**FAQ’s FOR VOLUNTEERS**

Thank you for volunteering. Those thanks come from the Judges at the Employment Tribunals, ADVOCATE, LawWorks (the Solicitors Pro Bono Group) and the Free Representation Unit (FRU), as well as from ELA.

In addition to these FAQ’s, please make sure you read the ELIPS Protocol and the ELIPS Leaflet that is given to those attending the Employment Tribunal without representation, referred to hereafter as litigants in person (LIP). Both documents can be found in the ELIPS Reference file at the Tribunal.

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THE PRACTICAL BITS

## On my duty days am I on standby, or do I just turn up at the Tribunal?

On any day for which you have volunteered (and been confirmed), you must attend Midlands (West) Employment Tribunal at City Centre Tower, Birmingham, at 9.00 am and report to reception. You should then make your way to the ELIPS room (see below). There will usually be two volunteers on duty. The clinic starts at 9.15 am and it is likely there will be a queue from around that time.

Please note that your attendance is required on the date(s) we have agreed with you. The onus is on you, the volunteer, to find a suitably qualified substitute if the need arises. Solicitors must have a minimum of 2 years’ PQE.

The scheme documents indicate that you will be on duty until 4:00 pm. However it may be appropriate to stay a bit later to assist litigants after they have finished in Tribunal.

## Where is the ELIPS room and how do I get in?

We will be allocated a room at the Tribunal for each clinic day. The security staff will notify you which room has been allocated.

## What types of hearing are covered by the ELIPS Scheme?

The Scheme is designed to primarily:

* **Assist litigants in person with preliminary hearings** (both private case management preliminary hearings and open/substantive preliminary hearings) including both waiting room advice and providing representation in front of the tribunal if appropriate. Many of the same sorts of issues arise in PHs (clarification of the claims and legal issues, time limits, employment status, amendment, timetabling, EC issues, etc) and volunteers can provide guidance on general principles, authorities, etc, as well as help with tribunal procedure generally.
* **Provide some ad hoc advice/assistance regarding tribunal procedure for litigants in person with full hearings, where appropriate, particularly for smaller claims such as wages and holiday pay.** Where a LIP asks for assistance with more complex matters, it may be appropriate only to assist with discrete aspects. The longer the hearing, the more likely it is that it will be possible to provide advice only.

## What type of help am I expected to give?

There are 3 types: (a) advice, (b) representation, and (c) providing assistance with an application to ADVOCATE, FRU or the EHRC, for further assistance at a later date.

Advice

You should always try to advise. It is understood that you are new to the case, that the conditions are not ideal and that time is limited. Please offer such immediate advice to the LIP as is possible in the immediate circumstances. You will often be short on time so think about what the LIP really needs to know. For example, are they ready to cross-examine the other side’s witnesses, do they have all the necessary paperwork? You may also wish to explore the possibility of settlement with them and/or suggest that they come back to see you at lunch time.

If the LIP is due to attend a case management PH, the Employment Judge will wish to clarify the claims and issues and record them in the case management order, so the LIP should be ready to provide clarification in the PH. It may therefore be helpful for you to advise on, for example, how to put a whistleblowing complaint, the different forms of discrimination or what a ‘protected act’ is for victimisation complaints.

Representation

The pro bono scheme also contemplates that you will be ready, if requested and if it appears to you to be appropriate, to appear for the LIP on that day’s hearing or at a judicial mediation. For longer hearings (over a couple of hours), it may not be possible to provide assistance with advocacy. You should only provide such representation if you feel comfortable doing so. If you decide to provide advocacy assistance, you should identify yourself as an ELIPS volunteer when you sign in with the Tribunal clerk.

On some occasions you may not feel able to provide advocacy representation, but in such circumstances you may feel it is appropriate to attend the hearing with the litigant, to sit alongside them and offer guidance as well as take notes so you can explain the outcome of the hearing and next steps.

Whatever advice/assistance you provide, you should ensure that the LIP has signed in and does not miss the start of their hearing.

Onward referral

There are forms available in the ELIPS room for applications to ADVOCATE that has been specifically tailored for ELIPS. The front page of this form explains which cases are suitable for onward referral to ADVOCATE and the process to be followed. You should familiarise yourself with this document. In particular, you should bear in mind that ADVOCATE is only likely to assist where the individual cannot afford to pay privately. Referral to ADVOCATE does not guarantee assistance and this must be made clear to the litigant.

If you have any questions for ADVOCATE, please contact Joint COO & Head of Casework:

  Shyam Popat, spopat@weareadvocate.org.uk, 0207 092 3971.

Please ask the LIP to submit the form to ADVOCATE.

In addition to the above, we understand that the Equality & Human Rights Commission is presently looking for some cases to fund/support. It is particularly interested in cases involving discrimination or harassment on grounds of gender reassignment, marriage/civil partnership and/or sexual orientation. If you come across a case which would benefit from EHRC support please contact Eleanor Williams, tel: 07812 674216, email: Eleanor.williams@equalityhumanrights.com.

Lastly, if a litigant that you have been advising has a Trial at a later date, it would likely be beneficial for them to observe a hearing while they are at the Tribunal or to come back and do so another day. They may be unsure about which hearings they are permitted to attend so please consider whether it would be helpful for you to accompany them into one of the hearing rooms.

## Do I have to complete any documents or take any notes?

You must complete a concluding letter for each LIP that you assist (whether by hand or on the laptop provided), which will summarise what happened on the day and what needs to happen next. Please ensure that the surname of the LIP is included on the letter, as well as either their email address or postal address.

ELA provides laptops and scanners for use by volunteers at ELIPS. Please do not use your own devices for ELIPS. To do so could make you inadvertent data processors.

It is important you read the ELIPS IT Guide, which will be emailed to you along with the cause list before your ELIPS session. This Guide gives a step by step guide to using the new equipment and the new process for handling ELIPS documents. There are also hard copies of the Guide in the room. The Guide contains all the log in details you need, along with the IT support line for any problems with the laptops.

**Volunteers must not take any documents containing litigant information with them when they leave the clinic.** Put all **hard copy confidential waste** into the envelopes provided (brown envelopes marked *Confidential ELIPS documents for disposal*) and hand to reception staff. The tribunal has agreed to dispose of ELIPS confidential waste safely.

Lastly, you should ask the litigant to complete a feedback form and diversity questionnaire. This should be handed back to you and scanned to the laptop folder along with the concluding letters.

Please see the flowchart in the ELIPS reference file which provides a handy summary of the above.

Please note that, bearing in mind the requirements of the GDPR, we are no longer asking you to complete the register with the names of those that you assist – this makes it all the more important that a concluding letter is prepared for each litigant.

## How long should I stay?

This will depend on who you see and the nature of the hearings listed: for example, if there are hearings listed at 2pm with litigants in person, you should stay to see if any of these parties need assistance. If you advise any parties whose hearings are listed in the afternoon, they may well benefit from further advice at the end of their hearings.

Litigants who do not have hearings on the day can drop in to the ELIPS Room between 11.30am and 1pm for advice on claims that have already been issued. Accordingly, you should not leave the Tribunal before 1pm on the day you volunteer.

You may find you need to wait to give litigants concluding letters and get them to fill in feedback forms. You may find that some litigants do not return to collect their concluding letters and fill in the feedback forms but do what you can to ensure this happens.

## Do I need to bring anything with me?

All the stationery you require should be available in the ELIPS box. However we recommend that you bring a fresh notebook and a pen in case supplies are running low. You may also wish to bring drinks and snacks in case you find it difficult to take breaks.

The following equipment is provided for ELIPS:

* 2 laptops and scanners along with an IT Guide on how to use them (see para 5 above)
* Hard copies of the necessary forms
* ELIPS lanyards
* Butterworths Employment Law handbook.

There is also a Wi-Fi pocket hotspot device – the black Huawei device. You just need to plug this device in to the mains and then connect to the wifi from the laptops in the usual way:

**Network name:** ELIPS **Password:** brumprobono

**Please ensure you put all the ELIPS equipment and devices into the box provided at the end of the ELIPS day to be locked away by the tribunal.**

## What do I have to do once my volunteering day has finished?

Make sure all your electronic documents are saved in the correct folder on the ELIPS laptop you are using (see ELIPS IT Guide). ELA will empty the folders remotely to send them to our cloud storage. Where volunteers are sharing the day, if you do see any documents from another volunteer’s session, please do not open them.

**Volunteers must not take any documents containing litigant information with them when they leave the clinic.** Put all **hard copy confidential waste** into the envelopes provided (brown envelopes marked *Confidential ELIPS documents for disposal*) and hand to reception staff. The tribunal has agreed to dispose of ELIPS confidential waste safely.

***No other client related paperwork should be left in the box as the volunteers the following week could be conflicted on the matters upon which you have advised.***

## What do I do if there are several litigants who all want my assistance at the same time?

Take some time at the start of the day to ensure you have all the necessary documents. If there are people waiting outside the door when you arrive, ask if any of them have a hearing on the day. Those with hearings on the day are to be given priority.

If you have more than one person with a hearing on the day, it is best to approach this on a ‘first come, first serve’ basis. There are usually a relatively small number of litigants who fall into this category.

It is for you to manage your time as you see appropriate – you might want to split the work with your partner and see as many people as possible. If you decide, given the numbers, that you are going to allocate everyone 20 minutes, that’s fine – just make people aware.

Most importantly, you should remember that you are not expected to help every LIP and you are not obliged to do any more than you feel comfortable doing. We encourage you to be flexible and to use your discretion in a sensible and fair manner.

## Is there any administrative support?

In order to help provide some administrative support, we have arranged for a law student to attend. They will be on-hand to assist you as you see fit. For example, they can take a note of your advice, carry out a triage service for those waiting to be seen (we have produced a triage form that they can complete and this can also assist with conflict checking), and/or check a point of law on Lexis Nexis etc.

Please note that whilst the students will have received a training session outlining the scheme, they will not be familiar with the setup of the room or with the day-to-day running of the scheme. As such they will need you to advise them on what they should be doing. Whilst this has been made clear to the students as part of their training, please remember that the students are not able to provide legal advice.

THE SERIOUS BIT

## Am I covered by insurance if I volunteer under the scheme?

Barristers will volunteer under the auspices of ADVOCATE. This means that barristers are able to accept instructions to provide legal services from litigants in person via the ADVOCATE license. Because of this, self-employed barristers are covered by their own BMIF insurance. Employed barristers should check if their employers insurance extends to pro bono work. If your employer has insurance that permits you to provide legal services to the public then you will be covered by your employer’s insurance. If you are an employed barrister and your employer does not have insurance that permits you to provide legal services to the public then you must contact ADVOCATE before you undertake any pro bono work.

Solicitors are covered by insurance put in place by LawWorks. LawWorks have obtained from the Solicitors Regulation Authority (SRA) a waiver from the Professional Indemnity Insurance Rules. Solicitors should familiarise themselves with the waiver, which can be found on the ELA website here: <http://www.elaweb.org.uk/content/sra-professional-indemnity-insurance-rules-waiver>

## What about the regulatory position?

Litigants are informed as follows:

The duty lawyer will be either a qualified solicitor or a qualified barrister. Where you are assisted by a solicitor, then unless you are told otherwise, they will have a valid practising certificate and be practising either a) as an employee or a member of a body that is regulated by the SRA; or b) as an employee or member of an authorised non-SRA firm but in accordance with Rule 4.10 of the Practice Framework Rules (which requires there to be professional indemnity insurance reasonably equivalent to that required under the SRA Indemnity Insurance Rules, states that fees must not be charged and prohibits solicitors from undertaking reserved legal activities – this does not include Employment Tribunal advice).

Where you are assisted by a barrister, then unless you are told otherwise, s/he will have a valid practising certificate and be regulated by the Bar Standards Board. The charities involved in this scheme are independent of the Ministry of Justice and of HM Courts and Tribunal Service.

**If the above does not apply to you, please email** **elips@elaweb.org.uk** **in advance of your session so they can seek advice.**

## What if the matter is nearing the limit of my competence, or too complicated to be dealt with on the day?

Please keep in mind that the LIP is likely to be better placed with what help you can give, than without that help. **However, you should only do as much as you feel comfortable doing and you must not act outside the limit of your competence.** Consider working jointly with the other duty lawyer on the day. Consider whether it may be in the interests of the LIP if the matter could be adjourned, with an application then made to ADVOCATE to bring in a more experienced Advocate on a future occasion or to arrange detailed advice. Where any application to ADVOCATE for assistance may be involved, please remember to make clear to the LIP that the application may not be successful.

You must always take into account your professional obligations, competence and level of expertise when deciding what assistance you are able to offer.

1. **Is there anything we can’t advise on?**

Due to the nature of the clinic and the insurance in place, you are unable to advise:

1. On whether someone should appeal a decision or judgment and/or how to appeal. You can refer a LIP to the procedural rules that set out the deadlines for submitting an appeal.
2. Where a claim has not yet been issued.

You are also unable to provide ongoing support. Some litigants might come back to the clinic for follow-up advice which is permitted. However, we are unable to agree to take on a case on an ongoing basis. In such situations please consider ADVOCATE and FRU.

## I am a barrister; am I entitled to act alone, without a solicitor?

Acting under the auspices of ADVOCATE means that the answer is “yes” (ADVOCATE has a special licence).

Where the matter is of a complexity or nature that the involvement of a solicitor (not undertaking advocacy) as well as an Advocate is necessary even for the purpose of that day only, then you should not assist without the involvement of a solicitor. If a barrister volunteer is in any doubt about whether it is appropriate to proceed without the involvement of a solicitor, he or she should refer to ADVOCATE before proceeding further.

All volunteers must take into account into account their professional obligations and their own competence and level of experience when deciding what assistance they are able to offer.

## Identifying a conflict

You will be provided with a list of hearings two days before the day you are due to volunteer. If you are a solicitor volunteer, you must run client conflict checks against all litigants in person on the list (through your firm’s ordinary conflict check system). You should also consider whether you have an own interest conflict – this will include considering including whether your ability to act in the best interests of a particular litigant in person, is impaired by: (a) any financial interest; (b) a personal relationship; (c) the appointment of you to public office; (d) commercial relationships; or (e) your employment. Barrister volunteers should consider whether they personally have a conflict. If you are conflicted, please inform the other volunteer, so that he or she can assist a litigant in the matter in relation to which you are conflicted if requested to do so. You should keep a record of any conflict check and upload a copy of that record to Intralinks.

We recommend that you bring a hard copy of the list with you on the day. The list the Tribunal has on the day is likely to be more detailed/updated e.g. Judges will be allocated to cases. It is worth asking for an updated list on the day, if the clerks are willing to provide one.

If an individual does not have a hearing on the day and drops in for advice, you will need to ask for their details and that of the other party and run a conflict check on the spot (via your law firm or chambers) before advising. We recommend that you make arrangements with your firm/chambers to ensure that conflict checks can be done on the spot prior to volunteering. As with conflict checks run in advance, you should keep a record of any conflict check and upload a copy of that record to Intralinks.

***It is your responsibility to ensure you are not conflicted before providing any advice***. ***If there is a conflict (be it a client conflict or own interest conflict) or a significant risk of a conflict, you must not act. As a solicitor volunteer, if you require any further information about conflicts, we refer you to the SRA Code of Conduct.***

## What about confidentiality?

As you would expect, you must keep all matters discussed with litigants under the ELIPS scheme strictly confidential.

The ELIPS Leaflet confirms to litigants that anything discussed will be kept confidential between them, the volunteers and the scheme administrators.

All documents must be treated with the same level of confidentiality as you would a paying client. Please make sure that all confidential information is removed from the room and disposed of via confidential waste (once copies have been uploaded to the secure cloud storage, Intralinks, per Q8).

## What happens if I think I have made a mistake in any advice that I have given?

Please email elips@elaweb.org.uk with details of the individual you advised, the advice you gave and the error you believe you made.

To ensure that we are able to contact the relevant litigant in these circumstances, it is extremely important that you complete a concluding letter for every litigant that you advise and that you clearly record on the concluding letter the litigant’s email or postal address.

If you are a solicitor volunteer and circumstances arise which could lead to a claim being made against you, you need to fill in the notification form for LawWorks as soon as possible after you become aware of those circumstances, but in any event within 5 days of the circumstances arising. The form, which contains further guidance, is available from elips@elaweb.org.uk

## What level of service is required for clients of the ELIPS Scheme?

You should provide the same level of service to clients of the ELIPS Scheme as you would provide to your normal fee paying clients.

You should be aware that at all times you are required to comply with your professional duties under the Solicitors Code of Conduct or Bar Code of Conduct respectively.

## What about diversity and equality?

ELIPS is an equal opportunities scheme. You must ensure that you do not discriminate unlawfully, or victimise or harass anyone, in the course of volunteering for ELIPS and you must provide services to LIPs in a way that respects diversity. You should also make reasonable adjustments to ensure that disabled litigants are not placed at a substantial disadvantage compared to those who are not disabled. If you have any concerns in this regard, please email elips@elaweb.org.uk.

TIPS

1. **In terms of advocacy, what if there are several points but I consider one to be a hopeless point, or one that I consider may not properly be advanced?**

You should inform the LIP that you are prepared to make only part (rather than all) of the argument. You should explain why. If he or she insists that the point is advanced, you should say that they will have to advance that point themselves, and you should ask the Tribunal to hear both you and the LIP, on the basis that you will make part of the argument and the LIP will make the remainder of the argument. Equally, you should feel free to decline to provide formal representation and offer advice only in these circumstances.

1. **What if I need more time on the day to read the papers or to take instructions or to research a point?**

You could consider asking the Tribunal Clerk (or the Judge), involving the other side if present, whether the matter can be taken at a later time that day.

The Judges understand that you have had a limited amount of time to prepare: they encourage you to engage in an open dialogue with them and do not expect you to step into the shoes of Counsel.

If a short delay is unlikely to assist, the merits and suitability of seeking a formal adjournment will need to be considered. See also question 13 above.

## What about the question of whether the person seeking help could afford to pay?

ELIPS is not a means tested service. If you think someone may be able to afford legal advice (e.g. because they are a senior individual asking for advice about restrictive covenants), we do not advise that you simply refuse to see that person or ask them about their financial means. However, it may be possible to explain the purpose of the scheme (i.e. that it is for litigants in person who are unable to afford legal representation) and explain that providing the requested level of advice to the individual in question would take too much time (if it involves complex restrictive covenants) - or something to that effect.

## I understand that 3 weeks’ notice is required for an application for further assistance from ADVOCATE to be dealt with. What if the case needs further assistance within a shorter period?

Please make ADVOCATE aware of this and they will consider whether an emergency request for assistance to ADVOCATE is appropriate, by contacting their Joint COO & Head of Casework: Shyam Popat, spopat@weareadvocate.org.uk, 0207 092 3971.

## Should I work with the other volunteer or should we split up?

This is for you and your fellow volunteer to decide.

If it is quiet, you may wish to advise jointly. Alternatively, if one of you is a solicitor and the other is a barrister, the solicitor may wish to advise with the barrister providing advocacy assistance. You could also split up and check the waiting rooms on different floors.

## Help on a legal point

We have also arranged for volunteers to have access to Practical Law and LexisPSL. The Login details will be provided to you in advance of your session.

## Is the room exclusively for the use of the ELIPS Scheme?

Yes, on that day. When a conference room is being used as the ELIPS room, it is possible parties not using the ELIPS Scheme will ask if they can make use of it. Please tell them they cannot; on Fridays the room is made available exclusively for ELIPS.

Please make sure that you leave the room tidy.

## Can any fees be charged for ELIPS work?

No. No fees can be charged to any individual using the ELIPS Scheme under any circumstances. Providing advice to any ELIPS litigants on a private basis following the volunteering day is also prohibited. However, further pro bono work can be undertaken if all parties agree. ELIPS must be notified where a client is taken on for further pro bono assistance, however such further work is not covered by the ELIPS scheme and insurance. You must therefore ensure that you have the appropriate insurance cover and are able to comply with all regulatory requirements before agreeing to take on this work.

## Who knows about the ELIPS Scheme?

The Scheme has the support of Brian Doyle, President of the Employment Tribunals and the Judges at Midlands (West) Employment Tribunal.

There are ELIPS posters in all of the Claimant and Respondent waiting rooms as well as information about the Scheme on the door to the ELIPS room at the Tribunal. There is a stash of ELIPS Leaflets (which explain how the scheme works to litigants in person) at the sign-in desk on the ground floor and these will be given out by Tribunal staff.

In addition to the above, please feel free to publicise the scheme to lawyers and litigants alike (as well as on social media) as we are keen to spread the word.

## Is there any security in place at the Tribunal?

The safety of ELIPS volunteers is extremely important and this is one of the reasons why we strive to always have two volunteers on duty. As you will be aware, this is not always possible and, even when there are two volunteers, a particular volunteer may still be on their own in the ELIPS room. With this in mind, we have taken the following steps to ensure the safety of our volunteers

* There are two personal alarms in the ELIPS room at all times (Mighty Safe black, oval device). Please locate them at the start of the day. If you are at any time concerned for your safety, please use the alarm. The alarm is switched on and off by removing and inserting the pin. We recommend you don't try the alarm out - it is very loud!
* We have asked the Tribunal to ensure that a clerk or security officer patrols past the ELIPS room from time to time. However, if you are on your own on a particular day, you may wish to let security know.
* Apart from in exceptional circumstances, we recommend that the clinic closes at 4pm. If you are a solo volunteer, this is even more important