

Evidence to the Commission on Justice in Wales

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Overview

The purpose of this submission is to provide expert evidence to the Commission on Justice in Wales. This submission is based on the findings of my qualitative research, conducted between January and September 2014, comparing telephone and face-to-face housing legal aid advice. The research is the subject of my PhD thesis: *'Calling for Justice: comparing telephone and face-to-face advice in social welfare legal aid'* (Burton, 2015). I have also recently published an article on this subject: M Burton (2018), 'Justice on the line? A comparison of telephone and face-to-face advice in social welfare legal aid', *Journal of Social Welfare and Family Law*, 40(2): 195-215.

My overall conclusion is that there are significant consequences of replacing face-to-face advice with telephone advice in social welfare law. These consequences can seriously disadvantage many social welfare clients, particularly those who are more vulnerable and those with the most acute legal problems (who are often the same people). While some clients value telephone-only services, for many social welfare clients face-to-face interaction is likely to be more effective than telephone advice.

My research confirms and provides insights into statistical research which shows that face-to-face advice achieves better outcomes for clients (Balmer *et al*, 2012; Patel *et al*, 2014; Patel and Smith, 2013; Smith *et al*, 2013). In addition, in housing cases, those with more serious problems gravitate towards face-to-face advice (Balmer *et al*, 2012).

Research summary

In summary, my research found that **face-to-face advice** was linked to:

1) A stronger emotional connection

- Face-to-face interaction with the adviser can result in stronger emotional engagement on the part of the client. Serious legal problems (such as facing homelessness) can be emotionally overwhelming and even more capable clients expressed a need for emotional support.
- The level of emotional engagement between client and adviser can affect the degree to which the client is willing and able to give information. Therefore, clients are likely to be more forthcoming face-to-face and this improves the quality of the advice that can be given.

2) A fuller exchange of information and advice

- **Communication is improved by face-to-face interaction**
 - Clients often find it easier to express themselves face-to-face.

- Better rapport results in better instructions (see above).
 - Non-verbal communication helps clients and advisers to explain themselves and understand each other more easily. In particular, facial expressions and physical gestures help the speaker to get their story across. They can see whether they are being understood and adapt what they are saying accordingly.
 - Having documents to hand can help advisers understand at an earlier stage what is going on (particularly where clients are confused about their situation).
 - Face-to-face interviews tend to be structured less rigidly than telephone interviews. The client has greater freedom to give their account naturally and more room to ask questions.
 - Clients value the privacy and security of the interview room. They also expressed concerns about telephone surveillance and scams.
 - Vulnerable clients tend to be more affected by these issues, particularly those with mental health difficulties
- **Advising becomes easier face-to-face**
 - Advisers have more information on which to base their advice (see above).
 - Advisers are better able to explain their advice and assess whether it is being understood.
 - Improved rapport and client engagement can lead to better client co-operation with the advice process. This is very valuable in difficult cases, especially where the advice may be unpalatable to the client.
 - If urgent action is needed, particularly if proceedings are involved, face-to-face advisers can deal with completing the relevant documents more effectively.

3) **The advantages of local knowledge, local relationships, local networks**

- Face-to-face advisers are able use their local knowledge for the benefit of clients. This includes knowledge of the physical locality, familiarity with local policies, practices and procedures and their long-standing relationships with opponents and organisations providing local support (e.g. debt and benefits advice or social assistance). This knowledge can help to secure better case outcomes and improve clients' longer-term wellbeing.
- Telephone advisers have less contextual information about their cases and lack the relationships with opponents and allies to assist with casework - not knowing the place, people and practices of the area where the client is based can affect the conduct of the case and case outcomes.
- **BUT:** telephone clients value the accessibility of the Community Legal Advice (CLA) service, particularly if they have experienced difficulties in obtaining advice locally.

Recommendation: Improved service design

It is evident from these research findings that telephone advice is less able to cater effectively for certain types of clients and cases. Decisions regarding the type of service that a client should use could be made using a system of 'indicators'.

Indicators

The key elements in determining whether a face-to-face or telephone service is more suitable for a particular case are the capabilities of the client and the nature of the client's problem. Clients with low capability may not be able to deal with the most straightforward matter over the telephone. Conversely, clients with high capability may, under normal circumstances, be able to deal with many matters without face-to-face assistance – although the acute nature of many social welfare problems may reduce their ability to act without face-to-face support. The factors that would suggest which type of delivery is more appropriate in a given situation can be described as 'indicators'. The indicators for telephone and face-to-face advice can be broken down as follows:

Client indicators for face-to-face advice

- General vulnerability: poor communication skills, low personal effectiveness, difficult personal circumstances
- Mental health issues
- Learning disability
- Hearing impairment: Advisers believed that clients who are deaf or hearing impaired would find telephone services more difficult to use.
- Language issues
- Low literacy
- Sensitive issues with need for emotional support
- Age: youth and older age
Research has shown that vulnerable young people prefer face-to-face advice, because of the ability to develop trust with their advisers (Kenrick, 2009). Younger clients are likely to have access to technology, but they are not adept at using the internet to solve legal problems (Denvir *et al*, 2014).

Older clients were considered likely to be more comfortable seeing advisers face-to-face. Hearing impairment could also affect the ability of older clients to deal with telephone advice. Older clients were seen as less likely to have access to fax and e-mail, which could impede the exchange of documents in relation to telephone-only advice. However, in relation to telephone-only services, it was felt that they might benefit from the convenience of not having to travel to get advice (see below).

Nature of the problem indicators for face-to-face advice

- Urgency
- Complexity
- Litigation
- Administrative barriers eg completion of legal aid and/or court forms

Indicators for telephone advice

- Client mobility issues
- Caring responsibilities
- Geographic remoteness

Nevertheless, given the greater efficiencies of face-to-face advice, if a client expresses a preference for face-to-face advice, despite issues of mobility, caring responsibilities or geographic remoteness, this should be made available. In my research, there were clients who fell into these categories (eg poor mobility) who nonetheless expressed a strong preference for face-to-face advice.

Some voices from the research:

Face-to-face adviser representing a client with £10,000 rent arrears:

"...[S]he [the client] used to be quite defensive and 'Well, I haven't done this because I've been doing something else'. I used to think 'What else are you doing?'...'It came out [that the client's son had left a gang and would not leave the house through fear of reprisals]...and then she burst into tears, she cried for about half an hour...And I just, I got a feeling that if I was just to speak to her over the phone I would never have got to that stage. And we have a really good relationship...She was a brilliant client. Anytime I asked for something, she'd bring it the next day. She kept all her appointments. She called me when she said she would, she paid her rent and she's kept her home now and she's doing really well. She's got a job..."

A face-to-face client who was facing eviction at a time when she was a full-time carer for her disabled sister, who was also living in her house:

"You can express yourself better [face-to-face]. You can see who you're talking to...You don't know who you're talking to on the phone. You don't know if they're interested or they're not interested. They may sound interested because that's part of the job..."

"I needed to sit with somebody. I needed somebody to reassure me, listen, this is what it is. Just because it's the police and the housing, doesn't mean that they're right. And she took her time to explain all that to me...you don't say a lot of things you want to say on the telephone, because you feel a bit rushed on the phone, I think, sometimes."

A telephone client (self-employed sales consultant) facing a mortgage possession case:

"I was very, very comfortable with the conversations on the phone, so I didn't feel that...Maybe, maybe the only I would think is maybe that if it had become more drastic where it was like they were going to seize the property from me, then I would have...wanted a face-to-face to, you know, because then it would have gotten more - what's the word, you know - drastic really..."

Notes:

About this research:

This was a qualitative study. Between January and September 2014, I observed 11 telephone interviews and 11 face-to-face interviews between clients and advisers/lawyers. I carried out

research interviews with 10 telephone advisers and 10 face-to-face advisers/lawyers and 7 telephone clients and 13 face-to-face clients. Most of the research took place with the clients, lawyers and advisers of a national housing advice organisation providing advice funded by legal aid in local offices and over the telephone as part of Community Legal Advice (CLA). I visited the CLA office and four local offices (two in London and two outside).

Please note:

This submission is a summary in very broad terms of the findings of my PhD thesis: *Calling for Justice: Comparing telephone and face-to-face advice in social welfare legal aid* (LSE, 2015) (funded by ESRC and LSE). The thesis is 367 pages long. Therefore this note contains only the headline findings of the research. If the Commission requires any further information or has any questions on the matters raised, I would be very happy to assist. I can be contacted on m.burton@mdx.ac.uk.

Background information about Dr Marie Burton

Dr Marie Burton specialises in access to justice, legal aid, the legal profession and social welfare law. She is currently a Lecturer in Law at Middlesex University. She obtained her PhD from the LSE in 2016. She has over 30 years' experience of working in and around the civil and criminal justice system. Dr Burton is a former practising solicitor and senior policy analyst whose work has influenced the development of national policy on legal aid, financial exclusion, high cost credit and debt. For example, as a Policy Developer at the Legal Services Commission, Dr Burton led on projects of national significance. She was responsible for the project which introduced the funding of housing possession court duty schemes. Duty schemes continue to be an essential element of the Legal Aid Agency's strategy to respond to unmet need for social welfare legal aid.

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