

## Relevant extracts from the Civil Justice Council Report on Access to justice for Litigants in person (November 2011)

1. This Report provides some highly relevant context for the proposed rule changes.
2. The presenting problem:

“Access to justice for all is central to the Rule of Law. The proposed reduction of publicly-funded legal aid, and the current cost of privately-paid legal services, are likely to lead to a substantial increase in those whose access to law is unaided by lawyers. The result will be no access to justice for some, and compromised access to justice for others.”

“Every informed prediction is that, by reason of the forthcoming reductions and changes in legal aid, the number of self-represented litigants will increase, and on a considerable scale.”

3. The need to be bold in providing solutions and not to let the best be the enemy of the good enough:

“If progress is to be made then an overall approach that is less cautious than hitherto will be necessary. We must recognise that we are at a point when to insist on a perfect model may mean that there can be no model at all.”

4. The centrality of expanded public access as part of the solution:

“The most important thing for self-represented litigants is access to objective advice that can be trusted. Above all, advice about merits, and risks (including costs), but also about process. As a result every effort should be made to increase the availability and accessibility of early advice of this type, including on a paying basis for those litigants who can afford a piece of advice but not to engage lawyers for the whole case.”...

“In regulation the task is to facilitate affordable access to lawyers for discrete pieces of advice rather than a whole case, while retaining safeguards against exploitation.”...

“It is entirely possible that more people will be able to afford at least some access to legal services. The choice for the litigant may move from self-represented or lawyer-represented to self-help, or lawyer-review, or lawyer-led.”...

5. In particular, the need to dismantle any unnecessary regulatory barriers to the provision of public access services:

(At paragraphs 112-115)

“Some self-represented litigants would be able to pay for some legal assistance. Traditional legal assistance throughout a case might be unaffordable, but, for example, advice on merits or advice on a procedural step might be affordable.

Generally speaking the more this opportunity is present the better – for the self-represented litigant, the courts and other parties. Regulatory momentum is designed to encourage it. To increase opportunities there needs to be greater readiness of solicitors, barristers and legal executives to sell small amounts of their time or take on one or two defined pieces of work in the course of a case rather than the case as a whole. The example of one practice, charging £7 for 5 minutes of advice, illustrates the potential. A fixed price for a piece of advice is another approach.

Awareness of services offered in this way will need to be increased, so that people feel they can take a single question about their case into a law firm, and not expect to have to hand the whole case over at costs they cannot afford, or where that is not what they want to do.

At the same time it will need to be made clear that potential regulatory barriers have no place here unless strictly necessary. For example:  
[...]

(3) There is currently a prohibition on barristers under 3 years call undertaking paid Direct Access work. We question whether this should continue when the current challenges are so great.”