this group and the secret Mummies group used by Cheryl were created and used with a definitively private intention – secure spaces free from perpetrators, in which survivors can speak freely about their experiences and the essential emotional context to their case. In addition to preventing perpetrators access to the private online groups, the sanctity of these spaces was also strongly maintained in response to other professionals and individuals who were involved with the family justice system. The privacy of these online groups was particularly important for two reasons. Firstly, six interviewees explained that perpetrators had been able to use applications to draw them back into contact through the court process and felt that this was not effectively acknowledged by lawyers or those working within the family justice system. As discussed in chapter one, this is an enduring problem faced by survivors, and despite improvements to PD12J, has historically been insufficiently acknowledged within the family court process (De Simone and Hunter 2009, p.268; Rights of Women 2012, p.10; Douglas 2018; Birchall and Choudhry 2018, p.42). Secondly, and relatedly, survivors have also experienced continual difficulties establishing the relevance and significance of their experiences of abuse in their interactions with family law professionals, especially when this is constructed as oppositional to facilitating contact between their children and their fathers (Hunter and Barnett 2013; Barnett 2015; Birchall and Choudhry 2018, p.30-2). Reiterating this, all 12 survivors who were interviewed for this research described conversations with either solicitors or CAFCASS where they felt that their allegations were not taken seriously.

In addition to the ways in which use of social media may relate to the broader structure of class, therefore, the use of social media may also be a conscious response to the vulnerability they experience within the court process itself. In the American context, Tyler explains that the reasons that people follow the law are not simply because they fear the consequences, but also

because they are invested in the legitimacy and justness of the authority of law. In other words, negative experiences of the legal system can undermine the trust that people have within that system (1990, p.20-39). Drawing this idea through to this finding, it is possible to appreciate that survivors in particular who have negative experiences with family justice professionals may turn to social media as an alternative source of support and advice.

Additionally, although these findings alone cannot indicate the extent to which social media is used and abused in this way, these findings expand upon existing research by reiterating that the Internet and social media may be an increasingly important environment in which LIPs seek advice and support, and reflecting upon the challenges that LIPs may face in sourcing accurate and up-to-date information online. They also expand these understandings by indicating that the use of social media may hold both essential benefits as well as concerning dangers, specifically for survivors of abuse. On one hand, social media may function as a refuge from perpetrators as well as professionals working within the justice system who have failed to respond appropriately to allegations and experiences of abuse. On the other, it may also function as a further space in which survivors are subject to continued methods of intimidation and control, which exacerbate the disadvantage they experience within the family court process and give rise to experiences of vulnerability which have not been anticipated within current policy.

4.4.2 McKenzie Friends

In chapter one, I explained that McKenzie Friends have always been an important resource for LIPs because they provide essential support by assisting with paperwork and providing emotional and practical support in the courtroom. McKenzie Friends have traditionally been friends, family or support workers, but as legal assistance became more limited in the decades leading up to LASPO, research has demonstrated that there has also been a gradual increase in 'professional' or 'fee-charging' McKenzie Friends, who may offer a variety of services beyond the traditional role of providing practical and emotional support in the courtroom (Moorhead and Sefton 2005, p.57; Legal Services Consumer Panel 2014, p.9; Trinder *et al.* 2014, p.96; Smith *et al.* 2017, p.5).

Additionally, the role of McKenzie Friends has become increasingly more contentious after LASPO, because there is a suggestion that even greater numbers of LIPs will rely on McKenzie Friends for assistance in light of even more limited options for accessing advice and support,

especially within child arrangements cases (Legal Services Consumer Panel 2014, p.8; Barry 2019, p.70). As discussed in chapter one, this complex debate hinges upon two powerful but opposing arguments. On one hand, the diminishing availability of legal aid and free advice means that the support that is provided by both free and professional McKenzie Friends may be vital for going at least some way to plugging some of the burgeoning gaps in advice and assistance, especially after LASPO (Legal Services Consumer Panel 2014, p.13-4; Barry 2019, p.79). However, on the other hand, the services provided by McKenzie Friends are unregulated and of variable and unpredictable quality (Legal Services Consumer Panel 2014, p.21).[39] Further, although they are likely to form only a small minority of McKenzie Friends, research has suggested that there are some McKenzie friends who may even attempt to pursue their own agendas or perpetuate damaging attitudes towards the family court through the cases of others, and it is inappropriate to expect LIPs to be able distinguish between the form and quality of the services that McKenzie Friends may provide (Legal Services Consumer Panel 2014, p.19; Smith *et al.* 2017, p.20-1; Barry 2019, p.78).

In this research, seven interviewees reported that they had relied upon McKenzie Friends during their time in the court process – three were strangers who charged fees for their services, three were support workers and one was a family member. Their experiences of using McKenzie Friends are useful for deepening current understandings of how LIPs may rely upon McKenzie Friends after LASPO, and importantly, how useful their support is for people in different circumstances. For instance, all seven of these interviewees explained that they had found a McKenzie Friend useful because of the barriers they faced otherwise in completing certain tasks on their own. Two were contending with mental health problems, one had learning difficulties, and four were survivors of domestic abuse.

As discussed earlier, Grace was an interviewee who was contending with learning difficulties which meant that she needed extra time to process information, and which fundamentally prevented her from being able to make effective use of face-to-face advice services which are premised upon accessing help from multiple sources via short appointments. Instead, she was assisted throughout the process by her mother, who held an undergraduate degree. Within the court process, Grace's mother was treated as a McKenzie Friend, meaning that she would be present in hearings to provide Grace with essential support. However, her mother also assisted with all other preparations for court, and for all intents and purposes, the two women went

[39] Cf. Smith *et al.* 2017, p.18.

through the court process together. Similarly, two other interviewees – Aly and Gary, had mental health problems which meant that they relied upon support workers to assist them with application forms and paperwork, in addition to attending hearings with them. While this sort of free assistance has traditionally been provided by McKenzie Friends, each of these interviewees specified that these circumstances meant that they struggled with preparatory stages, and that having McKenzie Friends was an important way of circumventing these difficulties.

This suggests that there is an important structural dimension to the ways that people may be motivated to seek help from McKenzie Friends, as opposed to navigating the fragmented network of advice and self-help resources described above. Existing research has already indicated the extent to which those living in poverty or with limited economic means also disproportionately contend with mental health problems, disabilities and learning difficulties (Curl and Kearns 2015, p.236). In addition to limited access to economic resources, the strain of living on low wages and precarious employment is a major contributor to psychological stress and generally chaotic lifestyles (Pleasance *et al*. 2006, p.49). Given the way in which the majority of people have been excluded from legal aid eligibility, these characteristics are likely to be even more prevalent among LIPs after LASPO. As discussed in chapter one, one implication of LASPO is that LIPs are likely to include even greater numbers of those on extremely low incomes, and those with mental health problems and learning difficulties (Trinder *et al.* 2014, p.102-5; Lee and Tkakucova 2018; Leader 2017, p.120). Further, the experience of self-representation itself can often exacerbate or trigger mental health issues, particularly given the costs and stress involved in going through the court process (Pleasance and Balmer 2009; Citizens Advice 2016, p.16). Taken together, this is likely to mean that people in these or similar circumstances are likely to face even greater difficulties when it comes to completing court forms, accessing advice, and preparing paperwork. For these individuals, McKenzie Friends are an essential resource of support, because their assistance is bespoke and often continuous during their time in the process.

The newly diverse range of circumstances in which people are now self-representing may therefore mean that there is an increased demand for McKenzie Friends, particularly from people with mental health problems and learning difficulties who may face specific difficulties during the preparatory stages of the court process. This reflects the findings of Smith *et al.* who found that a minority of professional McKenzie Friends pitch their services at precisely these

clients – those on low incomes, with mental health problems and several other intersecting problems (2017, p.35). However, this in turn emphasises existing concerns about the potential consequences when individuals with mental health problems or learning difficulties instruct McKenzie Friends who provide agenda-driven or poor-quality support. As Kerry Ann Barry has indicated, inadequate support can have a detrimental impact on the mental health of clients (2019, p.79). Therefore, it is possible that people with these characteristics are not only more likely to instruct McKenzie Friends, but are also more likely to be vulnerable to the potential dangers that come with the variable and unregulated services that McKenzie Friends may provide. There is therefore a need for further research which specifically examines the extent to which people with these characteristics can obtain useful support from McKenzie Friends during the preparatory stages of court.

In addition to the ways that people with mental health problems and learning difficulties may be motivated to rely on McKenzie Friends, the experiences of interviewees also suggested that there may be a gendered dimension to the use of McKenzie Friends.

> He helped me to submit all my paperwork, made loads of phone calls, made sure I had all the evidence I needed. He even spoke to the social worker for me when I couldn't stand her anymore.
>
> **Fiona**

> Take me with you. Honestly, just take me – you'll be scared if it's your first go, but I'm not scared anymore. I've helped a couple of women at my group since then, and they just need someone to sit them down and tell them when to speak up and when to shut up.
>
> **Sal**

Here, Fiona describes the help she received from the McKenzie Friend that she came across within a public Facebook group. Before her hearings, he would support her in terms of completing paperwork, negotiating the conversations she was expected to have with family law professionals, and even contacting public offices in order to obtain documents required for the court bundle. For Fiona, her McKenzie Friend was a vital source of guidance, which was especially valuable because he provided her with continuous support which encompassed all of the tasks she was required to do before court, and involved him taking over control of when and how these tasks needed to be completed. Most importantly, this meant she was able to avoid communicating directly with family law professionals and her self-representing perpetrator in advance of court hearings.

Fiona's experience reiterates the argument that, particularly after LASPO, some McKenzie Friends may stray into the realm of charging fees in exchange for more non-traditional services, such as those relating to advice-giving and acting as quasi-representatives during hearings (Legal Services Consumer Panel 2014, p.26; Caplen 2016; Hunter 2017b). It shows that McKenzie Friends may overstep the traditional boundaries of the McKenzie Friend model by providing services relating to all preparatory stages of the court process from application to negotiating with family law professionals outside of the courtroom. However, it also suggests that the use of professional McKenzie Friends may relate to broader experiences of inequality which relate to gender. Existing research has already highlighted the gendered ways in which fathers may provide assistance to other fathers through the capacity of McKenzie Friends, and how this often involved perpetuating negative attitudes towards mothers and the family court, to the detriment of the father involved in the case (Legal Services and Consumer Panel 2014, p.19; Barry 2019, p.77). However, the experiences of interviewees suggest that there is also an important gender dimension to the ways that mothers may rely on McKenzie Friends. Specifically, survivors of abuse may perceive McKenzie Friends as not only beneficial, but important for mitigating the difficulties that they may have engaging with perpetrators and family law professionals throughout the court process.

As discussed so far in this chapter, there are several different stages before court at which LIPs in various circumstances may be excluded, disadvantaged or experience vulnerability as a result of the expectations that are placed on LIPs. Survivors of abuse face particular barriers, as a result of the fact that they frequently have limited access to economic and social capital after they leave abusive relationships and are disproportionately likely to be contending with other legal problems at the same time. They may also be at risk of further intimidation and control from perpetrators throughout the process, even during their attempts to seek advice and support where perpetrators may be able to monitor their activity online. The Legal Services and Consumer Panel have already indicated that LIPs may choose McKenzie Friends over lawyers in some circumstances because they are perceived to provide greater emotional support (2014, p.19). This insight extends this, to suggest that in practice, McKenzie Friends who take control of contacting other parties and managing the preparatory stages of court hearings may be extremely important for survivors of abuse, even to the extent that they may actively seek these sources of support over the face-to-face advice described earlier in this chapter.

Additionally, although a significant proportion of the literature concerning McKenzie Friends focuses on the potential implications of those who are fee-charging or presenting themselves as

professionals, this also provides an insight into how some mothers who have been through the process themselves may be motivated to help others by acting as a McKenzie Friend for free. For instance, the benefit of this continuous and proactive support from McKenzie Friends, and the specific difficulties that survivors experienced within the court process, were also significant motivations for these interviewees to help other LIPs after their own proceedings had concluded. As part of every interview, I concluded by asking interviewees what, if any, advice they would give to other people self-representing. Through this question, it became apparent that four female interviewees went on to act as McKenzie Friends for other mothers going through the court process. Existing literature has already indicated that a significant proportion of people go on to offer assistance as professional McKenzie Friends following their own negative experiences of the court process, and are genuinely motivated by a desire to help others, even if they do end up providing detrimental or inadequate support (Legal Services Consumer Panel 2014, p.11-2; Smith *et al.* 2017, p.19). The motivation for interviewees going on to offer help to other survivors for free, however, appeared to hinge on specifically gendered experiences of the court process. For instance, Sal was also a survivor of domestic abuse, and she felt strongly that it was important to help other women to deal with the issues that she faced navigating the family justice system.

Thinking about this through the theoretical framework, it is possible to appreciate that the desire to instruct a McKenzie Friend or even offer help to other LIPs in this capacity, may specifically relate to the gender-based disadvantage that mothers experience during the court process. For instance, as Sal describes, being a survivor of abuse within the family justice system requires a nuanced understanding of when to 'shut up' and when to 'speak up'. In practice, this requires a degree of cultural familiarity, including an appreciation for the ways in which mothers and child contact are constructed within family proceedings, and how abuse is perceived and recognised by others within that process. The interviewees who went on to help other mothers did not charge for their services, but rather would offer to help particular individuals whom they had connected with, either in person at support groups or online through social media. The motivations for helping other LIPs through the process centred around a desire to emotionally prepare others for the reality that the court process operates differently for survivors of abuse, and that survivors are likely to face additional barriers within this environment.

However, the fact that several interviewees went on to provide this support to others for free is indicative of two things. Firstly, it demonstrates the perceived usefulness of this support for

especially those who may encounter additional disadvantage or vulnerability before court as a result of facing perpetrators. Secondly, it suggests that altruistic motivations to help others through the court process are not limited to professional McKenzie Friends – rather, there is also a need for further research into how this motivation may be leading LIPs to go on to offer a variety of services for free, and to reflect upon the quality and adequacy of this support. For example, in an ongoing project examining the quality of advice that LIPs receive through social media, Tkakucova argues that McKenzie Friends are increasingly offering advice through forums and Facebook groups, and emphasised that this is frequently incomplete, biased or incorrect (Tkakucova 2019). The altruistic motivations for helping others through the court process, therefore, may mean that inaccurate advice or detrimental support may be accessed and provided in several different ways beyond professional services, especially after LASPO.

In considering the ways that survivors may help each other through the mechanism of McKenzie Friends in order to negotiate the cultural barriers which they experience as both survivors and mothers within the court process, it is also possible to see how survivors may face particular risks if they seek help with this from inappropriate sources. For instance, two of the interviewees who were self-representing against perpetrators paid for professional McKenzie Friends, and their experiences were indicative of the specific ways in which survivors in particular may feel pressured into instructing professional McKenzie Friends in order to gain protection during their time in the process.

> My McKenzie was late and then walked me to the cashpoint. I was scared that if I didn't give him the extra cash, he wouldn't come with me to the hearing, but I needed him there.
>
> **Beth**

The appeal of having someone to negotiate with other parties on their behalf and to shield them from their perpetrator during the process may mean that survivors are at greater risk of exploitation, especially if they are contending with limited options after LASPO. Beth, for example, was a survivor who was also contending with simultaneous difficulties of gaining access to economic resources, because these were largely still controlled by her ex-partner. With her limited finances, she instructed a McKenzie Friend who agreed to help her for a set fee. However, she explained that he would ask for additional money at crucial points, such as immediately before hearings, with the threat of withdrawing his support if she did not pay more than the original agreement.

Existing research indicates that the people who offer services as McKenzie Friends can encompass a broad range of individuals with varying levels of expertise and motivations for helping LIPs with their cases. For example, examples range from ex-legal aid lawyers or other family law professionals, to NFP support workers, to entirely unqualified individuals who may be offering services as a means of furthering their own agenda against the family court through the hearings of others (Legal Services Consumer Panel 2014, p.19; Trinder *et al.* 2014, p.96-8; Smith *et al.* 2017, p.21; McKeever *et al.* 2018, p.93). Further, while some fee-charging McKenzie Friends only ask for reasonable costs such as travel, others may charge unpredictable and unregulated amounts of money to support LIPs (Legal Services Consumer Panel 2014, p.13-4; Smith *et al.* 2017, p.25-6; Barry 2019, p.79). Despite the increased level of need for advice and support after LASPO, there are still important apprehensions about the appropriateness of individuals charging potentially vulnerable LIPs for a range of services which may be of variable and unknown quality. If anything, the fact that LIPs are likely to have more limited options after LASPO exacerbates these concerns, because as highlighted throughout this chapter, many people may have nowhere else to turn for help with specific aspects of the court process.

The consensus of existing literature is that these 'rogue'[40] McKenzie Friends constitute only a minority of those who advertise their services (Legal Services Consumer Panel 2014, p.21; Smith *et al.* 2017, p.22). However, the suggestion that McKenzie Friends may be specifically sought out by survivors of abuse could mean that they may be at particular risk of encountering these professionals. Additionally, for these LIPs, it may be more complicated than simply being able to distinguish between the quality of the services provided by McKenzie Friends. Beth was aware that her McKenzie Friend was exploiting her financially, but her need to avoid facing her perpetrator alone was so significant that she felt she had no choice but to comply with his demands for extra money. Where survivors are reliant upon McKenzie Friends for their safety and wellbeing during the court process, therefore, they experience a distinctly gendered form of vulnerability which cannot be allayed through ad-hoc face-to-face support or self-help resources. McKenzie Friends may be an important resource for mitigating this barrier, but they may also exacerbate these difficulties if the support they provide is not adequate or if they form part of the minority of professionals who may take advantage of LIPs in these circumstances.

[40] This term has been used to describe professionals who 'unscrupulously exploit clients for personal gain, or otherwise engage in wholly inappropriate conduct' (Smith *et al.* 2017, p.21)

An increasing reliance on McKenzie Friends may therefore be incredibly positive given the limitations of other resources, especially for those who cannot afford to pay for any amount of legal advice or access face-to-face services, those who may specifically struggle with aspects of preparatory work like court forms and bundles, and those who are contending with facing perpetrators within the court process. However, it is also important to appreciate that people in these circumstances may in turn be disproportionately at risk of accessing inappropriate or inaccurate support, if they are motivated to actively seek and provide support and advice from McKenzie Friends over other sources. This is likely to be even more complex after LASPO, with not only a diverse range of professional and free McKenzie Friends offering support to LIPs, but also a newly diverse range of LIPs with low incomes and higher proportions of mental health problems, learning difficulties and domestic abuse. As such, this indicates an important need for further research which focuses on the kinds of support that McKenzie Friends are providing, as well as how this is used and perceived by LIPs in different circumstances.

4.5 Conclusion

This chapter has considered various ways in which interviewees experienced the preparatory stages of the court process and reflected upon the barriers that may exist for LIPs who are expected to undertake these tasks in the post-LASPO context. For instance, it has highlighted the ways in which people with learning difficulties, mental health problems or those facing perpetrators in the court process may face specific difficulties in relation to court forms, accessing advice, and preparing court bundles. It has also explored the ways that LIPs may respond to the barriers they experience within these stages, for instance, by demonstrating how some LIPs may piece together advice from multiple sources, and how others may turn to the Internet, social media, or McKenzie Friends for support. By analysing these findings through the lens of the theoretical framework, it has also drawn connections between the disadvantage that interviewees experienced, and the broader structural inequalities that are likely to hold important implications for LIPs engaging in this stage of the court process. Importantly, it has provided an insight into the motivations and perceptions that interviewees had of these preparatory stages, and reflected on how these reiterate, deepen and expand upon existing understandings about how LIPs prepare for court. This thesis will now continue to consider the experiences that interviewees had of attending court and participating in their court hearings.

5. At Court

5.1 Introduction

The purpose of this chapter is to draw on the experiences that interviewees had when they attended court and participated in their hearings. In terms of structure, the chapter begins by outlining the specific difficulties that survivors of abuse had coming face-to-face with perpetrators in the waiting area and making use of side rooms whilst waiting for their hearings. It will then explore the ways in which LIPs experienced inconsistency in the location of their hearings, and the disproportionate impact of this for interviewees with learning difficulties. Here, it will consider the different experiences that LIPs had attending hearings held in traditional courtrooms as opposed to judges' chambers and court meeting rooms, including the specific implications of these environments for LIPs contending with various circumstances, and those facing perpetrators. The chapter then considers how interviewees experienced the organisation of these hearings, in terms of the ways in which LIPs were able to access and contribute to conversations involving 'legal' language and forms of specialist knowledge. Building on this, it then explores the experiences that LIPs had of undertaking the task of advocacy during their hearings, including the ways in which this was disproportionately problematic for individuals with communicative difficulties and mental health problems. Further, it explores how this manner of speaking led several interviewees to experience court hearings as a confrontational and adversarial environment, at odds with the traditionally conciliatory ethos of family law. Lastly, this chapter will focus on the issue of cross-examination. In doing so, it will draw together the difficulties that interviewees had in both undertaking the questioning of witnesses and being cross-examined. In doing so, it emphasises the specific and different ways in which the requirements of cross-examination are inappropriate and unsuitable for those with mental health problems and learning difficulties, as well as survivors who may be expected to engage in this process.

5.2 Before Hearings

Until the point of arriving at court, communication between parties is usually restricted to the written format of court forms and bundles. As a result of this, interviewees explained that the process of waiting for their hearing created some specific problems for survivors who were self-representing against abusive ex-partners. This section explores the ways in which the waiting area is experienced by those coming face-to-face with perpetrators, and the extent to which the

justice system facilitates their protection through the use of adjustments like side rooms. In doing so, this section discusses a specific experience of gender-based disadvantage that may be experienced by LIPs who have experienced domestic abuse, whilst reiterating and deepening existing arguments that these experiences have been omitted from current debates about the future of the family justice system.

5.2.1 The Waiting Area

Seven interviewees experienced intimidation and isolation within the waiting area as a result of having to share this space with their perpetrators. Four interviewees explained that they attempted to ameliorate this by bringing McKenzie Friends, who would sit with them in the waiting area until it was time to go into their hearings.

> I'd still have to go there and be in the same space as him and have him look at me, and glance at me, and stare at me, and it was just horrible. [My support worker] would sit between me and him, and to be honest she made sure I went in…if I didn't have her, I would've sprung off like an elastic band.
>
> **Joan**

> When he was in the waiting area with me, he knew I felt really uncomfortable. I had my back to him, he came and sat down on the chairs behind me, and I could just sense his presence. When I took my friend with me it was easier, because she shoved me down into the corner and sat next to me like a wall.
>
> **Fiona**

Many interviewees referred to particular triggers that perpetrators could employ which would set off feelings of fear and intimidation while together in this space. This ranged from things like perpetrators winking or even pointing their shoes towards them. For example, Joan explains here that having her ex-husband glance and stare at her was enough to intimidate her to the point of wanting to leave the courthouse altogether. As Richard Moorhead explains, family breakdown is best understood as a 'process, rather than an event', and as such it is reductive to presume that the problems between parties do not continue into the court context (2004, p. 5). Therefore, tensions or fraught relationships often cause problems in the waiting area for LIPs, particularly because this means parties are unlikely to be able or willing to negotiate before hearings without appropriate support (Trinder *et al.* 2014, p.47-48; McKeever *et al.* 2018, p.119-20).[41] However, the experiences of these seven interviewees indicates that the stage of waiting

[41] Studies have found, for example, that McKenzie Friends or lawyers may be able to facilitate negotiations in the waiting area (Trinder *et al.* 2014, p.49-50). However, it should be noted that there is extensive evidence to suggest that the presence of legal representation can also

for hearings also gives rise to specifically gendered experiences of vulnerability. For example, the specific nature of these problems for abusive relationships are most notably discussed by Evan Stark. Stark argues that these varied and subtle strategies of domination and control form the fabric of abusive relationships, and together constitute 'the lived infrastructure of partner abuse' (Stark, 2009a, p.1513; Stark 2009b). The personal forms of intimidation that survivors experience as a result of these interactions are therefore particular to the relationship and history of the partners concerned.

As discussed in chapter one, there is an extensive amount of literature that demonstrates the ways that law and the legal system have historically and continually minimised the relevance of domestic abuse to proceedings in the family court, and interpreted domestic abuse in ways that are often limited to physical incidents, in contrast to more progressive understandings about the implications of long-term abuse for survivors engaging in those proceedings (Hunter 2011; Hunter and Barnett 2013; Barnett 2014; 2015; Hunter *et al.* 2018). Despite the progress that has been made elsewhere in terms of strategies for responding to domestic abuse[42], there has been limited success through attempts to improve awareness of the relevance of domestic abuse to child arrangements and appropriate responses to abuse within the court process.

One part of this has been a difficulty in ensuring the safety and wellbeing of survivors while they are waiting for their hearings at court. For example, in the 2014 revision to PD12J, specific instructions were posed to ensure that courts 'secure the safety' of survivors while they are attending hearings, and that appropriate arrangements are made for their hearings. Nevertheless, evidence following this revision demonstrated that women were commonly being followed, stalked and harassed by perpetrators when they attended court (All Party Parliamentary Group on Domestic Violence 2016, p.16). Additionally, a Women's Aid survey found that 55% of their respondents did not have access to special measures, and 39% were physically abused by their former partner when they attended court (2016, p.17). Based on this evidence, the 2017 revisions to PD12J included further refinements to this guidance. Under the current version of PD12J, courts are specifically directed to consider the need to protect survivors in relation to their waiting arrangements at court prior to hearings, and their arrangements for entering and exiting the court building. However, recent research has found

make this more difficult, as LIPs often perceive pre-hearing negotiations as an opportunity for the other side's lawyer to take advantage of them. This will be discussed further in 6.2.1.

[42] See, for example, the introduction of criminal sanctions for coercive control under s 76 Serious Crime Act 2015.

that 61% of survivors did not have access to any special measures – with only 7% of survivors having separate entrances and exits, and 33% having separate waiting areas (Birchall and Choudhry 2018, p.27). To this end, the repeated failure of the court process to implement the revisions to 12J has been described as a 'cycle of failure' (Hunter *et al.* 2018, p.404).

This finding therefore reiterates the concerns of existing research that despite revisions to PD12J, the court process is still falling short of providing protection to survivors when they are waiting for their hearings, and that these experiences are inextricably related to a broader context of gendered inequality (Birchall and Choudhry 2018, p.15; 29-31). Additionally, it is possible to deepen current understandings by reflecting on the material ways in which the court environment may in practice facilitate experiences of intimidation before hearings. For instance, the ability of perpetrators to make use of these strategies was in practice further enabled by the way in which the waiting areas of courthouses are physically organised. Within sociology and law, materiality has already been used to study the ways in which the design of court environments reflects wider political and normative ideas about 'justice' (Mulcahy 2010, p.1). However, through an ANT approach to materiality, it is possible to go further and consider how the physical dimensions of waiting areas can be used by individuals in order to further their own objectives.

In contrast to courtroom spaces, which are strictly regulated in terms of who is permitted to speak and where litigants are expected to sit, waiting areas are communal spaces in which litigants have relative freedom in terms of where they sit, how they position themselves, who they speak to and what they can say. This freedom therefore mediates the relationship between survivors and perpetrators and permits perpetrators to utilise these strategies of control. For example, all seven interviewees explained that perpetrators would choose to sit near them in order to subtly intimidate them, even though there were seats available which were further away. In the courtroom, this proximity would be dictated by the format of the room and the directions of the judge, but the lack of physical regulation or division of space in waiting areas effectively provided perpetrators with the opportunity to perpetuate influence and control.

Additionally, at the same time that perpetrators were able to take advantage of the physical dimensions of waiting areas, survivors also took steps to try to protect themselves from these strategies. For example, the presence of a third party made a significant difference to the experiences of all four interviewees who brought people to wait with them in court. When

describing how their friends and support workers made things easier, Fiona explained that it was because she was 'like a wall' next to her, and Joan explained that she was only able to remain in the waiting area because there was another person sitting between her and her ex-partner. These descriptions demonstrate both the need that Joan and Fiona felt for division and separateness from her perpetrator in order to feel safe within the waiting area, and the ways in which another person beside them in the waiting area may provide survivors with some degree of resilience against these strategies. This builds upon the finding presented in chapter four, where it was suggested that survivors may be motivated to use McKenzie Friends who provide help with court preparations in order to avoid contact with their perpetrators.

In addition to exposing the gendered and material ways in which survivors may experience vulnerability to intimidation in the waiting area, through vulnerability theory, it is also possible to appreciate that the family justice system holds an institutional responsibility to facilitate resilience and ensure the security of individuals who make use of it. However, recent research involving interviews with judges indicates that there is variable availability of special measures within courts, even though this is widely perceived by judges as important for the security and safety of survivors (Corbett and Summerfield 2017, p.25-6). Additionally, until recently, it has been premised upon the assumption that survivors should be the ones to ask for special measures, such as separate entrances and alternative waiting areas, which can be requested through the C100. For example, a change that was incorporated into PD12J in 2017 was that 'any party' may advise the court of the need for these arrangements – prior to this, the guidance specified that the court should consider special arrangements if advised by the applicant themselves or CAFCASS. However, due to the unpredictability of these experiences and the difficulties with court forms discussed in chapter four, many survivors may have difficulty requesting this assistance.

Although the sample of interviewees in this research is by no means representative, the fact that none of the 12 interviewees who were facing perpetrators of abuse in court took advantage of these options may be some indication that LIPs are either unable to locate this element of the form or do not feel confident enough to request these accommodations. This is reinforced by the findings of Lefevre and Damman's survey, where 36% of lawyers indicated that special measure applications were made in less than half of the cases they were involved in, and 16%

stated that they were 'never or almost never' made (2019, p.12-3).[43] Taken together, this indicates that the capacity of the family court process to protect survivors waiting for hearings will depend on firstly, increased availability of these measures within the family justice system, and secondly, the perceived and actual ability of survivors or other parties to request special measures. Additionally, the experiences of interviewees suggest that in the meantime, McKenzie Friends may be used not only as a source of emotional support, but as a means of mitigating the ways that perpetrators may be able to continue strategies of intimidation through the physical dimensions of a shared waiting area.

5.2.2 Side Rooms

While McKenzie Friends may be used as a means of achieving physical distance from perpetrators in the waiting area, interviewees also described 'side rooms' as another option when they were faced with sharing a waiting area. Although courthouse format varies across England and Wales, a general characteristic of waiting areas is that they are surrounded by small consultation rooms which are traditionally used for meetings between lawyers and clients. During interviews, survivors commonly referred to these as 'side rooms', and discussed their potential usefulness for providing a practical solution for those needing to wait separately from abusive ex-partners. However, as with the accommodations which can be requested via the C100 form, survivors also experienced problems accessing these rooms.

> The rooms are private, like a safe space for just ten minutes so you're not on show. But you have to ask for it, you don't get offered them, and if someone with a solicitor wants it, you're not allowed one.
>
> **Erica**

> It's intimidating to have to sit in the same room as them, but there's lots of other little rooms. They're meant for solicitors, but we never had any bother going and sitting in one. Not being funny, but because of how we are, we have a degree of confidence I suppose about how we approach things, so we would just be polite and go for it, and whenever someone told us to get out then we would be like, 'oh OK, sorry'.
>
> **Grace**

In Trinder *et al.*'s research, the researchers also noted that side rooms were a potentially useful resource for LIPs. However, in that study, LIPs tended to be unaware that these rooms existed,

[43] In this survey, lawyers were asked about private family cases they were involved with, so it is not possible to distinguish between findings that related to cases where lawyers were acting for survivors or acting on behalf of the opposing party. However, these statistics suggest that generally speaking, there are low numbers applications for special measures, even where lawyers are involved in the case.

and the researchers observed that LIPs would remain in the waiting area even if these rooms were available (2014, p.48). The experiences of interviewees expand upon this finding in two ways. Firstly, they demonstrate the specific usefulness of these rooms for survivors who are unable to access special measures like separate waiting areas. Secondly, they emphasise the barriers that may exist for survivors who try to access these rooms.

As Erica explains, there is no rule against LIPs using these rooms, but access to them must be requested from court staff. Having the confidence to request a room in the first place is crucial for survivors attempting to avoid sharing space with their perpetrators. As discussed in relation to the Bourdieusian notions of capital and habitus, people from different social backgrounds inevitably have different experiences of the juridical field and draw upon their perceptions of this environment when assessing their own chances and possibilities within the legal system. For instance, the juridical field privileges particular capitals such as specific types of knowledge, vocabulary and behaviour, which LIPs are disproportionately disadvantaged in accumulating during the course of their lives. As Edwards explains, regardless of the words and actions that people use to convey information, a major aspect of communication is relying on the background knowledge which is shared in a particular context (1976, p.91-2). The ability of LIPs to ask for accommodations and assistance within the court process is therefore inextricably linked to how they perceive their own position, and what options and possibilities they perceive to be available and open to them within that context. Lawyers, who have the benefit of years of legal training and exposure to law and the court process, are inevitably able to make use of these capitals in order to navigate the various opportunities and rules that exist in that context. In contrast, the majority of LIPs lack background knowledge such as knowing the purpose of side rooms or who they are intended to be used by. As such, it is possible that some LIPs will not feel able to ask to use them, or even realise that this is a possibility that may be open to them.

Viewing this from an intersectional perspective, it is also possible to understand that the requirement to ask for the exclusive use of a side room may be particularly difficult for survivors. Grace had attended several hearings by the time we met and explained that she had grown in confidence in terms of speaking to court professionals and becoming more familiar with the staff who worked in her local court. It is possible that this increased familiarity enabled her to feel more confident and able to assert herself more easily in relation to requesting this assistance. For instance, although she knew that she could be ejected from a side room if a lawyer required it, knowing that no consequences would stem from her using it at least for a brief period of time

was an assurance that came from her previous experiences and conversations with court professionals. While of course it may be possible for some LIPs to become more confident within the family court, particularly towards the end of their cases, many LIPs are often contending with rules and expectations which are unfamiliar, and moreover designed to privilege capitals that they frequently do not possess. As a result, it is unrealistic to expect all LIPs to assert themselves with the same confidence as trained legal professionals, and many may be unable to request these rooms when they are not explicitly offered to them.

A failure of court staff to actively offer the use of side rooms, especially when special measures have not been otherwise available, is an important example of how the court process may be failing to respond to the needs of survivors who are waiting for their hearings. While three of the four interviewees who requested a side room were allowed to use them, permission to use side rooms appeared to hinge upon the attitudes of those working within the family justice system. Before one of Erica's hearings, she was denied a room because a lawyer in another case made the same request to the usher. For Erica, who attended her hearings alone, this seclusion would have provided her with essential protection against the strategies of intimidation she was exposed to in the waiting area. While this thesis cannot determine how commonly this attitude is taken by court staff, there is a plethora of existing literature which indicates the need for 'cultural change' within the family court in order to adequately protect survivors in these proceedings (Cobb 2016, p.3). This finding therefore reiterates existing calls for further and more specific domestic abuse training to be mandatory not only for judges and legal professionals but also for the court staff with whom LIPs interact, so that survivors may be offered these facilities rather than be required to ask (Birchall and Choudhry 2018, p.54).

5.3 Hearing Locations

During interviews, it emerged that the location of hearings varied not only from court to court, but also from hearing to hearing. Although there are several differences between courthouses and courtrooms across England and Wales, interviewees tended to drew distinctions between the proceedings they attended in traditional courtrooms, and those that were heard in smaller, alternative hearing locations, such as courthouse meeting rooms and judges' chambers. In order to understand how these different kinds of hearing location were experienced and perceived by LIPs, it is first useful to explain the ways in which this inconsistency in format itself was experienced as problematic, before turning to consider the different experiences that interviewees had in both traditional and alternative hearing locations.

5.3.1 Variation in Courtroom

During interviews, it emerged that there was often inconsistency in courtroom format across the courthouses in which family hearings are heard. Two interviewees attended self-contained family courts located in repurposed historic buildings, where hearings were held in older, more traditional courtrooms. Four attended hearings which were contained within newer Civil Justice Centres (CJCs), in which hearings were heard in courtrooms which, although designed according to the same layout as traditional courtrooms, were contemporary, simple and modern. However, the remaining 17 interviewees attended their hearings in combined courts, which form the majority of courthouses in 28 cities across England and Wales (SAVE Britain's Heritage 2004). Courtrooms within combined courts are purposed for family, county and magistrates hearings, within one 'fortified' building (Mulcahy 2010, p.144). Those attending self-contained family courts and CJCs therefore had their hearings in very different kinds of courtroom but would usually have the same style of courtroom for each of their hearings throughout their case. However, 12 of the 17 interviewees who attended combined courts, explained that these courthouses were often overwhelmed, and the location of their hearings would depend on which judges or courtrooms were free at the time of their hearing.

> From what I'd heard from others, I expected it to be like sitting around a kitchen table, but when I got there it was a proper courtroom, very formal and intimidating, like going into a church with pews – the court you imagine, when someone says 'court'.
>
> **Erica**

> I think it was difficult not to be nervous because we never knew whether we were going into chambers or the Crown court, it depended on where the free judges were.
>
> **Grace**

Seven of the interviewees who attended combined courts, including Grace, explained that due to a lack of free courtrooms or judges, they had hearings re-arranged to the local Crown court. Existing literature indicates that even before LASPO, increasing numbers of LIPs were placing a great deal of strain on the courts, due to the fact that listings often take longer than expected, and the delays within the system which occur as a result of the procedural difficulties that LIPs face, and the time that it takes for judges to offer inquisitorial help (Dewar *et al.* 2000, p.48-50; Moorhead and Sefton 2005, p.131; Trinder *et al.* 2014, p.62-3). Given the significant increase in LIP numbers after LASPO, delays are likely to be an even more common feature of the family court process – recent research involving interviews with court staff, for example, suggests that waiting times before hearings are increasing, hearings themselves are taking longer, and

reduced funding within HMCTS has meant that there are fewer staff to help with the practical aspects of listing hearings and directing LIPs to courtrooms (Speak Up For Justice 2016, p.16-8).

Although it is not possible to determine precisely why these interviewees were relocated to the Crown court, their experiences are indicative of the difficulties that this inconsistency may create for LIPs, particularly for those with learning difficulties. For instance, the fact that interviewees were relocated just before their hearing began meant that they were directed out of the combined courthouse they had been instructed to attend and had to make their way to a different building in the town or city they were in. This experience often caused practical problems for LIPs, for example, parents who had left children at nearby crèches or paid for parking nearby. However, for LIPs with learning difficulties, this disruption extended beyond inconvenience into significant barriers.

Drawing on Fineman's concept of institutional vulnerability, this common practice of relocating hearings can be understood as a response to the institutional, economic and practical pressures that are placed on the family justice system after LASPO (2016). However, by looking at this through a vulnerability lens, it is also possible to appreciate that this practice is underpinned by a cultural presumption that LIPs are able to contend with this inconsistency, and a failure to reflect the important ways in which LIPs are themselves reliant upon the family justice system for support, nor the diverse range of circumstances and characteristics which might lead to individual experiences of vulnerability at this stage of the court process. As discussed in chapter four, Grace had learning difficulties which meant that she required more time to understand and communicate things verbally. She had travelled to her nearest city in order to attend her hearing and explained that this process of rushing to the rearranged location of her hearing was incredibly difficult because she struggled to make use of the directions which were orally given to her by court staff. This was particularly challenging for Grace not simply because of the format in which she received these directions, but also the short amount of time that she had to put these instructions to use. This therefore also created a great deal of stress and concern about being late to her own hearing as a result of the difficulties she had finding the Crown court.

Observations of courthouses within existing studies have also suggested that signage can also be inconsistent, with some courts providing very clear guidance on how to find courtrooms, and others being quite difficult to navigate (Trinder *et al.* 2014, p.44). However, this experience suggests that firstly, this may be even more difficult when LIPs are expected to navigate between

different courthouses, and secondly, that individuals with learning difficulties may face disproportionate barriers to their ability to cope with this inconsistency. Additionally, the fact that Grace required more time to manage this relocation than was anticipated within the court process also suggests that other LIPs in different circumstances may face similar difficulties. For instance, many other LIPs may have other struggles such as mobility issues, or an inability to access expensive mobile data on smartphones, which would also prevent them from being able to quickly navigate a busy city centre.

Additionally, the experiences of these seven interviewees indicate that that this may cause variable levels of stress and anxiety for LIPs – especially those who may require more time to not only navigate to a different location, but also to emotionally prepare themselves for a different kind of environment to the one they were expecting. Erica, for example, had dyslexia, and sourced most of her help from videos and short posts shared within the 'secret mummies group' discussed in chapter four, rather than written forms of information like self-help guides. As a result, she expected her hearing to be held in a meeting room because those were the experiences of her friends online. However, she was taken aback and intimidated by the traditional format she ultimately experienced.

The experiences of interviewees, therefore, indicate that an important factor in feeling prepared and confident when going into hearings is the ability to envisage the space in which those hearings will happen. Existing studies have already indicated that LIPs sometimes face difficulties in finding their courtrooms within court buildings due to the high levels of stress and even 'emotional turmoil' that they may experience when they attend hearings and have to 'cope with the unknown' (Moorhead and Sefton 2005, p.164-5). As Leader explains, many LIPs have never experienced courtrooms before, and have to draw upon representations of court they have seen before. In her research, she noted that LIPs would base their expectations on examples like courtroom dramas, which was frequently inaccurate and led to experiences of intimidation when courtrooms were not as they expected them to be (2017, p.160). Here, Erica had the opposite expectation, which suggests that another consequence of this inconsistency for LIPs may be that it limits the usefulness of already-sporadic forms of help and support. For example, online videos are designed to help LIPs visualise what court will be like when they arrive and are recommended to be used more widely after LASPO, because they provide specific help to those who may struggle with written information (Trinder *et al.* 2014, p.109; AdviceNow 2015a). To this end, Citizen's Advice have also emphasised the need for physical court spaces to be set up

'with users in mind', or that alternatively LIPs should be offered the opportunity to familiarise themselves with the setting of their hearing beforehand (2016 p.46). However, if hearing locations are frequently inconsistent, these videos are also likely to be inconsistent in the extent to which they can prepare LIPs for the court environment. Taken together, the inconsistency of courtroom format may be a seemingly inevitable consequence of increased numbers of LIPs, but this must be viewed in light of the unpredictable and variable ways in which individuals may experience vulnerability within the process as a result.

5.3.2 Traditional Courtrooms

In terms of the spaces described as traditional courtrooms, these included the traditional courtrooms found within combined courts; Crown courtrooms when LIPs were relocated to local Crown courts; and some of the contemporary courtrooms found in CJCs. For LIPs, these traditional courtrooms were often intimidating.

> The judge sits higher at the front, and we sit lower, like paupers. He has nearly half the room, and we're all in the other half of it…which I felt was just a bit disrespectful. You have to remember that when people like me are self-representing, it's daunting enough, and it almost distracts you from the main reason you're all there.
>
> **Maxine**

Seven interviewees referred explicitly to ways in which the physical prioritisation of judges within these spaces conveyed an intimidating sense of authority. Maxine explained that having to look up at judges, who were often still positioned on raised platforms in sectioned-off parts of the courtroom, made her feel daunted within her hearings. Despite the design of combined courthouses having a 'conscious rejection of the use of excessive detailing' and having courtrooms which are 'noticeably simpler and flatter' than the traditional buildings which are often used for self-contained family courts, 'differentiation between participants has a very long heritage and continues to dominate thinking about court design' (Mulcahy 2010, p.39; 143). Additionally, even the more contemporary courtrooms in CJCs often contained raised sections for judges and divisive use of furniture.

Many sociological approaches have recognised the ways in which materiality and the physical organisation of space can reflect the power and dominance that operates within particular spaces (Lefebvre 1991; Massey 2005). However, ANT is particularly useful here because, as discussed in chapter two, as an approach it advocates deconstructing networks in order to appreciate how these physical arrangements might actually mediate the relationships between

actors. This approach is particularly useful for drawing links between the material ways in which class-based inequality may manifest within traditional courtrooms. For example, the fact that Maxine referred to herself as like a 'pauper' is indicative of the way in which these physical arrangements may actually reiterate class differences between judges and LIPs. In Leader's study, LIPs frequently commented on class-based differences between themselves and legal professionals, such as tone, behaviour and accents (2017, p.149). Similarly, in Lee and Tkakucova's survey, LIPs also provided examples of judges where they were described as 'posh' or 'out of touch' (2018). Given that the legal system already operates in an exclusionary way by privileging symbolic and juridical forms of capital, class is therefore an important factor in how LIPs perceive other actors, and the environment in which those interactions take place can also play an important role in mitigating or exacerbating those perceptions of difference. For Maxine, the elevation of the judge was not simply a reflection of their authority but amounted to disrespect for 'people like [her]' who are self-representing.

By focusing on the ways in which LIPs described and interpreted the arrangements of traditional courtrooms, it was possible to explore the ways in which spatial arrangements also reiterated the absence of legal advocates, particularly in semi-represented hearings where opposing parties did have representation.

> His barrister would sit at the front, and cos you've not got one, you stand next to him, and that straight away – he's got someone with experience in front of him like a shield, and you're just up there at the front alone.
>
> **Edie**

When facing legal representatives, ten interviewees explained that they were expected to stand in the space on the front row which would traditionally have been reserved for their lawyer. For Edie, the effect of this was for her to feel isolated and disadvantaged within proceedings, and to feel as though she was being compared to her ex-partner's lawyer.

Through an ANT lens, therefore, this is another way in which the physical arrangements of a traditional courtroom may actively mediate the relationships that LIPs have with their ex-partner's lawyer, as well as the judge. For instance, the way in which traditional courtrooms retain the traditional physical arrangements of a fully-represented hearing even when only one party is represented, may give rise to several implications for how LIPs perceive those hearings, and their own position within them. Within Edie's description, she felt disadvantaged not only by the inequality between herself and a legal representative, but also by the impression that she

was being held to the same standard as the lawyer by the judge. While the judge's act of asking Edie to stand at the front may have been a reflection of the cultural norms that underpin family proceedings, this spatial arrangement in practice resulted in significant anxiety. Rather than placing the parties on an equal footing, Edie felt that this arrangement signified that she was firstly, a disruption to the traditional format of the courtroom, and secondly, expected to – at least symbolically - take on the role of a trained and experienced lawyer. As Trinder *et al.* have already explained, the family court process is predicated upon a 'full-representation model', and as such, there are several and various parts of the court process that have not been adapted to either the increasing numbers of LIPs who were using the process before LASPO, nor the extensive prevalence of LIPs who are using the process after LASPO (2014, p.53). While these researchers were referring to procedural aspects of the general process and the ways that individual hearings are conducted, this research further expands and deepens this argument by demonstrating how this is also present within the material arrangements of traditional courtrooms.

Additionally, tracking these interpretations through ANT as well as a feminist approach highlights the diverse ways in which different individuals may perceive this layout. Ama, for example, also described problems with the traditional layout, but her experience was underpinned by the fact that she was self-representing against her abusive ex-husband.

> He's behind his barrister obviously, which means he's on the row behind me, which is really weird, because he's looking at the back of your head which is really unnerving. He just stares at me every time and it's really quite intimidating.
>
> **Ama**

Similar to the ways in which Edie felt that her ex was 'shielded' by his lawyer, Ama also felt exposed without the physical presence of someone alongside her in the courtroom. For Ama, however, this disadvantage was specifically related to the way in which this format exposed her to intimidation by her perpetrator.

By considering the different ways in which Edie and Ama interpreted the disadvantage they experienced within this format, it is possible to appreciate that there are multiple ways in which the material arrangements of courtrooms may exacerbate gendered forms of inequality. In a similar way to the manner in which LIPs sometimes brought third parties with them for protection in the waiting areas, this indicates that survivors in particular are likely to feel exposed in the courtroom without a legal representative during the stressful stage of facing

perpetrators. Ama's interpretation of the traditional courtroom was reiterated by four other interviewees, who explained that being alone in the courtroom exposed them to intimidation strategies where perpetrators were able to stare or smirk at them during hearings while they were talking.

Under FPR3A, judges are now expected to consider the relevance of domestic abuse to litigants' ability to attend hearings 'without significant distress'. In drawing on Ama's experience, it is possible to appreciate that such distress may be exacerbated by the layout of traditional courtrooms. However, this may not be recognised by judges when they draw upon FPR3A or PD3AA. For example, Corbett and Summerfield specified that according to the judges who participated in their interviews, 'larger rooms were seen to be beneficial in putting distance between uncooperative parties' (2017, p.27). In practice, larger courtrooms – although they were often seen to be inappropriate for child arrangements cases – were used as a case management tool to encourage parties to 'behave better'. However, the judicial perspectives discussed by Corbett and Summerfield centre mostly around the importance of courtroom format for ensuring that parties do not disrupt proceedings, rather than ensuring the protection of the vulnerable witnesses concerned in those cases (2017, p.26-8).

Rights of Women highlight that throughout hearings, perpetrators often stare at survivors, and that judges and court officials are often 'oblivious to, or perhaps choose not to recognise [these] acts of aggression' (2012 p. 42). As discussed earlier, these strategies were commonly experienced in the waiting area due to the way that these spaces are largely unregulated in terms of where people are permitted to sit or stand. However, even in a traditional courtroom, these interviewees experienced intimidation specifically because the layout of the courtroom meant that they were the centre of attention during proceedings. For example, if Ama had been represented, the focus would have been on her lawyer, rather than her. Although she would still be expected to share space with her perpetrator, she felt that having to have her back to her perpetrator exposed her to these experiences of intimidation. The strict regulation of space within formal courtrooms may therefore in practice actually *also* function as a means of exacerbating harm for survivors, even if they manage to contend with the waiting area before their hearings.

5.3.3 Meeting Rooms and Judges' Chambers

For other interviewees, hearing locations were not traditional courtrooms, but rather meeting rooms and judges' chambers. Within the family court, it is common practice for hearings to take

place in these spaces, and for the court environment to have fewer traditional manifestations of legal authority, such as raised flooring, divisions of space, or wigs and gowns. Of the 17 interviewees who attended combined courts, 10 were at some point heard in a meeting room or in a judge's chamber. Four of these interviewees commented specifically on how much they preferred these environments over traditional courtrooms.

> We had about four up in the big court, but [judges'] chambers is just like going into an office room, which is perfect, because it's much more comfortable. It feels like you're gonna get down to it, it's more like a meeting. It's when you get into that bigger space, you're more like, getting told what to do.
>
> **Grace**

For Grace, smaller rooms which were not constrained by the prescribed physical arrangements of 'the big court', were not only less intimidating but more productive and accessible for her. This aligns with McFarlane *et al.*'s finding that less division of space within courthouses can contribute to LIPs having more positive perceptions and experiences of self-representation (2013, p.72). Additionally, it builds upon Moorhead and Sefton's argument that LIPs who do not attend hearings may be intimidated by traditional court formats – as they explain, 'the grander the building, the more it made them nervous' (2005, p.122). However, what Grace's comparison adds is an understanding of how and why meeting rooms themselves may actually be more comfortable.

In respect of Bourdieusian notions of capital and the interpretative process that occurs through the habitus, Grace's comparison of judges' chambers to office rooms indicates that the format of these rooms was, at least to a degree, recognisable and familiar to her. As discussed in chapter two, individuals who are exposed to particular fields and become familiar with the kinds of behaviours and capitals which are privileged within them, can become more attuned to this process of value attribution and therefore more 'omnivorous' in their use of capitals for success in those contexts (Bennett *et al*. 2009, p.177). Through the habitus, Bourdieu argued, this familiarity can lead individuals to perceive themselves as having greater chances of success within particular fields. While LIPs had limited experience of the legal system, many had previous experiences of attending meetings in offices. For example, Grace and four other interviewees were also involved with social services and CAFCASS, as well as navigating bureaucratic processes of applying for welfare and housing support from local authorities. Although hearings were stressful and often problematic for these interviewees in other ways, the hearings that were held in meeting rooms were often perceived as a continuation of this ongoing experience

of attending meetings to resolve the issues related to their family breakdown. Grace explained that these hearings made her feel more comfortable and able to contribute to proceedings. Specifically, she contrasted this with her experiences of traditional courtrooms, in which she felt subjected to the instructions of others.

This suggested that hearings were perceived as more accessible when they were held in meeting rooms which were not only free of the intimidating and often class-based hierarchies experienced within traditional courtrooms, but also reflected the wider experiences that they were having in other aspects of dealing with their family breakdown. However, while three of these five interviewees emphasised the benefits of this format for their ability to self-represent, two others felt that meeting rooms were not appropriate for the serious nature of the issues concerned in child arrangements proceedings.

> It doesn't matter to me, I want the i's dotted and the t's crossed. It should be. You're dealing with children, not someone who owes someone money. It should be the most professional place you've ever seen in your life, but it isn't.
>
> **Chris**

> It's a hard one, because I don't know if a small room gives enough clout to the importance of what's being discussed. The issues are life-changing, it seems a bit – you know, a discussion around a table?
>
> **Edie**

In contrast to other interviewees, Chris and Edie felt that the strict and unadaptable layout of traditional courtrooms provided them with a sense of security and reassurance. While the physical representations of judicial authority and the power of law or the family court itself were intimidating for most interviewees, these arrangements provided them with assurance that their problems were being taken seriously. However, subsequent hearings in courthouse meeting rooms and judges' chambers left both feeling that the process itself lacked professionalism, which they believed undermined the serious issues at stake in their cases.

To understand these different interpretations, it is again helpful to consider the different circumstances in which individuals bring their cases. In the lead up to court, Edie and Chris had both experienced various incidents of conflicts and misconduct in relation to CAFCASS officers and support workers. While it cannot be drawn conclusively, this may offer some insight as to why they may have felt particularly vulnerable to further unprofessionalism in the courtroom, and how for them, the 'crude assertions of authority' and other signifiers of legal authority

described by Mulcahy, would have actually served to make them feel more secure within the family court process (2010 p.9). What this does suggest, however, is that there appears to be a diversity of possible ways in which LIPs in various circumstances may interpret and experience the physical environments of hearing locations.

This reiterates existing research which has already noted the importance for LIPs of feeling as though they are being taken seriously within their proceedings (McKeever *et al.* 2018, p.173). However, this suggests that the material ways in which hearing environments themselves are organised may also be an important factor in whether LIPs perceive their cases to be taken seriously. As a result, a significant challenge facing the family justice system is to provide hearing locations that accommodate LIPs, due to the different circumstances in which they self-represent and the various ways in which these environments may facilitate or inhibit their relationships with others. Importantly, the unpredictability of interviewees' interpretations of different hearing locations emphasises a major deficiency within the current characteristic-based approach to recognising those who are 'most vulnerable' and therefore deserving of legal aid under LASPO, or recognised by judges as in need of assistance within the family court process.

For example, in addition to the ways that they experienced intimidation within waiting rooms and traditional courtrooms, survivors also frequently described how this was also an experience that was facilitated by the physical arrangements of meeting rooms.

> I hated that set up being face-to-face with him. I sort of turned my chair around to try and face the judge rather than him. He's always speaking first, and he just goes on and on and brings up 10 issues all in one go, and I try to keep up, but you end up just trying to respond to what he's said not what you want to say.
>
> **Ikraa**

> It was a tiny room, just two seats next to each other behind a table. I moved my chair to the side of the table to be further away from him and feel a bit more in control. I couldn't say what I wanted while I was right next to him like that.
>
> **Joan**

Five interviewees explained that perpetrators had a disproportionate ability to influence hearings when they were held in these environments, because they were able to dominate the space according to their own terms. For example, both Ikraa and Joan started out sitting in close proximity with their perpetrators and had to actively move furniture to make themselves more comfortable.

This suggests that while meeting rooms may provide benefits for some LIPs due to the way they are sometimes perceived as more comfortable and less intimidating than traditional courtrooms, this may be experienced very differently for survivors of abuse. Thinking about this through the theoretical framework, it is possible to understand that these different interpretations and experiences of meeting rooms are shaped by both broader gendered inequality, as well as material manifestations of disadvantage. For instance, the need for division and distance from perpetrators is not something which is factored into the normative practice of holding family hearings in meeting rooms. Additionally, given the closer proximity that litigants have with each other within these spaces, it is even more important that judges have a supervisory presence within these hearings. However, as discussed so far, research has continually found that judges and legal professionals have limited awareness of the coercive and subtle ways in which abuse can be perpetrated, despite improvements to the definition of domestic abuse contained within PD12J. As a result, Birchall and Choudhry explain that survivors are often placed in frightening and dangerous situations including having to sit next to perpetrators, due to family court professionals not understanding the dynamics and impact of abuse (2018, p.23-4). This is reiterated by the experience of these five interviewees, who explained that they were also unable to rely on judges to recognise these experiences of intimidation and facilitate their protection within hearings.

Additionally, these experiences were shaped by the physical arrangements of meeting rooms. For instance, through ANT, it was possible to pay attention to how interviewees described the furniture and arrangements as well as the close proximity of these rooms. In doing so, their experiences suggest firstly, that survivors may experience similar problems within meeting rooms as they did within waiting areas, in that they are exposed and isolated without appropriate distance and separation from their perpetrators, unless they have the physical barrier of a third party beside them. Secondly, they suggest that even within these rooms, the layout may be inconsistent. While Ikraa was face-to-face with her ex-husband, Joan was sitting beside hers. In both of these scenarios, Ikraa and Joan moved their chairs in order to feel more comfortable within the hearing – either to avoid direct eye contact or physical contact with their ex-partner. In doing so, they were able to manipulate aspects of the material environment in order to feel more confident and comfortable. However, the fact that they had to do this in the first place indicates that neither of these layouts were set up with their potential vulnerability in mind. Rather, the adaptability of these rooms held quite different consequences for them, as

compared with perpetrators. While these interviewees adapted the furniture in order to achieve a basic level of safety, the adaptability of these environments for perpetrators often actually meant a more flexible approach to hearings. As Ikraa explains, the perceived informality of these rooms actually created an environment in which her ex-partner was permitted to alter the course of advocacy and dominate within the hearing itself.

Although Ikraa and Joan were not necessarily apprehensive of unprofessionalism like Chris and Edie, they also explained that they would have preferred a traditional courtroom, as based on their experiences of meeting rooms they felt the prescribed distance of this environment might have provided them with some degree of protection against the intimidation of their perpetrators, and a sense of structure which would have prevented them from having to take these steps to protect themselves. As discussed earlier in this section, however, the accounts of other survivors directly contradicted these interpretations, because they outlined the ways in which distance and dictated seating arrangements within traditional courtrooms were also utilised by perpetrators as a means of intimidating them during hearings.

Taken together, these findings reiterate the unique, subtle and nuanced ways in which domestic abuse can be experienced within the court process, and the difficulties facing the family justice system in terms of how it may protect survivors within the various stages of the court process. By defining vulnerability in a characteristic-based and evidence-driven manner, the LASPO eligibility rules cut through the diverse range of circumstances in which LIPs experience of vulnerability in different hearing locations. Although FPR3A and PD3AA now provide specific provisions to assist the court in identifying and responding to vulnerability within the process, these findings suggest that making effective use of these provisions in practice is likely to be a significant challenge, given the spectrum of possible implications of these spaces for those facing perpetrators within the court system. This is particularly important after LASPO where, as discussed, there is likely to be greater strain on the system in terms of delays and availability of resources.

5.4 Judicial Management of Hearings

Interviewees also explained that the way in which their hearings were organized by judges was a significant factor to their perceived ability to self-represent. Within hearings involving LIPs, it is common for judges to employ a variety of different approaches in order to manage proceedings, and go some way to addressing the imbalance that exists between LIPs and legal representatives, when only one lawyer is present (Dewar *et al.* 2000, p.63-4; Moorhead and

Sefton 2005, p.181-7; McFarlane *et al.* 2013, p.13; Trinder *et al.* 2014, p.62-3; McKeever *et al.* 2018, p.117-8; p.150-1). Within interviews, these approaches specifically centred around organising, firstly, the content and order of conversations that took place; and secondly, who was permitted to speak first during proceedings. By reflecting on how these approaches to hearing management were experienced and perceived by LIPs, it was possible to explore the ways in which, despite the efforts of judges, this imbalance and the approaches taken gave rise to implications of perceived disadvantage and experiences of vulnerability within hearings.

5.4.1 Conversations in the Courtroom

Due to the inaccessibility of specialist vocabulary and legal knowledge, interviewees often experienced difficulties understanding was happening during their hearings when judges, court staff and lawyers would talk to each other using these terms during proceedings. For instance, all 17 interviewees who faced legal representatives explained that the 'legal' conversations of court professionals were difficult to understand and felt excluded from specific discussions which revolved around references to things like statute or case law.

Many academics have already researched the way in which law and legal professionals use tools such as language and specialist forms of knowledge in order to maintain the illusion that law and the legal world exists as something separate from the rest of society (Illich *et al*. 1977; Ewick & Silbey 1998). For example, in Jonathan Caplan's work on the legal profession, he suggests that 'the easiest way to create a monopoly is to invent a language and procedure which will be unintelligible to the layman' (1977 p. 93). In Leader's study, conversations in the courtroom were also perceived to contribute to a sense of disadvantage, because LIPs felt that they were unable to contribute their story to these conversations (2017, p.199-200).

As discussed in chapter two, it is possible to understand through a Bourdieusian lens that the juridical field does not simply privilege certain forms of symbolic capital such as written and oral eloquence or education, but actively constructs its own specialist forms of capital which can only be utilised by those who have opportunities to access resources like legal and professional training. As such, experiences of broader class-based inequality operate to shape specific experiences of disadvantage within the legal system, because LIPs are unable to draw upon these forms of knowledge. In practice, this means they not only face barriers in terms of their ability to influence these conversations but often may be excluded from them altogether.

When court professionals do make use of specialist forms of knowledge and vocabulary in their conversations, this therefore has the effect of closing them off to lay individuals who do not have access to them or the ability to use them. Existing research has already demonstrated that this has the effect of preventing effective communication between LIPs and legal professionals, which in turn leads to a deeper mistrust of the legal system and those working within it (Tyler 1990, p.154-5; Moorhead and Sefton 2005, p.214). In addition to the exclusionary effects of this practice for the majority of interviewees, this also had specific consequences for interviewees with learning difficulties and mental health problems.

> There is a mask over their conversations – something is happening on a higher level that you aren't allowed to know, and you can't control.
>
> **Gary**

> They would talk among themselves in legal-type language, and I was just sat there waiting for it to be translated, but you don't know what they said at first, or if they're saying all of it to you.
>
> **Grace**

Gary explained at the beginning of his interview that in addition to dyslexia, he was also contending with depression. Although he required additional help throughout his time in the court process, this did not affect his ability to understand things which were verbally explained to him in lay terms. Nevertheless, Gary explained that professionals would often talk between themselves and did not make any attempts to include him in these discussions until after they had concluded. Similarly, Grace's learning difficulties meant that needed additional time to respond to verbal information. In addition to the exclusionary effects of legal jargon, therefore, she struggled to understand what judges and lawyers were discussing when they spoke at speeds inappropriate for her needs. This suggests that given the diverse implications of learning difficulties for individuals, there may also be inconsistent understandings as to the kinds of accommodations that LIPs may require in order to follow these conversations, particularly where there are mental health problems or learning difficulties.

To understand the implications of this more deeply, it is useful to consider from a Bourdieusian perspective what is required to participate in these conversations. Traditionally, litigants would have lawyers advocating on their behalf who could contribute to these discussions as well as translate the content of them. In the absence of a lawyer performing this role, interviewees experienced hearings as segregated into 'legal' and 'lay' discussions, in which there were some conversations dedicated to the use of legal forms of knowledge, and others which were made

accessible to them through being translated into lay terms. The consequence of this was that some conversations themselves were rendered entirely inaccessible for Grace and Gary, and that they had to wait for judges to subsequently translate these conversations into lay terms which they could process and understand. For Grace in particular, this often meant waiting for written summaries of information, which were provided after the entire hearing had concluded.

Although it is encouraging that judges may attempt to explain the content of these conversations to LIPs, the fact that interviewees did not have advocates participating in these conversations first-hand was perceived as a significant barrier to their ability to effectively participate in all aspects of their hearing. Conversations are constructive linguistic processes, in which knowledge and propositions are exchanged between parties and shared understanding and meaning is created (Coulthard and Johnson 2007). As Grace explains, when she was only presented with the conclusion of these conversations, she was excluded from being a party to that process of exchange and contributing to or understanding the reasoning that led the judge and lawyer to reach that conclusion.

Legal representation within hearings is therefore an important resource through which litigants who do not personally have access to specific legal knowledge or terminology are still able to assert their interests and negotiate within all aspects of their hearings. In the absence of this support, LIPs are therefore left without access to the forms of capital which are required to understand, let alone influence, these discussions. This is even starker for individuals who may have additional difficulties understanding verbal communication and are not recognised as in need of specific accommodations beyond translation into lay terms. In addition to the fact that learning difficulties are not recognised as relevant to the ability of individuals to self-represent, the approach taken under LASPO also does not consider the diversity of problems that this term may encapsulate in practice, nor the ways in which the reform itself has exacerbated the problems which are already experienced by individuals with various learning difficulties within the family justice system.

It is also helpful to draw upon the ANT approach in order to understand the ways in which this manifested differently in hearings which involved no legal representatives. For instance, this divisive judicial approach to organising conversations in hearings did not seem to be experienced in the same way by LIPs who were facing other self-representing parties.

> What was really helpful was that she talked through the process in her head out loud. So, even though she did occasionally talk to the assistant in jargon, for the actual hearing she would be like reading through everything and recapping everything but doing it out loud and verbally with us.
>
> **Fiona**

> The judge actually said things like, 'Are you clear on this?', and 'Do you need to say anything else?', which was really good compared to when his lawyer was there, purposefully using as much legal jargon as possible – he was a right ass.
>
> **Sarah**

Eight interviewees in this research at some point faced their ex-partners in hearings involving no lawyers at all. An interesting difference was that five of these interviewees, including Fiona and Sarah, explained that although they struggled with legal jargon and legal knowledge in their paperwork and research, they did not have this problem during their hearings when no lawyers were present.

Citizens Advice explain that in cases without any legal advocates, hearings can lack structure and judges are required to intervene more often (2016, p.40). For example, in Trinder *et al.*'s study, researchers found that in cases where neither party was represented, judges would often take a 'fully inquisitorial' approach. This would involve actively helping LIPs to communicate, by steering their contributions and coaching them through the hearing. While this generally worked well and parties were typically satisfied with this approach, the researchers noted that this approach placed significant demands on the judge, to the extent that this approach may be unsustainable in the context of long case lists and limited time for judges to prepare for each hearing (2014, p.62-3). It is possible, therefore, that without lawyers to rely upon for support, the judges described by these five interviewees had little option but to take a 'fully inquisitorial' approach.

As discussed in chapter two, a useful tool provided by ANT is the ability to consider networks such as the family courtroom as an active collection of actors working together to produce this network. The removal of legal advocates as key actors within this network means that inevitably, actors within it must relate to each other in different ways in order to produce this network. Fiona, for example, explained that mentions of law were still present in her case – the judge would use legal language when talking to the court professionals present – but from her perception, the majority of the hearing was conducted via conversations which involved both her and her ex-partner. Sarah also experienced a shift in approach from her judge for the one hearing in her case where her ex-partner was unrepresented, and specifically attributed this

change to the absence of his lawyer. Without a legal advocate using the language and references that she found unintelligible, she also perceived her judge to be more accommodating, and that particular hearing to be more inclusive. A significant difference in the experiences of these LIPs appears to be temporal – rather than having to wait for professionals to finish a 'legal' conversation before it is translated, the absence of legal advocates meant that the hearing involved a continuous translation of knowledge and process.

These contradictory interpretations of the conversations which took place during hearings indicate that in the absence of legal representatives, interviewees felt that there was less focus on 'legal' aspects of cases, and more conversations held in accessible, lay language. Further, this suggests that for LIPs, it may be the approaches employed by judges within semi-represented hearings which exacerbate the vulnerabilities they experience as a result of lacking access to the legal knowledge and expertise that comes with legal representation. While hearings involving two unrepresented parties are often categorised within existing research as the most chaotic (Trinder, *et al*. 2014, p.64-66), the perceptions of these five interviewees indicated that the absence of an opposing advocate meant that they felt more included in the discussions which took place during hearings. While LIPs recognised that law and specialist forms of knowledge still governed their cases, they felt that the absence of a legal professional for the judge to converse with, effectively limited the extent to which legal forms of knowledge and specialist language could be overtly used in proceedings and required judges to explain these relevant legal concepts on a first-hand basis. As such, this finding strengthens the argument that one way of helping LIPs to cope with the post-LASPO legal system in the short-term, may be to find ways of equipping them with required skills, for instance by coaching them through the court process (2014, p.113-5). However, this alone would not go far enough to address the structural ways in which the language and culture of the legal system may operate to exclude and inhibit participation of LIPs within this process.

5.4.2 Lawyers Speaking First

Another organisational aspect of hearings which interviewees perceived as significant to their ability to self-represent was the order in which sides were able to present their position statements and arguments. Traditionally, when both parties are represented, the applicant to proceedings is expected to give their submissions first, so as to outline details of the application, and then the respondent to proceedings is permitted to make their 'response'. However, in cases where applicants are unrepresented it is common for judges to reverse this order and ask advocates to speak first in order to summarise the case and provide vital structure to

proceedings (Moorhead and Sefton 2005, p.181; McKeever *et al.* 2018, p.117). Of the 17 interviewees who faced lawyers, ten explained that even though they were the applicant, their judge would direct the advocate to speak first.

> Normally, being a LIP, the judge explained to me that they start off by talking to the lawyer, so you can follow what they say and do, and I understand why that makes sense. I must admit though, that let them control the room. They take the conversation into a particular direction, then you find yourself defending what they've said, and you can't get all your points across, because they control the way the hearing goes.
>
> **John**

> His barrister always took over everything and stood up to talk about case law, and I know that's just what they do and I don't know anything about that – I'm very quiet anyway and don't like public speaking, but I suppose because I was self-representing he just stood up and made it all about that.
>
> **Beth**

The Family Court Bench Book provides guidance for judges in terms of how hearings should be conducted and the order in which oral presentations should be heard. In the most recent version of this guidance, the Bench Book directs judges to hear applicants first, 'unless the court directs otherwise' (Judicial College 2018a, p.105). Whether judges re-order proceedings in this way therefore appears to be a matter of discretion. In Moorhead and Sefton's interviews, judges reported that commonly, they 'relied on opponent lawyers to make the running in cases', as it was 'easier, and better just to ask the lawyer to summarise the situation' (2005, p.181). This was also raised in Trinder *et al.*'s findings, where in 'umbrella' semi-represented cases, hearings would progress more smoothly when opposing lawyers picked up more of the work for LIPs, and this prevented judges from having to alter their role within proceedings (2014, p.62). Though the judges in Moorhead and Sefton's study did not view this as problematic, the researchers did express their own concern that this 'might give the impression to an unrepresented litigant that the hearing is an agenda set largely by the judge and the lawyer, even where the litigant is the person making the application' (2005, p.181). Further, this may also lead to feelings that LIPs have not been able to say everything they wanted to say during the hearing, which can influence the perceived fairness of hearings (Moorhead and Sefton 2005, p.190; Tyler 1990, p.154).

The perspectives of these ten interviewees appears to support this concern. Although John appreciated that letting his ex-partner's lawyer speak first provided some structure to the hearing and made organisational sense, he felt that this approach allowed his ex-partner's representative to dictate the content of conversations that took place during proceedings.

Further, as Beth's experience demonstrates, this enabled lawyers to ensure that this content was focused on law, but also had the effect of further silencing her important contributions within her hearing. In order to appreciate the implications of these for individuals, it is useful to turn back to Bourdieusian understandings of the way in which specialist capitals are privileged within the legal context.

As discussed in the first half of this section, the use of specialist capitals such as legal knowledge in the courtroom is experienced by LIPs as exclusionary, due to the inaccessibility of these resources. In addition to feeling unable to participate in legal conversations, this becomes slightly more complex when the dynamic is no longer two distinct sets of conversations, but rather one conversation where lawyers are using these resources to dictate the issues to be discussed, and LIPs are expected to respond.

From Beth's perspective, being limited to responding to legal issues made her feel disadvantaged during proceedings because she could not draw upon the same forms of knowledge and vocabulary in her responses. John also felt disadvantaged by this approach, because he felt that this dynamic prevented him from being able to influence the kinds of conversations which were held during his hearing. As noted in chapter two, Bourdieu argued that the way in which particular attributes become privileged within fields, is by the ability of the powerful to continually reiterate their own interests within those contexts. Success within the legal context, for example, relies upon the ability to use exclusive forms of communication which are often inaccessible to those without professional legal training. An important difference between these two experiences, however, was that while John wanted to steer the conversations in his hearings in such a way that he could convince the judge of his position, Beth was crucially hindered in her ability to focus discussions on the implications of her ex-partner's abuse. This therefore reiterates the concerns outlined so far in this chapter, which suggest that the disadvantage that LIPs may experience during hearings may be experienced differently when class-based inequality intersects with gender-based inequality. Without access to knowledge about the case law that her opposing barrister was using, or the ability to draw on similarly valued forms of knowledge, survivors may feel unable to shift these discussions on to these important issues which are crucial to the proposed child arrangements which are being discussed. In addition to the ways in which these organisational approaches can exacerbate the vulnerability that some LIPs already experience in terms of learning difficulties, this suggests that judicial reliance on lawyers in semi-represented hearings may also create specific and further

barriers for survivors who already experience problems asserting allegations and feeling believed within hearings.

It was evident from the interviewees who experienced both of these judicial approaches to managing hearings that either of these attempts to maintain the order of hearings or even help LIPs to participate, may actually be experienced as a disadvantage to their ability to effectively respond to the issues being discussed, and as disempowering to their ability to influence the content and progress of those discussions. Within the context of this project, therefore, the disparity of access to legal capital appeared to disproportionately lead to experiences of vulnerability in semi-represented hearings. The exclusion that interviewees experienced during these hearings was often directly attributable to the ways in which lawyers were able to use these forms of knowledge and terminology in order to dictate the format of conversations, and the organisational approaches that were taken by judges who chose to rely upon these lawyers as a resource.

5.5 Experiences of Advocacy

In addition to the difficulties that LIPs had following conversations which involved legal forms of knowledge, they also faced challenges when actually presenting their own points and speaking in court. Existing research into self-representation frequently identifies that LIPs struggle to cope with oral procedures, even if they generally appear confident elsewhere in proceedings (Williams 2011; Moorhead and Sefton 2005, p.163; McFarlane *et al.* 2013, p.89-96; Trinder *et al.* 2014, p.23). From interviews, it was possible to identify two major challenges experienced by LIPs when attempting to advocate in court. Firstly, interviewees experienced difficulty emulating the performative and time-restricted nature of speaking expected in the courtroom. Additionally, the requirement to convey information in this way was experienced as a particular disadvantage for those with certain learning difficulties and mental health problems. Secondly, it was identified that this performative and time-restricted advocacy often led interviewees to interpret advocacy as an adversarial process, which operated to further exclude and disadvantage them within their hearings.

5.5.1 The Performative and Time-Restricted Nature of Advocacy

The experiences of six interviewees indicated that the requirement to present points verbally within court hearings was difficult due to the performative, goal-oriented nature of giving speeches in court.

> 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.
>
> **Maxine**

Maxine, for instance, compared her experience to being on the X Factor, which suggested that this style of advocacy felt incredibly staged in comparison to forms of communication which were ordinary to her.

In order to understand these difficulties, it is again useful to consider the kinds of Bourdieusian capital required to give this sort of presentation. As discussed in chapter two, the use of language is inherently classed, because language is the device through which individuals draw on both their background knowledge as well as specific words and linguistic tools in order to convey meaning (Edwards 1976, p.91-2). Therefore, the way in which linguistic skills and tendencies are accumulated and used depends on the exposure and access that individuals have to contexts like the legal system, as well as professional and social circles. In their linguistic study of courtrooms in the United States, Conley and O'Barr explained that self-representing individuals who did not have legal training, tended to present 'everyday' and 'relational' narratives when making submissions in court (1998). In other words, they presented their accounts conversationally, using reference points such as events or people, instead of the legal rules and principles which are commonly used in the court context, but are not resources that many people have access to within everyday life. Rather than being conversational, the style of communication expected in the courtroom is more akin to a presentation or a performance.

Existing research suggests that some judges already attempt to mitigate these problems, but that this is often inconsistent. For example, Leader's study found that sometimes LIPs were told to 'tell their stories simply' or to 'just speak plainly and simply' (2017, p.145). However, as she notes, this was not alone enough for LIPs to feel as though they were being enabled to participate. Rather, what is 'plain and simple' is likely to have different meanings inside and outside of the courtroom, and even when it does not involve using legal words, the task of advocacy still involves being coherent in a specifically 'legal' way. In essence, requiring LIPs to present points orally within court hearings is therefore implicitly still asking LIPs to meet 'significant, and often unclear, performative demands', even if legal professionals themselves do not realise that this is what the process requires (Leader 2017, p.163). Even beyond legal technicalities and specialist forms of knowledge, the oral presentation involved in legal advocacy

is therefore characterised by what Tkacukova refers to as 'goal-oriented' narratives (2016, p. 442). These narratives are one-sided, in the sense that their aim is to *convey* rather than *exchange* information through communication, in single, monologue-style instances of speaking. Maxine explained to me that she was a full-time mother, having previously worked in social care, which required her to be chatty, and build rapport and trust very quickly in her line of work. As a result, she was confident, welcoming and clearly an effective communicator in everyday conversation. However, faced with the task of communicating to convey – rather than exchange – information, Maxine perceived herself to be at a disadvantage due to the lack of experience she had with giving presentations in this way.

Importantly, Maxine also emphasised the advantages that her opposing barrister had as a result of his experience. In chapter one, I drew on Sandefur's research in order to demonstrate that many of the barriers experienced by LIPs which have been identified by existing research relate to *procedural* rather than legal difficulties within the court process (2011). In her findings, Sandefur argues that making arguments in court is one stage where having a legal representative makes a 'spectacular' difference to the success of litigants (2011, p.924). Reflecting on this through Bourdieusian capital, it is possible to understand why lawyers are more successful when it comes to advocacy, even when legal language is not required. The skills required for advocacy directly contradict the way in which the majority of people without legal training are used to communicating. The ability to exchange and negotiate information during interviews came naturally to both interviewees and I, due to the frequency with which we spoke like this with our peers, friends and families. However, for Maxine and other interviewees, the unfamiliarity of the goal-oriented nature of advocacy meant that they felt disadvantaged in their ability to advocate, especially when they felt that their presentations were compared to those of barristers, who have the benefit of previous experience and practice in this way of speaking.

Another problematic aspect of the communication style was the way in which these speeches were constrained by time. 13 interviewees explained that they struggled to convey everything they wanted when their time to speak during hearings was restricted to one or occasionally two opportunities. This meant that the time-constrained nature of advocacy in particular was problematic for the majority of interviewees, but importantly also posed particular challenges for interviewees with certain learning difficulties and mental health issues which made communicating in a time-constrained manner more difficult.

> Academically-minded people work well under pressure, so my Mum could notice things and think under pressure. She was able to think on her feet, I can't, and all the other people you'll be interviewing won't be able to either.
>
> **Grace**

> When you come out of the courtroom you're thinking of things you should've said or asked. When you're speaking the judge can interrupt you and ask you things, and make you lose your thread – I can't do that scattergun approach.
>
> **Ama**

Ama was contending with stress-related anxiety and depression during her time in the court process. In chapter four, I explained that Ama invested a great deal of time and effort into preparing her court bundle, precisely because she knew that she would experience symptoms such as feeling too stressed and overwhelmed to present her arguments coherently in the courtroom in front of her ex-partner. By drawing on her experience again here, it is possible to understand these difficulties manifested specifically in relation to the time-constrained way in which she was required to get all of her points across in one speech. During her interview, Ama explained that a common way in which her anxiety affected her during court hearings, was that it often felt as though the world was 'speeding up', as a result of her experiencing feelings of panic and struggling to concentrate. Due to being restricted in this way, she was unable to remember everything she needed to say in these circumstances, especially when she was interrupted for clarifications.

As discussed earlier in this chapter, Grace's learning difficulties meant that she required additional time to understand things that had been said by the other party and respond to them effectively within her own submissions. Although they were not permitted to speak for LIPs, four interviewees explained that their McKenzie Friends were an invaluable source of support during this stage, due to the ways in which they were able to help them prepare and remind them of key points during the limited opportunities they had to speak. For example, when Grace was expected to present her position, her mother would help her by holding cue cards between them, which enabled her to stay on track and say everything that she had prepared, even if she was interrupted by the judge. While she and Ama experienced distinct challenges in relation to their respective issues of anxiety and learning difficulties in other aspects of the court process, both of these issues were exacerbated by the inflexibility of this time-constrained approach to advocacy.

This aspect of the court process, therefore, is particularly unsuitable for those who already struggle with verbal forms of communication. As discussed so far, under FPR3A, the court is required to consider whether the participation of any party in hearings may be diminished by reason of vulnerability. In making this assessment, judges are expected to consider the relevance of 'mental disorders' to the ability of litigants to 'put their views to the court'. While some exceptions and accommodations were made to assist LIPs, such as relying on lawyers to provide structure to proceedings or changing the order of conversations within hearings, it did not appear from interviews that any interviewees who experienced mental health problems were provided with assistance in terms of advocacy. While it is hoped that mental health problems may now be taken into account as relevant characteristics of vulnerability through FPR3A and PD3AA, this may not go far enough to recognise the situational nature of conditions like anxiety, nor the more structural barriers that LIPs are likely to face when they are expected to speak in court.

In order to understand the impact of requiring LIPs to speak in this time-restricted nature, it is helpful to reconsider from a Bourdieusian perspective how the skills required to communicate in this way contrast to the ways in which individuals typically make use of language and the linguistic resources they have access to in their everyday lives. While it is not the case that people have unlimited opportunities to talk during conversations, it is very unusual for individuals to be denied chances to follow up on points or develop their ideas in subsequent parts of conversations. The ability to convey all information in this time-restricted way, therefore hinges upon the access that individuals have to professional training, their ability to prepare a comprehensive argument, as well as the opportunities they have had to become practiced in oral eloquence. Examples of communication conducted in this manner outside the courtroom could include university lectures, business presentations, sales pitches, or even the speeches at a wedding breakfast. Time-restriction and goal-oriented styles of speaking are therefore not uncommon, but the frequency and context with which individuals are required to communicate in this way is crucial.

From Bourdieu's notion of symbolic capital, it is possible to see that those who are habitually exposed to contexts like higher education and professional employment, are therefore more likely to accumulate these skills and become more experienced with this style of presentation. In contrast, those who do not have the opportunities to participate in these environments are restricted to the forms of language and communication that they make use of on a day-to-day

basis. For the majority of LIPs who do not have access to these opportunities nor the linguistic capitals that they offer, the format of advocacy is extremely problematic. In addition to exposing the ways in which interviewees experienced difficulties during the process of advocacy, this understanding of the way in which particular forms of communication are privileged and expected within the family justice system also highlights another deficiency of the LASPO approach.

The current practice of requiring LIPs to present their points verbally within hearings therefore fails to incorporate an understanding that professional training is often required for individuals to develop the communication skills necessary to perform advocacy within the legal context. Additionally, this is likely to cause even further problems after LASPO, due to the increased numbers and diversity of LIPs who are using the family justice system whilst also contending with learning difficulties and mental health problems, or a variety of other circumstances which may make verbal communication more difficult.

5.5.2 The Adversarial Experience of Advocacy

In addition to struggling with the performative and time-restricted nature of giving submissions in court, many interviewees experienced the format of advocacy in family proceedings as adversarial in nature and explained that this influenced the way in which they approached hearings.

> 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 [ex] did, and that's my child, I had to fight for her.
>
> **Kate**

> I got a recommendation for a McKenzie Friend, who was fairly notorious. He's in prison now, but for me he was brilliant. He stepped over the boundaries quite a lot, he spoke when he wasn't allowed to, but I wouldn't have got through seeing [ex-partner] in court without him.
>
> **Fiona**

In addition to the political emphasis that continues to be placed on mediation, the family court process is also designed so that at every stage, parties can be encouraged and given every opportunity to settle or agree on an arrangement for their child for themselves, if possible.[44] However, existing research has consistently found that for LIPs, there is a stark contrast between

[44] See: Child Arrangements Programme, Practice Direction 12B.

this ethos of family law and the way in which family hearings are actually experienced (Dewar *et al.* 2000, p.52-3; Moorhead and Sefton 2005, p.163-4; Trinder *et al.* 2014, p.72). Due to the performative and time-restricted nature of advocacy, five interviewees in particular seemed to conceptualise the prospect of presenting their position in court as their half of a larger fight or a battle, which would be compared against the speech given by the other side, before a winner was decided.

These interviewees frequently used words and phrases such as going to 'fight' in court, and 'fighting' for children, when describing their experiences of orally presenting their position statements and responding to the position advocated by the other side. Kate, for example, reasoned that in order to get the outcome she wanted in a hearing, she had to perform well in her oral presentation, so that the judge would pick her over her ex-partner. Similarly, Fiona appeared to equate success within hearings with the ability to assert her position authoritatively within hearings – specifically by overstepping the limitations that were placed on her opportunities to speak during hearings, such as speaking more than once. In terms of how advocacy is experienced, therefore, it appears that where so much emphasis is placed on limited opportunities to speak to the judge in their hearing, interviewees conceived this opportunity as their sole chance to assert themselves during the hearing and convince judges of their position. Additionally, a significant aspect of convincing the judge that their position is correct, appeared to be a refusal to concede to any suggestions or arguments made by the other side.

Viewing this through a Bourdieusian lens, it is possible to consider the contextual factors that may contribute to shape these perceptions and interpretations of the advocacy process. For example, according to Maclean and Eekelaar, a major part of the role of a legal representative is to manage the expectations of their client, in terms of both potential outcomes of hearings and what to expect in the courtroom (2009). Now that many more LIPs may not have access to this guidance, it is possible that the settlement ethos of the family justice process is lost. Additionally, as Moorhead and Sefton explain, LIPs often have a 'social interpretation' of what constitutes a successful argument, which was described by a lawyer in their study as 'arguing over the back fence with the neighbour' (2005, p.163). Both of these arguments suggest that without lawyers, LIPs may descend into more adversarial methods of advocacy, and thus further exacerbate conflict between themselves and cause further strain on the family justice system.

While it would not be realistic within the current political context to argue that all LIPs should have access to lawyers in order to understand the settlement ethos of the family court, it may nevertheless be important to consider how their approaches to advocacy may be influenced by the other sources of information that they may draw upon in absence of legal advice. For instance, the interpretations of LIPs may instead be framed by the attitudes and approaches of others who they seek assistance from online or through McKenzie Friends. As discussed so far, many McKenzie Friends have useful experience to offer LIPs – specifically for Fiona, this McKenzie Friend provided her with the confidence and protection that enabled her to face her perpetrator in court. The benefit of this support should not be underestimated, particularly for survivors who struggle to face perpetrators in waiting areas and hearings. However, as noted in chapter four, there is also some evidence to suggest that professional McKenzie Friends may take advantage of the opportunity to appear in court in order to gain a platform from which to further their own agendas against their family court (Legal Services Consumer Panel 2014, p.19; Trinder *et al.* 2014, p.96-8; Smith *et al.* 2017, p.21; McKeever *et al.* 2018, p.93). For example, many individuals may choose to offer their services because they have their own 'axe to grind', following 'custody battles' of their own (Thomas 2016).

In addition to the assistance that Fiona's McKenzie Friend offered with paperwork, therefore, he also played a vital role in making her feel as though she had asserted herself well within proceedings. However, the approach that he encouraged her to take may have meant that he also potentially hindered her ability to participate in other aspects of the process, as well as exacerbated the already protracted conflict that existed in her proceedings.

In terms of Bourdieusian capital, therefore, a specific concern is that the withdrawal of legal representation may in practice mean that many LIPs will instead draw upon alternative sources of support and advice which perpetuates adversarial attitudes within the court process. This is particularly so when the format of court processes like advocacy are already designed in such a way that, as discussed so far in this section, engenders competition rather than negotiation. The potential consequences of this for LIPs, is that they will be further excluded from the capitals and attitudes which are valued within the court process – openness to settlement, compromise and negotiation. Instead of taking these approaches, interviewees interpreted advocacy as an adversarial process, and experienced further disadvantage as a result of their being less willing to attempt to reach agreements or compromises during proceedings.

5.6 Cross-Examination

In addition to the struggles that interviewees had in relation to advocacy in the courtroom, another aspect of performing in court which has been the subject of much controversy in the post-LASPO context, is the issue of cross-examination. Due to either requiring FFHs or reaching final hearings, 12 interviewees undertook questioning as part of a cross-examination, and ten were cross-examined. In alignment with existing literature, both of these tasks had significant implications for survivors of abuse, because despite the way in which vulnerability has been conceptualised under LASPO as stemming from experiences of domestic abuse, survivors are still faced with the prospect of having to cross-examine or be cross-examined by perpetrators. Although this is set to be banned under the Domestic Abuse Bill, the cross-examination process is currently governed by PD12J, in conjunction with FPR3A and PD3AA.

5.6.1 Cross-Examining as a LIP

The purpose of cross-examination is to enable parties to test specific elements of evidence from witnesses and expose weaknesses in the claims or position of the other side. However, interviewees in this research who had cross-examined, explained that they struggled to think of what questions to ask for this purpose. Therefore, rather than asking inappropriate questions, most ended up struggling to ask questions at all.

> I think I was really prepared…I just pulled out the important bits of it, just like in the way barristers do, I made sure to get them to repeat all the good bits. But the judge kept picking me up, for saying statements rather than questions.
>
> **Catherine**

Rather, Catherine, along with seven other interviewees, explained that they would repeat aspects of the case which they felt were the most important facts for the purpose of portraying their ex-partner negatively in court, instead of actually asking questions.

This aligns with the findings of previous studies, which have argued that regardless of the procedural assistance that might be made available to LIPs, there are some 'legal' tasks such as cross-examination, which LIPs simply cannot perform effectively, if at all. Trinder *et al.*, for instance, found that LIPs struggle with this questioning process in two main ways – firstly in formulating questions, and secondly, in keeping their questions to those which are legally relevant (2014, p.70). In this study, the researchers found that judicial approaches to managing the process of cross-examination varied widely. For instance, while some judges would take complete responsibility for devising and delivering the questions, others would help LIPs to

formulate questions, or give some guidance to LIPs about the topics that should be addressed. Some judges in this study took a 'sink or swim' approach, in which LIPs were offered no more assistance than that which would be available to a trained lawyer, and LIPs were rebuked for mistakes or straying off topic (2014, p.71-5). Similarly, in Moorhead and Sefton's research, the researchers found evidence of opposing barristers assisting LIPs with the format of cross-examination, often by acting as intermediary or helping them to formulate questions (2005, p.183). However, in their study, there was a general sense of anxiety among both judges and lawyers about the disruption this caused to the impartiality of judges and the position of represented litigants, which meant that there not a uniformity of approach (2005, p.184).

There are therefore a range of ways in which judges may assist LIPs with the task of putting questions. However, none of these eight interviewees mentioned any assistance that they were given by judges – in fact, three including Catherine, explained that judges had criticised their questioning technique. It should be noted, of course, that Catherine's judge may have been attempting to help her by reminding her to ask questions rather than give statements. However, an important finding is that this was not perceived as help by Catherine. Rather, during the interview, Catherine was still of the position that she had prepared well and effectively emulated her ex-partner's barrister during her questioning.

To understand this further, it is useful to turn back to the theoretical framework. As discussed in relation to advocacy, the Bourdieusian notion of capital is an important and valuable means of understanding the class-based inequality that characterises particular forms of communication, because the ability to effectively cross-examine is again dependent on the extent to which individuals have access to particular skills and experience. While advocacy requires LIPs to have attributes such as the ability to give a single presentation which conveys all information in an authoritative and convincing manner, cross-examination requires LIPs to reflexively use these skills in order to actively deconstruct aspects of the other party's case. For instance, Tkacukova explains that cross-examination provides a unique opportunity to reiterate one's own position through the device of another person, by eliciting specific responses from them (2016, p.445). Cross-examination is distinctly asymmetrical, in that it follows a strict question and answer dynamic, which remains goal-oriented (Tkakucova 2010). The task of testing evidence through questions is therefore another example of a specialist and regulated form of communication, distinct from ordinary forms of conversation or confrontation that LIPs are likely to have encountered before.

While symbolic capital may be a useful resource through which LIPs are able to demonstrate oral eloquence, confidence with public speaking, and posing their questions authoritatively, this alone still does not mean that LIPs are able to pose questions in the legally relevant manner expected by the court process. As Trinder *et al.* note, the ability to question effectively during the cross-examination process does not necessarily relate to intelligence, but rather 'legal nous' (2014, p.70). The skill of legal questioning is not something that comes naturally even to those who are generally privileged within society. While some LIPs may have some experience of oral presentations such as those required in advocacy, the opportunities for individuals to engage in cross-examination style communication outside law is are even more rare. Previous exposure for the majority of people who are not trained or experienced within the juridical field, for instance, is likely to be largely limited to representations of the process in popular culture, such as criminal proceedings in courtroom dramas or selective reproduction of high-profile court cases on the news (Leader 2017, p. p.160). Rather, this skill is developed through the specialist experience and training which comes from practicing within the juridical field. The ability of lawyers to question effectively stems from the knowledge they have of governing legal principles, as well as their experience as to how individuals typically respond to different kinds of questions, and how to influence the narrative which is presented in order to fit with legalistic conceptions of 'truth' or 'fact'.

Through Bourdieusian theory, therefore, it is possible to see how LIPs are structurally disadvantaged for this task, and how this exists within a broader context of class-based inequality, where only certain groups of people have access to the advantages and opportunities which enable them to move fluidly between the requirements of having to give one-sided oral presentations during advocacy, and then adapt to this specialist means of questioning, in order to reinforce the same goal-oriented narrative by using the accounts of witnesses. By virtue of being excluded from this all-important legal knowledge and experience, Catherine was also excluded from understanding the precise ways in which lawyers typically succeed within the process of cross-examination. Rather than relying upon these capitals as a means of exposing weaknesses in her ex-partner's case, Catherine was only able to repeat parts of the hearing, and unable to use this process as a means of otherwise influencing the hearing. Additionally, interviewees who had difficulty posing questions like Catherine, did attempt to undertake cross-examination in a goal-oriented way – by pulling out the 'important' bits of a case, they attempted to reiterate their argument and work towards a conclusion which portrayed them in

a better light than their ex-partner. Importantly, the requirements of this process, as well as the approaches that LIPs may take when attempting to cross-examine, may therefore in practice also perpetuate the adversarial attitudes and interpretations discussed so far in this chapter.

Another problem experienced by LIPs during cross-examination which cannot be understated, is the specifically gendered way in which survivors of abuse experienced vulnerability within this questioning process. Within this research, five interviewees explained that they were expected to cross-examine their perpetrators during hearings.

> I had a screen, and I questioned him through the judge, which I suppose did help, because I didn't have to have him glaring at me. But he didn't get any of the grilling in the same way I did. I wasn't aggressive enough to question him like I had been questioned. Either way I don't think you can make that experience a good one.
>
> **Erica**

While there are a variety of approaches that judges *may* take to assisting LIPs with cross-examination, they are under certain obligations when it comes to cases involving domestic abuse. Under PD12J, judges are encouraged to undertake cross-examination in an inquisitorial manner in cases where domestic abuse is present. For instance, this might involve asking each party to set out the questions they wish to ask in advance, and specifically, PD12J states that judges should be prepared where appropriate to conduct questioning on behalf of litigants. However, despite recommendations which preceded the 2017 revision of PD12J, this falls short of stating that judges should not require survivors to question their abusers.[45] Additionally, under FPR3A and PD3AA, judges are now required to specifically consider the potential ways that a history of abuse may diminish the ability of survivors to effectively participate in cross-examination.

Of these five interviewees, Erica was the only one who had access to special measures – specifically, she had a screen in the courtroom, and the judge acted as an intermediary by relaying her questions to the other party. The fact that four other interviewees did not have access to special measures and were required to directly cross-examine their perpetrators, therefore, reiterates the myriad of literature which indicates that there is variable availability of special measures and that judges may not be willing to entirely take over the questioning process on behalf of survivors, even if this is necessary to support their participation during the

[45] See: (Cobb 2016).

cross-examination process (Corbett and Summerfield 2017, p.16-8; Birchall and Choudhry 2018, p.23-5; p.27).

However, Erica's experience also indicates that even with these measures, the process was often traumatic and difficult. As discussed throughout this chapter, survivors experience specific difficulties before and during hearings due to the way in which the court process itself is organised, and the ways that this is not currently set up in a way that accounts for the diverse, subtle and coercive strategies of intimidation that may be employed by perpetrators within family proceedings. Here, Erica explains that the effectiveness of the screen provided for her elapsed when she was required to have a real-time exchange with her perpetrator by posing questions. This suggests that although material resources are important for achieving separateness and division within waiting areas and hearing locations, this is not enough to protect survivors when court processes themselves require LIPs to talk to each other directly. Rather, this fails to account for the ways that this requirement means that women feel that they are unable to advocate properly for the safety of their children (All Party Parliamentary Group on Domestic Violence 2016, p.15).

In addition to the vulnerability that is experienced as a result of being exposed to perpetrators, this suggests that survivors are also particularly vulnerable to being unable to make use of this process, even if they are identified as vulnerable by judges under FPR3A. As Erica explains, she felt that the questioning process had been unbalanced because her ex-partner had not received a 'grilling' in the same way that she had. In this sense, it is useful to consider how the class-based and gendered inequalities discussed so far in this section may intersect for survivors who are expected to question their perpetrators. Traditionally, the questioner would directly examine the witness, making use of the linguistic tools discussed so far in this section – for instance, through using closed or leading questions, it is possible to coerce particular forms of responses from witnesses. This can be done by limiting or prescribing the possible responses a witness is able to give – similarly, by managing the speed of questions and length of pauses between questions, it is possible to emphasise certain aspects of the exchange and dramatically reinforce the flaws in their evidence and argument (Tkacukova 2016). However, in a dynamic where Erica felt unable to share the same physical space as her perpetrator, she felt it was wholly unrealistic to expect her to effectively test his evidence using this style of communication. Rather, Erica and the four other survivors who cross-examined their perpetrators in this way, conceived this as an

experience to get through with as minimal emotional trauma as possible, rather than an opportunity to reinforce their cases.

Survivors facing perpetrators in court disproportionately experience vulnerability throughout their time in the family justice system, but particularly so when the court process requires LIPs to communicate with each other directly. The construction of vulnerability which has been used by the government is premised upon the idea that LIPs are able to participate in these processes, but this fails to account for the vulnerability that is in practice facilitated by the requirements that may be placed on LIPs at this stage. The mechanisms available to support their participation under PD3AA provides further impetus for judges to use special measures and intervene in this process, but this may in practice be limited given the limited compliance with PD12J in these cases. This is particularly important after LASPO due to the increasing numbers of self-representing perpetrators, and the prolonged delays that have been associated with the implementation of the Domestic Abuse Bill.

5.6.2 Being Cross-Examined as a LIP

Six interviewees were cross-examined by opposing lawyers, and all of these LIPs explained that they struggled to answer questions for the purpose of defending their case and reinforcing their evidence.

> The last final hearing just happened so quick and no one told me what was going to happen, like the whole format I just didn't know what to expect. I wasn't told beforehand that I would go into the box. If I knew, I would've sat there with my brain and not gone to pieces at the questions.
>
> **Edie**

> I was there giving evidence, and it was difficult because I didn't think about my answers, I was just honest in saying what I thought of him. But looking back now, if I had said it in a different way, that would have been fine. But because I was under pressure and scared, I didn't think then about how my answer would be used, and then it was all used against me.
>
> **Kate**

While existing literature focuses mainly on how effectively LIPs are able to make use of the questioning process, this finding allows an insight into how LIPs may perceive the answers that they give during this process. For instance, in reflecting on their experiences, both Edie and Kate felt that they would have been able to provide better answers if they had been able to access information about how the questioning format was going to work, or how their answers were going to be used by the other side.

In Corbett and Summerfield's research, judges reflected upon the kinds of vulnerability that they felt were important and relevant to whether witnesses required special protections during the cross-examination process. Aside from domestic abuse, judges identified that learning difficulties can sometimes mean that a witness might need support – for instance, judges explained that they might remind a LIP to speak clearly, help them by breaking a question down to make it easier to understand, and taking breaks throughout the hearing (2017, p.37). This is a positive indication that some judges may intervene to help some LIPs, and a suggestion that the understanding of vulnerability relating to these circumstances is broader than the definition which has been used to inform the LASPO reform.

However, as discussed so far in relation to Boudieusian theory, effective cross-examination involves the use of specific capitals, including linguistic tactics, such as combining open and closed questions and employing pauses to emphasise particular aspects of the answers given. In the same way that LIPs struggled to make use of these tools during questioning due to the limited access and familiarity they have with this unique form of communication, they also appeared to struggle in predicting how lawyers would use these tools against them. Without access to legal forms of knowledge or the experience that is only available through legal education and training, LIPs are therefore also inevitably disadvantaged in their ability to *respond* to questions during the cross-examination process. Without effective guidance and information about the cross-examination process and how it works, therefore, LIPs may struggle to know what sort of answers will best support their case or at least prevent their cases from being undermined.

As discussed in chapter four, Kate was Romanian, and her experience highlights that the process of being questioned by a trained advocate may be even more arduous for those whose first language is not English. For instance, in giving 'honest' answers, Kate relied on familiar narratives and forms of expression when answering questions, in which she was limited not only to ordinary, non-specialist modes of conversation, but also excluded from the nuanced and complex ways in which lawyers are able to manipulate language and influence responses through the asymmetrical question-and-answer dynamic. This suggests that the current requirement for LIPs to answer questions without necessarily having had any prior guidance about the process, may disproportionately place individuals who do not speak English as a first language at a disadvantage. In reality, therefore, even this understanding of vulnerability does

not go far enough to capture the range of ways that LIPs may experience vulnerability at this stage of the process.

Another specific way in which LIPs may be disproportionately disadvantaged for the task of effectively answering questions, is when they are survivors of abuse who are being questioned by unrepresented perpetrators. As discussed in chapter one, one of the highly controversial consequences of the restrictive understanding of vulnerability which has been used under LASPO, is the situation where alleged perpetrators are permitted to directly cross-examine alleged victims of their abuse. As discussed above, in addition to the guidance provided under PD12J, judges are also expected to consider FPR3A and PD3AA in these situations. In *all* cases where a vulnerable party is to be cross-examined, PD3AA requires judges to consider steps that can be taken to protect them during this process, including agreeing questions or topics prior to the hearing, and to consider putting the questions to the vulnerable witness themselves, instead of allowing perpetrators to do this. However, as discussed so far, research has consistently found that nevertheless, survivors are often cross-examined by perpetrators – one study found that this occurred in 25.3% of cases, and this was still found to be 24% even after the 2017 revisions to PD12J (Women's Aid 2015, p.17; Birchall and Choudhry 2018, p.27).

In this research, four interviewees were cross-examined by their perpetrators (one indirectly, and three directly). This dynamic created significant problems for their ability to give appropriate answers during cross-examination.

> Even when I was crying during the cross-examination he didn't stop pushing me. Eventually the judge stopped him, but it went on for some time. It was horrible, terrifying to be questioned like that. The things he was asking me as well, things about my mental health, he was trying to undermine me in front of everyone.
>
> **Erica**

> That bit of the hearing is just a blur, to be honest with you. But they do need to be aware of the control. The manipulation. It's what she doesn't say – it's what she's holding back for fear of having her kids taken off her and being told that she's the one neglecting the children. They need to read between the lines. It's what she doesn't say.
>
> **Joan**

In contrast to those interviewees who were cross-examined by advocates, these survivors did not feel that any level of preparation for cross-examination would have helped them during this process. Erica, for instance, explained that her ex-partner was able to ask her provocative questions regarding her mental health, which she felt were attempts to undermine her character

and her experiences of abuse, as well as her evidence.[46] Although it may not have been executed using the sophisticated linguistic resources which are utilised by trained advocates, her ex-partner was still able to limit her responses and undermine her evidence by drawing upon existing strategies of control and intimidation.

Additionally, this reiterates the concern of other studies that even when survivors themselves are faced with being questioned by perpetrators, there may still be an unwillingness among the judiciary to take control of the questioning process. As was also the case in Birchall and Choudhry's research, survivors left this process feeling that perpetrators had been allowed to treat them in a 'degrading manner' and that their safety had been compromised to the extent that they felt at risk of further abuse (2018, p.47). As such, there have been consistent calls for a ban on direct cross-examination as soon as possible, and it is hoped that this may take effect through the Domestic Abuse Bill (All Party Parliamentary Group on Domestic Violence 2016, p.26; Birchall and Choudhry 2018, p.54). Within Corbett and Summerfield's research, some judges appeared to perceive the possibility of a publicly funded advocate for the purpose of cross-examination as the 'magic wand' needed to solve this situation (2017, p.34). However, rather than this perception being premised upon the vulnerability of the witness, judicial responses appeared to indicate that the attractiveness of this solution was again related to the need to control potentially aggressive LIPs, and that a publicly funded advocate might only be necessary in severe cases which are difficult to manage (2017, p.35-6).

This understanding of vulnerability exists in stark contrast to the experiences of interviewees. For these survivors, being questioned by perpetrators was a harrowing experience, which also held implications for their ability to describe this process within interviews. Erica's experience was in fact unique within this research, because she was the only interviewee of these four able to pinpoint any specific questions she was asked by her perpetrator. Joan and two others struggled to describe these experiences because it was too traumatic an experience. The only thing that she remembered about being cross-examined, was her hope that the judge would 'read between the lines' and be able to deduce answers from what she was not able to verbalise when being questioned by her perpetrator. Joan and the three other interviewees all explained that they had blanked the experience from memory during the hearing, and subsequently had trouble recalling it during their interviews. All four of these interviewees were also contending

[46] Accusations relating to the mental health of mothers are commonly made in s 8 proceedings involving domestic abuse. See: (Birchall and Choudhry 2018, p.44-7).

with ongoing post-traumatic stress and anxiety as a result of going to court against their perpetrators, which they explained was triggered and exacerbated during cross-examination. According to Mind, a common symptom of both of these mental health issues is 'depersonalisation', in which individuals experience feelings of disconnection from their mind and body when they are experiencing panic attacks resulting from particular triggers and high-stress situations (2015). Joan discussed this feeling at length with me during her interview and described it as being like watching herself within the cross-examination process as if she was a third party in the room. In addition to highlighting the extent to which survivors may experience vulnerability during the cross-examination process, this therefore also indicates the difficulty that future research may face in exploring the precise nature of how this is experienced.

5.7 Conclusion

This chapter has drawn upon the experiences that interviewees had while they attended court. In doing so, it has identified specific aspects of these hearings, such as physical environments, judicial approaches and procedural requirements which LIPs believe to be relevant to their ability to self-represent and succeed within court hearings. In particular, it has demonstrated the problematic ways in which court hearings are failing to adapt to the needs of unrepresented users, which now come with a variety of different support needs relating to learning difficulties, mental health issues, language barriers or domestic abuse. Additionally, it has emphasised the ways in which the retention of traditional procedures and approaches may in practice exacerbate experiences of vulnerability for those who are not recognised under the current conceptualisation of legal need. In the next chapter, this thesis builds upon the findings presented in chapters four and five, in order to reflect more broadly upon the extent to which LIPs are able to participate in the family court process as a whole.

6. Participating in the Family Court Process

6.1 Introduction

So far in this thesis, I have outlined the different ways in which interviewees experienced various stages of self-representation, including those that relate to preparations for court and attending court hearings. This final findings chapter will now build upon these experiences in order to consider the extent to which interviewees felt able to participate in the family court process as a whole. In order to do this, the chapter will be divided into three main sections. Firstly, it will explore the extent to which LIPs were able to work effectively with judges and lawyers, and how these relationships framed their ability to participate in individual hearings. Secondly, it will consider the ways in which some interviewees attempted to circumvent their varied and particular experiences of disadvantage by making good impressions on their judges, and the effects that this had for their ability to participate in court hearings. The chapter will then explore the extent to which interviewees perceived themselves as able to participate in hearings, by discussing how hearing decisions were often interpreted according to ideas of luck and chance. The final section of this chapter will discuss the experiences and difficulties that interviewees had in terms of linking individual court hearings together and understanding the content and purpose of court hearings as part of the wider process of the family justice system. In reflecting on the fragmented and different ways in which LIPs experienced this process, I will lastly explore the perceptions that interviewees had in terms of the ultimate outcomes of their cases. In doing so, the chapter will conclude that interviewees not only struggled to participate in hearings, but also appeared to be excluded from broader participation in the family court process, as a result of the incomprehensibility of the process through which these decisions were reached.

6.2 Working with Judges and Lawyers

For all interviewees, an integral aspect of participating in the family court process was their ability to effectively work with the legal professionals that they came into contact with during their time as a LIP. However, during interviews, there were three main ways in which LIPs experienced vulnerability within these working relationships. Firstly, in many interactions with lawyers, interviewees felt that legal professionals would use their legal knowledge and experience in order to purposefully exclude them from key conversations and processes. Secondly, some interviewees found it difficult to communicate with judges when entire court bundles were not read in advance by their judge. Thirdly, LIPs also described experiences of feeling excluded from the pre-existing social and collegial relationships which existed between

many judges and lawyers. By exploring these specific problems, it is possible to reflect upon the extent to which these problems may be exacerbated by LASPO, and how these experiences may be shaped by broader experiences of inequality.

6.2.1 Being Taken Advantage of by Lawyers

As discussed in chapter five, interviewees experienced vulnerability when they were excluded from legal conversations conducted between judges and lawyers – particularly when this was further underpinned by existing learning difficulties which affected their verbal communication skills. However, in addition to the ways in which this was facilitated by the organisational approaches of judges, nine of the 17 interviewees who faced lawyers also explained that these legal professionals had exacerbated this exclusion by using professional skills and experience in ways that practically minimised their opportunities to participate in the court process.

For instance, four of these nine interviewees felt that lawyers would use their knowledge of court conventions and customs in order to try and pressure them into agreements before proceedings.

> The solicitor came back into the waiting area and tried to intimidate me. He had an order written up, and tried to force me to sign it, saying it was normal to do that. I found out later that it is normal for them to come and speak to you, but he was really quite nasty though, saying things like, 'you're not going to win this' and 'you're clearly not suitable to raise your son'. And I don't know what came over me, so I stood up and quite frankly told him where he could shove it!
>
> **Caroline**

> His barrister said we had to agree outside the room, and that if we agreed, the judge would help me better, so obviously I wanted that. But then when we got into the courtroom, the barrister changed completely – he told the judge – 'she agreed outside, we don't need to discuss this bit'.
>
> **Kate**

As discussed in chapter five, the family court process is underpinned by a strong commitment to promoting compromise and agreement between parties as far as possible. As part of this, where both parties are represented, it is common for the lawyers representing each side to approach each other in the waiting area before hearings to determine whether there are any elements of the hearing that can be negotiated or agreed upon in advance of going into the courtroom. In the absence of another legal representative, lawyers may instead approach LIPs in order to try and initiate these negotiations, which can be extremely helpful for helping to narrow down the issues to be discussed in the hearing. For example, in their observations,

Trinder *et al.* found that when opposing lawyers were able to communicate effectively with LIPs, this had a positive impact on their relationship throughout the process as well as on the conduct of the hearing itself, because they were able to establish a settlement-oriented environment from the beginning (2014 p.62-66). As a result, a major benefit for most of the LIPs they observed was that they were not only enabled to participate in this informal component of the court process, but also enabled to participate more fully in the hearing that followed.

However, the consensus of existing literature is that this is often not possible. For instance, research has already emphasised that LIPs tend to struggle to participate in pre-hearing negotiations, in that they will rarely initiate negotiations themselves, and often rebuff approaches from opposing representatives or refuse to engage in negotiations (Moorhead and Sefton 2005, p.173; Trinder *et al.* 2014, p.45; p.64). These studies have indicated that this attitude often stems from a perception that opposing lawyers may be trying to take advantage of them, and they do not want to be forced into agreements (Trinder *et al.* 2014, p.45-9; Lee and Tkakucova 2018). As Trinder *et al.* explain, 'trust was…the crucial issue in the waiting room negotiation process' (2014, p.49). This is also underpinned by evidence that suggests many LIPs are unaware of the role that negotiation plays within disputes, nor of the cultural practice for lawyers to try and narrow issues down outside the courtroom (Moorhead and Sefton 2005, p.173).

This second scenario appeared to also be the case for these four interviewees. While it is not possible to determine the intention of the lawyers that Caroline and Kate described, by drawing on their interpretations of these interactions it is possible to understand that whether LIPs dismiss lawyers may actually depend on the way in which they are approached. For instance, while both Caroline and Kate explained ways in which the lawyers told them that it was normal or helpful to discuss the issues of the case with them before they went into the courtroom, neither viewed this as an attempt to support their participation in the court process. Rather, they viewed these approaches as attempts to intimidate them and take advantage of their limited experience and familiarity with the court process.

As discussed so far, through a Bourdieusian lens, it is possible to understand that LIPs are continually disadvantaged as a result of their structural exclusion from specialist forms of juridical capital. The cultural practice of engaging in negotiations in the waiting area is therefore another way in which LIPs may be excluded from the benefits of this process, because they are

unaware that this is a normal albeit unwritten part of court procedure. Further, it is important to appreciate the ways in which approaches by lawyers may be interpreted when LIPs are not aware of this stage of the process. For instance, in chapter five, I discussed the ways in which, due to an unawareness of the settlement ethos of family law, some LIPs may interpret advocacy as an adversarial process, in which they need to assert their own cases and defend themselves against the words of the other party. Similarly, as is demonstrated by existing literature, a consequence of lawyers attempting to negotiate may therefore be that pre-hearing negotiations can also perpetuate adversarial attitudes, and exacerbate the difficulties that LIPs experience at other stages of the process because they are unable to narrow down issues in a way that would assist their progress.

Additionally, Bourdieu's habitus is helpful for understanding the subjective ways in which individuals continually interpret their own position and the opportunities available to them when they are faced with a situation like this. For instance, Caroline strongly resisted her opposing lawyer's advances but explained that she did so because he was 'really quite nasty', in implying that she would not be successful in the forthcoming hearing. In contrast, Kate did not resist the possibility of agreement, due to being convinced that this would help her during the hearing. Without access to legal forms of knowledge, experience of the court process, or relevant legal advice, she was grateful for any assistance before going into the courtroom. Instead, however, the barrister used the fact that she had made some agreements as a means to shut down and minimise those discussions during proceedings. Both therefore had calculated responses to these interactions, but in different ways felt that lawyers had unfairly taken advantage of the inequality of knowledge and experience that existed between them in order to benefit the other party. Taken together, therefore, it is possible to understand how LIPs may not only be excluded from the knowledge and understanding required to participate in pre-hearing negotiations, but also may actively interpret the advances of lawyers as attempts to intimidate or sabotage their cases.

This has significant implications for considering how the family court process may need to adapt after LASPO. For instance, in guidance for lawyers facing LIPs lawyers are advised to take extra care in terms of communicating clearly and avoiding 'inflammatory words or phrases', which may cause LIPs to feel 'further intimidated and antagonised' (The Bar Council, CILEx and the Law Society 2015, p.6). While this guidance is useful, it does not make clear that the participation of LIPs may in practice entirely depend upon the sensitivity and tact of lawyers attempting to

initiate negotiations. The way in which the court process continues to rely on lawyers to extend this assistance is additionally problematic, because it does not consider the ways in which LIPs may no longer have access to legal advice or guidance, especially after LASPO. As discussed throughout chapters four and five, in the absence of this support many LIPs may draw upon other sources of help like social media and professional McKenzie Friends. As a result, many may already be predisposed to holding adversarial attitudes or suspicion of legal professionals as a result of the advice they receive from these sources. However, this should not be taken to mean that LIPs are not interested in settling or narrowing down aspects of the case. For instance, more than half (55%) of the LIPs who responded to Lee and Tkakucova's survey stated that they would have preferred to settle outside of court if possible, but at the same time, the majority of respondents were suspicious of legal representatives who were representing the other party (2018). Additionally, when LIPs respond in this way, it is likely to inhibit their ability to settle within court proceedings, because as McKeever *et al.* note, these reactions cause lawyers to be less willing to try and engage with them before hearings in the first place (2018, p.119-20).

In addition to the ways in which LIPs felt taken advantage of before their court hearings, seven of these nine interviewees described experiences where they felt that the lawyer representing their ex-partner unfairly used legal forms of knowledge, such as case law and statutes, in order to take advantage of them during hearings.

> His barrister referred to a case – but he hadn't explained anything about it in his position statement, so the judge told him off, and [the barrister] went to print a copy of the case off for me and asked the judge to call a 20-minute break so I could get up to speed. But I'd never read a case before, how was I supposed to 'get up to speed' in 20 minutes? He completely took advantage of me and that was that for that hearing.
>
> **Ama**

As discussed in chapter five, due to the organisational approaches often taken by judges, it was common for interviewees to feel excluded from conversations about points of law, or conversations in which judges and lawyers used legal terminology which they did not understand. Importantly, this had a disproportionate impact on interviewees with learning difficulties and mental health problems, who were already disadvantaged in their ability to contribute verbally to these conversations in the performative, time-constrained and pressured conditions of the courtroom. However, for seven interviewees, this exclusion was also experienced as a result of the ways in which lawyers were able to frame hearings, using their legal knowledge and professional skills. Here, it was a common interpretation that lawyers would purposely draw upon their legal knowledge and experience in order to minimise the

opportunities that interviewees had to speak, and thus exclude them from participating in important conversations.

In addition to the way in which Bourdieusian theory demonstrates the disparity of access to legal capitals that exist between LIPs and lawyers, it is also useful for understanding how lawyers may be able to capitalise upon their access to greater advantages within the legal context. Specifically, the ability to read a case and understand a judgment is dependent upon the skills of legal reasoning and argument which are developed during professional legal education, as well as the resources and opportunities that enable individuals to comprehend complex and lengthy written text. For example, Erika Rackley explains that judgments themselves are a form of 'story-telling, [which] is made to function as, argument' (2010, p.46). Similar in essence to the ways in which lawyers may draw on a range of different resources in order to present a convincing narrative during advocacy and cross-examination, judgments contain a range of different 'rhetorical and literary techniques' in order to demonstrate the reasoning process through which a particular decision is reached. Rackley explains that while some well-written judgments include 'short sentences, plain language and clear reasoning to communicate [their] outcome', many badly written judgments are 'long, rambling, impenetrable and obfuscatory texts' (2010, p.47). Further, the task of decoding a judgment – whether well or badly written – hinges on the ability to not only comprehend the various style and forms of language used in case reports, but also to track backwards through these narratives in order to identify particular aspects of the judgment which are binding and relevant to their case. Even from the perspective of lawyers, therefore, judgments can vary in terms of their accessibility.

Ama was University-educated and, as discussed in chapter four, highly proficient in terms of literacy and her ability to comprehend complex written texts. However, she was also contending with anxiety and post-traumatic stress, which meant that she had greater difficulties communicating verbally during hearings in front of her perpetrator. For her, the introduction of this case to the discussions in her hearing exacerbated these difficulties, because she was unable to rely upon the arguments that she had prepared. Further, despite her skills and education, she was also disadvantaged by the way in which she was expected to make use of a written judgment, when the ability to do so requires specialist training and experience. This demonstrates that for the majority of LIPs who are unable to draw on professional legal skills, barriers to using judgments may be insurmountable.

From Ama's perspective, her ex-husband's barrister did not simply draw on his specialist skills in order to convince the judge of his position, but also used his knowledge in order to create an opportunity to take advantage of Ama's lack of experience with case law and legal principles. Without the support of a lawyer, Ama was not only unable to make use of this text but was also excluded from the discussions which subsequently took place. Importantly, this suggests that way in which vulnerability is currently defined under LASPO does not take sufficient account of the fact that a lack of professional initiation into the juridical field may itself facilitate experiences of disadvantage within the family justice system, as well as the disproportionate ways that this can exacerbate the vulnerability experienced during conversations by those with learning difficulties and mental health issues.

Having drawn upon Bourdieusian theory in order to reflect upon the inequality of access to these legal skills and resources, it is also helpful to use ANT in order to look more closely at how this inequality manifests within the relationships between LIPs and lawyers. In other words, by looking at the way in which individuals behave during court hearings, it is possible to see that in addition to some actors having greater advantages than others, those advantages may also enable actors to manipulate others in order to further their position within this unequal network. For example, In Ama's case, rather than translating the principle of the case into lay terms for Ama as he was expected to by the judge, the lawyer instead suggested to the court that it would be enough to give her the opportunity to read the case, which led the other actors in the hearing to continue without due consideration to the difficulties she would encounter in doing so. In terms of how this interaction was interpreted, therefore, Ama did not attribute this exclusion to the organisation of the process, but rather to the lawyer's ability to make use of his advantages as a means of effectively preventing Ama from participating in the hearing. This highlights a specific way in which these interviewees experienced disadvantage and vulnerability within hearings – not simply as a case of lawyers having *more advantages* within hearings, but as a process through which they felt actively *dis*advantaged by the unfair ways in which they perceived legal professionals to use their training and experience against LIPs.

While it cannot be determined whether lawyers intended to give these impressions or have this impact, the way in which interviewees perceived these interactions as attempts to take advantage of them before and during hearings is indicative of the difficulties they experienced in terms of participating in those proceedings. In addition to the ways in which this may affect perceptions of the family justice system and the legal profession, the failure of these working

relationships exacerbates the difficulties already experienced by individuals with learning difficulties and mental health issues in terms of participating in their hearings. Rather, these experiences led interviewees to feel taken advantage of by lawyers both in the waiting area and in the courtroom itself, and to perceive these relationships as detrimental to their ability to participate in hearings.

6.2.2 Communicating with Judges Using Bundles

In addition to the problems that interviewees experienced within their relationships with lawyers, there were also eight interviewees who highlighted problems relating to effective communication with judges. These interviewees explained that commonly, judges were unable to read entire court bundles in advance of each hearing, and instead relied upon parties to summarise case progress in their opening oral submissions, which caused specific problems for those who struggled with advocacy and verbal forms of communication.

> When I first went, I was really impressed because I was like, 'wow, they read files that big?'. But now I understand they don't read them. They read the position statement and maybe the reference point referred to in the position statement but that's it. I presumed they'd be there every night reading the whole thing, because why would you not? You're deciding people's lives. If you're not going to do it properly, why do it? Go off and be a gardener. You're in a privileged position, you should understand that and read what you're meant to read, because not everyone can do it all for you in the courtroom.
>
> **Ama**

> We got clever with it by the end of it – we were concerned because we were seeing so many different judges and there was no continuity – we needed to get my point across, so the best way to do that was to write a personal statement before each hearing, and we'd give it to the usher to give to the judge. The thing is, you're supposed to give a copy to the other side too, but we didn't do that until we were all in the courtroom. We realised that the judges only had time to read a certain amount of information, so we wanted to make sure that our statement would be on the top, right? We got away with it most times, I think it was just one time that a judge had a go at us for not submitting papers properly.
>
> **Grace**

Throughout interviews, LIPs explained that judges were often strictly constrained by time, which resulted in frequent inconsistencies for interviewees either in terms of being assigned to various different judges or locations in which their proceedings were heard. For these eight interviewees, an additional consequence of this was the fact that their judges often either had very little time in which to read the court bundles they had prepared or no opportunity to read these files at all before proceedings took place. For instance, Ama and Grace, who both attended several hearings over the course of their cases, explained that it was normal for them to attend

hearings where judges had only been able to read the first few pages of the bundle in advance. This aligns with existing research, which has identified the greater amount of time that it takes judges to prepare for hearings if there are gaps in the bundles or they are not clearly organised (Trinder *et al.* 2014, p.57-8; p.69). However, this caused specific problems for interviewees who had difficulties presenting their cases verbally, because they were unable to rely on the court bundle as a means of conveying important information to judges.

Here, it is helpful to consider the Bourdieusian concept of field in order to understand how broader inequalities relating to class and gender may intersect in order to shape the ways in which some LIPs may attempt to communicate with judges. For example, in chapter two I explained that fields are continually shaped by the actions of the individuals within it. Bourdieu argued that the experience of disadvantage is not passive – rather, individuals actively respond to their circumstances by drawing upon a range of different capitals in order to compete for value within a given context. In chapters four and five, I explained that Ama was one of the interviewees who relied heavily on her court bundles as a means of presenting her position. This was due to the subjective ways in which she interpreted her own chances within various stages of the court process – for instance, she was well-placed to prepare paperwork by her education and written proficiency, but simultaneously disadvantaged for the task of speaking in court due to the impact of the anxiety she experienced when facing her abusive ex-husband. By using the court bundle as a means to convey her arguments, Ama felt able to ensure that her position was expressed clearly and convincingly, within the context of other important documents which detailed the background to her case, and the progress that had been made so far. The court bundle was an important way in which Ama and these seven other interviewees were able to somewhat alleviate the vulnerability they experienced in relation to the requirement of advocacy by ensuring that important information was still communicated to the judge in other ways.

The impact of judges not reading these papers, therefore, meant that rather than having the opportunity to present her arguments through a combination of advocacy and the court bundle, Ama was expected to convey *all* of these details through her verbal submissions. In addition to the impact of having to face perpetrators in the courtroom, all eight of these interviewees were contending with various mental health problems and learning difficulties which meant that they experienced difficulty with verbal communication in the courtroom. Importantly, these problems did not link to one specific condition or diagnosis – rather, this difficulty was

experienced by interviewees who were contending with depression, post-traumatic stress, anxiety, speech impediments and learning difficulties. This highlights a significant shortcoming of understanding vulnerability by reference to particular characteristics, because it suggests that many LIPs may struggle to make statements verbally, particularly in these high-stress and emotional circumstances. Existing research has indicated that positive experiences with judges tend to centre around respectful and proactive communication from judges (MacFarlane *et al.* 2013, p.105-6). In the absence of this, court bundles were perceived as an essential resource through which LIPs like Ama could go some way to mitigating their own disadvantage. However, when her bundles were not read, she was effectively prevented from drawing on resources that were more accessible for her – her writing skills – and was left to rely entirely on her oral presentation skills.

This was also something experienced by Grace – as discussed in chapters four and five, Grace contended with learning difficulties which affected both her written and verbal communication skills. As such, she often relied upon the assistance of her mother, who acted as a McKenzie Friend during all of her hearings and supported her throughout the stages of preparing for court hearings and compiling court bundles. With this support, Grace also relied on the court bundle as a means of communicating with judges, because the time-constrained and goal-oriented task of advocacy was significantly problematic for her in light of these difficulties. For Grace, the inability of judges to read court bundles was particularly significant, because while her mother could help her to write, she was unable to speak for her during hearings. Within this research, those with learning difficulties – apart from Grace – tended to struggle in particular with either written or verbal forms of communication, and as such were usually able to lessen their disadvantage by drawing on the other. However, given the intersectional way in which learning difficulties and mental health problems are experienced, it is also important to note that many individuals are likely to experience difficulty with both forms of communication, and may not have access to support in the way that Grace did. Without court bundles, therefore, the existing vulnerability of these LIPs is inevitably exacerbated if they are practically excluded from using this paperwork as a source of resilience.

As discussed so far, Bourdieusian theory is useful for understanding the ways in which individuals may respond to their own experiences of disadvantage. However, in addition to appreciating the ways in which these eight interviewees were limited in their ability to do this via court bundles, it is also possible to explore the ways in which they subjectively interpreted

this disadvantage. For example, an interesting way in which Grace and her mother attempted to circumvent this problem, was to effectively disrupt the official process through which paperwork is submitted to judges, in order to ensure that she *was* able to convey some of her points in written format. This also raised an interesting difference between Grace and Ama's interpretation of judges not reading bundles, which relates specifically to class. Grace, for instance, framed this as an obstacle of disadvantage that she was expected to overcome – even through illegitimate means – whereas Ama blamed judges for placing her in this position of disadvantage. However, Ama was the only interviewee who interpreted this as a matter of injustice, and perceived judges as unprofessional for not reading the court bundles. In doing so, she placed great emphasis on the relationship of responsibility that she felt judges held towards her within these hearings.

In terms of their backgrounds, Grace and Ama had quite different experiences of the family justice process, in that Ama had previously lived a financially secure life during her marriage but – as she explained – was rendered financially and socially precarious due to her divorce and the financial abuse of her ex-husband. In contrast, Grace had spent her life so far living in precarious housing and work arrangements – partially attributed to her learning difficulties and caring responsibilities for her young child – and this was only exacerbated by the abusive behaviours of her ex-partner. There has been a great deal of sociological research on the ways in which experiences of class can mean that some individuals feel entitled to assistance and help throughout their interactions with society, and others do not expect this support. Skeggs, for example, explains using Bourdieusian theory, that 'the entitlement and access to the resources for making a self with value are central to how the middle-class is formed…but this is also about exclusion from the ability to [propertise] cultural resources; from access to the very resources for making the 'subject with value'' (Skeggs 2004, p.177). Here, Skeggs explains that a sense of entitlement to use particular resources, such as the ability to communicate in written formats as well as oral, in order to gain recognition and value within a context like the legal system, is often unique to those who have more privileged experiences of society. Further, she explains that this distinction is inherently underpinned by issues of access to those resources – in other words, the ability to 'propertise' these resources and feel entitled to use them, is well beyond reach of those who are unable to access these resources in the first place.

In terms of the different ways in which Ama and Grace interpreted their similar experiences of disadvantage, it is possible that Ama's sense of injustice at judges not reading bundles may be

related to her previous experiences of being able to access and use the resources she is formally entitled to. While Grace also had these formal entitlements, these different interpretations may suggest that LIPs from disadvantaged socio-economic backgrounds do not feel entitled or able to expect particular standards of the family justice system or conceive their relationships with judges as one characterised by duty and responsibility.

From Ama's perspective, judges were able to frame the possible relationship between them, and as a result had a responsibility not to cut off modes of communication which were important in terms of her ability to participate in hearings. Although Ama understood that judges had limited time – for example, she recognised that if they were to read the full bundles, they would be 'up all night' – she explained that they nevertheless held a responsibility to do so. To understand this sense of responsibility, it is helpful to consider the imbalance in their experiences of vulnerability. As discussed in chapter two, a theoretical underpinning of vulnerability is Fineman's argument that although every individual and institution is vulnerable, this vulnerability is experienced differently according to the precarity and situation of the individual concerned (2008; 2012, p.19). Judges are of course vulnerable to being unable to perform their duties to the same standard, due to the increased pressures of the post-LASPO courtroom as a workplace, and the myriad of challenges inevitably now facing judges in their attempts to ensure the accessibility of hearings and family justice for the new influx of LIPs. However, as one of the individuals attempting to use the court process, Ama's experiences of vulnerability and precarity related to far greater consequences – her ability to participate in hearings through which crucial decisions about her life and child arrangements would be decided.

As a result, Ama explained that judges failing to read bundles before hearings served her a significant disadvantage in terms of her ability to communicate with judges, and the possibility of being subsequently able to meaningfully contribute to her proceedings. In addition to the problems experienced by interviewees in relation to the format and requirements of advocacy, this highlighted a further way in which the family justice system may be failing in its responsibility to accommodate the needs and circumstances of a range of different individuals who may struggle to communicate with judges outside of paperwork. Further, it emphasises the potentially significant consequences for LIPs when opportunities to communicate are removed due to the constraints of the process itself. Lastly, it reiterates the insufficiency of the definition of vulnerability which has been employed under LASPO, due to the ways in which the current

approach is unable to account for the diverse range of circumstances in which individuals may be unable to participate in this aspect of the process.

6.2.3 The Collegiality of Judges and Lawyers

In addition to the problems that some interviewees had in forming these productive relationships with both lawyers and judges, ten interviewees also highlighted the exclusionary effects of the pre-existing social and professional connections that lawyers and judges had with each other. Rather than being an issue of access to legal knowledge, ten interviewees explained that they felt excluded from fully participating in hearings, because it was felt that within this environment, judges would demonstrate loyalty to lawyers as a result of their social and collegial relationships.

> There was another time as well, so the barrister that my ex has is apparently known as the best-looking lawyer on the circuit – I know, it's bonkers – anyway, we were in one of the hearings and I could tell there was flirting going on between him and the female judge. It was subtle, but the way she was talking to him and smiling, it was flirty. And for me, it was like being at a party when the other people are talking, and you're trying to elbow in.
>
> **Ama**

> A part of it sticks, and makes me think, what if that is what happens? What if they do have some sort of loyalty to their own? Because you can see it – I work for the [National Health Service (NHS)] and if a staff member comes in, you X-Ray them first, because you want them to get back to their job. What if there's something similar in the law world, where, 'OK, he's one of us – let's look after him'?
>
> **Ikraa**

So far in this thesis, I have discussed several problems that were unique to semi-represented hearings. For example, I have explained that when interviewees faced lawyers during hearings, they often experienced isolation and vulnerability as a result of the way in which their hearings were organised, or due to the inequality of access to legal knowledge that existed between LIPs and lawyers. For these interviewees, another important element of feeling isolated and excluded from participation in these hearings was the way in which they were also excluded from the social and professional relationships they perceived to exist between lawyers and judges. For example, Ama felt as though the social familiarity between the judge and her ex-husband's lawyer meant she had to overcome extra barriers to participate in conversations during her hearing. This aligns with existing research which has already drawn attention to the ways that LIPs are sometimes suspicious of the independence of judges and lawyers and tend to

interpret familiarity between professionals as an absence of impartiality and objectivity (Dewar *et al.* 2000, p.51-9).

While I have used Bourdieusian theory so far in this thesis in order to explore the ways in which LIPs were excluded from participating in hearings due to their limited access to legal forms of cultural capital, it is also useful for appreciating the role and significance of social forms of capital within the courtroom environment. Bourdieu's notion of social capital indicates that the social connections we have with others are dependent on the contexts in which we become socialised, and therefore the ability to draw on these social connections as resources is linked to the ways in which individuals are able to interact with each other in the legal context (Bourdieu 2005, p.211).

As Ama notes, judges and lawyers often work in the same circuits, and therefore due to the frequency with which judges and lawyers encounter each other, some degree of professional familiarity or even friendship is likely to be inevitable. However, from Ama's perspective, this was something that her ex-husband's lawyer was able to draw upon and utilise to his advantage during their hearing. Most importantly for Ama, it was a resource she was unable to access, and which hindered her participation in her hearing – the effect of their informal, 'flirty' relationship was that Ama felt she had to overcome extra barriers in order to 'elbow in' and make contributions to their conversations. Ama's experience is just one example of the varied ways in which some LIPs may experience isolation and exclusion within legal proceedings, as a result of pre-existing social relationships that may exist between judges and lawyers. In addition to the inequality that LIPs experienced in terms of their ability to draw upon legal resources, or particular skills such as written and verbal forms of communication, ten interviewees also perceived there to be a distinct sense of inequality in terms of the ability of lawyers to gain advantages using these social connections.

While it is not my intention to suggest that lawyers and judges do not conduct themselves professionally within their working relationships, this does suggest that displays of informality or friendliness between legal professionals may be interpreted by LIPs as part of an exclusionary environment. As a result of the way in which LASPO was implemented, the court process itself has undergone significant disruption. The current approach to eligibility has not incorporated a consideration of how a large-scale withdrawal of legal support has affected the procedures and practices which continue to exist within court hearings, nor the effect that these may have upon

LIPs. As such, the demonstration of these cultural practices may in practice create experiences of vulnerability if they feel less able to participate as a result of feeling isolated and disadvantaged within this environment. Perhaps the most important thing to note about this, is that this vulnerability is in practice facilitated by the way in which the family justice system can be perceived to operate as a culturally insular environment, which is not only exclusionary to outsiders but also facilitates internal social connections which are inaccessible to LIPs.

In addition to the exclusionary effects of social relationships, there was also concern that the professional status of lawyers would attract loyalty within the courtroom. For example, Ikraa's ex-husband was a practicing barrister, but he was appearing as a LIP in their child arrangements proceedings. In the context of this, Ikraa expressed a specific anxiety that judges would favour him during hearings as a result of his professional status. The collegial nature of workplace relationships is by no means unique to law – as Ikraa explains, she also held a sense of loyalty to her colleagues, even if she did not know them personally. However, her concern that these relationships were also present within law is attributable to the way in which this can have different consequences in different contexts. The ability to draw upon and gain advantages through social capital within the NHS, for example, is that nurses and doctors are given priority and members of the public may have to wait longer to be seen. However, this cultural practice would have a very different effect in the courtroom – if lawyers were indeed treated more favourably by judges, Ikraa would be directly disadvantaged in attempting to demonstrate that her proposed arrangements were more appropriate than her ex-husband's.

As well as the ways in which social capital may be drawn upon by individuals with access to valued social connections, in chapter two I also explained that social capital is a device through which particular individuals can exercise symbolic capital. For instance, here I explored that the interests, motivations and inclinations of individuals are often aligned with the other people, groups and institutions with whom they interact, and that this is why the powerful are able to 'omnivorously' accumulate different forms of capital and move between different fields with ease. In this sense, it is possible to understand that there are stark differences in the ways in which the justice system is experienced by those who are already attuned to working within other parts of the legal system or similar professional contexts.

From these ten interviewees it appears that a significant aspect of this is not just the unfamiliarity of the legal system, but the fact that they felt isolated as the only ones who

experience court in this way. The distinction between the experiences of those who are familiar with court and those who are not, is widely discussed in previous research. In Rock's court ethnography, he distinguished between 'insiders' and 'outsiders', in order to demonstrate the very different ways in which those who frequently participate in the court environment experience the court process, in contrast to lay individuals, such as defendants, who only engage with the court process on single occasions (Rock 1993). Additionally, although he did not focus on the differences between legal professionals and litigants, Marc Galanter explored the differences between 'one-shotters' and 'repeat players' in civil litigation. Here, he explained that 'one-shotters' have a far more ad-hoc experience of law, and despite spending less time in the court process, have more at stake and therefore occupy a more precarious position within the court system (1974, p.101, 110). In drawing this distinction between herself and her ex-husband, Ikraa compared this to the way in which she would extend privileges to her colleagues at work, not due to their social familiarity, but because of the importance she attributed to their professional status. In this sense, in addition to the legal knowledge and experience that her ex-husband was able to use in the courtroom, Ikraa felt that as a result of his professional status, he would also be able to draw upon his professional status as a resource in order to convince the judge in their hearing. Without access to these social and symbolic resources, Ikraa perceived herself as isolated in the context of what she perceived to be professional and collegial relationships of loyalty and familiarity.

The ways in which these ten interviewees felt isolated by the relationships between judges and lawyers were therefore important factors for their perceived ability to participate in hearings, besides their limited access to legal knowledge. Fundamentally, the findings presented in this section suggest that the working culture of courtrooms is itself problematic in terms of the impact that professional and social relationships can have on LIPs who are structurally disadvantaged and excluded from aspects of the court process in multiple ways.

6.3 Gaining Concessions in Hearings

In the context of the difficulties that interviewees experienced in terms of drawing on social and cultural resources during their hearings, several interviewees appeared to turn to other means in order to overcome their perceived disadvantages. For instance, nine interviewees explained ways in which they would use other skills and attributes in order to gain concessions or exceptional permissions during the court process. In doing so, these nine interviewees had a unique view of their own participation within hearings, as well as their ability to self-represent.

6.3.1 Using Non-Legal Resources

In chapter five, it was explained through Bourdieusian theory that a characteristic of the juridical field is the way it constructs and maintains its own unique forms of capital, which can have the effect of excluding those who do not have the benefit of access to these resources through specific legal training. In response to being unable to draw on specialist vocabulary and legal forms of knowledge, nine interviewees explained that although they struggled without a legal representative, they were able to gain some concessions during their hearings which aided their participation – such as getting more time to speak or being allowed to submit more paperwork – by making a good impression on the judge.

> I found out what judge I was going to be in front of as well, so then I researched the judge, and I discovered about him – the first one, that he was all about his paperwork. He's published a paper about trial bundles and how to put them together, so I followed that, and the judge noticed and was impressed. Because I did it the way he liked, he was really good and didn't kick off when I added more pages to each bit, even when I brought them to court with me.
>
> **Sarah**

> I think I got away with saying quite a lot because we were so polite – I think that made the judges more patient with us. I was extremely respectful and polite, and I didn't go in there shouting my mouth off like most of the people you've probably spoken to. We always looked the part, we always shook hands with them when we went in and when we left. But that's the people we are. We're middle class. That stood me in good stead.
>
> **Grace**

Throughout the findings chapters, I have used Bourdieusian theory in order to understand the ways in which some interviewees who experienced difficulties communicating through advocacy sometimes attempted to lessen this vulnerability by investing additional time and energy into written forms of communication, like court bundles and position statements. This was useful for considering the ways in which vulnerability may manifest differently at different stages of the process, depending on the skills and resources that individual LIPs are able to draw upon. However, another way in which LIPs responded to experiences of disadvantage when it came to participating in their hearings, was to attempt to circumvent these barriers by making a good impression on their judge.

Sarah and Grace both explained how they attempted to gain favour with their judges, and as a result gained extra opportunities such as being permitted to submit extra papers or say more during their hearings. This has also been highlighted in Leader's recent research, where she found evidence that LIPs may try to make good impressions on judges, but argued that the

effectiveness of this depends upon the approach taken by the judge in question, and how they interpreted this behaviour (2017, p.169). By drawing on the experiences of these interviewees, it was possible to deepen this understanding by considering how these good impressions were inextricably related to broader structures of class.

For instance, one of the fundamental propositions of Bourdieu's concept of field, is that fields are made up of individuals who are constantly competing for recognition and value within that context. In terms of this competition, individuals are only able to draw upon and use capitals which they have access to – and therefore, those with access to valued capitals – such as the specifically legal capitals which are privileged within the court context – are among those with the most power to shape that field according to their own needs and attributes. While LIPs like Sarah and Grace were unable to draw on and make use of specialist juridical capitals, they were attuned to the ways in which other capitals and attributes besides these were also symbolically privileged within the court context. For instance, the legal professionals who do make use of these resources tend to also have undergone a significant amount of education and professional training. As such, attributes relating to those experiences, such as discipline, organisation and respect for authority, are all also prominent features of the way in which professionals behave in the court context.

Although LIPs may not have access to the capitals that arise from professional training, these qualities and attributes are capitals which may be relatable for some LIPs. Sarah, for example, despite having difficulty researching and using the relevant case law or legislation which was relevant to her case, was able to research the individual preferences of the judge she was due to face. As discussed in chapter five and again in this chapter, several LIPs experienced vulnerability when they were faced with the task of advocacy, and this was often exacerbated when judges relied upon oral submissions during hearings instead of fully reading court bundles. By drawing on resources such as organisation skills and attention to detail, Sarah was able to obtain a certain level of resilience to this during her hearing because this meant that her judge not only read her bundle, but also did not penalise her for communicating greater amounts of information in writing. As with several interviewees, Sarah felt more able to present herself and her position on paper, and so by gaining this concession, she was able to effectively circumvent the barriers to participation discussed in the first section of this chapter.

As another interviewee who experienced problems with the time-constrained nature of advocacy, Grace explained that she was also able to circumvent these difficulties and participate more fully in her hearings by making good impressions on her judges. Here, she explained that she drew on her own ideas about 'middle-class' behaviour and found that demonstrating attributes such as politeness and respectfulness allowed her greater opportunities to contribute to her hearing, in the form of more patient attitudes from judges, and further opportunities to speak out of turn. This was a significant advantage for Grace, as being able to speak out of turn, enabled her – at least in part – to mitigate the specific vulnerability she experienced during advocacy as a result of her learning difficulties. As discussed earlier in this chapter, although Grace had assistance with her paperwork, advocacy was still a significant struggle due to the additional time she required to digest information and formulate responses. The ability to present arguments verbally in more than one instance of speaking, was therefore a major help in terms of her ability to consider things that she wanted to say and respond to things at later points in the hearing. Rather than being unable to communicate everything in one go, this adaptation was an important way in which she was enabled by some judges to contribute to her hearings and fully present her position.

Both Sarah and Grace therefore drew on resources they had access to in attempts to alleviate the vulnerabilities they experienced in relation to the common barrier to participation they faced – advocacy. This suggests that where LIPs struggle with specific aspects of the court process, they may attempt to circumvent these difficulties by drawing on other resources in order to gain favour with judges and maximise their opportunities to participate in the courtroom. Bourdieusian ideas about capital were therefore useful for appreciating the unique ways in which interviewees were able to actively respond to the disadvantage they experienced, as well as the diverse range of non-legal resources that they may be able to use in order to make these good impressions. However, it is also important to consider the classed ways in which these non-legal resources were put to use, and the impact of this experience on the ways in which interviewees conceived their own positions within the court process. For example, it was clear that interviewees' attempts to make good impressions on their judges, were not simply a case of drawing on non-legal forms of capital, but often also involved actively using these resources in order to *distinguish themselves from other LIPs*.

In addition to explaining that she demonstrated polite and respectful forms of behaviour, Grace also explained that she did *not* go into the courtroom 'shouting her mouth off'. Similarly, seven

of these nine interviewees emphasised ways in which they attempted to stand out from other LIPs by behaving respectfully, especially when they were self-representing against another LIP. For example, these interviewees would criticise other LIPs they had seen in the waiting room or faced in the courtroom by talking about the way they were dressed or the way they spoke to court staff.

Through a Bourdieusian conception of class, it is possible to appreciate the ways in which individuals are always in a constant state of competition for value. In addition to the ways in which value is accrued through the use of certain privileged capitals, however, it is also possible to be de-valued through the use of others. In addition to the challenges faced by LIPs when they could not use legal forms of knowledge which carry the most value within the justice system, interviewees therefore also seemed to face barriers when it came to *avoiding* particular capitals which would further disadvantage them in this context. In this sense, it is useful to look at the ways in which LIPs are represented in the range of online resources and literature which has been created by the government, the justice system and legal professionals. Many guides make practical suggestions as to how LIPs may behave respectfully and appropriately in hearings, such as to raise their hand when they wish to speak, rather than interrupt, to address judges politely by using formal titles, and to 'dress for success' (The Bar Council 2013; AdviceNow 2015b). This practical guidance is invaluable and essential for many LIPs, but it is also possible that LIPs may perceive judges to have certain expectations about the majority of LIPs, which are associated with working-class tropes, such as being loud, impolite, lazy or even casually dressed.

In his popular book, 'Chavs', Owen Jones discusses the ways in which caricatures of the working-class are commonly represented in modern British culture, and how these demeaning representations have perpetuated stereotypes about the working-class, as a collective who are characterised by attributes such as being lazy, violent, and uncivilised (2012). The divisive impact of these stereotypes is explored differently in many contemporary analyses of class – for example, Richard Wilkinson and Kate Pickett explain that one of the key implications of stereotypes, is to both create and entrench feelings of inferiority and superiority within society (2010). The family justice system itself is by no means immune to these conceptions of LIPs, and in the context of increased LIPs, the judiciary is keen to minimise this. In the most recent edition of the Equal Treatment Bench Book, published earlier this year, judges were warned that 'a thoughtless comment, throwaway remark, unwise joke or even facial expression may confirm or create an impression of prejudice…' (Judicial College 2018b, p.5). Where these expectations

of LIPs were perceived to exist, interviewees felt that an important part of gaining advantages during their hearings was distinguishing themselves from these ideas.

This attitude was even more prominent for interviewees who faced other LIPs in their hearings, who often described hearings as a means through which they were directly compared. Specifically, this had importantly gendered implications for female interviewees, who did not perceive themselves as compared only to their ex-partner, but also to their subsequent partners and girlfriends.

> I think there are other factors as well, like showing them you're serious. I think when you're going to court you have to remember you're going to a court. Smart black trousers, a grey jumper – they like quite dull colours. Normally I'd spike my hair as it's short, but I made sure I blew dry it flat and just sort of tucked it behind my ears. No jewellery, just little earrings. His new girlfriend, she's a big girl, in a skin-tight dress with a stone down the front of it, and she's got a very big bust, so you could sort of see cleavage and everything. I mean, as soon as she walked in, the judge looked very like, 'oh God', sort of thing! I do believe it does help, because you look sort of respectable, if you like.
>
> **Jacky**

Jacky, for example, placed great emphasis on the importance of demonstrating to her judge that she took her case seriously, and demonstrated this by drawing direct distinctions between herself and her ex-partner's new girlfriend. Despite his girlfriend not being a party to proceedings, Jacky believed that her presentation would contribute to a bad impression of her ex-partner. Importantly, by not dressing in this way, Jacky felt that the difference between them reflected well on her. Ideas about what judges expected of LIPs, therefore, were inextricably bound up in notions of class, but there was also a significantly gendered aspect to this experience, which can also be understood through Bourdieu's cultural tools of analysis.

For example, in chapter two, I explained that Sommerlad and Sanderson used Bourdieu's concept of capital in order to explore the ways that women can be ascribed certain characteristics based on their sex or gender, which are then devalued within the juridical field. In their work, capitals associated with femininity or motherhood were ascribed to women by others in the field, and these were then undermined, misrecognised and devalued in ways that those held by men were not (1998, p.28-9, 37-8). Within the context of the courtroom, therefore, it is possible that female LIPs are not only subject to gendered and cultural expectations of motherhood, but also specific and harmful standards of femininity. Most importantly, this may be central to the ways in which LIPs perceive their own position within

proceedings and assess the opportunities available to them within the legal system. For example, when Jacky distinguished herself from her ex-partner's girlfriend, she drew on capitals and resources which related specifically to her performance of femininity – not just presenting herself physically in a way which she felt would make a good impression, but in a way that would place her in a superior position when it came to the competition for this in the courtroom.

The notion of 'respectability' is also key aspect of Skeggs' work, which emphasises the ways in which women's experiences of class cannot be extricated from their experiences of gender (1997). This suggests that in addition to competing for recognition with regard to symbolically privileged capitals such as politeness, organisation and being smartly dressed, female LIPs have a unique experience of attempting to make positive impressions in the courtroom. This is because they are also always competing for value in terms of how judges perceive their physical appearance, and award concessions on the basis of their gendered respectability as well as their ability to emulate particular classed capitals. In terms of how they perceive this competition for a good impression, therefore, female LIPs may experience greater difficulties in the task of gaining concessions during hearings, due to the ways in which they feel required to distinguish themselves from negative tropes of both working-class status and their femininity.

Importantly, Jacky achieved this by changing aspects of her presentation – her ordinarily spiked hair or more colourful clothes – in order to avoid the negative connotations she perceived to be attached to this image. What she believed served her well in this context, therefore, was knowledge about how she might be perceived within the courtroom, and the ability to avoid those tropes. In terms of value, therefore, Jacky's description of her ability to make a good impression hinged directly on the way in which she was able to circumvent negative stereotypes about class and gender, and the way in which her ex was disadvantaged in this sense by the association of his girlfriend and how she presented herself. In addition to the ways in which particular behaviours or attributes may make good impressions, Jacky's experience highlights the important way in which this in practice rests upon the ways in which the majority of LIPs are already vulnerable to making *bad* impressions – especially if they are women.

In addition to highlighting the diverse range of experiences that LIPs may now have within hearings, the accounts of these nine interviewees also reiterate an important point about the current understanding of vulnerability. The difficulties that have been discussed so far in this thesis – for example, the challenges facing judges in terms of how to organise hearings or having

limited time to read court bundles – are all examples of institutional vulnerability. Given the increasing numbers of LIPs that are using the court process after LASPO, the family justice system itself is under significant pressure to ensure that its processes are still functional, and that justice is accessible. However, as discussed in chapter two, this institutional experience of vulnerability is quite distinct from that which is experienced by LIPs themselves, who no longer have access to this support. Rather, the ability of LIPs to participate in this process hinges upon the resilience facilitated within the system itself.

The fact that these interviewees were able to access some forms of resilience through making good impressions on their judges, suggest that it is possible to an extent for judges to adapt this process the diverse and individualised needs of LIPs. However, in reality, these adaptations were only available to those who were able to distinguish themselves from other LIPs, which itself reiterates the extent to which the majority of LIPs are left without this support. Importantly, individual experiences of vulnerability are now in practice something which LIPs have to circumvent using other forms of capital which they may have access to, rather than something which is pre-empted and mitigated within the process itself. Further, despite feeling more able to participate and take an active role in proceedings, gaining concessions in the court process did not appear to give LIPs the impression that they were any more able to actually influence the course of hearings – rather, these increased opportunities perpetuated views of the process as hinged on matters of luck or chance.

6.3.2 Perceptions of Luck and Chance

> When I accidentally said something good, the judge would nod and agree, and I'd think, 'you've saved yourself there' – and I would've done, by the scruff of my neck. It's like a game. In fact, no, it's like a game of chess, because no one normal understands how to play chess.
>
> **Gary**

> It's difficult because you trust the system, it's supposed to help you, so you trust it. And it isn't working. So, when you go to court, at the end of the day it's luck of the draw. It's a bit like a lottery, in fact, it's literally a lottery – of which judge you get, and if you say the right thing at the right time.
>
> **Grace**

Success with resources such as organisation, politeness and being smartly dressed was therefore perceived as helpful for the purposes of being allowed to gain extra opportunities to participate in hearings, such as to speak out of turn or submit extra papers. However, existing research has

already highlighted the difficulties that LIPs have understanding what is happening during hearings, as well as their own role within proceedings (Leader 2017, p.145).

As part of this, when it came to the actual decisions made in hearings, LIPs tended to view these as a matter of luck or chance rather than something they could actually influence using these opportunities. For example, although Gary described instances in which he would contribute to the decision-making process, he attributed this success to accident. This highlights an important way in which LIPs may be unable to cognitively participate in the decision-making process of hearings, even if they are able to circumvent the difficulties discussed so far in this thesis.

While Bourdieusian theory was useful for understanding the ways in which particular capitals were valuable and useful for LIPs in terms of gaining concessions during hearings, in order to understand how LIPs view themselves as able to contribute to the ultimate decisions which are made during hearings, it is useful to reinforce this analysis with the tools of ANT. By conceptualising court decisions as networks, it is possible to trace the means by which decisions are reached, as well as deconstruct and examine the ways in which LIPs interpret the value of their contributions within this process. The traditional process by which decisions in court hearings are reached, is through the presentation of arguments and evidence by each side, before both cases are considered by the judge, who makes their decision on the basis of which side is most convincing, by reference to governing principles, such as the welfare principle. Further, this process can be broken down into constituent parts – comprehensive and concise paperwork, effective oral advocacy, and an argument justified with explicit references to these governing legal principles, which all tie together in order to produce the effect of a convincing position.

In terms of how interviewees perceived their own role within this network, LIPs are aware of the processes by which they are expected to make contributions because the court process dictates their participation in paperwork, advocacy and – if necessary – cross-examination. However, in addition to the ways in which many were disadvantaged for some if not all of these tasks, their structural exclusion from legal knowledge and governing principles means that LIPs are also intellectually excluded from the basis on which the convincingness of their case is judged, and the rationale of judge's decisions. For example, despite being required to participate in all of these aspects of the court process, Grace compared the decision-making process to a lottery – as something dictated entirely by luck or chance, rather than something that can be controlled

or influenced. Although similar, Gary's interpretation of this process was slightly different. Rather than viewing judges' decisions as purely random, he recognised that the decision-making process had defined rules, but that those rules were specifically inaccessible to him, as well as the majority of others.

Through the Bourdieusian notion of subjectivity, it is possible to understand that a major part of understanding different structures of inequality is to explore how LIPs understand and perceive the advantages and possibilities available to them. This notion is helpful in understanding the ways in which interviewees interpreted their ability to participate in hearings, as opposed to their ability to influence the decisions made in those proceedings. Grace, for instance, explained that a significant factor in whether she would be able to gain concessions during hearings, depended on whether she was listed before a judge who she could gain favour with using these resources. Although Grace and Gary could not access the resources required to influence these decisions, they understood that it was possible to 'accidentally' do or say something that judges would take note of during hearings.

The use of other resources, such as politeness, organisation and physical presentation were therefore ways through which some interviewees felt able to gain further opportunities to participate and maximise their chances of influencing decisions. However, without access to the legal principles which govern the decisions of judges, they felt that these opportunities were restricted to maximising their chances to participate in hearings, rather than being able to put legal capital to specific and purposeful use in influencing decisions. Among these nine interviewees, there was therefore a general acceptance that although a good impression would serve them well in terms of being heard during hearings, it was not perceived as enough to actually influence the decisions made by judges. Rather, when judges made decisions which reflected their position, this was interpreted by LIPs as a consequence of luck or chance, rather than the contributions they had been able to make. These interpretations emphasise that the vulnerability experienced by LIPs in terms of their ability to make use of individual aspects of the court process, is further compounded by the way in which they are also unable to draw upon the logic by which these processes contribute to the outcomes of hearings.

Another aspect of this perception of the decision-making process in hearings, was the way in which seven of these LIPs were reluctant to dispute points in hearings when they had already perceived themselves to have gained some advantage through luck or chance.

> I didn't get as much [contact] as I hoped for, because to be honest, I was so nervous. I just felt so nervous I didn't want to ask for anymore because I was frightened they might go, 'you're not having any of it'. If I had a solicitor, obviously I wouldn't have had that fear.
>
> **Jacky**

Three of these seven LIPs explained that often, they did not dispute points or argue further for fear of losing the position they had already managed to gain through the court process. For example, Jacky explained that during hearings, she feared that she would lose the amount of contact that the judge had already accepted she should have with her child. Where interviewees perceived decisions as based on luck, therefore, a consequence was the extent to which they were reticent to push this luck. Without access to the logic of the decision-making process, or the ability to root her arguments in legal principles, Jacky and these other interviewees did not feel secure in either their opportunities to participate in hearings, nor in their ability to influence this process.

This highlights an important way in which exclusion from the decision-making process can manifest in experiences of vulnerability within the courtroom. Jacky specifically explained that a lawyer would have allayed this fear of losing what she had already gained. From her perspective, a lawyer would have been more secure in their attempts to negotiate a higher proportion of contact within a child arrangements order, because as a result of their legal training, they are able to use and develop the rationale on which that original level of contact has been granted. In addition to the ways in which legal representatives are able to draw upon training and experience in order to navigate processes like advocacy or cross-examination, therefore, they also provide an important resource through which lay individuals are able to influence the decisions made during hearings. Without an understanding of the rationale through which her judge would accept greater levels of contact, Jacky did not attempt to make additional requests in her hearing, because to do so without this support would have been to gamble the progress she had already made. As Leader explains, an important consequence of being excluded from the logic of this decision-making process is that if LIPs do not understand why they have not achieved the outcomes they were expecting, they will inevitably respond with conspiracy, negative perceptions or mistrust of the system (2017, p.218). For interviewees who interpreted decisions as a matter of luck or chance, therefore, it is possible that they are also inhibited in subsequent hearings, because they are unable to repeat things that went well

for them during hearings, and may experience subsequent hearings as arbitrary if they do not go the same way again.

A specific concern that emerged in relation to this finding, was the way in which this interpretation may have specifically gendered implications for survivors of domestic abuse, who may draw upon these ideas of luck and chance in order to decide not to make allegations or raise important safety concerns during hearings.

> When they were talking about my allegations of rape and [domestic violence], and they didn't believe my allegations, the judge made a really offensive off-hand comment, but I was so shocked at the time I didn't complain because I didn't want to rock the boat and risk getting an even worse outcome for my children or lose them completely.
>
> **Erica**

Here, Erica felt that losing favour with her judge might place her at risk of losing the established contact she already had with her children, despite the clear importance of the safeguarding issues she needed to raise. An important difference between Erica and Jacky, therefore, was that Erica's reluctance to push her luck during hearings was based on fears that doing so would result in unsafe arrangements for her children.

Importantly, this highlights a specific consequence that the exclusionary effects of the family court process may have for survivors – that the family court process may not viewed as a means of achieving appropriate outcomes, but rather a process through which protection is obtained on the basis of luck or chance. Existing literature already indicates that, because of the damaging ways in which domestic abuse is constructed within the family court, women frequently feel pressured not to raise allegations of domestic abuse, due to the fact that they are often minimised as hostility or high-conflict within proceedings (Birchall and Choudhry 2018). However, when this is coupled with a broader perception that the decision-making processes of hearings are already predicated upon luck or chance, this may mean that survivors are even less likely to raise these issues. For instance, Erica was vulnerable in the sense that she was unable to assert the importance of her abuse to the outcome which was eventually reached. Instead, her main objective in her hearing was simply to *not make things worse*. There is therefore a risk that when survivors in particular view the decision-making process as based on luck or chance, they may not wish to 'gamble' their existing contact arrangements by raising important issues which are supposed to be relevant to the legal principles which do underpin the decision-making process.

Exclusion from the logic of the decision-making processes of hearings meant that some interviewees consciously remained silent during their proceedings, due to concern about what they had to lose. In addition to the vulnerability experienced by the many LIPs who are unable to meaningfully contribute to hearings or influence decisions, this may also have a disproportionate impact on survivors, who may be less likely to raise important safety concerns or be able to draw upon the relevance that this has to the basis upon which decisions are made. The current approach to understanding vulnerability, therefore, is not only insufficient for recognising the various and diverse needs that LIPs have engaging with particular aspects of the court process, but also fails to account for the ways in which LIPs struggle to participate in these processes in order to make meaningful contributions to their hearings.

6.4 Using the Court Process

So far in this chapter, I have explored how interviewees were able to participate in individual court hearings. This final section will build upon this to consider the extent to which participation was possible in the broader scheme of their court cases. This will be done by firstly exploring the ways in which interviewees generally experienced the trajectory of different kinds of proceedings as unpredictable and erratic, and the difficulties that interviewees encountered in terms of linking their hearings together over the course of their time as a LIP. Secondly, in considering the extent to which LIPs felt able to participate in the court process, it will consider the ways in which the unpredictability of hearings impacted upon their perceptions of the court process as something in which outcomes were pre-determined, and beyond their control.

6.4.1 The Unpredictability of Hearings

As discussed in chapter three, there are several different kinds of hearings in which interviewees self-represented during their time as a LIP, which could range from relatively short and informal directions hearings at which judges would review information provided by the parties and decide the next steps to be taken in their case, to more substantive FFHs or final hearings, at which interviewees were expected to give evidence and cross-examine other parties and witnesses. However, of 23 interviewees, 15 explained that on at least one occasion, they had arrived at court to find that the subject or format of their hearing was not that which they had prepared for.

> There's no organisation, not just from me but the courts themselves. There's missing paperwork, they don't make you aware of everything, there's delays. Sometimes you

> can turn up to a hearing and the judge wants to discuss something completely different to what you thought the hearing was meant to be.
>
> **Joan**

Six of these 15 interviewees explained that one of the major reasons they experienced confusion in terms of their hearings was because they had simply never received crucial court documents in advance of attending hearings. Joan, for example, explained that court professionals did not ensure that she was aware of what was expected of her at each hearing, and as a result of this breakdown in communication, there were often delays and problems once she got to court. Existing literature has identified that LIPs often arrive into the process without an understanding of what is required of them, and some in particular LIPs disproportionately struggle to complete tasks or participate effectively during hearings at every stage. These LIPs are sometimes categorised as 'vanquished' or 'out of their depth' (Hunter *et al.* 2002; Trinder *et al.* 2014, p.65).

While a Bourdieusian lens has so far been useful for understanding the ways in which legal knowledge and professional training are important requirements for individual aspects of the court process, it can also be used to reflect upon the security that juridical capital provides during the broader court process. For example, experience of how the system works and familiarity with different hearing types means that lawyers instinctively know what to expect between hearings. Traditionally, represented individuals would therefore have the benefit of protection from court errors, because their lawyers would be able to draw upon this knowledge and experience in order to identify any abnormalities or problems that arose with regard to paperwork before they got to their court hearings. However, without this, LIPs are unlikely to be able to recognise when errors occur or when other parties are not following the normal conduct of proceedings. For example, Trinder *et al.* found some evidence that LIPs simply did not receive notice of their hearing, because these were sent to the wrong address (2014, p.31).

As discussed earlier in relation to the perceived collegiality of legal professionals, in his ethnography, Rock explained that 'insiders' and 'outsiders' experience the court process in different ways, as a result of their familiarity with the legal context. In doing so, he drew specifically on the different ways in which legal professionals and defendants experienced temporality within the crown court environment. According to Rock, insiders – professionals working within the system – experience their time in court in a cyclical manner, according to regular rhythms of hearings which begin and end with regularity. In contrast, outsiders – users of the system – experience their time in court in a linear sense, with a definitive beginning and ending. Rock argued that a consequence of this, is that insiders are able to derive a sense of

security and certainty from their experience of the court process due to the frequency with which they follow cases through the system, and the familiarity they have with each stage of the process as it is repeated in this cyclical manner. Outsiders, however, do not experience court in this repetitive manner, and as such their experiences are characterised by uncertainty, and difficulty conceiving or envisaging forthcoming stages or the broader direction of cases beyond individual hearings (Rock 1993, p.262). What Rock is referring to here is the inequality of access that insiders and outsiders have to the internal practices and routines of the family court process. The difficulties that LIPs experienced in terms of participating in individual aspects of the court process discussed so far in this thesis can therefore be compounded by mistakes made by within the court process itself and the fact that this process does not equip LIPs to pre-empt and prevent these errors.

Without this information, Joan explained that on multiple occasions, she had not been able to fully prepare for the discussions that were due to take place in a given set of proceedings. The court process continues to be designed around lawyers in a way which is inappropriate and ineffective in a post-LASPO context where the majority of cases now involve LIPs. As a result, LIPs may be excluded from fully participating in their proceedings – because LIPs are going through the court process for the first time, they may struggle to recognise that papers have gone missing until they come face to face with the consequences of that error and arrive at court unprepared for the hearing. Without this support, interviewees experienced vulnerability in the sense that they were unable to identify and respond to these mistakes, were impaired in their ability to prepare, and arrived at hearings without crucial information. Moreover, as Trinder *et al.* note, there is a tendency to assume that LIPs are being uncooperative, when they may simply not understand or even be aware of what is being required of them (2014, p.31).

Additionally, these problems were not limited to situations where court errors occurred. Even when papers did not go missing, all 15 of these interviewees explained that they still struggled to predict either the type of hearing they were due to attend or the format of these hearings.

> Loads of times I got there, and you think you are all there to discuss one thing, but then you find that the judge is making a decision about something else you haven't thought about yet, and you're full on expected to give evidence. So, you have to do it off the top of your head.
>
> **John**

> She said to us that we were breaking for lunch, and when we came back, she wanted our proposals. So, we went, and we only had an hour and 15 minutes to work out a proposal for permanent contact, and we had only expected it to be a directions hearing.
> **Grace**

Both Grace and John described occasions on which they had turned up to hearings expecting a standard directions hearing, but found themselves in a FFH and final hearing, respectively. In chapter four, I discussed the extensive difficulties that many interviewees generally experienced in relation to preparing for court hearings, which included barriers to accessing practical and legal assistance, as well as the problems associated with the preparation of position statements and court bundles. However, this was compounded by the fact that interviewees also frequently prepared for the *wrong type* of hearing and arrived at court to find that judges wanted to discuss things that they had not prepared.

This suggests that the difficulties experienced by interviewees in terms of understanding the content and purpose of each hearing type, and the ways in which these hearings work together to progress the course of case through the family court process, may extend significantly beyond problems relating to missing paperwork and failures of communication from court professionals. For interviewees, this had a stark impact on their ability to participate fully in both those hearings, as well as the court process more broadly. As John notes, the evidence he had to give during his FFH was 'off the top of his head', because he did not expect or prepare for this aspect of the process.

So far in this section, Bourdieusian theory has been used to demonstrate that the disadvantage that LIPs experience within court hearings are related to broader structures of inequality. However, it is also useful to reinforce this with tools from ANT, in order to consider how these different hearings may operate to produce case outcomes. For instance, ANT has been useful for deconstructing stages of court hearings such as advocacy, in order to reflect upon the specific requirements of each task and the unique barriers that are subsequently faced by LIPs. With the same approach, it is also possible to deconstruct the family court process and consider the different court hearings that make up this process. Rather than a seamless journey through the family court, the family court process is a series of hearings which are deployed in a typically regular pattern. This process is adapted to the needs of different cases – for instance, where there is a particularly complex background to the case or there are significant difficulties drawing together this context, some parties will be asked to attend more directions hearings so that judges can ascertain more relevant information about their circumstances. During the earlier

stages of the court process, judges may also order parties to attend a FFH in order to determine the truth of abuse accusations for the purposes of consideration in later hearings.[47] Although not all cases do, some will also conclude in a final hearing, where agreement or compromise has not been possible earlier in the process.

Although the process is relatively adaptable to the case concerned, the different kinds of hearings are designed to contend with individual obstacles such as a lack of information or proof, or a failure to agree. Taken together, these different hearings are designed to contribute to the general trajectory of the family court process, which as a whole, is geared towards reaching resolutions. Although he did not appreciate it until after his case had concluded, the fact that John did not understand the role that his FFH had within the broader context of his journey through the family court process was therefore a significant barrier to his participation in his case as a whole. The outcomes of FFHs are crucial to the direction in which cases subsequently progress, because they have a significant bearing on the kinds of issues and arguments used in later hearings and on the final form that any child arrangements order may take. Yet, John explained that the evidence he was expected to provide and the significance that this evidence would have for the later stages of his case, was something he had yet not thought about at the point of arriving for this hearing. As Trinder *et al.* explain, the value of receiving legal advice specifically at an early stage in the court process is to at least make LIPs aware of the 'possible range of feasible outcomes' (2014, p.36). However, this also suggests that in addition to specific difficulties that LIPs encounter in terms of the format of hearings, they may also be intellectually and practically excluded from the ways in which these hearings *fit together* to produce outcomes.

Grace's experience of being taken aback by a final hearing was slightly different, in that while the outcome of this hearing would not affect her subsequent experiences in the family court process, it would render all of her previous work and efforts redundant. The purpose of a final hearing is to end the court process and provide an ultimate outcome to the case through an adjudicated decision. Research consistently indicates that these hearings are much more common in cases where parties are unrepresented (Moorhead and Sefton 2005, p.227; Trinder *et al.* 2014, p.59). At this stage, there was a great deal of pressure on Grace and her mother, because without the ability to spend weeks prior to their court date preparing for a final hearing and attempting to reinforce their final proposals against what the other side might say, they

[47] At least in theory. See 1.3.3 for discussion about the rarity of FFH directions in practice.

were forced to write up these proposals in the court cafeteria.

This further compounded the existing difficulties she experienced in terms of preparing this paperwork alongside her learning difficulties. As discussed earlier, Grace managed to overcome the problems she had processing written information by relying upon her mother's support. Additionally, she invested a great deal of energy into her written preparations, so as to somewhat mitigate the difficulties she had presenting her arguments verbally. Nevertheless, Grace required additional time in order to consider everything that she needed to say during hearings. Requiring LIPs in these circumstances to prepare arguments at short notice, especially in a stressful and emotionally charged environment, significantly exacerbates experiences of vulnerability that are not currently accounted for. Importantly, this also demonstrates the way in which the court process itself may fall short in terms of ensuring that individual LIPs are fully supported and enabled to participate in different kinds of hearings, especially in light of the diverse needs and circumstances which are likely to be even more common among those self-representing after LASPO.

These experiences also highlight the ways in which LIPs may not always experience their time in court in the linear manner that Rock argued was the case for 'outsiders' to the court process. In addition to the difficulties that interviewees already contended with in terms of preparing paperwork and navigating various aspects of the court process, therefore, the strained nature of the family justice system after LASPO may mean that LIPs themselves are more likely to experience isolation and confusion within the process without consistent and appropriate guidance. As a result, hearings were often experienced as unpredictable and erratic, and interviewees often struggled to comprehend the ways in which hearings were supposed to link to each other in terms of reaching a conclusion to their case.

> It's like there are these rules and regulations that you have to follow whether you like it or not, and you have to bite the bullet and say, 'yes, sir; no, sir; three bags full, sir' for a bit. It's quite annoying and tiring – the women at the group I go to, we always use the term 'jumping through hoops'.
>
> **Sal**

> Family courts, when you've got no experience, is like a series of roundabouts. You go to your first roundabout and it's round in circles, and you go to your next roundabout if you're lucky, and then it's round and round again, and usually you end up back to the first roundabout.
>
> **Chris**

There was also evidence to suggest that interviewees struggled to link hearings together as part of the broader family court process. For example, although it was not a question specifically asked during interviews, both Sal and Chris' descriptions of the family court as a series of obstacles are revelatory of the non-linear ways in which some LIPs may experience the family court process without the guidance of a legal representative. Both Sal and Chris were contending with depression and dyslexia, which for them meant that they disproportionately experienced problems understanding court paperwork and preparing for each hearing. As a result, they often struggled to understand the purpose of each court hearing, or the relevance of court hearings to the final outcome they received. Instead, they described experiences of turning up at court without any expectation as to the content of their hearings. This suggests that individuals who struggle with learning difficulties and mental health issues may be at disproportionate risk of perceiving the court process as something which happens 'to' them, rather than something they are able to participate in.

This view of the court process was, however, not limited to those interviewees with learning difficulties or mental health problems. One of the main challenges of undertaking interviews for this project, was that in describing their experiences of the family court almost all interviewees had trouble telling their story from beginning to end. Rather, interviews would almost always focus on issues, rather than individual court hearings. While this posed challenges during interviews, it did also provide me with an insight into the confusing and senseless ways in which interviewees perceived their hearings to link together, and the ways in which they may often be intellectually excluded from the routines and patterns inherent in the experiences of those who are more familiar with the aims and format of proceedings.

Emily Grabham has used ANT in order to explain the ways in which legal contexts are comprised by non-human technicalities, such as legal texts. In doing so, she emphasises that although there are a myriad of objects and technicalities which combine to produce a legal context, a very significant technicality which frames the experiences that people have of law, is time (Grabham 2016, p.386). Considering the family court process through time is also useful in order to understand the consequences of LIPs experiencing their hearings in this fragmentary way. By approaching each hearing as a hoop to jump through, or a roundabout to navigate, Grace and Chris both conceived the process as something where they could only envisage the stage which was immediately next. Rather than viewing their current hearing as a stepping-stone towards

subsequent hearings, or a final outcome, their efforts and focus appeared to be restricted to getting through the challenge of the next hearing. Further, the conception of these stages as obstacles, rather than increments towards an ultimate outcome, further reiterates the perception that they are not participants in this process – rather, someone or something else is setting down these obstacles. As Sal explains, to get through the process, she had to 'bite the bullet', and follow the rules and procedures laid down by the judges she perceived to be in control of her court experience.

Similar to those interviewees who explained that they managed to gain concessions and advantages during their hearings as a result of luck or chance, Chris also drew on the idea of fortune when describing his experiences of being able to progress through the family court process, on to the next roundabout. The distance that Sal and Chris drew between themselves and the authority to influence the direction in which cases progress after each hearing, may therefore be indicative of the difficulties they had in making sense of their place in relation to the family court process. Existing literature, for instance, has emphasised the important disconnect that often exists between the expectations that LIPs have and then the reality that they experience during the court process. As MacFarlane *et al.* explain, expectations often vary – some of the LIPs they interviewed began court proceedings with a reasonable degree of confidence, whilst others began with trepidation. However, within a short time all became 'disillusioned, frustrated, and in some cases overwhelmed by the complexity of their case' (2013, p.8). However, Trinder *et al.* found that in practice, many LIPs did not know what to expect or could not provide much detail about their prior expectations. To this end, the researchers suggested that LIPs may feel out of their depth before proceedings even begin (2014, p.79-80). It is likely therefore, that the design and practices of the court process itself play a significant role in compounding and exacerbating any existing vulnerabilities, as well as falling short of the expectations of support that some LIPs may have when they enter the process.

6.4.2 The Pre-Determined Nature of Decisions

Having discussed the ways in which several interviewees experienced difficulties in terms of their ability to participate in both individual court hearings and wider experiences of the family court process, it is important to finally consider the impact that this had on their perceptions of the decisions made through this process. For instance, there was a general consensus among interviewees that they were powerless to influence the decisions made in terms of the ultimate outcomes of their cases. Rather, these interviewees described the decisions made by judges as pre-determined or inevitable.

> What the court want to see, is me kick off – so that I look like a nutter and they have a reason to side with Mum. Like, they've already made up their minds before they walk in, they're just looking for an excuse.
>
> **John**

The idea that judges had already made their decisions before entering the courtroom was expressed by 20 of 23 interviewees. Existing literature has already indicated that LIPs struggle to comprehend the decision-making process of court hearings, and that even when LIPs feel as though they understand court decisions, judges nevertheless feel as though LIPs do not fully understand these decisions (Moorhead and Sefton 2005, p.166-7). However, the experiences of interviewees indicate that the difficulties they had understanding the basis on which decisions were made, often led LIPs to speculate or assume that their personalities or backgrounds were the things being judged during proceedings. For example, earlier in the chapter, I explored the ways in which interviewees who managed to gain concessions and extra opportunities during their hearings explained that they were able to do so because they were fortunate in being listed before judges who appreciated attributes that they could demonstrate in the courtroom, such as politeness or being organised. In contrast, John was a previously absent father, and he felt that this was a bad impression he would not be able to overcome. Rather, he felt that his judge would read the court documents and base their decision on their own personal opinions concerning his past behaviour, rather than his suitability as a parent, which he viewed as two distinct issues.[48] As a result, he perceived the decisions in his hearings to have been made before they had even taken place, and that any negative impressions he made in person would serve only to further justify those outcomes.

Earlier in this chapter, it was demonstrated through the use of Bourdieusian theory that some LIPs were able to draw on attributes which are valued within the legal context, such as politeness and being well dressed, in order to make good impressions on judges. In the same way, this suggests that some LIPs may recognise that they have qualities and characteristics which are actively devalued within that context. For example, interviewees indicated that a major aspect of being able to make a good impression on judges was to distinguish themselves from negative tropes that they believed to exist about LIPs – such as laziness, loudness, being casually dressed and being uneducated. John also appeared to draw on these ideas – for him, 'kicking off' and

[48] It should be noted that, as discussed throughout this thesis, these are also often viewed as two distinct issues by legal professionals and judges when it comes to promoting contact with children, however John expected the opposite. See 1.3.3 and (Barnett 2014).

'looking like a nutter' were examples of behaviour that would serve to justify the pre-determined decisions of judges. Rather than simply being unable to gain advantages during hearings, therefore, John explained that from his perspective, a consequence of demonstrating capitals or characteristics which are actively devalued in the legal context, was to be excluded from the decision-making process entirely.

While personalities and personal impressions were frequently central to interviewees' perceptions of how decisions were made by judges, there was also a sense that decisions were pre-determined by the legal process itself.

> Each judge has a character just like everyone, we're all human. But I found that judges have a set pattern of how they are, so one will be black and white – 'I don't care what's happened, there's going to be this and this.' There will be judges who are empathetic but will still go with the decision they've already made, because they all decide before they walk into the courtroom.
>
> **Kate**

> It was a panel of magistrates and they didn't listen to anything. It was like they were following a process and at the end of the process there was gonna be contact. They already had a decision in mind, they kind of listened but then made the decision they were gonna make anyway.
>
> **Fiona**

Kate and Fiona also explained that they felt as though the outcomes of their hearings were inevitable, because they were pre-determined by the legal process itself. Kate explained that although some judges can be empathetic during hearings, they ultimately have a set pattern according to which they make their decisions. This suggests that a major consequence of being unable to participate during hearings or understand the purpose and significance of each court hearing, was also the ways in which LIPs may perceive the decision-making process that occurs within the family court process, and the ultimate outcomes of their cases. For instance, both Kate and Fiona referred to the idea of routine when describing the approaches taken by judges in making their decisions. In Kate's view, judges would disregard the context to the case and instead have a set order of considerations which they would repeat each time, and for Fiona, judges followed a process, through which there was a clear, pre-determined outcome. Rather than personal impressions, therefore, for Kate and Fiona the process itself appeared to provide this justification for the decisions that had already been made by judges.

Both of these interpretations are indicative of the ways in which LIPs not only struggle to participate in the court process but may also perceive the decisions made through this process as detached from both their contributions and their interests. In Tkacukova's study, she explained that a common effect of LIPs not understanding the broader context of the legal system, was the perception that the court system was something that happened regardless of whether they contributed during hearings or not (2016, p.443). Although this research concerned financial remedy proceedings rather than disputes over child arrangements, this perception of the court system therefore appeared to also be common among the interviewees to this research. As a result, in addition to the difficulties that many interviewees had navigating and make sense of the family court process, this process was importantly not perceived as something they were able to actively contribute to.

This raises serious implications for the effectiveness of the family court process for achieving resolutions in these cases. Tyler, for instance, has written extensively about the importance of procedural fairness to the perceived acceptability of decisions that are made within the legal system. It is not, he argues, simply a case of whether people believe that outcomes are fair, but whether the process by which those decisions have been made are perceived as fair. Additionally, a key part of whether people perceive processes as fair, is whether they have been able to contribute to that decision-making process, and whether the authority who makes those decisions is acting legitimately (Tyler 1990, p.154-60; Zimmerman and Tyler 2009). The judiciary have also expressed concern about the consequences of this perception – the Judicial College, for example, have called for judges to bear in mind that a general aim of court proceedings is to ensure that regardless of outcome, parties leave court 'with the sense that they have been listened to, and had a fair hearing' (2018a, p.7).

Having explored the experiences and interpretations of interviewees through the lenses of both Bourdieusian theory and ANT, this thesis suggests that interviewees are excluded from meaningful participation in both individual hearings and court cases more broadly. Further, it suggests that they LIPs may also be excluded from the logic and reasoning behind the decision-making process in family court hearings. While it is certainly possible that the perception of decisions as pre-determined may be related to the many ways in which they may have been dissatisfied with the outcomes of their hearings and cases, the findings presented in these three chapters indicate that there are several stages of the court process at which LIPs experience disadvantage, and that this is likely to have a significant impact on the degree to which they

perceive the court process itself as fair and legitimate. Moreover, what this perception does suggest is that interviewees did not leave court feeling as though they had sufficient opportunities to participate in their hearings. Rather, their experiences suggest that a major impact of the problems and disadvantages discussed so far in this thesis, is that interviewees did not perceive themselves as in any way able to influence the outcomes of their hearings.

Although the focus of this thesis is on the experiences that interviewees had of the family court process rather than the quality of outcomes that they received in their cases, the fact that such a large proportion of interviewees felt strongly about their ability to participate is indicative of the potential consequences of their exclusion from the decision-making process. Without the necessary support to participate in either court hearings or the court process more broadly, case outcomes may range from unsatisfactory – and therefore potentially short-term – child arrangements, to risks of potentially unsafe arrangements in cases involving domestic abuse.[49] An important and concerning consequence of the barriers to participation discussed in this chapter, is that four interviewees who were left with unsafe ongoing arrangements with their perpetrators explained that they would not return to court. Without appropriate support and intervention, the family justice system was no longer perceived by these interviewees as a realistic means of remedying these arrangements, due to the trauma they had experienced in attempting to use the court process. This raises crucial concerns about both the capacity of the court process to accommodate LIPs with various needs and circumstances, as well as the way in which barriers to participation may mean that the family justice system is no longer perceived as a means of obtaining support and assistance in relation to private family law problems.

6.5 Conclusion

This chapter has explored the various and unique experiences that interviewees had in terms of participating in both individual court hearings and their cases within the broader family court process. By exploring the ways in which interviewees experienced exclusion from participation in individual hearings, it has been possible to identify specific aspects of the process where, despite the best efforts and training of the judiciary, LIPs contend with a diverse range of circumstances and requirements which have specific and crucial implications their ability to participate in their hearings. Additionally, by then considering the extent to which interviewees were able to navigate and make use of these hearings within their wider experiences of the

[49] Unsafe outcomes have commonly been identified in existing literature, notably: (Women's Aid 2004; 2015; Birchall and Choudhry 2018; Lefevre and Damman 2019).

family court process, this chapter has also demonstrated the important ways in which LIPs may now be excluded from the decision-making process which occurs during their cases. In doing so, this chapter has highlighted crucial ways in which interviewees experienced vulnerability within the court process without legal representation, and the significant shortcomings of both current legal aid policy and the family justice system in recognising and responding to the diverse needs of LIPs within the court process. Importantly, by focusing on the ways in which processes and decisions were interpreted by interviewees, it has been possible to emphasise the ways in which LIPs may now perceive the family justice system as a process which is not only inaccessible, but not useful for obtaining appropriate resolutions to their problems. Having presented the research findings across these three chapters, this thesis will now conclude by demonstrating the significance of these findings and the implications of this thesis for the current body of knowledge that exists in relation to LASPO, family law and access to justice.

7. Conclusion

7.1 Introduction

This final chapter will conclude the thesis by drawing together the main research findings that emerged from this project. In doing so, it will also outline the significance of these findings for the current and future contexts of legal aid policy within family law, as well as for further research into the family justice system and broader issues of inequality and access to justice. In terms of structure, the chapter will outline the key findings and conclusions of this thesis, by responding to the overarching research question and specific sub-questions identified in chapter one. Following this, it will emphasise the original contributions that these findings make to the current body of knowledge that exists about the impact of LASPO, and their implications for future research, policy and practice.

7.2 Key Findings and Conclusions

As identified in chapter one, this project was guided by five sub-questions which underpinned the exploratory aims of the thesis. Here, this chapter will draw together these key findings and conclusions about the experiences that LIPs may be having of the post-LASPO family court.

7.2.1 Usefulness of Resources used by LIPs

Throughout this thesis, I have reflected upon the different kinds of resources that LIPs may be relying upon for support, and the likely usefulness of these resources after LASPO. In doing so, the thesis reiterates the findings of existing research which suggest that LIPs are likely to rely on a range of different resources, including unbundled legal services, pro bono legal advice, and free non-legal support, as well as alternative sources of information and advice that may be found on the Internet, through social media, or through McKenzie Friends (Moorhead and Sefton 2005, p.55-7; 197-212; MacFarlane *et al.* 2013, p.64; 77-9; 85-90; Trinder *et al.* 2014, p.21-3; 89-98; Leader 2017, p.118-20; Lee and Tkakucova 2018).

For instance, by drawing together the experiences of interviewees with other studies and literature, the thesis suggests that given the increasing numbers of LIPs who are using the family justice system after LASPO, there is also likely to be an increased demand for unbundled legal services (Wong and Cain 2019). However, by exploring the ways in which interviewees accessed and used these services, this thesis has suggested that this method of accessing legal services is unlikely to meet the advice needs of many LIPs who cannot afford to instruct solicitors even on

this basis. Rather, as Trinder *et al.* note, there is likely to be a significant number of LIPs who may need to rely on advice and support which is entirely free, such as pro bono legal advice and non-legal support services (2014, p.104-5). The task of accessing free sources of advice and support can be experienced in multiple ways. For instance, for those living in and around large cities, this may involve navigating a complex and fragmented network of services and organisations, including drop-in pro bono clinics and a myriad of non-legal face-to-face services, where LIPs must in practice 'jump' between services in order to access as much advice and help as possible. This method of accessing support is, however, likely to be extremely limited for those with limited access to economic resources, those with caring responsibilities, living in rural areas or those who are contending with abusive relationships.

For those who cannot or do not know how to access these free services, an important resource was the information they could source online. While online resources have the potential to operate as a safety net for these individuals, the availability and format of these can also mean that they may also be inaccessible for individuals with limited financial resources or learning difficulties (Trinder *et al.* 2014, p.90-1). In addition to information guides that may be found online, LIPs may frequently use social media in order to obtain information and advice about the family court process. For example, it has reiterated emerging findings from other research, which suggests that LIPs may rely upon the experiences and advice of other LIPs through both public and private social media forums, instead of the information and advice that may be available from official services or information guides (Tkakucova 2019). By exploring the ways that LIPs may use these forums, this thesis has provided a deeper understanding of how social media may be an invaluable source of continual and emotional support for LIPs. In particular, it has provided an insight into the important resources that private groups may provide for those contending with domestic abuse, as well as the ways that public online spaces may in turn be used by perpetrators to continue strategies of intimidation and harassment.

The thesis has also deepened current understandings of how LIPs may rely upon McKenzie Friends after LASPO. For instance, it has reiterated the findings of existing literature by identifying examples of McKenzie Friends offering a broader range of assistance, including provision of advice and assistance with pre-court preparations (Legal Services Consumer Panel 2014; Hunter 2017b, p.17; Smith *et al.* 2017; Tkukucova 2019). It has emphasised the value that this support may have for LIPs, especially those who would otherwise struggle to navigate a fragmented network of support in the manner described above. Rather than being limited to

sporadic instances of practical or legal advice, McKenzie Friends may be a means through which individuals can obtain a wide range of practical, emotional and legal support in advance of their hearings. However, the thesis has also restated the concerns of pre-LASPO studies surrounding the use of professional McKenzie Friends[50], by providing an insight into how people with learning difficulties or who are facing perpetrators in court may disproportionately feel pressured to instruct a McKenzie Friend in order to access the assistance and protection that they may provide. However, it has suggested that this in turn may mean that these groups are at even greater risk of encountering the minority of McKenzie Friends who may offer misleading or inappropriate support. As a result, despite the many potential benefits of alternative sources of support, including social media and McKenzie friends, these research findings suggested that an increased reliance on these new sources of support may potentially perpetuate adversarial interpretations of the court process. These findings are therefore important examples of the way in which the restrictive recognition of need under LASPO may in fact exacerbate experiences of vulnerability if newly ineligible individuals are forced to seek advice in ways that put them at further risk. Further, this is likely to be disproportionately experienced by those who have limited options as a result of LASPO.

Taken together, these findings suggest that in practice, the accessibility of both legal services as well as non-legal support hinges upon the individual circumstances of LIPs attempting to use them. As such, this thesis reiterates the concerns of existing literature that LIPs may be attending court with various levels and kinds of advice and assistance, and that some may have been unable to access any at all.

7.2.2 Problematic Aspects of the Court Process

This thesis has identified several stages of the court process which LIPs may now find problematic. These problems spanned from the initial stages of making applications to court. For example, this thesis has reiterated and deepened understandings of the barriers that LIPs may face in relation to court forms (Dewar *et al.* 2000, p.43-4; Moorhead and Sefton 2005, p.60; De Simone and Hunter 2009, p.265; Trinder *et al.* 2014, p.40). It has argued that the accessibility of court forms hinges upon the ability of LIPs to locate, understand and use forms like the C100 and the associated supplementary paperwork which is required. While there have been improvements to the online availability of these forms, the findings of this research suggest that there are still likely to be problems for LIPs who need to submit their court forms in person.

[50] See, for instance: (Legal Services Consumer Panel 2014; Hunter 2017b).

Additionally, it suggests that although organisations like STC can provide vital assistance at this stage, the availability of this support is dependent on geographic location. Further, LIPs experience problems when they attempt to submit their applications in person at court because of the ways in which these forms are often referred to by their codes rather than their names, and in which vocabulary like 'contact' and 'residence' used by LIPs may disadvantage them in their ability to search for these forms. Additionally, LIPs may struggle to extract the legally relevant information required to complete these forms. As a result, this finding aligns with previous studies which suggest that LIPs are at risk of delays within the court process as a result of submitting incomplete or incorrect applications (Moorhead and Sefton 2005, p.131).

In addition to the problems they may experience with court forms, this thesis restates and elaborates upon the findings of other studies which indicate that LIPs also find the stages of preparing for court problematic (Dewar *et al.* 2000, p.45; Moorhead and Sefton 2005, p.103; Trinder *et al.* 2014, p.25). It does this by emphasising that the ability to prepare for each court hearing, in terms of gaining information about their cases and understanding what will be expected of them in court, invariably hinges upon the resources and support that LIPs are able to access. Given the difficulties and barriers identified above, LIPs may struggle to prepare the court bundles and position statements which play a crucial role in how their hearings progress, and which issues are raised and discussed during proceedings. Rather, as discussed in Trinder *et al.*'s research, LIPs may face further problems within the process if they over-prepare their bundles to communicate with judges (2014, p.67-8). These research findings deepen current understandings of these problems by demonstrating that LIPs may consciously prepare as much as possible, in order to mitigate the disadvantages they may face elsewhere in the process.

Proceedings themselves were problematic for interviewees in several ways. As well as struggling to prepare information in advance of hearings, LIPs may also experience difficulty in terms of following and contributing to conversations that occur within the courtroom, particularly where the other party is represented. As existing studies indicate, court proceedings have traditionally relied upon a 'full representation' model, in which lawyers would present arguments on behalf of their clients. However, in semi-represented hearings, judges may employ different approaches to organising these conversations (Moorhead and Sefton 2005, p.181-7; Trinder *et al.* 2014, p.62). This thesis reiterated these findings by indicating that some judges may hold conversations with legal representatives first, before translating the content into lay terms for LIPs. Additionally, some judges may rely on lawyers to present their arguments first in order to

provide hearings with structure, regardless of which side is the applicant or respondent. However, while previous studies have found that this adaptation is often helpful for hearings involving LIPs, this thesis has demonstrated that this may often be experienced by LIPs as exclusionary and problematic. Without the ability to participate in these conversations first-hand, and without opportunities to speak first and dictate the content of those conversations, LIPs may in practice feel unable to assert their interests and negotiate within their hearings.

This problem also underpinned the expectations of LIPs to participate in the specific processes of advocacy and cross-examination. Existing studies have found that LIPs often struggle to undertake the technical legal tasks of advocacy and cross-examination (Moorhead and Sefton 2005, p.163-5; Trinder *et al.* 2014, p.70). This thesis has deepened these understandings by exploring the ways that LIPs may be structurally disadvantaged for participating in these tasks. As discussed, both advocacy and cross-examination are premised upon specialist forms of communication which are often unfamiliar and difficult for LIPs who are disproportionately excluded from contexts which would give rise to the opportunities and prior experience of communicating in this performative and time-restricted way. As a result of only being able to present their arguments at defined points in the hearing, LIPs may be unable to convey all of the information they need to or may struggle to respond appropriately to all of the relevant points being discussed. Similarly, in terms of cross-examining others, this research reiterates Trinder *et al.*'s finding that LIPs may specifically struggle to formulate questions that test the evidence of witnesses (2014, p.71). Instead, they may ask unfocused questions, or repeat important aspects of the case in attempts to present witnesses in a negative light. This lack of support may also serve to disadvantage LIPs in terms of their ability to respond to questions in ways that do not undermine their cases. Without professional training or the support of someone who is familiar with this format of communication, LIPs may give 'honest' answers, rather than anticipating the ways in which these responses can be manipulated and used by the individual cross-examining them.

7.2.3 Factors Relevant to Self-Representation

An important part of understanding how these problems may be experienced, is to consider the factors that LIPs themselves perceived to be relevant to their ability to self-represent. For instance, this thesis has demonstrated that many LIPs who experience these problems in relation to advocacy, perceive court bundles as particularly crucial to their ability to self-represent, particularly for those who may struggle to advocate during their hearings. This is because the court bundle provides LIPs with an opportunity to communicate with judges in

advance of their hearings, in a written format. Trinder *et al.* have already noted that while some LIPs may be able to organise bundles effectively for this purpose, this may lead others to 'over' prepare in the sense of providing far more documents than judges are able to read for their hearings (2014, p.69). This research deepens current understandings of why LIPs may do this, and how they may perceive bundles as an essential part of their ability to communicate with judges, and consequently their ability to participate in hearings.

Another important aspect of communicating with judges for LIPs was the ability to make a good impression. This thesis suggested that when LIPs are able to impress judges, they may be able to obtain additional opportunities to submit papers or speak during their hearings. Importantly, making a good impression often hinges upon the ability to distinguish themselves from other LIPs. These perceptions were indicative of the ways in which LIPs may perceive judges to have classed and gendered expectations of LIPs, such as being loud, impolite, or disrespectful, which were frequently bound up with ideas of femininity for female LIPs. These findings suggest that LIPs are keen to rebuff these expectations, and that demonstrating qualities and characteristics of respectability are particularly important for LIPs when self-representing against other LIPs.

As well as the factors that LIPs perceive to be helpful to their ability to self-represent, this thesis also identified factors that may hinder this ability. For example, LIPs may perceive themselves as disadvantaged by the environment in which proceedings are heard. This project identified the inconsistency with which LIPs experience both the judges they are listed before and the locations in which they have their hearings. Particularly in combined court centres, LIPs often have hearings relocated to Crown courts or to smaller, alternative spaces like meeting rooms and judges' chambers. Further, it identified the many different ways in which these locations may be interpreted as relevant to their ability to self-represent. As existing studies have already demonstrated, many LIPs may find traditional courtrooms to be intimidating, and chambers to be more comfortable and adaptable to their needs (MacFarlane *et al.* 2013, p.72). However, this thesis has further explored these perceptions and found that traditional courtrooms may provide others with reassurance that their problems are being taken seriously. This interpretation may be particularly prevalent among LIPs who have previous experience of unprofessionalism in their interactions with other organisations like CAFCASS and social services. The wide range of perceptions identified in this project are indicative of the difficulties facing the justice system in terms of predicting and responding to the various needs and circumstances of LIPs coming to the family court, especially after LASPO.

This thesis also found that LIPs perceive the behaviour of opposing legal representatives as relevant to their ability to self-represent. Rather than providing support or structure during proceedings, LIPs perceive lawyers as able to purposely use their legal expertise to exclude them both before and during hearings. For example, in alignment with existing studies, this research found that LIPs may perceive attempts of lawyers to initiate pre-hearing negotiations as intimidating or aggressive (Moorhead and Sefton 2005, p.173; Trinder *et al.* 2014, p.64; Lee and Tkakucova 2018). Consequently, they may either feel pressured into agreements outside of the courtroom, or actively resist potentially beneficial negotiations. Further, this thesis also identified examples of lawyers using legal resources like case law without sufficiently supporting LIPs to participate in these conversations. While this may not be the intention of representatives, the potential failure of these working relationships means that many LIPs may be unable to participate in key aspects of the court process, such as pre-hearing negotiations as well as their own hearings.

These perceptions of lawyers are also underpinned by the way in which LIPs perceive the social and professional relationships which exist between judges and lawyers. As also noted by Dewar *et al.*, a common fear among interviewees was that judges would demonstrate loyalty to lawyers as a result of these relationships (2000, p.52; 59). In addition to the ways that LIPs are structurally excluded from specialist forms legal knowledge, therefore, they may also perceive lawyers as better placed to gain advantages using their social and professional connections. Without a representative of their own to negotiate these relationships, LIPs may feel isolated and disadvantaged when they perceive familiarity between judges and lawyers as a result of pre-existing informal or collegial relationships. As such, even if this is not the intention of judges and lawyers, the demonstration of these cultural practices may in practice create experiences where LIPs feel unable to participate in these relationships.

7.2.4 Vulnerability Within the Court Process

In light of the problems that LIPs experience during the court process, this thesis has also provided an important critique of the way that vulnerability has been used to define eligibility for legal aid under LASPO. As discussed in chapter one, legal aid funding for advice and representation has been entirely removed for the majority on the basis that it should be reserved for the 'most vulnerable'. In practice, this category of people was limited to those who qualify under the ECF scheme, and those who can provide specific forms of evidence to prove that they have experienced domestic abuse, because these were the litigants that the

government assessed to be the least likely to be able to use other forms of resolution or find alternative sources of funding, and would have the most difficulty presenting their own cases. This is, therefore, an extremely narrow conception of vulnerability, which implicitly categorises the majority of people contending with family breakdown as capable of either resolving their problems privately, privately funding their own legal advice and representation, or presenting their own case to court.

As discussed in chapter one, there are several barriers to obtaining legal aid, which mean that despite the expansions which have been made to the domestic abuse evidence requirements since LASPO was implemented, there have always been and are still a proportion of survivors who are self-representing within the family court process. By drawing on the experiences of LIPs who either could not or did not access legal aid, this research has demonstrated that vulnerability is widely experienced within the court process beyond the parameters that have been defined by the government. Further, these experiences of vulnerability do not simply stem from a lack of legal representation, but due to the way that the court process itself operates. To this end, the construction of vulnerability which has been used by the government contradicts with the way in which vulnerability has been used within the court process under FPR3A and PD3AA, to identify and respond to LIPs that may need greater amounts of help from judges to participate in hearings. However, although the understanding of vulnerability that is used in order to identify need for assistance from judges may be more flexible than the construction of vulnerability used under LASPO, it still falls short of adequately responding to vulnerability, because of the historic and sustained failure of the system to protect survivors of abuse, and the continued underestimation of the vulnerability that may be experienced by LIPs simply as a result of the fact that they are not professionally trained.

For instance, in terms of survivors who may at least be theoretically eligible for legal aid, the research has drawn together existing studies with the experiences of interviewees in order to demonstrate that survivors experience vulnerability throughout the court process when they self-represent. Before hearings, online groups on social media provided an important resource through which survivors may be able to provide each other with specific emotional support. However, this new means of accessing support is also potentially problematic. Survivors who make use of public forums may be vulnerable to experiencing further intimidation and strategies of control from perpetrators who can use this opportunity to monitor their online activity. Within court itself, survivors are isolated and exposed to perpetrators in waiting areas. Although

many courts already have the potential to provide accommodations like separate entrances or side rooms, existing studies have already indicated that special measures are often rarely available, and that court staff are not always sufficiently able to offer or encourage the use of side rooms (Women's Aid 2015; Birchall and Choudhry 2018, p.27-8). This thesis has deepened this understanding by exploring the implications for survivors of having to assert their needs for side rooms to court staff. It has found that this requirement is unrealistic, given the unpredictable ways in which triggers are experienced and the difficulties that LIPs may experience generally in relation to court forms. Further, even when survivors are able to request side rooms, court staff may exclude them from this facility, because these rooms are traditionally reserved for legal representatives.

Within proceedings, survivors are also vulnerable to intimidation in both the close proximity of judges' chambers, as well as within the dictated seating arrangements of traditional courtrooms, particularly when expected to advocate in front of perpetrators or participate in cross-examination (All Party Parliamentary Group on Domestic Violence 2016, p.26; Birchall and Choudhry 2018, p.54). Although this research found some evidence of judges using screens or relaying questions on behalf of LIPs to assist them in cross-examining perpetrators, it reiterates existing concerns about the inconsistency with which special measures are available, and the variable approaches that judges may take despite the encouragement to take inquisitorial approaches in PD12J and PD3AA (Corbett and Summerfield 2017, p.24-6; Birchall and Choudhry 2018, p.27). Additionally, the thesis argues that while material resources are important for achieving separateness and division within waiting areas and hearing locations, this is not enough to protect survivors when court processes themselves require LIPs to talk to each other, rather than through lawyers. As such, this research restates the findings of earlier studies which argue that survivors are often exposed to further trauma through requirements to participate in this process (Women's Aid 2015; Birchall and Choudhry 2018; Douglas 2018). This is even more prevalent for those who are directly cross-examined by their perpetrators, as perpetrators are often able to undermine their evidence by invoking existing strategies of domination.

Throughout this thesis, it has been discussed that experiences of domestic abuse within the family court process were often inextricably bound up with experiences of mental health problems such as anxiety, depression and post-traumatic stress. To this end, many survivors who were interviewed could not remember large portions of this experience, which suggested that in addition to being unable to use this process, being forced into participating in processes such

as advocacy and cross-examination can be wholly traumatic. Additionally, although survivors are theoretically eligible for legal aid, representation would not necessarily go far enough to protect them within the court process, due to fact that perpetrators themselves would still be unrepresented. Therefore, this thesis has outlined several ways in which survivors nevertheless experience vulnerability as a result of the way in which the court process itself is designed, and in which family law professionals themselves are failing to respond appropriately to experiences of abuse.

In addition, this thesis also reflected upon the extent to which other LIPs who are now categorically excluded from legal aid may also experience vulnerability. By restricting eligibility to specific experiences of domestic abuse, this characteristic-based understanding of vulnerability used by the government is incapable of recognising the many other characteristics which may mean that individuals require different kinds of support, and several ways that the court process itself may facilitate experiences of vulnerability for LIPs. For example, individuals contending with mental health issues and learning difficulties have various support needs in terms of their ability to convey information both in paperwork and in person within hearings. Submitting applications and preparing for court, for instance, requires LIPs to have specific linguistic capabilities and a high level of literary proficiency in order to understand what to include and how to express themselves. These requirements are therefore disproportionately problematic for those with learning difficulties like dyslexia, but these experiences fall outside of the current recognition of vulnerability. Additionally, due to the way in which processes like advocacy and cross-examination demand individuals to convey information 'on the spot', this causes experiences of vulnerability for those with communicative learning difficulties and mental health issues like anxiety and post-traumatic stress disorders. These individuals may require additional time in order to process information, and the requirement to perform in this way can be extremely triggering for those with mental health problems.

In Corbett and Summerfield's research, judges who were interviewed about how they acted to protect vulnerable witnesses recognised that people with learning difficulties might require additional help and support during hearings. However, this understanding of vulnerability does not extend to other characteristics that might affect an individual's ability to self-represent, not recognise the exclusionary ways that the legal system itself may facilitate experiences of vulnerability.

For example, the general lack of consistency between hearing locations intensified experiences of existing vulnerabilities like anxiety and learning difficulties. When hearings are relocated to Crown courts, LIPs may have to navigate their way around unfamiliar city centres at short notice. In addition to the obvious stress and concern that this may cause for many LIPs, this is also inappropriate for those who may require more time to process verbal or written directions given by court staff or who may experience this as triggering for mental health problems like anxiety. Although it was not the case for interviewees in this research, this may also exacerbate difficulties relating to limited physical mobility or to a lack of access to resources like smartphones. Many LIPs do not have the ability to pre-empt or manage these problems but are nevertheless expected to cope with this unpredictability. Further, this inconsistency may be even more common after LASPO, due to the strain and challenges that have come with an increased number of LIPs in the family justice system.

In addition to identifying the ways in which these characteristics can impact upon the ability of individuals to participate in the court process, the current understanding of vulnerability is also insufficient for recognising the circumstantial and fluctuating vulnerability experienced by those with caring responsibilities, precarious working arrangements and limited financial resources who may struggle to make use of official sources of support or spend time preparing for their hearings. These individuals, and many others who may be otherwise restricted in terms of their ability to spend time travelling between services or accessing the Internet, are therefore vulnerable to being unable to effectively prepare for hearings or understand the important principles that govern their cases. This thesis drew upon examples of interviewees who were occasionally able to submit extra papers or use additional opportunities to speak during hearings. Taken together with the varied judicial approaches identified in existing studies, this suggests that there is capability within the family court process to support some of these individualised needs (Trinder *et al.* 2014, p.62). However, the fact that these adaptations were only available to some LIPs reiterates the extent to which the majority are left without this support, and that the court process itself is not designed in a way that is responsive or flexible to these needs. Importantly, this emphasised the problematic way in which individual experiences of vulnerability are now in practice something which LIPs have to try to circumvent, rather than something which is pre-empted and mitigated within the process itself.

Finally, this thesis emphasised that LIPs may also experience vulnerability simply due to being excluded from the specialist education and skills that come with professional legal training.

Without access to legal representation, for example, LIPs are excluded from conversations involving legal forms of knowledge, as well as being unaware of governing principles such as the centrality of settlement to the family court process. As a result, processes like advocacy can in practice be an adversarial experience. Additionally, as discussed above in relation to the problematic aspects of the process, both advocacy and cross-examination require communication skills for which lawyers are professionally trained. Therefore, although those with learning difficulties and mental health problems do have specific problems participating in these processes, the majority of LIPs who do not have access to this professional training also have significant difficulty meeting these requirements. As such, many LIPs are vulnerable to being unable make use of processes like advocacy and cross-examination, and the current definition of vulnerability does not account for the professional skills required to participate in the manner required by the family justice system.

Despite evaluating need for legal support through vulnerability, the LASPO definition does not consider the tangible ways in which many LIPs are vulnerable to being unable to advocate or communicate their points during hearings, nor the intersectional ways in which individuals experience these vulnerabilities. Taken together, this thesis has demonstrated that LIPs using the family justice system after LASPO experience vulnerability in many ways which are not currently accounted for within the definition that has informed the LASPO reform. As such, this thesis suggests that vulnerability is not an adequate means of identifying need for legal aid. Further, it has demonstrated that using the concept of vulnerability in this way is problematic because it fails to recognise the ways in which the family justice system itself facilitates experiences of vulnerability for people who either cannot or do not access legal aid.

7.2.5 Accessibility of the Family Court Process

Finally, this thesis has considered the extent to which the process is viewed as accessible to LIPs who are using the family justice system after LASPO. In addition to the difficulties experienced by LIPs at various stages, it has highlighted the concerning ways in which LIPs may be practically and culturally excluded during the court process if they are unable to effectively prepare for court or participate in their hearings.

Rather than enabling LIPs to feel included within court hearings, the inconsistency with which they are able to access accommodations and assistance perpetuates views of hearings as based on luck or chance. Without guidance as to the reasoning of decisions, or how to influence these decisions, hearings are instead perceived as a lottery, or a game in which LIPs are excluded from

the rules. This intellectual exclusion from the decision-making process of court hearings has a direct impact on the extent to which LIPs are able to participate in hearings, and thus perceive hearings as accessible. For instance, without appropriate support, some LIPs may be reluctant to dispute points or argue further during hearings. Specifically, this may mean that survivors of domestic abuse are prevented from raising important safety concerns in the courtroom. While some LIPs may attempt to overcome the problems discussed so far by making good impressions on judges, the support that is extended to them is experienced as concessional and exceptional. As a result, court hearings are not perceived as accessible by the majority of LIPs who experience vulnerability in several different ways which are not recognised under LASPO.

As a consequence of experiencing exclusion within individual hearings, LIPs may also struggle to make use of the court process as a whole. For example, this thesis reflected upon the difficulties that LIPs may have in terms of understanding the role and purpose of each hearing within the scheme of the court process. Different types of hearing require LIPs to prepare in different ways, and the outcome of each hearing has significant implications for the way in which a case will progress through the system. However, due to their lack of professional experience with the routines and practices of the family justice system, this research reiterates the concerns of existing literature, which indicates that LIPs often turn up to hearings without fully preparing for or understanding the type of proceedings due to take place if they do not receive notice of hearings (Trinder *et al.* 2014, p.31). Building on this, this thesis suggested that LIPs may also be intellectually and practically excluded from the ways in which these hearings fit together to produce the outcomes which are possible within the family court process. Rather than viewing the family court process as accessible, therefore, LIPs are often instead restricted to the challenge of getting through each hearing. Being excluded from participation in this broader sense can mean that LIPs may perceive case outcomes as pre-determined or inevitable. Rather than something they are able to contribute to and influence, the court process may instead be perceived as something which happens 'to' LIPs.

As such, this thesis highlights the significant risk that even if decisions are made in their favour, many LIPs may not perceive the family court process as accessible if they do not perceive themselves as active participants in the decision-making process. By demonstrating the inaccessibility of both hearings and the process more broadly, it also highlighted that as a result of these experiences, several interviewees would not return to court to attempt to resolve their ongoing problems. This finding suggests that LIPs may no longer view the family justice system

as a means of accessing appropriate arrangements for themselves and their children, and that this perception is likely to be more common after LASPO, where more people are self-representing with limited access to advice and information.

7.3 Original Contributions

In terms of originality, this thesis makes two important contributions to the current academic literature. Firstly, it provides an insight into the range of possible experiences that LIPs may have of the post-LASPO family justice system by producing empirical findings which reiterate, deepen, and expand current understandings about the problems and barriers that LIPs face within it, as well as how these experiences may affect perceptions of the system. Secondly, this thesis makes important contributions to wider literature by providing an innovative example of how researchers may use creative theoretical and methodological approaches in order to produce knowledge which privileges under-researched perspectives.

As discussed in chapter one, the purpose of this project was to provide an insight into some of the ways that LIPs may be experiencing the post-LASPO family justice system. In doing so, the thesis has specifically explored the ways that LASPO has exacerbated existing strains on this system, including diminishing levels of legal aid and availability of legal advice, increasing numbers of LIPs and diversifying sources of support and assistance. For example, it has drawn together existing knowledge about the kinds of resources that are available to LIPs – such as unbundled legal advice, pro bono advice, non-legal support, Internet-based resources and McKenzie Friends, and discussed the specific ways in which these resources may be used and perceived by LIPs in different circumstances. It has also indicated that assessing the usefulness of these resources may be more complex after LASPO, as it suggests that limited availability of assistance may only be one factor in determining how LIPs make use of different resources. This has involved reflecting, where possible, on where resources may be more constrained either in light of the fact that there are firstly, more LIPs using the family justice system and therefore increased demand and strain on available services, and secondly, 'new' LIPs who are likely to have a range of different circumstances and characteristics which influence the resources that they are able to use. In particular, it demonstrates that this diversity of LIPs may mean that some LIPs are practically, culturally, financially and geographically excluded from particular forms of advice and support, and some may actively choose 'alternative' resources like McKenzie Friends and social media because of their own circumstances, as well as the specific forms of support that these resources may provide.

The thesis has also demonstrated that LIPs in different circumstances may experience varying barriers and problems at different stages of the court process. This includes aspects of the court process which have already been identified as problematic within existing studies conducted before and after LASPO, such as making applications, preparing paperwork, attending court, understanding and participating in hearings, advocacy, and cross-examination. This thesis explores how experiences of LIPs are located within broader structures of inequality, and how these structures may intersect to produce specific barriers for LIPs when they are expected to navigate these stages. For example, it has traced the ways that experiences of the legal system are inherently classed, due to the exclusionary ways that the system places disproportionate value on skills, language and attributes which are only accumulated through particular educational and professional opportunities, as well as specific cultural backgrounds. As a result, it has demonstrated that not only does the current format of the family court process currently operate in a way that excludes those who do not have the benefit of legal training, but also disadvantages those who are structurally excluded from the opportunities and environments that would enable them to accumulate these skills and attributes. Additionally, this disadvantage is disproportionately experienced by those who are also contending with mental health problems, learning difficulties, or who speak English as a second language. Given that LASPO has removed legal aid eligibility for private family law cases regardless of income, circumstances or background, it is likely that many more LIPs will experience these disadvantages in the post-LASPO family justice system.

Further, the thesis has reiterated and deepened the wealth of existing evidence which indicates that female LIPs disproportionately experience disadvantage within the family justice system, and that various aspects of the family court process are characterised by a failure to attend to the structural and cultural ways in which gender-based inequality operate. For example, it has discussed the ways that advice-seeking strategies of LIPs are likely to be gendered, because of the multiple ways that women experience greater constraints on their economic resources and time, and conventionally have greater amounts of caring responsibilities. It has suggested that, especially in light of the even more limited and sporadic sources of support available after LASPO, mothers may be more inclined to seek advice through social media, and that as a consequence, women may be at greater risk of accessing inaccurate or biased information. Additionally, the thesis has demonstrated that gender plays an important role within the relationships that LIPs have with family law professionals – particularly judges. For instance, in addition to the fact that female LIPs may rely more heavily on the court bundle as a means of

communicating with their judge, mothers also have to navigate these relationships in the courtroom by making good impressions in order to gain concessions during hearings. From the perspective of mothers, the ability to make a good impression on judges involves meeting specific standards of femininity that relate to both gender and class. As a consequence, the thesis has deepened existing knowledge by emphasising the relevance of gender and class to how LIPs perceive themselves within hearings, and how these perceptions play a tangible role in the extent to which they are able to participate in the court process.

Further, the thesis has discussed several stages of the process where mothers who have experienced domestic abuse are disproportionately likely to experience disadvantage, and demonstrated that these experiences are likely to be exacerbated by the strained court system and limited availability of advice and representation under LASPO. For example, it has demonstrated that survivors may experience strategies of intimidation and concerns about their safety when they seek advice in public forums, while they wait for their hearings, when they appear in both traditional courtrooms and meeting rooms, when they are expected to speak in court in front of perpetrators, and when they have to both ask questions and be questioned during cross-examination. In doing so, the thesis has built upon existing literature by indicating that several of these experiences are facilitated by the practices of the family justice system itself. For instance, in addition to the physical layouts of certain court environments and the inflexible format of court procedure, the thesis has also provided evidence that suggests court staff, lawyers and judges may fail to appreciate the implications of these experiences on survivors. From not being actively offered the use of side rooms or special measures, to being required to sit within close proximity of perpetrators, to participate in advocacy or cross-examination, to even being limited to seeking assistance from public forums or McKenzie Friends, survivors are routinely subjected to intimidation. Further, these experiences are exacerbated as a result of the ways that the court process is not designed or practiced in ways that reflect the needs and concerns of survivors, despite the extent of guidance that has been provided through PD12J, FPR3A and PD3AA.

Additionally, the thesis has provided an insight into how LIPs may perceive the court process after LASPO, including the factors they believe to be relevant and the extent to which they perceive the family justice system as accessible in light of these experiences. For example, it has drawn together various ways in which LIPs assess their own experiences of disadvantage and may actively attempt to mitigate this disadvantage through other aspects of the court process.

Where LIPs feel they are likely to struggle with the oral requirements of advocacy, for instance, this thesis has demonstrated that they may attempt to overcome these barriers by investing a great deal of their energy, time and effort into those aspects of the process which involve written forms of communication. Similarly, the thesis has also exposed some of the ways that LIPs may attempt to present themselves in hearings in a way that will enable them to gain concessions during hearings, such as extra time to submit paperwork, the opportunity to speak out of turn, or otherwise encourage the judge to take a more flexible approach to the balance between written and verbal aspects of hearings. Together, these findings demonstrate that LIPs are often best placed to assess their own needs within hearings, but that in practice their perspectives are only sometimes taken into account when accommodations are made to the court process. In practice, these highlight important ways in which LIPs may attempt to 'second guess' ways to gain advantages within the court process, and how judges may be unable to appreciate this behaviour or logic.

Additionally, the thesis has highlighted that there are significant consequences for the perceived accessibility of the family justice system, when these perspectives are not accounted for or these informal attempts to gain concessions are not successful. In chapter six, for instance, the thesis provided a detailed insight into the ways in which LIPs were intellectually and practically excluded from the logic which underpins the decision-making processes that take place in both individual hearings, and in cases more broadly. As a result, LIPs may attribute decisions to the personal impressions that judges have of LIPs, assume that judges have a pre-defined decision in mind before hearings even begin, or assume that decisions are based entirely on factors like luck and chance. An important consequence of this exclusion, therefore, is that experiences are likely to give rise to negative perceptions of the family justice system as a whole, and that a major implication of LASPO may be that family law is no longer seen as a realistic means through which to obtain resolutions to family problems.

As such, the thesis also contributes an important critique of the way in which vulnerability has been used as a means of identifying need for legal aid. As discussed in chapter one, there has been an overwhelming amount of criticism as to the limited scope of legal aid eligibility, but there has not been an investigation into the implications of using the label of vulnerability as a means through which to identify those who are likely to have difficulty accessing other forms of resolution, alternative sources of funding, and representing themselves within the family court process. Throughout, this thesis has reiterated the findings of existing studies which

demonstrate the problems and barriers which are frequently experienced by LIPs and reflected on how these are likely to be exacerbated by LASPO. For instance, the widespread removal of legal aid for the majority of people has led to greater demands on providers of legal advice and support services, and increased strain on the family court, both mean that LIPs coming to court after LASPO are likely to have even more limited access to advice and even more chaotic experiences of the court process. In exploring the experiences of LIPs who have self-represented in the post-LASPO family justice system, the thesis has demonstrated various ways in which LIPs experience vulnerability outside of the parameters defined by the government in current legal aid policy. For instance, although survivors are theoretically eligible for legal aid under LASPO, existing literature suggests that a significant proportion either cannot or do not access legal aid. This thesis has explored the experiences of some of these survivors and demonstrated that they experience vulnerability in a multitude of ways.

Additionally, the thesis has explored the experiences of some of those who are now categorically excluded from legal aid and demonstrated that there are also various and multiple ways in which they experienced vulnerability. Moreover, the thesis has indicated that these experiences of vulnerability are not simply related to the availability of legal representation, but rather are related to the way that the family justice system itself operates to exclude and disadvantage LIPs in a variety of circumstances. By reflecting on how vulnerability is understood through FPR3A and PD3AA, it has also contrasted the different understandings of vulnerability which inform judicial approaches to the court process, particularly cross-examination. As such, the thesis has contributed a critique which reiterates existing criticism about the limited scope of legal aid under LASPO, but also demonstrates the problematic consequence of using vulnerability in a characteristic-based way to identify need for support. The thesis argues that using a restrictive understanding of vulnerability to identify need for legal representation, or vulnerability within the court process, results in a failure to recognise the many different ways in which vulnerability may manifest, as well as the ways that the family court process itself is designed in a way that facilitates experiences of vulnerability.

A major contribution of this thesis, therefore, is that it has systematically considered the unique and intersectional ways in which individuals contending with these circumstances experienced and perceived different stages of the court process. In doing so, it not only reiterated the issues identified in previous research, but also demonstrated the various ways in which these problems are now even more diverse, complex and severe in the post-LASPO context.

In order to make these contributions to the knowledge that exists about LASPO and access to family justice, this thesis employed an innovative and unconventional theoretical framework, consisting of tools drawn from feminist theory, Bourdieusian theory, vulnerability theory, and ANT. By using this framework, this thesis also contributes an important example of how frameworks such as these can be used as fertile methods of analysis. Throughout the findings chapters, these different approaches were used to analyse various experiences and perceptions of the court process. For instance, feminist theory was useful for drawing attention to the way in which law and legal scholarship is often formulated in a way that is blind to marginalised experiences and the implications of intersectional and structural inequalities. It was also helpful in promoting the value of asking the woman question in order to explore these experiences and bringing them to the forefront of discussions about how the family justice system is experienced. Building upon this, Bourdieusian theory provided conceptual tools which were useful for understanding the specific implications of class for these experiences, and for unravelling the cultural means by which these structures of inequality operate intersectionally to shape the experiences that LIPs have of the legal system. In tandem, vulnerability theory provided the theoretical resource of the 'vulnerable subject', which enabled the analysis to look beyond even intersectional understandings of historical categories of structural inequality, and take account of the ways that the institutional context of the family justice system may facilitate experiences of disadvantage which fall outside of these parameters. Lastly, despite its ontological shortcomings, ANT provided the opportunity to scrutinise the material and specific ways that these experiences played out within the family court process and consider pragmatic questions of *how* these structural inequalities translate into experiences of disadvantage on the ground. As discussed in chapter two, these different analytical approaches are often conceived as working in contradiction to each other. However, taken together, they enabled the analytical lens of this thesis to take a broad approach to recognising and understanding not only a range of different structural forces that shape the experiences that LIPs have within this process, but to also pay close attention to how the process itself is implicated within those experiences.

In doing so, this thesis has been able to make a significant departure from existing ideas about authoritative knowledge within the family justice system. As discussed at the beginning of this thesis, the political approach surrounding LASPO has been underpinned by a polarisation of those who are defined as most vulnerable, against the majority who are held to unrealistic ideals of autonomy and self-sufficiency. A significant factor in making this politically possible, of course,

is the way in which particular forms of knowledge are regarded as reliable or useful. For example, Sally Merry argues that indicators such as vulnerability are inevitably shaped by the data that already exists, which means that 'local knowledge' or lived experiences have no opportunity to shape these definitions or the law and policy that stems from this authoritative knowledge (Merry 2016, p.6). Local knowledge which reflects the lived experiences of individuals is politically unhelpful, because it cannot be generalised to larger populations, cannot be quantified for the purpose of making definitive comparisons, and is generally messy and complex. As such, it is often treated as unreliably anecdotal, and of little use for informing things like legislative reform or national policy. However, as discussed in chapter three, attempts within research to comply with these ideas about what counts as authoritative knowledge, inevitably perpetuates the absence of these lived experiences from public knowledge about these marginalised experiences.

By drawing these theoretical approaches together, however, this project has built upon the foundations of existing literature in order to use a methodological approach which actively challenges existing ideas about how LIPs are conceptualised within the court process and how they perceive different aspects of this process, by exploring it through the experiences of LIPs themselves. For instance, by taking inspiration from feminist theory, traditional indicators of quality research such as reliability and generaliseability were reframed, and the project was instead designed around different standards, including the validity and integrity of accounts and high levels of ethical responsibility towards interviewees. Further, by using the four distinct approaches detailed in chapter two, it has been possible to explore the important ways in which different structures of inequality shaped the experiences of LIPs and expose specific and material ways that they may experience disadvantage within the post-LASPO family justice system. In doing so, it has been possible to critique the different ways that the family justice system currently fails to accommodate both the number and diversity of LIPs who are self-representing in a variety of circumstances after LASPO, and provide evidence that goes some way to contradicting the narrative that only some individuals are likely to experience vulnerability within this process. By placing the experiences of LIPs at the centre of this research, this thesis provides an account which is not simply *about* LIPs, but which is co-produced *by* LIPs, and thus emphasises the value of using these accounts as a basis on which to challenge common assumptions and existing knowledge about LIPs.

This thesis has therefore made important and original contributions by providing an insight into what the post-LASPO family justice system is like and reflecting on future implications of this system for LIPs and the accessibility of family justice. In addition, it has also contributed a valuable example of how theoretical and methodological tools may be innovatively combined and used in order to produce research that challenges authoritative knowledge within contexts like the family justice system and exposes the broader structural context in which it is experienced. On the basis of these contributions, it is lastly possible to identify some specific implications of this thesis for identifying areas that require further research, as well as making recommendations to inform policy and practice within the family court process.

7.4 Implications for Research, Policy and Practice

By providing an insight into how LIPs may experience the family justice system after LASPO, it is also possible to reflect on what this may mean for the future of family justice. In Trinder *et al.*'s research, the authors drew upon earlier studies in order to consider three potential ways forward after LASPO.[51] These included: firstly, finding ways of equipping LIPs with the skills and resources that they will need in order to represent themselves, secondly, relying on 'lawyer-substitutes' to assist LIPs, and thirdly, modifying the court system itself (2014, p.112). This thesis builds upon existing understandings of these options by suggesting that ultimately, there is an important tension within post-LASPO research between the need to identify short-term solutions that can help LIPs to navigate the system as it currently exists, and long-term solutions which will involve greater investment and deeper thinking about how the system may be modified to effectively support the participation of LIPs. Importantly, this tension is also characterised by political willingness to invest in reform, and the capacity of research to provide evidence about how this investment may best meet the needs and circumstances of those who are using the system.

For example, Trinder *et al.* have noted that in other jurisdictions, a range of innovative methods have been put into place to equip LIPs with a range of practical skills and some legal knowledge. With a view to providing LIPs with some relevant assistance, certain United States jurisdictions have invested in technology that enables LIPs to complete paperwork online, accessing 'coaching' support services which provide practical assistance through multiple formats and in relation to information needs which are specific to the LIP concerned, and self-help centres which may provide educational and training workshops for LIPs as well as resources like

[51] These three approaches were also subsequently considered in (McKeever *et al.* 2018).

computers, printers and spaces to do research (Zorza 2009; Trinder *et al.* 2014, p.114). There has been some progress in England and Wales in terms of moving the C100 application online and investing in innovations such as the LIPSS, which draws together practitioners, the not-for-profit sector and academic research in order to establish ideas about best practice for supporting LIPs through the court process. In the long-awaited PIR, the government conceded that more needed to be done to support LIPs, and as such they have pledged to temporarily increase investment in the LIPSS (Ministry of Justice 2019b, p.26). Therefore, of the three options identified by existing research, this is the one that relates most closely to the intentions of government and exemplifies the future direction of reform in its current political trajectory. However, the innovations that have been introduced so far do not come close to the systematic and structured investment that underpins the support services in the United States. Additionally, Trinder *et al.* argue that their efficacy is inevitably limited by a number of factors, including the extent and quality of provision, the complexity of the cases in which people are self-representing, as well as the accessibility of this support for LIPs in different circumstances (2014, p.114). As they explain, these services are 'only ever likely to be partially effective, and are likely to be most helpful to the most able LIPs in less complex cases' (2014, p.115).

The findings of this thesis reiterate Trinder *et al.*'s concerns with taking this approach. Specifically, they provide a deeper insight into the complex structural context in which people are self-representing and indicate that the accessibility of self-help services is likely to be extremely limited for LIPs in various circumstances. Self-help services may therefore be a short-term solution for helping some LIPs to navigate the court process, but this would require far greater levels of investment and fuller integration with the family court system. However, even with this, these services would not go far enough to meet the needs of all LIPs. Rather, LIPs will inevitably either be unable to access and use this support, and their ability to use the system will still also depend on their ability to seek information, advice and support from a range of other sources.

To this end, Trinder *et al.* also discuss the appropriateness of focusing on 'lawyer-substitutes', such as increased awareness and use of a combination of unbundled legal services, professional McKenzie Friends, mediators, and pro bono services (2014, p.115-9). However, the authors conclude that this option is also of limited use, due to the significant amount of investment that this would require, in conjunction with a need to rethink how certain lawyer-substitutes would be incorporated into the family justice system (2014, p.118). For instance, this would involve

rethinking the regulation and role of professional McKenzie Friends, as well as complex insurance arrangements for lawyers offering unbundled services. However, as this thesis demonstrates, there is still uncertainty about how LIPs may be using these substitutes after LASPO. From an increasing number of LIPs who may be excluded from accessing any paid services at all, to the shifting role of McKenzie Friends, to the increasing use of social media as a primary resource for advice and support, this thesis indicates that there is an important need for further research investigating the usefulness and risks of these resources before it is possible to consider the investment and regulation needed to realise this option within future reform.

Additionally, as discussed in chapter one, not-for-profit advice services such as CABx and Law Centres have so far struggled to incorporate family law advice into their services, due to the way that family advice has historically been funded through legal aid, and their existing services have also been subjected to stark funding constraints (Trinder 2015, p.236; Maclean and Eekelaar 2019, p.135). Greater and more strategic investment in the provision of family law advice would do a great deal in terms of providing LIPs with access to a vital level of insight into the different options that are available to them aside from court, as well as what to expect from the family justice system and a realistic understanding of the potential outcomes of their case. However, given the manner in which the government has removed legal aid eligibility and responded to the concerns of emerging research within the PIR, it is unlikely that there is sufficient political will to invest in legal services, even in an unbundled format or within the not-for-profit sector.

Most importantly, while there is evidence to suggest that early legal advice makes an important difference to the progress of family cases involving LIPs, there is also evidence to indicate that LIPs frequently require ongoing support and advice throughout the process. For example, Dewar *et al.* noted that it was sometimes problematic for LIPs to receive information early on in the process because they were often too emotional to digest this fully. Rather, the authors recommended that advice and support was best delivered in stages (2000, p.42). Additionally, McFarlane *et al.* explain that only receiving small amounts of advice sometimes left LIPs feeling more panicked and confused than before they had received advice (2013, p.12). The findings presented in this thesis reiterate that a plethora of lawyer-substitutes is likely to be problematic for many LIPs, because this format of advice provision will still be characterised by the requirement for LIPs to piece together advice and information from multiple sources. As discussed in chapter four, this method of travelling between services in order to obtain both legal and non-legal support was disproportionately difficult for those living in rural areas, with

limited economic resources, and with caring responsibilities or precarious working arrangements. Further, the time constraints on appointments with advisors was also problematic for interviewees with learning difficulties and mental health problems. The option of relying on a combination of lawyer-substitutes, therefore, is likely to be of limited use for a range of LIPs who are using the family justice system after LASPO.

Moreover, this thesis suggests that even if both of these options – equipping LIPs with skills and investing in lawyer-substitutes – were taken forward in tandem, this would be a politically and ideologically problematic starting point for thinking about the future of family justice. This is because both options are predicated upon a continued expectation for LIPs to proactively adapt to the specialist processes of the family justice system, and a failure to consider the ways that the system itself may need to adapt. Rather, this thesis recommends that while these short-term options would have some immediate benefit for some LIPs who are currently attempting to navigate the family justice system, it is also necessary to invigorate longer-term thinking about how the court process itself may be designed in a way that supports their participation.

Modification of the court system has also been recommended by Trinder *et al.,* who argue that the traditional format and roles currently contained within the court process are simply not sustainable in a family justice system where the majority of cases involve LIPs. Rather, the authors argue that the format of hearings and the conduct of judges need to better reflect the signposting, explanations and support that LIPs require, and that this inevitably involves not only more time but a far more inquisitorial judicial approach, especially when both sides are self-representing (2014, p.119-21). In McKeever *et al.*'s research, the authors reflect on this third option within the context of Northern Ireland, where the court system has not suffered the impact of LASPO (2018, p.204-30). Here, they argue that modification of the court system could involve multiple options, ranging from significant adaptations to the current system, such as introducing a more inquisitorial role for judges as described above, to the radical rebuilding of a new system which is specifically designed to include LIPs. Even in the current political climate, it is the position of this thesis that radical redesign would nevertheless be a valuable and productive pursuit for future research, as this would enable more creative thinking about possible avenues for reform, and the underpinning aims and problems of the family justice system. Within this climate, however, it is likely that significant adaptations to the current system are most feasible, and if viewed holistically, this approach could hold important promise for responding to the diversity of barriers that LIPs face within the court process.

As McKeever *et al.* note, one of the most important barriers to achieving substantial modifications – or indeed, a radical redesign – will be the attitudinal change that is required within the system (2018, p.204). As discussed throughout this thesis, there are a multitude of ways in which the traditional requirements of the family court process operate to exclude LIPs from meaningful participation. In addition to the inconsistency with which interviewees were able to effectively communicate with judges or gain concessions within hearings, interviewees were also expected to proactively seek forms of accommodation or support within the system and comply with written and oral requirements at various stages. A major challenge to modifying the system to meet the needs of LIPs will therefore be to challenge the assumption that reforms should aim to fit LIPs into a system which is designed for lawyers, rather than aim to shape the system around the LIPs who are attempting to use it.

Further, as demonstrated by this research, the task of reforming the system is also inevitably complicated by the diversity of LIPs who are using the system. Throughout the findings chapters, the thesis explored the different ways in which individuals were disadvantaged by tasks that required specialist forms of verbal and written communication, like advocacy, cross-examination, preparing court paperwork and understanding complex and legal forms of language. These findings provide a basis for appreciating some of ways in which LIPs might be accomodated during these stages – for example, by being permitted to use different forms of communication, being permitted extra time, or being consulted on the ways that their hearings are managed or conducted. However, it is also essential that further research is conducted that can further evidence the accommodations that may be required by LIPs in other circumstances. In addition to the barriers that exist within the court process, this must also incorporate further research into where LIPs are seeking help after LASPO, and the consequences of coming to court with inaccurate or misleading information, or no support at all.

Although progress has been made in terms of expanding the evidence requirements for survivors of abuse to obtain legal aid under LASPO, there is also an important and urgent need for several aspects of the court process to be modified to respond to the needs of survivors who are self-representing. Throughout, the thesis has explored experiences of interviewees which reiterated existing concerns about the ways that the legal system itself may be used and experienced as an apparatus of abuse. For instance, it has demonstrated the potential ways in which survivors are exposed to strategies of intimidation from their perpetrators throughout

the stages of seeking advice, attending court and participating in hearings, despite the multiple reiterations of PD12J. Specifically, these findings reiterate calls for increased availability and use of special measures, such as ensuring that existing facilities such as separate entrances and side rooms are actively offered to unrepresented survivors, or that courtroom layouts may be adaptable to their individual needs. Further, the thesis demonstrates that there is an urgent need to for the government to introduce the long-awaited legislative ban on survivors having to participate in the process of cross-examination. It is hoped that after a failure to incorporate this ban into the 2017 into PD12J, placing this on statutory footing will strengthen the obligations of the family justice system towards survivors during this process. However, in order to begin to protect survivors within the court environment, and support their participation in the process more broadly, a cultural and attitudinal reformation is needed. While PD12J along with FPR3A and PD3AA provide important guidance for judges, research has consistently demonstrated that these are not sufficiently utilised to protect survivors within the court process. Indeed, on the basis of this, Lefevre and Damman have argued that the current situation where cases involving domestic abuse are regularly dealt with by family magistrates, has been 'thrown into question' (2019, p.26). More research is required to identify the specific training needs that exist for judges at all levels in order to break free from the 'cycle of failure' that characterises judicial responses to domestic abuse within the family justice system (Hunter *et al.* 2018, p.404). However, this thesis argues that more broadly, further substantive steps are required in order to ensure that judges, lawyers and court staff are sufficiently able to recognise and respond to experiences of vulnerability at all stages of the process, including those that do not stem from clearly defined characteristics.

Lastly, this thesis reiterates the argument of other studies, which is that there are always going to be a significant number of individuals who will require legal representation in order to fully participate in the process (Dewar *et al.* 2000, p.81; Trinder *et al.*2014, p.121-3; McKeever *et al.* 2018, p.203). Regardless of the level of investment in support services or lawyer-substitutes, or the extent to which the justice system is modified to incorporate accommodations for LIPs, the findings of this research reiterate that there may be still be a significant section of society who require representation if they are to be able to access and navigate the court process.

While there is unlikely to be political will to re-introduce greater levels of funding for legal aid, this thesis has provided a critique which demonstrates that the current approach of quantifying need for legal representation on the basis of who is 'most vulnerable', is insufficient. For

example, by identifying the various and fluctuating ways in which LIPs may experience disadvantage within the system, the thesis has indicated that the current means of identifying need for legal aid does not account for the multiple ways in which LIPs may experience vulnerability. Rather, these findings suggest that a far more nuanced and holistic approach is required in order to evaluate need for legal support, and that a significant amount of further research is required in order to fully appreciate the extent and diversity of the intersectional vulnerabilities experienced by LIPs within the court process. This thesis provides an important foundation for this future research, because it has highlighted the ways in which different stages of the family court process may now be disproportionately problematic for individuals in particular circumstances and identified the need for specific forms of support at these stages.

Despite the relatively small number of interviewees who participated in this project, these findings and recommendations have already been used by not-for-profit organisations, charities and practitioners. During the final stages of this project, for instance, I was invited to present these findings at three national events organised by Public Law Project. Attendees of these events included law firms, executives of charities and representatives from the Ministry of Justice. Following these events, the research project was cited in an article published in the Financial Times, and a summary of the findings of the project were submitted as evidence to the PIR in September 2018. Since completing the project and taking up a lectureship at Cardiff University, I have also been invited to reflect upon how the experiences of LIPs in England may inform future innovations within a potentially devolved justice system within Wales. This has involved invitations to work with Welsh Women's Aid as well as disseminate my findings to the Welsh Assembly.

In conjunction with Public Law Project, I have also co-organised sessions for members of the not-for-profit and charitable sector in which other researchers and I provided methodological and research training for those who were also attempting to submit qualitative and small-scale evidence to the PIR. While multiple large organisations were able to submit statistical data to the Review, these organisations were often working with individuals contending with specific experiences of disadvantage within the justice system and society, such as those with mental health problems, learning difficulties, travellers or the homeless. Despite the small nature of these organisations, therefore, the evidence that they produced was of crucial importance to the Review in terms of expanding the insight that exists into possible experiences of vulnerability outside of the current definition. In turn, therefore, the findings of this thesis are already making

practical impact in terms of contributing to future policy and are already being used as a basis of informing forthcoming research.

Underpinning the recommendations set out in this section is an argument that reform is not only necessary, but that the findings of this and future research are capable of bringing about positive change for the accessibility of family justice. Although LASPO has not in itself created the problems that characterise the family justice system, this thesis suggests that LASPO has exacerbated them to such a degree that the post-LASPO context may now pose an important opportunity for finally thinking about the solutions to these historical problems. As discussed in chapter one, LASPO is by no means the end of the story of legal aid reform, but does mark a turning point in which people are finally asking what will take the place of legal aid, and what the different parts of the family justice system may need to look like in order to ensure access to family justice in the future.

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Have you gone to court without a lawyer for a private family law problem?

Would you be willing to take part in a research project, to talk about your experiences in court?

Please turn over for details

Researcher: Jess Mant (PhD Researcher, University of Leeds)
Contact: J.L.Mant@leeds.ac.uk **or 07547 907 604**

UNIVERSITY OF LEEDS

Information

'LIPs and the Family Court: The Accessibility of Family Justice after LASPO'

What is the research about?

Legal aid was removed for most private family law cases in April 2013, and lots of people are now going to court without a lawyer for cases about children. Jess is a researcher from the University of Leeds who wants to understand what it is like for people to do this without a lawyer, so she needs to hear about the experiences of people who have been through the process. Jess is the only researcher working on this project, and it is completely separate from any organisation.

What does the project involve?

Jess will interview around 25 people about their experiences of going to court, including their thoughts and feelings about the court, process and the family justice system. Jess will then analyse these ideas and write up her findings in her PhD thesis, as well as other publications like books, articles and presentations.

Why should I take part?

This research will raise awareness of what court is actually like for people who need to use it. By taking part in this project, you will make an important contribution to that process.

How can I take part?

Doing an informal, face-to-face interview with Jess (of no more than 90 mins), in a place of your choosing. This can happen at a time and place which is convenient for you – Jess can travel to you and/or cover any of your travel expenses.

What will happen to the information I provide?

With your agreement, your interview will be audio recorded so that Jess can write up what was said into a transcript.

All of the information you provide will be stored securely and used anonymously. No one else will have access to your information or the audio recording of your interview. When Jess is writing about your experiences, she will use a different name of your choice.

What happens if I change my mind about taking part?

Jess will be available to talk about any concerns you have at all stages, but you can change your mind about taking part at any time. Jess can withdraw and destroy your information as long as you let her know before March 2018, when it will be written up in the final PhD thesis.

If you are interested in contributing in this research, please visit http://jlmant.wixsite.com/goingtofamilycourt and fill out the contact form provided, or contact Jess using the details on the front of this flyer.

Thank you for your interest and help with this important research

Appendix 2: Research Website

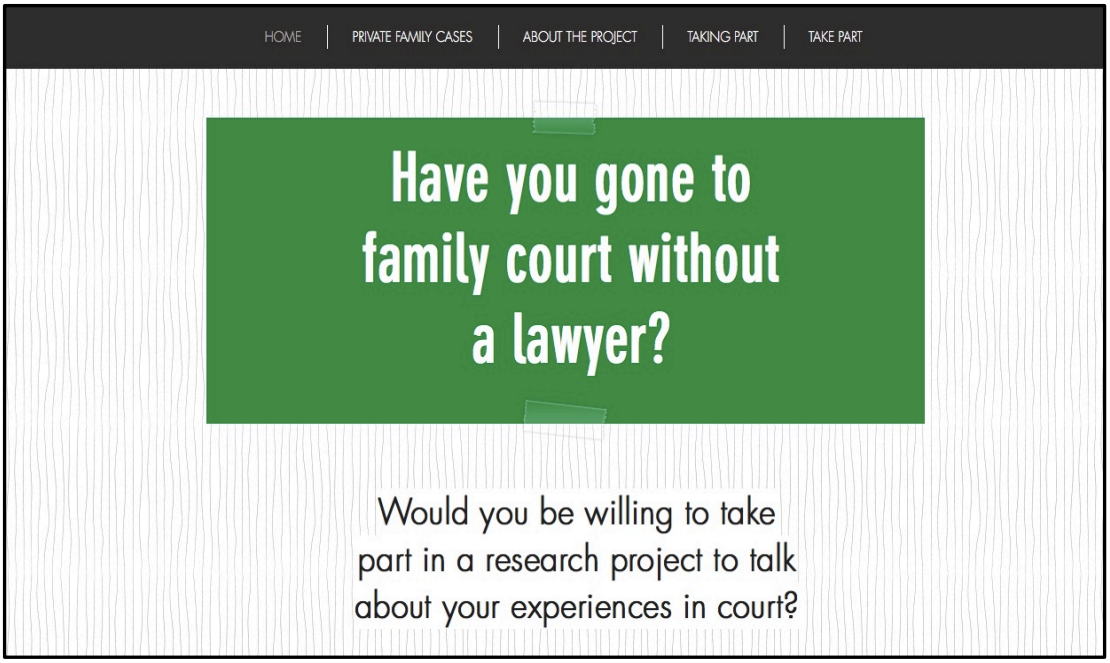

Fig.6 Research Website Landing Page

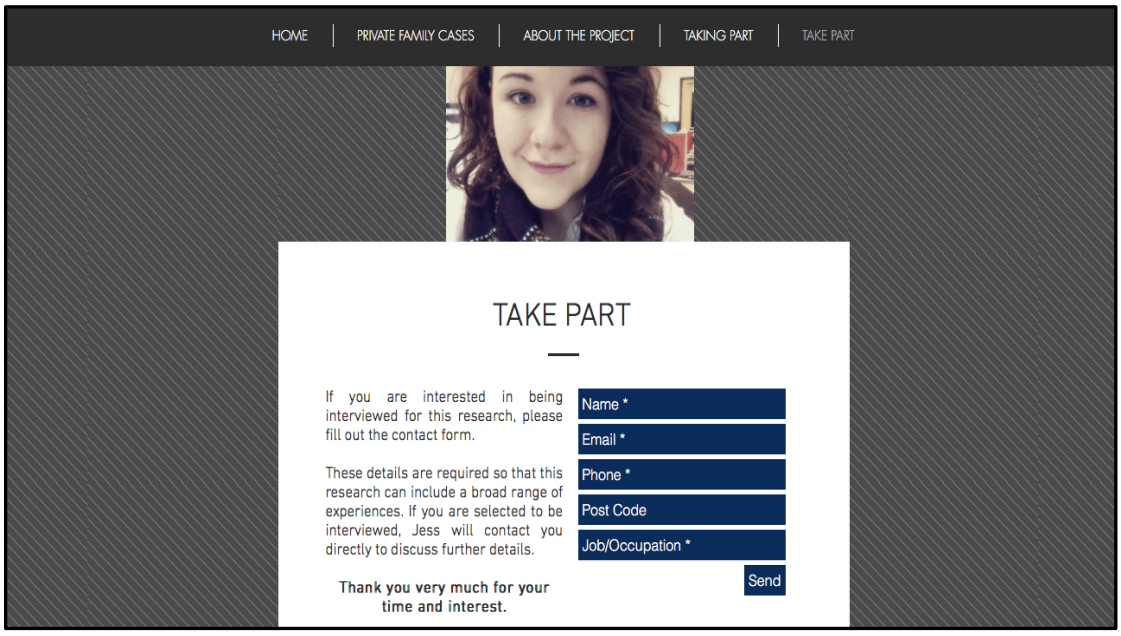

Fig.7 Research Participation Page

Appendix 3: Interview Schedule

Part 1: Preparing for Court

1. **When you were preparing for court, where did you find advice/information?**
2. **Which was most helpful to you, and why?**
3. **Did you have any problems filling in and sending off your court forms?**
4. **Did you ever think about giving up on going to court?**

Part 2: The Hearing

5. **Once you got to court, did you have any problems finding your courtroom?**
6. **Did X/X's lawyer come and talk to you while you were waiting to go in?**
7. **Can you remember anything what the courtroom was like? What did you think of it? How did you feel while you were there?**
8. **What was the judge like? Were they helpful?**
9. **Did X have a lawyer? What were they like?**
10. **What did you have to do in this first hearing?**
11. **Did the judge help you during the hearing? How?**

Part 3: Other Hearings

12. **Did you have to go back to court again?**
13. **What did you have to do in this hearing?**

(Additional questions for fact-finding hearings/final hearings)

14. **Did you have to give evidence in this hearing? What was this like?**
15. **Did X/X's lawyer ask you questions about your evidence? What was this like?**
16. **Did you get the chance to ask X questions about his/her evidence? What was this like?**

17. **Did you have to go back to court again?**
    (If yes, repeat 13 and 14-16 if appropriate.)

Part 4: Current perceptions

18. **On the whole, do you think having a lawyer would have made a difference to the outcome of your case?**
19. **Who was the most helpful person you met during your time in court?**
20. **Lastly, what advice would you give to someone else going to court in a case like yours?**

Appendix 4: Consent Form

This research project is being conducted by Jess Mant, a doctoral researcher based in the Centre for Law and Social Justice at the University of Leeds. The research explores the experiences of people who have appeared in court without a lawyer for private family law cases, after April 2013. Please refer to the participant information sheet accompanying this form for further information. This research project has been ethically approved by the University of Leeds (Ethics Reference: AREA16-008). Any confidential questions or concerns about the research can also be addressed to Jess' doctoral supervision team: Dr Julie Wallbank (email: j.a.wallbank@leeds.ac.uk) and Professor Louise Ellison (email: l.e.ellison@leeds.ac.uk).

1. I confirm that I have read and understood the information contained above, as well as that contained in the participant information sheet and that I have had the opportunity to ask questions.

2. I voluntarily agree to participant in this research project.

3. I agree that my interview with Jess can be recorded and transcribed.

4. I agree that my responses may be used in Jess' doctoral thesis and other research publications or reports related to the project.

5. I understand that my participation in the research is voluntary and that I am free to withdraw at any point up until a final draft of the thesis is being prepared.

6. I understand that I can refuse to answer any particular question(s) and that no negative consequences will flow from doing so.

7. I understand that a pseudonym (alternative name) will be used to refer to any quotes given by myself in any published documents related to the project. If an organisation with whom I am associated wishes to be named in the study (for example, for awareness-raising purposes), I understand that there will be no identifiable association between that organisation and my pseudonym in these publications.

Signature of Interviewee: …….
Print name: …….
Date (dd/mm/yyyy): ……..
Selected pseudonym:……
Email address: ……..
Signature of Researcher: ……..
Date: …….