



Francesca Kaye and Mary Hodgson
consider how the courts deal with
self-represented parties with no legal
training or easy access to the internet

A little knowledge...

Tinkler and Anor v Elliott [2012] EWCA Civ 1289 began in March 2007. By November 2009 Mr Elliott had been sentenced to three months' imprisonment for contempt, been made bankrupt and was subject to an extended civil restraint order (CRO). In March 2010 trial of an action brought by Tinkler for an injunction and damages, together with an application for a general CRO, came before His Honour Judge Tetlow. Elliott sent in a GP's letter saying he was not medically fit to attend. He was not represented.

A permanent injunction was granted and a two-year general CRO. Eighteen-months later Mr Elliott applied to set aside the March 2010 order. The appeal was limited to considering whether a delay of 18-months from receipt of notice of the judgment could be considered prompt under CPR 39.3(3) to set aside an order. The court acknowledged Mr Elliott was unaware he could apply to set aside the order until seeing mention in the decision to refuse permission to reinstate an appeal. Even then, the Court of Appeal noted he took another two months to apply. Lord Justice Kay concluded the issue of promptness was mandatory. Only where the requirement of promptness is satisfied does the court have discretion to set aside the judgment.

Lord Justice Kay said: "I accept there may be facts and circumstances in relation to a litigant in person which may go to an assessment of promptness but, in my judgment, they will only operate close to the margins. An opponent of a litigant in person is entitled to assume finality without expecting excessive indulgence to be extended to the litigant in person. It seems to me, on any view, the fact that a litigant in person 'did not really understand' or 'did not appreciate' the procedural courses open to him for months does not entitle him to extra indulgence."

This judgment provides helpful guidance on how to deal with unrepresented litigants

who bring or respond to claims out of time.

The April 2012 Law Society Practice Note on litigants in person provides guidance on how to balance duties to a client and the court and how to manage unrepresented litigants.

Civil Restraint Orders

CROs can help to reduce the time and costs involved in dealing with vexatious litigants. They can be applied for only after at least two applications are dismissed and found to be wholly without merit. CPR 3.4(6) obliges the court, when considering that a claim is totally without merit, to record it as such on the order and consider whether a CRO is appropriate. The court may need to be reminded or encouraged to positively record that the claim is without merit. CROs can help to restrict the tide of unmeritorious applications from unrepresented parties but they require litigants to understand the consequences and comply with the CRO.

Lay representatives

In *Noueiri v Paragon Finance plc* [2001] All ER (D) 43 (Sep), Mr Noueiri was not a vexatious unrepresented party. He sought and obtained assistance from a Mr Alexander, an unqualified person acting as a lay representative. It became clear to the High Court and the RCJ Citizens Advice Bureau, who intervened in the *Noueiri* case to seek an order curtailing Mr Alexander's activities, that he made a habit of offering his services as a lay representative to unrepresented, vulnerable individuals.

The court questioned the value of this assistance. In particular it considered problems caused by Mr Alexander in the following areas:

- (1) He gave bad advice which led to a waste of court time and risk of adverse costs orders;
- (2) People he tried to assist were already vulnerable;
- (3) Despite on occasions referring to

- himself as a pro bono advocate, he had proposed acting on a contingency basis;
- (4) He held himself out as a lay representative able to assist otherwise unrepresented litigants; and
- (5) He was an incompetent advocate.

The court considered the numerous hopeless applications and misguided attempts to appeal prepared by Mr Alexander as well as costs incurred, and the restrictions placed on qualified persons in relation to rights of audience. It concluded Mr Alexander should be restrained from acting or purporting to act for anyone other than himself in any legal proceedings or intended legal proceedings without leave from the High Court or Court of Appeal.

This went further than a CRO by preventing Mr Alexander assisting anyone else to prepare for legal proceedings. In so doing it attempted to protect the court, vulnerable parties and their opponents from the additional costs and time spent in dealing with his ultimately doomed applications.

In conditions where access to free legal representation is being eroded, there is a risk vulnerable parties will rely on convincing charlatans to promote their legal interests. Anyone faced with this should act quickly to avoid a waste of time and accumulation of costs. Courts may legitimately be hesitant to restrict the rights of litigants to choose their own counsel but there are real incentives to them in restraining unqualified representatives who, ultimately, act to everyone's detriment.

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