

The London School of Economics and Political Science

*Calling for Justice: Comparing Telephone and Face-to-face Advice in
Social Welfare Legal Aid*

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Declaration

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Abstract

This thesis considers the impact of the major shift to telephone-only services that took place in social welfare legal aid in April 2013. It asks whether changing the method of delivery of social welfare advice from face-to-face to telephone transforms the nature and quality of that advice in ways that are detrimental to the client. The lawyer-client relationship has been a major concern of work carried out previously by law and society scholars. Significantly, none of these commentators considered the impact of the telephone as a sole method of delivery. This research aims to contribute towards filling the gap in the current literature by carrying out an in-depth qualitative study which compares telephone and face-to-face advice in social welfare legal aid.

On the basis of empirical data, gathered through interviews and observations involving lawyers, advisers and clients, the thesis identifies three main sets of problems associated with telephone advice. First, local knowledge, community networks and working relationships with opponents put face-to-face lawyers/advisers in a better position to take action on clients' behalf. Second, the absence of in-person interaction can have a negative impact on the interpersonal elements of the relationship, which can affect clients' willingness to give full instructions. Third, the practical aspects of taking instructions and giving advice are adversely affected by telephone-only delivery, particularly as a result of the absence of non-verbal communication, and the difficulties associated with dealing with documents. The overall conclusion of this research is that some clients are able to overcome the potential barriers of telephone advice, but less capable clients and those with more complex problems are put at a significant disadvantage. In the contemporary situation of scarce resources, this research directly challenges the government rhetoric that changes to the delivery of legal aid target services at those most in need.

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Chapter 1: Introduction

Introduction

‘[W]hen the great writer E.M. Forster talked about only connecting...he was talking not about connecting two telephone wires but about human interaction. The Government should not discount human interaction when they or lawyers are in the business of giving advice...’

Lord Bach, HL, 20 Dec 2011, vol 733, col 1761

These words were used by Lord Bach in 2011 during the committee stage of the Legal Aid, Sentencing and Punishment of Offenders Bill (now Act), in relation to the government’s proposal for a mandatory ‘Telephone Gateway’ in social welfare legal aid.¹ This thesis explores the impacts of replacing face-to-face interactions in social welfare advice with telephone-only provision following the changes to social welfare legal aid that took place in April 2013. The key research question posed is whether telephone delivery of social welfare legal aid advice is able to provide an equivalent service to that of face-to-face advice, especially for individuals with acute legal problems and complex needs. This thesis investigates whether transforming the method of delivery of advice significantly changes the dynamics of lawyer–client interaction and the nature and quality of the service that a client receives. It is particularly concerned with whether the changes wrought by this transformation markedly disadvantage those individuals whose acute legal problems are compounded by poverty or other difficulties, such as mental or physical ill health or disability. The findings of this research suggest that ‘those who need it most’ (Ministry of Justice, 2015a) are least likely to benefit from this element of the government’s reforms to legal aid.

This fundamental change to the delivery of legal aid deserves our attention because telephone-based services have the capacity to have a far-reaching impact on

¹ The Telephone Gateway is currently mandatory in the areas of debt (i.e. mortgage possession), education and discrimination law.

public access to state-funded legal advice, especially among the most vulnerable in our society. Reforms to civil legal aid provision in April 2013 vastly reduced the availability of legal aid for dealing with social welfare legal problems.² Where legal aid for social welfare law remains, telephone-only advice from the Civil Legal Advice telephone service (CLA) is now either the sole or a very significant method of delivery. In addition, as a result of the way in which the civil legal aid contracting regime is now affecting high street legal practices and advice agencies, telephone advice looks likely to become increasingly the medium through which it is practicable for people to receive specialist social welfare law advice. The extent of these changes and their possible implications mean that the effectiveness of telephone advice demands closer scrutiny.

Moreover, the provision of advice over the telephone is of considerable contemporary importance because the imperative for the use of this method of delivery is set to continue. The government is currently embarked on a ‘digital by default’ programme and, in keeping with this, the Ministry of Justice (MOJ) has signalled its intention to provide yet more legal aid services over the telephone and online (NAO, 2014: 38). Problems with the current policy have not gone unremarked. In recent months, the Low Commission (2015) and the Justice Committee (2015) have both criticised the government’s programme on legal aid, including the unexpectedly low numbers using the Telephone Gateway. In the course of assessing the government’s legal aid reform programme against its own stated aims, the National Audit Office (NAO) highlighted that, in 2013–14, the number of people contacting the telephone service over ‘debt’ problems (i.e., mortgage possession cases) was 86 per cent lower than originally forecast (NAO, 2014). Low public awareness and the government’s failure to promote the service are often seen as the main reasons for this problem (Justice Committee, 2015). The reality is that there is little understanding of the causes of the poor take-up of the telephone-only

² Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, legal aid funding is now only available in welfare benefits cases for matters involving an appeal on a point of law; debt advice is only funded where someone’s home is at risk; in education law, the only advice funded is in relation to special educational needs. A new category of ‘discrimination’ law has been created, which is the only aspect of employment law that remains funded, but includes other areas of discrimination such as education and goods and services. In housing law, eviction and possession, homelessness, hazardous disrepair and harassment remain in scope. It was predicted that, under the reforms, the social welfare law budget for legal aid would be cut by 59 per cent (£89 million) (Low Commission, 2014b).

service. It is credible to suggest that, for vulnerable clients, barriers to using the telephone-only service may go beyond a lack of publicity. This research presents an opportunity to fill a current gap in knowledge about the potential repercussions of providing telephone legal aid services for individuals with complex needs and acute problems.

The current state of the academic literature

In order to compare telephone and face-to-face advice, it is necessary to have benchmarks or a model of lawyering that can be used to judge what constitutes an effective method of delivery. The current literature on the lawyer–client relationship contains a variety of models of lawyering.³ Until the late 1960s, modern-day sociological enquiry into the lawyer–client relationship was strongly influenced by the work of Durkheim (1957/1992), which suggested that standards of interaction were likely to be determined by lawyers. The lawyer was seen to act in furtherance of an altruistic, and often paternalistic, ideal, whereby their chief concern was the best interests of their client, not personal or financial gain. This benevolent view of the lawyer–client relationship was displaced during the late 1960s and 1970s, as sociologists began to conceive of professional relationships as an exercise in class power driven by lawyers’ material and social self-interest (Larson, 1977; Johnson 1972; Abel, 1988; Macdonald, 1995; Watson, 2008). This theme of unfettered professional power and the inherent conflict between lawyer and client fuelled the development of new models of lawyer-client interaction with a more client centric view of what constitutes good standards of interaction. Criticisms have been directed at all lawyers, including ‘poverty lawyers’ who are seen to impose upon their clients a narrative of victimhood, with the cumulative effect of perpetuating social inequalities (see Alfieri, 1991; White, 1990; López, 1989; Cunningham, 1992; Tremblay, 1992). A solution put forward to redress these issues of lawyer dominance is ‘critical’ or ‘radical’ lawyering, adopting principles of client collaboration and empowerment and community-based campaigning. Academics who adopt this ‘critical’ lawyering perspective largely conceive of the lawyer–client relationship as

³ It is notable that, although in the past notions of lawyering and the nature of professionalism attracted considerable academic debate, in more recent times, scholarly interest in these issues has waned. Thus, although still relevant, the literature from which these models are drawn has not developed significantly since the late 1990s.

an act of oppression on the part of the lawyer. In contrast, early research in the law and society field by scholars such as Sarat and Felstiner (1986; 1995) produced more nuanced insights into the complicated power dynamic between lawyer and client. Another alternative model of lawyering developed during the same period in reaction to growing dissatisfaction with paternalistic lawyering is ‘client-centred’ lawyering. This approach to thinking about the ideal lawyer-client interaction is based on an ‘ethic of listening to the client’ and advocates client participation and a more equal relationship between lawyer and client (Rosenthal, 1974; Binder and Price, 1977; Binder *et al*, 2011; Sherr, 1999; Moorhead *et al*, 2003b: 9-10). This contemporary approach has played an important part in questioning the pursuit of lawyer control and self-interest, while at the same time recognising the limitations of client empowerment and maintaining that the lawyer should retain professional responsibility for the case. Its acceptance as an aspirational model of lawyer-client interaction in current social welfare practice and modern-day legal education, as well as among sociologists of the legal profession, means that it has been chosen as the preferred model of lawyering for comparing telephone and face-to-face advice in this thesis.

The lack of recent academic interest in the sociology of the legal profession means that the bulk of the literature in this field dates from a time when it was assumed that legal aid clients would continue to have face-to-face access to their legal representatives. It therefore fails to take into account the spread of telephone-only advice and how the use of the telephone as the principal means of communication between lawyer and client might change the dynamics of the interaction. A key goal of this thesis is to pay overdue attention to the issue of telephone-based social welfare lawyering and, in doing so, to bring new impetus to the socio-legal debate about what legal aid lawyering should be and the nature of the service it is acceptable to deliver in a contemporary English setting.

There are currently very few empirical comparisons of telephone and face-to-face advice in the UK context within the academic sphere. In the past, the vast majority of research into telephone-only advice was in the form of policy-driven evaluations by, or on behalf of, government agencies (see, for example, Bull and Seargeant, 1996; Legal Services Commission (LSC), 2004; 2009). More recent policy research in the area of debt advice prior to the reductions in legal aid, and in relation to the now mandatory CLA telephone debt advice service, suggests that, in

standard debt cases, telephone services can be effective for some clients, but more vulnerable clients may struggle with telephone delivery (Patel and Smith, 2013b; Paskell, *et al*, 2014). In contrast, research conducted on behalf of the Money Advice Trust (a provider of telephone debt advice through National Debtline and Business Debtline) was more favourable about the use of telephone services by vulnerable clients and, in a survey of debt clients, found that there was scope for a greater proportion of vulnerable clients to receive telephone debt advice than is currently the case (Ellison and Whyley, 2012b). In qualitative studies, anonymity, convenience and accessibility have been put forward as particular benefits of telephone debt advice. At the same time, these studies have raised concerns about problems of communication over the telephone, and the potential impact on trust and rapport between the client and adviser (Patel and Smith, 2013b; Patel, *et al*, 2014; Patel and Mottram, 2014; Paskell *et al*, 2014; Ellison and Whyley, 2012b).

Nevertheless, there remains relatively little academic research on this subject in this country, and what does exist is mostly quantitative. Statistical analysis of cases undertaken prior to the legal aid changes has shown that face-to-face advice consistently delivers better outcomes than telephone-only advice in the areas of housing, education, debt and family law (Balmer *et al*, 2012; Patel *et al*, 2014; Patel and Smith, 2013a; Smith *et al*, 2013). In addition, more vulnerable housing clients appear to gravitate towards face-to-face advice (Balmer *et al*, 2012). Thus far, in-depth qualitative analysis directly comparing the two methods of delivery, as carried out in this thesis, is largely absent from the academic field.

It is evident from the above that there are a number of gaps in the current literature which it is the intention of this thesis to address. In contrast to the majority of work in this area, this thesis is an in-depth qualitative study intended to increase knowledge of the implications of telephone-only communication for the lawyer–client relationship and social welfare law consultations in particular. Accordingly, this research situates itself within the evidence-based studies of lawyer–client interaction as previously undertaken by law and society academics (for example, Sarat and Felstiner, 1986; 1995; Sherr, 1986; 1999; 2000; Bogoch, 1997; Sommerlad, 1999; Sommerlad and Wall, 1999). In addition to its contribution to scholarly debates, it also aims to feed into the current policy debates and to have an important role in informing the future development of social welfare legal aid provision.

Research questions

The fundamental question that this research seeks to answer is: What impact does telephone-only contact have on lawyer–client interaction and can it provide an equivalent service to clients with social welfare advice needs? When considering the possible changes produced by shifting methods of delivery, this overarching question suggests a series of research questions that need to be addressed. Firstly, how does the site of delivery, whether local or remote, condition the lawyer–client experience? This thesis begins with a case study of the early law centre movement. From this it is possible to see how, in the past, a re-imagining of the appropriate place of delivery of legal aid services led to a significant opening up of social welfare legal aid provision for people in poverty. It is posited in this thesis that the current shift in the location of services from face-to-face to telephone may represent the latest phase in the story of the connection between the place of delivery and access to social welfare legal aid. The CLA moves advice provision from the local to the remote, but telephone services are theoretically available from any location linked to the telephone network. Thus, it may be that telephone-only advice is a more convenient way for social welfare clients to obtain advice.

In addition, for the client, being physically distant from the lawyer and more at ease due to being in their own home may give them greater control over their narrative. It could be contended that telephone-based delivery can provide a new answer to old criticisms of lawyer domination and the perception of poverty lawyering as a form of client oppression. It seems possible that the transition to telephone-only advice could have the same transformative effects on social welfare advice as the advent of local Law Centres. Alternatively, it can be argued that the success of Law Centres lay in the reduction of physical and social distance between lawyers and disadvantaged clients. What, then, will be the consequences of increasing physical distance?

The second question for examination is: How effective is telephone communication in meeting the advice needs of clients with complicated social welfare and other problems? The Coalition government claimed that its legal aid reform programme would ‘make legal aid more effective’ by creating a revised legal aid scheme that ‘targets the highest priority cases and those who need it most’ (MOJ, 2015a). On this basis, effectiveness appears to mean focusing limited resources on

the most needy. 'Effectiveness' is however a contested notion. Effectiveness in legal aid provision has also been conceived in narrow market-based terms, as generating the maximum number of instances of advice from a finite pool of resources to provide 'value for money' (VFM) for the taxpayer (Sommerlad, 2008). To achieve this end, a fixed fee contracting regime was introduced by the New Labour government and has been adopted and intensified by the Coalition and current government under shrinking budgets. In a fixed-fee system, where the same fee is payable per case, regardless of complexity or the quality of service provided, effective access to justice is understood in terms of 'the number of clients processed rather than a just outcome achieved' (Sommerlad, 2008: 188; Sanderson and Sommerlad, 2011; Mayo *et al*, 2014).

These different understandings of effectiveness are in conflict with each other: a fixed fee contracting regime – which focuses on case throughput rather than quality and impact – acts to exclude those with serious or complex cases and/or with limited abilities to deal with their legal problems alone. These more difficult clients and cases take considerably longer to deal with than a fixed fee system allows and, to ensure financial sustainability, solicitors firms and not-for-profit (NFP) agencies are increasingly forced to reduce the quality of their service or 'cherry pick' more straightforward cases (Sanderson and Sommerland, 2011; Sommerlad and Sanderson, 2013; Mayo *et al*, 2014). Yet these are precisely the individuals whom the Coalition government claimed would be prioritised to achieve 'effective' legal aid provision as a result of their reforms. Thus 'effectiveness' within this definition of VFM acts to undermine 'effectiveness' in relation to being able to provide good quality legal assistance to social welfare clients in the greatest need and for whom the assistance of a legal adviser is likely to make the most difference.

The position taken in this research is that effectiveness should be judged in terms of where it can meet the greatest needs and make the most difference to the recipient of social welfare advice. My starting principle is that access to justice should include the provision of legal aid to all those of low or moderate means in need of legal advice. This reflects the values under which the legal aid scheme was originally set up in 1949 (Smith, 1997). However, when confronted by a situation where the government is prepared only to grant very limited resources for legal aid in general and social welfare law in particular, I would argue that those resources should be used for those social welfare law clients who are most in need of the

professional assistance of a lawyer or legal adviser. This is likely to be individuals who, due to the difficulties of their personal circumstances and/or the severity or complexity of their case, are not able to handle their legal affairs effectually without expert help. It is in these situations that the intervention of a lawyer or adviser is most likely to have a significant impact on how the matter would have progressed if the client had been left to deal with it alone. Judging the effectiveness of advice on this basis means examining who receives assistance from social welfare legal aid and the types of problem with which they are obtaining help, the quality and nature of the advice received, and the impact and outcomes achieved as a result of that advice.⁴

Thus the question to be considered in this research is: How does the move from face-to-face to telephone-only communication change the nature of lawyer–client interaction in social welfare matters and what impact does it have on the exchange of information and advice between lawyer and client? As stated earlier, previous quantitative analysis suggests differences in case and client profiles and case outcomes between telephone and face-to-face cases (Balmer *et al*, 2012; Patel *et al*, 2014; Patel and Smith, 2013a; Smith *et al*, 2013). Qualitative studies highlight the difficulties faced by vulnerable clients in trying to use telephone services. What are the causes of these differences between telephone and face-to-face service delivery?

This question can be broken down further. Firstly, what effect does the nature of the medium have on the relational aspects of the interaction? Are there reasons why this should have particular potency for social welfare clients in situations of pressing need? In the past, notions of professional neutrality have led to the emotional content of lawyer–client interactions being considered an inappropriate issue for discussion in the analysis of lawyer–client relationships. However, client-centred lawyering acknowledges the importance of recognising clients’ emotional needs when dealing with their legal problems. Moreover, studies have shown the value that clients attach to interpersonal factors when obtaining legal advice (Sommerlad and Wall, 1999; Sommerlad, 1999; Buck *et al*, 2010). A goal of this research is to compare how relational elements of the interaction, such as rapport and

⁴ It seems that the CLA telephone service may currently be failing to be effective in narrow VFM terms in any event: the numbers assisted by the telephone service have been far lower than predicted (NAO, 2014) and recent research has questioned whether telephone services are achieving VFM on a cost-per-case basis (Public Law Project, 2015).

trust, are established over the telephone and face-to-face between lawyers and social welfare law clients.

Secondly, what are the practical implications of the differences between telephone and face-to-face advice when dealing with social welfare law matters, which may be legally or factually complicated and/or urgent and/or involve a client with limited personal capability? If there are disparities between telephone and face-to-face advice in terms of emotional engagement, non-verbal communication, the ability to collaborate over documents and the nature and format of the interaction, do those disparities affect the practical functioning of the lawyer–client interview as a central tool in the giving of advice and the provision of ongoing casework when dealing with clients’ social welfare law problems? What are the specific repercussions for vulnerable clients, who research has shown struggle with self-help and taking action on their own behalf (Genn, 1999; Moorhead and Robinson, 2006; Buck *et al*, 2010). These are issues that this thesis proposes to investigate empirically.

This research takes a qualitative approach to answering these questions. Interviews and observations were selected as the most apposite method for capturing complex and potentially sensitive material from research participants about their feelings, thoughts and behaviours. However, obtaining qualitative data was far from easy. The project had to overcome a number of bureaucratic and practical hurdles in its goal of researching the client experience, which had an impact on the methods adopted and sample size. Despite these issues, it is felt that the client sample, which explores the experiences of 20 people, provides a rich source of material for rigorous in-depth analysis and valuable insights. In-depth research interviews with clients, lawyers and advisers and observations of lawyer/adviser–client interactions mean that the findings of this thesis are steeped in the everyday reality of those who must negotiate their way through the legal system with the help of social welfare legal aid. It is submitted that the testimony of clients – the people with the most to lose or gain through the advice process – enhances the authenticity of this research.

The thesis

The thesis that unfolds in these pages is that changing the method of delivery affects the nature, content and quality of advice given. It is argued that locally based provision continues to be relevant to the effectiveness of advice. Face-to-face legal

advisers situated in services that are embedded in their local communities benefit from their knowledge of the places, people and practices of the area they serve. It is also contended that emotional engagement with the client is more easily established and maintained through face-to-face contact, and that this can lead to more open and co-operative relationships with clients. Furthermore, this thesis disputes claims about the greater efficacy of telephone advice. It is asserted that considerable practical advantages attach to the face-to-face experience. It is posited that, face-to-face, clients can be more expansive, mutual understanding between lawyer and client is often deeper, and advancing the case is frequently more straightforward from a practical perspective. The degree to which these differences between the two methods of delivery impinge on a particular case will depend on the needs and abilities of the client and the nature and complexity of the case concerned. The line of argument pursued in this thesis is that, although some more capable clients can overcome the additional barriers posed by telephone-only advice, vulnerable and distressed clients dealing with acute legal problems are considerably better served by an adviser that they can meet in person.

The structure of this thesis

Following this introduction, Chapter 2 is devoted to exploring issues of place in the post-war development of social welfare law. By looking in parallel at the ‘professional project’ of lawyers (particularly solicitors) and the way in which legal aid evolved as a profession-led, state-funded service during the 1960s, it has been possible to identify the crucial role that the physical location of legal services in affluent areas played in preventing disadvantaged clients from having access to social welfare legal aid advice. Conventions about suitable places for legal service delivery were overturned in the 1970s by legal activists who set up Law Centres and other sites of alternative legal advice provision in deprived areas. This resulted in far greater take-up of social welfare legal aid. These events raise issues about whether this most recent shift from face-to-face to telephone delivery presents a new opportunity to challenge dominant notions about the appropriate place for giving legal advice once again, in an effort to expand the legal aid services available to low income individuals.

Chapter 3 explains why this thesis employs a ‘client-centred’ model of interviewing as the baseline for determining the expected characteristics of an

effective interview. It sets out the spectrum of models of lawyering, outlining the varying elements of ‘market-driven’, ‘paternalistic’, ‘client-centred’ and ‘critical’ lawyering. It outlines their different theoretical positions and how these inform the characteristics that are ascribed to lawyer–client relationships, before detailing why the client-centred model is the preferred approach for this thesis. It also explains the decision not to delve deeply into issues of deprofessionalisation within this thesis and to treat advisers and qualified lawyers as doing essentially the same job.

Chapter 4 begins with a consideration of the limited existing research comparing telephone and face-to-face advice. It then explores the literature on the emotional and interpersonal elements of lawyer–client interaction, and compares how these aspects of the relationship are likely to fare in face-to-face and telephone environments. An analysis follows which identifies the requirements of the three essential stages of the interview as: allowing the client to tell their story; probing and exploring the client’s story; and advising (including agreement on the ‘next steps’). Telephone and face to face advice are then assessed to determine whether and the degree to which they are likely to help or hinder the different stages of the interview process. In the absence of an established lawyer–client literature dealing with the disparities between telephone and face-to-face interviewing, studies of interviewing in social science research and the use of videolink technology in courts provide useful comparators. This chapter identifies the key research issues to be further considered by empirical analysis.

Chapter 5 describes the methodological choices made in this thesis in order to answer the research questions posed. It explains that an empirical and qualitative methodology was considered the most appropriate to explore at a personal level the behaviours and experiences of clients, lawyers and advisers and their attitudes towards telephone and face-to-face advice. The use of grounded theory enabled the construction of a thesis that was exploratory and rooted in the real-life experiences of the research participants. Taking a ‘subtle realist’ approach (Hammersley, 1992: 50–2) and adopting a feminist standpoint perspective (Letherby, 2003; Harding, 2004) permitted the development of a multifaceted account of the research question, which also allowed sufficient reflexivity to acknowledge my insider status as a former social welfare law practitioner. This is followed by a discussion of the process of planning and conducting the research, including a review of the ethical issues that arose during this process. Sampling decisions are then justified, together with a

description of how the research sample was affected by issues of access, and how, with the assistance of my insider status, the barriers to access were eventually overcome. This chapter ends with a description of the interviews and observations conducted, and the characteristics of the clients, lawyers and advisers who participated in the research.

The remaining substantive chapters of the thesis (Chapters 6 – 9) turn to analysis of the data and the research findings. In Chapter 6, the role of place and the local in casework for social welfare law clients facing problems of housing and homelessness is the first subject to be explored. This chapter responds to the questions posed in Chapter 1, regarding the possibilities that may be realised through a reconfiguration of place away from the local to the remote in terms of increased access to advice. In fact, this chapter shows a number of advantages that local knowledge brings to lawyers and advisers when dealing with clients' cases, and the limitations imposed on telephone advice in this regard.

Relational and interpersonal issues are the subject of Chapter 7. In the course of conducting this research, the high degree to which social welfare clients valued the psychological aspects of their relationship with the lawyer became apparent. This chapter sets out in detail the features involved in establishing a close and trusting relationship between lawyer and client, and compares the effectiveness of telephone and face-to-face advice in achieving this. It also highlights the impact that the strength of the relationship is likely to have on the client's openness with the adviser. Next comes an exploration of the lawyer's emotional life. This focuses on the importance of fulfilment and reward for lawyers and advisers, and also the potentially negative consequences of greater detachment due to telephone-only contact with clients.

The essential judgement to be made between telephone and face-to-face advice is which method of delivery provides the better service for those clients who should be prioritised for legal aid assistance. Thus, Chapter 8 considers how non-verbal communication and the physicality of documents affect the practicalities of the lawyer–client interview. Evidently, these elements of the face-to-face interview are not easily reproduced in telephone-only advice, and affect the ability of telephone advice to replicate the performance of face-to-face advice at all stages of the interview process. Chapter 9 is a detailed examination of how the components that differentiate the telephone from the face-to-face interview – such as

interpersonal factors, non-verbal communication, the tangible document and other practical issues – affect the three main phases of the lawyer–client interview. The chapter also includes an investigation of the complicating factors that often affect social welfare law clients and casework, and compares the telephone and face-to-face experience in relation to matters of this kind. It is argued that where clients are vulnerable, have poor literacy or language skills, or are in acute or complicated situations – particularly cases involving current or contemplated proceedings (and many clients fall into more than one of these categories) – they need face-to-face legal advice.

Chapter 10 ends the thesis by bringing together all the aspects of the preceding discussion. It acknowledges the role that telephone advice has to play in the delivery of advice services, but questions the increasing impetus towards telephone-only delivery in social welfare legal aid. It argues that face-to-face advice is often more effective in these cases, and is necessary for clients who are vulnerable or in urgent or complex situations. It determines that the move away from face-to-face advice is likely to leave a significant portion of those who most need legal aid without advice or with a level of advice that is inadequate to their needs. In housing law, at least, that seems likely to mean that the large increase in rented housing evictions recently identified by the Low Commission (2015) will continue. In the longer term, the costs are harder to quantify, but a price will have to be paid somewhere – probably first by the poorest in society in terms of increased poverty, lost homes, ill health and fragmented family relationships – but ultimately, due to the resulting social disintegration, by us all.

Chapter 2: Place and Social Welfare Law

Introduction

The site of encounter is a defining difference between face-to-face and telephone advice. Currently there is no explicit academic literature which considers the importance of place in relation to social welfare law advice in England and Wales. In the scholarly literature on lawyer–client interaction, the lawyer’s office remains the assumed place of legal business, and issues of remote service-delivery are rarely examined. Yet, due to technological advances, the multiplicity of methods of communication now being used challenges the dominance of office-based interaction and raises new questions about the appropriate place for lawyer–client interviews. Using the example of debates about place in the development of specialist social welfare law practice after the post-war introduction of legal aid, this chapter will consider how the location of legal advice provision can have an impact on the way a service is delivered, the experience of recipients of that service, and on the nature of the issues dealt with as a result. This analysis begins to unravel the potential impact of replacing local face-to-face services with remote telephone-only provision in the future.

In order to explain how place has affected the provision of social welfare law legal aid in the past, this chapter includes an analysis of the role of the location of the solicitor’s office in the ‘professional project’ of solicitors (Larson, 1977: 6). It also examines the link between the establishment of Law Centres in deprived areas during the 1970s and the growth in social welfare legal aid. It is argued that the forthcoming shift from face-to-face to telephone advice represents the most recent stage in the story of place and social welfare legal aid. The aim of using the development of Law Centres as a case study is to consider the past significance of the location of advice services for disadvantaged communities, in order to explore whether the move to telephone services is likely have the same transformative impact on access to social welfare law advice in the future. The issue at the heart of this chapter is whether and how the place of legal service-delivery matters.

Definitions of 'place'

In common usage, 'place' refers to a location with a material, visual form (Cresswell, 2004: 7). The advent of telephone and other remote forms of communication challenges this definition of place, as many instances of human interaction occur in environments that lack physical substance. Massey's (1994a: 154) response to this conundrum is to replace the physical notion of place with one of social connection. She proposes an alternative, 'progressive' vision of place 'constructed out of a particular constellation of social relations meeting and weaving together at a particular locus'. This notion therefore embraces mobility and rejects exclusion. With its focus on networks and links between people, this is a definition of place that can include interaction that takes place only over the telephone or online. It has been criticised, however, for paying insufficient attention to the relative importance that people continue to invest in a degree of fixity or rootedness (Cresswell, 2004). In addition, individuals continue to maintain a 'sense of place' in terms of an emotional attachment to specific known locations (past or present) (Cresswell, 2004: 7–8, citing Agnew, 1987). Fixity can take on additional importance for those in a position of physical insecurity, such as migrant workers (Cresswell, 2004).⁵ This may also be the case for social welfare clients who are homeless or at risk of losing their homes. In addition, the psychological impact of physical instability may make it more difficult for clients to cope in situations of financial insecurity. These issues raise the question of how the dematerialised nature of telephone-only connection will affect the advice experience of social welfare clients.

In deconstructing the role and meanings of place in lawyer–client relations, it is important first to recognise that place is not a neutral concept. The practices and processes associated with particular places have the power to alienate or to include: 'The creation of place by necessity involves the definition of what lies outside' (Cresswell, 2004: 102). The configuration of place has an impact on political and societal relations.⁶ Foucault (1977: 141–5) recognised the unique power of place in

⁵ Research into the lives of Filipina domestic workers in Vancouver showed the significance they attached to being able make the space they were allocated into their place through small physical adjustments, such as putting up a poster (Cresswell, 2004).

⁶ Within law and geography scholarship, a number of commentators, in addition to Blomley (2003) and Cresswell (2004), are concerned with the issues of place and the exercise of power and social control. Massey (1994b), for example, explores these issues from a gender perspective. Calmore

respect of social control through the ‘enclosure’ and ‘partitioning’ of individuals within barracks, schools, hospitals and factories during the eighteenth century. Blomley (2003) also sees the designation of space as a form of political and social control. Social and legal penalties are imposed on those fail to conform to the behaviour required in certain spaces. With this in mind, the argument put forward in this thesis is that place, in the sense of the siting of the lawyer’s office, had a significant effect on relationships between lawyers and low income clients, and led to the exclusion of social welfare clients from legal aid.

Place and the legal profession

The location and nature of the lawyer’s office plays a fundamental role in the legal profession’s conception of itself. It is now assumed that the natural place of lawyer–client interaction is the legal office. Nonetheless, historical accounts show the movement of the developing profession away from shared communal spaces into formal offices (Kirk, 1976; O’Day, 2000). In the earliest days of the profession, attorneys did not have offices at all; instead they carried their papers and other possessions in a (usually) green bag, and met their clients in the precincts of the court or any other convenient place. Even after they had offices (often in their own homes), they continued to transact business in the tavern, inn or coffee house until the nineteenth century, when the solicitor’s office as we would now recognise it came into existence (Kirk, 1976; O’Day, 2000). Thus, as solicitors achieved greater professional status, the relationship between solicitors and their clients became more stratified, and solicitors were increasingly divided from the wider community by formal offices. The profession also became increasingly segmented in terms of the types of practice and client groups served.⁷ As a result, practitioners opened offices in locations appropriate for their area of practice and the status of their clientele, creating physical divisions between different sectors of the profession. Solicitors no longer attended their clients at home or met them in public spaces. The solicitors’ office became the place where it was appropriate for legal business to be transacted.

(1999: 1930) recognises that, for the inner-city poor, place may be where different sites of oppression, such as race and class, intersect to produce a situation of ‘concentrated poverty’.

⁷ Abel (1988: 290) refers to the considerable internal stratification of the legal profession due to the very different types of clientele served. This leads to lawyers being divided from each other in terms of ‘material rewards, power and status.’

Contemporary theories of professionalism provide an explanation as to why this shift in the location of legal service-delivery occurred.

It is argued here that, for the developing solicitors' profession, the establishment of an office situated in a reputable area was an essential component in their battle to achieve professional status. Larson's (1977: xvi–xvii, 6) theories on professionalism expose the 'professional project', the process through which occupational groups possessing special knowledge obtain a privileged position in society, which they can then exploit for financial and social gain. The intangible nature of the 'commodity' produced by the professional means that the value of their 'product' is inevitably connected to their 'person and personality' (Larson, 1977: 14). The 'professional project' of lawyers is therefore dependent on their fitting the client's image of 'repute and respectability' in order to gain the trust of the governing elite (Macdonald, 1995: 30–1). It is put forward in this thesis that maintaining the required image included ensuring that the physical places in which lawyers practiced matched their bid for social respectability.

It was therefore important that the office should be located in an area that was not associated with the poor and their problems. The status of a profession is influenced by the socioeconomic status of its clients (Larson, 1977). Working for impoverished clients presented a risk to the solicitors' professional project, as it could damage their reputation: '[T]he Law Society has often feared that down-market lawyers, grubbing around trying to make a living from the poor, would reduce the social standing of lawyers' (Goriely, 1996: 242). This resulted in a situation where solicitors were reluctant to have social welfare clients in their offices (Egerton, 1945). The Second Lawrence Committee pointed out in 1925 that it was difficult to find solicitors to do work under the Poor Person's Procedure because the clients were 'often ill-dressed and frequently ill-mannered' (Goriely, 1996: 242). The exigencies of the professional project are therefore a significant element of the explanation for the unwillingness of the profession to establish practices in poorer areas.

Solicitors also had financial reasons for siting their offices in more affluent areas. The pursuit of economic gain is a major component of the professional project (Larson, 1977). Until the 1990s, the bulk of solicitors' work came from property-related matters – either conveyancing or wills and probate (Zander, 1978; Abel, 1988). Solicitors established their practices in the areas that were likely to be

the most profitable and the most pleasant to live in (Kirk, 1976). This meant that their offices were in areas that were inaccessible to poorer clients. They also failed to develop the expertise to deal with social welfare matters (Bindman, 2004). The Poor Persons Committees reported that solicitors were not keen on the ‘unfamiliar and distasteful’ work that clients in poverty brought with them (Egerton, 1945: 108). Lawyers had little understanding of social welfare law and few incentives to rectify their ignorance. The ‘professional ideal’ required solicitors to provide voluntary services for the poor, but it was a costly burden with little benefit, and they were therefore keen to limit the extent of their commitment to such work (Goriely, 1996: 220). The combined factors of maintaining their professional standing and serving their business needs therefore produced a situation where, even after the introduction of legal aid, social welfare clients were likely to continue to be poorly served by the legal establishment.

The expectation that the client would attend the lawyer rather than the other way around was further underlined by the professional rules against unfairly attracting business, or ‘touting’. These rules meant the first approach to the lawyer had to come from the client (Zander, 1968; 1978). If lawyers attempted to take their services nearer to low income clients by volunteering at advice centres, further professional barriers existed. Solicitors were only allowed to provide advice for free at advice centres; if they subsequently continued to work for the client at their own firm, they would be presumed to have taken advantage of their position in order to attract business unfairly. This discouraged some lawyers from working in these centres and others from taking further the cases of clients they had seen in that location (Zander, 1968). By acting on the assumption that the advice centre gave dangerous potential for touting, the professional rules reinforced the notion among lawyers that the only ‘safe’ site for lawyer-client interaction was the lawyer’s office.

Conversely, the lawyer’s office did not represent a neutral environment for the client. While place is an issue rarely considered in the literature on the lawyer–client relationship, the alienating nature of the lawyer’s office has received some attention from commentators in this area. As stated by Felstiner and Sarat (1992: 1457): ‘Lawyer–client interaction always occurs in the space of law. For the lawyer, this means the interaction takes place in a familiar space, a space of privilege ... For the client, on the other hand, the space is unfamiliar and forbidding’. The status symbols in the office of even a ‘rebellious’ lawyer can act to undermine the client

(López, 1989: 1614). It may not be inevitable that the space of law is alienating, but control over the nature of that space remains the lawyer's. An issue this thesis will consider is whether no longer having to operate within the confines of the lawyer's office liberates or disorients the client.

Attending the traditional solicitor's office presented considerable barriers to disadvantaged people in need of social welfare law advice. Firstly, geographically, solicitors' offices were not likely to be in places where low income clients with social welfare law problems were able to visit them easily (Zander, 1968; 1978; Kirk, 1976). Secondly, the nature of the lawyer's office was off-putting to low income clients. In 1926, the National Council of Social Service told the Finlay Committee on Legal Aid for the Poor that low income clients were intimidated by the formal atmosphere of solicitors' offices (Goriely, 1996). Even after the introduction of legal aid for advice and assistance, a worker's preference for a free legal advice centre was attributed partly to the fact that it 'has none of the aura of the professional man's office', which meant that the client could attend in his working clothes (Zander, 1968: 241). The style and atmosphere of service-delivery discouraged social welfare clients from consulting private practice solicitors (Bindman, 2004). Thus, place – in the form of both the location and the atmosphere of the solicitor's office – was a factor in excluding people on low incomes from advice.

The implementation of the advice⁸ provisions of the Legal Aid and Advice Act 1949 ('the 1949 Act') consolidated the pre-eminence of the lawyer's office as the expected site of legal services delivery. To obtain legally-aided advice, the client (or, if the client could not attend, their intermediary) was expected to apply to the solicitor in person (Matthews *et al*, 1971). This signalled a belief on the part of the state that the appropriate place for communication between lawyer and client was the lawyer's office. The importance of the lawyer's office as the place of exchange was reinforced by the application of the legal aid rules.

The 1949 Act also contained provisions for a limited salaried legal advice scheme.⁹ This was based on the recommendations of the Rushcliffe Committee that private practice legal aid provision should be supplemented by a state-funded advice

⁸ Legal aid for advice is distinguished here from legal aid for representation in proceedings.

⁹ Restricted to verbal advice and applying for legal aid ('LCBG', 1950).

service staffed by full-time solicitors employed by the Law Society. This service would provide advice direct to the public through the legal aid area offices, and also, where local demand justified it, through branch offices and individual solicitors sent to provide advice sessions (Rushcliffe Committee Report, 1945; Morgan, 1994; Goriely, 1996). Implicit in the Rushcliffe Committee proposals is a recognition that, in some areas, the level of demand for legally-aided advice would not be met by private practice solicitors alone. Their solution therefore included establishing salaried services in the localities where the level of need outstripped supply. These provisions were never put into effect, however, due to limited resources, a lack of political will and resistance from the legal profession, which was keen to protect its monopoly of legal aid (Morgan, 1994; Goriely, 1996). Thus, the private lawyer's office retained its primacy as the site of lawyer-client interaction within the legal aid scheme. As a result of the negative connotations of solicitors' offices for social welfare clients, this had significant adverse consequences for their access to advice.

Despite funding now being available for social welfare cases, professional legal practice remained centred around property-related transactions,¹⁰ and civil legal aid was predominantly a scheme concerned with family problems. Social welfare law hardly featured in the work done under the legal aid scheme (Smith, 1997). By 1968, it was becoming increasingly evident that legal aid 'channelled through private practice' was not working, and alternatives had to be sought (Zander, 1968: 242). By rendering social welfare clients 'out-of-place' (Cresswell, 2004: 27) in the traditional lawyer's office, the impact was to discourage low income people from seeking social welfare law advice. Further, Blomley's (2003) analysis of place as a means of social control can be seen in the effect of place in further disempowering a socially subordinated group. For reasons of professional and social standing, solicitors did not want to become embroiled in the unpalatable problems of disadvantaged people, even after legal aid reduced the financial disincentives for undertaking social welfare work. Despite the theoretical availability of legal aid, in reality, few clients received its assistance with challenging social welfare issues, such as housing, debt and benefits. Notably, local provision subsequently played a significant role in the solutions that were proposed to this problem. This emphasis on place and the local

¹⁰ In 1968, the National Price and Incomes Board found that 71.3 per cent of solicitors' income came from property-related transactions (Zander, 1978)

can be seen as a direct reaction to the failure of the traditional lawyer's office as a site of legal aid provision for social welfare clients.

Drawing on the work of Massey (1994a&b), Blomley (2003) and Cresswell (2004), it is possible to see how the creation of place can be an exercise of power and an act of exclusion. Lawyers were reluctant to associate themselves with the problems of poverty, and the lawyer's office was an alienating environment for low income clients. Solicitors were discouraged by the professional rules from leaving their offices to attend at advice centres; but clients seeking social welfare law advice were loath to attend lawyers' offices. The convergence of these various factors resulted in the lawyer's office being represented to working class clients as a place where they were not welcome, and therefore somewhere they did not want to go. These symbolic messages around place were part of a process of exclusion of low income clients from legal services that increased the oppression of already marginalised social groups (Cresswell, 2004; Blomley, 2003; Massey, 1994a&b). The historical exclusion of disadvantaged clients from solicitors' offices meant that implementation of legal aid through private practice solicitors was unlikely to reach the social welfare clients for whom it was intended. Prior to the post-war introduction of legal aid, it would not have been possible for most working class people to afford lawyers' fees, and their implicit exclusion from lawyers' offices was likely to go unremarked. Once legal aid was available to fund their cases, the failure of lawyers to provide services to poorer people became more apparent. This resulted in political comment and activity and, ultimately, the setting up of Law Centres as alternative sites of legal practice.

Subversive sites of lawyer-client interaction: the rise of the community

The establishment and growth of Law Centres in the 1970s and 1980s provides an excellent example of how the location of legal services can have a profound effect on who receives legal assistance, and on the types of problems it becomes possible to resolve by legal intervention. In the case of Law Centres, the change that occurred was in relation to the provision of social welfare law advice to low income clients living in disadvantaged areas.

During the 1960s, dissatisfaction with the failure of legal aid to deal with pressing issues of social deprivation began to mount (Zander, 1968; Goriely 1996). Rising social discontent erupted in violent protest and riot. An increasing number of

UK law students, academics and practising lawyers began to question the private practice-based model of legal aid provision in the UK. Bolstered by the successes of the civil rights movement in the US in using the law to end racial segregation, and the emphasis put on legal services as part of the US government's 'War on Poverty', legal activists who believed that law could be used to achieve social change supported the idea of locally situated legal services working with and within deprived communities (Goriely, 1996; Smith, 1992; Zander, 1968; 1978; Mayo *et al*, 2014). Place therefore played an integral role in their developing philosophy, which advocated for local initiatives and the creation of sites of legal activism in the heart of deprived inner city communities.

Across the political spectrum, it was recognised that the existing model of private practice delivery was failing social welfare clients. In a pamphlet, *Justice for All*, published in 1968, the Society of Labour Lawyers proposed that 'neighbourhood law firms'¹¹ should be set up in deprived areas to meet the needs of the poor in a place that was convenient for them (Goriely, 1994: 553; 1996: 230; Zander, 1968: 243–244; 1978: 71; Smith, 1992: 6; Mayo *et al*, 2014: 25). In their publication of around the same time, *Rough Justice*, the Committee of Conservative Lawyers' recommendation was to pay a subsidy to private practice solicitors to set up in disadvantaged areas¹² (Pollock, 1975; Zander, 1978; Smith, 1992). The solutions to the failures of legal aid proposed by both sides were based on an understanding that *how* legal aid services are funded determines *where* they are provided and that the site of delivery governs *who* is able to use them. Private practice solicitors were unwilling to establish offices in disadvantaged neighbourhoods because of the professional, social and financial advantages of being situated in more prosperous areas (Zander, 1978). This meant that, in order to be located in the places where poorer clients would be able to make use of them, legally-aided services had either to be salaried or state-subsidised. This fundamental link between the model of funding and the place of delivery has parallels for the move towards telephone advice today.

¹¹ In the US, neighbourhood law firms were staffed legal offices in areas of poverty funded by the federal government through the Office of Economic Opportunity (OEO) as part of the 'War on Poverty' (Zander, 1968; 1978).

¹² Although they did not entirely dismiss the idea of salaried solicitors' offices if private subsidy failed (Zander, 1978).

At the request of the Lord Chancellor, the Legal Aid Advisory Committee ('the Advisory Committee') looked into concerns regarding the failure of legal aid, including the issue of neighbourhood law firms. Initially, the Law Society pressed mainly for a more comprehensive legal advice scheme, which continued the case-by-case approach to payment. However, as the concept of independent (state-financed, but community-run) Law Centres gained support, and with the prospect of a possible Labour government that might be willing to introduce them, in June 1969 the Law Society suddenly changed its proposals to the Committee to include the power for the Law Society to set up advice centres and Law Centres in areas of unmet need. This had the effect of neutralising the opposition (Zander, 1978; Goriely, 1996). Reporting in January 1970, the Advisory Committee rejected the Labour Lawyers' call for independent neighbourhood Law Centres, and adopted the recommendations of the Law Society (Legal Aid Advisory Committee Report, 1970). These proposals became legislation in the Legal Advice and Assistance Act 1972 ('the 1972 Act') (Pollock 1975; Goriely, 1996). The expansion of advice and assistance by private practice solicitors under the 'Green Form scheme' was implemented in 1973; but, as with the salaried legal services of the 1949 Act, the power to fund legal advice centres in the 1972 Act never reached fruition (Pollock, 1975; Zander, 1978; Goriely, 1996).¹³ Given that the concentration of solicitors' firms in wealthier areas meant that the private practice model of provision was already failing social welfare clients, the government was in effect consigning this client group to systematic exclusion from advice.

In this context, it is unsurprising that the changes to legal aid did not result in private practice solicitors working in 'poverty law'. It fell to the burgeoning law centre movement¹⁴ to take the lead in using legal aid to provide expert legal advice on social welfare law matters¹⁵ at accessible locations within underprivileged areas (Zander, 1978; Smith, 1992). Law Centres were founded in the places where clients

¹³ Goriely (1994: 555) attributes this to 'astute lobbying by the Law Society [which] managed to ensure that the scheme remained a "judicare" one, delivered in the traditional way, and dominated by the traditional concerns'.

¹⁴ The term 'movement' may exaggerate the coherence of the early Law Centres. The early law centre 'movement' was characterised by its diversity; the first Law Centres were developed along very different lines. By 1980, there were 32 Law Centres, and it became possible identify certain common features and interests among them (Goriely, 1996).

¹⁵ Non-legal aid and non-solicitor provision would come from Citizens Advice Bureaux and independent advice agencies.

in need of social welfare advice lived and worked. Therefore, in contrast to the established situation where engagement with the law required the client to go to the lawyer's office, Law Centres represented an ideology whereby the lawyer's office should come to the client. Implicit in their philosophy was a recognition that the physical manifestations and psychological associations of place could act as a barrier to low income people being able to obtain advice and that this represented an exercise of power and subordination (Blomley, 2003). It was the intention of the law centre movement to use local legal services to overcome the marginalisation of deprived communities.

For the law centre movement, place, in terms of physical location, was an essential factor in differentiating themselves from traditional private practice. The identity of most Law Centres was inextricably linked to where they were situated. They usually served clients who lived or worked in a defined geographic catchment area (Goriely, 1996),¹⁶ which was specified in the Memorandum and Articles of Association that established the charity. To ensure the accountability of the Law Centre to the local population, its management committee was made up of local people and representatives of local community groups (Campbell, 1992; Goriely, 1996). Thus the organisation's charitable purposes and governance structure meant that it was bound into a legal relationship with its local community.¹⁷

Law Centres were located physically within the areas they served, with the express intention of forming links with local community groups and organisations. It was part of the work of the Law Centre staff to go out into the community to raise awareness about housing and other social welfare rights. Law Centres were able to provide a local base for collective action, such as campaigns against poor housing conditions or bad landlords (Zander, 1978). The capacity for group action and policy work differentiated Law Centres from traditional private practice. These various mechanisms demonstrate the extent to which the Law Centre was intended to be rooted deeply in the geographical area in which it was situated, and hence the fundamental importance of 'the local' to the law centre ideology.

¹⁶ Alternatively, Law Centres can serve a specific client group, as does the RAD (Royal Association for Deaf People) Deaf Law Centre, for example; but these sorts of Law Centre are rare.

¹⁷ 'Community' is used here in a similar way to 'neighbourhood', to denote a geographical area. It is understood that 'community' can also refer to groups with shared interests or values, and that it is a contested concept, as indicated by the work of Massey (1994a), Rothschild (1993) and Engle Merry and Milner (1993).

The space inside the Law Centre was also distinct from that of private practice: '[I]nstead of the formality and staid dignity of the typical solicitor's office, law centres go out of their way to present an informal, casual atmosphere' (Zander, 1978: 78). The staff wore casual clothes, and 'loons and cheese-cloths' were apparently favoured items of clothing in the early days of the movement (Goriely, 1996: 232). The intention was to reduce as much as possible the barriers between the layperson and the lawyer (Zander, 1978). The stated aim of the first Law Centre, in North Kensington, was to provide an excellent but non-intimidating legal service from within the community (Smith, 1997). The law centre philosophy was centred around creating close social and physical proximity to its client group, as opposed to professional and geographical remoteness.

Law Centres also embedded themselves in the community through the type of work they did, which was often determined by the acute problems affecting inhabitants of the local area (Mayo *et al*, 2014). Responding to the issues faced by local residents meant that Law Centres were among the first organisations to tackle systematically issues of landlord and tenant,¹⁸ immigration, sex and race discrimination, domestic violence, and care proceedings (see also Stephens, 1993; Mayo *et al*, 2014). It is evident that a number of these are issues pertaining specifically to the position of women and minority ethnic groups. I would argue that a consequence of Law Centres being situated within more disadvantaged areas was that the problems of women and minority ethnic groups became more prominent. Local provision meant these marginalised groups were able to gain access to legal services from which they were often excluded. For women in particular, law was traditionally part of the realm of business and criminal justice, and hence of the world of men, but through the establishment of Law Centres in poor residential areas, law became part of the realm of 'the home' and 'the local', and what was considered the domain of women.¹⁹ This demonstrates the influence that location can have on who in society is able to receive legal services and hence construct the types of problem that are given legal advice and support. This raises the potential for

¹⁸ It was, for example, through the involvement of North Kensington Law Centre (NKLC) that the rogue landlord Nicholas van Hoogstraten was tackled. In addition, following fire fatalities in their local areas, campaigns by NKLC and Camden Law Centre led to the introduction of fire safety regulations in houses of multiple occupation (HMOs) (Campbell, 1992).

¹⁹ Massey (1994c: 10) refers to the 'culturally specific symbolic association of women/Woman/local' and the gender associations with notions of 'home'.

telephone advice provision to have a different client and case profile from face-to-face services, because of the distinct relationship of these factors to the place of service-delivery. A key issue for this study is how vulnerable clients are likely to be affected by the shift from face-to-face to telephone advice. Will telephone services encompass or exclude them as advice recipients?

A unique way in which Law Centres and advice centres subverted the dynamic of place in relation to the delivery of legal advice was with regard to duty advice schemes. Duty schemes were about the lawyer or adviser getting out of the physical establishment of the Law Centre building and seeking out clients at a critical point of interface with the legal process. North Kensington Law Centre (NKLC), for example, operated the first free, out-of-hours duty advice service for people detained at police stations. Other Law Centres, advice centres and local solicitors worked in collaboration to provide duty schemes at county court possession days, representing those at risk of losing their homes (Campbell, 1992). In addition to their office-based activities, Law Centres and advice centres also provided outreach services at non-legal community premises such as libraries, GP surgeries and community centres. Duty schemes and outreach represented a reversal of the traditional position, as they involved the lawyer attending the client rather than the other way around, and they happened long before legal aid funding was available to pay for them.

It could also be argued that the abandonment of the lawyer's office symbolised the Law Centre's abandonment of professional neutrality – a characteristic associated with being a 'cause lawyer' (Scheingold and Bloom, 1998: 209). By placing themselves within the geographical community, Law Centres were aligning themselves with the interests of their clients and the community rather than the legal profession and the small business community to which it belongs. Lawyers in Law Centres were also politically committed to dealing with structural inequality, recognising that the problems their clients faced occurred within a broader social context (Campbell, 1992). In the US, critical legal theorists have specifically recognised the dimension of place in respect of cause-lawyering and the empowerment of deprived urban communities. One position advanced is that cause-lawyering must be conducted 'in context' at 'the site of material deprivation' (Calmore, 1999: 1936–7). Despite reservations about poverty lawyers, a number of other critical legal theorists also see community collaboration as central to the

effective practice of poverty law.²⁰ Accordingly, their prescription for improved cause-lawyering is couched very much in terms of physical presence and situatedness in the locality; remote interaction is not contemplated.

By positioning itself within a deprived geographical location, the Law Centre conveyed a message to potential clients that it was a shared local legal resource that they were entitled to enter for advice. The physical presence of a Law Centre in the locality had a symbolic as well as practical value: it introduced the notion to local people that their problems were deserving of legal intervention. It is posited here that this in turn affected their understanding of the nature, function and operation of the law in their lives, otherwise termed their 'legal consciousness' (Sarat, 1990: 343). Remote services are not in a position to have the same symbolic power in terms of giving physical messages of invitation and entitlement at a targeted local level, although national advertising and social marketing campaigns may result in a shared social understanding that it is appropriate for individuals in need to seek legal aid services to assist them with their problems.

This is not to claim that the Law Centre model was perfect. Due to the demands of individual casework and financial pressures, 'open-door' Law Centres were never able to conduct the level of strategic work originally envisaged. This led to criticism from those within the law centre movement who advocated a 'closed-door' approach (Stephens, 1993: 56–9), whereby Law Centres accepted clients only after initial telephone screening or through referrals from other agencies. This 'closed-door' policy was an attempt to keep caseloads under control, with the purpose of enabling Law Centre staff to be 'proactive' in relation to community-based work. 'Open-door' Law Centres were viewed as 'reactive', dealing with individual clients' problems at the expense of taking collective action (Stephens, 1993: 56–7). It is not clear whether closed-door Law Centres were able to achieve more on a strategic level than open-door Law Centres. The differences of opinion over 'closed-door' and 'open-door' Law Centres demonstrate another key failing of the law centre movement: its propensity for internal wrangles and disputes, driven by strongly held values and ideologies.

Whatever criticisms may be made of Law Centres, they were proved right in their originating belief that, in order to engage with disadvantaged communities, it

²⁰ See, for example, López (1989); Alfieri (1991).

was necessary for services to be provided in the places where the people in those communities lived and worked. Following the introduction of Law Centres, there was a substantial increase in the level of provision of social welfare law: the number of social welfare cases paid for under legal aid advice and assistance (known as ‘the green form’ and now ‘legal help’) grew from 27,000 in 1975/76 to 172,000 in 1985/86 (Smith, 1992). In 1979, the Royal Commission on Legal Services Final Report, although critical of Law Centres and their political stance, had to acknowledge that ‘the impact of law centres has been out of all proportion to their size’ (Vol 1, para 8.11, as cited in Smith, 1997: 20). In 1984, the Lord Chancellor’s Advisory Committee, despite criticising some of the non-casework activities of Law Centres, gave its broad approval to the movement because it was accepted that it was dealing with an unmet need for legal services (Stephens, 1993). Thus, even among official quarters, the Law Centre model, which combined local place with welcoming space, was considered more successful than the private practice model in delivering legal services to disadvantaged communities.

Despite their success in addressing issues of unmet need for social welfare law advice, Law Centres failed to achieve mainstream status as a method of delivery mainly as a result of chronic underfunding (Smith, 1997). The movement’s overtly political stance and professional antagonism towards local authorities did not help it to attract funding (Mayo *et al*, 2014).²¹ Ultimately, it was not a lack of vision that prevented Law Centres from becoming a dominant force within the legal system, but the pragmatic realities of financial survival. From a peak of 62 Law Centres in the mid-1980s (Smith, 1992; Mayo *et al*, 2014), the current figure stands at 44 (Law Centres Network, 2015).

The changes wrought by Law Centres in relation to place, and their consequent success in relation to social welfare law clients, led to incremental alterations in the approach of private practice solicitors. At first, the private profession were suspicious and hostile towards Law Centres, seeing them as a threat to business. However, after a period of open conflict, the Law Society and the profession came to accept that many of the clients who went to Law Centres would not have gone to private practice solicitors, and, even more importantly, Law Centres

²¹ ‘On more than one occasion, a law centre which has taken action against the local council has found its grant from the council suddenly at risk’ (Harlow and Rawlings, 1992: 119).

proved a useful source of referrals, as they could not deal with all the cases that came through their doors (Stephens 1993; Smith, 1997). Some private solicitors set up firms in areas near to existing Law Centres where there had previously been no private practice solicitors (often staffed by former Law Centre workers who retained a commitment to poverty lawyering) (Goriely, 1996; Sommerlad, 2001). As other sources of income, such as conveyancing, reduced, social welfare legal aid became more important to solicitors in private practice (Smith, 1996). Consequently, the Law Society now finds itself a champion of legal aid, although this is a relatively recent development (Goriely, 1996). By redefining the site of lawyer-client interaction, Law Centres were able to stimulate an expansion of the types of services that solicitors could be expected to provide, and this led to a better overall service for disadvantaged clients (Goriely, 1996). Unfortunately, the recent legal aid changes have done much to dismantle all that was achieved by Law Centres and other legal activists.

Implicit in the law centre ideology was an understanding of how the physical and symbolic factors of place could be used to prevent people in need from getting effective advice and assistance, and that this was an exercise of power and subordination. They understood that, in order to overcome the wider structural problems of poverty and disadvantage, engagement at a local level was necessary. Projects were developed and defined in relation to place in geographical and conceptual terms, which in turn had an impact on how those services were delivered on a day-to-day basis. By disrupting the traditional sites of legal service-delivery, Law Centres and popular justice projects were able for a time to disturb the usual patterns of power relations between subordinated and dominant groups in society.

Conclusion

It has been argued here that the proposed move to telephone-only services is the next stage in the development of the connection between place and the provision of social welfare legal aid. Accessibility is frequently cited as a benefit of telephone advice (Patel and Smith 2103b; Legal Services Commission, 2004) and it can be argued that this latest change in legal aid delivery to telephone-based services presents another opportunity to improve access to advice for low income clients. The question asked in this thesis is whether a new shift in the site of delivery of social welfare legal services – from face-to-face to telephone delivery – will improve the situation for

disadvantaged clients in the same way as the law centre movement in the 1970s intended the shift of the site of legal practice from affluent neighbourhoods to deprived communities to do.

It is evident from this chapter that it was the co-location in disadvantaged areas of the lawyer/adviser and the client that was fundamental to Law Centres' success in increasing the take-up of social welfare legal aid by low income clients. By subverting the usual place of legal business and locating themselves in deprived communities, Law Centres brought about a major shift in the attitude of the legal profession towards the desirability and delivery of services for low income clients (Stephens, 1993; Harlow and Rawlings, 1992; Goriely, 1996). However, it is precisely this element of physical embeddedness in an area that is missing from telephone-only provision. Thus while past events in relation to Law Centres and social welfare law show how disruption to place may transform the provision of legal services to disadvantaged groups in positive ways, it is important to be circumspect about the extent to which changing the location of advice is always progressive. In the present case, there is a danger that disruption to place will render advice giving in the social welfare sphere more remote from clients than ever before.

This chapter has shown that, in social welfare law, it is of critical importance to consider where services are delivered. Concerns that detachment from place and provision at a distance will lead to a reduction in access to advice appear to be borne out by the low figures for the first year of operation of the telephone gateway in relation to debt (now essentially mortgage possession) cases (NAO, 2014). Undoubtedly, this is a cause of significant disquiet, and explains why it is so important for the issue of telephone-only advice to be given in-depth consideration. The next chapter goes on to look at the expected standards of lawyering if we are to make informed judgements about the differences between telephone and face-to-face advice.

Chapter 3: Professionalism and the Meanings of Lawyering

Introduction

The issue of the expected standards of lawyer–client interaction is critical to this thesis. In order to be able to compare the impact of telephone and face-to-face communication on the delivery of advice, a value judgement first has to be made about what the function of the interaction should be. Yet, there is more than one understanding of the goals that should and do inform lawyer–client interaction. There are several dominant narratives in this arena, each influenced by a different understanding of the nature of professionalism. Some work in the field is aspirational and focuses on what the relationship ought to be. Other commentaries are descriptive and seek to explain what the interaction is. These various ideological, analytical and observational insights generate a spectrum of models of lawyering, depending on the degree to which the function of the lawyer-client relationship is considered to serve lawyers' self-interest, clients' objectives or wider social goals. Market-driven lawyering is at the most self-interested end of the spectrum, followed by 'paternalistic' lawyering, then 'client-centred' lawyering, and, finally, at the other, more socially-minded end of the spectrum, by 'critical' lawyering, with its interest in achieving social justice through collective movements. A choice has to be made between these models in order to develop criteria for comparing the success of telephone and face-to-face communication in the delivery of advice. This chapter therefore deals with the contested nature of the function of the lawyer–client interview and the different models of lawyering that might be used to judge whether an interaction between lawyer and client is successful. It also considers how notions of client empowerment, which arose originally as part of radical lawyering on behalf of the disadvantaged, have been appropriated by the neo-liberal discourse of responsibilisation in relation to access to justice issues. Finally, I justify my choice of the client-centred model as the framework for assessment of the effectiveness of lawyer–client interviews conducted by telephone or face-to-face and explain what this entails.

In addition, I recognise that, it is impossible to talk about the meanings of professionalism for different models of lawyering in relation to telephone advice and ignore the possible impact of deprofessionalisation on legal work. The concept of

deprofessionalisation is exemplified by telephone advice services which depend largely on the use of unqualified and lower-paid staff. This raises concerns about the risks to the quality of the service as a result of the deskilling and deprofessionalisation of legal practice (Sommerlad, 1995). However, the not-for-profit (NFP) sector has traditionally employed a high number of unqualified staff to deliver advice, and the voluntary sector has a better track record than private practice solicitors on the provision of social law welfare advice (Zander, 1968; 1978; Goriely, 1996; Smith, 1997; Moorhead *et al*, 2003a). In addition, NFP advisers have been shown to provide better quality advice than solicitors in specific areas of social welfare law (Moorhead *et al*, 2001). This chapter will also therefore briefly consider these issues and explain why deprofessionalisation has not been investigated as a central concern in this research.

Models of lawyering

In order to compare telephone and face-to-face interviews between lawyers and clients, it is necessary first to establish a framework by which to assess the nature of the interaction. However, this is contested territory, with a variety of forms of lawyering populating the academic discourse. Each takes its cue from a distinct analytical approach to the nature of professionalism and the function of the lawyer–client relationship. The situation is complex, and the chief sociological analyses of professionalism do not necessarily map neatly across to the main models of lawyering. Nevertheless, it is possible to see how different theoretical positions on the role of the lawyer–client relationship have contributed towards the various models of lawyering that have emerged.

The dominant models of lawyering can be conceptualised in terms of a broad spectrum, dependent on who the lawyer–client relationship is considered to benefit (see Table 3.1). In crude terms, at one end is the self-seeking entrepreneurialism of ‘market-driven’ lawyering. This is followed by ‘paternalistic’ lawyering, characterised by notions of altruism towards the client, but asserting power over them. Next is ‘client-centred’ lawyering, motivated by acting in the best interests of the client and committed to client participation. Finally, ‘critical’ lawyering is concerned with rectifying social inequalities through strategies of client empowerment and community collaboration. It is notable that, in recent times, analysis of lawyering and the operation of the lawyer-client relationship is a subject

that has been somewhat neglected. Some of the literature from which these models are drawn therefore dates back several decades, with the most recent developments occurring in the 1990s. I would argue, nonetheless, that these models continue to be relevant in current debates about legal practice and remain to a degree observable in practice. In this regard, it is important to be aware that these models are ‘ideal-types’, and they are unlikely to be found in ‘pure form in practice’ (Boon, 2014: 300). Furthermore, some models represent a description of how commentators understand the lawyer–client relationship to operate in practice; others are aspirational versions of what the nature of the relationship should be, and have transferred into the practice environment with varying degrees of success. The following section explains each of these models of lawyering in more detail.

Table 3.1: Spectrum of lawyering

Self-interest	Client	Collective interest
Market-driven	Paternalistic	Critical
→	→	→
	Client-centred	

At the self-interested end of the spectrum is ‘market-driven’ lawyering. This model is a description of the practice of lawyering which most strongly accords with the analysis of the professions applied by commentators such as Abel (1988) and Larson (1977: xvi). For them, the professions are marked out by ‘the professional project’, and by their collective pursuit of material reward and upward social mobility through control of the market for their services. The function of the lawyer–client relationship is thus the exploitation of the client for material gain. The one-to-one relationship with the client is the mechanism through which the lawyer exerts power over the client (Johnson, 1972). In market-driven lawyering, the lawyer is primarily motivated by economic self-interest and the prospect of social advancement (Abel, 1988; 1989).

Analysis focusing on lawyers’ bid for market control has been criticised for staying at a structural level, rather than examining what lawyers actually do in practice (Marshall, 2004). The social costs of market-driven lawyering are apparent, however, in the operation of the ‘professional project’ of solicitors to the disadvantage of social welfare clients, described in the previous chapter. In addition, legal aid lawyers have referred to the ethic of service to the client being eroded by

the imperative to generate income (Sommerlad, 1995). Research has also identified situations where market-driven lawyering has been observed to result in lawyers putting their economic interests ahead of the client's. The market-driven approach is evidenced by criminal solicitors who push defendants to plead guilty for financial reasons (Newman, 2013), and by concerns about inadequate preparation and the premature settlement of personal injury claims due to lawyers' financial self-interest (Rosenthal, 1974; Genn, 1987). From this it is possible to surmise that, in market-driven lawyering, the lawyer has little regard for the clients' instructions or objectives, apart from the extent to which they assist the lawyer's pursuit of financial and social reward. Thus corporate clients may be able to wield power in the lawyer–client relationship, but the private clients of sole and small practitioners are more likely to be dominated by their lawyers (Abel, 1989). Due to inequalities in education, intellectual ability and technical expertise between lawyer and client, social welfare clients are likely to fare particularly badly in a framework of market-driven lawyering.

I accept that the market-driven model describes a type of lawyering that exists, but I would argue that it is not the only valid interpretation of the lawyer–client relationship. There are spheres of legal practice, such as social welfare law, where the lawyer has little to gain materially from the relationship. Mayo *et al* (2014) refer to the different types of ethos that may pertain in different sectors of the legal profession, such as Law Centres, where a public service ethos is part of the identity of the organisation and of individual members of staff. It is submitted that the market-driven model of lawyering does not have universal application across the legal profession. It is also contended that, because of its potential for client exploitation, it is an undesirable model of lawyering, particularly from the perspective of the social welfare client, and is not useful as the standard in this research for judging the success of the method of communication between lawyer and client.

The next position along the lawyering spectrum is occupied by the 'paternalistic' model of lawyering (Boon, 2014: 301). 'Paternalistic lawyering' describes the mode of lawyering most closely associated with how lawyering was

traditionally practised in the past.²² It has been observed in practice and is usually characterised as a model where the lawyer purports to act in the best interests of the client, but, due to a belief in their own superior knowledge, skills and experience, they handle the case with only minimal reference to the client (Rosenthal, 1974; Hosticka, 1979; Cunningham, 1992; Boon, 2014).

A significant problem with paternalism is that the lawyer's control over the situation gives considerable scope for abuse of the relationship, and for the lawyer to serve their own interests at the expense of the client's (Boon, 2014; Rosenthal, 1974). Paternalistic lawyering has therefore been condemned as an expression of the lawyer's power over the client. This is based on an analysis of the lawyer–client relationship which draws on theories of professionalism as a device for professional power and control over clients (Johnson, 1972). Poverty lawyers have, for example, been criticised for the dominance they exhibit in their relationships with their clients, despite claiming to act in their clients' best interests (Hosticka, 1979; Alfieri, 1991; White, 1990; Cunningham, 1992; López, 1989; Tremblay, 1992). The paternalistic model is seen by these scholars as marginalising clients and undermining their autonomy within both their cases and their own lives.

There are commentators who take issue with the typical representation of the lawyer–client relationship as 'one of professional dominance and lay passivity' (Sarat and Felstiner, 1995: 19). Sarat and Felstiner (1995) have a more nuanced approach to power, seeing it as a dynamic and fluid phenomenon that is constantly negotiated and reconstituted between the parties. Other research has shown that the power differential narrows between male clients and female lawyers, whereas it widens between female clients and male lawyers (Bogoch, 1997), and that, in large part, private practice solicitors do not control and subordinate their clients (Cain, 1979/1983). Thus, while the lawyer may be better placed to exercise power in the lawyer–client relationship, it is not inevitable that the lawyer holds all the power.

Paternalistic lawyering may seem similar to market-driven lawyering, with regard to lawyer dominance, but the ideal model can be distinguished by its altruistic aspirations to act in the client's best interests. The degree to which these claims to altruistic ideals are realised in day-to-day legal practice is a matter of considerable scepticism (Larson, 1977; Abel, 1988; Macdonald, 1995). During the middle of the

²² Rosenthal (1974: 7-8) refers to the paternalistic ideal as 'traditional'.

twentieth century, altruism, or a public service ethos, was considered one of the indicators of professionalism by functional sociologists such as Parsons (1964), who took their lead from the work of Durkheim (1957/1992) (Macdonald, 1995; Watson, 2008). More critical theories of professionalism emerged from the 1960s onwards, and the profession's claims to altruism and public service were seen as a conceit designed for the achievement of the professional project (Larson, 1977; Mayo *et al*, 2014). The professional–client relationship became characterised as one of exploitation and control (Johnson, 1972). As a result of this change in the understanding of professionalism, it has become increasingly unfashionable to refer to altruism in connection with the legal profession. The evident commercial success of many solicitors, combined with their poor reputation for customer service (Sherr, 1999), and the ‘anti-lawyer discourse’ perpetuated by successive governments and the popular media, has resulted in considerable public scepticism about the claims of lawyers to act in pursuit of their clients’ best interests at the expense of their own financial gain (Sommerlad, 2001: 338–9; Abel, 2004). Nevertheless, while assertions of altruism should clearly not be taken at face value, it does appear from research with lawyers that altruistic ideals of public service continue to be part of the professional identity of some of those engaged in legal aid work (Sommerlad, 1995; 2001; Sommerlad and Wall, 1999; Mayo *et al*, 2014). Thus the altruistic ideal may continue to have personal resonance for individual practitioners. It therefore seems apposite within this research to revisit notions of altruism with regard to how lawyers’ personal motivations are affected by working over the telephone or giving face-to-face advice.

As a standard for judging the effectiveness of the lawyer–client relationship, however, it is argued that, even if altruism does exist in the practice of some solicitors, the negative impact on client autonomy of the paternalistic model means that it is fundamentally flawed as a model of good practice in lawyering. Self-generated claims to altruism are not enough to justify undermining the client’s control of their own case. The potential for social welfare clients to be dominated and ignored within the paternalistic model of lawyering renders it a defective standard for comparing the relative merits of telephone and face-to-face contact.

The other two models on the spectrum of lawyering – ‘client-centred’ and ‘critical’ lawyering – can be said to have been conceived as different attempts to correct the perceived deficiencies of the ways in which lawyering has operated in the

past. Their origins are as normative models of lawyering, focusing on what lawyering should be rather than describing what it is. 'Critical' lawyering (also known as 'rebellious' lawyering) occupies the fourth position on the spectrum, due to its focus on client empowerment and collective action in furtherance of social change (see, for example, Alfieri, 1991; White, 1990; Tremblay, 1992; López, 1989: 1608; Buchanan and Trubek, 1992: 687). It is an alternative model of lawyering for the underprivileged. It gathered momentum during the 1980s and 1990s, when more conventional forms of legal activism which had developed in the civil rights movement of the 1950s and 1960s – specifically using the courts and legal process to establish social rights for disadvantaged groups – were considered to have failed (Buchanan and Trubek, 1992; Cantrell, 2003). Theorists in this area have been particularly concerned with correcting the perceived paternalism within the practice of 'poverty law', which is another term for social welfare law. A common view in this scholarship is that the poverty lawyer ordinarily subordinates the client and that the lawyer's involvement in the case disempowers the client (Alfieri, 1991; Tremblay, 1992). Therefore the aspirational, 'critical' model of lawyering is proposed, advocating co-working with clients on cases and wider community mobilisation in order to address what are seen as fundamental problems of poverty law practice (Alfieri, 1991; Tremblay, 1992; López, 1989).

The overtly socialist position of critical lawyering has many attractive qualities for those who see law as a possible weapon in the struggle for social justice. It seems self-evident that only systemic changes in society will address fundamental social inequalities, not individual casework (see also Goriely, 1996). Nevertheless, there are a number of ways in which the critical lawyering model can be criticised for having only limited relevance to the complex practical realities of day-to-day social welfare law practice (Lesser Mansfield, 1995).

In the first instance, it is argued that the understanding of power in the critical lawyering model is overly simplistic. As the research by Sarat and Felstiner (1995) has shown, power in the lawyer–client relationship is a more complex phenomenon than this model allows. In addition, the power differentials between lawyer and client may be influenced by factors relating to gender (Bogoch, 1997). It seems likely that race would also have an impact on the distribution of power if the lawyer was black

and the client was white. In social welfare law, where many workers are women and/or from ethnic minorities,²³ and many clients are white and/or male, continuing to make claims of lawyer dominance and client subjugation based on conventional assumptions of the white, usually male, lawyer and the black, often female, client is untenable. The present situation demands a more sophisticated understanding of the power dynamic in lawyer-client relationships than the prevailing critical lawyering model provides.

Secondly, critical lawyering seeks to address the dominance of the client over the lawyer by giving paramountcy to the 'client voice'. In order to prevent the silencing of the client narrative, the lawyer is required to reproduce the client voice in terms that are faithful to the client's expressed story (Alfieri, 1991; Cunningham, 1992; Tremblay, 1992). When dealing with a real-life case, however, it is contended that the lawyer retains a professional responsibility for placing a legal construct on the client's instructions in a way that will be most favourable to achieving the client's aims. This means the lawyer's interpretive practices may result in a re-telling of the client's narrative that differs from the way in which it was first told to the lawyer. Rather than undermining the client, this is considered a legitimate and necessary part of professional practice in furtherance of the client's objectives (see Lesser Mansfield, 1995; Moorhead *et al*, 2003b).

Thirdly, critical lawyering takes a very distinct perspective on the issue of client empowerment. The concept of 'empowerment' of disadvantaged clients and communities arose during the civil rights struggles of the 1960s in the US. Neighbourhood-based legal services, aimed at combatting poverty and achieving social change, saw collective action involving local residents as a key element of empowering marginalised communities (Cantrell, 2003). It was an approach to tackling social inequality that was subsequently adopted by Law Centres and the alternative justice movement in the UK (Campbell, 1992; Harlow and Rawlings, 1992; Mayo *et al*, 2014). Nonetheless, it was also a model of legal activism which remained dependent on the lawyer's professional expertise in taking legal challenges

²³ In 2011, 52.8 per cent of solicitor fee earners and 76.3 per cent of non-solicitor fee earners in firms with civil legal aid contracts were female. In not-for-profit agencies with legal aid contracts, 74.6 per cent of paid workers and 67.3 per cent of volunteers were female. In legal aid firms with civil contracts, 16.9 per cent of solicitor fee earners were from BME groups. In the not-for-profit sector, in agencies with legal aid contracts, 17.9 per cent of paid workers and 23.6 per cent of volunteers were from BME groups (LSRC, 2011).

through the courts (Buchanan and Trubek, 1992; Cantrell, 2003; Harlow and Rawlings, 1992).

In the 1980s, however, when legal activism through the courts and the legal process was considered to have failed to deliver the anticipated social reforms, a number of poverty lawyers began to question the way in which they worked with their clients. They decided that the existing methods of poverty lawyering rendered clients powerless and needed to change if existing social inequalities were to be tackled effectively (Buchanan and Trubek, 1992; Cantrell, 2003). Thus, for these ‘critical lawyers’, the project of client empowerment is further bolstered by full-scale co-working between lawyer and client²⁴ (Alfieri, 1991; Hurder, 1996; López, 1989). It is questionable, however, how realistic this is for social welfare clients with acute legal problems – particularly those whose problems are compounded by issues of mental and physical ill health or disability. In legally complex situations, it seems impractical to expect distressed and vulnerable clients to be working jointly on their cases.

In addition, the notion of ‘empowerment’ subsequently developed to include clients being assisted by lawyers to take action themselves. The original intention of this approach, taking its lead from the aims of critical lawyering, was to foster client autonomy and independence (Boon, 2014). Over time, it has become a strong part of the philosophy of many NFP agencies, particularly Citizens Advice Bureaux (Genn *et al*, 2004; Moorhead and Robinson, 2006). Yet, though the concept of client empowerment has its roots in the radical legal services movement, since the 1990s, the self-help ideal of client empowerment has been co-opted by successive governments, attracted by its fit with neo-liberal notions of citizenship, the accompanying concept of responsibilisation²⁵ and its attendant cost-saving potential (Clarke, 2005; Sanderson and Sommerlad, 2011; Sommerlad and Sanderson, 2013; Moorhead and Pleasence, 2003). Responsibilisation is a political rationale that justifies posing ‘welfare to work’ policies and ‘healthy living’ initiatives as the solutions to problems of poverty and poor health, rather than the elimination of

²⁴ Alfieri (1991: 2130) proposes ‘client-conducted interviewing, counselling, and investigation, or client-assisted negotiation and trial practice’.

²⁵ As Clarke (2005: 451) explains the responsibilisation discourse renders the citizen as the cause of their own poverty and, in doing so, transfers responsibility for resolving their difficulties from the state to the individual.

structural inequalities of ‘resources, capacities and opportunities’ (Clarke, 2005: 451). ‘Access to justice’ is similarly redefined. The client is recast as the ‘consumer’ and ‘empowerment’ is about the client taking action on their own with little or no support from the lawyer.²⁶ This provides the justification for the reduction in legal aid spending in social welfare law which has hit the NFP sector particularly hard in recent years (Sommerlad and Sanderson, 2013: 309-11). Thus, in the absence of its originating radical ideology, empowerment in the form of self-help has been transformed from a well-intentioned attempt to reconfigure the power relationship between lawyer and client into a justification for removing state assistance from vulnerable individuals. Greater provision of telephone and online advice by government and NFP agencies has been part of this process of transformation towards increased client ‘self-help’ (Sommerlad, 2008; Sanderson and Sommerlad, 2011; Sommerlad and Sanderson, 2013). Nevertheless, there remains scepticism among NFP practitioners about the ability of their clients to be able to ‘self-care’ in this way (Sommerlad, 2008: 188–9; Sanderson and Sommerlad, 2011; Sommerlad and Sanderson, 2013).

Interestingly, from the client perspective, in a survey of telephone and face-to-face debt advice clients, a substantial proportion of service users reported that they did not expect the adviser to take on full responsibility for dealing with their debt problems, regardless of vulnerability (Ellison and Whyley, 2012b). However, Genn (1999: 100) found that clients were sometimes so overwhelmed by their problems that: ‘They did not want to be *empowered*, they wanted to be saved’ (emphasis in original). Work by Genn (1999), Genn *et al* (2004) and Moorhead and Robinson (2006) has questioned the degree to which empowerment in the form of self-help is appropriate for disadvantaged clients facing complex problems. For these reasons, the position taken in this thesis is that, in some circumstances, ‘client empowerment’ in the manner of self-help may amount to an abdication of responsibility on the part of the lawyer or adviser.

Finally, critical lawyering promotes wider social change by rejecting traditional legal intervention through the courts and the establishment of rights through individual casework in favour of community mobilisation and campaigning

²⁶ See, for example, Susskind’s (2008: 237-8) ‘empowered citizen’ able to ‘take care of some of their legal affairs on their own and work more productively with those who advise them, if guidance is needed’.

(Tremblay, 1992; López, 1989; Calmore, 1999). This may be ideologically justified from the perspective of these critical lawyers, but it does not translate easily into day-to-day social welfare law practice. This was recognised by commentators in the 1980s and 1990s when these ideas were being formulated. Tremblay (1992: 959), for example, admits that ‘existing clients, and particularly clients in crisis, will not find it easy to forego immediate benefits’. Accordingly, ‘rebelliousness may need to be imposed’, which, as he acknowledges, undermines the requirement to prioritise the client voice (968–70). Research around the same time also revealed that many social welfare lawyers were aware of the contradictions between concentrating on individual rights and achieving wider social change, but, when faced with acute client need, it was impossible not to respond to those immediate demands (Scheingold, 1988). Tremblay (1992: 949) accepted that social welfare lawyers in the US were usually working towards ‘social justice and to lessening the pain of poverty’, and chose not to adopt rebellious lawyering practice because of the political, economic and social constraints upon them. It is posited in this thesis that today’s social welfare lawyers are facing similar difficulties to those experienced in the US in the 1980s and 1990s (Cantrell, 2003), in terms of working in a policy environment which is hostile to the provision of social welfare assistance,²⁷ and where there are considerable financial constraints imposed on legal aid services.²⁸ I would argue that it is unrealistic to expect social welfare lawyers working in the UK now not to respond to the immediate problems suffered by their clients by providing individual casework services.

Overall, it seems that the politically-motivated tenets of the critical lawyering model may be attractive in theory, but are impractical to implement. The requirements of the model seem to contain little understanding of the current realities of legal advice provision in social welfare law. Its general impracticality may be the reason why the critical lawyering model has remained aspirational rather than observable in practice. For the reasons set out above, it does not seem appropriate to use the critical lawyering model as a basis for assessing the effectiveness or otherwise of telephone and face-to-face advice in the contemporary situation.

²⁷ During the last parliament, £36 billion was cut from the UK welfare budget (CPAG, 2014, at: <http://www.cpag.org.uk/content/benefit-cuts-who-hurting> , last accessed 7.10.15)

²⁸ See note 2 above for the reductions in social welfare legal aid funding introduced in April 2013.

The final model of lawyering to be considered is ‘client-centred’ lawyering. It occupies the third position on the spectrum, because it recognises the importance of client autonomy and participation, but focuses on the individual client rather than the collective. In addition, unlike in critical lawyering, the lawyer retains responsibility for the preparation and management of the case. In client-centred lawyering, lawyers are required to give the client the space to tell their story in their own terms, to listen attentively to what the client has to say, and to understand the client’s objectives. The client is advised of the possible options in their case, and assisted in making a choice between them (Binder *et al*, 2011).

Client-centred lawyering began as a response to the rising dissatisfaction with lawyers that emerged in the 1970s and 1980s (Mungham and Thomas, 1983; Sherr, 1999). At that point, ‘participatory’ lawyering was an aspirant model of lawyering that was rarely, if ever, practised (Rosenthal, 1974:12). However, the client-centred model now appears to reflect current best practice in social welfare law in the voluntary sector in this country and is the predominant model of lawyering taught to student lawyers.

It continues to be an aspirational model, and there remains some scepticism regarding how much it has been adopted by individual practitioners (Boon, 2014; Maughan and Webb, 2005). Nevertheless, there is also evidence for its existence in practice, particularly in the NFP advice sector. It was, for example, a client-centred model that was observed in the recent empirical research into the delivery of social welfare advice by Community Legal Advice Centres (CLACs) and Networks (CLANs) conducted by Buck *et al* (2010). It is, in addition, the type of lawyering that my experience as a social welfare lawyer led me to anticipate in the advice settings involved in my research. It may not be the norm in more commercial advice settings, but, during the course of my interviews and observations, the client-centred approach appeared to be the standard which many of my research participants strived to achieve.

It can be argued that the conflict between the market-based ideals of legal aid reforms since the late 1990s and the client-centred ethos of many NFP advice agencies has contributed to the problems they have recently encountered with regard to continued legal aid funding from the government. The client-centric values of the NFP sector were officially welcomed during the 1990s by legal aid policy makers (Lord Chancellor’s Department, 1995; 1998). However, NFP agencies were also

recruited as potential competitors to private practice within the legal aid market and the increasingly market-based policies of successive governments since the 1990s towards ‘access to justice’ mean that legal service providers are now required to prove their financial efficiency and VFM to the taxpayer (Moorhead and Pleasence, 2003; Sommerlad, 2004; Sommerlad, 2008; Sommerlad and Sanderson, 2013; Mayo *et al*, 2014). Some NFP agencies have tried to comply with the strictures of the contracting regime by limiting client care and formulating self-help initiatives, but, over the past decade, the continued adherence of many advisers in the NFP sector to a client-centred model of practice has resulted in increased friction with the legal aid authorities (Sommerlad and Sanderson, 2013; Sommerlad, 2008).

The marketisation of legal aid services through tendering for advice contracts has occurred within the policy climate of responsibilisation set out above. This justifies providing only a minimal level of legal aid to social welfare clients. Under the fixed-fee system, the funding available to carry out casework on behalf of clients has significantly reduced, putting NFP agencies under considerable financial strain (Sommerlad and Sanderson, 2013; Mayo *et al*, 2014). The culmination of the twin discourses of responsibilisation and VFM is to be found in the massive reductions in social welfare legal aid funding suffered by the NFP sector in 2013 (Low Commission, 2014b).²⁹ These were justified on the grounds that, in many instances, individuals should be able to resolve their social welfare problems themselves and therefore legal aid was an unnecessary cost to the taxpayer (MOJ, 2010a). Evidently there is little room for client-centred lawyering within this conceptualisation of legal aid provision.

Nevertheless, the client-centred model is considered the ‘new orthodoxy’ in legal education (Maughan and Webb, 2005: 113). In varying degrees of detail, a number of texts for Legal Practice Course (LPC) students promote a client-centred approach, including helping the client to reach a decision, rather than telling the client what they should do (Maughan and Webb, 2005; Webb *et al*, 2013; Elkington *et al*, 2014; Slorach *et al*, 2015).³⁰ The client-centred approach has been described as ‘the modern view’ of appropriate lawyering practice (Boon and Levin, 2008: 183).

²⁹ It was estimated that the NFP sector would suffer an 88 per cent (£50m) cut in social welfare legal aid funding as result of LASPO (Low Commission, 2014b).

³⁰ For example: ‘All major decisions concerning the case or transaction are for the client to make’ (Elkington *et al*, 2014: 130).

Client-centred lawyering is therefore likely to be a model that is familiar to students, academics and practitioners.

A defining characteristic of the client-centred approach is its acknowledgement of the importance of emotional and interpersonal factors in the lawyer–client relationship. It adopts the basic proposition that to obtain all the necessary information to present clients with appropriate solutions to their problems, lawyers cannot ignore clients’ feelings, and should show empathy (Binder *et al*, 2011; Sherr, 1999). Research with legal aid clients has shown that they value lawyers who exhibit personal qualities of ‘communication, empathy, trust and respect’, as well as having technical expertise (Sommerlad, 1999: 500). The relational aspects of lawyering receive little consideration in the other models of lawyering. This can be explained by the view pervading much of the legal profession that law is about facts, and not feelings (Binder *et al*, 2011). However, it has been argued that failing to deal with a client’s emotional needs is failing to provide them with an adequate service (Sommerlad, 1999; Binder *et al*, 2011). This seems particularly true for social welfare law clients, who may be vulnerable and in situations of crisis. The significance of emotional factors for clients makes it probable that, when examining the issue of telephone and face-to-face interaction, interpersonal and psychological elements will feature in clients’ evaluations of their experiences. The client-centred lawyering model provides a framework which encompasses those issues.

Client-centred lawyering is presented by its proponents as a more successful way of conducting lawyer–client relations and therefore good for business (Sherr, 1999; Binder *et al*, 2011), but it also entails a value-judgement about the way in which lawyers and clients should interact. The lawyer–client relationship is conceptualised as being one between equals. It is fuelled by a belief that lawyers’ technical knowledge should not be used to disempower the client, but rather to help them find a solution to their problems. By facilitating client participation and decision-making, client-centred lawyering attempts to rebalance the power between lawyer and client. To a degree, it remains an aspirational model of lawyering, because it sets a standard of legal practice and lawyer-client interaction towards which many social welfare practitioners strive, but, as research has shown, it also describes social welfare lawyering as it is currently practiced in some settings (Buck *et al*, 2010).

Despite a stated intention to equalise as much as possible the relationship between lawyer and client, as stated above, client-centred poverty lawyering is condemned by a body of critical lawyers for silencing the client voice and substituting the lawyer's narrative for that of the client (Cunningham, 1992; Alfieri, 1991; Hosticka, 1979; White, 1990). It is argued that the importance accorded to obtaining the client's account and following the client's objectives in client-centred lawyering counters this criticism of poverty lawyers. It is believed that client-centred lawyering can return power to the client in a way that is appropriate to the client's abilities, desires and needs.³¹ In addition, as has been explained above, it is contended that choosing to prioritise clients in immediate need over achieving long-term social goals is a valid response in a climate of scarce resources.

Having considered the spectrum of ideal-types of lawyering, the position taken in this research is that the client-centred model represents the most appropriate standard for the delivery of legal services. It is asserted that the level of client participation envisaged by client-centred lawyering is preferable to the market-driven and paternalistic models. The client-centred model promotes a more altruistic and egalitarian vision of the lawyer–client relationship, which is more amenable to the practice of social welfare law. At the same time, client participation is balanced with the lawyer retaining professional responsibility for the case. This demonstrates a more realistic approach to the practical realities of lawyering for disadvantaged clients in a political climate where, despite many clients continuing to be in situations of acute need (Low Commission, 2015), there has been a dramatic reduction of legal aid funding for social welfare law (Low Commission, 2014b). Moreover, client-centred lawyering still allows for work aimed at alleviating deprivation and achieving social justice by undertaking legal casework with clients and communities. It is for these reasons that client-centred lawyering is the chosen standard for comparing the performance of telephone and face-to-face advice services.

There are nevertheless elements of the ideal-type of client-centred lawyering detailed by Binder *et al* (2011) that have, I believe, only limited application to social welfare law casework in areas such as housing law. A key example of this is the notion of 'counselling' – the process of facilitating clients to reach their own

³¹ Not all clients want the same level of participation in their case (Sommerlad and Wall, 1999).

decisions. It takes place over a series of interviews with clients being steered slowly through a wide range of choices and their potential consequences (Binder *et al*, 2011: 316–448). With its emphasis on the client’s responsibility for decision-making, it is possible to see how client-centred lawyering was influenced by the empowerment strategies of radical anti-poverty legal activists, but can also be co-opted as empowerment within the terms of the responsibilisation discourse. It is arguable that it is in the concept of ‘counselling’ within client-centred lawyering that the neo-liberal view of ‘client as consumer’ establishes a strong hold on the client-centred model. I would argue that for many social welfare clients in situations of acute need it is inappropriate to conceptualise the response to their situation in such terms. In urgent matters of this nature, decisions about taking action have to be made very quickly and clients may have limited capacity to deal with the legal complexities of the situation. In any event, the notion of choice is often artificial in cases of eviction or homelessness. The client-centred principle that the client should make the significant decisions in the case should continue to be paramount in any lawyer–client interaction, but the degree of decision-making in which the client is required to participate should also be tailored to their wishes, needs and abilities, and to the nature of the case.

The decision having been made that client-centred lawyering is to be used in this research as a framework for comparing telephone and face-to-face lawyer–client interaction, a model of the ideal interview then has to be devised. For the reasons given above, a simplified model of client-centred lawyer–client interaction is proposed for this purpose, principally combining elements of Sherr’s (1986; 1999; 2000) work on client care – which references the earlier work of Binder and Price (1977) – and Buck *et al*’s (2010) empirical study of advice in CLACs. Despite their differences,³² both of these schemas describe a client-centred approach and are in broad agreement that, on a practical level, the interview involves three key stages: an opening phase in which the client is encouraged to explain their problem (‘listening’/‘allowing clients to tell their story’); a second phase of checking facts,

³² Sherr (1999) sets out three stages of the interview, divided into 13 tasks and 18 skills, as a way of measuring the lawyer’s performance. Buck *et al* (2010) identify 5 key stages in the interview. It is argued that Buck *et al*’s (2010) more straightforward approach is to be preferred as a framework for assessing real-life interviewing, because it is derived from observing a phenomenon, rather than as a quality assurance mechanism.

gaining a deeper understanding of the client's problem and probing for inconsistencies and ambiguities ('questioning'/'probing and exploring'); and a final phase when the lawyer advises the client, the lawyer and client agree what is going to happen next, and the client is given the opportunity to raise any additional issues ('advising'/'checking of understanding and inviting additional issues') (Sherr, 1999: 8; Buck *et al*, 2010: 117–26). It is also common ground that creating trust and rapport between lawyer and client is essential to obtaining instructions (Buck *et al*, 2010; Sherr, 1999; Binder *et al*, 2011). This three-phase framework will be used in the next chapter to compare the relative impacts of telephone and face-to-face communication on the practice of client-centred lawyering.

It is also evident from the above discussion about models of lawyering that the distribution of power is an important element in the discourse of lawyer-client relationships. Client-centred lawyering provides a basis for looking at the issue of power from the perspective of whether the client has the freedom to express their needs and wants, and the extent to which their objectives are ascertained and followed by the lawyer. Does remoteness enable the client to be more assertive, or does it make it easier for the lawyer to disregard them? As this thesis proceeds, the issue of how telephone and face-to-face communication are likely to affect the power dynamic between lawyer and client will be an important consideration.

Deprofessionalisation: 'lawyer' versus 'adviser'

The above discussion considers how notions of professionalism configure understanding and expectations of the lawyer–client relationship. However, telephone-based advice provision, such as the CLA, with its dependency on unqualified workers, symbolises the deprofessionalisation of legal services. The models of lawyering outlined above may be rendered irrelevant in the context of growing deprofessionalisation. Thus, it is important to explain here why deprofessionalisation has not been considered a central concern of this thesis.

'Deprofessionalisation' is the process through which a profession loses its claim to unique qualities such as specialist knowledge, a service ethos, autonomy in

working practices, and authority over clients (Haug, 1972: 197–9).³³ The increasing use of the unqualified ‘para-professional’, such as advisers or ‘paralegals’,³⁴ has been seen as the embodiment of deprofessionalisation in law. In the UK, disquiet has been expressed about the increased use of non-lawyers following standardised procedures to provide legal aid services. The deskilling of the legal profession and its consequent loss of autonomy and independence has been identified as posing a risk to the expert practice of lawyering and the quality of the service received by clients (Sommerlad, 1995; Sanderson and Sommerlad, 2002). There are indications that increased reliance on paralegals and unqualified staff may have implications for the quality of legal aid service delivery. A survey carried out by Young Legal Aid Lawyers (YLAL), for example, revealed poor supervision and low levels of training among paralegals in legal aid practice (YLAL, 2008).

Yet the use of unqualified advisers in the NFP advice sector has a long history that is somewhat different from that of private practice. It is argued that this brings an alternative dimension to the debate over deprofessionalisation, particularly with regard to the quality of advice. In the first instance, private practice solicitors have a poor track record with regard to the delivery of social welfare law advice (see Chapter 2). It was not until the 1980s that the private profession began to take social welfare law seriously (Goriely, 1996; Smith, 1996). Until then, it was through NFP agencies that most social welfare law provision was made. Furthermore, in relation to quality, a study conducted by Moorhead *et al* (2001; 2003a) confirmed that specialist advisers in the NFP sector outperformed solicitors in specific areas of social welfare law. In addition, there is a long history of unqualified specialist advisers being employed in the NFP advice sector (Campbell, 1992). The NFP sector was at the forefront of recognising that social barriers of entry to the legal profession meant that a lack of legal qualifications did not prevent individuals from being good legal advisers. I would therefore submit that the quality issues that may pertain to the rest of the legal aid sector with regard to deprofessionalisation and the use of

³³ As was indicated above, the market control theory of professionalism questions the existence of a public service ethos, apart from as mechanism to justify professional privileges (Larson, 1977; Abel, 1988).

³⁴ A third of organisations regulated by the SRA report using paralegals to deliver legal services to clients (4 per cent without supervision) (IFF Research, 2014: 42).

unqualified staff are of less relevance to social welfare law provision by the NFP sector.

In relation to the threats posed by the loss of professional autonomy, the advice sector has also demonstrated that it is capable of maintaining its independence from government interference. As Moorhead *et al* (2003a) point out, NFP advisers have their own claims to independence. As previously stated, the NFP sector fell out of favour with the Legal Services Commission when it would not co-operate with the latter's value-for-money agenda, and continued to provide more comprehensive services to clients (Sommerlad, 2008). In this way, the NFP sector appears no more malleable in ethical terms than private practice solicitors, despite the unqualified status of many staff members. Fears about the erosion of professional independence by the legal aid authorities may have been proved correct, but it is argued that this has not been due to the use of social welfare advisers in the NFP sector.

My research was conducted mainly with a highly reputable NFP provider.³⁵ The telephone service used only advisers, while the face-to-face agencies employed a mixture of lawyers and advisers. Among the telephone and face-to-face advisers, there were two non-practising solicitors and several people who had taken the LPC exams. There is thus an element of blurring between advisers and lawyers, in any event. Several of the face-to-face advisers were very experienced, and it is notable that I interviewed fewer members of staff in the telephone service who had the same degree of advice experience. This may have quality implications for the different types of service due to the levels of experience of the staff they employ, but it is submitted that, if there are differences in the quality of service, it is because of the knowledge and abilities of the individuals concerned, rather than whether or not they are qualified lawyers. This is a view that has been confirmed by previous research (Moorhead *et al*, 2003a). I appreciate that this research was with a NFP provider, and that research in a commercial organisation might have led to a different perspective on the issue of quality and the use of unqualified staff. However, for the purposes of this research, I believe it would be artificial to draw a distinction between advisers and lawyers on the basis of qualifications alone. I do not propose therefore to go any further into the specific issue of deprofessionalisation within this

³⁵ Apart from two of the lawyers and one of the clients.

thesis. If there are significant differences between lawyers and advisers in relation to a particular issue, then they are highlighted in the text and discussed accordingly.

Finally, a brief note on terminology and how the terms ‘lawyer’ and ‘adviser’ are used to describe the legal personnel within this thesis. In keeping with the decision not to distinguish between legal personnel on the basis of qualification alone, the terms ‘lawyer’ and ‘adviser’ should be seen as interchangeable, unless the text makes clear that a distinction is being drawn between the two. I decided to take this approach rather than using ‘lawyer/adviser’ throughout, which seems very cumbersome. The existing socio-legal literature refers mainly to the ‘lawyer–client relationship’; thus, when referring to that literature, the term ‘lawyer’ is used for the legal worker in the relationship unless the work cited itself uses the term ‘adviser’. However, five lawyers and 18 advisers participated in this research, so in the analysis of the data, from Chapter 6 onwards, the term ‘adviser’ is used generically to describe the legal staff who were interviewed and observed. However, when quoting an individual, their citation will indicate whether they are a lawyer (L) or an adviser (A).

Conclusion

The preceding discussion has mainly been concerned with the role of theories of professionalism in shaping a range of descriptive and aspirational models of lawyering. We saw how the function of the lawyer–client relationship varied depending on how the nature of professionalism was interpreted, and discussed the impact of this interpretation on each model of lawyering that emerged. Through an exploration of the spectrum of models of lawyering, ranging from ‘market-driven’ to ‘critical’, it was possible to identify the more egalitarian and participatory client-centred model of lawyering as the most suitable for the purposes of this project. It takes into account client needs and it is the dominant model of lawyering to which social welfare lawyers aspire. It is also found in empirical studies, legal texts and commentary on lawyering skills and is now being taught as best practice in vocational legal education. This provides an appropriate standard against which to judge the success or otherwise of telephone and face-to-face service-delivery, and a framework for breaking lawyer–client interaction down into its component parts during the process of analysis.

In addition, it has been recognised that this discussion about professionalism occurs in the context of the growing deprofessionalisation of legal practice, a key example of which is unqualified staff being used to provide telephone advice services. The ongoing deprofessionalisation of lawyers by the legal aid authorities has led to understandable concerns that the use of advisers will have an adverse impact on the independence and quality of legal aid services. It is argued, however, that, in the NFP sector, unqualified specialist advisers in social welfare law have been shown to provide higher-quality services than private practice lawyers, and are no less independent in their approach to their work. This research was undertaken with a NFP provider and, for these reasons, it is contended that the experience and ability of the individual adviser is likely to be more relevant to the issue of quality than the mere fact of whether or not they are a qualified lawyer. This is therefore the approach that will be taken in this study. Thus, in the next chapter, my decision that client-centred lawyering is the appropriate standard for judging the effectiveness of the lawyer-client relationship will form the basis for my analysis of the current literature comparing telephone and face-to-face interaction.

Chapter 4: Comparing Face-to-face and Remote Communication in the Advice Process

Introduction

The lawyer–client interview is vital to the advice process (Sherr, 1999). This chapter analyses what we currently understand about the interpersonal dynamics and functional components of lawyer–client interaction and considers how these factors might alter when face-to-face advice is replaced by telephone advice. While the previous chapter explained the rationale for using the client-centred model of lawyering, this chapter builds on that analysis by focusing on the specific elements of the interaction that make it most effective.

It is often assumed that there are few material differences between communicating over the telephone and face-to-face, and that one can easily substitute for the other. However, as Jacob comments:

‘Two-way radio is not the same as a telephone call (indeed I would distinguish the landline from the mobile), which is not the same as a face to face conversation, although all have some common features...The adoption of new technologies will be hindered not advanced by ignoring the subtleties of the differences.’ (Jacob, 2001: 51)

In this chapter, current research will be explored in order to suggest where differences between telephone and face-to-face interaction are likely to occur, with a view to highlighting areas for further consideration in the empirical element of this thesis. Using a client-centred model, the key functions of the interview will be compared in respect of telephone and face-to-face contact. More specifically, this chapter looks at the impact on the quality of the interaction of interpersonal factors, non-verbal communication, concealment, the pace of the interview, rituals associated with lawyer–client meetings and aspects of tangibility. Particular attention will be

paid to any significance these components may have for the effectiveness of the interview as a casework tool, in both psychological³⁶ and instrumental terms.

The research context

The delivery of legal services by telephone has been under-researched in this country. Historically, most research has been policy-driven evaluations by or for government agencies and has been largely favourable about the possibilities of telephone advice.³⁷ Work has been previously been undertaken on this topic in other jurisdictions. In the US, a substantive study of legal ‘hotlines’(which provide one-off telephone advice) received mainly positive feedback from clients – although, notably, those from more disadvantaged groups experienced less successful outcomes than others (Pearson and Davis, 2002). Due to the very different geographical, social and political setting in which it occurs, the degree to which telephone-service delivery in Australia can be compared to the situation in the UK is questionable. In Australia, properly planned and targeted remote services may be the most expedient way of widening access to legal advice for remote communities (Giddings and Hook, 2002). Nevertheless, despite the need for high quality remote services in the Australian context, serious failings with telephone service-delivery have been identified in a number of publicly-funded initiatives. This has been ascribed to poor service design which failed to take into account local circumstances and user needs (Giddings and Hook, 2002; Hunter *et al*, 2007). It is telling that Giddings and Hook (2002) also make the point that technological solutions may have a part to play in increasing access to advice, but remote communities still need face-to-face legal services.

There has been some limited recent research in the area of telephone legal advice in England and Wales. The Ministry of Justice review of the implementation of the mandatory ‘Telephone Gateway’ for debt (as defined since April 2013 – i.e. mortgage possession), discrimination and education law found some users were

³⁶ The term ‘psychological’ is used in the layperson’s sense in this thesis to indicate the thought processes and emotional responses of the individual. It is not intended to have any specialist social psychological meaning.

³⁷ Examples include: *Alternative Methods of Delivering Legal Services* (Bull and Seargeant, 1996); *Improving access to advice in the Community Legal Service: Report on Evaluation Research on Alternative Methods of Delivery* (LSC, 2004) and *Family Community Legal Advice Helpline Pilot Evaluation* (LSC, 2009).

satisfied with the service, although people with complex cases and vulnerable individuals struggled with telephone-only delivery (Patel and Mottram, 2014; Paskell *et al*, 2014). Qualitative interviews with telephone debt advisers (conducted prior to the April 2013 changes to legal aid and using the former, wider definition of debt) also gave a positive view of telephone advice for more capable clients with standard debt problems (Patel and Smith, 2013b). In addition, the Money Advice Trust has published a recent study which shows good outcomes and high customer satisfaction among telephone debt advice clients. It is notable, however, that telephone clients are more frequently the ‘worried well’, with less serious debt problems and higher incomes than face-to-face clients (Ellison and Whyley, 2012a&b: 17). It can also be argued that debt advice in the NFP sector is predominantly the rescheduling of clients’ debts (Moorhead *et al*, 2001). This more formulaic work may lend itself more readily to telephone advice than other areas of social welfare law, especially for one-off matters (Patel and Smith, 2013b). Despite this recent policy research into telephone and face-to-face advice, in-depth qualitative direct comparisons of telephone and face-to-face advice provision remain relatively unusual within academic scholarship.

A rare example of academically rigorous research comparing telephone and face-to-face advice is the quantitative analysis of case data held by the Legal Services Commission (LSC). This statistical research shows that face-to-face advice consistently delivers more tangible benefits to clients than telephone-only advice in housing, education, debt and family law matters (Balmer *et al*, 2012; Patel *et al*, 2014; Patel and Smith, 2013a; Smith *et al*, 2013).³⁸ In addition, in housing legal aid cases – when advice time was controlled for other variables, such as the client profile, case type and stage reached – telephone advice took 14 minutes longer than face-to-face advice (Balmer *et al*, 2012). It appears that, once subjected to more sophisticated analysis, telephone advice may not be as efficient as earlier evaluations have suggested (see, for example, LSC, 2004).

³⁸ Outcomes have also been found to be better for face-to-face debt clients in other research comparing the two modes of delivery (Ellison and Whyley, 2012b).

Vulnerable clients

The literature also suggests that vulnerable clients may experience particular difficulties when dealing with telephone advice services. The MOJ's Telephone Gateway research found that dealing with telephone-only delivery was a struggle for people with communication difficulties and mental health or mental capacity issues (Paskell *et al*, 2014). Telephone debt advisers have also referred to the problems of more vulnerable clients in using telephone services (Patel and Smith, 2013b). In addition, people with disabilities, especially those with mental health problems, have been identified as often finding it problematic to use telephone-only services (Mind and Rethink, 2011; Disability Charities Consortium, 2011). In contrast, other research has suggested that there is scope for vulnerable clients to be given effective debt advice over the telephone (Ellison and Whyley, 2012b). However, the bulk of the evidence indicates that dealing with legal problems over the telephone is often a considerable challenge for vulnerable individuals.

This is a highly relevant issue, because a significant proportion of civil legal aid clients can be described as vulnerable. Before the legal aid changes, in 2008–9, 23 per cent of civil legal aid matters involved clients with an illness or disability (MOJ, 2010b). It seems unlikely that the legal aid reforms have reduced that figure, and may well have driven it up. Research by Balmer (2013) has also shown that individuals who are eligible for legal aid are more likely to have at least one justiciable problem and to be adversely affected by their difficulties than those in the non-eligible category. In addition, their predominant method of contact with first advisers is in person (Balmer, 2013). The analysis of LSC housing advice case data concludes that more disadvantaged clients (young people, those with physical or mental health difficulties, tenants and homeless people) and those with more acute problems (homelessness and housing benefit issues) are more likely to use face-to-face advice (Balmer *et al*, 2012).³⁹ Other research has shown that young people are more inclined to use face-to-face services than any other age group (Kenrick, 2009). Moreover, more vulnerable clients often struggle with taking action on their own behalf (Genn, 1999; Moorhead and Robinson, 2006; Buck *et al*, 2010). This

³⁹ It has been found that people in areas of higher deprivation are more likely than residents of more affluent areas to use Casualty rather than NHS Direct (Shah and Cook, 2008). Earlier studies correlated average or just above average levels of deprivation with the highest rates of NHS Direct usage (Cooper *et al*, 2005; Burt *et al*, 2003).

suggests that they are likely to find it particularly difficult to cope with the more limited practical support available from telephone advice. Evidently these differences between the types of client who are likely to use face-to-face and telephone advice raise serious questions about the impact on more vulnerable individuals of a swing towards telephone-only advice in social welfare legal aid. The danger is that, in a shift to service provision via the telephone or internet, the most disadvantaged will be left behind.

Studies of online advice provision may also shed light on how more disadvantaged clients are likely to fare in the telephone-only environment. Commentators such as Susskind (2008) and Smith and Paterson (2014) are enthusiastic about the ability of online delivery to assist in increasing access to justice,⁴⁰ but Susskind (2008: 237) reveals his limited understanding of the complexities of social welfare law practice by stating that, in future, clients will only need the legal assistance of those in the voluntary sector with ‘a kind, empathetic ear with only a light sprinkling of legal expertise’. The website of the Dutch Legal Aid Board, ‘Rechtwijzer’, has been lauded as a ‘game-changer’ due to its interactive interface (Smith and Paterson, 2014: 59–66). Its efficacy in the delivery of advice remains untested and its ability to cater for those who have communication difficulties or poor literacy and language skills is unknown.⁴¹ Empirical academic research into online delivery of legal advice remains uncommon (Denvir, 2014). The current evidence suggests that internet-based delivery may be appropriate for some groups in society, but not others – particularly those with high support needs. Recent research with Shelter’s housing advice clients found little appetite for online delivery. Clients needed personalised expert advice and emotional support when they faced a situation of housing crisis (TNS BMRB, 2015). In addition, contrary to general expectations, young people are relatively infrequent users of the internet for legal advice – especially if they have low educational attainment (Denvir *et al*, 2011). They also struggle to use the internet to solve legal problems (Denvir, 2014). In contrast, online mediation in 126 uncomplicated Dutch divorces was found to have been a generally positive process for both parties, although more costly in

⁴⁰ JUSTICE (2015) has also recently made proposals regarding the use of telephone and online services to improve access to justice.

⁴¹ A recent first report on users of Rechtwijzer found there was no difference in self-efficacy levels as a result of using the website (Bickel *et al*, 2015).

emotional terms for women than men (Gramatikov and Klaming, 2011). In other research, users of online debt advice were shown to be younger and better-educated than users of telephone and face-to-face services (Ellison and Whyley, 2012a). In keeping with this, Shelter's (2012) analysis of usage of its online information suggests that it receives more visits from a new, more capable audience than from its usual, more disadvantaged, client group. These studies suggest that remote methods of advice may prove useful for mainstream clients, but are less likely to be of assistance to more vulnerable clients. Claims regarding the ability of online service delivery to meet the needs of social welfare law clients are undermined by existing research, which indicates that telephone delivery may face similar barriers in assisting disadvantaged groups.

Quantitative analysis of legal aid statistics has shown that telephone and face-to-face advice do not coincide in terms of their client profile or case complexity or in the nature of the service provided, but it has not been able to explain the underlying reasons for this divergence. Furthermore, the limited amount of qualitative research previously undertaken on this topic has focused on the less contentious field of debt advice, rather than more litigious areas of advice, such as housing law, where court proceedings and legal challenges are more likely to feature. The intention of this study is to offer an in-depth explanation for the social phenomenon which statistical analysis has begun to capture. In this way, this work will complement and add to the existing literature by providing a dynamic and rich account of how telephone advice differs from face-to-face advice in terms of the nature of the advice experience and the lawyer–client relationship. The potential adverse impact of telephone-only advice on vulnerable clients is an issue that will be given specific scrutiny in the empirical element of this thesis. This issue is particularly important in a climate of restricted public spending. It is argued that if resources are limited they should be properly targeted at those most in need of assistance.

Comparing the dynamics and mechanics of telephone and face-to-face interviewing

The academic literature on lawyer–client interaction largely ignores the notion of the telephone as the principal mechanism for the delivery of advice. This is in part due to the fact that this is an area of study that has not experienced a high degree of scholarly activity in recent years. Conceived during a different era of legal aid

provision and confident in the continuing availability of face-to-face legal services, the existing body of work in the area of lawyer–client relationships has not developed new theoretical models which take into account the spread of telephone-only advice. The current research on face-to-face client-centred lawyering will be used as a starting point for identifying the functions of the lawyer–client relationship and suggesting how these may be affected by telephone-only interaction. Due to the lack of lawyer–client studies comparing face-to-face and telephone interviewing, the analysis will be supplemented by material on this topic from social science research methods. A growing body of literature on the nature and impact of videolink technology in healthcare settings (‘telemedicine’) and court proceedings (the ‘virtual trial’) will also be used to illuminate how telephone-only advice may affect the dynamic between lawyers and clients.

During the course of a case, the lawyer–client interview performs a variety of purposes, both practical and relational. The first interview is accorded a particularly important status in academic works and legal skills texts (Sherr, 1986; 1999; Sommerlad and Wall, 1999; Sommerlad, 1999; Binder *et al*, 2011; Elkington *et al*, 2014; Webb *et al*, 2015). The purpose of the first meeting is multifunctional. It is for the lawyer to ascertain from the client why they have been consulted, provide initial advice and propose a course of action. Getting the first interview right is an important step in ensuring that communication between lawyer and client begins well.⁴² It is also about establishing a good working relationship between lawyer and client which will form the foundation for effective advice provision for the duration of the case (Sherr, 1986; 1999; Maughan and Webb, 2005; Elkington *et al*, 2014). As established in Chapter 3, based on the client-centred versions of lawyering found in Buck *et al* (2010: 117–26) and Sherr (1999: 8–9), the functions of the first meeting are described as: ‘establishing trust’, ‘listening’/‘allowing clients to tell their story’, ‘questioning’/‘probing and exploring’, ‘advising’/‘checking of understanding’ and ‘inviting additional issues’. These aspects of the interview are described in a similar form in a range of texts dealing with lawyers’ skills (see, for example, Maughan and Webb, 2005; Elkington *et al*, 2014; Binder *et al*, 2011).

⁴² It is also an important factor in avoiding later problems with the client – poor communication has been identified as one of the most frequent reasons for client complaints (Sherr, 1999).

In the pages that follow a comparison is made of how telephone and face-to-face interaction are likely to affect the performance of the emotional and practical functions of lawyer–client interaction. The features of the interaction that will be considered in relation to this issue are interpersonal factors, body language, concealment, pace, ritual and tangibility. The interpersonal and relational elements of lawyer–client interaction are dealt with first, because of the critical role they have been shown to have at the earliest stages of the advice process (Sommerlad and Wall, 1999; Sommerlad, 1999; Buck *et al*, 2010). The other more practical elements of the interview will be considered in more detail below.

The interpersonal dynamics of lawyer–client interaction

It is a central proposition of this thesis that the relational elements of lawyer–client interaction, such as trust and rapport, are as important as the more practical functions in providing effective advice. It is argued that a strong lawyer–client relationship is integral to the effective performance of the task-based elements of the interview. Research has shown that the ‘relational, interpersonal qualities, such as empathy and trust’ are critical to the lawyer–client relationship (Sommerlad and Wall, 1999: 41; Sommerlad, 1999: 500; Buck *et al*, 2010). In client-centred lawyering, dealing with the emotional life of the client is considered necessary to provide them with an adequate service (Binder *et al*, 2011; Sommerlad, 1999). It is important not only for the purposes of the full and frank exchange of information and advice between lawyer and client, but also in terms of obtaining the client’s agreement and co-operation with taking action in the case (Buck *et al*, 2010; Sherr, 1999).

Historically, emotion has not been considered an appropriate consideration for practising lawyers. The ‘standard conception’ of professional legal ethics has been one of ‘professional neutrality’. This demands that lawyers divorce themselves from moral and emotional responses to client’s problems (Boon and Levin, 2008: 13–14). A consequence of this is that, as Binder *et al* (2011: 48) point out: ‘Lawyers are prone to seeing themselves as rational fact-gatherers and decision-makers’ and feelings are therefore perceived as either impediments or irrelevant. In confirmation of this, empirical research has shown that lawyers try to avoid engaging with clients at an emotional level, often advising clients to separate out their emotional responses from the legal aspects of their case (Sarat and Felstiner, 1986; Bogoch, 1997). Thus

the impact of emotion on lawyer–client interaction is a minor aspect of much of the literature on the advice process.

There is, however, a growing understanding of the importance of lawyers recognising and responding to client emotion. Within client-centred lawyering, ‘empathy’ – in terms of the ability to ‘hear, understand and accept clients’ feelings’ – is considered the ‘real mortar’ of the lawyer–client relationship (Binder *et al*, 2011: 48). Sherr (1999) counsels the lawyer to pay regard to the client’s emotional needs. The acknowledgement of client emotions also appears in several key legal skills texts for students (see, for example, Maughan and Webb, 2005; Webb *et al*, 2013; Elkington *et al*, 2014). This represents an important shift away from the previous prevailing view of emotion as out of place in lawyer–client interaction.

The significance of understanding and responding to client emotion may now be gaining greater recognition, but the impact of lawyers’ feelings on themselves and their work receives scant attention in the current discourse (Westaby, 2010). The traditional ethical requirement of professional neutrality still demands that lawyers keep at ‘a safe professional distance’ from their clients (Maughan and Webb, 2005: 144). It is, for example, unusual for the legal skills texts that advise lawyers and students to pay regard to client’s psychological needs to acknowledge the emotional needs of lawyers (Sherr 1999; Maughan and Webb, 2005; Webb *et al*, 2013; Elkington *et al*, 2014). Students are instead advised to practise their ‘poker face’ and not react to clients’ disclosures as they ‘must maintain a professional demeanour at all times’ (Slorach *et al*, 2015: 276). It is argued that these works demonstrate that admitting to experiencing emotion remains outside the process of identity formation of lawyers. This is despite the value that some legal aid lawyers state they attach to ‘reward’ from their work (Sommerlad, 1995: 175–176; 2001; Mayo *et al*, 2014). In a rare exception to the legal skills norm, Binder *et al* (2011) acknowledge that lawyers’ emotions may have an impact on their work. Clients may admit their feelings more readily, but lawyers too will be affected psychologically and this may influence their professional behaviour. It is for the reasons given above that, for the purposes of this research, it is considered essential to recognise the emotional life of both the lawyer and client when comparing the effects of telephone and face-to-face advice.

A strong personal relationship between the lawyer and client is considered to facilitate the seeking and giving of advice. Developing a strong rapport with the client is viewed as fundamental to building trust and confidence between lawyer and client. The risk of poor rapport is that the client may 'hold stuff back' from the lawyer, with potentially serious consequences for the case (Sommerlad and Wall, 1999: 10; Buck *et al*, 2010). The proposition put forward here is that the deeper the trust between the lawyer and client, the more likely it is that the client will give comprehensive instructions to the lawyer and also listen to their advice. Clients need to be able to trust lawyers in order to give instructions in full and lawyers need to feel that clients are being open with them. When clients intentionally withhold relevant information, it can impede an adviser's ability to help them (Buck *et al*, 2010). It has been suggested by telephone debt advisers that it may be harder to build up trust in the more impersonal telephone advice setting (Patel and Smith, 2013b). Notably, however, another study showed that telephone debt clients were marginally more likely to report satisfaction with their relationship with their adviser than face-to-face clients (Ellison and Whyley, 2012a). It is possible that this is a consequence of the less serious debt problems faced by the telephone clients in this research, who also tended to be less vulnerable. They may therefore have been seeking less from the relationship than the face-to-face clients. Thus, the degree to which rapport is more effectively created is an important area for comparison between telephone and face-to-face advice.

Non-verbal communication appears to have a powerful role in the development of rapport. Clients use elements of the adviser's body language, such as smiling and eye contact, to assess how engaged the adviser is with them and how interested they are in helping them with their case (Buck *et al*, 2010). A number of legal skills texts also emphasise to student lawyers the importance of being aware of non-verbal communication in establishing relationships with clients, including in terms of maintaining eye contact during the interview (Slorach *et al*, 2015; Webb *et al*, 2013; Elkington *et al*, 2014). The absence of non-verbal communication may also impair trust. Witnesses in mock rape trials giving evidence from behind a screen in court or by videolink were less likely to be believed than witnesses giving

evidence without special measures in place (Ellison and Munro, 2014).⁴³ These findings indicate that the lack of visual cues during telephone communication may leave a telephone lawyer at a disadvantage when trying to establish trust and rapport in the early stages of the relationship.

Emotional engagement between lawyer and client may be stronger when it is formed face-to-face. The orthodoxy in social science research is that telephone interviewing impedes the development of rapport and therefore in-depth qualitative interviewing should be conducted face-to-face (Irvine, 2011, and see, for example, Legard *et al*, 2003; Gillham, 2005). This may be because of the ‘less brisk’ and more informal nature of face-to-face interviewing and the more limited opportunities for social pleasantries and small talk over the telephone (Shuy, 2003: 179; Irvine, 2011). On this basis, it seems that telephone-only advice may struggle to reach the same levels of intimacy with clients as face-to-face advice.

The literature on the use of videolink in court also indicates that virtual relationships may suffer from disengagement. It has been suggested that it can result in detachment from the proceedings on the part of defendants and harsher treatment from judges when sentencing (Rowden *et al*, 2010).⁴⁴ It is notable that defendants sentenced in the Virtual Court pilot in the UK received more severe penalties than those dealt with in traditional courts (Terry *et al*, 2010). It has been argued that when using videolink evidence: ‘One of the costs which is incurred is a loss of humanity or human connection’ (Mulcahy, 2011: 178).⁴⁵ Testifying via videolink may also reduce the emotional impact of child witnesses’ evidence on a jury (Goodman *et al*, 1998; Orcutt *et al*, 2001). It is possible therefore that one risk of a loss of emotional engagement as a result of remote communication is a reduction in compassion. By dealing with the defendant through videolink, it seems we are absolved from having to deal with them as a flesh and blood individual, comprised of difficult emotions and complex claims on our humanity. The more limited rapport and increased

⁴³ Although it is posited by the researchers that juries returning guilty verdicts may have been more influenced than other juries in the study by the belief that complainants do not always have to show physical signs of resistance (Ellison and Munro, 2014).

⁴⁴ A reason given against imposing custodial sentences by videolink is the lost opportunity to engage with the defendant (Rowden *et al*, 2010).

⁴⁵ An ideology of restorative justice also considers the face-to-face meeting between victim and offender as an opportunity for emotional engagement between them (Johnstone, 2001).

detachment of remote communication may have implications for the formation of close lawyer–client relationships over the telephone.

Conversely, there have been social science research studies where researchers reported no difficulty in establishing rapport with telephone interviewees. In order to achieve rapport, they adapted their research methods, taking compensatory steps to deal with the fact that the interview was being conducted over the telephone (Stephens, 2007; Sturges and Hanrahan, 2004; Holt, 2010). It may be unrealistic to expect this level of adjustment in typical lawyer–client telephone interactions, although specialist training may help in this regard. There are also researchers who are enthusiastic about the potential to develop rapport through online interviewing, although others are more circumspect and do not feel it can substitute for face-to-face interaction (Mann and Stewart, 2003). Thus, while problems are not inevitable, there does seem some potential for the diminution of rapport as a result of telephone-only contact.

The above discussion suggests that the emotional quality of lawyer–client interaction is likely to be affected by telephone communication. There is the prospect that, where communication takes place only over the telephone, lawyers and clients will experience less strong rapport, be more emotionally detached, and hence have poorer levels of trust. This may have an adverse impact on the client’s instructions and also the client’s willingness to follow the lawyer’s advice. The possibility that telephone-only communication will compromise lawyer–client trust and the strength of the relationship between them is an issue that will be explored through analysis of the empirical evidence in this research.

The mechanics: practical functions of the lawyer–client relationship

The next stage in this chapter considers the functional tasks of the interview and the impact on those tasks of telephone and face-to-face interaction. It is important to note that the practical functions of the lawyer–client relationship are interrelated with the emotional elements. As an example, listening sympathetically to the client’s story, even if the adviser has been fully informed of the client’s problem in advance, helps establish trust between adviser and client (Buck *et al*, 2010). At the same time, trust and a strong rapport with the client are needed to obtain full instructions. While it would be wrong to see the emotional and practical factors of the relationship in isolation, it is, nevertheless, useful for the purposes of analysis to separate out the

different elements of the advice process in order to examine how they may be differentially affected by aspects of telephone and face-to-face communication. Accordingly, the three major stages of the lawyer client interview and the range of tasks the interview performs will be outlined below, before going on to consider how non-verbal communication, concealment, pace, ritual and tangibility feature in the provision of face-to-face advice and the possible impact that delivery over the telephone is likely to have.

Listening/allowing the client to tell their story

This is the first stage in the initial lawyer–client interview. A fundamental element of the client-centred approach to interviewing is allowing the client to explain their problem in their own words with minimal interruptions from the lawyer (Sherr, 1999, Elkington *et al*, 2014; Buck *et al*, 2010, Slorach *et al*, 2015; Webb *et al*, 2015). Lawyers are required to ‘actively listen’ to clients. This includes paying attention to both the content and the emotion in the client’s account (Binder *et al*, 2011, 40–48).

Questioning/probing and exploring

‘Questioning’ or ‘probing and exploring’ is the second phase in the interview when the lawyer gathers more detail on the presenting problem and attempts to find out about any other potential difficulties (Buck *et al*, 2010: 122; Sherr, 1999: 29–36) (‘theory development’, according to Binder *et al*, 2011: 151). The lawyer also checks with the client that they have fully understood the client’s account and objectives. Buck *et al* (2010) identified that clients reacted well to advisers who actively checked their understanding of the situation with the client. This is also the stage when the lawyer begins to test the client’s instructions for ambiguities and inconsistencies (Sherr, 1986; 1999). In social welfare cases requiring urgent work, it may be necessary to challenge the client’s story in the first interview. This necessitates striking a delicate balance between essential questioning and inappropriate cross-examination so as not to jeopardise the relationship with the client (Buck *et al*, 2010; Sherr, 1986; 1999). This can be a demanding exercise requiring considerable skill on the part of the lawyer.

Advising

Advising comes at the end of the interview. It involves applying the law to the client's situation and recommending an appropriate course of action. The advice must be communicated to the client in a way that they understand, so that a proposed plan can be agreed and put into action (Sherr, 1999). Research into advice 'hotlines' in the US found that a significant proportion of clients reported they had not acted on advice because they had not understood it (Pearson and Davis, 2002). Taking action can be difficult for clients. Buck *et al* (2010) found that both very vulnerable clients and clients capable of self-help struggled with tasks that had been appropriately allocated to them. In some instances, clients may receive advice that requires them to change their behaviour, such as changing spending habits to meet essential financial commitments. For these reasons, securing the client's co-operation in relation to the advice and the plan of action is essential.

Non-verbal communication

Body language is the most immediately noticeable difference between telephone and face-to-face interviewing. It can be shown to have many different impacts across the whole range of interview functions. As stated above, non-verbal communication has been identified as a key component in creating trust and rapport between lawyers and clients. With regard to getting the client's story, visual cues and body language can also be crucial in allowing the client to give their account in their own terms. Sympathetic body language, such as smiling and nodding, can encourage clients to speak (Webb *et al*, 2013). In social science research methods, it is recognised that interviewers can use non-verbal communication to convey enthusiasm and commitment to the respondent, which may add to the respondent's motivation to engage with the interview (Holbrook *et al*, 2003). Visual cues can also help to guide the interviewee through the parameters of a non-directive interview (Holt, 2010). Thus being face-to-face may have an impact on the client's willingness and ability to give a more detailed account to the adviser.

Non-verbal communication can increase the lawyer's understanding of the client's problem. Binder *et al* (2011) refer to the use of non-verbal communication in understanding the client's feelings or attitude towards a topic. Similarly, in social research interviewing, body language is considered a useful tool in gaining a comprehensive understanding of what the interviewer is being told (Robson, 2011).

It is also seen to add depth and richness to the interviewee's account (Legard *et al*, 2003). In addition, visual communication provides an opportunity for the interviewer to see the respondent's physical response to a question in terms of 'discomfort, puzzlement or confusion' and to tailor their questioning appropriately (Bryman, 2008: 457; Stephens, 2007, Holbrook *et al*, 2003). It should be noted, however, that there is a risk that the interviewer's body language may influence the client to deviate from their natural account (Kvale and Brinkmann, 2009). Despite this possibility, the visual communication provided by the face-to-face encounter appears to increase the prospect of the research interviewee giving an accurate and comprehensive account. Intuitively, it seems likely that the same will be true in relation to face-to-face lawyer-client interaction.

Questioning or probing the client's story over the telephone may be hampered by the absence of non-verbal communication. In the first instance, in social science interviewing, facial expressions can hint when an issue warrants further exploration (Robson, 2011). In addition, subtle management of the interview becomes more difficult without visual cues. Unsolicited utterances by a telephone interviewer can be perceived as interruptions. As a result, the interviewer may be unwilling to interject in order to probe issues, as this may undermine the flow of conversation (Stephens, 2007). This may be particularly problematic in lawyer-client interviews if there are issues of fact in dispute. Unless unclear issues and inconsistencies are dealt with, however, it will be harder for the lawyer to advise the client realistically and to conduct the case appropriately.

Non-verbal communication can be useful in gauging the accuracy of the client's account. Non-verbal cues may give messages which help the interviewer to understand the interviewee's verbal response, 'possibly changing or even, in extreme cases, reversing its meaning' (Robson, 2011: 281–2). It is a much-understated aspect of lawyer-client interaction, but clients do not always tell their lawyers the truth. In the legal skills literature there is a reluctance to place much emphasis on the fact that clients may not be entirely straightforward in the stories that they tell (see for example, Sherr, 1999; Maughan and Webb, 2005). A client may give an inaccurate account consciously or unconsciously and their motives for doing so may be well-intentioned, misconceived or straightforwardly dishonest (Binder *et al*, 2011). Buck *et al* (2010) found that clients would intentionally not mention issues, sometimes through embarrassment about the problem they faced or to conceal some form of

wrongdoing. It is argued that taking a client's account at face value may ultimately be a disservice to the client. The lawyer is required to investigate the ambiguities and inconsistencies in the account given by the client (Sherr, 1986; 1999).

Certain visual cues are considered to be reliable indicators of truthfulness. In Western cultures, the ability to maintain eye contact while relaying an account is strongly associated with credibility (Ashfield *et al*, 2014; Slorach *et al*, 2015).⁴⁶ Non-verbal communication has a particular potency within legal culture in relation to the assessment of 'demeanour' in the trial (Costigan and Thomas, 2000). In the legal arena, there remains a widely-held 'common sense' view that: 'the way a man behaves when he tells a story...may furnish valuable clues to his reliability' (Frank, 1949: 21). There is, however, little psychological evidence to support the notion that witness credibility can be determined by demeanour (Stone, 2009). Research suggests that repeated exposure to lying does not make criminal investigators, judges and psychiatrists better at detecting falsehood (Costigan and Thomas, 2000). It is possible that a witness may show physiological signs of 'deception', but jurors do not tend to use these to determine veracity (Orcutt *et al*, 2001: 365–6).⁴⁷ In contrast, Ekman (1992: 39) would argue that lying can sometimes be detected by behavioural indicators in the body, face, words and voice called 'deception clues'.⁴⁸ Lying well takes careful preparation. To avoid giving a 'deception clue', the liar must have composed a false line and anticipated all the questions they will be asked about it (Ekman, 1992: 42–43). It is contended that, although demeanour may not be a reliable guide where the client is an accomplished liar, relatively few clients will be as calculating as this in their approach to the interview and most clients are unlikely to have formulated their lies in advance. Thus demeanour may provide useful 'deception clues' when a client is trying to be evasive about the truth. This is particularly the case if the client is ambivalent about lying or when the issue is not anticipated by the client.

It is also unlikely that the lawyer will be using demeanour alone to judge the client's story. When probing the client's case, the client's physical response and the

⁴⁶ It is important for advocates to be aware that this is not the same across all cultures (Ashfield *et al*, 2014).

⁴⁷ Reliable cues which can distinguish liars from truth tellers are 'uncontrollable signs of arousal (e.g. pupil dilation)' (Orcutt *et al*, 2001: 342).

⁴⁸ Such as a change in facial expression, a body movement, a change in inflection, or a pause or inadvertent gesture (Ekman, 1992).

internal coherence of their story will be assessed together as a composite whole to form an overall impression of truthfulness or otherwise. Webb *et al* (2013: 5) refer to the importance of ‘congruence’ in non-verbal communication: the client’s behaviours should be ‘consistent with the other aspects of the communication in that interaction’. As explained by Costigan and Thomas (2000: 333), ‘The combination of the story, the storytellers and the audience produces a complicated pattern within which credibility is established’. The lawyer will use both the client’s account and their demeanour to form a view of the merits of their case. Over the telephone, the assessment of demeanour becomes more difficult because, although speech patterns and, to a degree, intonation can be assessed, all non-verbal information is lost. The absence of visual cues could make testing the client’s account more problematic over the telephone.

Telephone interaction may also have a more volatile quality due to the absence of visual communication, which makes probing and exploring the client’s account more difficult. Rowden *et al* (2010) suggest that, in the remote environment of the court videolink, defendants can behave in a disinhibited manner without the visual cues they would get from being physically present in court. As a rule, lawyers and clients prefer to avoid open confrontation with each other (Sarat and Felstiner, 1995). When directly confronting a client with a lie, lawyers are advised to do so with a demeanour that shows the client ‘your concern and desire to help’ (Binder *et al*, 2011: 312). Conveying concern may be more difficult to achieve in a telephone-only situation without visual cues. Without the subtle management of the interview facilitated by visual cues, telephone interaction may make it more difficult to avoid direct confrontation when querying the client’s version of events. This may result in the lawyer failing to question the client in order to avoid causing a rift with them.

At the same time, from the provider perspective, an advantage of not being in the client’s physical presence is adviser safety in a situation of conflict (Patel and Smith, 2013b). Research has shown that advisers may be less willing to probe the story of a ‘challenging’ client when they feel under physical threat (Buck *et al*, 2010: 106). This may mean the lawyer will be more willing to confront a difficult client over the telephone. The potential problem with this is that, if the client’s reaction is hostile, over the telephone, the lawyer will have fewer tools available to preserve the relationship. The combination of these factors may mean that the lawyer sets a higher threshold for challenging the client’s account. Major flaws may be dealt with,

but less obvious gaps or inconsistencies may not be addressed, because of a reluctance to jeopardise the relationship. This could have serious consequences for the accuracy of the information that the lawyer has about the case and undermine the accuracy and appropriateness of their advice. It seems that, over the telephone, the lawyer's ability to assess the veracity of the client's version of events may be impaired due to the absence of non-verbal communication. It is argued that probing and questioning is an essential element of the lawyer–client interview and the proper preparation of the case. For these reasons, it is possible to see how telephone-only contact may prove a less effective method of dealing with the complications of a client's instructions.

Non-verbal communication is also useful for lawyers in the process of advising. Body language, such as gestures and facial expressions, can be used to explain concepts to clients. In addition, using drawings and diagrams can also help clients to grasp the legal complexities of a situation. Checking that the client has understood the advice and the steps that need to be taken is a crucial aspect of the advice-giving process. It has been suggested that legal clients may 'freeze' in the same way as medical patients when they are being given advice and fail to take in what they are told – a phenomenon that it is believed can usually be detected by a 'glazed look' on the client's face (Sherr, 1999: 57–8). Face-to-face, the lawyer is able to see the client's expression and, if the client does not appear to have understood them, the lawyer can adapt their language accordingly. Over the telephone, checking for understanding may be more challenging, because the lawyer is unable to see the client's reaction to what is being said. Some clients will be willing to admit to not understanding the advice, but others will be reluctant to do so. It is possible that in the absence of non-verbal cues, telephone-only contact may compromise the lawyer's ability to ensure that their advice has been understood.

Non-verbal communication affects all aspects of the lawyer–client interview, both interpersonal and practical. In the above discussion, the potential issues in relation to listening to, questioning and advising the client have been outlined. It seems likely that the absence of visual cues will have a significant effect on the functioning of the telephone-only interview. The impact of removing non-verbal communication from lawyer–client interaction is an issue that will be further examined in the analysis of the research material in Chapters 7, 8 and 9.

Concealment

Evidently, the lack of body language in telephone interaction has a number of disadvantages for the process of obtaining the client's story, questioning them on it further and giving them advice. Non-verbal communication appears to have a significant role in aiding lawyer and client to express themselves more clearly and to understand each other more comprehensively. Nevertheless, being concealed from view may help some clients to communicate with the lawyer. In the first instance, clients may find it easier to express themselves when they are not face-to-face with the lawyer. Many social science researchers refer to the reduced 'interviewer effect' as a key advantage of remote interviewing methods. The lack of visual information means that respondents are less affected by the social characteristics of the interviewer such as race, sex, age and socio-economic group. Telephone and online interviewing can reduce and even eliminate factors related to personal characteristics (James and Busher, 2006; Denscombe, 2007; Bryman, 2008; de Leeuw, 2008, Holt, 2010). Online interviewing through e-mail allowed research participants to take greater control over the content of the interview (James and Busher, 2006). Marder (2006: 253) too suggests that 'cyberjurors' (online mock jurors) may experience greater freedom in expressing their views when they are anonymous and are no longer 'subject to stereotypes about their race, ethnicity, class or sexual orientation...'. In the lawyer-client relationship, if the client feels a greater sense of equality with the lawyer due to telephone-only interaction, it may lead to the client being better able to get across their version of events and objectives for the case.

Secondly, it has been suggested that the concealment of remote communication may permit greater openness in relation to sensitive subjects. Currently, there is no consensus on this topic. Anonymity has been put forward as a benefit of telephone advice in situations where clients feel ashamed or embarrassed (LSC, 2004; Patel and Smith, 2013b; Ellison and Whyley, 2012b). In a similar vein, the Samaritans have found that people are more able to express suicidal thoughts by e-mail (LASA, 2000). Concealment also enabled some women to put in writing experiences of infertility that they would not have been able to talk about face-to-face (Letherby, 2003). Alcohol surveys have shown both greater and less reporting of alcohol usage over the telephone (Midanik *et al*, 1999) and analysis of survey data has shown that people are more willing to admit socially embarrassing attitudes and behaviour when their anonymity is guaranteed (Holbrook *et al*, 2003). On the basis

of these reports, it seems telephone communication may aid discussion of sensitive areas.

Yet there are also numerous examples giving the contrary viewpoint. Female victims of domestic violence, for example, express a clear desire for face-to-face legal services (National Federation of Women's Institutes, 2011).⁴⁹ Other studies have determined that respondents are more likely to admit illegal drug use in person (Shuy, 2003). Furthermore, interviewees have expressed greater uneasiness about discussing topics such as income and political opinions over the telephone rather than face-to-face (Groves, 1979). In addition, ethnic minority groups appear to be less willing to disclose information on sensitive subjects in telephone interviews (Shuy, 2003). The nature of the sensitive issue may also drive preferences for different types of interview: guilt over embarrassing topics may call for telephone interviews, whereas emotionally painful subjects may require the more immediately empathetic environment of a face-to-face interview (Sturges and Hanrahan, 2004). Client preferences regarding mode of advice may be influenced by their personal characteristics and the nature of the issue at stake. For those seeking legal advice, full anonymity is not an option, but being on the telephone and out of view may nonetheless make it easier for some clients to be more open about sensitive or embarrassing issues related to their case.

Concealment may have the potential to benefit the client, but it raises an important question about the extent to which not being seen may permit the client to be less honest. It may be possible for the client to be more evasive over the telephone. Online interviewers found that 'the lack of an embodied social presence of the researcher in the conversation makes it easier for participants to ignore researchers' requests' (James and Busher, 2006: 416). The current picture regarding the relationship between concealment and honesty is unclear. On the one hand, there are concerns expressed by many social science researchers that information obtained over the telephone is of poorer quality in terms of accuracy (Bryman, 2008; Holbrook *et al*, 2003, Marder, 2006). The tendency of respondents to lie to present a better image of themselves – 'social desirability responses' – appears to be greater when surveys are carried out by telephone (Holbrook *et al*, 2003: 81). On the other

⁴⁹ A survey by Rights of Women (2011) shows the 93 per cent of the all-female respondents would prefer in-person legal advice.

hand, in direct contrast, it is suggested that face-to-face interviews are more likely to produce more socially desirable responses than self-administered questionnaires completed in the absence of an interviewer (de Leeuw, 2008). Further, the ‘electronic distance’ of e-mail may enable people to be more frank than they would be in person, though they may also engage in unrestrained and irresponsible commentary (Marder, 2006: 259). The phenomenon of online abuse and internet ‘trolls’ has been explained as due in part to the disinhibition and emotional disengagement permitted by the anonymity of the internet (Hardaker, 2013). Thus, while concealment may enable some individuals to speak more freely, given the contradictory nature of current evidence, it is difficult to make any claims about remote advice being more or less likely to result in honest responses from clients. In view of the importance of frankness in the lawyer–client relationship, exploration of how the telephone affects this aspect of lawyer–client interaction merits further consideration within the empirical element of this thesis.

Pace

It is rarely acknowledged explicitly, but the pace and intensity of telephone encounters is another significant difference to face-to-face meetings. It has been found in social science methods research that telephone interviews are prefaced with fewer social niceties and the parties ‘get down to business’ much sooner (Irvine, 2011: 211; Shuy, 2003). Conversational analysis of qualitative research interviews has shown that telephone interviewers question respondents more intensively than face-to-face interviewers, asking more questions in a shorter space of time (Irvine, 2011). The intensity of the telephone interview means that it is not considered the optimal way for encouraging the client’s story to come out naturally, which may impinge on accuracy (Shuy, 2003). Feeling rushed may also mean that the client does not tell the lawyer important information or that the lawyer fails to identify the full extent of the client’s problems. This can have an adverse impact on the case (Buck *et al*, 2010). In this way, it can be seen how the speed imperative of telephone-only interviews may impede the client’s ability to tell their story in a natural manner.

There is a concern that the more concentrated nature of telephone contact will exacerbate lawyers’ existing tendency towards examining rather than encouraging the client to speak in their own terms. It is already a problem in the conventional

face-to-face setting that lawyers may narrow down issues prematurely within an initial consultation at the expense of establishing the client's view of the situation and their objectives (Hosticka, 1979; Sherr, 1986; 1999; 2000; Slorach *et al*, 2015). There is, however, an alternative picture presented in recent in-depth research, where lawyers and advisers recognise the importance of allowing the client to tell their story in their own time and, in the main, clients feel able to do so (Buck *et al*, 2010). The client-centred model takes the position that giving clients sufficient time to express themselves comprehensively is essential for the provision of good quality legal advice and casework (Sherr, 1999; Binder *et al*, 2011).

The time spent with the client can have impacts beyond the accuracy of client narrative. Where a client is encouraged by the lawyer to go through their whole story without substantive interruptions, they are less likely to interrupt the lawyer later in the interview, when they are being given advice (Sherr, 1999). Sherr (1999) also suggests that when clients feel more involved in their cases as a result of being listened to properly in the first instance, they are less likely to seek subsequent reassurance through frequent telephone contact with the lawyer. Thus, taking the time to listen to the client can benefit other elements of the conduct of the case.

It is often overlooked that silence or 'pause' is as important in lawyer-client communication as words. At the beginning of the interview, the 'helpful silence' (with a few words of encouragement) has been recognised as an effective method of prompting the client to tell their story naturally (Sherr, 1986: 334). Silence may also encourage the reticent client to speak (Buck *et al*, 2010). Clients often need time to formulate their thoughts, particularly where issues are awkward or painful and this may lead to pauses as the interview progresses. The literature suggests that lawyers should not rush to fill those silences (Binder *et al*, 2011; Webb *et al*, 2013; Elkington *et al*, 2014). In social science research interviewing, silence is considered 'as important as noise' (Letherby, 2003: 109). The social science research interviewer is advised to give the interviewee time to think about their replies and to 'hold the pause until the participant is ready to speak' (Legard *et al*, 2003: 157). By way of contrast, silence is barely tolerated in telephone encounters: when two parties cannot see each other, silence expresses absence or disengagement. In internet interviewing, 'on-line listening needs to be expressed as words, not silence.' (Mann and Stewart, 2003: 256). Holbrook *et al* (2003) suggest that telephone survey interviews may be completed more quickly than face-to-face interviews because of the awkwardness

associated with silence over the telephone. Face-to-face, listening can be conveyed by visual cues rather than words (Sherr, 1986; Binder *et al*, 2011). On the telephone, the lawyer can use verbal ‘non-committal acknowledgements’, such as saying ‘mm’ during the interview to encourage the client (Sherr, 1986: 351; Binder *et al*, 2011), but they have fewer non-judgemental techniques at their disposal. Silence or ‘pause’ in face-to-face interaction may therefore be more effective in terms of encouraging the client to tell their story.

Repetition is seen as an important element of advising. It gives the client the opportunity to ask more questions or to introduce a fact which has not yet emerged in interview. Sherr (1999: 73) states this stage should be given ‘full time’ and not rushed. This may be more difficult in the telephone-only environment where there appears to be more emphasis on dealing with matters quickly. In addition, repetition may come across as more laboured over the telephone where it is not moderated by non-verbal communication. The lawyer may therefore devote less time to ensuring that the client has understood their advice.

Given these findings regarding the importance of taking time with the client and permitting silence, it should not be ignored that one of the policy drivers towards the greater use of remote technology is that it is seen as less time-consuming and therefore less costly per case. Thus, in addition to the observed tendency of telephone interviewers to spend less time on conversations, the funding model of telephone advice is predicated on the expectation that lawyer–client interactions take less time. This factor is likely to influence the approach of lawyers working within these settings under contracts that have been negotiated on this basis. Legal aid lawyers are under considerable time and costs pressures in any event. The risk is that with the switch to telephone-only communication, the financial focus on speed, coupled with some lawyers’ tendency towards legal categorisation, will interfere with clients’ ability to explain their problems naturally. This may have implications both for the information that the lawyer receives and the relationship between lawyer and client.

Ritual

Client behaviour will be influenced by the symbolic messages conveyed by rituals in the legal setting. The physical office environment and the greeting the client receives at reception have a significant influence on how comfortable a client feels from the

outset of their advice experience (Sommerlad and Wall, 1999; Buck *et al*, 2010; Sherr, 1999). The opening stage in the appointment, ‘the meet and greet’ between lawyer and client, will also influence how willing the client is to disclose information about their problem. The way the lawyer behaves when first meeting the client will send the client messages about whether they are being treated as an equal by the lawyer (Sherr, 1986). Being accorded respect and treated with dignity by their legal adviser is very important to clients (Sommerlad and Wall, 1999; Sommerlad, 1999; Buck *et al*, 2010). Most solicitors handle this stage competently, although a significant minority do not (Sherr, 2000). Poorly executed, these welcoming rituals can unnerve clients, but, as the research into CLACs indicates, when performed properly, they can provide the foundation for a productive interview (Buck *et al*, 2010).

The specific welcome rituals of the face-to-face meeting do not, however, translate easily into the telephone-only environment. The more perfunctory nature of initial telephone contact has been identified as a feature of telephone interviewing in social science research (Shuy, 2003). Research into medical teleconsultations has found that the lack of a conventional introductory phase to the meeting can destabilise both doctors and patients (Pappas and Seale, 2009). Holt (2010) also discovered that research participants in telephone interviews may struggle to orient themselves without the expected interview structure and a lack of verbal cues. This may lead to the client feeling less comfortable with the lawyer and therefore more reticent in explaining their problem. Clients have shown too that they value the reassurance given by the private nature of the interview room (Buck *et al*, 2010). Fears of being overheard when using telephone debt advice services have been expressed by face-to-face clients (Ellison and Whyley, 2012b). As a result of not sharing a physical private space with the lawyer, the telephone interview may suffer from a perceived lack of privacy on the part of the client. This may make it a more difficult situation in which to build trust quickly. Even though the telephone is now old technology, clients may feel disoriented by the more limited introductory rituals and lack of private space in remote interaction and find it more difficult to engage with the lawyer. How much the absence of the face-to-face rituals of welcome and privacy affects telephone interviewing and the willingness of clients to disclose information is an issue this research will explore further in Chapter 7.

Tangibility

It is submitted that there is a physical dimension to face-to-face lawyer–client interaction which has an independent effect on the impact of the meeting on the individuals concerned. In face-to-face advice, this is believed to manifest in two ways, firstly in relation to the influence of physical presence and secondly in respect of the tangibility of physical documents. It is argued that this means telephone interaction has the potential to hinder the ability of lawyers to get across their advice to clients and the willingness of clients to follow the advice they have been given.

Dealing first with physical presence, it is posited that physical presence has a greater impact on individuals than remote contact. Research suggests that proceedings conducted over videolink have an air of unreality and make less of an impression on defendants (Rowden *et al*, 2010). The same research found that defendants appearing by videolink had frequently not understood the proceedings and relied on the prison officers with them to explain what had happened in the hearing (Rowden *et al*, 2010).⁵⁰ This suggests that being present may contribute to clients' understanding. As mentioned above, studies have also shown that jurors are less likely to believe evidence given through videolink than in court (Leader, 2010; Goodman *et al*, 1998; Orcutt *et al*, 2001). The experiences of some magistrates and judges within the Virtual Court pilot confirmed that it was harder to assert their authority via videolink (Terry *et al*, 2010). This indicates that the extent to which lawyers are able to make an impression on clients when communicating their advice to them may be diminished over the telephone due to the lack of physical presence. The cumulative effect may be that advice given over the phone does not have the same authoritative impact on the client as advice given in person.

At the same time, a reduction in lawyers' authority over the telephone may provide an opportunity for clients to assert themselves more forcefully within the relationship. In addition, the disruption to established ritual referred to above, may disorient some clients, but others may feel less constrained by social norms of behaviour over the telephone. Nicolini's (2011) study of telemedicine showed how a patient at home did not have to conform to the behaviours of the patient in hospital and was able to assert himself in terms of a decision not to take his prescribed

⁵⁰ It should be noted, however, that defendants in traditional trials do not always follow the proceedings. This may not be a specific feature of videolink sentencing, although a videolink may exacerbate the effect.

medication. If defendants are more disinhibited in the virtual court environment, as suggested by Rowden *et al* (2010), some clients may feel less constrained by behavioural norms once they are outside the lawyer's physical presence. Being on the telephone, outside the lawyer's presence and away from the office environment may encourage the client to assert their own narrative more forcefully. This could lead to a solution that is more effective in meeting the client's needs.

These studies suggest that telephone communication may have the potential to alter power relations between lawyer and client. As explained in the previous chapter, the inequality of power in the lawyer–client relationship is an issue that has been raised by a number of critical legal scholars. Within this body of work, the poverty lawyer has been condemned for using their power to silence the client voice and replacing it with a narrative of victimhood dictated by the objectives of legal process and the legal establishment (White, 1990; López, 1989; Alfieri, 1992). By lessening the lawyer's physical authority over the client, telephone-only communication may have the potential to help the client to gain greater control over the case and this may have benefits both in terms of the client experience and the outcome of the case.⁵¹ The lack of conclusive evidence in this area makes it difficult to say whether clients will feel able to be more assertive as a result of being outside the physical presence of the lawyer, but it is clearly an issue to explore.

It should be noted, however, that should telephone contact result in increased client assertiveness, this may not always be a positive outcome. Failing to take their heart medicine because of feeling more able to ignore medical advice over the telephone may damage a patient's long-term health (Nicolini, 2011). By analogy, if a client feels less obliged to comply with advice as a result of the more limited influence of telephone advice, it will not necessarily have a better legal outcome for them. In some situations, the adviser needs to be able to make an impact on the client in order to stop them losing their home (for example, by convincing them to pay their rent out of a low income). In addition, telephone-based lawyers will be particularly reliant on clients taking certain steps or providing key documents. In these circumstances, co-operating with the lawyer will be in the client's best interests and creating a situation where the client feels less able to ignore the lawyer may

⁵¹ Hosticka (1979) found that when clients were persistent in resisting lawyers' attempts to control the initial interaction, the lawyers spent more time and effort on their cases. It may also be that the lawyers had to spend more time and effort on these cases, because the clients were more difficult.

serve the client better in legal terms. The indication is that this is likely to be the face-to-face interview.

In any event, social science research suggests that the inherent imbalance of power between researcher and respondent may be exacerbated over the telephone. This is because the interviewer, as the question-asker, has more control over the interview than the interviewee and telephone interviewing exaggerates this effect (Shuy, 2003). Telephone researchers take more control of the interview through ‘conversational floor holding’ and telephone interviewees generally offer less detail or elaboration (Irvine, 2011: 212). The more speed-driven nature of telephone interactions is also likely to result in clients having less time to give their input into the case. Thus it seems probable that it will remain within the ambit of the lawyer to decide the extent to which the client is able to take control of the process over the telephone. The literature on telephone interviewing in social research methods suggests that it may be unrealistic to expect telephone interaction in social welfare law to result in any significant shift of power from lawyer to client in most cases. Accordingly, if – as appears to be the case with a significant minority of lawyers – the lawyer is more concerned with categorising the client and their problem than listening to them, the telephone seems likely to enable them to pursue this type of approach more easily. It may be that telephone communication consolidates the lawyer’s power, rather than diminishes it. These are issues that this research will seek to illuminate through empirical investigation.

Another proposition is that presence makes a difference to client understanding because the lawyer gives the client a tangible being in whom to locate legal meaning. The law is made up of many abstractions and theoretical concepts that are unfamiliar to the majority of laypeople. Despite this, or perhaps because of it, legal process has continued to privilege physical presence as the means of explaining and adjudicating upon these rarefied intellectual concepts. Tangibility has therefore assumed a fundamental role in translating the abstractions of the law into the everyday reality of the people engaged in legal procedures. The concern is that in the depersonalised remote environment of telephone advice, the law will become even more difficult for social welfare law clients to understand because they will be unable to attach abstract legal concepts to a physical person. This issue is of particular relevance to the most vulnerable clients, often living in situations of material and mental insecurity. In this work, the intention is to focus on the

deficiencies in current knowledge regarding the meanings attached to presence and tangibility in our legal system and how these meanings are disrupted by remote forms of communication.

Documents provide another physical element in the advice process. Despite the increasing use of electronic documents, in matters of social welfare law, such as housing law and welfare benefits, the majority of the client's relevant documents, including tenancy agreements, notices and benefit determinations, will probably be in physical form. The physical document also continues to be an important part of the law and the legal process. The conduct of legal proceedings is dependent on the document⁵² and dominated by notions of the 'original' document.⁵³ Original court seals and signatures are required on documents to provide validity to court documentation. There are provisions around the use of electronic documents within the court process,⁵⁴ but they are recent adaptations to rules originally intended for physical documentation. In cases involving private individuals, the physical paper document continues to be highly relevant.

Despite the significance of the document in most legal cases, its physical manifestation does not often feature in the current academic discourse on lawyering. Legal anthropologists, such as Riles (2011: 46, 175–6), are concerned with investigating how legal documents as 'material artifacts' of law configure technical understanding of the law (see also Johns, 2012). They do not, however, deal with the practical application of the document in the provision of day-to-day legal advice. Conversely, in the legal practice literature on lawyer–client interviews, the document is rarely mentioned. Furthermore where it does arise, it receives only limited attention within the interview as a whole (Binder *et al*, 2011; Sherr, 1999). The underlying assumption is that the document will be available to the adviser when giving advice. Evidently this is unlikely to be the case in most initial interviews taking place over the telephone. Research with telephone debt advisers highlighted problems around the transfer of documents, particularly where cases involved a high

⁵² For example, under the Civil Procedure Rules (CPR) Rule 7.2, proceedings are started by a claim form (Form N1) being issued (MOJ, 2015b).

⁵³ Under CPR 31.8, a party is required to disclose documents which are or have been in their physical possession, to which they have a right to physical possession, or which they have the right to inspect or copy (MOJ, 2015b).

⁵⁴ For example, CPR Practice Direction 5B – Electronic Communication and Filing of Documents and Practice Direction 31B – Disclosure of Electronic Documents (MOJ, 2015b)

volume of papers (Patel and Smith, 2013b). Concerns about managing case papers and documents were a barrier to face-to-face debt clients being willing to use telephone services (Ellison and Whyley, 2012b). Electronic communication may provide a solution to this issue. The research undertaken on the Telephone Gateway found, however, that users varied in their ability to use online communication. Users with complex needs in particular did not find it easy to use e-mail to send documents (Paskell *et al*, 2014). It appears therefore that where cases involve complex documentation, telephone advice may be less effective. The extent to which the telephone advice process is hampered by the lack of access to documents is an issue that will receive further in-depth consideration in the analysis of the empirical evidence in Chapter 8.

Conclusion

It is clear from the literature discussed in this chapter that the lawyer–client relationship is multifaceted. The model of client-centred lawyering has been used to consider the complex network of factors that contribute towards the interpersonal and instrumental aims of the lawyer–client interview. The current literature offers a number of suggestions regarding how the relational aspects of the interview may be affected by the more limited emotional engagement of telephone-only interaction. The functional elements of the interview – listening to, questioning and advising the client – have also been explored from the perspective of existing knowledge, with specific consideration of how these aspects of the interview are likely to differ when conducted over the telephone rather than face-to-face. Existing studies raise significant issues regarding how the practical functions of the lawyer–client interview may be affected by telephone-only interaction. The principal areas identified for further investigation are non-verbal communication, concealment, pace, and tangibility in terms of the impact of physical presence and access to documents. The picture is mixed, but it does appear that there is scope for the telephone interview to perform less effectively in the provision of advice in a number of significant areas. The purpose of this research is to see whether and how these possible consequences of telephone-only advice for the emotional and functional elements of the lawyer-client interview materialise in real life advice settings. In the next chapter, I turn to the methodology and methods that I used to further the purpose of the research and answer these questions.

Chapter 5: Methodology and Methods

Introduction

The methodology and methods used in relation to a research project determine the answers that can be generated to the questions asked. At the same time, the methodology and methods adopted must be able to produce data that addresses the specific questions posed. In this case, three main questions have been posed in earlier chapters: How will the remote location of telephone services affect the delivery of telephone-only services? What impact will telephone-only interaction have on the trust, rapport and interpersonal elements of the lawyer–client relationship? And how will the factors of non-verbal communication, concealment, pace, ritual and tangibility differentially affect the practical functioning of the lawyer–client interview, depending on whether it takes place face-to-face or over the telephone? This chapter considers the methodology and methods that have been employed to answer those questions.

The purpose of this chapter is to explain my decision to conduct a qualitative empirical study to answer the questions raised in this thesis. It sets out how the methodological strategies of grounded theory methods and feminist standpoint theory fit with the priorities of studying in an under-researched field, developing theories about how telephone and face-to-face advice are experienced and conducting research with the aim of improving the evidence available to policy makers. I go on to explain my reasoning for using the methods of semi-structured interviews and observations to investigate the research questions, and outline the ethical issues that arose in respect of this project and how they were resolved. Finally, I detail the formulation of my potential research sample, the problems I encountered in relation to access and describe how, with the benefits of insider status, I was able to recruit participants and build a substantial body of original research material based on interviews with lawyers, advisers and clients.

Qualitative methodology

As the discussion in previous chapters has shown, there is limited academic research in the area of telephone advice and lawyer–client interaction in the field of social

welfare law. One aim of this research is to contribute towards rectifying that situation. Qualitative research is particularly effective for my research because of its emphasis on gaining in-depth knowledge of the perceptions, behaviours and feelings of individuals (Snape and Spencer, 2003; Bryman, 2008). It is a methodology that centres on the collection and analysis of verbal, visual and other non-statistical data in order to improve understanding of social phenomena and human behaviour (Robson, 2011; Ritchie, 2003). It is therefore considered a good basis from which to form theories about the nature of people's lived experiences (Bryman, 2008; Flick *et al*, 2004; Letherby, 2003; Miles and Huberman, 1994; Strauss and Corbin, 1998). It is also an apt choice when seeking to develop knowledge in an area such as this where current understanding of the subject is under-developed (Flick *et al*, 2004; Ritchie, 2003; Strauss and Corbin, 1998). In relation to my own research, the absence of empirical evidence might mean that abstract explanations of lawyer–client interaction would be speculative and evidentially unsound. Empirical research provides me with a real-life basis from which to start to analyse interaction between lawyers and clients and to explain what social factors shape that behaviour.

Qualitative research is often associated with a postmodernist ideology that 'There are no fixed or overarching meanings because meanings are a product of time and place' (Snape and Spencer, 2003: 9).⁵⁵ In contrast, quantitative research focuses on the analysis of statistical data and is more closely allied with the notion of knowable objective 'facts' or a single 'reality' or 'truth' (Hammersley, 2008:10; Flick, 2009:19; Bryman, 2008: 680; Robson, 2011: 16–7; Letherby, 2003: 51). Rather than being concerned about a single 'truth' or 'reality', Kvale and Brinkmann (2009: 247) counsel us to concentrate instead on 'defensible knowledge claims'. Employing the concept of 'subtle realism' in qualitative research enables us to accept the premise that there can be 'multiple, non-contradictory and valid descriptions and explanations of the same phenomenon' (Hammersley, 1992: 51).⁵⁶ Thus, while I acknowledge that it may not be possible to reproduce a single truth through my

⁵⁵ The apparent conflict between adopting an interpretivist approach and producing authoritative accounts of social phenomenon has been the subject of considerable wider debate within the social sciences (see, for example, Flick, 2009; Snape and Spencer, 2003; Bryman 2008; Hammersley, 1992, Robson, 2011).

⁵⁶ 'Subtle realism' defines reliable knowledge as 'beliefs about whose validity we are reasonably confident' (Hammersley, 1992: 50–2).

research, I believe it is feasible to put forward a valid explanation of a phenomenon, provided it is supported by convincing arguments based on empirical evidence.

A common criticism of qualitative research is that, due to the small populations studied, it is not generalizable in the same way as quantitative research, and therefore has little to say beyond the research setting (Kvale and Brinkmann, 2009). It has been suggested that this is a misconception of the value of qualitative research: it may not be able to provide universal generalisation, but there is a strong argument that it can produce ‘theoretical’, ‘analytic’ or ‘conceptual’ generalisation, whereby findings from individual cases are developed into abstract concepts that may be applicable beyond the immediate study (Robson, 2011: 160; Flick, 2009: 407; Kvale and Brinkmann, 2009: 262–3, Miles and Huberman, 1994: 279). Theoretical generalisation is more tentative than statistical generalisation; it is more concerned with the possibility of transfer of concepts to other contexts than with making definitive conclusions (Miles and Huberman, 1994). Theoretical generalisation has been criticised for vagueness and a lack of verification or justification (Hammersley, 2008). Nonetheless, it is possible to appreciate how a theory developed in one setting may help to illuminate what is happening in other situations with similar characteristics (Robson, 2011). The area being studied in this research is the impact of removing face-to-face contact in professional services to disadvantaged groups. In a context where remote technology is increasingly being used to deliver public services,⁵⁷ it is possible therefore to see how the theories developed in this project might have application in other public service-delivery settings.

Grounded theory

To aid my understanding of client and lawyer perspectives and the development of theory in this area, I use grounded theory methods in this research. ‘Grounded theory’ is a research strategy whereby theory emerges from the data, rather than being arrived at by testing a preconceived hypothesis (Glaser and Strauss, 1967: 2–3; Strauss and Corbin, 1998: 12–13). Once radical, it is now a well-established

⁵⁷ For example, ‘Probation officers face redundancy in plan to replace them with machines’ Travis, *Guardian*, Monday, 30 March 2015, available at <http://www.theguardian.com/society/2015/mar/30/probation-officers-face-redundancy-in-plan-to-replace-them-with-machines> (last accessed 6.10.15)

qualitative methodology, which has had a significant impact on the development of qualitative research (Flick, 2009). The principle underlying grounded theory is that ‘theory derived from data is more likely to resemble the “reality” of social phenomena and will therefore ‘fit’ the situation being studied and explain the behaviour observed (Glaser and Strauss, 1967; Strauss and Corbin, 1998: 12). In grounded theory, theory development is central to every decision during the course of research, including data collection (Robson, 2011; Flick, 2009; Charmaz, 2006). It is a particularly appropriate choice for dealing with an under-theorised topic, as is the case here, because the practice of starting with ‘real-world’ data, means it is considered especially useful by social scientists for researching in areas where no or little theory exists (Robson, 2011; Flick, 2009).

The original version of grounded theory propounded by Glaser and Strauss (1967) proposed a systematic approach to the gathering and analysis of qualitative data with the goal of generating theory from the data. This resulted in grounded theory gaining a reputation for methodological rigour (Robson, 2011; Hammersley, 2008). However, newer iterations of grounded theory emerged that were increasingly prescriptive in terms of methodology and grounded theory was criticised as too rigid and unresponsive to the research question (Charmaz, 2006). In response to this, more flexible applications of grounded theory developed (Flick, 2009; Robson, 2011; Bryant and Charmaz, 2007; Charmaz, 2006). The research methods I have followed in this project are in line with these more flexible approaches to grounded theory. In practice, this meant that I drew on the current body of knowledge when developing my research questions, and that I used a test of ‘theoretical sufficiency’ during data collection.

Formulating my research questions with reference to existing theoretical knowledge is a valid approach within grounded theory (Flick, 2009). It is sometimes claimed that the original version of grounded theory proposed by Glaser and Strauss (1967) requires a researcher to come to a project without any prior knowledge of the existing theories in the field. It is posited that this reflects a misunderstanding of the early work of Glaser and Strauss (Strauss and Corbin, 1998; Flick, 2009). Several times within their work they refer to a grounded theory being a combination of emergent and existing theories. They require only that existing theories should fit and be relevant to the data emerging from the study. Their chief concern is that a researcher should not try to fit the data to a preconceived theory, and hence limit

their ability to generate theory that is truly grounded in the data. What remains critical in any version of grounded theory is that conceptual development is driven by the data itself (Glaser and Strauss, 1967).

Thus, in framing my research questions, I examined the existing literature to identify the deficiencies in current research and the issues and concepts that seemed most likely to be relevant to telephone and face-to-face interaction. I was able to use my insider knowledge of the field to assist me in this regard (Strauss and Corbin, 1998). Subsequently, throughout the course of my fieldwork and data analysis, I considered whether and how these concepts manifested themselves in the data, but, in accordance with the requirements of grounded theory, I also attempted to remain alive to how the data might challenge those theories or produce entirely unique and unanticipated ideas. I set out below in more detail how I employed grounded theory techniques in relation to the analysis of data.

During data collection, I applied a test of 'theoretical sufficiency' to my research. 'Theoretical sufficiency' requires explanatory categories to be well developed in order for data collection to end (Charmaz, 2006: 114). This differs from 'theoretical saturation', which demands that a category is exhausted for data collection to cease (Glaser and Strauss, 1967: 61; Strauss and Corbin, 1998: 136). 'Theoretical sufficiency' is more realistic for a researcher in my position, working alone without a budget and with limited time and personal resources. In my findings I am clear about which aspects of the data are being used to support the theories that I am advancing and I do not make a claim unless it is evidenced by the data.

Reliance on the data is a key benefit for this project, because it means that the voice of participants is central to the development of theory. Conscious of my 'insider status' in relation to this project as a former social welfare lawyer, I was able to use grounded theory methods to give primacy to the experiences of my research participants. This also acted as a check on my own preconceptions (Strauss and Corbin, 1998). The starting point for analysis in this project was consideration of the material obtained through the interviews and observations with participants. The data was not used to test pre-formulated hypotheses. As required by grounded theory, the research findings and any theories developed during this project emerged from the experiences of the research participants.

Feminist research perspective

I have adopted a feminist research perspective in this research. There is no innate reason why research undertaken through a feminist approach should be qualitative, but, because of its in-depth exploration of individual experiences, a large proportion of feminist research continues to be conducted through qualitative studies (Letherby, 2003; Robson, 2011; Flick, 2009). As a result of its emphasis on researchers deriving theory from ‘real world’ data, grounded theory methods are also considered to have a high degree of resonance for many feminist researchers (Letherby, 2003).⁵⁸ I appreciate that there is no single feminist research methodology or method, but there are common features within the feminist approach, many of which are relevant to this project.

‘Feminist standpoint theory’ works on the premise that there is no objective truth, and that different social experiences condition knowledge (Letherby, 2003: 45; Harding, 2004: 7–8). This context-driven perspective on knowledge has resonance for me because of my ‘outsider within’ status as a black woman in the academic establishment (Hill Collins, 1986/2004: 103). Hill Collins (1986/2004: 122) describes how the ‘outsider within’ status of Black women intellectuals means they are more likely to consider that academic research ‘places white male subjectivity at the center of analysis’. Traditionally, researchers have removed themselves from the verbal and written accounts of their research in an attempt to appear objective, but an alternative, feminist position is that the self is always present in the research. Feminist theory explicitly recognises the ‘personhood’ of the researcher when conducting research (Letherby, 2003: 45; Smith, 1974/2004; Oakley, 1981/2004). It is argued that by leaving the researcher out of the final account there is a failure to include a relevant factor (Stanley and Wise, 1993). The willingness of feminist researchers to recognise the impact of the individual on their research means that their work is often criticised for a lack of objectivity. In response, it is contended that ‘a strong reflexivity’ and being open about subjectivity are safeguards against bias, because value-explicit research does not adhere to the pretence of neutrality (Harding 1993/2004: 136; Letherby, 2003). By providing information on our own values and beliefs, we enable others to judge the value of our research for themselves

⁵⁸ The proposition that researchers should come to research without pre-existing theories has led some feminists to reject grounded theory, but, as stated above, I consider that this is an inaccurate view of how grounded theory operates (Letherby, 2003; Flick, 2009).

and thus make bias less, not more, likely (Snape and Spencer, 2003). I would argue that feminist standpoint theory allows me to make reference to my own experiences as a social welfare lawyer in order to produce a more multifaceted account of the nature of lawyer–client interaction.

I am aware that as a black, female, former social welfare lawyer and academic, I am a member of both privileged and subordinated groups.⁵⁹ The low numbers of black people in the legal profession⁶⁰ and the academy⁶¹ mean that I do not necessarily fit the traditional mould of what either clients or lawyers expect. It has been suggested that the interviewer’s personal characteristics in terms of social class, race, age, gender and disability may influence the interviewee’s responses (Miller and Glassner, 1997). The self-awareness that I employ as a feminist researcher meant that I was reflexive about this issue and I do not believe that my personal characteristics caused problems with conducting this research.

This research situates itself within the academic tradition of socio-legal enquiries into lawyer–client interaction. It does so within a political context with regard to the legal aid reforms and with the aim of having an impact on the current policy debates. An important attribute of the feminist position on social research is that, in common with other forms of critical theory, ‘the value of findings is judged in terms of their political and emancipatory effects’, not purely in respect of the accuracy of their interpretations or the nature of their theories (Snape and Spencer, 2003: 9). Thus, the focus of feminist principles on research that intends to create positive change chimes with my own ambitions with this project.

Evaluative criteria in qualitative research

Establishing the credibility of my work is vital. This can be more difficult with qualitative research, where the lack of conventions of validity means that questions of quality are more contentious than in quantitative research. The result is that it can be difficult for readers to judge how much confidence to place in research findings, and for researchers to assess the accuracy of their conclusions (Miles and Huberman,

⁵⁹ The literature on intersectionality deals with the failure of the conventional discourses on race, feminism and class to recognise the complexity of experience of black women and the combined impact upon them of multiple sources of subordination (Crenshaw, 1989; 1991)

⁶⁰ Among practising solicitors 2 per cent identified as ‘Black’ in 2013 (SRA, 2013)

⁶¹ Among non-professor academics 1.2 per cent are ‘Black’ UK nationals (Equality Challenge Unit, 2014)

1994; Flick 2009; Robson, 2011). Hammersley (2008) is critical of the failure of qualitative researchers to arrive at a standard paradigm for the assessment of the validity of research results. One of the key attractions of grounded theory is that its systematic approach to the research process recognises the need for methodological rigour (Robson, 2011; Hammersley, 2008).

Common to the various ways in which research credibility may be achieved in qualitative research are the procedural measures followed and the transparency of the research process (Flick, 2009). The human researcher has many possible deficiencies as an analyst (Robson, 2011; Miles and Huberman, 1994). The researcher is therefore required to demonstrate the validity of their findings by documenting the process of analysis through which those findings were reached (Miles and Huberman, 1994). In this way, others will be able to assess the soundness of their conclusions (Kvale and Brinkmann, 2009; Flick, 2009; Robson, 2011; Miles and Huberman, 1994; Hammersley, 2008). This has a useful crossover with the feminist research principle of reflexivity set out above, as it is through the transparency of my research, as evidenced in my written account, that the accuracy of my work can be critically judged (Letherby, 2003).

I chose a mixed methods approach in this research. This was not to provide triangulation, in terms of using research methods from different epistemological origins to validate research findings, but to produce a more multifaceted picture of the complicated phenomenon of lawyer–client interaction (Mulcahy, 2000; Hammersley, 2008; Flick, 2009; Ritchie, 2003). The data gathered by different methods may sometimes confirm what has been said or seen elsewhere and in other instances may contradict it. However, contradictory results are not necessarily a failure of the research and can improve its quality by providing a deeper, more complex understanding of the phenomenon being studied (Mulcahy, 2000; Robson, 2011). It is argued that by using two methods in combination, I have enhanced the complexity and the credibility of my research findings.

Research methods

I elected to combine observations and interviews in this project. It seemed important to have access to both types of research material, because of the different qualities that they bring to the research. Interviews enabled me to understand the attitudes, emotions and experiences of the participants from their own perspective.

Observations allowed me to see whether participants' behaviour in lawyer–client interviews reflected what that they had told me in interview. Observations can act as a useful check on interview material as well as being a valuable source of data themselves and it seemed likely that lawyers and advisers would want to present themselves favourably in interview (Ritchie, 2003; Denscombe, 2007; Becker and Geer, 1969/2004; Robson, 2011; Hammersley, 2008). There were sometimes instances of interviewees making statements in interview that were not borne out in observations and, by using both methods, I was able to develop a more nuanced and sophisticated understanding of lawyer–client interaction over the telephone and face-to-face.

Interviews

The majority of the material in this thesis has been gained through interviews with advisers and clients. I used semi-structured 'intensive' interviews (Charmaz, 2006: 25–6). These are less structured than a survey or questionnaire, but more structured than participant observation or ethnography (Gaskell, 2000). This flexibility proved useful when applying grounded theory method, as it gave me, as the researcher, scope to probe and ask questions that were pertinent to the theories that were developing as the project progressed (Charmaz, 2006). The 'authenticity' of the data obtained in interviews is a much-debated issue.⁶² Interviewee accounts are seen as potentially unreliable: interviewees may have a distorted perspective of a situation, or they may omit certain topics from their answers, either on purpose or in ignorance (Miles and Huberman, 1994; Letherby, 2003). The radical social constructionist argument is that interview data can only tell us about what happens in interviews generally or about the content of the specific interview in question (Hammersley, 2008; Robson, 2011; Miller and Glassner, 1997). I would tend to agree with those who respond that this approach is excessively cautious (Hammersley, 2008). I do not deny the importance of scepticism about truth claims, but interactionists maintain that 'people create and maintain meaningful worlds' (Miller and Glassner, 1997: 102). Thus, while I was circumspect in relation to the accounts I was given by

⁶² Despite the widespread use of qualitative interviews in social research, this issue continues to be contested (Jones, 1985/2004; Holstein and Gubrium, 1997; Miller and Glassner 1997; Hammersley, 2008).

interviewees, they still provided valuable and interesting data about how lawyers and clients make sense of and negotiate both face-to-face and telephone interactions.

As I was using semi-structured interviews, my interviews were steered by topic guides. In creating the topic guide, I included the issues outlined in the earlier chapters of this thesis, specifically, the place of delivery, interpersonal factors, non-verbal communication, concealment, pace and ritual, the power dynamic, and the practical differences between telephone and face-to-face interaction when dealing with complex matters and/or vulnerable clients. The aim when drafting a topic guide for a semi-structured interview is to cover the chief dimensions of the subject area, but to also ensure it is sufficiently open to enable different aspects to be covered or new ideas to emerge (Flick, 2000; 2009; Gaskell, 2000). When drafting the topic guide for this research, there was a tension between covering all of the areas that were of potential interest to me in terms of the research and creating a manageable interview. I was cognisant of the time and other pressures under which interviewees would be operating and the need to conduct an interview that would not take any more than an hour. I concentrated on the areas where interviewees would have the most to offer in terms of their real life experience and understanding, rather than trying to engage them in discussions about abstract conceptual issues. The inspiration for the eventual format of my topic guide was the topic guide that had been used by the Legal Services Research Centre (LSRC) during their Community Legal Advice Centre (CLAC) research (Buck *et al*, 2010). I also found a list of sample questions to be a useful prompt during the interviews.

In addition, it is part of grounded theory that the topic guide is a living instrument and should be revised as the research progresses, in order to explore areas of theoretical interest as they arise from the data. Accordingly, during the course of the research I made a number of adaptations to the topic guides. The changes I made were in order to better facilitate the emergence of unanticipated concepts and also to further the development of emerging theories. Copies of the first and last versions of the topic guide are provided in Appendix C.

Piloting the topic guide

A pilot study is advisable in research projects in order to test how well research design translates into practice, and to make any necessary adjustments before proceeding to the main phase of the project (Robson, 2011). I therefore arranged a

pilot phase for this research in July 2013. However, I could not conduct the pilot as envisaged, because I was unable to have direct access to clients. Nevertheless, I carried out four pilot interviews with non-housing lawyers with considerable telephone advice experience in July and August 2013. Overall the lawyer topic guide seemed to perform well in the pilot. Two questions in the topic guide that were less successful were in relation to preparation and how the telephone and face-to-face ‘encounter’ differ. I decided to keep these issues under review as I proceeded into the full project.

The pilot stage was useful, but because these were not housing practitioners, there was a different case and client profile, and it was not until I embarked on the full-scale research that I was able to see the ways in which the topic guide needed to be amended. There were two particularly significant revisions of the topic guide during the course of the research. Firstly, after my first few interviews with telephone housing advisers, the topic guide was changed to include a more specific question regarding the issue of local knowledge (see further Chapter 6). Then, at a later stage of data collection, I amended the structure of my interviews to simply ask at the outset whether the interviewee considered there was a difference between telephone and face-to-face advice. This resulted in a more spontaneous method of interviewing which allowed more room for the language and conceptual framework of my interviewees to emerge.

Conducting interviews

All of my in-depth interviews with lawyers and advisers and most of my in-depth interviews with clients were carried out face-to-face. I offered all clients the option of a home visit to carry out my interview. Most face-to-face clients chose to be interviewed in their adviser’s office, but this was not possible for the telephone clients. Interviewing clients at home could be problematic, as it was often difficult to get them to focus on the interview. Distractions included the television, telephone calls and dealing with children. For practical reasons, I was not able to interview everyone I observed or observe everyone I interviewed.

I also carried out three telephone interviews at the request of the clients concerned (two were face-to-face clients whose cases had ended, and one was a telephone client). This gave me an opportunity to compare and reflect upon my own experiences of using these two forms of communication. I found that, over the

telephone, I was making a conscious effort to verbalise my reaction to what I was being told when speaking to the client. I used a number of emphatic verbal enforcers (for example, 'Oh dear!', 'Oh no!'). I also noticed that, if I failed to do this for any length of time, the client would prompt me for a verbal response. Two of the clients responded well in interview, but a third was more reticent and did not react well to my efforts to draw more information out of him. Over the telephone, I felt that I tended to go through my questions more quickly, and I was more uncomfortable with silence and pauses than I was face-to-face. This meant that, on a few occasions, the client and I would speak at the same time. I was also aware that, even where clients were co-operative, face-to-face, I would have felt more relaxed about taking up more of their time and going into greater detail on background issues. This is borne out by the fact that the telephone interviews lasted for an average of 36 minutes, compared to 54 minutes for interviews conducted in person. Thus it seemed my own experiences were echoing many of the issues flagged up in the social science interviewing literature; with possible implications for the lawyer–client interview.

There was often an educational and social inequality between myself and client interviewees. Power asymmetry between researcher and participant is common in interview research: the researcher defines and controls the terms of the interview.⁶³ She also decides on the authoritative interpretation of the meaning constructed in the interview (Kvale and Brinkmann, 2009; Letherby, 2003). It was therefore my responsibility to be sensitive to the power dynamic and adapt my behaviour in order to facilitate the client voice. I did so by adopting a relatively informal and clear manner, and accepting what clients said in the terms that they offered it. This often involved summarising back to clients what I believed they had meant in their answers, for them to confirm or reject. My previous experience of dealing with disadvantaged clients assisted me in this regard.

Observations

I chose observations as one of the research methods in this project because they give researchers direct access to the actual practices of research participants within the studied environment (Robson, 2011; Ritchie, 2003). I used non-participant 'unobtrusive observations' in this study to compare how lawyers and clients behave

⁶³ The interviewing of elite individuals is a notable exception to this (Stephens, 2007)

during face-to-face and telephone consultations. It is essential when carrying out observations to recognise that the ‘naturalness’ of what is observed is likely to be affected by the presence of the researcher (Flick, 2009; Robson, 2011; Miles and Huberman, 1994). I tried to reduce the ‘observer effect’ by adopting a ‘minimal interaction’ strategy and engaging with the participants as little as possible (Robson, 2011: 331). Despite this, on occasion in the face-to-face observations, clients and advisers would include me in the discussion. Clearly, it was easier to be unobtrusive over the telephone, and often I formed the impression that the clients had forgotten I was there. Both face-to-face and telephone clients subsequently told me that my presence in the interview or on the telephone had not been an issue for them. I sometimes felt that my presence might have affected the adviser in terms of an initial nervousness, but in most situations I felt I was obtaining a good approximation of how the interview was likely to have proceeded in my absence.

I created an observation schedule (see Appendix D). This focused on discernible elements of the interview, such as non-verbal communication, pace, ritual and conflict, previously identified as relevant from my development of the research question. As with the topic guide, I also left space on the schedule to include ‘unanticipated areas of interest’. In fact, I did not find it practical to use the observation schedule during the lawyer–client interviews. Instead I found it more useful to write detailed notes during the observations, which I transposed onto the schedule after the interview. I found this process valuable in respect of categorising and hence analysing what I had witnessed. By observing, I was able to gain first-hand knowledge of the behavioural aspects of the consultation between lawyer and client (Denscombe, 2007; Robson, 2011; Hammersley, 2008). This included noting body language, which is a major issue within this research. I would argue that combining interviews and observations resulted in a robust and comprehensive basis on which to conduct an analysis of the phenomenon studied.

Ethics

Ethical questions arise in every aspect of qualitative research (Flick, 2009). The involvement of human actors in research gives rise to risks of potential harm, so ethical standards have been developed for the protection of both research subjects and researchers (Kvale and Brinkmann, 2009; Lewis, 2003). I recognise that ethical decisions are always the responsibility of the researcher and receiving approval from

an ethics review board or committee does not mean that the researcher can abdicate ethical responsibility (Robson, 2011; Flick, 2009). The issues that I identified in relation to the ethics of my research were: the informed consent of participants, guaranteeing anonymity and confidentiality, not causing harm to participants and researcher safety. I followed the LSE's ethical procedure and used its ethics review questionnaire to record the ethical issues that might arise during this project and explain the steps I would take to deal with them. I was also assisted by having the LSRC ethical review for their CLAC research to consider.

Every participant in this research was asked for their consent in advance and given sufficient information to understand what they were consenting to, and to know that their participation was entirely voluntary (Robson, 2011; Flick, 2009; Miles and Huberman, 1994; Kvale and Brinkmann, 2009; Lewis, 2003; Legard *et al*, 2003). In face-to-face situations, I explained verbally to each participant what they were consenting to, as well as providing them with a written explanation. I also asked them to give their consent in writing (see Appendix E). In my telephone interviews with clients, I gave a verbal explanation to the client and sent them a copy of the written form prior to the interview. I adapted my explanation to each individual participant to ensure their understanding, and there were no interviews where I doubted the client's capacity to consent. I have over 20 years' experience of assessing client understanding and capacity as a social welfare lawyer, which I was able to draw upon when making these decisions. In the telephone observations, I ensured that the advisers were careful to obtain the client's verbal consent prior to allowing me to listen in on a call.

Another key element of participant protection is guaranteed anonymity and confidentiality. Thus all the data in this project have been anonymised, and any potentially identifying information removed. One area where confidentiality may prove more difficult in this project, however, is in relation to participants not being identifiable to each other, as they share the same workplace (Lewis, 2003; Flick, 2009). In addition, the number of telephone-only providers is small, which increases the risk of the organisation being identified. In order to maintain the anonymity and confidentiality of the research participants, I have taken particular care in how my findings are presented. I have not, for example, given individual profiles of the advisers and lawyers. Instead, in Appendix B, there is an overview of the profile of the lawyers and advisers involved. In some instances it may even have been

necessary to 'do violence to truth' rather than disrupt the anonymity of the research (Miles and Huberman, 1994: 293). The data from the interviews and observations are stored securely. Electronic data are password-protected and written data are kept in a locked filing cabinet. All transcripts are anonymised. Participants are allocated a code and their names and addresses are kept in separate locked storage box.

A fundamental precept of ethical research is that it should not cause harm to the participants. I was alert to the possibility that I might be asking vulnerable individuals to relive distressing experiences (Flick, 2009). There were instances in my interviews where clients became very upset. Due to my previous working life, I was able to handle such situations with care and sensitivity, while also maintaining appropriate emotional boundaries. There were no instances in which an interviewee needed to be referred to an organisation for assistance (Lewis, 2003). Where client interviewees seemed confused about what was happening in their case, or seemed to be contemplating inadvisable action, I urged them to contact their adviser.

Research participants may also feel harmed by the revelations of the research or the judgements made in the analysis of the research (Miles and Huberman, 1994; Flick, 2009). I have made criticisms of the practices of lawyers/advisers in this research, although on the whole, I was impressed by their expertise and commitment. Where I have made criticisms, it has been in order to improve legal aid services for the other group of participants (clients) and thus I feel it is justified in the context of the research.

There is also a view, particularly among feminist scholars, that research should result in positive gains for participants (Miles and Huberman, 1994; Letherby, 2003). I feel that a number of participants enjoyed the rare opportunity to talk about themselves (Kvale and Brinkmann, 2009). As a lawyer participant commented: 'It's sort of therapeutic, isn't it?...It's worth paying for!' (FL3). Lawyers and advisers may also have felt that the research could lead to improvements in a policy or programme that affects them (Miles and Huberman, 1994). Several clients wanted to participate in order to express their gratitude to their advisers. Others were motivated by having the opportunity to assist me in my studies. Nonetheless, it is difficult to see how this research can result in direct, positive benefits for all participants.

Another issue that has to be considered in relation to a project of this nature, which involves visiting clients in their homes, is researcher safety. Interviewing a

person at their home can be a risk, particularly for female researchers working on their own (Robson, 2011; Lewis, 2003; Letherby, 2003). I took precautions in advance in case of any difficulties, but no situations arose where I became concerned for my safety during the course of the interview.

I was also concerned at the outset of this project that my insider status in the world of social welfare lawyers was a potential risk area for this project. However, as this experience demonstrated, in view of the problems with gaining access, my insider status proved invaluable. It seems unlikely that it would have been possible to carry out this project if I had not had the links with the voluntary sector and social welfare lawyers that I do. Evidently, insider status can be a distinct advantage (Robson, 2011). Yet there is a risk of data distortion or lack of objectivity on my part (Taylor, 2011). Nevertheless, by being both 'reflexive and self-conscious' during the course of my analysis, I believe I have achieved a balanced and fair approach (Taylor 2011:9). In order to guard against the possibility of bias, I paid particular attention to minority voices and outliers within the research, and have been keen to ensure that, as much as possible, those views are represented in my findings (Miles and Huberman, 1994).

In addition, a potential consequence of conducting research in a policy climate where legal aid lawyers and advisers feel their position is precarious is that their comments may be coloured by their current work situation. Face-to-face and telephone providers alike may have reasons for promoting their own model of provision. This became evident to me when interviewing telephone advisers during a time of organisational restructuring. Advisers appeared to feel the need to 'make the case' for telephone advice. It emerged that they believed that telephone advice was being cut, because, within their organisation, people were being redeployed out of the telephone service. There were also face-to-face advisers who volunteered to participate in the research because of their belief that face-to-face advice is important. Carrying out observations gave me an independent opportunity to compare the spoken account with the actual event, but, even then, participants may be able to change their behaviour for the time that an interview is being observed. However, I have my own former experiences and expertise to draw on when assessing the accounts I have been given. Thus, despite these potential issues, I consider that I have significant body of material on which to base a credible appraisal of telephone and face-to-face advice.

Sample for interviews and observations

The selection of the sample ultimately defines the version of the studied phenomenon that the research presents (Flick, 2009). The potential research population for this project includes all social welfare law clients in England and Wales⁶⁴ in receipt of face-to-face or telephone advice classified as ‘Legal Help’⁶⁵ under legal aid and their lawyers and advisers. Due to the limitations of time, there is inevitably a tension between achieving a wide breadth of sample and reaching a deep level of analysis (Flick, 2009). The sample of actual participants is also determined by questions of access and recruitment. These are factors that had a significant impact on the sample in this research. In view of this, I will first explain the model sample I devised for this research, followed by the problems with recruitment I encountered. Finally, I will describe the actual sample achieved in this study.

Model sample for interviews and observations

Client model sample

Beginning with the client sample, in 2013–14, the total number of ‘Legal Help’ cases started in the categories where legal aid remained available for social welfare law after April 2013 was 52,981. Table 5.1 shows the extent of the reduction since April 2013. In fact, the numbers fell even lower than the MOJ had predicted, particularly in the area of debt (NAO, 2014).⁶⁶

⁶⁴ I am restricting my study to this jurisdiction. The provision of legal aid is entirely separate in Scotland, where it is managed on a very different model by the Scottish Legal Aid Board.

⁶⁵ Not ‘Full Representation’, which is used for court litigation and is not available through the telephone service.

⁶⁶ According to the government’s impact assessment the changes in scope would lead to a reduction in legal help case numbers of 100 per cent in welfare benefits, 74 per cent in debt, 40 per cent in housing, 58 per cent in education and 78 per cent in employment when compared with case numbers in 2008–09 (MOJ, 2011).

Table 5.1: Legal Help case numbers 2012-2014

Category of law	Case numbers 2012-13	Case numbers 2013-14
Employment, now discrimination only	16,119	2,384
Education	2,956	1,167
Housing and debt ⁶⁷	171,844	49,293
Total	279,281	52,981

Source: Legal Aid Statistics in England and Wales 2013–14 (Legal Aid Agency, 2014)

These figures give an indication of the potential research sample among clients. In view of the size of the possible client research population, it was evident that it would not be feasible for me to carry out interviews with all of these clients.

I therefore adopted a strategy of purposive sampling (Robson, 2011; Flick, 2009; Charmaz, 2006). The client category I chose for my ideal sample was people with housing problems – particularly homelessness or possession cases. In the first instance, housing is an area where both face-to-face and telephone advice are provided under legal aid. Secondly, housing is a major problem area for people with mental health problems and/or those aged 16-24. As set out in Chapter 4, people with disabilities – especially those with mental health problems – and young people have been identified as more likely to find using telephone-only services problematic (Mind and Rethink, 2011; Disability Charities Consortium, 2011; Kenrick, 2009). In addition, legal needs surveys have shown that young people⁶⁸ and people with mental health issues⁶⁹ are more likely to report problems with housing and homelessness than people in other age groups or without mental health problems, respectively (Pleasence *et al*, 2010; Balmer, 2013). There is also an overlap between the two groups: research has shown that many young people who seek advice from

⁶⁷ These categories are now amalgamated, although debt is subject to the mandatory telephone gateway and housing is not. The number of debt cases in 2013–14 was 86 per cent lower than predicted (NAO, 2014).

⁶⁸ In the Civil and Social Justice Panel Survey (CSJPS) 2010 and the Civil and Social Justice Survey (CSJS) 2006–9, the 18-25 year-old age group reported the highest incidence of problems with rented housing and homelessness of any age group (Pleasence *et al*, 2010; Balmer, 2013).

⁶⁹ In the CSJPS 2010, people with mental health issues reported a higher incidence of rented housing problems (8.1 per cent) than those who did not have those issues (2.1 per cent) (Balmer, 2013). In the CSJS 2006–9, 1.6 per cent of ill or disabled people reported problems with homelessness compared to 0.9 per cent of those who were not ill or disabled (Pleasence *et al*, 2010) (NB: the separate category of mental health was not introduced until the CSJPS 2010, and the homelessness question was no longer asked at this time).

youth advice agencies have housing problems and a very high level of mental illness (Balmer and Pleasence, 2012). Thus, these were the clients who, on the basis of the existing literature and my professional experience, seemed most likely to be differentially affected by a shift from face-to-face to telephone advice. By focusing on clients with housing problems, my expectation was that clients from both of these groups would feature in my sample.

Lawyer/adviser model sample

Since 1 April 2013, housing and debt advice can be provided both under a Standard Civil Contract (SCC) for face-to-face advice and through the CLA telephone service. It should be noted that the category now called ‘debt’ is in fact mortgage possession, which would usually have been categorised as ‘housing’ previously, and bears little relation to the category of ‘debt’ as it was prior to the legal aid reforms. Housing clients may choose either telephone or face-to-face advice, but debt clients must go through the Telephone Gateway. They are only able to get face-to-face advice if they are ‘exempt’, or telephone advice is not considered ‘appropriate’ in their case. Thus, very few debt clients receive face-to-face advice. In 2013–14, there were only 172 referrals for face-to-face debt advice from the telephone service (Patel, 2014).

In 2013–14, there were eleven providers with Community Legal Advice contracts for the social welfare law categories of housing and debt (five), discrimination (three) and education (three). In education and discrimination these organisations are now the only providers of legal aid funded advice in these areas of law. Table 5.2 sets out the current telephone providers (as of 1 April 2013):

Table 5.2: Telephone providers 2013–2014

Category of law	Provider
Housing and Debt	Duncan Lewis
Housing and Debt	Direct Help and Advice (Derbyshire Housing Aid)
Housing and Debt	Shelter
Housing and Debt	Carillion Energy Services
Housing and Debt	Ty Arian Ltd
Education	MG Law Ltd (Maxwell Gillott)
Education	The Children's Legal Centre
Education	Tower Hamlets Law Centre
Discrimination	Stephensons
Discrimination	Howells
Discrimination	Merseyside Employment Law

Source: Legal Aid Agency, 2013

The bid round for Standard Civil Contracts in housing and debt resulted in a large number of providers being awarded contracts with very few new matter starts per contract. Table 5.3 shows that, according to the Legal Aid Statistics in England and Wales for 2013–14 (Legal Aid Agency, 2014), as of the end of March 2014, there were 662 providers with Standard Civil Contracts to provide face-to-face advice in the social welfare advice subject areas of housing and debt.

Table 5.3: Face-to-face providers 2013-2014

Category of law	Number of face-to-face providers with contracts
Housing and debt	662
Education	0
Discrimination	0
Welfare Benefits	15
All	677

Source: Legal Aid Statistics in England and Wales 2013–14 (Legal Aid Agency, 2014)

The actual number of lawyers and advisers employed to do telephone and face-to-face work in these agencies is not publicly available information. Nonetheless, whatever the precise figure, it seems reasonable to assume that the numbers are far too high for me to observe and interview every lawyer and adviser in the sample population. Given that clients with housing and homelessness problems were a major target group for the research, then clearly lawyers and advisers giving legal aid advice in this area of law were the priority for my sample. In particular, the five organisations providing legal aid telephone-only and face-to-face housing advice would be the most relevant to my research. I therefore decided to focus my efforts on obtaining access to one of these five providers.

Problems with access

Gaining access to the advice agencies that provide telephone and face-to-face advice in housing under legal aid was essential to this research; it was also the biggest hurdle I had to overcome. Previous studies have documented the difficulties of obtaining access to lawyer–client consultations on a voluntary basis (Danet *et al*, 1980; Sarat and Felstiner, 1986; Sherr, 1986). I identified at an early stage the risk that the usual access problems might be exacerbated by the current policy environment; since a controversial new legal aid regime is in place, I was concerned that providers operating under the new contracts might be reluctant to give me access. In the event, my concerns regarding access proved well-founded, though perhaps not quite in the way that I had anticipated.

Shortly before my pilot study was due to commence with a provider organisation in July 2013, the Legal Aid Agency (LAA) took the view that I should not be given direct access to clients or client files. I therefore conducted pilot interviews with lawyers in July 2013, as planned, but did not have any contact with clients. I did not however believe that the LAA’s position was correct. I therefore sent a request to the LAA in August 2013 asking them to change their position on this issue.

Unwilling to cause difficulties with or for provider agencies, while awaiting the LAA response to my request, I spent summer 2013 pursuing the possibility of going through generalist agencies to find clients who were seeking legal aid to participate in the research. I approached two national mental health charities and three local mental health advice and support agencies. I did not hear back from the

local charities, and the national agencies did not have the resources to assist with my research. A national representative body for young people's advice agencies contacted three organisations on my behalf, but, due to pressure of work, only one of these organisations was able to assist with my research. They were not a suitable subject for the research, however, as they referred very few clients for advice funded by legal aid.

In early September 2013, I heard back from the LAA: they were not prepared to change their view. I reverted to contacting provider organisations that had prior knowledge of me as a practitioner. In this way, I was able to find an organisation that was willing to reach its own view regarding the issue of client access. The organisation was keen to be involved in my research and, in November 2013, began the process of setting up the research with the individual services. My fieldwork began in January 2014. If it had not been for my pre-existing personal relationship with this organisation, I do not think it would have been possible for this research to be carried out in the way that it has been. Evidently, far from being a problem, my insider status was crucial in this regard.

Problems with recruitment

Clients

I experienced particular difficulties with the recruitment of telephone clients. Trying to recruit existing telephone clients to participate in the research was largely unsuccessful. After attempts to recruit clients through their telephone advisers failed, the organisation sent out 40 letters to existing clients in January 2014 (see Appendix E). This resulted in 2 client participants. Due to the lack of participants, from April 2014, I attended the telephone service for three separate sessions where new telephone clients were asked at the beginning of their call if they were willing for me to listen in on the conversation. I had been reluctant to pursue this option, because of my concerns that it might have a negative impact on the client's initial perception of the adviser and the service. However, those fears were not realised; my presence did not seem to have any detectable impact on the client. I would not hesitate in using a similar method in future, should the circumstances arise. Adopting this method, I was able to carry out a further ten telephone observations in April and May 2014.

Securing telephone client co-operation, in terms of actually carrying out a follow-up interview to an observation, was also problematic. Ten of the observations

took place during an initial call. Just one of the ten clients from these observations refused a follow-up call from me at the time. However, in the event, I was only able to interview four of the nine clients. In five cases, the clients did not keep to the arrangements made for interviews or further contact. Interestingly, the clients in this category were mainly the more articulate and capable clients. It seemed that, despite being given every opportunity to do so, clients were reluctant to refuse to be interviewed when speaking to me on the telephone. Given that this research was considering whether greater client assertiveness and openness result from telephone advice, this provided the useful insight that perhaps it was not the case. Clients preferred to opt out by non-co-operation, rather than give me an explicit refusal. My experience suggests that anonymity does not necessarily mean that telephone clients are more willing to enter into open conflict than face-to-face clients.

It proved easier to recruit face-to-face client participants, as this was done in advance by the lawyer or adviser concerned. The exception to this was a drop-in session at a face-to-face service. My attempts to arrange follow up interviews with these clients failed. I was able to interview eight of the eleven face-to-face clients that I observed.⁷⁰ A benefit of face-to-face advice was that it was possible to interview the client immediately after the interview with the adviser. I would have preferred to have some time to reflect on the interview I had just observed, but it was often the client's preference to be interviewed at once. Thus, I was able to interview a substantial number of the face-to-face clients that I observed.

In summer 2014, with the assistance of the participating organisation, letters and e-mails were sent to a further 46 former face-to-face and telephone clients (See Appendix E). Unfortunately, only a small number of these were telephone clients, and, despite requests, no more clients were put forward by the telephone service for interview. By September 2014, I had interviewed 13 face-to-face and 7 telephone clients. It is disappointing that, despite strenuous efforts being made, the number of telephone clients I was able to interview is significantly lower than the number of face-to-face clients. Obtaining higher levels of direct evidence of users of telephone services should be a priority for future research in this area. Nevertheless, I consider

⁷⁰ I was not able to carry out a full follow-up interview with a fourth face-to-face client; but, fortunately, during a break in the interview with the adviser, I was able to discuss the issue with the client, and he was able to make known his very strong views about the differences between telephone and face-to-face advice.

that there are sufficient numbers of telephone client interviewees to form the basis for analysis, and face-to-face clients and advisers are also able to provide their own insights into clients' attitudes towards using the telephone for advice.

Lawyers/advisers

It proved relatively straightforward to arrange to interview telephone advisers. The managers of the service took on responsibility for facilitating my visits and ensuring staff were available. It took more effort to reach the relevant staff in the four face-to-face teams that had been identified. In some instances, I was reliant on personal relationships to make the necessary arrangements. Usually, a member of the staff team would volunteer to participate in the research and assist with co-ordinating my visit. It was also more difficult to arrange the visits to face-to-face services, because, from the outset, my visits were often co-ordinated with opportunities to observe lawyer/adviser interviews and this meant that they were often subject to change at the last minute – for reasons such as the client cancelling, or not turning up, or the adviser having to deal with an emergency on another case. In addition, two of the services only carried out intake interviews on certain days of the week. Nevertheless, although they were problematic to organise, attending face-to-face services was highly productive as they often resulted in both observations and interviews with lawyers/advisers and clients. Between January and June 2014, I interviewed ten telephone advisers and ten face-to-face lawyers and advisers across five different sites.⁷¹

All face-to-face interviews and observations with clients, lawyers and advisers were recorded, if permission was given; otherwise I made handwritten notes. In the recorded face-to-face observations, I made notes on matters of interest. In all the telephone observations, I made detailed handwritten notes of the interaction. All the recordings and notes were then transcribed in full. The transcripts of interviews that were recorded are more accurate and more comprehensive than those where recording did not take place.

⁷¹ The national CLA telephone service, based outside London, and four face-to-face services, two in London and two in cities outside London.

The actual sample

I was able to secure a sizeable sample of interviews and observations, despite the difficulties I had encountered. This was in large part due my pre-existing relationship with the participating organisation. It seems doubtful whether a researcher in a similar position, who did not have prior links with the agencies concerned, would have had the same success in reaching this client group.

Sample size

Tables 5.4, 5.5 and 5.6 set out the size and nature of the sample of interviews and observations I achieved.

Table 5.4: Number of client interviews

Face-to-face	13
Telephone	7

Table 5.5: Number of lawyer and adviser interviews

Face-to-face advisers	5
Face-to-face lawyers	5
Telephone advisers	10

As stated in Chapter 3, it is because of the prevalence of advisers in the research that, in the coming data analysis chapters, for reasons of convenience, I use ‘adviser’ as a generic term to describe both lawyers and advisers.

Table 5.6: Number of observations

Face-to-face lawyer/adviser-client interview	11
Telephone adviser-client interview	11

Taken in combination, this is a large body of good quality data on which to base an in-depth comparison between the different methods of communication and from which to draw credible conclusions. I have, for example, exceeded Gaskell’s (2000) recommended upper limit of 15 – 25 interviews for an individual researcher. I

consider that the sample I have obtained meets the test of ‘theoretical sufficiency’ in grounded theory, which I have used in this research (Charmaz, 2006:114).

The client profile

I was successful in achieving a sample of clients with housing problems, but it proved impossible to be selective regarding their personal characteristics. I worked with any clients who were willing to be observed and/or interviewed. In total, there were 29 clients involved in the research, but I was not able to interview all of the clients I observed, or observe all those I interviewed. There were 16 face-to-face clients and 13 telephone clients in total. All 29 clients had housing problems, predominantly homelessness or possession. Ten clients were male and 19 were female. Although this is not an even split, it broadly reflects the caseload profile of the participating organisation for 2013–14 (42 per cent male; 58 per cent female).⁷² The tables in Appendix A set out the socio-demographic profile of the clients interviewed and observed in more detail.

A high proportion of the clients (13/29) had mental health issues of some kind, ranging from short-term bereavement-related difficulties to more enduring problems such as depression and agoraphobia and bipolar disorder. A slightly higher number had physical health problems (16/29). Thus, in relation to mental health and disability issues, there were plenty of client experiences to draw on. However, despite my efforts to engage with young people’s advice organisations (referred to above), no clients were under 20 and only a small proportion of clients observed were in their 20s (4/29). It was more difficult to make arrangements to interview clients in this age group and they were less likely to keep to any arrangements made. This means the research relies largely on lawyer/adviser views of the experiences of young people, rather than on their direct testimony.

In addition, it is important to be aware that the people who volunteered to participate in this project are self-selecting, and there may be voices that go unheard in my research – not least the voices of particularly vulnerable clients. It did not prove possible to work with generalist advice agencies to increase the spectrum of experiences. Capturing the voices of those who are choosing not to use legal aid

⁷² Interestingly, men were less likely to use the telephone service (38 per cent) than the face-to-face service (45 per cent).

telephone or specialist face-to-face services could usefully be the subject of research in the future.

With regard to the client profile, as the thesis proceeds into analysis, I use the terms ‘vulnerable’ and ‘capable’ to describe clients. By vulnerability, I mean clients who, as a result of physical, mental or social characteristics, are more susceptible than others to difficulties in managing day-to-day activities, and who find it harder to cope when faced with problems. Capability is a reference to the client’s ability to take responsibility for their own case and to act on advice. Client capability was assessed with regard to the client’s communication skills, their mental or physical health, and their emotional state. I recognise that making judgements on these issues can be highly subjective. Nevertheless, when doing so I was drawing on over 20 years’ experience of working with clients from vulnerable and disadvantaged groups.

Appendix A shows the socio-demographic profile of the client sample in detail, but in relation to the observations – arguably the more ‘randomised’ element of the study – a greater number of clients of above average capability were involved in the telephone consultations. Clients of mid-level capability – who had some, though more limited capacity to take steps on their own behalf – tended to be using the face-to-face services. Clients of low capability were fairly evenly split between the telephone and face-to-face services. It is argued, however, that some of the face-to-face clients with language issues in the mid-level range were likely to have fallen into the lower capability bracket if they had had to deal with their case over the telephone.

A noticeable difference between the telephone and face-to-face observations related to the presenting problem of the clients in rented accommodation (see Appendix A for all categories). Of the eight telephone clients in the observations who were in rented accommodation, six were private tenants and two were in social housing. Two clients were seeking assistance with applying as homeless. The remaining six clients were under threat of eviction, but in only one of those cases had the landlord started proceedings; the remaining five clients had been served with possession notices threatening proceedings. In contrast, in the face-to-face observations, of the eight clients in rented accommodation, six were social housing tenants and two were in private accommodation. Five of the clients were under threat of eviction, and in three of these cases the landlords had already begun proceedings. Coupled with a much higher incidence of mental health difficulties among the face-

to-face tenants, my sense was that the tenants in the face-to-face observations were often more vulnerable and at a more serious stage in proceedings than the majority of those telephone clients who were tenants.

It should also be noted that writing to clients to request their participation in the research may have skewed the overall profile of client interviewees. It was noticeable that, as a group, the face-to-face clients who responded on their own initiative to these requests tended to be more articulate than those who were more ‘randomly’ involved through observations. Yet, as explained above, the telephone clients who opted out of follow-up interviews tended to be more articulate than those who participated. Thus it seems that the face-to-face client interviewees may be more articulate than the usual users of face-to-face advice services, while the telephone client interviewees may be less capable than the usual profile of telephone advice service users.

Timings

Tables 5.7, 5.8 and 5.9 below detail the length of each of the different types of research interviews and observations in terms of the average, shortest and longest time taken.

Table 5.7 shows the length of the research interviews I carried out with lawyers and advisers.

Table 5.7: Lawyer/advisers - length of research interviews

Face-to-face lawyer/adviser	Average	1:17
	Shortest	0:31
	Longest	1:56
Telephone adviser	Average	1:01
	Shortest	0:30
	Longest	2:00

The longer time taken in my interviews with the face-to-face lawyers and advisers when compared to the telephone advisers is largely explained by the greater level of experience of face-to-face lawyers and advisers (see Appendix B). They had often dealt with both telephone and face-to-face advice and seemed to have a higher

degree of engagement with the subject as a result. Only a few of the telephone advisers had experience of giving advice face-to-face (including, notably, the telephone adviser who gave the longest interview).

Table 5.8 shows the timings of my follow-up interviews with clients.⁷³

Table 5.8: Clients - length of research interviews

Average	0:51
Shortest	0:20
Longest	1:40
Average face-to-face client	0:46
Average telephone client	0:59

In formulating the client interview topic guides, I had anticipated an interview length of approximately an hour. Several interviews were considerably shorter than this, including three interviews with face-to-face clients of less than 30 minutes. It seemed there were a number of reasons for several client interviews being shorter than expected. In the first instance, interviews that followed an observation were often quicker than interviews where there had been no prior observation, as I was already fully informed of the facts of the case. Taking down the client's account of the case was usually the longest part of an interview where no prior observation had occurred. In addition, interviews with clients conducted over the telephone tended to be shorter than face-to-face ones (see above, p101). Finally, it seemed that a number of clients saw the issue in a fairly one-dimensional way. With the very shortest interviews, the clients held particularly strong views on the subject and were often reluctant to be drawn into discussing the nuances of the situation. Thus although their interviews might be brief, they provided very clear material for the purposes of analysis.

The timings of the observations are set out in Table 5.9:

⁷³ Not included in these figures, but otherwise included in the analysis is a ten-minute interview that I carried out with a client while their adviser was out of the room. I have used this material, as the client was very clear in his opinions regarding the differences between telephone and face-to-face advice – although he did not respond to my subsequent attempts to arrange a follow-up interview.

Table 5.9: Length of observations

Face-to-face lawyer/adviser–client interview	Average	1:06
	Shortest	0:30 ⁷⁴
	Longest	1:25
Telephone adviser–client interview	Average	0:45
	Shortest	0:20 ⁷⁵
	Longest	1:10

The face-to-face meetings between lawyers/advisers and clients routinely took longer than the telephone conversations. However, around five to fifteen minutes of each initial face-to-face consultation were taken up with legal aid form-filling and other administration and in two face-to-face meetings the adviser spent ten minutes photocopying documents. Thus, the difference may not be as stark as it at first appears. Explanations for the variations in time spent are explored in Chapters 7 and 9 of this thesis.

Data analysis

In grounded theory, data analysis and data collection are not discrete stages of the research project. They do not follow a linear process; grounded theory researchers are required to adopt an iterative approach to data collection, analysis and theory development (Strauss and Corbin, 1998; Robson, 2011; Charmaz, 2006; Flick 2009). Grounded theory is an ‘abductive’ research strategy: analysis of the data leads to theory development, which then informs the collection of data in line with a particular developing theory (Charmaz, 2006: 103; Strauss and Corbin, 1998).

In accordance with grounded theory, my analysis of the data began in the field from the first interview (Flick, 2009; Miles and Huberman, 1994). After each session of interviews and/or observations, I wrote notes on the issues that had occurred during that session. I read over these notes and referred back to them during the process of data collection. I kept a fieldwork journal and, as the research progressed, I used it to record my thoughts on the concepts that were developing. My aim was to be alert to the similarities, differences, and developing patterns arising as

⁷⁴ Drop-in session interview.

⁷⁵ Interview in ongoing matter.

the research proceeded. As I was using grounded theory, I reflected on how I should amend my approach, so that emergent themes and theories were pursued during subsequent data collection. This led me to make revisions to the topic guide, as mentioned above. During the fieldwork phase of my research, my categorisation of the data was in broad themes, some of which coincided with the areas of potential interest that had been identified from the existing literature, and others which arose, unanticipated, in the field. In this way, by the time I came to the end of my fieldwork, I was already aware of a number of nascent theories for further exploration during the process of coding.

Coding is central to grounded theory analysis (Bryman, 2008). In simple terms, it is the categorisation and labelling of segments of data (Charmaz, 2006). In grounded theory, coding also represents the beginning of the interpretive process: ‘Through coding, you *define* what is happening in the data and begin to grapple with what it means’ (Charmaz, 2006: 46, emphasis in original). The aim of coding is ‘to identify threads that can be woven together to tell a story (or a number of stories) about the observed social world’ (Emerson *et al*, 1995: 142). It is through coding that the data becomes theory (Strauss and Corbin, 1998; Charmaz, 2006; Flick, 2009).

The categorisation of the data obtained from interviews with lawyers, advisers and clients took place at four levels. This involved ‘open coding’, ‘focused coding’, developing ‘sub-themes’, and identifying major themes. ‘Open coding’ refers to the process of categorising small segments of the data using labels that the content itself suggests, rather than predetermined codes (Emerson *et al*, 1995: 150–2). I coded each interview transcript freely on a line-by-line basis, including all the categories suggested by the data, recording my codes in the margins. At this stage, the codes were very close to the data (Miles and Huberman, 1994). When coding the observation data, I adopted ‘incident-to-incident’ coding in the initial phase, as suggested by Charmaz (2006: 56). Instead of line-by-line coding, each observation was coded in respect of notable incidents or occurrences within the interview, such as the use of body language or a reference to local knowledge. Initial coding was recorded on the transcript, either in a comment box in the text or in marginal notes. Thereafter, the analysis of the observations followed a similar pattern to that of the interview data.

Through open coding, I was able to identify an initial set of major themes arising from the data (Emerson *et al*, 1995). At this early stage, the major themes

were place and local knowledge, emotional engagement and detachment and the practice of lawyering. ‘Focused coding’, which follows open or incident-to-incident coding, describes the process of building the data into larger analytical components from which it is possible to develop theories (Emerson *et al*, 1995: 160; Charmaz, 2006, 57–60). During the phase of ‘focused coding’, I identified the segments of coded data that related to the major themes, and sorted the data in relation to each of those major themes into different thematic clusters according to their content (Ritchie *et al*, 2003).⁷⁶ As ‘focused coding’ is a comparative process, I examined the incidents in each conceptual category for similarities, differences, emerging patterns and exceptions (Emerson *et al*, 1995: 160–1). As well as considering the similarities and differences *between* the accounts given by telephone and face-to-face lawyers, advisers and clients, it was also necessary to pay attention to the differences and similarities of the experiences of individuals *within* those groups (for example, between more capable and vulnerable telephone clients) (Glaser and Strauss, 1967). I also examined the themed clusters in order to identify patterns and linkages between them, alert to both congruence and conflict, so that they could be developed to form broader ‘sub-themes’ at a more abstract level (Emerson *et al*, 1995; Ritchie *et al*, 2003). In addition, I compared the interview material with the observation data. A particularly important aspect of the analysis process was identifying where an individual or an event contradicted the consensus view or my own expectations on a particular topic. This was a way of trying to avoid focusing only on the data that was in line with my own preconceptions, which can be an issue in qualitative analysis (Robson, 2011). It is often by recognising outliers and working through the contradictions on a topic that a more nuanced and therefore more complete representation of the phenomenon arises (Miles and Huberman, 1994). My analysis of the data collated under the sub-themes forms the foundation for the theories that have been used to explain each of the major themes.

The major themes are the core conceptual categories according to which the data has been analysed in this thesis. By undertaking a detailed process of analysis by intensive open and then focused coding, I was able to identify the major themes appearing in the data that seemed most compelling in a comparison of telephone and face-to-face advice. The major themes that were finally arrived at following the full

⁷⁶ I used Word, Nvivo and Excel to help me sort and organise the data.

process of analysis were similar to those that had been detected at the beginning. They were the role of place and local knowledge, interpersonal issues and the practical aspects of the advice process with particular emphasis on non-verbal communication and the use of documents. Each of these themes will now be dealt with in detail in the remaining chapters of this thesis.

Conclusion

The purpose of this research is to produce an insightful and illuminating account of the differences between telephone and face-to-face advice, and of the possible consequences of telephone-only delivery for social welfare legal aid. The above discussion has explained that there is currently a gap in the academic literature in this area and it is the intention of this research to contribute towards filling that gap using qualitative research. A qualitative methodology has been chosen because of its appropriateness when trying to understand the behaviours, attitudes and perceptions that shape complex human phenomena. Grounded theory has been adopted because of its emphasis on theories being generated from the data in a way that represents the lived world of the research participants. It is also argued that taking a feminist approach in this research provides me with the space to enrich my research with my experience as a former social welfare lawyer. This enables me to present a more multi-layered and complex understanding of lawyer–client interaction.

My fieldwork produced a rich dataset of interviews and observations with advisers, lawyers and clients. Semi-structured interviews and unobtrusive observations were used as the methods of research because of their capacity to capture valuable and detailed accounts of the complicated social phenomenon that is lawyer–client interaction. I have documented above how my insider status proved invaluable in overcoming the initial difficulties I experienced in gaining access and recruiting participants to the research. Despite these issues, I have been able to construct a substantial sample of highly informative and evocative material on which to carry out a rigorous and careful process of analysis using grounded theory methods. I believe that this has resulted in a powerful and thought-provoking account of the differences between telephone and face-to-face advice for social welfare clients. The details of this account are set out in the chapters that now follow.

Chapter 6: The Role of Embedded Place in Advice

Introduction

The discussion in this chapter highlights the powerful, and sometimes unexpected, manifestations of the dynamics of place and embedded local knowledge in the seeking and giving of advice. Materialising largely from the narratives of telephone and face-to-face advisers, place in this sense is not simply about the interaction of two individuals sharing the same physical space. Rather it is about the anchoring of those individuals and their interaction in a single embodied location, characterised by distinct physical features, governed by local policies and practices and shaped by personal relationships, organisational networks and the force of shared cultures. Earlier, in Chapter 2, we saw how, by establishing local Law Centres, legal activists were able to overturn the previous neglect of social welfare clients by private practice solicitors. The question that therefore arose was whether the shift to telephone advice could bring about the same transformative change in access to legal services for social welfare clients by ensuring that advice is available to them wherever they are located. Inspired by that question, this chapter discusses the research findings in terms of how the physical, socio-political, relational and cultural elements of place emerge in the face-to-face and telephone advice experience. Ultimately it exposes how, because the staff of local face-to-face services are embedded within a defined geographical area, they have a deeper level of physical and social engagement with that area which enables them in their current form to provide a more comprehensive service to their clients than telephone providers.

The potency of these issues is evident from the way in which the relationship between place and the local manifested itself during the course of my fieldwork. When constructing the topic guide for the lawyer/adviser interviews, I had to select which areas of enquiry to prioritise in order to ensure that the interview was short enough to be manageable. I chose to address the issue of place with respect to whether face-to-face or telephone provision changed the socio-demographic profile of the clients using the service. This was in order to explore further whether telephone provision might change the types of clients that were able to gain access to advice in the same way as the establishment of Law Centres had done in the past. At this preparatory stage, I did not include the issue of the practical effect on casework

of local knowledge in the topic guide. Although it is unusual for the existing literature on telephone advice to make reference to the possible problems of a lack of pre-existing social relationships for casework,⁷⁷ I was not unaware that the absence of local relationships might be problematic for remote advice provision, and my focus on the impact of telephone advice on client access was in part a recognition of place as a point of social intersection as defined by Massey (1994a). At this point I felt the issue of access was likely to be the more fruitful line of enquiry with my interviewees in this regard, as a more familiar and understandable concept. It became evident to me, however, during the initial stages of conducting interviews with telephone advisers that, by concentrating on client access to services, I had adopted too narrow an approach to the issue of place. These early interviewees mentioned spontaneously the different ways in which a lack of knowledge about the physical locality or familiarity with the people and working practices within a particular local authority area or court could affect their casework. It was apparent that I had underestimated the degree to which telephone advisers' lack of physical connection to a specific locality and the attendant absence of local knowledge and local relationships would have an impact on their day-to-day advice work.

Having recognised the particular significance of this area to the research, as I was taking a grounded theory approach, the topic guide was adjusted to include a question asking whether 'local knowledge' affected the adviser's work. In this way, the question in relation to place was broadened beyond matters of client access and the types of client using the service. The definition of 'local knowledge' was left open to the interviewee to decide, and it was rare to find an adviser who did not have a view on how local knowledge or the lack of it impinged on their work. Conventionally, place has been conceived in tangible terms as a fixed location with a 'concrete form' (Cresswell, 2004: 7). There were a few occasions when interviewees couched their responses in physical or concrete terms, but on the whole, interviewees brought a much more complex and wide-ranging understanding to the topic than this. It was evident from interviewees' responses that, to them, place and local knowledge were not just about co-location in a physical space, it was also about the special knowledge and relationships that are developed from being embedded in a specific

⁷⁷ There is a rare instance of the lack of local knowledge in telephone-based housing advice being given brief consideration in the LSC's (2004) evaluation of its pilot telephone advice services. It was decided that it was not a significant factor.

physical locality. It is this broader, more complicated understanding of local knowledge that has been used in this research to explore how place features in the experience of telephone and face-to-face advice. The findings of the resulting exploration are set out in this chapter.

With regard to physical embeddedness and local provision, several significant points of comparison between telephone and face-to-face provision emerge from the data collected for this study. First, in relation to the question of client access, the data presented indicates that, particularly for more vulnerable clients, access is often facilitated by the physical presence of locally based advice agencies in frontline community locations and their links to local support agencies. Second, adopting the conventional physical sense of place, knowledge of an area's geography has been shown to prove practically useful to an adviser when developing a case. Third, this chapter illustrates that local knowledge goes far beyond the tangible. In an echo of the local networks that Law Centres developed in order to be embedded within their local communities, it becomes evident that face-to-face casework can be enhanced by advisers' familiarity with local policies, practices and procedures, their long-standing relationships with opponents and their connections within the local voluntary sector. Court-based representation is considered as a specific example of how physical presence and local embeddedness offer significant advantages to clients at risk of losing their homes. The chapter concludes by recognising that there are possible disadvantages of local services in terms of a limited choice of advisers and client concerns regarding confidentiality in close-knit communities. Suggestions are also made about how, with some investment, telephone services might be reconfigured into a 'patch-based' service to ameliorate some of the current deficiencies of telephone advice with regard to local knowledge and connections. Overall, however, it seems that, judged by the criteria of the benefits to clients in terms of improved casework and overall well-being, in their current format, the physical and relational aspects of advice services which are embedded in specific local areas result in a better service to clients and the wider community.

It is important to acknowledge from the outset that a number of the place-related qualities found in face-to-face advice and absent from telephone advice are not inherent to either method of service-delivery. It is not inevitable, for instance, that a face-to-face agency will be familiar with the local authority's personnel or

policies or be connected to the wider network of support organisations within the local area. It is also not impossible for remote services to develop this knowledge. An Australian ‘Bush clinic’ experiment also showed that site-specific knowledge could be obtained by remote services if there was the commitment and resources to do so, by interacting and networking with on the ground services and the local community (Giddings and Hook, 2002). However, Community Legal Advice (CLA) currently provides a telephone service to clients across the country on a randomised basis, which makes local knowledge more difficult to acquire and retain. Indeed, a key finding of this research is that face-to-face and telephone advisers were alike in recognising that being anchored in a physical place offers a range of opportunities to face-to-face services that telephone services, as they are now organised, lack. Accordingly, while it is not automatically the case that these differences should occur with regard to local knowledge and relationships, the way that telephone and face-to-face services actually operate means that, in practice, they do. It is therefore this day-to-day reality that this chapter strives to explore through the experiences of clients, advisers and lawyers.

As we move on, please note the key to the direct quotes that follow in this and subsequent chapters: ‘FA’ denotes a face-to-face adviser, ‘FL’ is a face-to-face lawyer (i.e. legally qualified), ‘TA’ is a telephone adviser, ‘FC’ is a face-to-face client and ‘TC’ is a telephone client.

Access

Physical presence can promote initial access to legal advice by giving rise to opportunities for interaction with clients that are unlikely to occur when the only avenue for contact is by telephone, due either to encouraging spontaneous client visits or through the assistance of a local agency. Several face-to-face advisers believed that, particularly for more vulnerable clients, local street-level services were essential (5/10). A face-to-face adviser from a predominantly rural county stated that, following the closure of a branch office, fewer clients from that locality were seeking advice from the main office. The absence of a more local service therefore reduced accessibility to the people living in that location. Another face-to-face adviser described how less articulate clients struggled to communicate their problems and would often find it easier to seek help if they could simply come to the door of an agency and show someone their documents:

‘...[T]he person at the door can always show someone an eviction letter. But if you’re ringing up an adviser on the phone, you’ve got to actually know what an eviction letter is.’ (FA3)

A former Law Centre worker confirmed that open access legal services were important because, in her experience, clients would come into the Law Centre with problems involving complex legal issues, which they would never have categorised as legal. They would not therefore have sought advice from a private solicitor’s firm. As she commented: “...[I]t’s not a legal problem is it? It’s a problem with a – possibly a legal solution’ (FL4). This view is supported by research which has shown that individuals will still seek help from the advice sector whether or not they characterise a justiciable problem as legal (Plesence and Balmer, 2014). Failure to categorise a problem in legal terms was apparent from the response of the partner of a telephone client to being told by local Citizens Advice Bureau (CAB) (which was fully booked) that they could seek advice from a solicitor about their homelessness problem. She said: ‘They told me to go to a solicitor, but why did I need to go to a solicitor?’ (Partner of TC6). Her partner was being advised about the local authority’s legal obligation to house him, but she still did not see their problem in legal terms. Those who ‘lump’ their problems (Felstiner *et al*, 1981: 649) are much more likely to be on low incomes and be more poorly educated than those who take action (Genn, 1999). In order to enforce rights, an individual first has to realise that they have them (Buck *et al*, 2008). Thus, providing a community-based point of access can assist clients who do not see their problems in legal terms in finding legal assistance.

It is also often put forward that telephone advice is a particular benefit in providing access to clients with mobility problems. A small group of the clients in this study had mobility problems that made travel more difficult for them (4/20). The single telephone client with mobility difficulties was grateful that she did not need to leave home to get advice. However, most of the clients with mobility issues were face-to-face clients and they were unanimous in their view that they would prefer to travel to get face-to-face advice.

Local networks among voluntary sector agencies were seen by face-to-face advisers as significant in terms of ensuring that clients reached the advice services

concerned (4/10). This was achieved by referrals from other organisations. A face-to-face adviser explained: 'We have a network, referral network, which is the [Area] Advice Network...that's become really quite important in terms of bringing people in' (FA1). It was also suggested by this adviser that referral arrangements with other local organisations promoted interactions which improved access for more vulnerable client groups, since with the intervention of a support agency these clients were more likely to find their way to face-to-face services. Another face-to-face adviser suggested that clients living chaotic lives were more likely to attend appointments with the help of a support worker. Telephone advisers also referred to the help that support services could provide when dealing with vulnerable clients.

A face-to-face adviser described how, through a combination of local networks and local provision, he had been able provide a more accessible service to an elderly client with learning disabilities in a complex housing case:

'Now she initially came to see me with someone she knows from the church who brought her along... We went round to her house and she was able to have a friend there, she also had some sort of monk from the local church...she was quite different... She was really quite able to engage and talk...' (FL3)

This client was only able to access the service because of assistance from her local church. In addition, being based in a local solicitors' firm meant that the lawyer was able to carry out a home visit with the barrister, which had a considerable impact on the client's ability to give instructions in her case. The benefit of referrals through local networks in terms of assisting more vulnerable clients was also recognised by a telephone adviser with former face-to-face experience. In her role as a telephone adviser, she had, however, become aware of certain agencies referring clients to the telephone service on a regular basis, even though it did not happen as frequently as in her previous job.

Referral by another agency, such as the CAB, was the most common route given by clients in terms of finding their way to both telephone and face-to-face services within this research. The first (and less often second) port of call for most clients was the CAB. At this point, most of the face-to-face clients were referred to the housing advice agency where I met them. A notable exception to this was a client

who was not referred at once to the housing advice service which was co-located with the local CAB which he visited. He eventually found his way back to the specialist housing service through a series of external referrals. Telephone clients' routes to advice were often somewhat haphazard. Of the five telephone clients who reported going to the CAB for assistance, only one was given the details of the CLA service by the CAB. Clients obtained the details of the CLA from a wide range of voluntary sector organisations, and in one instance from a family member. It was unusual for a client to contact the CLA in the first instance. This may be an indication of poor levels of awareness of the CLA, which was something that telephone advisers recognised. Failure to promote the service was considered by the telephone advisers to be a major reason for the low take-up rate of the service – a criticism recently repeated by the Justice Committee (2015). It seems also, from clients' experiences, that knowledge of the CLA may not have permeated many CABs. Recent research by the MOJ has confirmed that there is low awareness of the CLA among both potential users and referral agencies (Patel and Mottram, 2014; see also, Public Law Project (PLP), 2015).

It is argued in support of telephone services that access does not have to take a local physical form to be successful. As a result of its being available at the end of a telephone and having longer opening hours, telephone advisers considered accessibility a particular benefit of telephone advice. This common view was expressed by a telephone adviser in the following terms:

‘But I just think there’s things that we can offer, that perhaps face-to-face can’t ...like the immediacy...like the fact that you can call us, we’re open till 8 every day. We’re open one in five Saturdays and it’s not just office hours.’
(TA3)

A couple of telephone advisers also stated that they felt clients might find it more convenient to pick up a phone rather than having to wait for an appointment in a solicitor's office or CAB. Several telephone clients expressed their gratitude at being able to get advice over the telephone without any further delay. Two had found it difficult to get assistance from the CAB. One had had to wait three weeks for a face-to-face appointment, and then been refused help. These clients very much appreciated being able to make immediate contact with the telephone service. It

appears therefore that telephone services may be able to offer more immediate access than face-to-face provision.

It should be noted that these telephone advisers' comments regarding the instant availability of their service were made in the context of a service that is currently significantly undersubscribed. Whereas cuts to legal aid mean that face-to-face services increasingly struggle to meet the level of demand they face (Low Commission, 2015), in 2013–14, the telephone service was underused (Patel and Mottram, 2014). There was little recognition among telephone advisers that the ability of services to meet demand is one of resources. It is not innate to telephone services that they are able to provide instant access to all clients. The Shelter Helpline is only able to answer 60,000 of 140,000 calls and Citizens Advice can only answer 45 per cent of all calls (Low Commission, 2014a). Telephone advisers did not seem aware that, if demand on the telephone service rose to levels similar to those of other telephone advice services, they might find their immediate accessibility compromised.

The unfavourable comparison of face-to-face services in terms of access was based on a pervasive view among telephone advisers that face-to-face services could not offer urgent appointments. A typical comment from a telephone adviser was:

‘...[I]t might not be that there’s an appointment until next week, or the week after... That’s really where the telephone advice is the benefit... as soon as a client phones the operator service, and they know they’re eligible, they will be transferred through to speak to somebody...’ (TA8)

Problems with access to CABx have been documented in the past (see, for example, Moorhead *et al*, 2001; Moorhead and Robinson, 2006). They do not necessarily reflect the way that all face-to-face agencies operate. Intake arrangements varied among the face-to-face services visited in this research. One of the face-to-face services appeared to adhere to a policy of offering only limited sessions for taking on new cases. This seemed very likely to restrict their ability to respond appropriately to emergency matters. It is accurate to say that, in face-to-face services, clients are likely to have to wait for an appointment to see the adviser, except possibly in urgent cases. In addition, on some occasions, face-to-face agencies simply do not have the capacity to deal with a last minute case. In a number of instances, however, face-to-

face clients found they could be seen at very short notice. A client who was seen at once stated:

‘...I did wait for a while, which is understandable, I walked in off the road and, yeah, they found me an adviser... You do an initial interview just to check what the problem is and they pass you on...depending on what the matter is that you’re dealing with.’ (FC14).

While telephone advisers have some justification for seeing face-to-face services as being generally ‘oversubscribed’ (TA8) in comparison to telephone services, it also seems possible for face-to-face services to respond quickly in appropriate cases.

The lack of publicity surrounding the CLA raises an issue regarding the true accessibility of a telephone service if it is not properly publicised. If, as the current poor case numbers indicate, the public is unaware of a service, claims of improving access are largely theoretical. Moreover, speedier access by virtue of a telephone service does not deal with the barriers faced by more vulnerable clients who may not be able to articulate their problems over the telephone or who may need the assistance of a local support agency to recognise that they need to seek advice in the first place. In judging accessibility, the test should be who is not using the service.

The consequences of failing to get advice can be very serious for the individuals concerned. Previous research has shown that, where clients are eligible for legal aid, those who obtain advice have substantially better outcomes than those who do nothing (Balmer, 2013). There were several clients within this study who did not obtain advice until after a possession order had been made against them, and in one mortgage case the order had been executed prior to the client contacting the telephone service. Generally, within housing possession matters, the later in proceedings advice is sought, the more difficult it is to salvage the situation. It is argued that it is vital to reduce the proportion of people who find themselves not acting until it is too late. From the evidence presented in this section, it seems that there are a number of vulnerable clients who are less likely to find their way to advice unless it is provided locally, rather than over the telephone.

Place, local knowledge and casework

‘Local knowledge’ took on a wide variety of meanings for advisers in this study, but common to all was a belief that this type of knowledge was important to the service that clients received. Advisers applied their own definitions to the question of ‘local knowledge’. As the sections below reveal, although, for some, knowledge of the physical locality was useful, for many others it was the familiarity with local practices and procedures and the relationships with allies and opponents that they were able to develop, as a result of being rooted within a particular area, that they saw as most important to their work. It was notable that whatever their conception of ‘local knowledge’, both telephone and face-to-face advisers were able to recognise that it could improve the quality of the service given to clients.

Knowledge of the physical locality

Beginning with a traditional understanding of place, knowledge of the physical locality was considered by face-to-face adviser participants to be a valuable aspect of being based locally (2/10). This knowledge could assist the adviser in assessing the credibility of the case and the client. A face-to-face adviser referred to the usefulness of knowing the housing conditions that prevailed in the local area when evaluating a client’s instructions:

‘When clients talk about certain streets or certain estates, it’s very important in colouring the picture in for me. I mean if they say they live in a particular block, and there’s problems with something or other, I’ll think, “Ah, yeah, that sounds about right.”’ (FL3)

This seems likely to put the adviser in a good position to assess the credibility of what he is being told.

Another aspect of local knowledge was awareness of local shorthand terms for particular agencies. It was commented that local social support services would commonly be referred to by their location:

‘...[I]f you ask [clients] about mental health issues...they won’t understand what a CMHT [Community Mental Health Team] is...but you can just say to

them... '[D]o you ever got to X Road?' and I know X Road is the local CMHT...' (FL3)

This gave the adviser a useful tool in establishing the nature and level of the client's mental health difficulties and the options available to them in terms of resolving the client's housing problems. Another face-to-face lawyer working in a rural area explained how knowledge of the financial assets of local landlords informed his tactical decisions about whether and how to proceed with cases against them.

On the other hand, not having a physical understanding of the locality could present telephone advisers with difficulties when making judgements regarding the client's case. In one instance, a telephone client fleeing domestic violence stated that she wanted to move away from her address in the city centre, but did not want to be rehoused outside the city centre. The adviser was reliant on the views of the client's support worker of how great a distance there was between where the client currently lived and where she was prepared to move to. When approaching the local authority for emergency housing assistance, an apparent preference to stay in an area proximate to her former partner could have an impact on the client's credibility. The adviser raised this as a potential issue, but was unable to form her own independent judgement on it, as she did not know the area concerned. The same telephone adviser also referred to the problems a colleague had experienced when trying to direct a homeless client to a location using Google Maps.

Matters of this nature are not confined to telephone advisers. Similar issues can affect face-to-face advisers working on a wider geographic level. I observed a face-to-face interview where the adviser was not familiar with the area of London where the client had been placed in temporary accommodation. The client complained it was too far away from her children's school. The issue was perhaps easier to resolve than it would have been over the telephone, as both adviser and client were able to confer over an A-to-Z with some shared understanding of the workings of public transport within London.

It was evident from the accounts given by face-to-face advisers that, where they had local physical knowledge, it enhanced their ability to understand and assess clients' cases. Advisers who lacked this physical dimension to their work were less able to form their own judgements about issues that were related to the conditions or

geography of an area. In this study, this principally affected the telephone advisers, but could also have an impact on face-to-face advisers working across a wide area. In addition, it remains open to a face-to-face adviser to resolve these issues by a home visit where necessary. This will rarely be the case for telephone advisers, who will usually remain reliant on third parties at best. It is important to acknowledge that in housing cases the physical reality of the client's circumstances will often continue to be relevant to the issues in dispute. This may be for reasons to do with local housing conditions or the geographical layout of the area. Accordingly, the advantages of direct knowledge of the physical locality accrue particularly to face-to-face services with a local remit.

Knowledge of local policies and procedures

Local knowledge is about more than just the purely physical. Policies and decisions by central and local government are often implemented at a local level. Hence, in a move away from these more tangible notions of place, another important aspect of local knowledge is familiarity with the policies and procedures of local authorities. Face-to-face advisers believed this enabled them to advise clients more effectively from the outset of a case, particularly in terms of being able to guide clients through the process they were about to go through (3/10). In addition, a face-to-face adviser referred to instances where knowledge of the internal practices and procedures of a local authority could inform strategic decisions regarding advising clients on particular avenues to take. Familiarity of this nature could have a significant impact on the approach that was taken in the case with a consequent effect on the success of the outcome for the client.

In contrast, telephone advisers rarely have a chance to build up expertise regarding the policies and procedures of the local authority or social landlords in a specific area. A telephone adviser explained that: '...[E]ach council has a different procedure, so we have to sort of look up each procedure or find out each procedure, so it just takes that bit longer for us as well' (TA6). She had been to court with face-to-face advisers, and was able to see their in-depth knowledge of local policies and procedures in respect of homelessness applications. A face-to-face adviser commented that telephone advisers on a general advice line had good technical knowledge of the law, but often did not know the policies and procedures that applied to a particular local authority area. One of the telephone advisers explained

how, in her previous job, her detailed knowledge of the local council's policies meant she had felt more able to identify potential issues for clients than she could now. As before, these same issues can affect face-to-face services with no particular local remit.

In a telephone observation, the adviser was trying to understand from the client's confused instructions the process that the council operated in relation to homelessness assistance. In the end, she had to contact the local authority concerned to get the information she needed. In another instance I observed a telephone adviser asking the client whether her current rent was reasonable for the area, in trying to determine whether the limits on their housing benefit were justified. Issues such as local rent levels are more likely to be known by a face-to-face adviser with experience of serving a particular area. These difficulties are not only experienced by telephone advisers. In a face-to-face observation, an adviser used the client's documentation to piece together the homelessness application process at a local authority with which she was unfamiliar.

Another potential issue for telephone advisers was the variation in local court procedures. As one telephone adviser said: '...[W]e don't have...a knowledge of how that particular court works – they all seem to work differently, the courts...' (TA6). Face-to-face advisers dealing with their local courts would not have these difficulties. A face-to-face adviser explained how she was able to help unrepresented individuals dealing with eviction warrants because of her knowledge of the local court's very specific processes.

Another benefit of familiarity with the working practices and policies of a particular local authority is the increased possibility of spotting patterns of illegal or unacceptable behaviour and taking steps to address them, through legal action and/or political lobbying and campaigning at a local or national level. Law Centres were at the forefront of dealing with the problems of local communities, such as poor housing in this way (Zander, 1978). This policy role at a local level remains an important aspect of Law Centres' work today (Mayo *et al*, 2014). In a similar vein, a face-to-face client referred to his case being an 'example case' in relation to the council's failure to accept applications from homeless single people in priority need. He commented: '...they'd [advice agency] had so many people had been turned down...in spite of priority needs, they were getting a bit cheesed off...' (FC14). Thus, dealing with the same council or recurring issues on a regular basis can put

locally-based advice services in a better position to challenge policies at a systemic level for the benefit of the wider community.

These different examples demonstrate that local knowledge is about more than just knowledge of the physical locality. It extends into understanding the workings of local opponents, their policies, and the way in which they implement them (or fail to do so). Where face-to-face staff have a degree of familiarity with specific local authorities, this can give them a head-start in dealing with the authority concerned; they are able to challenge the authority more authoritatively and more quickly, and this can lead to benefits for the client. Moreover, they may make strategic decisions due to awareness of the internal operation of the services concerned. In addition, by being in a position to see how a local authority applies the law on an ongoing basis, organisations are more likely to be able to identify – and therefore challenge – policies on a collective, rather than individual basis. This shows the considerable benefits that may arise from local knowledge built up as a result of serving a particular community. Suggestions are made towards the end of the chapter regarding how this situation could be improved in telephone-based services.

Place, relationships and casework

Face-to-face advisers were more likely to express the substantial advantages of dealing mainly with cases from a specific area in terms of the human relationships they were able to build locally than knowledge of the physical environment and local practices. Relationships with adversaries were seen to contribute towards better outcomes for clients in their legal cases and relationships with allies were seen to improve clients' future prospects. Thus, place in this context was seen more as the point of social intersection that Massey (1994a) describes.

Relationships with the other side

Many face-to-face advisers described the benefits derived from the direct relationships they were able to foster with opponents as a result of working in a specific area over time (8/10). A face-to-face adviser who had been working in the same locality for a long period stated: 'I know the rent arrears team, the court team, because I used to do a duty scheme for years...it's a bit of gold dust really' (FA2). Several telephone advisers also recognised these relationships as an advantage of

face-to-face advice (3/10). Research in the past has shown that the adversarial legal systems of the US and UK are characterized by negotiation and settlement (Galanter, 1984; 2006; Genn, 1987; 2009; Sarat and Felstiner, 1986). Galanter (1984: 268), in a reflection of his view that these are not alternatives but part of the same process, has termed this ‘litigotiation’. He explicitly recognised that relationships between lawyers can take on significance in the litigotiation process. He referred to the ‘bargaining arenas’ that develop in respect of particular legal specialisms in specific localities around a ‘constellation of lawyers...who interact with one another... They share (more or less) expectations and understandings about procedures, applicable norms, outcomes’ (Galanter, 1984: 272–3). He also referred to more ‘diffuse’ arenas, where these characteristics do not exist (273). The lawyer’s job is to interpret the nature of the arena in which they are working and respond appropriately. Genn (1987: 48) refers to personal injury plaintiff lawyers who are ‘repeat players’ establishing either a combative or a co-operative relationship with defendants’ representatives in the process of negotiation.⁷⁸ This is an indication of how familiarity between legal advisers can affect the legal process. A concern was expressed in Genn’s (1987) research that non-specialists who favoured the co-operative approach might settle for less than the client’s claim was worth in order to avoid proceedings. However, different areas of law may produce different ways of dealing with negotiations. In relation to family matters, for example, Eekelaar *et al* (2000: 125) described a largely ‘principled’ approach to negotiations on the part of lawyers, whereby they adopted some notion of a reasonable outcome for their client and tried to steer negotiations and their client towards it. Thus, reasonable dealings with the other side are not necessarily to clients’ detriment. In this study, a number of advisers believed they could use a co-operative approach to the benefit of their clients.

In the most immediate sense, relationships with the other side often enabled face-to-face advisers and lawyers to circumvent the barriers posed by local

⁷⁸ ‘Combative’ solicitors were described as taking a more aggressive approach to negotiation. They tended to be specialists, and would issue proceedings and then negotiate. ‘Co-operative’ solicitors were more concerned with avoiding litigation and ‘maintaining a good personal relationship’ with the other side. They were more often non-specialists. Their tendency was to try to achieve settlement without first issuing proceedings (Genn, 1987: 46, citing Williams, 1983; Genn, 1987). Genn (1987) does not express a view on which approach is more effective, but it is apparent that insurance companies’ representatives preferred the co-operative approach and, at the same time, were keen to take advantage of any perceived weaknesses in the plaintiff’s solicitor.

bureaucracy. They could bypass the switchboard in place at the local authority in question and speak directly to the relevant person:

‘I know who I’ve got to talk to at every single local authority, because we have people coming to see us from all over [area of London]. I’ve got all their e-mail addresses, I’ve got all their phone numbers.’ (FL3)

For telephone advisers, this kind of direct contact was much more difficult. A number of the telephone advisers referred to the time it could take them simply to make contact with the relevant local authority official in the initial stages of the case (3/10). A telephone adviser explained that she could ‘spend a whole morning’ and get ‘passed from pillar to post’ trying to find the person she needed to speak to at the local authority (TA4). Another telephone adviser described a local authority where it was impossible to call the housing officer directly. Advisers referred to the problems experienced by clients due to the use of remote systems by local authorities. Increasingly applicants for homelessness assistance have to apply by telephone or online. A face-to-face adviser described how dehumanising this could be for clients:

‘...[Y]ou apply to the homeless section by phone now ...I sat with a Chinese couple the other day while they were phoned to make their application. And it was done via Language Line. And the guy dealing with it...he was trying his best, but it was just all onto a script and it was just appalling...they weren’t being treated as people.’ (FA2)

The dislocation being felt by the telephone advisers echoes the experiences of many clients when confronted with the automated processes in operation at local authorities. Due to their previous contact with the other side, in many instances it was an experience that face-to-face advisers could avoid.

Telephone advisers mainly saw the lack of relationships at a local level as an issue only in the earlier, information-gathering part of the case: ‘I think all it does is maybe slow us down very slightly in terms of we don’t have the direct contacts’ (TA8). In addition, one telephone adviser suggested that the lack of prior contact

meant local authority staff might find it easier to ignore requests for information from telephone advisers.⁷⁹ A face-to-face adviser confirmed that council representatives were now more willing to provide him with information about cases, as the result of a longstanding working relationship: ‘...[T]hey realise they’ve got to share [information] really. They just respond differently, because of what you’ve built up over the years’ (FA2).

Telephone advisers tended not to see relationships with opponents as having much influence beyond the initial stage. Further, it was suggested that local knowledge made little difference to cases in legal terms. A typical view among the telephone advisers sharing this opinion was:

‘I think, maybe from our legal point of view, not [any difference]... I think it depends on other issues. I think if it’s a straightforward housing issue, it’s not maybe relevant, but I think for people with support needs...’ (TA7)

It was their view that the legal case was not affected by issues related to local knowledge – only the support available to the client. However, a number of the other advisers, particularly face-to-face (6/10), referred to various ways in which these local level relationships could make to a real difference to the outcome of a case. When dealing with emergency homelessness matters, a face-to-face lawyer described how he could contact the local authority lawyer and get a swift resolution to a complicated matter. Another face-to-face adviser explained how he was able to agree fixed term adjournments with opponents in circumstances where they would usually be refused: ‘So, you can do things like get fixed period adjournments to sort stuff out that they wouldn’t agree to under other circumstances’ (FA2). Being able to agree adjournments can be very valuable to the client concerned. It may give time to resolve problems with welfare benefits and debt, or to help the client obtain assistance from local support services. This can give the case an entirely different complexion and increase the likelihood of a more favourable outcome. On the whole,

⁷⁹ A couple of telephone interviewees had previously been employed by a firm involved in the CLA Housing Advice Line prior to April 2013. They commented that they felt they were less likely to be ignored than they had been formerly, because the current organisation had a national ‘brand’ that was more widely recognised than their prior organisation had been. Thus, they were less disadvantaged than they had been before when contacting potential opponents.

the telephone advisers did not tend to see relationships with opponents as having much impact on the legal aspect of the case, whereas a number of the face-to-face advisers were able to pinpoint situations where relationships could contribute to positive case outcomes. It seems that the telephone advisers were more likely to see their intervention in technical legal terms and did not recognise the potential impact of the subjective elements of reputation and personal familiarity on a case.

Face-to-face advisers were also able to explain how their knowledge of an opponent's likely approach to a case might make a difference to the way in which they conducted a case (3/10), as it enabled them to anticipate how a particular request might be received and, where possible, to adapt their behaviour accordingly:

‘...[T]here are certain people in the Council now who I know fairly well. I know how they’ll react to certain requests for information or requests for accommodation etc., etc. So, I know the ones that are pretty good and amenable to what we need.’ (FL1)

One of the face-to-face advisers explained how familiarity with the review officer in homelessness cases could be beneficial in deciding how to formulate review representations. The value of local relationships was acknowledged by a telephone adviser who felt that the reputation that face-to-face organisations built up with local homelessness review officers could put them in a better position when their cases were being considered. However, she felt that as time went on, she was having her cases reviewed by the same people at different local authorities and this might reduce the disadvantage of telephone services in this regard.

An experienced face-to-face lawyer also explained how awareness of the conditions in a particular local authority could give advisers a tactical advantage when dealing with ongoing proceedings:

‘...[I]f you act against a local authority, if you know that they’re understaffed and you know the lawyers that you’re dealing with and you might know what sort of settlement proposals are likely to work, so that makes quite a difference.’ (FL4)

This kind of knowledge was therefore useful in pursuing a successful case strategy.

It was observed on a couple of occasions during initial face-to-face interviews that advisers were able to indicate to clients that they were familiar with individuals at the local authority or housing association concerned. This sort of recognition did not occur during any of the observed telephone interviews. In addition, during an initial face-to-face interview the adviser called the client's housing officer, and was quickly able to reach an agreement for the client to repay their rent and arrears. The client was highly suspicious of the local authority, but she mentioned in her interview with me that she had been reassured by the adviser's familiarity with the housing officer. It is evident that familiarity with the staff of local opponents can prove very advantageous to face-to-face advisers, including in terms of building clients' confidence in their abilities.

Clients can, however, find it difficult to understand that it is possible for opposing sides to co-operate while maintaining their independence from each other. Thus, the daughter of one client was slightly suspicious of the advice agency concerned, because the local authority routinely advised tenants in difficulty to seek advice from them (although this is generally considered good practice for social landlords). She explained: 'I don't understand why the council would direct you to somewhere that would then take them to court and fight against them' (Daughter of FC4).

There is a potential danger that, by forming these relationships, lawyers and advisers will lose their independence and refrain from taking action that would be in their clients' best interests, in order not to jeopardise their relationship with the opponent. In the past 'co-optation' of this nature has been identified as a feature of the criminal justice system and a potential risk in personal injury litigation (Genn, 1987: 49). Family solicitors have, however, been found to be able to manage amicable negotiation without compromising their clients' best interests (Eekelaar *et al*, 2000). In any event, following the Woolf reforms, there are considerable pressures on the parties to settle and an unreasonable refusal to mediate is likely to be punished by considerable costs sanctions (see, for example, *PGF II SA v OMFS Co 1 Ltd*, 2013). Thus it becomes more risky for lawyers to be openly unco-operative and aggressive in relation to negotiation.

The effect of this is that, in practice, lawyers and advisers are required to manage the ethical complexity of maintaining a co-operative relationship with their opponent while cultivating a sufficiently combative mental attitude towards the case.

Evidently, personal injury litigation in the 1980s was very different to housing law advice and litigation now and the dichotomy between co-operative and combative approaches to negotiation may be less clear than it once was. Certainly, many of the face-to-face advisers and lawyers interviewed for this research felt that they were able to use the direct working relationships they had developed with opponents to benefit their clients, and at the same time protect their client's best interests.

Research has suggested that the co-operative approach may have been preferred by personal injury non-specialists because their more limited knowledge of the field led to a lack of confidence in taking proceedings (Genn, 1987). In trying to negotiate the new complexity of behaving co-operatively while maintaining a combative mind-set, possibly the best protection against co-optation in negotiations is to be a specialist and to be committed to taking proceedings where necessary (and for your opponent to know it). This proposition was confirmed by a face-to-face lawyer who explained that he was able to manage an informal approach with the other side at the same time as being clear about his willingness to take a robust position with his opponent where necessary. He stated:

‘I know who to threaten with an out-of-hours application to the duty judge in the high court...I know exactly who to send [a letter before claim] to and just do the threat at the bottom...and you're not lying and they know you're not lying and it's all sorted.’ (FL3)

It seems that relationships with the staff of opposing organisations and familiarity with the way in which they were likely to react could often have a very positive effect on case outcomes. Possible ways of replicating remotely the relationships that face-to-face advisers and lawyers are able to establish with their opponents are discussed in more detail below. Nonetheless, the way in which telephone advice services are currently configured makes it much harder for telephone advisers to build up relationships with opponents to the same extent as locally based face-to-face advisers and lawyers. Thus telephone advisers cannot use those relationships or that familiarity to the benefit of their clients.

Local networks and relationships with community organisations

The relationships with ‘allies’, such as other local advice agencies and voluntary sector support organisations, that face-to-face services were able to cultivate were seen by face-to-face advisers to present opportunities to connect clients with services that were not available from the advice organisations concerned (3/10). These services ranged from other forms of advice provision, such as welfare benefits and debt advice, to social support and practical assistance in the form of food and furniture. In relation to this particular aspect of face-to-face services, it was probably significant that the services involved in the research were not-for-profit agencies. It seems less likely that the same level of integration with the local voluntary sector would be achieved by more commercial enterprises.

One of the housing advice services in this study was co-located with the local CAB. A particular advantage of this was that the CAB was able to provide debt and welfare benefits advice for clients (as they were in one of the face-to-face cases that I observed). According to a face-to-face adviser there was regular cross-referral and joint working in relation to cases, which was of considerable benefit to the client. In contrast, in a telephone matter that I observed, a telephone client made no mention to her telephone adviser of her debt problems or the involvement of the local CAB in her case. These matters only came to light in my follow-up interview with the telephone client, when the client told me that the CAB adviser had quickly been able to resolve her Housing Benefit problems as a result of the adviser’s contacts at the local benefit office. It had been particularly difficult for the telephone adviser to take clear instructions from this client over the telephone. This situation indicates both the difference that relationships between agencies at a local level can make, and the sort of information that may be lost when communication over the telephone is problematic.

In other instances, local relationships were less directly related to legal outcomes and more about integration with local networks of grassroots services, thus providing a more rounded service to clients. Research has shown the multi-dimensional nature of the problems faced by clients who experience problems in ‘clusters’ (see for example Genn, 1999: 31–6; Pleasence *et al*, 2004: 45–8; 2006: 65; Pleasence *et al*, 2010: 40). A ‘homelessness cluster’ has been identified, for example, incorporating problems with rented housing and homelessness and showing strong links to benefit problems (Pleasence, 2006: 70). Further, clusters of problems are not

distributed evenly across the population. Ill and disabled people are, for example, more likely than others to report 'homelessness cluster' problems (Pleasence *et al*, 2006: 73). Other research has shown that a significant minority (43 per cent) of clients seek advice with more than one legal issue and many clients' problems are further compounded by vulnerability due to physical or mental ill health (Moorhead and Robinson, 2006). Thus social welfare clients often require more assistance than legal advice alone can provide. For some clients in particularly dire circumstances, the support available was in connection with basic necessities. In one of the cases I observed, a face-to-face adviser explained how local charities had provided food and practical assistance to the client:

'For the client we saw on Friday, [local knowledge is] extremely important. She's had handouts from local charities. She goes to drop-in meals and things at different places round here. We know the area quite well now...and advise clients around that sort of stuff and what they need basically for their day-to-day living.' (FL1)

In several of the face-to-face interviews observed, advisers made reference to other local services where clients could obtain additional assistance with the problems they were facing.

It was also suggested by face-to-face advisers that links to other support services and local agencies could also produce longer-term outcomes for the client by improving their ability to cope with their personal circumstances. As a face-to-face adviser explained:

'In my experience, if you are looking at trying to have a long-term impact on someone's life, the legal problem is usually something that comes up when everything's gone wrong and there's an immediate thing that needs to be fixed. But, after that, trying to prevent that from happening again, you usually need other support services, is my experience.' (FA4)

Telephone advisers were also aware of this benefit of face-to-face services. As a telephone adviser who had previously worked in a face-to-face setting explained:

‘Just being aware of local schemes as well that client may be eligible for to get help with other issues. I think nine times out of ten, it’s never that they just have an issue with possession proceedings, there might be debt issues, there might be something else and I think it’s unfortunate that we haven’t got that local knowledge’ (TA4)

The telephone service had a comprehensive database of information in respect of local services, but it was recognised that it had its limitations: ‘...You can look on databases, but they’re not accurately updated and services open and close that often these days...’ (TA7). It was generally accepted by telephone advisers that access to additional support was an area where telephone-based advice was less able to assist clients than face-to-face clients.

The benefits to clients of receiving locally-based advice were considered by two face-to-face advisers to go beyond improved coping strategies, to a more general sense of connecting isolated individuals with the wider community. While many face-to-face clients valued face-to-face services for the ability to make personal contact with their adviser (an issue that will be explored in detail in the next chapter), they rarely spoke of the services that they had received in a wider, social sense. However, there were two clients, both of whom had mental health issues, who valued the opportunities for social interaction that face-to-face advice provided. One of these clients confirmed the benefits she had gained from coming out into the community to deal with her housing and numerous other problems:

‘It’s been brilliant...you have to go and meet people, you have to deal and talk and tell people...your problems...even if it’s just a walk round the shops, it’s lovely.’(FC2)

Thus, the provision of local frontline advice services, can contribute towards marginalised individuals feeling supported as part of a wider community.

The evidence set out above shows how, through formal and informal local networks, face-to-face services are able to enhance the service that they offer to clients. Firstly, their ability to deal with a client’s case is improved by working in collaboration with organisations that are able to assist with issues that are pertinent

to the legal issues in the case, such as welfare benefits and debt problems. Secondly, local knowledge enables advisers to direct clients towards support, which may contribute to the client's longer-term well-being and help them sustain their housing into the future. These findings confirm previous work which demonstrates the value of local networks linking Law Centres and other advice agencies in a specific locality (Mayo *et al*, 2014). It is apparent that clients can gain considerable advantages from these different aspects of local face-to-face provision, which telephone services are rarely in a position to provide.

Nevertheless, there may also be innovative ways of incorporating a degree of local knowledge into remote services. It is currently very difficult for telephone advisers working at a national level to build up the knowledge of an area held by locally-based face-to-face advisers. A possible way of increasing their knowledge of the workings of a particular locality would be for telephone advisers to be assigned to a 'patch', or more realistically, several 'patches', with clients allocated accordingly. While it is unusual for a call centre-based service to be run along these lines, it is presumably not beyond the possibilities of technology for this to be done. For reasons of practicality, the scale of providing a nationwide service would mean that each adviser would still have to deal with multiple local authorities, potentially limiting the extent of local knowledge that any adviser could develop, but it would still be an improvement on the current situation.

There is a certain irony in making these patch-based proposals. Telephone advisers informed me that the majority of their calls – particularly on homelessness – come from London. London accounts for a significant amount of housing law demand.⁸⁰ Mystery shopping research has demonstrated that London local authorities routinely fail in their legal duties towards homeless vulnerable single people (Dobie *et al*, 2014). Yet none of the telephone providers in housing and debt are based in London. The allocation of resources away from face-to-face advice to telephone advice represents a substantial shift in legal aid resources away from London. Meanwhile, telephone advisers based in areas including Derby, Sheffield and Swansea are advising housing advice clients in London, and suggestions are being made about how to reintroduce lost local knowledge to the telephone service. It seems unlikely, in any event, that reforms of this nature will be introduced to the

⁸⁰ In 2005/06, 31 per cent of 'legal help' housing cases were based in London (ASA, 2007).

telephone service, because of the potential cost implications. Once advisers are required to specialise according to different locations, the less flexible the service becomes. It is possible that more staff would be required to ensure national coverage and hence the service would become more expensive to provide. Given that the chief justification for telephone-based services is to save money, it seems unlikely that any change which has the potential to add costs will be welcomed. Nonetheless, without these adjustments it seems likely that telephone advisers will continue to be disadvantaged by their lack of local knowledge when dealing with opponents, and with regard to offering their clients a more well-rounded service.

Representation

The ability to provide representation is where face-to-face services truly distinguish themselves from telephone-only casework. Under current funding arrangements, CLA telephone advisers cannot provide clients with court representation. Telephone advisers identified that deficiency as a potential disadvantage of the service they offered.⁸¹ It was mentioned as the most common reason for clients to request face-to-face advice.

It is also at court that a network of social relations exists in terms of relationships between the ‘repeat players’ of the legal representatives of the landlords and the tenants and the judge (Galanter, 1974: 97). Between them, the members of this group form the ‘local legal culture’. A ‘local legal culture’ can be defined broadly as ‘common practitioner norms governing case handling and participant behaviour in court’ or simply as ‘a perception of “how we do things here”’ (Kritzer and Zemans, 1993: 538–540, citing Church *et al*, 1978: 54; Church, 1985: 449). It was apparent that face-to-face advisers’ understanding of the local legal culture could have significant benefits for their cases.

Face-to-face advisers were aware of the difference their presence as representatives could make to clients in court (4/10). As an experienced adviser stated:

⁸¹ A recent randomised trial in the US comparing outcomes in summary eviction matters found that clients who were given self-help ‘how-to’ sessions and then randomly selected for traditional attorney-client representation had significantly better outcomes than those clients who were only given ‘how-to’ sessions (Greiner *et al*, 2013).

‘I did the duty scheme for years, so even ten minutes with the client beforehand and then walking into court made a difference.. .they [the landlord] were going to request an outright order... They’d have got it if the client hadn’t turned up, they’d have got it if the client had gone in on their own.’ (FA2)

Another face-to-face adviser explained the very severe consequences that could result when clients were unrepresented in court. He referred to a case where an outright possession order had been made against an unrepresented defendant with severe mental health problems. With regard to the first court hearing, he stated:

‘I imagine the judge had said to her in the, you know, five minutes in G [court] ‘is this right, did [her son] smoke cannabis, and do you think it’s reasonable [to make a possession order]?’ and, you know, her just saying nothing really...’ (FL2)

He had now successfully applied to vary the original possession order. For clients with mental health difficulties, representation is essential.

Six of the sixteen face-to-face clients’ cases involved court proceedings. Two clients had attempted to self-represent prior to seeking advice (one in writing only), and in both instances an outright order had been made. In one case, once the client – a social housing tenant – had representation, a successful application had been made to set aside the order, but in the other, the client had remained unrepresented (it was not clear why, but it was possibly because the client was a private tenant and there was no substantive defence), and the eviction had gone ahead.

Five of the thirteen telephone clients were involved in possession proceedings. Two clients had attempted to self-represent prior to contacting the advice line and in both instances outright orders had been made (although one client had been represented by the CAB under the duty scheme – see more below). One of the clients had already been evicted by the time he contacted the telephone service. The client seemed capable, and had made previous applications to the court. He was unable to explain to the adviser why, on this final occasion, he had not taken any steps to prevent the eviction. He refused a follow-up interview, so it was not possible to explore this issue with him further; but sometimes even capable defendants

become overwhelmed by their problems when they have no support. Another two mortgage clients had been assisted by the telephone service prior to the court hearing, and both had attended court alone. In one case, an adjournment had been agreed in advance, so it was just a formality. In the other case, however, despite written representations from the telephone adviser, an outright possession order was made.

The fifth telephone client whose case involved proceedings had received an eviction warrant due to be executed in a few days. The nature of the telephone service meant that the client would have to represent herself in court when applying to suspend the warrant (unless a duty adviser was present). She had very poor English and, over the telephone, her sister had to speak on her behalf. Her ability to represent herself in court was considerably impaired.

The experiences of these clients underline how difficult it may be for clients to represent themselves in court proceedings. A face-to-face adviser stated:

‘...[F]or rent arrears, possession stuff I don’t get why you would just do phone advice. Well, you could do it on the phone, then meet the client there, you know, but just the phone advice and then leaving them to swim on their own? . . . didn’t work for me.’ (FA2)

The significant benefits that can derive from representation were also demonstrated by the provision of local duty advice schemes. As well as assisting unrepresented defendants in the court possession list, a face-to-face adviser explained that court staff would often send defendants applying to suspend eviction warrants to see her. She would then help them to fill in the required form at the court, make the requisite copies, and issue their application. In situations such as these, where defendants’ homes are at immediate risk, the consequences of not having this kind of advice and assistance are very serious. As the adviser said, ‘I don’t know how many people are evicted as a result of not getting their application, the N244s, in on time’ (FA5). Thus, for face-to-face advisers, representation is a service that they provide to clients, which can make enormous differences to the lives of the individuals concerned.

The issue of representation was not commonly referred to by face-to-face advisers as an advantage of face-to-face advice over telephone advice. This may be

explained by the fact that remote caseworking *per se* does not preclude clients being represented in court. It is simply a matter of the current funding arrangements for the CLA service. Where a client is being represented under Legal Help for advice and assistance only, any court representation will be provided by the face-to-face service (funded by what is known as 'Help at Court'). If, however, the client has a full legal aid certificate (available only in more complex cases) a remote adviser can instruct a barrister or an agent to represent the client in court. This would have been the experience of some of the face-to-face advisers when conducting remote casework. Thus, face-to-face advisers may not have been thinking of the limitations of telephone casework in these terms.

Possibly because of their awareness that court representation was something they were unable to provide, telephone advisers were more likely to pinpoint the familiarity that face-to-face advisers and lawyers had with the local court, and the judges in particular, as an advantage. A typical comment was: '...[T]hey're going to know how that judge thinks' (TA1). Interestingly, familiarity with the judge was a factor that face-to-face advisers were less likely to mention as an advantage of face-to-face services. This may be because this was an aspect of their work they took for granted. It may also be because, at court, the time spent before the judge is minimal, and it is therefore in the negotiations that take place outside the courtroom that advisers feel they can have most influence. A third possibility is that these face-to-face advisers do not feel particularly familiar with any individual judge.

This is not to say that familiarity with the judge as a result of regular court attendance was not seen by face-to-face advisers to have a beneficial effect on judicial decision-making. There were several face-to-face advisers who stated that it had a significant impact (3/10). One explained:

'I used to win benefit appeals that I didn't think were winnable just because you developed a relationship with the judges and everything like that. I think it made a huge difference.' (FA2)

Another face-to-face adviser described how, when working at a local branch of the organisation, their approach to the case would be influenced if they knew in advance which judge was dealing with their case. This is an indication of how specific local knowledge can make advisers more aware of which arguments are

likely to be successful before certain judges and what approach to adopt when they appear before them.

A face-to-face adviser explained that, when she was on duty at court, the district judge immediately sent unrepresented tenants out to see her – particularly if the landlord was seeking a suspended possession order. Thus in this court the presence of advisers under the duty scheme has significantly influenced the way in which this district judge behaves towards unrepresented tenants. Moreover, it represents a very clear instance of how face-to-face services can increase access to advice and representation in the most legally acute circumstances.

However, the same adviser was also able to identify how attitudes varied among judges in different courts with regard to the role of the duty adviser and in some courts the judges were simply not prepared to listen when she tried to speak on behalf of tenants. This reflected the experience of a telephone client who had been represented by a duty adviser from the local CAB in relation to his mortgage possession case (where an outright order had been made): ‘I’ve been to court twice now and [laughs] both of them have refused to listen to what I have to say, so I’m not...a big fan of judges [laughs]’ (TC9). Following his experiences, this client could not see the value of representation, because he could not see how it would make any difference if the judge was not prepared to listen. Thus, while the presence of a duty scheme may affect judicial behaviour, in order to operate to best effect, duty schemes are reliant on co-operative judicial attitudes and these may vary considerably from place to place.

In addition, the discretionary element in judicial decision-making in social housing rental cases will often vary depending on local circumstances, such as rent levels and the functioning (or otherwise) of the local authority Housing Benefit department. Thus, a face-to-face adviser described how judicial practices with regard to the making of suspended possession orders⁸² (SPOs) varied between different courts inside and outside London:

⁸² A suspended possession order, often referred to as an ‘SPO’, is an order for possession suspended on the basis that the tenant keeps to certain specified conditions. Failure to keep to the conditions means that the order is no longer suspended and the landlord may apply for a possession warrant to be issued without reference back to the court. Advisers try to avoid SPOs being made, because of the precarious position in which clients find themselves as a result and try instead to get cases adjourned on terms of payment.

‘I find the judges in W [town] very different even though it’s not very far [from London] ... In their attitude to the level of rent arrears, they just inevitably see £800, £900 as an SPO.’ (FA5)

In comparison, other face-to-face advisers described how clients with £10,000 in rent arrears were not uncommon in their area of London. The disparity in these approaches to possession matters shows how local legal cultures develop regarding what is an acceptable level of rent arrears in a housing possession case. Telephone advisers were not unaware that judicial attitudes might vary between courts: ‘[T]hey [face-to-face advisers] know for instance if the judge doesn’t grant adjournments other than in exceptional circumstances...’ (TA10). The information about the prevailing legal culture within a local county court is not recorded anywhere. It is something that is learned by regularly conducting cases in those courts, or by word of mouth between colleagues within and between agencies in that area. Thus, without on the ground contacts, the ‘local legal culture’ is largely inaccessible to remote telephone advisers (Kritzer and Zemans, 1993: 538). In this respect, they are akin to ‘one-shotters’ when it comes to court proceedings in a variety of courts (Galanter, 1974: 97).

Face-to-face advisers were more likely to refer to the impact of their interaction with opponents than with judges as influencing case outcomes. This echoes their emphasis on the advantages of their relationship with the other side in relation to the other elements of the advice process. As mentioned above, negotiating with the other side is a key element of the litigation process, and lawyers routinely spend far more of their time involved in activities related to trying to settle the claim outside court than in front of the court (Galanter, 1984). In some instances, the duty adviser’s intervention was enough to dissuade landlords from seeking a court order immediately and agreeing to the tenant having more time to resolve their difficulties. In the words of a face-to-face adviser who regularly attends court on the duty scheme: ‘There is a lot of respect...between us... No matter how bad the arrears are, if I say “[We] are willing to take on this case and help this client”, they back off’ (FA5). The impact of face-to-face negotiations was appreciated by a telephone adviser who had ‘shadowed’ a duty scheme, who stated:

‘I did one of the duty schemes at [local] County Court, and... [laughing] you just walk in and speak to the housing officer, and the matter’s resolved in about two minutes.. [H]aving that local knowledge just gives you that edge, I think...’(TA8)

The data suggests that telephone advisers may be focusing unnecessarily on familiarity with the judge as a benefit of representation. It seems that, for many face-to-face advisers, it is the simple fact of representation rather than any particular insights into the judge’s approach that is considered of value to the client at court. Face-to-face advisers are more likely to characterise their influence on the proceedings in terms of their working relationships with opponents, either before the court hearing or outside the court room. Furthermore, knowledge of the ‘local legal culture’ may be more important than knowing the attitude of an individual judge. Thus, it is perhaps as a result of their lack of knowledge of their opponents and the local legal culture that telephone advisers are most disadvantaged, rather than their lack of familiarity with the thinking of the judge in any specific case. What is clear is that representation by face-to-face services can considerably benefit clients, particularly when the adviser’s understanding of the local legal culture and prior relationship with opponents are brought to bear on the situation.

Potential disadvantages of local provision

This chapter has shown that there are many benefits to advice provision that is based in and serves a specific geographical area. It is important to acknowledge, however, that, there are disadvantages to local face-to-face services. The chief disadvantage identified by telephone advisers in relation to access to local face-to-face services was that they were oversubscribed, but that is as much a resource issue as a specific consequence of being locally based. The figures show that telephone services can suffer similar difficulties in meeting demand.

Although face-to-face and telephone advisers rarely referred to them, there are nevertheless potential downsides to local provision. In the first instance, there may be a limited choice of local providers (see also Giddings and Hook, 2002). This becomes particularly pertinent when clients have a poor advice experience. A face-to-face client expressed dissatisfaction with the service they were receiving, but they continued to use the service it, despite their misgivings. There were a few other

providers in the area, but the client was familiar with this service and so persisted to use it. Where levels of local advice provision are low, if clients are unhappy with their adviser, they may have few options in terms of obtaining help elsewhere.

A second limitation of local provision is that, in close-knit communities, clients may be reluctant to seek advice in relation to issues such as domestic violence or abuse, due to concerns about their confidentiality being compromised (Mayo *et al*, 2014). In rural communities in Australia, for example, women experiencing domestic violence find it difficult to access local services due to social and professional links between their husbands, lawyers and police (Giddings and Hook, 2002). This type of issue was not mentioned by any adviser in relation to advice. However a face-to-face adviser mentioned that in a city where she had worked previously, domestic violence clients had been particularly reluctant to use interpreters for fear that their advice-seeking would get back to their families. Clearly, advisers are bound by very strict rules of client confidentiality, but clients may not realise this. In addition, they may not want to risk being seen going into an advice agency, because of the questions that might result. A telephone adviser referred to a domestic violence client who she felt was only willing to contact her because it was a telephone service. Thus, the opportunity to contact non-local services may be attractive to clients unable to leave their own community and unwilling to access advice within it. This is an argument for retaining a proportion of telephone advice services.

Conclusion

A significant finding of this research is that both face-to-face and telephone advisers were aware that the local knowledge held by face-to-face services serving specific local areas brings substantial advantages. This chapter has explored the connection between telephone and face-to-face advice and place in its many different facets. Firstly, while telephone access may be seen as more convenient, physical presence and local referral networks may facilitate greater access to advice for more marginalised groups. Furthermore, in the absence of publicity, claims to improve access to legal services through telephone provision are largely meaningless. Secondly, on the basis of a more traditional notion of place, knowledge of a physical locality can enhance the adviser's understanding of a case. Thirdly, by adopting a broader, less conventional, perspective of place which defines the local in social

rather than physical terms, it is possible to appreciate how local services are able to forge relationships between advisers, their adversaries and their allies. These relationships can have benefits for both the client's case and their longer term well-being. The provision of local advice services can also assist isolated individuals in feeling part of a wider community. In addition, court representation is a particularly potent advantage of local face-to-face provision, where advisers' local knowledge and relationships come to the fore in helping clients to save their homes.

It is nonetheless important not to over-romanticise the advantages of local services. In some areas, there may be a lack of choice of advisers and, in certain communities, clients may be fearful of seeking advice at a local service because of concerns about confidentiality. In addition, taking a more place-specific approach to telephone services might result in being able to reproduce some of the benefits of familiarity with local opponents and other services. Despite this possibility, this chapter has shown that, in the current situation, face-to-face services with a local remit combine the physical and the relational in a way that is unique and is of particular benefit to their clients, especially the disadvantaged and the marginalised.

Chapter 7: Creating Relationships in Telephone and Face-to-face Advice

Introduction

The impact of the relational quality of lawyer–client interaction is a much overlooked aspect of effective lawyering. As outlined above, it is argued that, because of the historical preference for viewing the practice of law as a morally neutral technical exercise, the dominant discourse of law and legal practice has largely ignored the impact of clients’ and lawyers’ feelings on the provision of advice. Yet a client-centred approach to lawyering suggests that the degree of the emotional connection between adviser and client can have profound effects on the quality of communication between them, which in turn may affect the efficacy of the whole advice experience (see, for example, Binder *et al*, 2011; Sommerlad and Wall, 1999; Sommerlad, 1999; Buck *et al*, 2010). The question being asked in this thesis is whether telephone communication has an impact on the level of engagement between adviser and client, and, if so, what are the possible implications of this for the advice-giving process? In order to investigate these issues, this chapter considers psychological engagement and detachment, and the ways in which telephone and face-to-face advice may have different emotional registers for both the client and the adviser. In Chapter 9, the changes induced by these critical interpersonal issues on the practical realities of telephone and face-to-face casework will be distilled.

Possibly more than any other chapter in this thesis, this is where the client voice is heard in terms of their view of the adviser–client relationship and the differences between telephone and face-to-face advice. This is because the emotional realm of adviser–client interaction is where the client perspective most naturally lies. As discussed earlier, clients often judge the quality of their advisers by the interpersonal elements of communication between them, as well as by their technical competence (Sommerlad and Wall, 1999; Moorhead *et al*, 2003b). It was anticipated when approaching this research that clients would express their assessment of the interaction with the lawyer in terms of their feelings. What was perhaps less predictable was the extent of the greater emotional reassurance that a substantial proportion of clients would ascribe to the face-to-face experience. The question to be

answered in this chapter is why telephone advice is often considered to result in a more impoverished form of lawyer–client relationship. My aim is to try and identify the elements of interaction that are central to the relationship in order better to comprehend the differences that result when communication between advisers and clients occurs over the telephone rather than face-to-face.

Evidently, clients are very much guided by their feelings with respect to their opinion of the adviser. This is not to say, however, that emotion is irrelevant to the adviser. Commentators on adviser–client relations, such as Sherr (1999) and Maughan and Webb (2005) recognise the importance of acknowledging emotional factors within the case, but continue to view emotion as the province of the client. This thesis takes issue with that delineation. It has been suggested earlier in this thesis that the ethical requirement of neutrality has resulted in a dominant legal culture where, in order to maintain a professional appearance, legal advisers are not allowed to admit to an emotional life (see also Macfarlane, 2008). Thus, the client is free to refer to how they feel, but the adviser is not. Despite this, within this study, a number of advisers revealed the impact of engagement and detachment in their own work, in terms of their own motivation and their need for fulfilment and reward, particularly when comparing telephone and face-to-face advice. A further unexpected element of detachment that this study brings to light is that working remotely from clients may result in a more limited ability to appreciate the situation from the client perspective, and that the physical distance between adviser and client may even inculcate an attitude of trepidation towards face-to-face interaction with clients. Advisers' contrasting emotional reactions to telephone and face-to-face interaction have implications not just for the provision of legal aid advice, but also more widely for a society where increasingly services are being moved to remote telephone and online delivery.

The data presented in this thesis reveals a complicated constant interplay between the relational and functional elements of the lawyer–client interview: the way clients and advisers feel about the relationship will shape how they behave in the interview at the same time as behaviours within the interview will affect the relationship. Thus, while trying to disentangle these elements in order to understand them better from the perspective of the impact of telephone and face-to-face advice, we should not lose sight of the fact that in reality the emotional elements of the adviser–client interview are inextricably intertwined with the performance of its

practical functions. Furthermore, what an individual client takes from any given situation will vary depending on the personal characteristics of the client, the problems they face, their capacity for dealing with them and the adviser's personality and skills. This chapter attempts to separate out the key constituents in building an adviser–client relationship and to consider how the impact of each aspect may vary according to the medium through which it is communicated. In practice, though, none of these factors exist in isolation from each other and in every interaction, these qualities combine uniquely to determine the exact nature of the relationship between an adviser and client.

Forming a relationship

The position adopted in client-centred lawyering is that the emotional strength of the lawyer–client relationship is likely to affect the level of co-operation between the adviser and client. Empirical studies have shown that interpersonal factors are a major influence on the extent of trust between client and adviser (Sommerlad and Wall, 1999; Sommerlad, 1999; Buck *et al*, 2010). These relational components seem likely to affect the client's willingness to be open with the adviser, which will in turn determine the adviser's ability to give advice that is both apposite and meets the client's needs (Binder *et al*, 2011). Thus, in the absence of an emotionally effective adviser–client relationship, the efficacy of the advice process is undermined. As a face-to-face adviser explained, echoing a view expressed by several other face-to-face advisers (5/10):

‘Fundamentally the outcomes, I think, in the long ways are driven by the relationship between the adviser and the...client and the stronger that relationship is the better prospect there is of being able to get...positive outcomes...’ (FA1)

The depth of the relationship is therefore crucial to the effective conduct of the case.

Legal services are ‘credence goods’. This means, as laypeople, it is difficult for clients to assess the quality of the services that they receive (Moorhead *et al*, 2003b: 8). Therefore clients fall back on proxies to assess the quality of advice services. In describing a good quality legal service clients have been shown to be as

concerned with the interpersonal skills of the adviser as their technical knowledge (Sommerlad and Wall, 1999). Previous ‘model client’ research into advice has also shown that individuals are likely to judge the quality of advice by the interpersonal qualities of the adviser, such as empathy, even if these do not necessarily reflect the adviser’s actual competence (Moorhead *et al*, 2003b). This suggests that in order for clients to be willing to engage in the advice process they need to be confident of the interpersonal aspects of the interaction.

Clients and advisers were largely agreed that face-to-face contact was more likely to result in a closer relationship with the adviser. This was the view expressed by nearly all of the face-to-face clients (12/13) and face-to-face advisers (9/10). A typical comment by a face-to-face adviser was: ‘I think [face-to-face] builds a better long-term trusting relationship with the client’ (FA4). Most of the telephone clients said they were satisfied with the relationship they had established with their adviser over the telephone, but a significant proportion also believed that face-to-face contact resulted in a closer connection with the adviser (4/7). This was a view also reflected by a substantial number of the telephone advisers, who largely believed that it was more difficult to establish a relationship in the initial stages of the case (6/10). A minority of telephone clients (3/7) and telephone advisers (3/10) did not agree with this position, so clearly, the situation may not be the same for everyone. Nevertheless, for many clients and advisers, face-to-face contact was seen to result in a more intimate adviser–client relationship. A number of different interpersonal factors were believed to contribute to the development of strong relationships between clients and advisers. These various elements will now each be explored in more depth.

Personal nature of interaction

Personal contact was viewed by a number of clients as central to building and sustaining a relationship with the adviser. Face-to-face interaction was frequently referred to as more ‘personal’ or ‘human’ than telephone contact. It was considered that being able to see the adviser enabled the client to ‘get a sense of who they are’ (FC2) and produced a ‘closer bond’ (FC4). This feeling was expressed particularly strongly among face-to-face clients (10/13). A number of clients referred to the importance of being able to ‘put a face to a name’ and ‘knowing’ the adviser. A typical comment was:

‘...[D]oesn’t worry me particularly getting on the phone...But I do – I did find it a lot more reassuring to actually have a face, if you like, I could put a name to. Or I knew who I was dealing with.’ (FC14)

A small group of telephone clients also considered the telephone to be less personal. A telephone client, who had spoken to her adviser through a support worker because of language issues, stated: ‘To talk on the phone, it’s not the same as face-to-face. You see the person you’re talking to. You know, you’re talking to a person, the phone is a machine’ (TC3). Several clients equated talking on the telephone to talking to an inanimate object, rather than another human being (4/20). It was described as like talking to ‘a bit of machinery’, ‘a wall’, ‘a piece of plastic’, and ‘a computer’. In this way the person on the other end of the phone was rendered a ‘non-person’, an emotionless piece of equipment. Evidently, embodied human connection remains important to individuals. This confirms that the personal element of ‘place’ remains important to people, that the architecture of ‘network interfaces’ and ‘loading docks for bits’ predicted in Mitchell’s *City of Bits* (1996: 104) continue to be insufficient to sustain human relationships.

In addition, a number of clients saw the interview as a reciprocal interaction and an opportunity to be known by the adviser. As one client explained: ‘...[Y]ou get a sense of who they are and you can try and let them know who you are’ (FC2). It was also important to this client that the adviser should see that she was ‘genuine’. A face-to-face adviser commented that clients often felt the need to convince her that they were ‘not a bad person’ and believed that it was through face-to-face interaction that they could best achieve this (FL1). Thus for certain clients it seems equally important for the adviser to be familiar with them as an individual as a result of the interaction.

Most face-to-face advisers were aware that the telephone could seem more impersonal to clients than face-to-face contact (8/10). Telephone advisers were less likely to make this comparison, although there was a small group of telephone advisers (4/10) who felt that face-to-face advice had a more ‘personal’ element. Several face-to-face clients expressed the view that being able to see the adviser in person made the situation more comfortable for them (7/13). One client explained:

‘I think just seeing the person. It’s for real. It’s more – you’re either going to feel comfortable or you’re not. When you’re hearing a voice on the phone, there’s a different, formal attitude going on...’ (FC12)

It seems that informality may not be a feature of clients’ experiences of telephone advice and that a substantial group of clients in fact find telephone interaction more impersonal than face-to-face contact. This seems likely to result in a lower level of emotional engagement between the adviser and client, and may have implications for how the relationship between them develops.

Emotional support

The emotional support available to the client through the relationship with the adviser is also a significant factor in its development. Many face-to-face clients (9/13) and a number of telephone clients (4/7) believed that face-to-face advice provides more emotional support than telephone advice. These clients believed that the greater degree of emotional support available through face-to-face advice was essential because of the serious nature of their cases or, as one client expressed it, when ‘you’ve got so much at stake’ (FC16). It is easy to forget the degree of desperation in which many of these clients found themselves and it is hard to reproduce the extent of those emotions on paper. Nineteen of the 29 clients observed and/or interviewed for this research were receiving advice in connection with possession proceedings or homelessness matters (12/16 face-to-face and 7/13 telephone). A further eight of the clients (2/16 face-to-face and 6/13 telephone clients) had been served possession notices of some description. Most clients also had physical and/or mental health conditions (20/29). Clients cried both in interviews with their advisers and during their meetings with me. I observed interviews where clients were upset, angry and agitated in their despair. A telephone client gave a vivid description of how he felt he had been treated by his building society when financial troubles with his business had meant he could not pay his mortgage for a few months:

‘...[I]t’s like some, like, how can I put it, a creature on another creature’s throat and just trying to rip the life out and they don’t seem to understand that they’re playing with people’s lives...’ (TC1)

Clients said that they were unable to sleep, were very anxious and cried frequently when they were on their own. It is unsurprising that, in situations of such acute distress and anxiety, clients feel the need for emotional support at a personal level. A telephone client (who had subsequently been referred for face-to-face advice) was very satisfied with the service he had received over the telephone, but explained that he preferred face-to-face advice, because meeting his solicitor in person gave him 'more strength' in the stressful situation of being harassed by his private landlord (TC13). For a number of face-to-face clients who were in an emotionally vulnerable state, the face-to-face experience helped them cope with a very worrying situation. In support of this view, a face-to-face adviser made the point that many of her clients are unlikely to have anyone else to unburden themselves to about the stress they are feeling: '...[A]ctually, a lot of my clients, I'm probably the first one that's really sat and listened to them and taken an interest' (FA3).

The need for face-to-face emotional support spanned the ability range. While most of the face-to-face clients in this study were at average or below-average levels of capability (as defined in Chapter 5), there were three face-to-face interviewee clients who could be described as having above-average levels of capability, and all three differentiated between everyday situations where telephone advice was acceptable and the acute housing problem that they were facing, where they believed face-to-face advice was needed (at least at first). A very competent client explained how she used the internet and the telephone for consumer and general advice and information, but not for advice on her homelessness application, because:

'This situation, as I said, is very personal and it's very urgent and it's you know kind of something that it, it does keep me awake at night. Being able to talk to somebody face-to-face and get that message across, get some advice from them...it's key.' (FC11)

Often these more capable clients did not expect all contact to be face-to-face, and were happy for telephone communication subsequently. However, they felt it was important for the first interview to be in person, because that initial connection meant that later telephone exchanges had a more personal quality, which improved

communication with the adviser. Although he was convinced that the adviser had been ‘very very much on my side’ (TC1), a very capable telephone client nevertheless stated that, if the situation had been ‘more drastic’ and things had not gone to plan, he would have wanted face-to-face advice for the emotional support: ‘Yeah, if I felt more worried and didn’t feel secure, then I would have wanted a more face-to-face situation...it would be a comfort thing, I think’ (TC1). For many clients, across the broad range of capabilities and types of problem, greater emotional support was strongly associated with face-to-face contact with the adviser.

Conversely, some telephone clients felt very well supported through the telephone-only experience. One client stated: ‘[A]t the end of it all, I felt we were friends, it felt like I had a friend in [adviser] and yet we’d never met’ (TC12). She also made the point that, when she had gone to see a solicitor face-to-face regarding a contested insurance claim, she felt the solicitor had been ‘detached’ towards her.⁸³ Yet this client also stated that she valued the detachment of telephone contact, because it had enabled her to retain her composure and not break down when speaking to the adviser. Thus it seems clients can derive emotional support over the telephone, but it may be experienced in a less intense form. It is evident from the above that some clients would find it very difficult to cope with telephone-only contact, because of the lack of emotional support, and this could impair their ability to deal with their case.

Empathy and compassion

Another important psychological element in creating an emotional connection with the adviser from the client perspective was the adviser’s empathy, described as the adviser understanding ‘where I’m coming from’ (FC11), or sympathy, in terms of ‘feeling sorry for you’ (FC3). Clients often used these sorts of terms in conjunction with each other, and did not tend to distinguish between them. The words of a face-to-face client demonstrate this common approach to the emotional components of the relationship with the adviser:

⁸³ It is notable that, on this occasion, the face-to-face solicitor had been telling the client that she would be unable to deal with her case. The solicitor’s ‘detached’ approach might have been because she was delivering unwanted news to the client.

‘...[W]hen I am telling you something which hurts me and I look at your face and you show me that you are sympathising with me, you know, it makes me feel much better...I can see that there is compassion in you, you are feeling what I’m feeling...But on the phone – no.’ (FC1)

Several face-to-face clients (4/13) and one telephone client made references to the importance of empathy in their interactions with the client and adviser. These clients were all in situations of acute personal distress. Most of the clients who referred to empathy and sympathy as important factors believed that it was through the advisers’ body language that empathy was best conveyed. The telephone client, who had mental health issues, felt that it was more likely that an adviser would have a more empathetic understanding of his difficulties if they had met him: ‘...[S]ay you’re looking at me now, and I’m talking to you and explaining my situation, you probably know my situation, don’t you?’ (TC6).

Both face-to-face and telephone advisers recognised the importance of empathy in developing a connection with the client. A strong view was expressed by face-to-face advisers that the ability to empathise more deeply with a client was a benefit of face-to-face interaction (8/10). Body language in terms of expressing empathy and understanding the client’s physical state was considered a key advantage of the face-to-face interview (7/10). A face-to-face adviser explained:

‘I just feel like I can understand more about where a client’s coming from. I don’t know why, but when I see them and sometimes you can really see what a state someone’s in. Their physical appearance, it just makes you more, really understanding.’ (FA3)

Interestingly, several telephone advisers agreed body language was a key factor in conveying empathy (5/10), and a number recognised the difficulty with the development of empathy over the telephone, particularly responding to clients’ distress (6/10). Nevertheless, they also felt there were things they could do in terms of adapting their tone of voice and using verbal acknowledgements that would help to convey empathy to the client. The general view, however, was that face-to-face is a better environment in which to foster and communicate empathy to the client.

Several face-to-face advisers also mentioned that they were more able to show sympathy or care for the client in person (4/10). A small group of face-to-face clients confirmed that they felt that the adviser was more likely to feel compassion in person (4/13). A face-to-face client described his view of the situation:

‘The way I’m talking to her, she can see how I feel. She will feel ‘What if it was me?’ She is doing her job, she will feel that she knows the person, seeing you in a way, feeling sorry for you...You feel that more if you see someone.’(FC3)

Demonstrating compassion seemed to have less currency in the telephone experience. Telephone advisers rarely mentioned sympathy and spoke mainly of empathy (although they may have been conflating the terms). A couple of telephone clients commented that their adviser had treated them sympathetically. One of the telephone clients saw no difference between telephone and face-to-face contact in this respect, but the other felt that it was possible that the adviser would have been ‘a tad more’ sympathetic face-to-face, although he had been able to achieve what he needed to over the telephone (TC1). These experiences indicate that compassion may be more actively conveyed and understood in face-to-face adviser–client relationships.

A telephone adviser suggested that rapport was stronger with clients who valued the telephone service because their mobility problems or other issues made it difficult for them to access face-to-face services. A number of telephone clients expressed gratitude for being able to get advice when other attempts had failed. However, face-to-face clients seemed equally grateful for the help they were receiving. Several clients spoke of feeling relieved after their first interview with the adviser (7/20). Gratitude may be a factor in building the relationship between adviser and client, but it does not seem to depend on the medium through which it is provided. The mere fact of being helped may be enough.

The empathy and compassion that the adviser is able to communicate to the client appears to be an important element in creating a greater personal connection between adviser and client. It seemed that for many clients, face-to-face contact facilitates greater empathy and compassion, often because of the significant role of body language and a perception that adviser is able to gain a deeper understanding of

the client in person. This may result in the face-to-face experience providing an increased opportunity for the client to form a strong bond with their adviser, and a deeper level of trust.

Adviser commitment

Clients are often concerned to know that the adviser is committed to helping them and ‘on their side’. This can be a factor in the development of trust between the client and adviser (Buck *et al*, 2010). A number of clients mentioned this aspect of their relationship with the adviser (11/20). Interestingly, most of the face-to-face advisers recognised the importance of clients being confident of the adviser’s engagement in their case and being on their side (8/10), but this was much less the case for telephone advisers. This may be a reflection of the higher degree of experience of many of the face-to-face advisers in this study compared to the telephone advisers. Yet there were younger advisers among the face-to-face advisers who also seemed more attuned to this issue. It may also therefore indicate a gap in emotional imagination due to advisers feeling more distant from their clients as a result of using a more impersonal method of communication.

For a number of face-to-face clients, a major benefit of face-to-face advice was that they could be more certain of the adviser’s commitment to them and their case by assessing their body language (6/13). Most clients did not provide a detailed definition of ‘body language’, even when probed, but more often proceeded on the assumption of a shared understanding of the term. Some clients were, however, able to give a more nuanced explanation of what they meant by body language. A capable face-to-face client described the difference that the adviser’s body language made in terms of assuring her of the adviser’s attentiveness in relation to the case:

‘...[S]he’s actually leaning forward, not sitting backwards, she’s, you know, kind of attentive and nodding like you are [both laugh], listening, it all puts you at ease. To say right, okay, well actually I am being heard...’ (FC11)

Visual assessment of the adviser also enabled the client to gauge the sincerity of the adviser’s interest. As a face-to-face client explained:

‘...[Y]ou know if they’re interested or not and you know if they care or not...you can read people when you meet them, can’t you? You know if they’re sincere or not...not on the telephone. I wouldn’t say, anyway.’
(FC16)

Several face-to-face advisers explained that vulnerable and often suspicious clients needed to believe in the adviser’s commitment to dealing with their problems in order to be engaged with the case themselves and this was more effectively achieved face-to-face (3/10). In confirmation of this, an agitated face-to-face client explained that being able to see the adviser’s body language made him believe that the adviser cared about his situation. This meant that he was willing to accept the opinion of the adviser regarding his case, which he said he would not have done over the telephone. This indicates that, by being able to assess the extent of the adviser’s engagement in person, a client may feel more willing to follow advice. Face-to-face advisers also referred to the ‘trust issues’ that a number of their more vulnerable clients had. As a face-to-face adviser explained: ‘Because the clients that I deal with have some vulnerability... they are not going to give their trust to you very easily’ (FA3). In some situations, a client’s decision not to follow advice, due to mistrust as a result of telephone-only contact, could have serious consequences for the conduct and outcome of the case.

A number of face-to-face advisers (4/10) and one of the telephone advisers also showed their understanding that body language played a key role in communicating the adviser’s commitment to the client. A face-to-face adviser reflected the view among these advisers when he commented:

‘[I]f you can show somebody that you are engaged, you know, and that you are trying to help and that you are listening, that you are understanding ... I think [it] can make a big difference.’ (FA2)

It was also recognised by face-to-face advisers that where the adviser’s body language does not demonstrate commitment to the client there is the potential for negative consequences (2/10). The same face-to-face adviser referred to a situation where his body language had conveyed his tiredness to a client and she had reacted angrily.

Moreover, despite the scepticism of some face-to-face clients in respect of being able to judge the adviser's sincerity over the telephone, telephone clients found other means to be satisfied of the adviser's interest in helping them. A telephone client with mental health issues stated that he had been reassured by the adviser sounding interested during his call and two more capable telephone clients referred to the adviser's manner over the telephone reassuring them that the adviser was on their side. Thus it may be possible for clients to be satisfied of the adviser's commitment over the telephone. For many more wary clients, however, the ability to assess the adviser's commitment visually is evidently of importance.

The greater ability to convey the adviser's commitment to the client in person was seen by a couple of advisers as particularly important in situations where difficult conversations with the client were necessary. Often these sorts of conversations will involve challenging the client's version of events and/or advising them that they do not have a good case. One of the advisers who raised this issue explained:

'I just think it's quite important if you are telling somebody something that's quite difficult like – they're not going to be believed and they might lose their case – I think it is easier if you do it face-to-face... I imagine that they find it quite important to see me to know that I'm hopefully sympathetic and giving them good advice rather than just disbelieving them.' (FL4)

Other research has also shown that a client's willingness to accept unpalatable information is influenced by the depth of their relationship with the adviser (Sommerlad and Wall, 1999). This demonstrates the complexity of the lawyer–client relationship, whereby the adviser must both maintain the client's confidence in them and at the same time explain to the client the flaws in their case. Sarat and Felstiner (1986: 122) have previously alluded to the difficulties of '[a]chieving this precarious balance' in the family and criminal law context. For both of the face-to-face advisers who explicitly acknowledged the duality of the adviser's role in terms of being on the client's side but not 'too much' on their side, face-to-face interaction provided a more effective environment in which to maintain the client's trust in a complex dynamic. One of the face-to-face advisers who engaged with this issue analysed the situation in terms of having more 'tools' available in a

face-to-face interview to navigate a complicated relationship and therefore being more likely to do so successfully.

Believing in the adviser's commitment appears to be a vital part of establishing a firm relationship with the client. Moreover, non-verbal communication is clearly one of the most powerful ways in which clients can be convinced of the adviser's interest in helping them with their case. It is however a tool that has to be wielded with care and skill to achieve positive results. It is therefore important that face-to-face advisers are aware of the potency of body language and also that, where necessary, they receive training about how to use it well. When deployed effectively, it is clear that body language can make a significant contribution towards creating a strong bond between adviser and client.

Professionalism

Face-to-face clients often focused on being able to assess the adviser visually when forming a relationship with them. In the absence of this, several telephone clients used their belief in the adviser's 'professionalism' as part of the process of evaluating them (3/7). While these interviewees were not asked to define what they meant by the term 'professional', the inference from what clients said is that they equated being 'professional' with efficiency, good technical knowledge (exemplified by asking 'pertinent' questions), and creating the impression of knowing what to do. These clients were reassured by the adviser's apparent knowledge of and familiarity with the process. A telephone client explained that he had not been troubled by telephone-only contact in his case, because:

‘[S]he had a very very good professional manner about her ...she knew what she was doing... she asked all the right questions, had all the pertinent information and she did what she had to do.’ (TC1)

In addition, the mental image that two of these clients had of their adviser was as a 'professional' or 'in a suit' (TC1 and TC9).

It is notable that these references to the reassurance of professionalism were made only by the three telephone clients with mortgage possession cases. The four other telephone clients, who were mainly of lower capability, did not refer to this aspect of the adviser's approach. They were usually more concerned by the way they

were treated by the adviser. There were several face-to-face clients who ascribed 'professional' qualities, such as 'efficient', to their advisers (4/13). As a group, however, professionalism seemed less of a consideration for face-to-face clients than the adviser's interest in helping them. Overall, notions of professionalism seemed more forceful among the three telephone clients with mortgage issues as an element of constructing the relationship. This highlights the possibility that, because telephone clients lack the more feeling-led mechanisms of visually assessing the adviser during face-to-face contact, more capable clients may be more likely to draw on (possibly stereotypical) notions of the legal professional as part of the process of forming a relationship with their adviser.

The greater inclination of certain telephone clients to value the professionalism of their advisers is of special interest, because several telephone advisers believed that it was the informality of telephone advice that made it more attractive to clients (3/10) – although, as concluded above, this is not how clients appear to perceive the relationship. In the words of one telephone adviser:

'I think, just from a personal point of view, if I had to go and discuss something sensitive, I think I'd prefer to do it over the telephone... I think I'd feel more comfortable doing that than going into an office in quite formal surroundings with somebody sat in front of me in a suit.' (TA2)

It was notable that these telephone advisers chose to compare themselves with private practice solicitors in this regard, and seemed to have little awareness of the more informal manner in which their own colleagues in face-to-face offices or other voluntary sector agencies would dress, or the surroundings they would work in.

Conversely, there was a group of telephone advisers who recognised that the client's confidence in them was gained by a professional approach in the conduct of their cases (4/10). They saw trust with the client being established as a result of meeting their own deadlines and getting the job done: 'I think if you... are doing a good job, and you're getting results, that's what builds the trust between you and the client, with the telephone advice' (TA8). Thus these advisers had accurately identified an important aspect of establishing trust with the client in the telephone-only environment.

In fact, face-to-face advisers recognised that informality was an important feature in ensuring individuals from their particular client group did not feel intimidated (5/10). As a face-to-face adviser from a solicitors' practice explained:

‘[O]ne thing I think I’m reasonably good at is being . . .[p]rofessional but I hope being friendly and being informal. I think that a sort of starchy formality would not assist at all well with...the sort of clients I have.’ (FL3)

He felt that it would be harder to replicate the same level of informality over the telephone.

This research has shown that there are a variety of emotional components that contribute towards developing a strong and effective relationship with the client. Many of these interpersonal factors – emotional support, empathy and compassion, and adviser commitment can be felt over the telephone – but this study shows that for many clients across the capability range, they have a greater psychological impact when they are experienced in person, often because the client can assess the adviser visually and be more convinced of the adviser’s emotional responses to their situation. These findings contradict previous statistical research which shows telephone debt clients as marginally more likely to report a good relationship with their adviser (Ellison and Whyley, 2012a). A possible explanation for this divergence is that the telephone debt clients in the quantitative study tended to have less serious problems than the face-to-face clients, and may have expected less from their relationship with the adviser. My research suggests that more capable telephone clients may be better able to use their perceptions of professionalism as a proxy for good quality advice, and may not suffer from the same problems with regard to forming a relationship with an adviser. However, the less individualised and non-visual nature of telephone-only contact may mean that lower capability clients will find it more difficult to create sustainable relationships with telephone advisers. This could have a significant effect on the conduct of the case, because of the potential adverse impact on the client’s openness with the adviser. Many face-to-face advisers (7/10) and some telephone advisers (3/10) made a clear link between the relationship between the adviser and client and getting the best possible instructions from the client. As one face-to-face adviser explained, echoing the view of several others:

‘I come at it from very much that point of view...we need to get as much of the story as possible and you can only do that if they feel comfortable to tell you. So, the relationship is everything’ (Face-to-face adviser: FL2)

An impoverished relationship with the client as a result of telephone-only contact may therefore result in poorer quality instructions from the client, which could have an adverse effect on the case as a whole.

Trust and reassurance

Mutual trust, in terms of the client and lawyer’s belief in a shared commitment to sincerity and reliability (particularly on the part of the lawyer), is considered an essential component in the lawyer–client relationship (Sherr, 1999; Maughan and Webb, 2005; Buck *et al*, 2010). Lawyer–client literature may foreground trust, but, in this research, the primary focus of many clients was the reassurance that they were able to gain from an interview with the adviser (12/20). In contrast, only one client mentioned trust without being prompted. It is suggested that the difference between trust and reassurance is that trust describes how the client and adviser feel about each other and reassurance describes how the adviser makes the client feel about their problem and their case. From the responses of advisers and clients, it is evident that trust and reassurance are interrelated, but involve different perspectives on the same situation.

Reassurance in this context did not mean that clients simply wanted advisers to tell them that they had a good case. It often seemed to take the form of advice that all was not lost and that there was the possibility of a favourable outcome. As one client facing eviction due to anti-social behaviour allegations put it:

‘...[W]hen I rang my housing, you know about all the eviction that was going on, they really led me to believe that, you know, I’ve lost hands down and that’s it, blah, blah...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.”’ (FC16)

It is argued that, in such serious situations, reassurance is a crucial part of enabling clients to take action and to cope with the difficulties they face, which may otherwise seem overwhelming. In addition, the client is more likely to feel engaged with the adviser and the case and to give fuller instructions if – as in the case of the above client – they have been reassured by the adviser that there is something that can be done about what may seem an insurmountable problem.

Across the broad range of capabilities and types of problem, greater reassurance was associated with face-to-face contact by a significant number of face-to-face clients (8/13) and several telephone clients (3/7). Two of the seven telephone clients interviewed felt there was no difference between the reassurance they felt over the telephone and face-to-face. Nevertheless, it seemed that many clients felt that face-to-face interaction could produce a higher degree of reassurance than telephone communication. From this, it seems that it was the more personal nature of the interaction – the degree of empathy, emotional support and commitment shown by the adviser – that made a difference to how clients felt about the situation and gave them greater reassurance. On this basis, it seems that telephone advice may not provide the same amount of reassurance to clients. A client may find it more difficult to cope emotionally with a lower level of reassurance and be less willing to engage with the adviser and with dealing with their case. This could have negative consequences for both the client and the case.

Trust between legal adviser and client is a hallmark of the professional relationship and it is argued that being trusted is part of an individual's professional identity. This contention is supported by the fact that advisers were much more likely than clients to initiate discussions on the issue of trust (9/20 advisers compared to 1/20 clients). For the client, their most pressing concern is their problem. For the adviser, the client's problem is mediated through the client, so the relationship with the client assumes priority. It is posited that this is the reason for the divergence between clients' and advisers' expressed attitudes towards trust.

It is possible to see from this analysis how the development of trust between adviser and client can be affected by the interpersonal components of lawyer–client interaction, including adviser commitment, emotional support, empathy and compassion, and perceptions of professionalism. There was a significant consensus among advisers that trust with clients was more easily established face-to-face. All ten face-to-face advisers took this viewpoint, which, significantly, was also shared

by a number of the telephone advisers (6/10). The telephone advisers saw the situation slightly differently. They often agreed that trust was built more quickly face-to-face than over the telephone, but they usually felt that, over time, they could reach the same level of trust with their clients. This position was set out by a telephone adviser with previous face-to-face experience: ‘...I think during the interview you would build up that relationship with them and I think that’s easier face-to-face...But after I’ve spoken to them for, you know, a few times and they can see that their case is being progressed, I think [it] does get a lot, a lot better.’ (TA4)

Face-to-face advisers took issue with this view and felt that, as well as establishing trust more quickly with clients, they reached deeper levels of trust with the client as the case continued. This sometimes led to significant revelations at later stages of the case. A face-to-face adviser (with substantial telephone-only experience) described how her continued efforts with a client with £10,000 rent arrears led the client to disclose that her son was an ex-gang member who would not leave the house due to fear of reprisals; a disclosure that made a significant difference to her case:

‘...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 called me when she said she would, she paid her rent and she’s kept her home now and she’s doing really well.’ (FA3)

Furthermore, as a telephone adviser recognised, in housing matters, which are often urgent, gaining the client’s trust quickly is central to being able to deal with the case effectively:

‘... [U]nfortunately with housing cases, sometimes speed is of the essence. So I think sometimes – I wonder sometimes whether they can get to the heart of the issue faster than we can. Because they’re seen.’ (TA1)

A minority of telephone advisers considered that trust was the same or better over the telephone, due to their perception of having more frequent contact with their clients. It seems from this that trust can be established over the telephone, although it is possible that the degree of trust and the time taken to establish trust may differ

from face-to-face interaction. Again, it seems that this could negatively influence the extent of the information clients give to advisers over the telephone.

As stated above, clients did not usually volunteer an opinion on the subject of trust; but, when the issue was raised,⁸⁴ it was unusual for clients in this study to say that they did not trust their adviser (3/20). However, a significant proportion of face-to-face clients (10/13) expressed the view that they would be less likely to trust an adviser over the telephone, often because of not having the opportunity to assess the adviser physically. Individuals with housing problems still have a degree of choice regarding whether to use telephone or face-to-face advice, which is likely to lead to an element of self-selection in terms of the service they use. These findings suggest that a proportion of face-to-face clients exists whose wariness of telephone services could preclude them from seeking advice in the absence of face-to-face provision.

Among the small minority of clients who were not prepared to say they trusted their adviser, two face-to-face clients had not been satisfied with the aftercare received from their adviser and this had affected their trust in the adviser.⁸⁵ Buck *et al* (2011: 120) identified that failures in aftercare can lead to 'trust depletion'. This shows the fragility of trust, and the fact that it is something that needs to be nurtured once formed. It is notable that, despite their reservations about the service they had received, both face-to-face clients balked at the suggestion that telephone advice would have been better.

Trust can also be a highly contingent phenomenon. A telephone client said she would not trust any adviser until she saw what they could do for her, as she had very little faith in the system: 'I don't know whether to trust until I see with my eyes what has happened. I've seen too many people before and everybody's useless' (TC3). Thus, this client was only prepared to trust on the basis of outcome.

A client's willingness to trust an adviser may also be affected by factors outside the relationship. One telephone and one face-to-face client said they trusted their adviser because of the reputation of the organisation concerned or the referring

⁸⁴ As it was in all but two interviews, which were truncated for practical reasons.

⁸⁵ One of these face-to-face clients complained the adviser had not contacted her after the first meeting at all, despite her attempts to contact him. However, the file showed subsequent telephone conversations with the client, as well as letters and calls that were not answered by the client. It may be that, due to the client's itinerant lifestyle, it was difficult for the adviser to keep in touch with her, but he did seem to have been trying to do so. The other client said the adviser had not written to her as he had said he would. When I raised this with the adviser, he said that he had sent her a letter several days earlier.

organisation. A face-to-face adviser recognised that in some situations, trust in the referral agency would form the basis of the client's trust in the advice organisation. Accordingly the willingness of the client to trust a telephone service might be affected by the organisation that refers them to it in the first place. This is also a way in which the local referral networks mentioned in the previous chapter may have a particular influence on the client's willingness to use the service concerned.

The need to prompt clients to discuss the issue of trust suggests that it was not at the forefront of their conceptualisation of the relationship. These findings suggest that although trust is an important element in creating an effective adviser–client relationship, the adviser's ability to reassure the client may have a greater impact on the strength of the relationship and the client's continued engagement in the case. Reassurance and trust were related concepts in clients' understanding of the relationship, but the expressed attitudes of clients reveal that it is reassurance that they often seek in the emotional realms of adviser–client interaction and it is face-to-face contact that appears to provide this most readily in many cases.

Privacy and security

Privacy and security concerns were also significant for a group of clients in terms of their willingness to use the telephone in obtaining advice. Several face-to-face and telephone clients were sceptical about the privacy and security afforded by telephone communication (6/20). They therefore appreciated the physical containment of the interview room provided and its association with confidentiality and privacy. A typical comment was:

‘On the phone also with this technology which is there, you don't know whether you are speaking to [the adviser] alone or there's someone also listening on the other end. Face-to-face is sort of privacy, it's you and I.’
(FC1)

Recent scandals regarding phone-tapping and government surveillance appeared to have had an impact on clients' psyche, resulting in a mistrust of telephone communication. One client referred to not wanting to give personal information over the telephone: ‘...because of all the atrocities going on in the country’ (FC9). Other clients were less explicit, but there seemed to be a high level

of suspicion that telephones might be tapped and calls listened into by unknown people. It was notable that most of the clients who spoke in these terms were originally from abroad. It may be that clients from overseas – particularly those who have sought asylum in this country – will be more aware of the possibilities of surveillance.

Even where it was not surveillance that clients were concerned about, the telephone was seen as a potentially unsafe method of communication. A capable face-to-face client expressed concern about giving his financial details over the telephone. He was worried about fraud:

‘...[T]here’s some stuff I had to give, I wouldn’t have particularly liked giving over the phone... I just don’t like the idea of talking about bank accounts and stuff over the phone...’ (FC14)

He referred to reports in the media about fraud perpetrated over the telephone.

A couple of face-to-face clients also associated telephone contact with cold-calling from financial services and debt management companies: ‘...[T]here’s a difference when you’re speaking to someone and they’re saying would you like a loan, oh, insurance or whatever it is ...’ (FC12). Telephone advice also suffered unfairly from comparison with call centres. Negative references were made to call centres when clients were asked about telephone advice. Telephone advice was considered impersonal partly because the call centre association led to an expectation that there would not be the same continuity of care. As a face-to-face client explained:

‘I know that’s grossly unfair on [company] but yeah you get the impression well I’m just calling a centralised office in Birmingham or something like and they bring it up on the computer – “Oh yes, we see your case number 123456, what have we got written down about it?” ’ (FC14)

Another face-to-face client criticised the automated nature of many telephone-based services. These issues with telephone services in general appeared to influence clients’ reluctance to use telephone-only advice services.

However, a fundamental difference between the average call centre experience and CLA telephone advice (at least as observed in this study) is that, in the latter, the client is assigned to a specific case worker. The technologically-savvy daughter of a face-to-face client recognised that it might be possible to build up a relationship with an adviser over the telephone if the same person was being dealt with on each occasion, although this had never been her previous experience with telephone services.

As an advice professional, it is easy to take for granted that clients will understand that their communication with advisers by telephone will be confidential and secure. When advisers expressed opinions about whether clients would be more or less willing to disclose sensitive matters on the telephone rather than face-to-face, they tended to focus on whether clients would prefer anonymity or emotional support. No adviser suggested that clients might be concerned about the security of the medium itself. It is salutary to be reminded that clients' willingness to trust telephone communication for legal advice will be influenced by the associations with those methods of communication in wider culture, which may not necessarily be accurate.

Evidently there are already a number of emotional barriers to clients being willing to use telephone-based services. Where these involve clients' needs for personal support in an emotionally-charged situation, they are unlikely to be addressed through a telephone service. Nevertheless, there do seem to be other barriers where clients' fears could at least be reduced if they were better informed about the type of telephone service that they would receive, both in terms of confidentiality and continuity of service. This could be achieved through better publicity regarding the nature of the CLA service. The lack of public information on the Telephone Gateway has, however, been a consistent criticism of the implementation of the government's legal aid reforms (Justice Committee, 2015). For a number of clients, the telephone is a compromised medium in terms of safety and security. Until they can be persuaded that it is a safe means of communication, the extent to which they may be willing to open up to an unseen adviser regarding their private affairs is likely to be hampered by their general mistrust of telephone interaction, even though in this instance their fears may not be justified.

‘Meet and greet’ and other rituals in adviser–client interaction

Earlier in the thesis there was reference to research which has shown the importance of ‘first impressions’ in the relationship between the client and adviser. This extends to the physical office environment and the treatment clients receive from office staff, as well as the adviser’s behaviour towards them (Sommerlad and Wall, 1999: 9; Sherr, 1999; Buck *et al*, 2010). The initial contact between adviser and client is therefore likely to set the tone for the rest of the interview and possibly even for their ongoing relationship. Face-to-face advisers recognised the importance of the welcoming phase of the face-to-face interview, or the ‘meet and greet’, in helping the client to feel comfortable in the interview (6/10). The behaviours associated with welcoming clients were seen to provide a brief but valuable interlude at the beginning of the interview, giving the client some breathing space before delving into the more serious issues that had brought the client to the meeting.

In some instances this period involved greeting the client and/or a brief period of ‘chitchat’, including discussing the weather, the client’s journey or the adviser or client (as appropriate) apologising for being late. A face-to-face adviser explained: ‘You’re showing you’re interested in them and you give them a chance also to talk to you a bit about something that’s not difficult to talk about’ (FL3). It was therefore essential to handle the initial phase of the meeting sensitively, and tailor it to the individual client. Other advisers suggested that this initial phase could be filled by making sure the client was physically comfortable, so they were able to see that the adviser was taking them seriously. Clearly, it would not be possible for these initial welcoming behaviours to take place over the telephone, and it was suggested by a couple of face-to-face advisers that the absence of the more relaxed welcome phase between lawyer and client over the telephone could detract from how comfortable the client felt in the situation.

In terms of the physical environment and office atmosphere, a face-to-face adviser referred to the importance of a ‘brilliant receptionist’ and a welcoming reception area for ensuring that clients were comfortable coming into face-to-face services (FA4). In confirmation of this, a face-to-face client appreciated the warm welcome she got at her local housing advice agency: ‘...[W]hen you get in there, love, it’s the most warmest, welcomest place you can go in’ (FC16). Overall, face-to-face advisers considered that the quality of the client’s welcome assisted in forming a strong relationship with the client.

Telephone advisers could not employ the same welcoming rituals as face-to-face advisers. This was not something they were particularly aware of, except one telephone adviser who mentioned that ‘chitchat’ could make face-to-face advice less efficient. In observations, most telephone interviews involved little preliminary discussion. It would be possible for telephone advisers to use more social pleasantries at the beginning of their conversations with clients, but perhaps not very easy, because of the contradiction with the usual norms of telephone interaction. In addition, clients who have already spent an initial period on the telephone with the Gateway operator⁸⁶ before being put through for advice are likely to be impatient with superfluous ‘chitchat’. Thus, there may be limits on the degree to which a less directive opening phase to telephone interviews could be introduced.

In many ways, the telephone advisers’ answer to the greeting phase between a face-to-face adviser and a client was their responsiveness to an initial client enquiry. Once clients were referred by the Telephone Gateway, they were usually dealt with immediately. While they could not give clients the same initial welcome as face-to-face advisers, it was suggested by telephone advisers that their ability to give the client an immediate response, particularly in emergency matters, helped develop a stronger relationship with them: ‘I think if it’s homelessness, because they’ve got that immediate response, I think you have a better relationship’ (TA3). As mentioned previously, several telephone clients were grateful that they could get advice quickly in this way. It was unusual, however, for clients to talk about the nature of their welcome in the face-to-face service or the immediacy of the telephone service’s response in relation to building their relationship with the adviser. Thus, although these issues might have had an impact on their feelings about the adviser, most clients did not explicitly make the link between them.

An aspect of the rituals associated with face-to-face advice which was also valued was the ability for the client to ‘sit down’ with someone to discuss their problem. The face-to-face client facing allegations of anti-social behaviour stated that the ability to sit down with someone and discuss the situation gave her ‘Massive peace of mind’ (FC16). Both advisers and clients referred to the value of the client

⁸⁶ One client described spending 45 minutes on the phone before being put through to the telephone adviser.

‘sitting down with’ the adviser in stressful situations. As a face-to-face adviser described:

‘I’ve found on a number of key occasions where, you know, the client is agitated already, they’re worked up... The ability to sit down and draw – or take a pause, which is another idea, is vital – make someone a coffee or a cup of tea – is quite important.’ (FL2)

‘Sitting down with’ someone in this context appears to be shorthand for the face-to-face interview ritual of being together in a private space and taking the time to go through the problem without outside interruption. The ability to ‘sit down’ in this way is evidently confined to face-to-face advice. It may be another indicator of the advantages that accrue to face-to-face interaction in respect of forming a relationship with the client.

There appear to be a number of rituals of face-to-face interviews that are likely to contribute to the client’s ease in the interaction and hence facilitate the creation of a trusting relationship between lawyer and client. These do not translate easily into the telephone interview, but the current instant accessibility of the telephone service may assist in overcoming some of these deficiencies. The importance of the ritual of the ‘pause’ of ‘sitting down with’ the client seems to take on a particular significance when dealing with clients who are distressed. This finding highlights just one aspect of the role of time in developing the adviser–client relationship. Other ways in which time has an impact on the development of the adviser–client relationship will be explored in more detail in the next section.

The impact of time on the adviser–client relationship

It was posited in Chapter 4 that telephone interviewing is likely to differ from face-to-face interviewing in terms of the time spent and the pace of the interview. I suggested that telephone communication takes on a more concentrated format, while face-to-face interaction is conducted at a slower pace. The argument was therefore advanced that these differences could have consequences for the development of rapport between client and adviser. In this section I consider how these issues emerged in this research. The major time-related factors that were considered to

influence how the client felt about the interview were identified as the time spent on the interview and the pace of the interview.

Being given enough time was seen as a significant factor in facilitating client ease and hence the relationship between the client and adviser. In my observations, as set out in Chapter 5, face-to-face meetings were generally longer than telephone interviews. Nevertheless, all of the clients interviewed, both telephone and face-to-face, felt that they had had sufficient time when speaking to their adviser.⁸⁷ One telephone client, whose support worker had been handling the call for her due to language issues, felt that, at two hours,⁸⁸ her interview had been too long. Face-to-face clients were usually satisfied with the longer time their interviews had taken, because of the opportunity to express themselves it had given. There was a recognition that telephone conversation was harder to sustain for long periods of time, particularly regarding serious matters, such as legal advice. As a face-to-face client said: 'I think about say an hour on the phone, I mean your ear's quite hot, isn't it and you're kind of thinking "Oh hell, how long have I been on the phone for?"' (FC11).

In addition, a group of face-to-face clients were fearful that the nature of telephone communication could be less expansive or even 'rushed' (5/13). In keeping with this, several face-to-face advisers also took the view that the telephone was a more constrained medium, made less comfortable by the more perfunctory norms associated with its use (6/10). Many face-to-face advisers considered that clients felt more relaxed in the face-to-face environment (7/10). A face-to-face adviser commented: '...[I]t's easier to make people feel at home and relaxed, I think, if you're able to meet them and sit them down and focus their minds on what they're doing' (FL4).

Despite the view being expressed that telephone advice may be a more truncated medium than face-to-face contact, the feeling of a number of telephone clients was that they had felt relaxed during their interviews, and found the interaction easy (4/7). One telephone client felt that face-to-face interaction would

⁸⁷ None of these clients were interviewed on a time-limited basis. The only time-limited advice interviews took place in the drop-in session and I was not able to carry out follow-up interviews with any of these clients.

⁸⁸ In fact, it was two interviews, one with the Telephone Gateway and a second with the telephone adviser, which lasted approximately 1 hour and 10 minutes.

have been no better and possibly not even as good as telephone advice: ‘Easy, that’s the word to describe it, it was so easy’ (TC12). The clients who stated that they found telephone interaction straightforward could perhaps, with one major exception, be described as being of average or above-average capability.⁸⁹ The three telephone clients who stated that they found telephone contact more difficult, were affected by a mixture of issues that impeded their ability to deal effectively with telephone contact. One client had poor cognitive abilities and mental health issues. He struggled to give a coherent story, and was reliant on his partner to obtain telephone advice.⁹⁰ Another client had language and mental health issues. She used her support worker as an intermediary with the adviser, and at the follow-up interview was very uncertain about what was happening in her case. The third telephone client seemed more personally capable, but had language and hearing impairment problems, and had subsequently been referred for face-to-face advice by his telephone adviser. All three clients explained that they preferred face-to-face contact. The client with language and hearing difficulties summarised the situation from his perspective:

‘Initially, yeah, [the telephone adviser] helped me, instant things I mean...it was very helpful what she did...[T]hen I go face-to-face, it’s more comfortable for me, than trying to, I can explain more time...’ (TC13)

Despite this, no telephone client expressed feeling ‘rushed’ during their interview, and it seems that the fears of face-to-face clients that telephone interviews are more hurried may be misplaced. Certainly, during my observations, the telephone advisers usually spoke to clients in calm and even tones, which it seems likely clients would have found reassuring. The indications in other works that the pace of interviewing differs over the telephone from face-to-face are not borne out by this research.⁹¹

⁸⁹ One client in this group was in the low capability range. Her poor telephone communication skills were possibly an indication that the quality of interaction is not best judged by the client’s stated ease alone.

⁹⁰ Fortunately his more able partner was able to take over when he gave up.

⁹¹ Although there were indications in recent research on the CLA telephone service that some clients felt that advisers that did not give them enough time (Paskell *et al*, 2014).

A notable difference between the telephone and face-to-face interviews was that, on several occasions, telephone clients raised important new issues during the final stages of the call. This tended not to happen in the face-to-face interviews. A possible explanation for these occurrences is that, although the pace of the call had not been hurried, the client had not had the time to voice all the matters that were of concern to them during the body of the call. This may have been due to the more rigid question- and-answer format which telephone advisers often used to control calls. In combination with the more limited time usually spent on telephone interviews, this indicates that face-to-face clients and advisers may have been accurate in their assessment of telephone communication as a more restricted form of interaction. The issue does not appear to be a matter of pace, but one of interview structure. This is of interest because it further illuminates the concern raised by Moorhead *et al* (2003b) regarding client competence in judging the quality of advice. As they explain, clients may place importance on the adviser spending enough time with them, but they are unlikely to know *when* the adviser has spent enough time with them. In this instance, the telephone clients did not feel rushed, but they were also unlikely to know when issues were not being dealt with. The pace of telephone interviews did not appear to be a problem for clients and would probably not have had an adverse impact on the relationship. It seems, though, that the format of the interview may have had an impact on the instructions received from the client (see more in Chapter 9).

Telephone advisers held a number of misconceptions regarding time and face-to-face advice. In the first instance, they believed that they were able to give more time to clients than face-to-face advisers, often because they thought that face-to-face advisers would be restricted to short time slots. This resulted in a minority of telephone advisers believing that the telephone interchange was more relaxed because the client was allowed more time to speak (2/10). In fact, the face-to-face interviews observed were, on average, longer than the telephone interviews, and they were not usually time-limited. Face-to-face services are under considerable pressure in terms of client demand, but in the interviews observed for this study this did not appear to translate into restricting the time spent with the client. Secondly, telephone advisers held the mistaken belief that face-to-face advisers and clients did not speak

to each other on the telephone. This meant they believed that they had more time available for clients as the case progressed, due to ‘always’⁹² being available on the telephone. These misconceptions were largely based on equating face-to-face advice with either CABx or notions of traditional private practice solicitors (which were often outdated in the case of social welfare law). As stated earlier, telephone advisers rarely compared telephone advice with the face-to-face provision made by their own organisation.

Overall it seems that clients can feel at ease in both the telephone and the face-to-face environment. However, it seems that the time spent and the structure of the interview may differ depending on whether the interchange takes place face-to-face or over the telephone. For some clients – particularly more vulnerable clients, affected by issues such as mental ill health, language difficulties and hearing problems – the greater time allowed makes the face-to-face interview a more relaxing environment and this can improve clients’ ability to give instructions in person. According to a face-to-face adviser:

‘I think that if you’re with a client face-to-face, you can, through things like body language, facial expression, making a client feel at ease by sitting them down and telling them to take their time, that they are under no pressure, just those sorts of things I think have a really big effect on getting good instructions.’ (FL3)

This may have implications for the conduct, and hence outcomes, of the case. Considering these issues is the work of Chapters 8 and 9 of this thesis.

Anonymity, shame and judgement

It was suggested in Chapter 4 that, for clients, the removal of the possibility of being stereotyped according to their appearance is a potential benefit of telephone advice. A telephone adviser suggested that the ability to remain visually anonymous would make the experience more comfortable for certain clients. She gave a previous transgender client as an example. A face-to-face client remarked that, if she had

⁹² Telephone advisers were rostered on to deal with new intake calls for blocks of four hours at a time. They could only take existing client calls between new calls if they were not busy on the intake line.

appeared less capable in person, she might have got a better service (nonetheless, she remained a strong proponent of face-to-face advice). A telephone client gave not being assessed visually as a reason for preferring telephone advice. He felt that he had suffered prejudice because of his appearance (white male with shaven head), and he found the anonymity of telephone advice reassuring in that respect: 'I would rather do things over the phone, it's faceless, you probably can't judge a book by the cover over the phone' (TC9). It was notable that none of the nine non-white British clients interviewed expressed a similar view and many of them expressed a strong preference for face-to-face advice (7/9). The fear of judgement is sometimes given as a reason for telephone advice being more attractive for ethnic minority clients, but this is not supported by the findings of this research.

In addition, as stated in Chapter 4, the anonymity of telephone advice is put forward as an advantage in terms of liberating clients to talk about issues about which they feel embarrassed or ashamed (MOJ, 2011; Patel and Smith, 2013b; Ellison and Whyley, 2012b). This view was supported by a telephone client who specifically valued telephone advice because of its lack of personal contact, and the emotional distance it provided. She explained that, at a time when she was feeling emotionally fragile, it was easier not to see the adviser face-to-face. In this way, the client could keep her emotions under control and avoid the embarrassment of being upset in front of the adviser.⁹³ A significant group of telephone advisers shared the perception that some clients were likely to find it easier to disclose embarrassing or shameful matters over the telephone (8/10). A couple of telephone advisers referred, for example, to victims of severe domestic violence who they believed had only been able to contact their service for advice due to the anonymous nature of telephone services. It is recognised that shame can be an immobilising force in terms of people seeking help with their problems (Rahim and Arthur, 2012; Sandefur, 2007). Thus the anonymity of telephone advice may have the potential to encourage more clients to seek advice, because they are able to hide their shame and distress.

Telephone advisers also spoke of being able to stop the interview when the client got upset as a benefit of telephone advice (2/10). Yet, a couple of the face-to-face clients felt that it was better for them to continue the interview despite their distress, because they were assured of the sympathies of the adviser. They

⁹³ She did in fact cry when she was relaying events to me in person.

recognised that, if they wanted to keep their homes, they needed to produce their testimony, and that meant going through the facts, however difficult that might be. Both clients felt they would have struggled to speak over the telephone, because of being upset. One client explained that she knew it was something she had to get through, and that it was easier for her to do it face-to-face:

‘So, with face-to-face I’m here. I cannot say ‘I will go home and then I come back’ [laughs]...Because if – you know, if you stop, still we will continue with that conversation. It won’t end, isn’t it? [laughs]... I think on the phone, I don’t think I was ever going to speak much.’ (FC1)

Moreover, a face-to-face adviser suggested that sitting with a client through their distress can be a ‘bonding part of the interview’ (FL4). For an adviser who takes a client-centred approach to their work, creating this ‘bond’ with the client may have profound effects on the degree to which the client is able to disclose information to the adviser. In fact, this adviser felt that stopping the interview conveyed the wrong message to the client: ‘...[I]t sounds like you’re saying, “OK, I don’t want to hear you being upset, I’m going to end this, and then when you’re not upset you can call me then”’ (FL4). Thus this adviser saw sitting with the client while they were upset as a way of building the relationship between them in a way that would not be possible over the telephone. On hearing this, I was reminded of training I have received in the past on dealing with traumatised clients, particularly with victims of violence, rape and torture: rather than ending the interview when the client becomes distraught, the advice given is to acknowledge the painful nature of their experience and stay with the client through their distress. Curtailing the interview gives the message to the client that what they want to disclose is not acceptable for others to hear and this has the effect of compounding the shame often felt by individuals who have been victimised in this way. The intention of staying with the client is to demonstrate to them that they are entitled both to speak and to be upset.

Shame is an abiding emotion in the housing advice setting, because clients may have failed to keep up with their rent or mortgage payments and/or acted in ways that have jeopardised their and their family’s housing security. Four clients specifically mentioned the shame and embarrassment at the situation they found

themselves in. It could therefore be argued that failing to engage with clients face-to-face for these reasons perpetuates their feeling that they should be ashamed. A face-to-face client referred to her fear of being judged because of anti-social behaviour allegations, but she went on to speak of how her fears were unrealised: ‘Everybody, they were so warm and welcoming there and, d’you know, you don’t get judged at all’ (FC16). For this client, face-to-face interaction proved to be an affirming process. It seems possible that other clients could find the same affirmation and acceptance in the face-to-face context. While there may be clients who would prefer to remain hidden in their distress, this is perhaps an underestimation of how influential the experience of not being judged in person could be for clients. Initial contact over the telephone might assist clients in seeking advice, but there is an argument that subsequent face-to-face advice might better relieve the client’s burden of shame and embarrassment than telephone advice. This could have longer-term consequences for the client’s ability to cope with their situation.

Language issues and building a relationship

In a telephone-only context, issues relating to clients with poor or no English take on a new dimension. Taking instructions becomes more difficult, and being unable to communicate directly with the client can present significant issues for the adviser in terms of developing a relationship with them.

None of the clients that I interviewed used interpreters. However, six of them spoke English as a second language: three face-to-face clients and three telephone clients. Two of these telephone clients said that they were more comfortable with face-to-face services. The third telephone client stated that she had not experienced any problems with communication, but, in fact, the adviser had struggled to understand her over the telephone. She was also the most difficult client to understand in person. This client showed little awareness of her issues with communication. Of the three face-to-face clients with English as a second language, all three had fluent, but strongly accented English. Two of these clients referred to this as a reason for preferring face-to-face as opposed to telephone communication. One client explained that, despite severe mobility issues, she preferred to travel for face-to-face advice because: ‘If they’re going to listen, hear what I’m saying, because sometimes I speak Nigerian English, you might not understand me properly’

(FC9). One of the face-to-face advisers recognised the type of problem described by these clients:

‘[Y]ou get many clients...who speak English after a fashion but with varying degrees of fluency and some don’t speak it very well at all. They don’t quite need an interpreter but their command of English isn’t good.’ (FL3)

It is unlikely an interpreter would be necessary face-to-face for this type of client, and they would probably feel sidelined (or even insulted) if an interpreter was used over the telephone. Nevertheless, as clients suggest, an accent that does not present difficulties face-to-face may be more problematic over the telephone. In any event, the observations indicated that, even where it was quite difficult to understand a client over the telephone, if the client persevered in English, an interpreter would not be proposed.⁹⁴

As previously mentioned, among the clients interviewed, there was one with English as a second language who used her support worker as an intermediary for the call, due to the problems she had understanding different accents over the telephone. The conversation between the adviser and her support worker was conducted in English, as the client was able to understand English face-to-face. The support worker used a conference phone for the telephone call, but the client reported that the line quality had been poor and she had not been able to understand the adviser’s accent. Using an intermediary was a practical solution to the difficulties of telephone communication, but it meant that the client felt little connection to the adviser or her case. She told me she did not know what was happening in her case, or whether the adviser was helping her. This client’s level of disengagement following contact over the telephone using an intermediary exemplifies the alienation that a client may feel as a result of communicating via a third party over the telephone.

Telephone advisers seemed unaware of the detachment that clients might feel as a result of communicating via a third party, whether a family member or a formal interpreter. Nearly all (9/10) telephone advisers felt that language did not present any barriers over the telephone, because they were able to use a telephone interpretation

⁹⁴ The very low use of interpreters has been noted in relation to the specialist CLA service: just 0.6 per cent of debt cases in 2013–14 involved the use of interpreters (Patel, 2014).

service. A typical comment was: ‘We don’t really struggle with...language barriers...we use the Language Line Service, which I think works really well...they just have an interpreter on the phone’ (TA6). Only one of the telephone advisers suggested that clients with language issues might prefer face-to-face services.

Face-to-face advisers mainly took a very different view of telephone-based interpretation services, particularly with telephone-only clients. Most (8/10) advisers felt that interpretation was easier with a client face-to-face, not least because of the opportunity to see the client’s non-verbal communication. This view was exemplified by a face-to-face adviser’s comment:

‘...[F]or people . . . for whom English isn’t the first language. It’s very hard even taking instructions when you’re face to face, you know. And sometimes maybe they’ll use their hands and then you...get your clues from there if English isn’t the first language’ (FA5)

There were also several advisers who recognised the potential impact on their relationship with the client of not being present with them while their words were being interpreted. One face-to-face adviser referred to the ‘distancing’ effect of using an interpreter over the telephone (FL4). Another face-to-face adviser explained the problems of using telephone interpreting services with telephone clients:

‘It’s excruciating. It’s difficult enough when you are sitting here with a client and the interpreter is on the phone... But, when it’s all on the telephone, they are just having a conversation with the interpreter. I’m really not there at all, basically...Whereas you can make the connection if they are here...’ (FL1)

Thus for these face-to-face advisers, telephone-only contact with clients who did not speak English failed to establish a relationship between the client and the adviser. This echoes the experience of the client who had spoken to the adviser through her support worker. In another telephone observation, it was not clear at any point during the initial call that the person on the telephone was not the client, but her sister who was speaking on the client’s behalf. This shows the extent of dislocation between client and adviser that can take place in intermediated calls over the telephone. The use of intermediaries is sometimes seen as a solution to the

problems that vulnerable individuals may face using telephone services (Patel and Smith, 2013b). The experience of the clients in this research indicates the potential problems that it may create in terms of client disconnection and confusion. It seems that for clients who require interpreters or need to use intermediaries over the telephone, face-to-face contact is more likely to result in a stronger relationship with the adviser.

Face-to-face advisers seemed much more alert to what could be lost in terms of the relationship between the adviser and the client where language issues meant that interpretation was necessary. This may be because they have experienced both face-to-face and telephone clients using interpretation services and therefore have a basis for comparison. From their comments, telephone advisers seemed to have given little consideration to how it might feel for a client speaking to a stranger on the phone with no direct verbal contact between themselves and the adviser. Furthermore, although the observations and interviews with clients suggested that telephone advisers did encounter situations where accent could disrupt the communication between adviser and client, none of the telephone advisers referred to it as a potential issue. This seems similar to their failure to consider the impact of interpretation on the client's feelings towards the adviser. This raises again the question of whether, because they never personally encounter the client, telephone advisers are less able to imagine the interaction with the adviser from the client's perspective.

Adviser engagement: fulfilment and reward

The preceding section focused on how the client feels about the relationship with the adviser. So far, we have paid scant regard to the feelings of the adviser. This is not uncommon in studies of lawyer–client interaction. The client's emotions are rightly the chief concern, because the client is more likely to be governed by their emotions than the adviser. The adviser as the professional is expected to be objective and unemotional. Current literature on the lawyer–client relationship tends to allocate the emotion of the interaction to the client. Thus Sarat and Felstiner (1986) refer to the attempts of the client to introduce emotional elements to a divorce case, which the lawyer works to exclude. Similarly, Griffiths (1986: 155) states that 'lawyers and clients are in effect largely occupied with two different divorces: lawyers with a legal divorce and clients with a social and emotional divorce'. Accordingly the realm

of emotion is seen to belong to the client. Sherr (1999) refers to the importance of acknowledging emotion when dealing with clients' needs and wants, but does not consider the issue of adviser emotion. This view of emotion as more relevant to the client perspective is reflected in this comment by a face-to-face adviser: '... [T]he trust and rapport, I suppose, is more something that's kind of for their benefit than for mine' (FL4).

Nevertheless, it is impossible to ignore that there are two parties in this relationship and, although the adviser should be able to regulate their emotions so that they do not impact on the client, it is unlikely that any adviser will be entirely free of emotion (whether they are aware of it or not), which may have implications for the case. This is recognised by Binder *et al* (2011), who, in a departure from the conventional position, recognise that advisers have feelings, and may find themselves in situations where they find it difficult to empathise with certain clients. The accounts of advisers interviewed in connection with this study demonstrate that, contrary to the received understanding of lawyer objectivity, there are a number of ways in which the adviser's emotions may manifest themselves depending on whether the matter is being dealt with face-to-face or over the telephone.

In the first instance, there is the level of commitment that the adviser feels towards the client. In theory, there should be no difference in advisers' attitudes, regardless of whether they are advising the client over the telephone or face-to-face. Despite the pressures not to admit to emotional responses, however, several face-to-face advisers (two of whom had previously worked extensively on telephone-only cases) expressed the view that they were likely to do a better job for clients they met in person, because of a greater feeling of responsibility towards them (3/10). A face-to-face adviser who had until recently had a substantial telephone-only caseload explained:

'...[T]his is a bizarre thing to say because I think you do work harder for a client once you've met them and, I know it's not the right thing to say or the right thing to do at all, but I never realised that I felt that way before until I've started taking on a lot more face-to-face work.' (FL1)

This face-to-face adviser stated that she felt more responsible for her clients now that she routinely met them. Another adviser made the point that the work of

housing cases can be very difficult, and that it is important to meet clients, because: ‘I think you’ve got to have a reason to fight for them, which is that you engage with them’ (FL2). A telephone adviser with previous face-to-face experience described how she felt *less* responsible for her clients now that she no longer went to court with them:

‘...[B]ecause you’re *there*, you know, you don’t want to sit next to a client if it all goes horrendously wrong in a hearing, or you don’t want to be told off by a judge if you’ve not done something procedurally right. So I think there was a lot more pressure to get everything sorted.’ (TA4)

She appreciated the reduced burden of not attending court with the client, but it also made her do less for the client. This analysis shows that face-to-face interaction with the client can be significant in terms of its effect on adviser motivation. It may affect how much advisers actually do for clients, which may have implications for the quality of service that clients receive.

A small group of telephone advisers were aware that, as a result of telephone-only contact, they were more detached psychologically from their clients (3/10). This emotional distance from the client was, however, often considered an advantage of telephone advice, preventing the adviser from getting ‘too involved’ (TA10) or working too hard as another telephone adviser suggested:

‘I mean, it could be a bad thing in that you got too attached to them, and, sort of, you take your work home with you more, and are you more likely to do *too* much for them, because you’re desperately trying to help them.’ (TA6)

The telephone adviser, who had previously felt more pressured when attending court with her clients as a face-to-face adviser, now also expected clients to do more for themselves. She saw this as a benefit as she believed that giving the client greater responsibility improved the relationship with them: ‘I think the relationship comes and I think it ends up actually being better because they have so much responsibility to progress the case themselves’ (TA4). She also felt that this added responsibility resulted in better client engagement with the case. These opinions were not expressed by other advisers or clients, although one telephone

client (who was observed, but not interviewed) seemed keen to deal with her social housing landlord herself. Research has uncovered the problems that both vulnerable and more capable clients can encounter with self-help when dealing with legal matters (Genn, 1999; Genn *et al*, 2004; Moorhead and Robinson, 2006; Buck *et al*, 2010).

Secondly, two face-to-face advisers made the point that they found their job more rewarding as a result of personal interaction with clients. A face-to-face adviser explained that he had chosen to be a solicitor because he wanted to have contact with people. For a third face-to-face adviser, meeting the client was how she expressed care towards them as a professional: ‘[I]t seems to me to be a contradiction in terms to show a client proper client care fully in...all its meanings, if you are not seeing the client’ (FL5). A couple of telephone advisers also recognised that not having the same level of connection with the client could have implications for their job satisfaction. As a face-to-face adviser pointed out, adviser fulfilment is not a concern to the government. However, with regard to the provision of advice, if the aim is to get the best service for clients, the reward advisers take from their work is not irrelevant, particularly when there is relatively little reward in financial terms. The possibility that telephone-only work produces lower motivation among advisers is a concern, because of the potential for that to have an impact on the quality of advice provision.

A minority of telephone advisers suggested that the detachment of telephone advice enabled them to deal more effectively with disagreement between the adviser and client (3/10). A telephone adviser stated:

‘And so I think sometimes we can be much more closed, whereas if you’re with someone, it’s harder to be very closed and very blunt and just say “D’you know what? I’ve got to go now.”’ (TA1)

Conversely, as stated above, a small group of face-to-face advisers felt that when dealing with disagreement or situations where there is the potential for conflict with the client, it was easier to calm clients down face-to-face (3/10). This view was shared by the same number of telephone advisers (3/10). In addition, when asked whether clients were more willing to challenge them over the telephone, the perception of a couple of telephone advisers was that clients were more likely to be

aggressive over the telephone (2/10). This gives greater potential for situations of conflict to arise. As a face-to-face adviser summarised:

‘...[O]ne of the key things with it [face-to-face advice] is non-verbal communication...And if you lose that, it’s one of the tools that you can use just isn’t there at all...[W]here you get conversations like that [with an agitated client] going over the phone, I’ve found that there tends to be a greater risk of them going wrong.’ (FA1)

Running as an undercurrent beneath the telephone advisers’ view that telephone communication made disagreement easier to handle also seemed to be a fear of intimidation by the client in the face-to-face environment. Several telephone advisers mentioned that a benefit of telephone advice was that if clients became difficult, the adviser would not feel threatened (3/10). A telephone adviser explained that she preferred telephone advice because she was less affected personally by ‘horrible’ behaviour from clients, although she had previously acknowledged that clients were more likely to become aggressive if they could not see you (TA10). A face-to-face client and her daughter also considered that telephone advice might protect advisers from violent clients. No face-to-face adviser referred to the potential threat of the face-to-face environment and, as the above paragraph suggests, where a view was expressed about dealing with disagreement, rather the opposite view was taken. The fear of the client that these telephone advisers allude to is a possible concern, particularly when coupled with the gaps in the imagination of telephone advisers regarding the client experience suggested above. In some ways, from the accounts of these telephone advisers it seems that, through detachment, the client has been transformed into the unknown ‘other’, making them the object of apprehension. Ironically, given that few clients expressed any difficulty with raising disagreements face-to-face,⁹⁵ it seems that some telephone advisers may be more intimidated by the face-to-face environment than clients. Are the advisers’ fearful feelings a consequence of clients being at a distance?

⁹⁵ Although disagreement was a rarely-reported phenomenon.

Conclusion

This chapter has demonstrated the many different factors that contribute towards building a trusting relationship between adviser and client and how those factors may be variously affected depending on whether communication takes place face-to-face or over the telephone. This research suggests that the more personal nature of face-to-face advice, and the emotional support, empathy, adviser commitment and reassurance that it engenders, often result in better engagement, and therefore trust, between adviser and client. Moreover, the rituals of welcome and privacy associated with face-to-face advice can bolster the client's confidence in the adviser and the advice process. In telephone contact, issues of language and accent present greater barriers to communication, and clients with language needs may also find it more difficult to engage emotionally with telephone advisers. For some, often more capable, clients, the potential interpersonal differences between telephone and face-to-face advice may be less important. They may need less emotional input, and may find other aspects of the adviser's behaviour, such as their perceived professionalism, help them to form a relationship with the adviser. Other clients may seek out the detachment of telephone advice for reasons of shame and embarrassment. However, for clients facing very serious legal difficulties and/or who are less able to cope with their problems, due to personal characteristics – particularly mental health needs – the deeper opportunity for engagement and reassurance offered by face-to-face advice may be crucial in terms of enabling them to co-operate with their adviser and deal effectively with their case. The emotional distinction between face-to-face and telephone advice is significant not only because it has the potential to improve the client experience, but also because the strength of the relationship can affect the comprehensiveness of a client's instructions.

Furthermore, challenging conventional notions of advisers' emotional detachment, the findings of this research indicate that face-to-face advisers may be more motivated in their efforts for the client, because of the stronger personal relationship that develops between them. It seems that telephone advisers are likely to feel more detached from their clients. This could have implications for the relationships between advisers and clients into the future. As services are increasingly moved onto the telephone and online, this research suggests that the relationships between clients in acute need and advisers are likely to become more attenuated. The proposition put forward within this research is that, if the

interpersonal elements of adviser–client interaction are compromised by remote communication, then the effectiveness of the advice process and ultimately case outcomes will also be adversely affected. These are the issues that will be considered in the remaining chapters of this thesis.

Chapter 8: Non-Verbal Communication and the Use of Documents

Introduction

The questions asked in this last section of the thesis concern how the practical components of providing advice are affected by the means of interaction. This chapter deals with the two major elements of face-to-face and telephone adviser–client interaction whose impact has been shown in this research to cut across all aspects of the advice process. These are non-verbal communication and the role of documents. In the previous chapter, non-verbal communication was considered for its significance in creating a relationship between lawyer and client. It is examined again in this chapter, but this time in relation to its practical functions within the adviser-client interview. In addition, often overlooked in the lawyering literature, the role of documents is considered here in terms of its contribution towards successful advice provision. This chapter analyses whether non-verbal communication and more immediate access to documentation give face-to-face interviews advantages over telephone-only contact. In the following chapter, the adviser–client interview will be examined in relation to its three main instrumental phases (allowing the client to tell their story, questioning and probing, and advising), and also in respect of factors that may complicate the delivery of advice. The test being applied in this thesis is which method of delivery results in the best service for the social welfare clients who are most in need of legal aid services.

Non-verbal communication

The capacity for non-verbal communication is the most obvious difference between face-to-face and telephone advice. In Chapter 4, the current literature suggested that non-verbal communication was likely to have a positive influence on the client's willingness to engage in the interview and give the adviser detailed instructions. In Chapter 7, which dealt with the relational rather than practical elements of the interview, it was confirmed that body language can play a central role in strengthening the relationship between adviser and client. A major premise of client-centred lawyering is that this in turn results in clients providing fuller and franker instructions to advisers, thus aiding the conduct of the case. In addition to this psychological aspect of body language, the argument made here is that there is a

more directly functional role that body language plays in helping communication between client and adviser.

The exchange of information and advice

As stated in Chapter 7, when asked about body language, some clients struggled to articulate a precise definition of what they meant by the term. Nevertheless, across the range of face-to-face clients there was a strong feeling that non-verbal communication had an impact on their advice experience. Several face-to-face clients stated strongly that it was easier to understand someone when their words were accompanied by non-verbal cues (6/13). A client commented: 'Body language, looking at your face. I can tell what you mean by looking at me. Using your hand, I can tell. Physically, I can tell' (FC9). Some clients evidently feel that body language affects both their ability to express themselves and understand the adviser. For them, it is an intrinsic part of effective communication. Two of the more vulnerable telephone clients expressly stated that body language helped them with their communication difficulties. Both these clients had mental health issues and one of them also found it difficult to understand English over the telephone (less so face-to-face). This suggests that clients with more complex needs may find it more difficult to deal with telephone encounters without body language to assist them with understanding the adviser and with explaining themselves.

Both face-to-face and telephone clients spoke of the importance of being able to look the adviser in the face, or in the eye, when explaining themselves. A face-to-face client considered this to be one of the main differences of being face-to-face with the adviser: 'I think, possibly, as you said, trying to get the issue across, where you know, you're actually able to see them face-to-face, look them in the eye...' (FC11). As well as being able to express themselves more successfully, it is equally important to clients to see the adviser's reaction. For clients, who are experiencing intransigence on the part of local authorities, landlords or mortgage providers, knowing that they are being listened to can take on considerable significance. A face-to-face client described how speaking to the adviser made her feel 'like I'm not going mad' as a result of her dealings with the local authority staff (FC11). For this client, seeing the adviser's attentive body language helped her be more certain that she was 'being heard' and reduced the stressfulness of the situation. In common with the client experience, face-to-face advisers also expressed a strong view that body

language was helpful in enabling both clients and advisers to explain themselves to each other (9/10).

The ability to assess the client physically was another benefit of face-to-face advice in terms of maximising the information available. Several face-to-face advisers referred to issues they had discovered as a result of seeing the client, including problems such as alcoholism, self-harming and drug addiction, and how the client was coping with their situation. A group of telephone advisers also recognised that being able to assess the client physically could be of help in gauging the client's physical or mental health needs from the outset of the case (4/10). A face-to-face adviser explained how he had realised that a client had mental health issues as a result of meeting her:

‘...[I]t was seeing her and how she couldn't answer my questions...in a way that just said, you know, she's more than a frightened rabbit in the headlights. She's got mental health problems.’ (FL2)

A face-to-face client with mobility issues stated that he did not think his adviser would have realised the urgency of his situation if she had not seen that he walked with two sticks. However, one of the telephone advisers raised that not seeing the client could be an advantage in terms of not judging the client prematurely on their appearance. Provided advisers guard against making assumptions based on appearance, it seems that being able to see the client's physical appearance can provide the face-to-face adviser with additional information that is useful in the conduct of the case.

In addition, there was a high level of agreement among both telephone and face-to-face advisers that non-verbal communication, especially facial expressions, provided advisers with clues in respect of client understanding or the client's reaction to the advice being given (15/20). Clients could demonstrate their confusion in a number of non-verbal ways, as a face-to-face adviser described:

‘Facial expressions, puzzlement, body language as to whether people are expressing frustration, closed posture, those kind of things, nodding for understanding or sometimes just a glazed look, you know. But those are the usual things that need do – you are looking to pick up on.’ (FA1)

Being able to use the client's facial expressions to check for understanding meant that advisers could tailor their advice accordingly. In relation to assessing a client's mental capacity, a telephone adviser commented: 'I think it's a lot easier [to] judge somebody's understanding if you're sat with them face-to-face' (TA2). A face-to-face adviser summarised the situation in relation to dealing with complicated cases in the following way: 'To be honest, when it's legal and complex, face-to-face again – it's just so much easier to explain things to a client. Because it's, you can see when they haven't got it' (FL1). This would enable the adviser to adjust their advice to the client's levels of comprehension, which is particularly important for vulnerable clients.

Eye contact was the form of non-verbal communication most frequently observed in this research. In interviews, face-to-face advisers frequently referred to the importance of eye contact when talking to clients. In the observations of face-to-face interviews, eye contact played a central role. Advisers, who were either typing or writing notes had developed techniques for maintaining eye contact by periodically looking up while the client was speaking. Rarely did an adviser ask a client a question without looking at them at the same time. All advisers engaged clients in sustained eye contact whenever they were giving advice, marking out to clients that this was a section of the conversation to which they were expected to pay particular attention. Clients responded by engaging in eye contact during these periods, appearing to give advisers their full attention. They also supplemented their eye contact with facial expressions and nods, or shakes of the head. Most clients chose to maintain consistent eye contact with their advisers for the majority of their interviews.

Eye contact is usually considered a positive indicator of attentiveness in adviser–client interaction (Buck *et al*, 2010; Slorach *et al*, 2015). However, unbroken or 'too much' eye contact may suggest a client who is in a more disturbed state. A particularly agitated client fixed his adviser with an intense stare for much of the interview. During the interview his voice was sometimes strident, and he jiggled his leg restlessly throughout. It eventually became evident that the client was very angry about a previous intentional homelessness decision, which he thought (wrongly) would exclude him from housing assistance. The adviser was able to manage the client's evident frustration without the client resorting to anger. When

we subsequently discussed this, the adviser explained how he had handled the interview:

‘...[T]here were times when I was looking at him...trying to make eye contact with him, opening your kind of posture and it did kind of bring him in to a level where you can try to get more balance in the conversation.’

(FA1)

The inability to maintain eye contact may be a significant indicator of client vulnerability. One face-to-face client in particular struggled with eye contact, although she did manage to look at the adviser when he was advising her. She spent much of the interview distracted and unable to look at the adviser for long periods of time – preferring instead to destroy a plastic bottle. This client had recently been diagnosed with mental health issues and ADHD. The adviser recognised the client’s poor concentration skills, dealt with them sympathetically and adapted the way that he gave advice accordingly. Thus difficulties with eye contact may be an indicator to the adviser of a client’s underlying vulnerability. Face-to-face advisers recognised that there were certain clients with particular mental health needs for whom eye contact was difficult, but many felt that clients with mental health needs usually valued face-to-face interaction. This particular client, for example, said that she did not like to do anything over the phone.

When conducting my observations, it was possible to see that clients and advisers used gestures to emphasise and clarify their words. The most common gesture was the nod, which was used in a variety of ways by both advisers and clients. Clients nodded to confirm to the adviser that they had correctly understood the client’s account, or that the client understood the advice they had been given. In this respect, the ‘half-nod’ was at least as expressive as the nod. The observed ‘half-nod’ describes when the client holds their chin up in suspension to indicate uncertainty and does not complete the nod until the adviser gets right what the client means, or the client understands the adviser. Advisers nodded while clients were talking to show that they had understood the client, often with the effect of encouraging the client to continue to speak. In addition to nodding, advisers and clients used hand gestures to punctuate the verbal content of their conversation.

Not all clients saw the absence of body language as an issue. This was more often the case for telephone clients, but it was not a view confined to them. A telephone client stated that the rapport between her and her adviser was more important than the lack of body language. A face-to-face client who suffered from depression spoke in similar terms, stating that as long as the adviser was ‘warm’ and ‘friendly’, ‘[body language is] not something I watch’ (FC2). This confirms, as outlined in the previous chapter, that for many clients it is the substance of the relationship with the adviser that takes on greater importance. Nevertheless, it seems that, for a significant proportion of clients, body language affected their advice experience.

Verbal cues were, however, seen by a substantial number of telephone advisers as having the potential to substitute for non-verbal communication (7/10). Several advisers felt that using verbal cues themselves, and interpreting and responding to the verbal cues of clients, was a skill that could be developed over time. Yet, in telephone observations, the use of verbal cues was rarely noted.⁹⁶ Analysis of qualitative social science research interviews has shown that, despite not being able to employ body language, telephone interviewers use fewer ‘acknowledgement tokens’ (for example, ‘mm’, ‘hm’, ‘yeah’) than face-to-face interviewers (Irvine, 2011: 208). Interestingly, in interview, a number of telephone advisers said that they still used body language when they were on the phone but this was rarely seen in observations (advisers’ facial expressions may have changed, but this was difficult to observe as they were usually facing their computer screens when speaking). Telephone advisers tended to adopt very neutral tones when taking initial advice calls. Often there seemed almost an absence of personality or individuality in their approach to the client. The discrepancy between advisers’ descriptions of themselves and their observed behaviour provokes the notion that this denial of self was a sensible, though possibly unconscious, response to neither adviser nor client being able to assess the other physically or gauge the reactions of the other. Thus the adviser treads carefully with regard to their presentation of self and this may limit the degree to which they are able to make a personal connection with the client.

⁹⁶ It is difficult to be certain that verbal cues were not used at all, because, although none are noted down, their absence is not specifically noted either. It is, however, the impression I was left with.

While acknowledging that facial expressions were helpful in assessing client understanding, a substantial proportion of telephone advisers expressly made the point they were able to use other methods to ensure client understanding. Firstly, they stressed that advice should be given clearly; secondly, clients should be given the opportunity to say whether or not they had understood; and thirdly, several advisers considered that whether or not the client had understood could be divined from verbal cues, such as their tone. A telephone adviser described how she was able to distinguish when a client had not understood her advice:

‘...[Y]ou can hear in somebody’s voice, maybe, if they’re feeling tentative or if they are repeating certain things...if you were face-to-face maybe you would be able to see that concern or doubt on their face more,...but when you can only hear somebody’s voice, I think maybe your senses are more heightened.’ (TA7)

Moreover a couple of telephone advisers felt that the lack of body language did not make any difference to the process of giving advice (2/10). A telephone adviser, who had previously worked face-to-face, described changing her practice to make up for the lack of body language:

‘I think you just use more open questions and get their understanding. Instead of looking at them and doing it, you just say, “Oh do you understand, is that okay?”’ (TA5)

Another former face-to-face adviser felt that her telephone clients were more likely to repeat back advice than face-to-face clients, which made her more confident that they had understood her advice (this was only noted in one observation). Overall, telephone advisers did not usually consider giving advice over the telephone to be an inferior process due to the absence of body language.

Questioning the client’s account

A particularly controversial aspect of non-verbal communication is the degree to which it provides an aid to assessing the client’s veracity. Views on this were mixed. Before going into this issue further, it should first be explained that, among a number

of face-to-face advisers, there was a marked reluctance to accept that clients might not be truthful and that part of the adviser's role was to assess the credibility of the client's version of events (4/10). A typical response from an adviser on this issue was: 'The account I'm being given is, that's my client's position, unless and until I'm shown otherwise' (FA4). Among face-to-face advisers, this position was taken more strongly by the non-qualified as opposed to the qualified advisers (ie solicitors). To an extent, this may be explained by the different nature of the work undertaken by these two groups, with solicitors tending towards more complex litigation, where the client's credibility might be more in dispute. However, telephone advisers, who were not involved in contested litigation at all, seemed more willing to accept the possibility that clients might not tell the truth.

Moreover, as commentators point out, there are numerous reasons why clients may be inaccurate when recounting matters to their adviser, not all of which are deliberate attempts to mislead (Binder *et al*, 2011; Sherr, 1999). It can be argued that it remains incumbent on the adviser to uncover these inaccuracies, because they may ultimately affect the client's case. Yet it seems as if, for some advisers, making judgements about the case, the legitimate role of the adviser, has become conflated with judging or pre-judging the client. It is argued that, while judgements should clearly not be arbitrary or based on prejudice, advisers must still form a view about the merits of the case. As a face-to-face adviser explained, her role is not to decide whether she believes the client, but to assess whether, objectively, what they are saying is likely to be believed by the court or tribunal. Failing to do this can have serious consequences for the client if they are shown to have lied or distorted the truth as the case progresses, particularly in matters such as asylum applications where 'credibility is everything' (FL4). It is contended that making assessments of individuals is an integral part of providing casework and advice, and that can include using aspects of non-verbal communication.

Linked to the reluctance to accept that clients might manipulate the truth was a corresponding wariness among face-to-face advisers of expressing the view that body language could indicate when the client was being less than straightforward with the adviser. There were also two telephone advisers who felt that body language was not a factor when assessing a client's instructions (2/10). Notably, it was the non-qualified face-to-face advisers who tended to take that position. A face-to-face adviser (who recognised that clients might be inconsistent in their accounts) stated:

‘...[I]t’s very rare that I’ve got somebody in front of me and...on the basis of their body language, I think they’re lying...I don’t think that’s a scientific way of judging it or anything like that...’ (FA2)

The second sentence may provide a clue to the problems that face-to-face advisers had with using body language as a way of assessing the client: its unscientific, subjective basis leaves it open to allegations of prejudice. Face-to-face advisers seemed to be wary of being seen to question the honesty of their clients, possibly because, when related to body language, it could be interpreted as prejudice. Telephone advisers did not have this potential allegation to concern them.

Nevertheless, several face-to-face lawyers (i.e. legally qualified staff) referred to clients averting their gaze, or other facial or bodily expressions, as indicators of the client being less than truthful. A face-to-face lawyer described how clients’ facial expressions were relevant when she was taking instructions in antisocial behaviour cases:

‘[I]t’s not only what they tell you. It is their facial expressions...if you were face-to-face you might be able to tell ‘Oh yeah, they might have been a little bit naughty on that one,’ or might have done that particular incident. But then there’s other times where you will be able to see that, actually, they’ve never even heard of this before...’ (FL1)

Another face-to-face lawyer made the point that assessing individuals in person was the basis on which the legal system operated: ‘...[I]t’s considered in all modes where people have to make judgements and assess people that it’s helped by seeing somebody in front of you’ (FL2). The ability to assess the individual physically is an essential element of institutional decision-making processes and that will include body language or ‘demeanour’. It is argued that if the lawyer fails to take this into account in their dealings with the client, they are ignoring an aspect of the case on which the client is likely to be judged.

Significantly, a number of telephone advisers agreed that body language made it more possible to distinguish when clients were giving a truthful account (4/10). At the same time, however, one of these advisers also felt that it was still

possible to get a feeling about whether the client was being truthful from the verbal cues in the way they answered questions:

‘I think the giveaway would be the gaps, when you’re having the conversation potentially...they’re not fluent in their version of events...there’s gaps in the story or they pause and they have to think about what they’re going to say.’ (TA2)

Thus, although the face-to-face setting might provide more clues to the client’s veracity than telephone communication, they believed was still possible for a telephone adviser to make judgements in this regard.

In previous chapters, we have seen how body language or ‘demeanour’ is a powerful force in the English legal system, although the extent to which it makes it possible to tell truth from lies is highly contested. Ekman (1992: 129–31) suggests that it is difficult to mask facial expressions immediately, and emotions may show fleetingly, but fully (‘micro expressions’) or partially (‘squashed expressions’), on the face before they are concealed by the individual, hence giving a clue to the watcher that the person is concealing an emotion and may be lying. This gives credence to the notion that non-verbal communication can help with assessing a client’s version of events, particularly when coupled with a lack of internal coherence⁹⁷ in the account that is being given. Thus the ability to see a client’s body language may give a face-to-face adviser an advantage in terms of judging a client’s truthfulness. This view was confirmed by a face-to-face client who stated:

‘...you look at the person’s face...you can see his facial expressions and so forth and you can tell when someone is lying to you...I had a cousin back home, he used to...when he was telling a lie he would [client rubs her ear].’ (FC1)

Body language does seem to be a useful tool for advisers in terms of assessing the instructions they are being given by clients.

⁹⁷ Internal coherence is taken here to mean not that the client’s story conforms to an objective, external notion of rationality, but that, however strange, it makes sense for that client at that time in that situation.

Yet, in the observations of face-to-face interviews that were undertaken, it was not in the assessment of the client's veracity that non-verbal communication was seen to be used to its best effect. It was in the advisers', often very skilful, dealings with clients who were distracted, upset, mistrustful, angry and wary, that non-verbal communication – particularly in the form of eye contact, but also in terms of posture and facial expressions – seemed especially instrumental. It is evident that, as well as strengthening the relationship between adviser and client, non-verbal communication has an impact across all elements of the advice process. It aids the giving of instructions, client understanding, and the assessment of the client's case. The nature of the impact described suggests that, particularly where clients struggle with verbal communication, non-verbal communication enhances the ability of clients and advisers to understand each other.

Documents

Remoteness reveals the consequences that flow from the absence of the document. The issues that occurred around documents were the most striking element of the observations of the telephone service. It had been identified in the preparatory stages of this research that dealing with cases involving complex documentation might present problems for telephone-only advice. However, the nature and extent of the issues that telephone-only delivery would raise when dealing with documents was not anticipated. This study highlights that the document or its absence can have an impact on the advice process in many and various ways, not all of them easily foreseen.

Dealing with documents

English law is highly dependent on the document and dominated by notions of the 'original' document in particular. Yet, as outlined in Chapter 4, the document receives little attention in the lawyering literature, largely because its presence or easy accessibility is assumed (Binder *et al*, 2011; Sherr, 1999). In addition, while legal anthropology has recognised the importance of the document as an artefact of law, it is less concerned about its practical application in the provision of advice (Riles, 2011; Suchman, 2003). In terms of legal practice, housing law is riddled with various types of official document, such as the tenancy agreement, tenancy deposit information, possession notices, claim forms, defences, applications, witness

statements, court orders and eviction warrants (Astin, 2015). A face-to-face adviser described the numerous documents relating to a possession action, which clients often find it difficult to distinguish between:

‘...[I]n a housing case, for example, a client will often tell you that they’ve got an eviction order and, in fact, it could be that they’ve got a Notice Seeking Possession, which is the very start of the proceedings. It could be that they’ve got a notice telling them to go to court... It could be that they’ve got a possession order or it could be that they’ve actually got a warrant.’
(FL4)

The importance of the document is indicated by the degree to which documents featured in the observations in this study. Of the 22 observations carried out, ten each of the telephone and face-to-face observations were first interviews and one of each related to an ongoing case. Nearly all of these cases involved documentation relating to the tenancy, threatened or actual possession proceedings or homelessness applications. It was not possible for the telephone advisers to see the papers relating to any of these cases at the time of the call. In most of the face-to-face cases, the clients brought most of their documents with them, largely because (apart from the clients at the drop-in and outreach services) they had been contacted in advance and told what to bring. This in itself indicates the centrality of the document to legal advice. Clients tended not to have brought tenancy agreements, which clients often struggle to find, but they usually had their court papers or documents relating to their homelessness situation and proof of income for legal aid. Sometimes they only had parts of documents, possibly hinting at a more chaotic lifestyle. Only one client, who was homeless due to family breakdown, came to the drop-in without any documents at all; but in this client’s situation, the advice was not dependent on documentation. A client with mental health issues, despite presenting as very organised, did not have the crucial Notice of Seeking Possession with her. Clearly, being in a face-to-face environment does not guarantee that all the necessary documents will be available to the adviser, but it does make it much more likely than in the telephone situation, especially if steps have been taken to prepare the client in advance. When dealing with remote casework, it is possible for clients to send documents to the adviser in advance of the first interview (which was the practice of

one of the face-to-face advisers when doing telephone-based work), but the CLA service does not usually operate on this basis.

In a face-to-face interview, the adviser is able to look at the documents immediately and quickly read them, working out what is and is not relevant. As a face-to-face adviser explained in relation to dealing with clients who found it difficult to articulate their situation over the telephone, seeing the papers helped him understand the legal issues faced by the client: ‘And, of course, as soon as I see the papers, it’s very clear to me what their position is’ (FL3). The consensus among all the face-to-face advisers was that being able to go over documents with the client in a face-to-face meeting could be very helpful, and make the process of giving advice easier (10/10). A face-to-face adviser summarised the situation in simple terms: ‘Practically, I find the hardest thing [over the telephone] is looking at documents together’ (FA3).

Over the telephone, the situation is much more complicated. Most telephone advisers recognised that there could be issues with documentation when giving telephone advice, although the degree to which they viewed it as a problem varied considerably (9/10). Telephone advisers recognised that not being able to see the client’s documents could affect their ability to be certain about their advice when they were first speaking to the client. A representative observation on this issue was:

‘...[I]f at a face-to-face interview the client’s got the section 21, so you can say, “Right, it’s valid” or “it’s not”, whereas in housing – in CLA, it’s like, “Well, it doesn’t sound valid, but I’m not going to say for certain until I’ve seen it.” (TA3)

The view that access to documents facilitated greater certainty when advising was supported by several face-to-face advisers, who referred to the role that documents could play in getting a more accurate account from the client (4/10). A face-to-face adviser stated:

‘...[I]f you can actually see the document...Whereas if they’re saying ‘I’ve never heard about this before’, and I’m looking through the paperwork and I can see eight unopened letters. You know, I’ve had that as well.’ (FA4)

It was also suggested that it was more difficult for clients to be elusive when the adviser had both the client and the case papers in front of them and that, face-to-face, the adviser could identify inconsistencies in the client's account sooner. A number of telephone advisers agreed that without seeing the case documents it could take them longer to get to the core of the issues in the case and this too would hamper their ability to advise the client. As a telephone adviser explained:

'Like I say, one of the main things is lack of documentation...I imagine if you were face-to-face it would just be a matter of let me look at your documents, I'll ask you a few questions that can't be answered by what I'm looking at' and it would be quite – more of a quick way of advising. Than us having to ask those questions and sometimes they can't answer those questions.' (TA2)

Face-to-face, advisers were able to go over documents with clients in detail. A face-to-face adviser commented on the benefits of going through the rent account with the client – a common occurrence in housing possession cases:

'You're actually looking at numbers and figures and trying to identify...where arrears accrued for, whether Housing Benefits has been stopped, all those kinds of things. Trying to do that over the telephone is just extremely, extremely difficult.' (FA1)

In one interview that was observed, as a result of the adviser going through the rent account and questioning the client about a long gap in her Housing Benefit payments, the client disclosed that she had been suffering from severe depression at the time. Several of the telephone interviews I observed involved allegations of rent arrears and, in each one of them, the client contested the level of arrears to some degree. However, it was not possible for the adviser to go through the rent account with the client in any of those cases, or to see their Housing Benefit documents. Clearly they would be able to see the documents in due course, but in the interim, they were advising 'blind', as one of the telephone advisers put it.

During observations of initial face-to-face interviews, advisers would usually read through the most important documents that clients had brought with them and

would even read out passages from those documents to the clients, asking or allowing clients to comment on the content of the documents as they did so. Face-to-face advisers also mentioned the benefits of physically pointing when taking a client through a document. In observations, it was possible not only to see advisers pointing to passages in documents, but also, in a few instances, using the documents themselves as props to orient the client through a complicated history. In one interview, for example, when the adviser was checking the client's account with him, she touched each report or letter as she spoke about it, and the stage in his story it signified. When this use of documents was mentioned to advisers in follow-up interviews, they were not conscious of having used the documents in this way.

Face-to-face advisers also made the point that being able to see the adviser reading the document gave the client confidence that their case was receiving the adviser's full consideration. When advisers also read the documents out to them, clients could be doubly satisfied that the adviser had read the information they had brought with them. Reading through documents in the client's presence also proved useful to advisers in a couple of instances, as documents do not always say what clients believe they do. In one interview, for example, the adviser was able to show the client an incorrect date in the council's decision letter and she and the client were able to resolve the discrepancy during the interview. As the client said: '[Face-to-face] I could double check – otherwise over the phone, you would just be arguing' (FC3). Being able to consider documents together reduced the potential for conflict between client and adviser.

The issues around access to documentation clearly affect the first contact between client and adviser, but may also affect later interaction as the matter progresses. On a very simple level, in the ongoing telephone matter that was observed, the adviser was taking a highly competent client through his financial statement for the purposes of making an offer of payment to his mortgage company. The adviser considered it was beneficial for the client to be at home, because he was able to access his accounts while the adviser was on the phone.⁹⁸ It seemed a straightforward matter and suitable for a call, but it became evident that the client did not have the financial statement that the adviser was working from in front of him,

⁹⁸ Although, in fact, the client had not anticipated that this information would be needed during the course of the call and the call had to be cut short, so that he could open up the relevant records on his computer and call the adviser back.

and was confused about some of the figures. Face-to-face, it might have been easier for the adviser to take the client through the figures by showing them to him. The usefulness of this way of dealing with documents was exemplified by the face-to-face observation in the other ongoing matter observed, where the adviser took the client through the council's housing file page by page as they sat together.

At the most prosaic level, the practicalities around the exchange of documents between client and adviser in the course of the advice process represent a particular distinction between face-to-face and telephone advice. As one face-to-face adviser who had previously had an extensive telephone caseload remarked:

‘Also, there’s the nice easiness of them just being able to drop in to sign some documents, if that’s what’s needed. Or drop in some documents that I’ve asked for. It’s much easier than a client posting stuff to me.’ (FL1)

A telephone adviser referred to an instance, at the CLA provider where he had previously worked, when a client had taken the train from London to hand-deliver a large quantity of documents rather than post them.

In addition, it is often the reality in social welfare law casework and litigation that both clients and advisers are working to a tight deadline. The daughter of a face-to-face client who had been involved in previous proceedings explained that, when documents were needed at the last minute and electronic communication was not an option, being able to hand-deliver them was crucial. A face-to-face adviser referred also to how the increasing strictures of court directions⁹⁹ were likely to make dealing with documents in a remote case even more problematic:

‘I can see in the future it becoming critical to see a client face-to-face. And the things that I’m thinking about are deadlines, like disclosure, witness statements, etc., etc. Getting those extended nowadays is becoming more and more difficult...If you are not getting back from the client [the list of documents], I mean that could be the end of their case basically. So it could be critical.’ (FL1)

⁹⁹ The recent Court of Appeal cases in *Mitchell MP v News Group Newspapers Ltd* (2013) and *Denton v TH White Ltd* (2014) demonstrate the stricter judicial approach that is being taken towards non-compliance with directions.

Currently, issues of this nature are unlikely to trouble CLA telephone advisers, who do not deal with contested litigation. However, if – as may be the case in the future – all or a greater proportion of legal aid services move to remote delivery,¹⁰⁰ this could have serious implications for the effective conduct of casework.

Face-to-face advisers also referred to the difficulties with documentation faced by clients with poor communication or literacy skills (or both), or with only limited English. A face-to-face adviser explained that these more vulnerable clients would often bring in all their documents without understanding the nature of their legal problem: ‘...[T]hey come with carrier bags full of stuff. If, you know, they are not clear about what the issue is, you’ve got to go through the papers’ (FL3).

Interestingly, two of the telephone advisers referred to the potentially ‘distracting’ effect of the carrier bag of papers upon the adviser. As one adviser put it:

‘I can imagine being face-to-face, and maybe somebody walks in with a carrier bag full of credit cards and...you’re having to maybe look at that...whereas on the phone you can just get brief information of those debts, give them initial advice and then ask them to send the information in...’
(TA7)

Unlike the face-to-face advisers, these two telephone advisers did not appear to recognise the value of the adviser not having to rely on the client to determine what documents were relevant to the case. As a telephone adviser stated about her previous face-to-face experience:

‘...Nine times out of ten, [clients would] have loads of paperwork with them, so they know that...if there was something that they’d missed, that might be really important in this mountain of paperwork that they’ve got, I think they just had some reassurance being able to say, ‘This is everything I’ve got, can

¹⁰⁰ The Ministry of Justice has already flagged up its intention to move more legal aid services to the telephone and online (NAO, 2014)

you tell me what's happening?' Whereas on telephone, because we don't have that paperwork right at the beginning, we're trying to unpick it and I think sometimes that can get quite frustrating for a client.' (TA4)

Several clients (telephone and face-to-face) stated that they preferred the face-to-face environment precisely because being able to show the adviser their documents enabled them to get their situation across to the adviser more easily. Where their own words failed, the document could take over. A telephone client with both mental health and language issues explained: 'In person, it's different. You can show the papers. You can understand better. You can explain better. On the phone, it is like talking to a wall sometimes' (TC3).

Two face-to-face advisers also made the point that when dealing with housing conditions and disrepair, getting the client to draw or to demonstrate physically the problem they are referring to can be vital in getting an accurate picture. One of the advisers said, '...it's very important to be able to say "OK, so, that soffit, which was next to the eaves – could you draw it?"' (FL2). Thus drawing could also help the client to clarify what they found difficult to explain in words.

It was notable that those clients who found telephone communication more difficult put particular faith into being able to show the adviser their documents in order to explain themselves more clearly. The relationship between tangibility and presence was discussed in the Chapter 4. It was suggested that in dealing with the abstractions of the law, clients might fare better when they had a physical adviser in whom to locate those intangible constructs. The findings of this study suggested that clients – particularly who were less able to express themselves – were reassured by the tangibility of the document, combined with being able to witness the adviser's consideration of it in their presence. Clients facing homelessness and possession problems are often at sea with their situation, unable to make sense of the legal framework that governs their circumstances, and with only limited control over their own lives. The physical document may provide a point to which such clients can anchor themselves, giving a tangible reality to events that seem ruled by abstract legal concepts and bureaucratic procedures. Being able to show the adviser their documents in a face-to-face interview was perceived by these clients as a real benefit.

In addition, as a face-to-face adviser pointed out, the language of legal documents is not only foreign to clients, but also quite intimidating – particularly when they are about to lose their home. A face-to-face client who had successfully defended antisocial behaviour possession proceedings made a similar point:

‘...[These] accusations what was being made, when [adviser] interpretes it in layman’s terms – it doesn’t sound so bad...[W]hen they send you these notices, they lose you in all the sections and paragraphs and Housing Act 1966 amended in 1970 and all that, you see – they lose you.’ (FC16)

Being confronted with complex and bewildering legal language can be very distressing for clients and having to repeat that language to the adviser over the telephone may increase clients’ stress levels further. Being able to show the adviser documents may provide clients with a degree of relief.

Among face-to-face advisers, a view was expressed that vulnerable clients often did not read or even open letters, possibly due to poor literacy, but also because of the stressful nature of their situation. A face-to-face adviser emphasised this point:

‘Clients come in with the carrier bag full of letters they haven’t opened because they’re too anxious or too frightened...And maybe they don’t know the full story themselves until they speak to you.’ (FA4)

This meant that face-to-face advisers could provide clients with more assistance in dealing with documents. In one of the face-to-face observations, for example, a client admitted to not opening letters during a period of depression, and the adviser told her to just bring all letters from the council to her in future. It would be much more difficult for the telephone adviser to offer the same level of support to a client in this situation. Given that, according to advisers, this is a relatively frequent occurrence in their work, this additional help may alleviate some of the anxiety felt by vulnerable clients.

Clearly, the documentation associated with legal issues can be fraught with difficulties for clients who are unused to dealing with formal papers. Furthermore, it is not always obvious when clients have literacy issues. It became apparent in the course of interviewing a verbally articulate client that she struggled with reading and

writing. In relation to dealing with the possession proceedings that had led to an outright possession order being made in respect of her home (before she sought advice), she stated:

‘It’s like, you said to me, “Oh, what did the papers say?” I didn’t really read it, I just briefed it and quickly, you know. I’m like that, I’m a bit naughty like that. I don’t really read through anything or really take it in.’ (FC12)

Telephone advisers were less likely than face-to-face advisers to mention having to read out documents over the telephone or poor literacy as potential problems for clients. One telephone adviser stated her own surprise at the extent of literacy problems, and another mentioned that clients could become ‘flustered’ when trying to answer questions on documents over the telephone. A telephone adviser who had face-to-face experience, and recognised that there were advantages in being able to see the documents, still felt that it was possible for the adviser to get the necessary information by questioning the client appropriately.

Nevertheless, overall, telephone advisers did not mention these sorts of complications to the same degree as face-to-face advisers. It is also possible that telephone advisers were dealing with clients with better literacy and language skills than face-to-face advisers. As one face-to-face adviser suggested ‘...if you’re ringing up an adviser on the phone, you’ve got to actually know what an eviction letter is...’ (FA3). In her view, clients who choose to use a telephone line are likely to be more able to understand and articulate their problems than those seeking advice face-to-face. This may explain why telephone advisers seemed on the whole less concerned about the difficulties clients would face when having to relay the content of documents to the adviser over the telephone. Yet, in observations, asking clients to read documents over the telephone was not always straightforward (see more below).

Just one telephone adviser felt that, when dealing with documents, it was easier to deal with clients who were in their own homes, because the relevant documents would be available. In her experience, clients came to face-to-face interviews without them. This was however a minority view, possibly because the adviser’s previous face-to-face experience had principally been providing a debt

outreach service.¹⁰¹ In contrast, a face-to-face adviser had, for example, found that face-to-face clients prepared their documents in advance when coming to interviews, but telephone clients were less likely to consider what documents they needed before her call with them.

Other telephone advisers also recognised that the lack of access to documentation could be an issue when first speaking to the client. When interviewed, however, they explained that they were usually able to get around this problem by directing clients to the relevant part of the document in order to get the required information. This meant they were reliant on the client to read the document to them over the telephone. In the observations of telephone interviews, it seemed that, even with clients who sounded quite capable of managing their affairs, this was not straightforward. Clients would often doggedly read out the standard wording while, on a few occasions, struggling to find key information. A particularly vulnerable client with mental health issues appeared to be reading from a variety of documents on a random basis, and the adviser simply had to give up trying to advise the client on the issues relating to his tenancy until she was able to get the documents from him.

In a time of extensive electronic communication, it might be assumed that these issues could be circumvented by documents being sent via e-mail or fax. In interview, a telephone adviser told me that most clients were able to find a way to send documents over in an emergency and it was not an issue that she had experienced in her work:

‘I have a lot of people that can scan [documents]...Or people – what I have noticed is – take pictures of it on their smartphone and it’s absolutely fine and then they just e-mail me the pictures.’ (TA4)

This experience was not, however, reflected in my observations of telephone interviews where clients struggled to find ways to send their information to the adviser other than by post. As well as not knowing how to use the technology, cost could also be a factor prohibiting clients from using e-mail or fax. Several telephone

¹⁰¹ As stated previously, in outreach services, clients may not be told in advance what documents to bring.

clients sounded highly capable when explaining their situation, but not many of the clients observed seemed to be actively able to send their documents by e-mail. Conversely, a telephone client (who I only interviewed) told me that he could have sent the adviser documents electronically, but it had not been requested. Many clients appeared to have internet access, but the impression gained was that most of these had internet access through smartphones, rather than desktops or laptops. Recent research commissioned by Shelter (TNS BMRB, 2015) confirmed that many clients have access to the internet, often through smartphones. Making sense of a typical A4-sized legal document on the screen of a smartphone might prove difficult for a client, particularly if their language and/or literacy skills are poor.

Furthermore, although it is increasingly widespread, it cannot be assumed that all clients have e-mail or internet access. The telephone client who was about to be evicted did not have home internet access. In addition, transferring physical documents to electronic format can present significant barriers to legal aid clients. Recent research into the Telephone Gateway found that some clients experience difficulty with using e-mail to send documents, and in some instances resort to using commercial services to do this for them, potentially at a high cost to clients on already low incomes (Paskell *et al*, 2014b). In the observations these issues affected both vulnerable and more capable telephone clients.

Getting the client to read the document out to them over the telephone was only one of the ‘workarounds’ employed by telephone advisers. The conference call – a three-way telephone conversation with the client and a third party, such as the landlord, local authority or court – was cited as a quick way of getting information that the client was unable or, in some situations, unwilling to give. The conference call enables the adviser to get the information during the telephone interview, because the client is on the line and can give their authority to the third party for the information to be given to the adviser. Otherwise, in the telephone environment the adviser has to wait for a written authority to deal with third parties to be returned by the client, which, as some advisers acknowledged, could lead to delays. The need for the client to be on the telephone at the same time to give their authority could be problematic in urgent matters, where it was not possible to contact the third party immediately. In the telephone eviction case that was observed, it seemed the adviser was going to have to wait most of the following day, until the client was available, to get the information she needed from the client’s housing officer, an unfortunate

delay in a very urgent case. In other observations, the conference call was put to good use in a couple of telephone interviews with regard to finding out information from a tenancy deposit scheme and in respect of a vulnerable client's homelessness application.

It is also common practice among face-to-face advisers to use calls to third parties while the client is in the room to find out information, although very few telephone advisers were aware of this. In face-to-face observations, these calls were most frequently used to establish the client's current benefit situation with the Department of Work and Pensions (DWP) for the purposes of legal aid eligibility. In addition, on one occasion, when the client had attended without the relevant possession notice, the adviser was able to contact the local authority landlord to find out the level of a client's current arrears, the stage the proceedings had reached, and, most usefully, to come to an agreement with the local authority regarding the client's payment of rent and arrears, which would prevent the matter going to court. Conference calls are evidently of use to both telephone and face-to-face advisers in the first interview. Face-to-face advisers have the advantage that they are able to get the client's written authority for third party disclosure in the first interview. Telephone advisers continue to need the client's oral permission to get information from a third party, until the client returns a written authority to them in the post.

Drafting documents

The role of documents in advice and casework is not confined to the adviser considering documents. Advisers are also often required to draft documents, such as court documents, witness statements and written review applications. As they do not deal with contested litigation due to legal aid restrictions, telephone advisers do not draft witness statements for clients, but they do draft written representations for clients in court proceedings and submit homelessness review applications. Face-to-face advisers generally preferred face-to-face interaction for drafting documents. A face-to-face adviser commented in a typical fashion on this issue:

'For something like doing a witness statement, I would generally prefer that it was face-to-face. And not least because I can type while they are sitting there and then I can show it to them and they can approve it and sign it...I

find that if you do that by post, [clients] often sign things and then tell you later that, actually, that wasn't quite right.' (FL4)

Face-to-face advisers considered the witness statement an exacting document, requiring a considerable degree of attention. Echoing this general view, a face-to-face adviser described it thus:

'If you are doing a witness statement, so a really important document...really that's the evidence that's going to prove one way or another. I think that for some clients, to get it absolutely right, you need them to sit down and just go line by line, this is how you felt when this was happening.' (FL2)

A former face-to-face adviser took a more relaxed view regarding the complexities of drafting a witness statement. She felt that, although she had not done it herself, a witness statement could be drawn up equally satisfactorily over the telephone, because '...it was just kind of clarifying...and just getting their side of it and putting it down...I don't think it would have been different to do it over the phone' (TA4). The contrasting opinion expressed by face-to-face advisers perhaps reflects their current litigation experience, which would make them more acutely aware of the importance of accuracy in the witness statement and the potential consequences for the client of any errors.

In addition, the complexity of the witness statement is increased when there are numerous other statements and documents to take into account. Face-to-face advisers referred to the complications that could arise when clients were involved in contested matters with large volumes of documents to consider. A face-to-face client who had successfully defended antisocial behaviour possession proceedings made the point that it would have been impossible for her to deal with the all the other side's statements in her case over the telephone:

'Oh, that [telephone-only advice] would have been an absolute nightmare! Because I'm talking a stack of statements. Police statements what they've sent through,...then you had statements from neighbours and their children who were going against us...' (FC16)

A face-to-face adviser spoke about this issue in similar terms, referring to an instance of taking the client's instructions over the telephone for a witness statement in an antisocial behaviour case:

‘ And, in the end, I drafted a statement of 30 pages long. I mean, it was pretty major and it was really gruelling to do over the telephone. It would have been so much easier and faster probably by...on face-to-face, basically, going through things.’ (FL1)

Despite showing some awareness of the limitations around dealing with documents over the telephone, on the whole, telephone advisers did not consider that cases involving high volumes of documents were any better suited to being dealt with face-to-face. A common response when this issue was raised with them was:

‘...[T]he way you deal with the document is the same, regardless, I think...there's no problem with, for us, personally to deal with a large amount of documentation – I think it's just the issue with the client getting them to us.’ (TA8)

When questioned further on this issue, the same telephone adviser volunteered:

‘I mean, the only difference is, you're not sat next to them and it can take longer...if you're saying to them, “Right, it's on paragraph such-and-such, or it's this page”...where you're dealing with them over the phone than if you saw somebody face-to-face – definitely.’ (TA8)

This adviser's initial response, along with that of others, suggests that telephone advisers often saw dealing with large volumes of documents from their own perspective of being able to consider them, rather than in terms of how they might take instructions on them from the client. It is unlikely that telephone advisers would have been exposed to drafting documents for the purposes of litigation, since, as soon as a matter becomes formally contested, the telephone service is required to refer it out in order for the client to obtain full representation under legal aid. It is therefore possible that the reasons these issues are less of a concern for telephone

advisers is because they do not deal with contested litigation. It seems likely that awareness of the more onerous requirements of litigation in terms of accuracy, comprehensive preparation and procedural compliance is likely to inform the difference in attitude between telephone and face-to-face advisers regarding the feasibility of conducting litigation over the telephone only.

It is possible that improved client and adviser focus is why face-to-face advisers preferred dealing with drafting and considering documents in complex litigation face-to-face. Face-to-face advisers often felt that clients were better able to concentrate in a face-to-face interview in the office (8/10). As one adviser put it:

‘...I think that often I find it difficult when people are at home, because, often they have other distractions...I think probably it’s more efficient for me to have a client in my office because they are focusing on whatever is at issue.’ (FL4)

A substantial proportion of face-to-face advisers commented on the challenges of taking instructions by telephone because of the distractions operating on clients at home and in the external environment (6/10). Just one telephone adviser mentioned the difficulties that could occur when clients were distracted by children, or when street homeless clients were calling from the street.

A face-to-face adviser who had worked extensively on telephone cases in the past mentioned having noticed that her face-to-face clients came to their interviews more prepared to focus on the case than her telephone clients. Another face-to-face adviser explained the difficulties she had faced trying to go through detailed representations with a client over the telephone:

‘I tried to [go over a document] the other day with client, but it was so difficult. She’s got a very short attention span and she sort of lost interest after about a page and they are four page submissions and I’m pretty sure I’d probably lose interest as well.’ (FA3)

The adviser felt it was harder for clients to lose interest when the adviser was sitting there with them.

In confirmation of this, a face-to-face client with depression and poor physical health referred to her own problems in concentrating if she was unable to have eye-contact with the person concerned: 'I can't – if I'm not looking into someone's face, I just, I sort of go, blank out basically...' (FC2). On the whole, telephone advisers did not seem to find client focus a problem in telephone contact, and the general view was that, if a client was calling from somewhere especially noisy or the adviser called the client at an inconvenient time, it was usually straightforward to rearrange the call.

Interestingly, face-to-face advisers also felt that their own focus could be improved by engaging in face-to-face interaction with clients. For some this was because they were better able to concentrate for long periods of time when meeting the client in an interview room. One adviser made the observation that '...you are sat down in a room with a table and you've got more time to explore the issues fully without distractions and that's not always the case...over the telephone' (FA1). The effect of this was that, face-to-face, the adviser would examine the matter in more detail.

In contrast, the view was put forward by a few telephone advisers (3/10) that they were more attentive to clients because of only having their voices to concentrate on. As one telephone adviser explained:

'...[Y]ou're not distracted by looking at the person and so you're compelled to hear what they're saying more than, I think, than if they're presenting to you in person.' (TA1)

In all of the observed interviews, telephone and face-to-face advisers appeared to be concentrating on the client. Most clients also seemed attentive to the adviser, although it was more difficult to judge with telephone clients. In one call, the client's young son could be heard intermittently in the background and in others a poor quality line made communication more difficult. Clients with mental health issues seemed to struggle most with focus. A telephone client could not respond to the adviser's questions and eventually gave up, handing the phone to his partner. A face-to-face client appeared distracted, although she seemed able to answer questions appropriately and concentrate on the advice at the crucial times.

Client focus was an issue that also arose during my interviews. On one occasion, I was able to observe a telephone client speaking to her other, non-CLA, adviser over the telephone about her debt problems when I attended a follow-up interview in her home. During the course of the call, the client watched the television, changing channels from time to time, sorted through her post, went upstairs for a while and then started cooking. I also experienced clients, during my face-to-face and telephone follow-up interviews with them in their own homes, being distracted by watching the television or having to deal with children. It is possible that if I had been talking about their legal problem, the clients I interviewed face-to-face would have been less distracted. However, the client that I witnessed being unfocused while speaking to her debt adviser over the telephone was dealing with her own problems. Among the group of clients who struggled to give me their full attention, was a client I had observed in a face-to-face interview with her adviser, when she had seemed very focused. Thus, the change in her behaviour was particularly striking. The alteration in her behaviour and the lack of attentiveness in other clients gave rise to the notion that perhaps it is being in the interview room that communicates to clients that the appropriate behaviour in that space is to be focused on the adviser and on the matter in hand. It may be that if clients are at home, they adopt a more casual attitude and it may not make any difference to their concentration whether communication is face-to-face or over the telephone. As the face-to-face advisers pointed out, greater focus can have considerable consequences when dealing with complex legal matters.

Legal aid

Requirements around documentation were particularly an issue in terms of legal aid. Telephone advisers are allowed to carry out two hours' work without proof of a client's income. After the first interview, clients are sent a legal aid ('Legal Help') form to sign and requested to return it with proof of income. In some instances, this procedure led to delays in conducting casework if clients did not return their completed legal aid forms and their evidence of income in a timely manner, or at all. Accordingly, there appeared to be a strong impetus among telephone advisers to try and complete the case within two hours.

The consequences of this hiatus in dealing with the case are potentially very serious. On one occasion, a capable client with an outright possession order due to

take effect in a few days' time was not sure whether the adviser continued to be in contact with the mortgage company on his behalf, because of postal delays in respect of the forms for 'Legal Help'. In addition, on two occasions, clients seemed confused about what they should do with the legal aid documents. They had not returned them at the time when I went to interview them, asking me instead what they should do. A third client, who was recovering from a stroke, had sent her form to the Citizens Advice Bureau in her confusion. The three latter clients can be described as vulnerable due to mental or physical health issues, indicating that it may be a struggle for less capable clients to cope with the bureaucracy of legal aid on a remote basis.

In face-to-face services, clients must provide proof of income at the outset of their cases in order to qualify for legal aid and difficulties can arise at the beginning stage if clients attend their first interview without the requisite documentation. In an outreach service, for example, the client observed had been asked to come back with proof of income before the interview could go ahead. The adviser explained that sometimes clients simply did not return in these situations. In addition, in a drop-in service where a homeless client attended without proof of income, he had to be dealt with urgently on a one-off basis and a legal aid claim was not possible. If clients were on benefits, advisers could contact the DWP for proof of eligibility; but if clients were working the situation was less easy to resolve. In addition, completing legal aid forms took around 5 – 15 minutes in most face-to-face interviews observed. Telephone advisers did not have to go through this process, but, once the forms had been completed, face-to-face advisers faced no further delays, unlike telephone advisers.

The rate of return of legal aid forms and proof of income from clients reported by telephone advisers ranged from 'a high return rate' to 'a good two-thirds'. Several advisers described an increase in the proportion of forms returned since, due to reductions in the scope of legal aid, the matters being dealt with had become more pressing.¹⁰² Both telephone and face-to-face advisers recognised that, in urgent matters, trying to get legal aid documents completed presented more of a

¹⁰² The reported rate of return for evidence of eligibility received in debt cases using the CLA in 2013–14 is substantially lower than this at 11.9 per cent, perhaps explaining why so few cases proceed to 'putting the case for the client' (Patel, 2014).

difficulty for telephone advisers. A face-to-face adviser described how these issues manifest themselves in her telephone-only work:

‘If I’m doing it remotely, three days to get there, three days to get the forms back, I’m left with a week. It’s. . . cutting it fine. And, our clients generally by nature are last minute...’ (FA3)

Several telephone advisers explained how, in an urgent matter, the legal aid requirements could present significant barriers to dealing with the case over the telephone. A telephone adviser explained the particular administrative difficulties that could arise if a client had an imminent hearing:

‘...[T]hose are situations where actually face-to-face would be more beneficial, because at least they’ve got the papers... Okay, we can do emergency case work, within the funding... but you’re still stuck with the Legal Help form, authority and the proof of income...’ (TA8)

It seems that, the more urgent the matter or vulnerable the client, the less telephone advice appears to lend itself to dealing with the practicalities of casework in terms of case papers and legal aid requirements.

The role of documents plays a minor part in the lawyer–client literature and yet we have seen here how, when remoteness enters the arena, it becomes apparent that there are myriad ways in which the document is central to the process of giving advice. Telephone advisers are disadvantaged by not being able to consider relevant documents, and the drafting of documents in conjunction with clients becomes unwieldy over the telephone. As long as the physical document remains the chief way of communicating in legal proceedings, it seems that telephone-only advice will lag behind in its ability to assist clients with acute housing problems. Moreover, even if issues around the transfer of documentation can be overcome, clients who experience problems with communication, comprehension, concentration and focus, whether for reasons of literacy, language, mental health issues or simply stress, will continue to be at a disadvantage when trying to engage with a document-bound system.

Conclusion

This chapter has dealt with two aspects of telephone and face-to-face interviews that affect every stage of the advice process. Non-verbal communication assists clients and advisers in explaining themselves more effectively. It helps advisers to obtain a fuller and more accurate account from clients on which to base their advice. In addition the ability to judge for client understanding enables advisers to give advice in a way that is more comprehensible to clients. With regard to the use of documents, the telephone advice process is held back at various stages as the case progresses by the difficulties around access to documents. Being unable to see the relevant papers when they are first speaking to the client hinders the adviser's ability to get a comprehensive view of the case and therefore to give the client advice that is as clear as possible. The mutual consideration and preparation of documents as the case continues also becomes more problematic. Furthermore the problems in communication associated with the absence of body language and lack of access to documents are exacerbated for the most vulnerable clients. If these clients are limited to telephone advice, this research shows that they will struggle to obtain the advice that is most effective in meeting their needs and to bring their case to the most successful conclusion that the law and the circumstances allow.

Chapter 9: The Advice Process

Introduction

As this thesis has evolved, we have seen how local knowledge, interpersonal factors, non-verbal communication (or its absence) and the use of documents manifest themselves differently in the telephone and face-to-face environments. This chapter assesses how all of these issues combine to affect the advice process. As previously discussed, this thesis takes a client-centred model of lawyering, where interviewing a client is taken to involve three key stages: getting the client's story, questioning and probing, and advising (including taking the next steps). It is these three principal stages of the advice process which will be analysed with respect to how they are altered by the distinctive characteristics of telephone and face-to-face advice. The issue of the power dynamic between adviser and client is also examined in terms of whether a rebalancing of the adviser–client relationship may result from the client being at a physical distance from the adviser. Factors such as client vulnerability and the complexity and urgency of the case are then considered from the perspective of the delivery of advice in person or over the telephone. The overall picture that emerges from the data is that, when the advice process takes on a remote form, there are potential compromises which can diminish the quality of the advice process for clients.

Letting the client tell their story

As seen in Chapter 4, texts concerned with the lawyer–client interview suggest that allowing the client to speak naturally and give their account in their own words is the most effective way of getting the client's story (Sherr, 1999; Elkington *et al*, 2014; Buck *et al*, 2010; Slorach *et al*, 2015; Webb *et al*, 2015; Maughan and Webb, 2005). Yet, the evidence from research with lawyers suggests that legal advisers are prone to narrowing the issues in the client's case prematurely (Sherr, 1986). A further danger identified by critical legal scholars is that controlling the interaction with the client enables the adviser to substitute their narrative for the client's version of events (Alfieri, 1991). The possibility that telephone communication would liberate the client voice was not generally supported by the literature on interviewing in social science research. Rather, the chief concern that arose from a consideration of

those studies was that the lack of non-verbal communication and the pace of the lawyer–client interview would reduce the level of participation of the client and exacerbate the lawyer’s tendency to control the client narrative.

The strong consensus among face-to-face advisers was that it was easier to get more detailed instructions when dealing with a client face-to-face (10/10). A face-to-face adviser with extensive prior telephone experience summarised dealing with clients over the telephone in the following way, reflecting the views of many of her colleagues and also her own changed position on the issue:

‘You don’t get as detailed instructions, yeah. You can deal with it, but it’s not as good, I don’t think. I used to be a real advocate for remote working, I thought it was brilliant and that it was fine. And, to be honest, even now I would say that it’s brilliant for someone who hasn’t got access to advice anywhere else, remote working is perfectly fine. But I think [my preference is] face-to-face.’ (FL1)

A variety of reasons were advanced by face-to-face advisers for the ability to get more information from the client face-to-face, many of which have already been discussed in Chapters 7 and 8. In the first instance, for many face-to-face advisers, their perception was that face-to-face communication produced deeper relationships and was more relaxed than telephone advice, which meant that clients were more at ease face-to-face, and this had a corresponding positive impact on the client’s willingness to give full instructions to the adviser. Another factor which several face-to-face advisers believed influenced the greater amount of information available in face-to-face interviews was the less structured nature of face-to-face advice, which they considered gave more room for the client to express themselves (5/10). As a face-to-face adviser explained:

‘Sometimes it’s good to let them talk because then their real feelings come out. You hear things that they might think aren’t important... Sometimes, it’s just rubbish. Actually, it’s something really crucial like “The council said this to me, actually and they did this in the end.”’ (FA3)

In the view of these face-to-face advisers, the telephone interview was often more prescriptive, and based on a series of questions and answers than face-to-face interviews. This picture of telephone interviewing was accepted by a significant number of telephone advisers (7/10). One telephone adviser referred to allowing clients to 'vent' in their initial calls; although she felt her colleagues were often more structured in their approach to interviews (TA1). In the opinion of face-to-face advisers, the more fluid face-to-face interview was more likely to yield a greater depth of information from the client.

It was rarer for telephone advisers to say expressly that clients would be more forthcoming face-to-face (3/10). However, a number of telephone advisers recognised that clients might be more comfortable speaking face-to-face, due to the client feeling reassured by having seen the adviser in person or because of finding it easier to deal with documents (5/10). On the whole, however, as stated above, telephone advisers felt that any advantages in terms of gathering information face-to-face existed mainly in the first interview alone. One telephone adviser felt that clients gave more information over the telephone, because they were in their own homes and more inclined to chat, but this was a minority position.

There were substantive differences observed in face-to-face and telephone interviews. Face-to-face advisers often allowed clients to tell their stories in their own words before going back and questioning them more closely. This is more in keeping with a naturalistic, client-centred approach to interviewing, which is considered to facilitate greater client disclosure (Binder *et al*, 2011; Sherr, 1999). Face-to-face advisers sometimes allowed the client's specific concerns to dictate the structure of the interview, going from one topic to another without any clear strategy. Face-to-face advisers often said in interview that they followed a structure, but it was noticeable that the face-to-face interviews were less structured than the telephone interviews. Without a clear structure, clients can be left slightly disorientated and uncertain as to how the interview will proceed. Some of the face-to-face interviews would have benefited from a more structured approach which outlined the interview format to the client at the outset.

This level of fluidity was much rarer in the telephone interviews that were observed, which were more likely to take a question-and-answer format. As has previously been flagged, this can impede the client's ability to give full instructions (Sherr, 1999). In interview, telephone advisers spoke about using open questions in

the initial interview, but this happened relatively infrequently in the observations. The exceptions to this more controlled approach came when clients were particularly articulate in their descriptions of their problems and could explain them succinctly to the adviser. If a client appeared more disorganised in their thoughts, however, telephone advisers moved to a question and answer format quite quickly. A telephone adviser described the more rigid method to interviewing he adopted:

‘I’ll say to the client, “I’ve got some questions for you; I’ll ask you these first, and then we can discuss the actual reason for the call in more detail”, just so that I know that I’ve got the information I need to actually give them the right advice’ (TA8)

The risk of this tighter form of control is that it can prevent the client from saying something important (Slorach *et al*, 2015). For the most part, clients accepted this more structured approach and answered the adviser’s questions, rather than insisting that their own questions were dealt with first. Thus telephone clients fell into allowing the adviser to dominate the conversation, a pattern identified by Irvine’s (2011) comparison of qualitative telephone and face-to-face interviews for social research purposes. As mentioned in Chapter 7, a possible consequence of this adviser control was that several telephone clients raised new and potentially significant issues, such as landlord harassment or personal reasons for their rent arrears, when calls reached the ‘wrapping up’ stage. This seemed less of a characteristic of the face-to-face interviews observed. A theory pursued in Chapter 4 is that being outside the adviser’s physical presence may liberate clients in voicing their own opinions. However, the phenomenon of telephone clients finding it more difficult to raise the issues of concern to them in the course of the substantive conversation with the adviser would tend to suggest that there is less rather than more room for the client voice in the telephone conversation.

It has been suggested that advisers may resort to narrower forms of questioning because of a fear that the client will ramble through their account without stopping. It seems, however, adviser’s fears are rarely realised and clients often reach the end of their story very quickly (Maughan and Webb, 2005; Binder *et al*, 2011). The advice is therefore to let clients speak without imposing order in the initial stages of the interview as this builds rapport and improves the instructions

subsequently received (Maughan and Webb, 2005; Binder *et al*, 2011). A possible explanation for telephone advisers' preference for the question and answer format is that they were fearful of losing control of the conversation and lacked the non-verbal cues and more subtle ways of bringing the client back to the topic in hand. A face-to-face adviser felt that she could be less overtly directive during the course of a face-to-face interview, because she could use her body language to indicate to the client when it was time to move on to a new issue. Thus, face-to-face advisers could be more relaxed about taking a less structured approach to the interview and this could have benefits in terms of encouraging clients to speak more freely.

Face-to-face advisers also spoke without prompting of the usefulness of silence, or the ability to pause, in their work (5/10). Silence, complemented by visual cues, was seen, by one adviser, to encourage the client to speak for longer. Other face-to-face advisers mentioned the role that silence could play in helping clients absorb the advice they were being given. One of them observed:

‘And sometimes that advice is difficult or it’s negative and I think that they need time to take that on board. And I think I’m quite happy with silences in interviews because it gives people time to think about things.’ (FL4)

Several face-to-face advisers commented that silence felt awkward over the telephone. On this note, in the interviews that I undertook with clients over the telephone, I was conscious of trying to avoid having a pause between the client's answer and my next question. Face-to-face, it seemed more possible to cultivate a method of waiting a few seconds after the client had finished speaking to see if they had any more to add (which sometimes they did). Telephone advisers did not refer spontaneously to the issue of silence in their interviews. However, in observations, clients sometimes responded to silence on the part of the adviser by asking whether the adviser was still there. Evidently, in the telephone environment, silence is an unsettling phenomenon. Accordingly telephone advisers are left without what may be an important tool in gathering information from the client.

A consistent view among face-to-face clients was that they were able to explain themselves more easily face-to-face (11/13). There were also three telephone clients who specifically stated that they found it easier to communicate face-to-face. Notably, all three clients had personal characteristics, such as mental health,

language or hearing issues, which impeded their ability to communicate. Clients often found it difficult to articulate precisely why they found face-to-face communication easier, but the explanations given seemed to relate to being more at ease and feeling more comfortable with an adviser face-to-face than over the telephone. This was as true for clients who stated they did not usually struggle with telephone contact, as it was for those who expressed difficulties in communicating over the telephone. This illustrates the client-centred lawyering position that the personalised contact of face-to-face advice is instrumental in facilitating communication between adviser and client (Binder *et al*, 2011). It is also confirmation that it is artificial to isolate the relationship from the process of giving advice because, from the client perspective, particularly when dealing with a situation of personal crisis, the two are inextricably intertwined. In addition, as referred to in Chapter 8, more vulnerable clients often valued being able to use documents to explain themselves face-to-face. It is interesting that, despite their difficulties with telephone communication, only one of the three telephone clients was referred for face-to-face advice, even though, for housing clients, face-to-face advice remains an option.

In the observations, three telephone clients with lower capability used intermediaries to speak to the adviser, which indicates their difficulties with the medium. The two calls which involved family members as the intermediary did not use speaker phones. Where a support worker was involved in the third observation, use of a speaker phone was attempted intermittently, but the sound quality was poor at the client's end and the call reverted to bilateral conversations between the adviser and the client or support worker in turn. In the face-to-face interviews, clients were also accompanied by a family member, but the adviser was able to take instructions from the client with assistance from the family member. Thus, the instructions were not being mediated through a third party, as they were over the telephone. As a face-to-face adviser commented about dealing with vulnerable clients who needed additional assistance:

‘...[T]hey often come in pairs. [A vulnerable client] was with her son and, on the phone, you don't get that. Or it's an annoying voice in the background, as opposed to somebody who's participating more fully.’ (FL2)

This highlights again the problems that telephone advice can present to clients who have more limited abilities in communication.

Significantly, there were telephone clients who had been able to cope perfectly well with explaining themselves. Unsurprisingly, clients who found the telephone easy to manage tended to be more articulate than telephone clients who struggled with the medium. There was however one less capable client who stated that she had had no problems in explaining herself to the adviser over the telephone. In fact, in the observation, the adviser struggled to understand the client and even in person, the client's strong accent and unclear pronunciation made it difficult to comprehend her. Not all clients will have insight into the barriers they face in communicating with advisers over the telephone, and they will be reliant on the adviser ensuring that they are referred to face-to-face services, where appropriate. However, the predominant practice of the service seemed to be to retain clients if at all possible, rather than to refer them, even when issues such as this arose.

Overall, the impression gained in the observations was that face-to-face advisers tended to go into more detail with clients than advisers over the telephone. As noted previously, in observations, the face-to-face interviews routinely took longer than the telephone interviews (on average, 1 hour 6 minutes face-to-face compared to 45 minutes over the telephone). However, apart from in the drop-in service, around 5 - 15 minutes of each initial face-to-face interview was taken up with legal aid form-filling and other administration. In two interviews the adviser also spent about ten minutes photocopying documents. The telephone interviews did not involve these administrative activities, although advisers usually spent a few minutes at the beginning of each call going through the details that the Gateway operators had recorded onto the central system. Thus, once the administrative elements of the interview are removed, the difference in substantive time may not be as great as it at first appears from the raw figures. Nonetheless, face-to-face advisers still seemed to obtain more comprehensive instructions from clients than telephone advisers.

Sensitive issues

Earlier, in Chapter 4, the issue was raised of whether clients might prefer to disclose personal issues within the more anonymous environment of the telephone call. A review of the current literature in social science research found the position to be

unclear, or even contradictory (see, for example, Midanik *et al*, 1999; Holbrook *et al*, 2003; Shuy, 2003). It was also suggested that, individuals who felt their behaviour had been shameful might choose the anonymity of telephone communication, whereas people who had been victimised might prefer the sympathy and emotional support of the face-to-face setting (Sturges and Hanrahan, 2004). The experiences and attitudes of clients and advisers involved in this research continue to reflect these divergent opinions.

Face-to-face clients (7/13) and especially face-to-face advisers (8/10) were broadly of the opinion that being face-to-face made it easier to discuss sensitive issues in the interview. A typical comment from a face-to-face adviser was:

‘Telephone, people find it really difficult chatting to somebody about their personal matters. Somebody they’ve never met, somebody they’ve never seen before, who they know nothing about...’ (FL1)

It was felt more appropriate to discuss sensitive issues face-to-face, because it was easier to handle the situation with the requisite amount of care and thoughtfulness.

The same face-to-face adviser also made the point that anonymity was not a realistic option if the client wanted to take legal action and achieve their desired result:

‘I think that when it comes to health and stuff, it might be easier on the telephone because you can remain anonymous to a certain extent. But when it comes to court case, it’s not the same type of thing is it?... The clients need you to know more about them so that they can get the outcome that they need. So actually, I think, that people want to tell me as much as possible, but it’s difficult to do that on the telephone.’ (FL1)

A face-to-face client described her feelings regarding discussing emotional and sensitive issues, such as her depression:

‘I would sooner be in the presence than I would of a phone. I can’t tell anything about you, all I can say is that you have a voice and you’re talking through a bit of plastic. I don’t know who you are.’ (FC2)

A number of other face-to-face clients made similar comments (7/13). In addition, face-to-face clients also referred to the added security of being face-to-face.¹⁰³ A couple of telephone advisers reported that they had had clients who were reluctant to share medical information over the telephone.

Conversely, telephone advisers were generally of the view that being on the telephone made no difference to the client’s willingness to disclose such matters (7/10). In fact, although they did not have direct face-to-face experience, the perception of a number of telephone advisers was that the anonymity of the telephone made it easier for clients to discuss sensitive personal information (5/10). A telephone adviser put this forward as an advantage of telephone advice: ‘And they might be more open with you over the phone as well, because they don’t feel as embarrassed...So I think from that point of view the telephone has benefits’ (TA8). A face-to-face adviser predicted that, as telephone contact was easier for him to cope with when dealing with sensitive matters, such as sexual abuse, it would be the same for the client. As set out in Chapter 7, adviser discomfort is not necessarily a good barometer of whether a client wishes their story to be heard. Bearing witness in person to a client’s traumatic testimony may have a redemptive effect for that individual and make them more willing to speak. None of the telephone clients interviewed expressed any difficulty with disclosing personal information over the telephone, although one client stated she would have preferred to do so face-to-face.¹⁰⁴

Given this range of opinions, it seems that a client’s preferred medium for volunteering sensitive information is likely to depend on the individual and their

¹⁰³ As stated in Chapter 7, some clients have become wary of giving personal or financial information over the telephone.

¹⁰⁴ Clients’ responses also sometimes suggested that they were conditioned to accept that they had to disclose sensitive personal information when seeking state assistance. As a face-to-face client with a mental health condition put it: ‘I’m used to it now, because unless I say all these things I do not get the correct support or the correct benefits etc.’ (FC10). Thus, clients seemed to have few expectations of privacy from the state if they were to receive help.

circumstances, as several telephone advisers (4/10) and one face-to-face adviser acknowledged. The face-to-face adviser explained:

‘I think that it can cut both ways that one. I think sometimes people might prefer the phone [to discuss sensitive issues], it depends on the nature of the client and the nature of the problems...that’s a very good example of where there is a really strong argument for both face-to-face and telephone.’ (FA2)

Clearly, if this is the case, then it is vital that both avenues of giving advice remain available. Moving advice services increasingly to telephone-only delivery may have the effect of deterring substantial numbers of clients from seeking advice, or from giving full instructions when doing so, because they would be unwilling to proffer sensitive information over the telephone.

Letting the client tell their story has many different facets, each susceptible to change in a variety of ways, depending on the form and nature of the method of delivery. Hence, a complex patchwork picture emerges. However, when the range of activities under this heading are weighed and the various impacts of telephone communication considered, there does seem to be an argument that – for all clients, but particularly for clients with any sort of impediment to their ability to communicate – face-to-face contact is a better way of taking their instructions. The end result is simply that the client can better tell their story and there is more information available for the adviser.

Questioning and probing the client’s account

As outlined in Chapter 4, the second stage in the client-centred interview is the adviser questioning and probing the client’s account. It is at this point that the adviser seeks to clarify issues that the client has raised, fills in any gaps in their story and explores any inconsistencies in the client’s version of events (Sherr, 1999). It is posited that this process of more detailed examination of the client’s account is a central part of advice and casework, and assessing the merits of the client’s case. This means it is an important exercise in all casework, and vital when litigation is involved or contemplated.

A significant proportion of face-to-face (6/10) and telephone (6/10) advisers believed that face-to-face interviewing lent itself more readily to questioning the

client. The previous chapter explored the reluctance among a substantial proportion of face-to-face advisers to acknowledge that their role involved assessing the client and the credibility of their account. This was possibly because of the issue of judgement being raised in association with body language. Notwithstanding the sensitivities of this area, a number of face-to-face and telephone advisers believed that non-verbal communication could provide clues to the accuracy of the client's account. In addition, as set out above, documents were believed to assist advisers to understand the client's problem more quickly and therefore enabling them to question the client more effectively.

Other reasons were also pinpointed for this difference between telephone and face-to-face advice in terms of getting a more accurate account from the client. First, the client's emotional remoteness from the situation was mentioned as making it easier for them not to tell the truth. A telephone adviser stated plainly: 'I think clients find it easier to lie over the phone...I think because you can't see how [someone is] going to react, it's easier not to be as truthful over the phone' (TA3). This adviser also described clients as more 'detached' over the telephone and a face-to-face client echoed this feeling of emotional disengagement as a motivation not to tell the truth when speaking on the phone:

'...[W]hen you're speaking to someone on the phone, because you don't know who they are, you're not getting that sympathetic feeling from them and basically you're not going to tell the full story or the whole of what's going on or you might even lie. And I've found myself doing this.' (FC12)

The client went on to say that the way that the person on the telephone acted towards her subsequently might change her attitude over time. In this instance, both the adviser and client are making the link, already referred to in Chapter 7, between the emotional strength of the adviser-client relationship and the willingness of the client to be open about their situation.

Second, a face-to-face adviser suggested that it was more difficult to question clients closely over the telephone, because they could just end the call: 'Because that's what I've found in the past before, as well, with telephone advice. You can tell that if you push it too far they'll just put the phone down' (FL1). The difficult conversations that advisers must sometimes have with clients about flawed cases

have been discussed previously. If the risk is that a client will terminate the conversation, then telephone advice may limit the extent to which the adviser can question the client, particularly in relation to discrepancies in their account. It is also possible to view this as an example of client assertiveness when dealing with the adviser remotely. It is not a very positive one however – especially as a failure to address inconsistencies could prove problematic in relation to the client's case.

When asked, telephone advisers did not report any particular difficulties in challenging clients over inconsistencies in their account. In response to a question about what she did when she believed a client had lied, a telephone adviser replied:

‘Basically I just, I just call them up and I’ll be like “Right I’ve had your documents back. It says this. Why?” Basically...some of them will still contest that they’re telling the truth, but others will say “Yeah, okay, sorry”.’
(TA3)

While she felt that clients were more likely to lie over the phone, she did not consider that this affected her ability to make accurate assessments of the merits in a case or to deal with clients who had lied. The view taken by other advisers would appear to suggest that this is not always the case.

A third reason given for it being more difficult for advisers to probe the client's account over the telephone was the inability to be certain that the client had heard the adviser's questions. A face-to-face adviser felt this meant it was more possible for a client to be evasive over the telephone. He described a telephone-only case where the client had eluded his attempts to question her about a missing element in her case:

‘I think perhaps you get more signals don’t you, that somebody’s avoiding directly an answer to a question...than you get over the phone. And there’s always that idea in your mind that they didn’t understand or hear the question on the phone and they’re not avoiding it but they are doing that.’ (FL2)

In the observation of a face-to-face interview, for example, the client's repeated failure to answer direct questions about the extent of the disrepair in her flat hinted to the adviser that the problem was possibly not as serious as she claimed.

Over the telephone, it may have been more difficult for the adviser to be certain that the client had heard his questions and was choosing not to answer them clearly. Thus, in face-to-face interviews, the adviser is often better able to assess the degree of the client's focus and comprehension of the matters in hand.

A fourth problem associated with questioning the client over the telephone was the obvious practical example of the restrictions imposed by poor telephone reception. This is a particular risk with mobile phones. In one telephone observation, because of a poor signal, the adviser could only take brief details from the client and give initial advice, before agreeing to ring him again the following day. Issues with the quality of the line occurred in several cases, with both mobile phones and landlines, and made the act of advising more physically demanding. Advisers also had to deal with the noise in the room around them. At times, this could be very loud, and advisers were sometimes seen leaning into their screens during calls, in what appeared to be an attempt to shield themselves from this extraneous noise.¹⁰⁵

Clearly, face-to-face advisers, working in the protected space of the interview room, did not face these types of problems. Yet face-to-face advisers were aware that their interview rooms were often cramped and poorly soundproofed, and this too could affect communication with the client. In observations, rooms were often small, which led to awkward configurations of the internal furniture, and few had natural light. Despite these problems, and although there was sometimes noise and considerable activity outside the interview room, it rarely seemed to affect the adviser or the client. It seems likely that the enclosed environment and the intimacy of in person contact made it easier for the client and adviser to ignore the compromises of the space itself – whereas the telephone client does not have this option when the line is bad.

All of the interviews observed involved some degree of questioning of the client and most involved some element of probing. Nevertheless, the amount of more detailed probing was not particularly extensive in either telephone or face-to-face settings. In most interviews, this did not appear to be related to the method of communication used. It may have been because these were first interviews and Sherr (1999) counsels against engaging in cross-examination-style questioning of clients in the first interview in order to aid the development of rapport. In addition, advisers

¹⁰⁵ Notably, however, when questioned on this, clients said they could not hear any background noise.

may have been unsettled by my presence. However, there were occasions, in both telephone and face-to-face interviews, where advisers could have probed further in order to obtain more comprehensive, relevant information. There were instances when these omissions related to central issues, such as whether there was any disrepair in the property to offset the landlord's claim for arrears, or the specific reasons for a client's rent arrears. On another occasion, a telephone adviser dealt with the client's immediate query, but failed to enquire further into a potentially serious matter relating to the client's tenancy, which the client mentioned in passing. It was difficult to be certain, but, on balance, these failures to probe seemed to be oversights on the part of the adviser, rather than a reflection of the medium used.

There were other telephone observations, however, where it seemed more likely that it was due to being over the telephone that the adviser was unable to go into more detail with the client. In cases where the client was less able to communicate for reasons of mental health or language or dialect issues, telephone conversation took on an effortful quality, and this seemed to deter advisers from pursuing lines of questioning with the client. One example of this was when a client contacted the telephone service for advice about applying as homeless on the grounds of domestic violence. As mentioned above, the client's first language was Spanish, and due to her difficulties understanding English over the telephone, the majority of the adviser's questions and the client's answers were relayed (in English) via the client's support worker (although for some of the conversation a speaker-phone was also used). When it came to the details of the domestic violence suffered by the client, the support worker asked the client to explain to the adviser herself. The client's manner was defensive, and she answered the adviser's questions in a minimal and slightly impatient fashion. After a few questions, it became apparent that she no longer understood the adviser, and the support worker took charge of the conversation again. At this point, the adviser stopped pursuing the issue, so that she only had a partial picture of the domestic violence that had affected the client. It is possible to make a comparison with how the client would have responded face-to-face to an adviser, because, a few days later, I conducted my follow-up interview with the client in person in English and was able very quickly to get a much fuller and more accurate description of the client's complex domestic violence history. In person, the client exhibited the same offhand attitude as she had over the telephone, but was nonetheless willing and able to answer my questions. It therefore seemed

that it was the telephone interaction that had compromised the adviser's ability to explore the client's situation more deeply.

Clearly, it is feasible to question the client over the telephone. It seems, however, that a number of factors – including greater client engagement, the availability of documents, the assistance gained through body language, and the practical advantages of being in the same room with the client – enable the face-to-face adviser to do so more effectively. Thus, in this area also face-to-face appears to have a number of distinct advantages.

Advising and taking the next steps

Advising is the third stage in the advice interview (Sherr, 1999). As advice is only effective if it is acted upon, persuading clients to take the next steps is seen as an integral part of advising (Sherr, 1999). There were some advisers who felt that the way they gave advice would be the same whether it was face-to-face or over the telephone. The consensus among advisers was, however, that giving advice was often easier face-to-face rather than over the telephone. The principal reasons for this were: a more robust relationship, which made the client more willing to accept advice (even when it was unwelcome); non-verbal communication, which enabled the adviser and client to better understand each other; and the availability of documents, which permitted face-to-face advisers to be more certain of their advice earlier on in the case. These factors have already been set out in detail in Chapters 7 and 8 and it is not proposed to rehearse them again here.

Nevertheless, interpersonal elements, body language and documents are not the only factors at play in the giving of advice, and face-to-face and telephone advisers were able to suggest other elements of their practice that positively influenced the delivery of advice. Firstly, several telephone advisers referred to the structured way in which they gave advice as being a way of helping clients understand advice. Telephone advisers were observed as giving advice in a clear and detailed way, which tended to be more uniform than that of face-to-face advisers. The structure of their advice was such that they were inclined to spend the first portion of their advice explaining to the client about the legal framework, rather than dealing with the substance of the client's query. This meant that clients would sometimes have to wait a while before the issue that truly interested them was reached. Furthermore, despite what they had said in interview, telephone advisers did

not always repeat their advice to the client. In contrast, face-to-face advisers commonly repeated their advice more than once, but were less likely to go into the same level of detailed advice about legal technicalities.

A possibility also raised by telephone advisers was that advising on the telephone could allow the adviser more time (2/10). An adviser who had previously provided face-to-face advice felt that over the telephone she was under less pressure, as she could put the client on hold in order to gather her thoughts before advising. She was, however, the only telephone adviser who was observed pausing prior to giving advice. In fact, other telephone advisers tended to go through their advice quite rapidly (sometimes more quickly than could be fully noted). Another telephone adviser felt it was a bonus of advising over the telephone that, if he was asked a question on an unfamiliar topic, he could ring the client back later to give them an answer, rather than being expected to provide one on the spot. On the whole, though, face-to-face advisers did not seem to struggle with pausing before giving advice. Where advisers were not confident of their advice, they would agree to look into the matter further and get back to the client, check on the computer in the room, and/or leave the room to consult with colleagues. Clients generally did not seem to have a problem with this, although the daughter of a face-to-face client remarked that she would have expected the adviser to have seen that sort of problem before, rather than having to research the issue further before giving an opinion. Accordingly, the perception of telephone advisers did not appear to be borne out by the observed behaviour of face-to-face advisers.

The use of visual aids was an aspect of advising a client in person that several telephone advisers (3/10) and face-to-face advisers recognised as useful (4/10). Two of the telephone advisers referred, for example, to writing out key bullet points for clients when they had worked face-to-face to assist with advising clients. A current face-to-face adviser confirmed that this was part of her standard practice: 'Where I see a client's pretty shambolic, I write them a – actually a physical list, a 'to do' list. I put their name on it, I put my name on it and I put a copy on the file' (FA3). Other face-to-face advisers found diagrams and other visual aids useful for explaining legal concepts to clients. Thus, the ability to use visual aids makes face-to-face advice potentially more comprehensible to clients than telephone advice.

In terms of ensuring client understanding, several telephone advisers (4/10) made reference to the importance of confirming their advice in writing. One of the

face-to-face advisers took a similar view, and another face-to-face adviser mentioned the usefulness of putting in writing advice that clients did not want to hear. She referred to a recent case where clients had accepted advice by e-mail that they would not accept on the telephone. Despite this, several telephone advisers mentioned that it was no longer their practice to write confirmation of advice letters in all cases. As a result of the restrictions on funding introduced since April 2013, their clients generally waived the advice letter in favour of the telephone adviser carrying out other work on their case. Two face-to-face advisers were dubious about whether clients always read advice letters, which is why they felt it was important to give clients advice in person as well as in writing. Given what this research has revealed regarding clients' attachment to the tangibility of the document, and the use clients make of documents in explaining their situation to others – even when they go unread – a letter confirming the advice given may act as a helpful point of reference for the client. In addition, if clients have only been given information verbally, they may find it difficult to recall over the longer-term. The lack of an advice letter may therefore be problematic. Furthermore, it is argued, that having to record their advice in a letter to the client may make an adviser feel more accountable for the advice they are giving. Thus, the provision of an advice letter may be a useful check on the quality of advice, even if the client does not read it.

It is argued, however, that, because of the propensity of clients not to read letters, advice should be given verbally as well as in writing. There was one notable incident in the telephone observations, where the adviser offered to put advice in writing to the client on the issue of homelessness. By this time the call had been going on for about 45 minutes, and the client was particularly difficult to understand because she mumbled and spoke English with a strong accent. The homelessness issue was not immediately pressing, but it was very pertinent to this client, who was a single parent and private tenant with rent arrears and no long-term security. If the client had been face-to-face it seems more likely that the adviser would have gone on to deal with the homelessness aspect of the advice, because, face-to-face, understanding the client would not have been quite so difficult and continuing the interview for longer would probably have seemed more manageable. On one level, there is nothing wrong with advising clients in writing in these circumstances; but, because the prospect is that the client will not read or understand the advice if it provided in writing only, it could make a difference to their understanding of their

situation. Thus, if telephone advisers are deterred from explaining matters verbally, due to the issues of time or poor communication with the client, the quality of the advice clients receive may be quite different, depending on whether it is provided over the telephone or face-to-face.

On a positive note, however, nearly all of the clients interviewed reported that they had understood the advice they had been given, although a couple of face-to-face clients referred to the use of legal terms that had not been explained to them (for example, ‘pre-trial [hearing]’ (FC4) and ‘set aside’ (FC12)¹⁰⁶). Client understanding of the advice they had been given was something that it could be difficult to check in follow-up interviews; but when the opportunity arose, most clients did seem to have at least a partial understanding of the advice they had been given, particularly in terms of its most immediate impacts. It was more difficult to be confident they had understood the longer-term implications of what the adviser had told them.

Next steps: adviser influence on client action

When it came to clients acting on advice, several face-to-face advisers were conscious of being able to have a greater influence on clients face-to-face than over the telephone (5/10). For one face-to-face adviser:

‘...[T]he main difference [between face-to-face and telephone advice] is that you can feel more confident if you give face-to-face advice that somebody will do whatever it is you are advising them to do.’ (FL2)

Two other face-to-face advisers felt that it was easier to explain or persuade face-to-face about the steps that needed to be taken. This was in part due to body language, but also because, face-to-face, there were more opportunities for putting things to the client in different ways. Over the telephone, the only option was repetition, which could seem relentless. The gentle persuasion available in face-to-face situations was demonstrated in a face-to-face observation, where the client at first seemed reluctant to seek medical assistance with his depression. The adviser

¹⁰⁶ The adviser concerned in this case stated that she had explained this term to the client, which demonstrates the difficulties some clients may have with absorbing advice.

went back to the issue a few times during the interview and eventually the client agreed. When asked about this in his follow-up interview, the client said:

‘On the telephone, [adviser]’s explanation would not be enough. Seeing her face-to-face meant she went into it in more detail than she would have over the telephone – because she was able to go into it in more detail, I was more convinced.’ (FC3)

It was also felt by two telephone advisers that trying to convey the urgency of a situation to vulnerable clients could be more difficult over the telephone than face-to-face. A telephone adviser who had previously worked as a face-to-face adviser remarked:

‘...[I]f you had a really urgent case and you really needed the client to go and do something...I think that comes across a lot better face-to-face. I think one of the difficulties I have on the phone occasionally is that they might not actually gauge how important it is that they...go and do something.’ (TA4)

Conversely, however, this adviser also considered that, due to their added responsibility for dealing with the case, telephone clients tended to be more engaged with the process than face-to-face clients and this led them to achieve better outcomes on their own behalf. Despite this minority voice, the broad sweep of opinion seems to be that face-to-face advice may be more effective in persuading clients to take the further action necessary in their case.

There is also the possibility that the adviser’s influence over the client may be overwhelming, and prevent the client from asserting their objective in the case. The argument put forward in Chapter 4 was that the client might find it easier to challenge the adviser if they no longer had to be in their presence, as a result of being on the telephone. There was little direct conflict seen in the observations. In a telephone observation, the client and adviser had a slight tussle over the meaning of ‘contractual payments’. In one telephone and one face-to-face observation, the client’s response to the advice suggested that they wanted the advice to be different (and might subsequently not follow it), but no open disagreement was expressed. Unfortunately, it was not possible to follow up with any of these clients. Few of the

face-to-face or telephone clients that I interviewed mentioned any sort of disagreement with the adviser over the advice they had been given. Two clients, one face-to-face and one telephone, alluded to possible areas of tension between themselves and the adviser, and both stated they had not experienced any difficulty in discussing it with the adviser. Both of these clients were articulate and confident, however, and less able clients might struggle more with challenging the adviser. A less capable face-to-face client felt, for example, that sometimes her anxieties were brushed aside when she raised them.

While none of the clients interviewed in this research expressed particular difficulty in speaking up for themselves, because of the power inequality between adviser and client, it is important to recognise the potential for the client voice to be silenced by the lawyer. A couple of face-to-face advisers acknowledged that it was possible that clients would be more willing to dispute things over the telephone, or alternatively by e-mail. Among the telephone advisers, a few agreed that the anonymity of the telephone might enable clients to be more challenging (4/10), but only a couple of them said that it was something that they had experienced or noticed.

In addition, in contradiction of this proposition, we have already seen how telephone advisers exert more control over the interview when they adopt a question-and-answer format and the potential for the client's concerns to be sidelined as a result. A couple of telephone advisers and three face-to-face advisers felt they had a higher degree of control over a telephone interview as it was easier to bring the interview to an end over the telephone. A face-to-face adviser explained this made the telephone useful in situations when he wanted to limit discussion:

‘I think there are instances when it is easier to use the phone, yeah... I think the telephone is useful when you don't want to, you know, spend ages talking to people and you can cut people quite short really and get to the point.’

(FL2)

In the face-to-face observations, there was an instance of a seemingly capable client, who took a very long time to get to the crux of her problem. She then prolonged the interview at the end, in what seemed to be an attempt to persuade the adviser to

revise his advice. Ending this interview seems likely to have been managed more efficiently over the telephone.

The opinion expressed by a telephone adviser with previous face-to-face experience was that face-to-face clients would ask more questions about what was going to happen next in their case. Face-to-face advisers also considered that the impact of silence not being acceptable over the telephone was to give the client less room for reflection (4/10). Two face-to-face clients confirmed that it was harder for them to find the time to think of and ask questions over the telephone. One of them put it in the following way:

‘Face-to-face, you think of things you can ask them. On the phone, when you’re talking to somebody you just answer their questions... You get to chat face-to-face. You tend to chat and add other things in. You tend to ask the questions that you think of.’ (FC13)

The other client explained how she would have been more aware of taking up an adviser’s time over the telephone and might therefore hold back on asking questions during a telephone interview.

It is also possible that, when there is disagreement in the adviser–client relationship, the awareness that the adviser can put the phone down at any time, rather than having to get them out of a room, might make clients feel more constrained with advisers over the telephone. A face-to-face client remarked that he preferred to make complaints face-to-face for that reason: ‘Because I like the idea they can’t suddenly go, click [mimes cutting connection], “Oh dear, the line’s gone”. In other words, I’ve got continuity there’ (FC14). A client may therefore be more willing to question the adviser if, as a result of being face-to-face with the adviser, they feel more in control of the interaction.

In the context of advising the client, sometimes the potential consequences of client inaction in homelessness and possession matters are so severe that advisers have to exert authority with clients who will otherwise fail to act on their own behalf. This does not quite conform to the more facilitative ‘counselling’ approach proposed by Binder *et al* (2011: 327) and Sherr (1999: 104). Furthermore, it is likely to be condemned as the subjugation of the client by the body of critical legal scholars who believe that poverty lawyers undermine client empowerment (López, 1989; White,

1990; Alfieri, 1991; Tremblay, 1992; Calmore, 1999). In addition, as referred to above, the responsabilisation discourse means that empowerment through self-help is now seen as a key means of providing access to justice. Thus 'access to justice' has been redefined as social welfare clients managing their legal problems with minimal professional support, rather than receiving an expert casework service in order to enforce their rights (Sanderson and Sommerlad, 2011; Sommerlad and Sanderson, 2013). Yet, research has indicated that self-help strategies are not suitable for clients with serious legal problems and without the requisite skills and educational ability to deal with them (Genn, 1999; Genn *et al*, 2004; Moorhead and Robinson, 2006). It is argued that with a client in acute crisis, the adviser may have to take control of the situation in order to achieve a positive outcome on the client's behalf. In my experience, clients have sometimes been battling for so long to keep their homes, that, by the time proceedings are contemplated, they have had enough and want to give up. As a telephone client said: 'I was so sick of fighting, because everything was a struggle' (TC12). Thus, there may be situations where the adviser of necessity takes over management of the situation. It is contended that provided the adviser has listened to the client's objectives and is acting to further them, then it is legitimate for the adviser to be directive in telling the client what needs to be done in order to achieve that objective.

In fact, in the observations, both telephone and face-to-face advisers were kind, compassionate, thoughtful and patient with their clients – and, in interview, nearly all clients were highly appreciative of their help. Nothing in the client interviews or the observations revealed either telephone or face-to-face advice as the exercise in client oppression formerly identified by Alfieri (1991) and other commentators. It is recognised that the majority of advisers in this study were working in the voluntary sector, not in private practice, and it may be that practitioners employing a more commercial traditional private practice approach would justify such criticisms; the differences between voluntary sector and private practice providers of legal aid services is an issue that should be explored in a further study, if it were possible for the access issues experienced here to be surmounted.

The above discussion suggests that advising over the telephone may not be problematic, provided the adviser has the full instructions and documents needed in order to advise accurately. Thus advising was largely dependent on the other two stages in the interview, and would reflect any deficiencies that had arisen in the

earlier stages of the interview. Given what has already been said about some of the benefits of face-to-face interaction in relation to getting the client's story and probing the client's version of events, it seems that these would have an impact on the nature of the advice being given over the telephone or face-to-face. Furthermore, it seems that there are ways in which face-to-face communication will assist the adviser in terms of using body language and other visual aids to explain their advice and also as a way of gauging whether their advice is being understood by the client and adapting their approach accordingly. Moreover, it was felt that, face-to-face, the adviser was more likely to be able to impress upon the client the seriousness of their situation, and the significance of any action that needed to be taken. It appeared that there was a possibility of telephone clients being more willing to challenge their advisers, but in terms of this research, this remained a largely theoretical prospect.

Complicating factors

In the area of social welfare law legal aid, cases are often permeated by factors that complicate the giving of advice and the ability to take legal action. Chief among these is the vulnerability and complex personal histories of many social welfare clients. Prior to the legal aid reforms, analysis of the legal aid claim data in civil law matters identified that 23 per cent of claims in 2008–2009 related to clients with an illness or disability (MOJ, 2010b). More up to date figures are not available, but given the reductions in scope to deal with only the most acute matters, it seems likely that the proportion of vulnerable clients in receipt of legal aid has grown rather than diminished. In addition, cases are frequently made more difficult by the fact that they have to be dealt with urgently, because a client may be street homeless or at imminent threat of eviction. Ignoring the needs of these particularly disadvantaged clients would be a failure of legal aid service provision. These factors will now be considered with regard to how telephone and face-to-face advice affect both the adviser's and the client's ability to cope with these additional complications.

Clients with complex needs

Running like a thread through this thesis is the recurring notion that, wherever telephone advice has the potential to disadvantage the client, it is most likely to be realised in respect of the vulnerable client. As set out above, vulnerable clients are more likely to find it difficult to engage with an adviser and communicate effectively

without the benefit of non-verbal communication, they will probably struggle more with coping with documents and case papers in a telephone-only setting, and are less likely to be able to give instructions and understand advice as a result. The needs of vulnerable clients are of particular concern because of the high proportion of legal aid clients who fall into this category. As set out in Chapter 5 and Appendix A, the face-to-face clients involved in observations presented a more vulnerable profile in terms of mental health issues than the telephone clients. In an illustration of this, a face-to-face adviser stated that only about 2 per cent of her clients were *not* vulnerable. Another face-to-face adviser considered that 70 per cent of his clients could be described as vulnerable.

The term ‘vulnerable’ is used in widespread and often ill-defined ways to indicate individuals who through personal characteristics or social circumstances – or, usually, a combination of the two – find it difficult to manage their own affairs. For the purposes of this thesis, the types of factors which are considered to make a client ‘vulnerable’ include: ‘learning and language problems, complex physical and mental health needs and cultural issues’ (Buck *et al*, 2010: 47). Research has recognised that these are the sorts of factors that can limit a client’s ability to communicate, to manage documents and to understand advice and to act on it (Buck *et al*, 2010). In addition, it is often overlooked, but should be acknowledged, that ordinarily capable individuals can be rendered vulnerable by their circumstances. Clients who are eligible for legal aid and experiencing legal problems frequently report adverse consequences such as physical ill health, stress-related ill health,¹⁰⁷ or other mental illness as a result of the problem faced (Balmer, 2013). It is argued that ill effects of this nature are particularly likely to affect clients facing the prospect of losing their homes or coping with homelessness.

A significant proportion of the clients observed in this study reported mental health conditions ranging from bereavement-related stress and ‘low mood’ to agoraphobia, depression and bipolar disorder (10/22). The majority of face-to-face observations involved clients reporting some level of mental health difficulty (7/11). For some clients, their mental health problems were central to the housing problems they were now experiencing. I was able to interview eleven clients in total who had

¹⁰⁷ Nearly 40 per cent of respondents in Wave 2 of the English and Welsh Civil and Social Justice Panel Survey reported stress-related ill-health as a consequence of their legal problem (Balmer, 2013).

mental health issues (this included clients I had not previously observed). Ten of these clients stated a preference for face-to-face advice. A face-to-face client who had been dissatisfied with how her case had been dealt with nevertheless stated:

‘I think my state of mind at that time. I probably wouldn’t have even bothered if I’d known it was just going to be over the telephone.....Because at that time I needed to be able to...talk to someone face-to-face.’ (FC15)

This also included two of the telephone clients. One of the telephone clients, with mixed anxiety depression disorder explained his difficulties with engaging with telephone communication. In confirmation of this, he had handed the telephone to his partner during the course of the telephone conversation, unable to cope with continuing the call. Fortunately, his partner was more capable, and able to give the adviser instructions over the telephone

The exception to the preference for face-to-face services among clients with mental health needs was a client who had experienced ‘low mood’ – a condition short of depression – due to bereavement. She had valued telephone-only contact from the advice service at a time when she had not wanted to leave her home. However, as indicated previously, clients who are isolated due to agoraphobia or depression may also value the opportunity for social interaction that face-to-face advice provides.

Significantly, most advisers agreed that, for clients with more severe mental health problems, face-to-face advice was preferable because it was possible to communicate with the client more effectively (16/20). There was an acknowledgement by many of these advisers, however, that this was not a blanket condition, and that for some clients with mental health issues face-to-face contact could be too intense and the telephone would be more appropriate. A small minority of advisers felt that telephone advice could be better for clients with mental health problems and a telephone adviser believed that some clients with mental health issues liked the convenience of having their adviser at the end of a phone. Nevertheless, while recognising that the needs of clients with mental health problems could vary depending on their diagnosis, the overwhelming view was that, for clients with more serious mental health difficulties, face-to-face advice provided a better

opportunity for engaging with the client. A face-to-face adviser summarised the situation in this regard:

‘...[W]ith clients with mental issues... you are able to give them a sense that they’re meeting somebody who’s sympathetically disposed towards them, takes them seriously. Absolutely crucial, clearly with them. Far more so.’

(FL3)

For clients whose mental health problems mean they struggle with telephone communication, face-to-face interaction can frequently provide a better opportunity to build a relationship and develop trust with an adviser. In observations, face-to-face advisers were often very skilled at dealing with clients with mental health needs.

It should be noted nevertheless that the face-to-face interview alone is not sufficient to ensure client co-operation for clients with mental health conditions. A face-to-face adviser did not make a specific arrangement for future contact with a client with mental health needs. During my attempts to arrange a follow-up interview with her, it became apparent the client had not got back in touch with the adviser. She told me the problem had been ‘sorted out’, but did not go into detail. With vulnerable clients, the initial contact should be backed up with an action plan that enables the adviser to check that the client is taking the necessary steps to resolve their problem. This is likely to require more input from the adviser than usual.

The preference of clients with mental health issues for face-to-face services is borne out by the statistical information available. Prior to the changes to legal aid, research found that clients with mental health conditions were ‘far less likely’ to use telephone housing advice services than face-to-face services (Balmer *et al*, 2012: 77). Thus, it seemed that, when given the choice, clients with mental health difficulties gravitated towards face-to-face services. The case statistics available for the main organisation involved in this research for 2013–14 (ie following the legal aid changes) suggest this preference continues (see Appendix F for tables). The numbers of clients with mental health issues using face-to-face services for housing legal aid matters are substantially higher (28 per cent) than those using telephone

services (8 per cent).¹⁰⁸ Thus it seems that not only are face-to-face services better suited to advising clients with mental health problems, but also that clients with mental health difficulties choose to use those services because they are more able to meet their needs.

Clients with learning difficulties were also mentioned by advisers as a specific group in need of special consideration (7/20). This happened less often than with clients with mental health needs, but the consensus was that clients with learning difficulties benefited from face-to-face advice. One face-to-face adviser described the importance of the face-to-face environment for putting a client with learning difficulties at ease before beginning an interview:

‘...[T]here’s just no way somebody with, I think, a reasonably serious learning disability would have been able to focus without quite a lot of ... preliminary making him feel relaxed and explaining what I wanted to happen’ (FL4)

Another face-to-face adviser gave a poignant and compelling account of dealing with a client with learning difficulties in relation to a complex housing case. In this instance, the client’s difficulties meant that only a home visit was suitable. It was also only possible to orient the client through her instructions by engaging her in discussions about her preferred topics of conversation (the royal family, Cliff Richard and her cats). As the adviser acknowledged, this was not a typical case. Nevertheless, as he also went on to say, there is a continuum of vulnerability, and many legal aid clients with housing problems are at some point on this continuum. A face-to-face adviser described getting a learning disabled clients to come in and see him if they seemed to be unable to absorb what he was saying: ‘I just thought it was better, gave you more of a fighting chance, you could actually see the responses’ (FA2). Even though he accepted that client might still not grasp the advice in person, he felt that this was giving them the best chance possible of understanding it.

¹⁰⁸ Due to reporting differences, because the face-to-face clients can include more than one disability, whereas the telephone clients can choose only their main issue, it is possible that the proportion of telephone clients with some more minor mental health issue is underrepresented. Nevertheless the difference is sufficiently great to indicate that clients with mental health problems are more likely to use face-to-face services.

Telephone advisers felt that they could deal with clients with learning difficulties if they had a support worker. Face-to-face advisers generally considered face-to-face interaction as essential for working with clients with learning difficulties. They were less likely to see telephone advice mediated via a support worker as an equally suitable option. Again, the ability to make clients feel more at ease in a face-to-face interview enables the adviser to forge a connection with a client with learning difficulties that the more concentrated nature of telephone-only contact seems less likely to produce.

The third area of vulnerability on which there was broad agreement that clients were likely to fare better face-to-face was in relation to hearing impairment. A telephone client with hearing loss confirmed that, although he had no complaints about the telephone service he had received, he was better able to hear and therefore better able to understand the face-to-face adviser now dealing with his case. A face-to-face adviser referred to a case for a deaf client he believed he would have ‘lost’, if he had not been able to provide the client with a face-to-face service. A telephone adviser also described a situation where it had proved difficult to deal with a deaf client over the telephone. Thus the consensus appeared to be that it was better to assist clients with hearing impairments face-to-face. Nevertheless as technology advances, it may be possible to provide service adjustments, such as Skype,¹⁰⁹ to assist some hearing-impaired clients with dealing with matters remotely. It should not be forgotten, however, that, due to poor educational opportunities, many deaf people also suffer from problems with literacy (National Deaf Children’s Society, 2008). Thus, even if they could be adjusted, remote services would not necessarily be appropriate for all clients with hearing impairments.

Opinion among advisers was more divided, however, on the issue of whether clients with drug and alcohol addiction issues were better served by telephone or face-to-face services. A number of advisers felt that it would make no difference. Some telephone advisers felt that the availability of the service on the phone would be helpful for a client group who found it difficult to turn up for appointments. A third group, consisting of face-to-face advisers, considered that face-to-face advice

¹⁰⁹ Current take-up for adjustments such as ‘Skype/webcam’ on the CLA mandatory gateway cases is less than 0.1 per cent (Patel, 2014).

provided a better opportunity to engage with a troubled client group. A face-to-face adviser gave his perspective on this issue:

‘I had a quite a few clients who were alcoholics as well, who were particularly suspicious, I think, and probably having been homeless and on the streets were also quite damaged people in other ways, with few skills...’
(FL2)

He therefore considered face-to-face advice a more appropriate method of working with these clients. The position overall, however, seems less conclusive.

Advisers also hold divergent opinions on the advice needs of care leavers. Care leavers are of particular interest as a group. They are extremely susceptible to suffering problems with housing and welfare benefits and previous research has suggested that vulnerable young people prefer face-to-face advice (Kenrick, 2009). Few telephone advisers reported any difficulties in dealing with care leavers over the telephone, although most admitted that their experience of working with this client group was limited (8/10). Some face-to-face advisers saw no particular reason to distinguish care leavers from other clients and believed that it would be more a function of personality whether the client was better suited to telephone or face-to-face advice (4/10). However, a minority of face-to-face advisers felt that face-to-face advice was usually preferable in terms of being able to engage with this group of clients, because of their vulnerability and often a general mistrust of the system (2/10). It is difficult to reach a conclusion on this point, largely because most advisers had relatively little experience of working with this group of clients, but also because these clients are unrepresented in this research, so the client voice is unheard. As explained in Chapter 5, making contact with clients in this group proved particularly problematic. Possibly the way to resolve this issue in future would be to conduct a study specifically aimed at care leaver clients and the ways in which they access advice.

While the position regarding care leavers and those with drug and alcohol addiction issues may be inconclusive, the situation regarding clients with mental health needs and learning disabilities is much clearer. It is evident that clients from these groups are likely to be better able to cope with casework conducted by face-to-face services in a setting where they will have the best chance of forming a

relationship of trust with an adviser and also be able to communicate more effectively with their adviser. In addition, at the current time, clients with hearing impairments are also likely to suffer adversely in circumstances where they cannot access face-to-face advice.

The government has recognised to a certain extent that vulnerable clients may need face-to-face services, as there is scope for telephone advisers to refer clients for face-to-face advice in any housing case and in debt (i.e. mortgage) cases where telephone advice is not ‘suitable’ for the client (MOJ, 2014: 11).¹¹⁰ However, this seemed a relatively infrequent occurrence. In my observations, it was noted that even if a call was difficult, advisers were unlikely to offer clients the option of referral to face-to-face services, and tended to persevere with the client regardless. Telephone advisers confirmed they rarely make referrals. In 2013–14, there were 172 debt advice referrals to face-to-face services (Patel, 2014). As mentioned above, the legal aid cuts have led to a reduction in the availability of face-to-face legal aid and the current level of calls to the telephone service is significantly lower than anticipated (NAO, 2014; Patel and Mottram, 2014). It seems that the low volume of calls to the telephone line and the problems of referring clients to face-to-face services have combined to make referrals to face-to-face services very rare. Thus, by moving legal aid advice resources from face-to-face to telephone, government policy appears to have resulted in vulnerable clients being disadvantaged in their access to legal aid services that are suitable for their complex needs. This tends to make a mockery of the government’s claims at the time of introducing the changes that its aim was to refocus legal aid to target those most in need.

Case complexity

Complex cases are denoted by the multiplicity of factors – legal, factual or client-related – at play in the situation. They have also been defined as a problem that is ‘interwoven with other issues’ (Buck *et al*, 2010: 14). Many of the attributes of face-to-face communication described above – such as clients and advisers being better able to express themselves and achieve mutual understanding, the contribution to mutual understanding made by non-verbal communication and the greater ability to

¹¹⁰ In reality, the threshold for referrals to face-to-face advice may be ‘exceptional circumstances’ (PLP, 2015: 48, citing Patel and Mottram, 2014: 4).

manage and confer on documentation – would seem to lend themselves to the notion of face-to-face advice being better able to cope with complexity within casework than telephone advice.

Nevertheless, despite all these factors, none of the telephone advisers who, when asked, expressed a view on this issue, felt that legally or factually complicated matters were any better dealt with face-to-face or over the telephone. A few mentioned that it might take slightly longer to explain more complex issues to the client. This attitude might seem a little surprising, but it seems to stem from the fact that these advisers were basing their responses on the limits of their experience on the CLA. This is apparent from this telephone adviser's comment:

‘I think anybody that works on CLA is trained to deal with anything, really, that comes up within the scope of the service, so they should be able to deal with those [legally or factually complicated] matters.’ (TA8)

Clearly, on the CLA line, they do not deal with contested proceedings, such as possession claims or judicial review, and so this adviser – and also, it is surmised, their telephone adviser colleagues – are only considering complexity in terms of the types of case they would deal with on the CLA line, and not within its wider meaning. Very few of the telephone advisers had experience of conducting litigation and a number had not even visited a court on ‘work shadowing’ basis.

Contested antisocial behaviour proceedings and age assessments for asylum-seeking children were among face-to-face advisers’ examples of complex cases. Given their wider breadth of experience, it is not surprising that face-to-face advisers took a somewhat different view of how appropriate the telephone was when dealing with difficult cases. Most of the face-to-face advisers who voiced an opinion considered that face-to-face was a better medium for dealing with a complex case (6/10). Only one face-to-face adviser felt that it was equally possible to deal with such matters either way. One adviser summarised the overall face-to-face adviser position as follows: ‘Definitely, legally or factually complicated...I think that you need to see them face-to-face to go through things’ (FA3).

Face-to-face advisers gave a variety of reasons for their view that complicated cases demanded face-to-face advice – all reflecting aspects of the face-to-face experience that have already been discussed above – amounting ultimately to

the better ability to communicate face-to-face, whether because of non-verbal communication, more time being taken, the easier use of documents, or a better relationship between adviser and client. All of these factors become even more significant if the client is also vulnerable, which is often the case.

Litigation also adds to the complexity of a case. The benefits of court representation were discussed in Chapter 6. Preparation for litigation is dealt with here. As set out in Chapter 5 and Appendix A, the face-to-face clients in rented accommodation tended to be at more imminent risk of eviction than the telephone clients who were tenants. The major exception to this was the telephone client who was a social housing tenant about to be evicted. Her case is discussed in more detail below. The telephone mortgage clients were all involved in court proceedings. Face-to-face advisers strongly believed that the features of the litigation process – complying with court directions and legal aid requirements, considering and commenting on documents, drafting court papers, taking witness statements, and obtaining clients' instructions on any and all of these matters as they arise – meant that cases should be dealt with face-to-face (8/10). This was particularly true if the client was vulnerable and communication was difficult (see above) or if the case was urgent (see below) – or a combination of the two (a frequent occurrence). Apart from the provision of representation and in urgent matters, telephone advisers did not take any particular position with regard to the issue of litigation and how it was best conducted – presumably due to their lack of experience in this regard.

The CLA telephone service does not provide representation for clients or deal with contested cases. Hence the telephone advisers seemed to have little appreciation of the demands which litigation places on both advisers and clients. The exception to this was a telephone adviser with previous experience of court work. She remarked upon the additional pressure that being the responsible representative at court imposes on an adviser when preparing a case. In view of the more limited notion of complexity that telephone advisers appeared to hold, it is suggested that face-to-face advisers are likely to have made a more informed assessment in order to reach their view that face-to-face advice is more suitable for truly complex matters.

Urgency

Urgent cases are characterised by the need to do a lot of work in a short amount of time. Possession and homelessness matters are often conducted as emergencies,

largely because of the type of problem and the nature of the client group. Again, the practical advantages that accrue to face-to-face advice in terms of dealing with legal aid administration more efficiently, the more straightforward consideration and management of papers, and taking instructions from clients more effectively in order to draft documents, made face-to-face the venue of choice for urgent matters for face-to-face advisers (6/10). An adviser outlined a recent case:

‘...[T]here was one last month... she eventually popped up at three o’clock on the afternoon where her eviction was scheduled for 10.30 the following morning. And we took the steps we needed to do to get her case into court and get it heard. And that...just couldn’t have been done over the telephone....We wouldn’t have been able to get the forms signed. We wouldn’t... have been able to get the funding application in place. You wouldn’t have been able to have completed the applications to the court...’
(FA1)

Several telephone advisers agreed that the practicalities of dealing with urgent matters made them more suitable for face-to-face advice (4/10).

However, a number of telephone advisers believed that because of being available on the telephone and having longer opening hours, telephone advice was better suited for responding to emergency matters (4/10). It was unusual for telephone advisers to recognise that, if court proceedings were necessary, telephone services were more limited in the response they could make. Nevertheless, telephone advisers referred to the hiatus that could occur when dealing with a homelessness matter and judicial review proceedings were needed, but no solicitor could be found to take them. In addition, one telephone adviser stated: ‘So for me, court cases I don’t believe really that we have any real role in apart from where there is no capacity with local solicitors or there are no local solicitors, for me’ (TA1). It could be argued that these problems would be reduced if telephone services could provide representation. As has already been discussed, however, dealing with the preparation of litigation over the telephone presents difficulties of its own, which would be exacerbated by the urgency of the matter.

A very stark difference arises between dealing with urgent matters over the telephone and dealing with them face-to-face, when a client needs to submit an

urgent application to court, such as applying to suspend a warrant of eviction. Ordinarily, in a face-to-face case, the adviser would complete the form on the client's behalf and either take it to court themselves or get the client to do so; but in a telephone case, this was not possible. Over the telephone, the 'workaround' in this situation is to assist the client by dictating the required information to them over the telephone. Nevertheless, having to complete a form and issue it at court requires a certain degree of competence on behalf of the client, and not all clients are capable of doing so, particularly as the application usually requires the inclusion of a significant amount of information about the client's personal situation.

The most drastic example of the difficulties that clients can experience in these circumstances was in relation to the observation of a telephone client facing imminent eviction. The initial interview was conducted via the client's sister, because of the client's limited English. There was not sufficient time for the adviser to send the client the application to suspend the warrant and the client did not have home internet access. The adviser told the client to go to a library and download the form and call her back the following day when she would tell the client, via her sister, what to put on the form so that the client could issue the application in court. When I next contacted the client, the eviction warrant was due to be executed in 48 hours. The client's sister told me that the client had lost the form for the application to the court, and that the application had still not been issued. Unfortunately, it did not prove possible to contact the client again to arrange a follow-up interview. The adviser was dealing with the situation as well as she could, but her efforts were hamstrung by telephone-only delivery.

A telephone adviser, who had worked face-to-face previously, felt that clients being responsible for completing and submitting court forms and other documents themselves was a positive step: 'I think it's a lot better for clients, because I think they actually learn how to manage their situation and they know what to do because they've actually had to go and do it' (TA4). It is contended that 'self-help' of this nature may be suitable for some clients, but in serious and urgent matters such as where someone risks losing their home, and for clients who have poor English language skills, issues with communication, low literacy levels or mental health issues, it is simply inadequate.

Outcomes

It is often asked whether the differences between telephone and face-to-face advice result in different outcomes for clients. The short answer is ‘yes’. Given the small dataset for this research, it is not proposed to extrapolate information on outcomes from the cases dealt with in this research – particularly as most of them cases had just started. However there is statistical data available on this information. Face-to-face advice in debt cases has been shown to achieve better and more sustained outcomes for clients than telephone advice (Ellison and Whyley, 2012a). In addition, prior to the introduction of the legal aid changes in April 2013, analysis of Legal Service Commission case data showed that face-to-face housing advice was much more likely to achieve tangible outcomes for clients than telephone advice (Balmer *et al*, 2012). Closer inspection of the figures suggested that this was because housing telephone services were dealing largely with one-off matters. The reduction in the scope of legal aid means that less serious matters no longer receive legal aid, and a number of telephone advisers confirmed that their case profile had altered since the introduction of the changes. One explained:

‘...[T]he number of cases we have now is smaller since the new rules came in, but they’re more intense. So before you would have had a bigger caseload, but with more people who were tantamount to one-off advice cases.’ (TA1)

Yet statistical analysis of case data from the main organisation participating in this research shows that, in 2013–2014 (ie after the legal aid changes), clients were ‘housed, re-housed or retained home’ in 19 per cent of telephone cases, compared to 36 per cent of face-to-face cases (see Appendix F for statistical tables). There were issues with the quality of the data,¹¹¹ but these figures indicate that face-to-face services still appear to deliver more substantial outcomes than telephone provision.¹¹² These findings are echoed in another recent report on the Telephone Gateway (PLP, 2015).

¹¹¹ Twenty per cent of face-to-face outcomes were classified as ‘unrecorded’.

¹¹² There may still be a client group factor here, but the data provided suggests that similar proportions of private rented and social housing tenants are seen by both types of service (although the categories used are not exactly the same).

Previous studies have shown that case outcomes are driven by the stage reached and that, because face-to-face cases are routinely taken further than telephone cases, they achieve more tangible results for clients (Balmer *et al*, 2012; Patel *et al*, 2014; Patel and Smith, 2013a). Worryingly, recent research into the cases dealt with by the mandatory CLA telephone service has shown that only 8.6 per cent of debt cases resulted in the service ‘putting the case for the client’ or ‘representation’. This corresponds closely with just 8.3 per cent of cases resulting in ‘affordable payment arrangements negotiated on behalf of clients’. The majority of cases concluded at ‘first meeting’, which means the client was advised over the telephone in just one call, with no further work being carried out – not even a confirmation of advice letter. These figures show that, in over 90 per cent of these cases involving homeowners threatened with possession, clients were left largely to ‘self-help’ (Patel, 2014). Unfortunately, equivalent statistics for telephone and face-to-face housing advice are not available. The telephone advisers interviewed for this study stated that they would liaise with mortgage companies on their clients’ behalf, and this was confirmed by the clients interviewed. However, the statistics for the entire CLA service show that this is not standard practice in most telephone debt advice cases.

The key findings of this research, as charted in this and the preceding two chapters, provide possible explanations for the difference between telephone and face-to-face advice in terms of stage reached and the tendency not to take telephone cases beyond initial advice and assistance. Firstly, greater emotional engagement between adviser and client may lead to the adviser providing the client with a service that goes beyond an initial meeting. Secondly, the problems of communication, of dealing with documentation, and of the increased practical difficulty of conducting a case over the telephone, may lead a telephone adviser to be more reluctant to take responsibility for taking action in a case. Thirdly, telephone clients’ failure to provide proof of eligibility may result in advisers ending cases without further work at a premature stage. Finally, face-to-face services are more likely to be assisting more vulnerable clients, who it will be more difficult to refer to self-help. It appears that these differences between the two types of service detailed in this and the previous two chapters translate into face-to-face delivery providing more effective advice services for many clients. Thus, by moving increasingly to telephone services,

there is a real danger of providing a less successful legal aid service which excludes the vulnerable clients who need it most.

Conclusion

The argument advanced in this thesis is that the test to be applied in considering the advice process is which mode of advice delivers the better advice service for the clients who most need it. As the thesis proceeded, it became evident that the face-to-face environment provides greater potential for the development of emotional engagement between adviser and client and that non-verbal communication and the facility to consider and prepare court documents gives face-to-face contact considerable advantages across all stages of the adviser–client interview, as well as in subsequent casework. In this chapter, it has become apparent that obtaining and questioning the client account and advising the client is often carried out more effectively face-to-face. In addition, face-to-face contact can clearly make a substantial difference to the ability of vulnerable clients with mental health needs, learning disabilities or hearing loss to cope with obtaining legal advice and assistance. It may also have similar benefits for other vulnerable groups. Furthermore, where cases are urgent or complicated, there are considerable practical advantages to dealing with them face-to-face. All these factors may contribute to a situation where face-to-face advisers achieve better results for clients, despite serving a more vulnerable client group. This chapter has demonstrated that, although telephone services may be able to provide an adequate substitute for some clients, in cases where clients are vulnerable or chaotic, have limited communication skills, poor literacy, or are in urgent or complex situations involving ongoing or threatened proceedings, those clients are better served by face-to-face legal advice.

Chapter 10: Conclusion

‘Only connect the prose and the passion, and both will be exalted.’

E. M. Forster, *Howards End*

I begin with this quote from E. M. Forster because I think that this thesis has demonstrated that the connection between the prose of the law and the passion of human relationships remains a fundamental aspect of the delivery of good quality legal advice, despite the technological changes that have occurred over recent years. The end of this thesis provides an opportunity to reflect on the issues that have surfaced during the course of this research. It is also the place to identify the areas where further research is likely to be useful. In addition, it is at this point that we are able to comment on the policy implications of these research findings for the current time and into the future.

Given the proposed shift in the site of the delivery of social welfare legal aid services from the local to the remote, the impact of place on the provision of legal aid was one of the first issues to be explored in this thesis. The history of legal aid shows that an expansion in the delivery of social welfare legal aid came about through siting Law Centres in deprived areas previously rejected by the legal profession. The question that arose was whether a renewed opening up of access to advice would be the result of remote telephone services becoming the new site of legal aid delivery, where advice was theoretically available from any location with a telephone connection.

What I have found is that place and the local, in different forms, still has a potency that it is difficult for ‘placeless’ remote services to replicate. Accessibility to more vulnerable clients is considered a particular benefit achieved through the localised provision of services. In addition, by being physically embedded in a specific geographic area, face-to-face services are often able to acquire local knowledge which performs a variety of significant roles in the advice process. Firstly, in its more conventional form, in terms of familiarity with the physical layout or conditions of an area, local knowledge informs advisers’ casework for clients with housing and homelessness problems. Secondly, when local knowledge takes on the

more abstract meaning of working relationships with local opponents and allies and an understanding of the local legal culture, it can assist advisers in negotiating the legal process more successfully, and achieving better outcomes for their clients. Thirdly, local networks provide access to social support for clients who need help with the personal problems of which their immediate legal difficulties are a symptom. Finally, local knowledge in all its forms combines powerfully with physical presence to provide legal representation in court that prevents clients from losing their homes, often at the last possible moment of legal intervention. Though there were downsides to local service provision, the consensus among advisers was that on the whole they were outweighed by the advantages. As long as telephone services continue to provide advice on a randomised basis across the country, it will remain the preserve of face-to-face services to take advantage of the benefits conferred by local knowledge.

The client-centred model of lawyering was selected as the basis of comparison between telephone and face-to-face interviewing in social welfare law matters. This is because it has served to undermine the professional self-interest of market-driven lawyering and the disempowering effects of paternalistic lawyering, while avoiding the less realistic aspects of ‘self-help’ and ‘empowerment’ originally advocated by critical lawyering and subsequently appropriated by the neo-liberal discourse of responsibilisation. Despite its detractors, client-centred lawyering moves lawyers towards a more equal, participatory relationship with their clients. At the same time, the lawyer retains professional responsibility for achieving the client’s objectives – an important element when dealing with often vulnerable and distressed social welfare law clients. Client-centred lawyering recognises too that dealing with client emotions is integral to providing advice. Yet the literature on interpersonal factors in client-centred lawyer–client interaction does not consider the telephone as a primary source of communication, so studies comparing telephone and face-to-face interviewing in social research settings were used as a substitute. These studies indicate that face-to-face interviews have a more relaxed pace and more natural interviewing style. In addition, they are considered to result in a deeper rapport between the individuals concerned. The cumulative effect of these different factors is believed to encourage interviewees to be more forthcoming. Conversely, it is posited that, by reducing the constraints imposed by differences of race, class,

gender and disability, telephone interaction can result in clients being more frank and assertive.

The findings of this research confirm those of other social science literature, by revealing the greater strength of feeling that many social welfare clients facing housing and homelessness difficulties attach to the more 'human' connection forged through face-to-face advice. For some clients, the extent of this attachment seems to exceed the levels suggested by the literature. Clients ascribe the development of this connection to being able to see the adviser's empathy, compassion and commitment when they meet them in person. Both vulnerable and more capable clients value the deeper emotional support of face-to-face communication. Face-to-face clients' perceptions of telephone advice are also clouded by concerns about surveillance and privacy. However, there are some telephone clients who do not feel as strongly that an emotional connection requires face-to-face interaction, and are willing in addition to look for professionalism as a marker of quality in their telephone advisers. For face-to-face housing advisers, the greater strength of the face-to-face relationship with the client is significant, because of its considerable influence on the willingness of the client to participate in the advice process, and hence give fuller instructions.

In addition, this research demonstrates the importance of the interpersonal component of lawyer–client interaction for some social welfare lawyers. Face-to-face advisers recognise that the personal connection with the client fulfils their need for reward from their role, and can also fuel their own motivation in a case. Telephone advisers acknowledge the detachment that can result from telephone-only contact. They are often positive about the lesser sense of responsibility for the client that results, although they recognise the negative effect of a slight diminution in the role's rewards. Overall, telephone advisers' attitudes reveal a lack of imagination regarding the emotional position of the client. In addition, some responses are tinged by hints of fearfulness towards clients. These worrying attitudes are possibly a consequence of the lack of personal encounters between social welfare clients and advisers. This suggests that the efforts of legal activists to reduce social distance between clients and advisers by providing legal services in marginalised communities may now be being undermined by the physical distance and emotional detachment introduced by telephone advice.

Face-to-face and telephone interviews are compared in respect of three essential practical functions: letting the client tell their story; probing and

questioning; and advising (including agreeing the next steps). In relation to getting the client's story, it seems the social welfare client often feels able to give more comprehensive instructions face-to-face. This is seen as a consequence of the encouragement to the client provided by the adviser's body language and the greater rapport between client and adviser. The less rigid structure of the face-to-face interview may also give clients more opportunity to speak. With immediate access to documents, face-to-face advisers can understand clients' housing and homelessness problems more quickly, and clients who struggle with communication feel more able to explain themselves when they can show the adviser their documents. When undertaken face-to-face, the adviser has more tools available to manage the complex operation of probing and questioning the client. Again, non-verbal communication and the ability to consult documents are important factors here. Without visual cues, telephone advisers are more limited in their ability to question the client's account sympathetically. In addition, face-to-face advisers can use client facial expressions to gauge understanding and have more methods available, including gestures and visual aids, to ensure that their advice has been understood. In terms of persuading clients who are dealing with issues of possession and homelessness to take the necessary next steps, telephone advisers require clients to do more on their own account; but it seems that face-to-face advisers have the greater potential for persuasive influence over their clients.

Cases are made more difficult to deal with because of the complexities of the client and/or the case in the social welfare arena. This research shows how difficult telephone advice can be for vulnerable clients who struggle to express themselves effectively. Clients with mental health issues and learning difficulties are most frequently mentioned as those who find telephone advice in housing matters particularly problematic. Face-to-face advisers are clear that complex cases are better dealt with face-to-face, particularly where litigation is involved; but telephone advisers consider telephone advice to be able to deal with complex matters (possibly due to more limited exposure in dealing with contested litigation). In matters of urgency, for reasons of sheer practicality, a general consensus emerges that, where court proceedings are involved or contemplated, face-to-face intervention is necessary.

It is not claimed here that it is impossible to deal with housing and homelessness cases over the telephone. It is possible in some situations and for some

clients. However, this thesis has shown that not only is the face-to-face interview a more effective vehicle for dealing with legal advice for a wide range of different reasons, both practical and emotional, but also that clients can be disadvantaged through telephone-only advice. This is particularly the case for clients who experience any sort of personal difficulties due to mental health problems, or who have language, literacy or communication issues. In addition, where problems involve litigation or are otherwise complex or urgent, then telephone communication makes the situation harder to manage than face-to-face interaction. Some social welfare clients in these situations will struggle with telephone advice, but will cope with it. Others will try and fail to cope. Yet others – probably the most vulnerable and for whom even face-to-face advice is a challenge – will not be able to attempt to use telephone services and will be effectively excluded from advice.

At relevant points in the thesis, I have tried to indicate the areas that this research has not been able to address and where future research could prove valuable. Notably, there were fewer interviews with telephone than face-to-face clients in this research, and future research could usefully include more direct evidence from these clients. Given the poor response rate encountered in this project, this is likely to need official backing in order to have access to the client contact details that would generate a large enough sample of interviewees. In addition, the literature suggests that a group that may not be willing to use telephone advice is young people, particularly care leavers. It proved difficult to recruit clients in this category to my sample. Research targeted specifically at this group would provide informed insights into the attitudes and experiences of young people, including care leavers, with regard to telephone and face-to-face advice.

There are also areas of law and types of legal practice that this research does not cover. Firstly, this study has focused on housing and debt advice. It has not considered the other mandatory areas of telephone advice: education and discrimination law. The issues that pertain in those areas may make them more or less suitable for telephone-only delivery. It has been suggested, for example, that education law lends itself more readily to telephone advice than other areas of social welfare law because the client group has more stable lives and cases are often reliant on expert reports and documentation rather than on taking detailed instructions from the client (Rosenberg, 2014). It may well be true that telephone advice in education matters is suitable for the clients that contact the telephone service, but this does not

account for those clients who are prevented from using the service because of difficulties with remote communication. Research has shown that a disabled child is more than twice as likely as a non-disabled child to have a disabled parent (Blackburn *et al*, 2010). Yet there was not a single education case in 2013–14 where referral to face-to-face services was considered necessary (Patel, 2014). Given what has been said earlier in this thesis about the barriers to using telephone advice for clients with disabilities, this suggests a possible mismatch between the profile of the potential client population and the types of clients using the service. Evidently, this is an issue that would warrant investigation in future research. Accordingly, further research should be conducted into the various characteristics of both the other mandatory areas of law, the client groups concerned and the degree to which the telephone is an appropriate method of delivery in those areas.

Secondly, this research has been predominantly conducted with a not-for-profit provider and the casework practices of more commercial telephone providers may be very different. It would be interesting, for example, to investigate the discrepancy between telephone advisers' accounts of routinely dealing with mortgage companies on behalf of their clients (supported by clients' testimony) and the figure of just 8.6 per cent of debt cases where the adviser is recorded as 'putting the client's case' in 2013–14 (Patel, 2014). It may be that other telephone providers more rarely proceed to 'putting the client's case'. It seems to me that research similar to my own in relation to the other, particularly the more commercial, providers of telephone housing advice could throw an interesting light on these statistics. Again, gaining access to these providers may require official sanction.

Conducting this research has caused me to reflect on the type of advice provision that is appropriate for social welfare law clients. Techno-enthusiasts, such as Susskind (2008), are keen to promote virtual and remote systems as ways to plug the gap in relation to access to justice. While efforts are concentrated on developing technologically 'smart' solutions to the problems of access to justice, the needs of the vulnerable individuals who should be a priority for social welfare legal aid are likely to be overlooked and overridden. The findings of this research indicate that the telephone service is in danger of providing a good service to those who are capable of self-help, and have less urgent and complicated problems, and an inferior service to vulnerable clients in the most pressing situations of acute personal crisis. This is not to say that telephone services do not have a role, but this research has shown that

they have significant limitations and should be deployed to best effect within those limitations, rather than being expected to do a job for which they are not suited.

I recognise that there is a role for telephone services, and I have tried to make suggestions about how to address some of the deficiencies of telephone services during this thesis. It may for instance be possible to use training to instil greater appreciation of the detachment felt by clients, and to help advisers to coax fuller instructions from their clients. Significantly, in an early evaluation of telephone advice services the LSC (2004) recognised that, to overcome the difficulties of dealing with telephone advice, advisers need to be particularly skilled. It is nevertheless an approach that has been ignored in the approach to commissioning telephone advice services, where reliance is largely on more inexperienced, unqualified staff. In addition, more place-specific qualities might also be injected into the telephone service by allocating advisers to geographical ‘patches’, so that they could acquire some of the local knowledge that they currently lack. Unfortunately government commitment to improving the telephone service seems low, especially if any changes might result in increased cost.

In fact, rather than trying to fix the current system, I would propose a comprehensive new model of a social welfare legal aid service, which would integrate all forms of delivery (i.e. face-to-face, telephone and internet) and use them to their best effect. Clients would have multiple points of entry into the system (e.g. face-to-face, telephone and internet) and would then be allocated to the type of service delivery that was most appropriate for their capabilities and the nature of their legal problem. The telephone service would usually deal with the less urgent and less complex clients and cases, whereas specialist face-to-face services would take on the most difficult cases and clients with greater needs. Clearly there would need to be an appropriate allocation of resources to reflect the more complex matters being dealt with face-to-face. Unfortunately, in the current legal aid policy climate where, due to the marketisation of legal aid services, providers are competing against each other for contracts, it is unrealistic to expect that a service of this nature would evolve. As we have seen from the CLA telephone service, due to case numbers being low, few referrals take place, even though it may be more appropriate for the client to be dealt with face-to-face. While the delivery of legal aid continues to be based on principles of organisational competition and lowest-price tendering rather than co-operation and appropriate resource allocation, a service of this nature is not possible.

This research has demonstrated that, for many social welfare clients in need of legal aid, technology is not the solution. My aim in this thesis has been to prevent the government perspective on telephone delivery from going unchallenged, to identify the risks and potential costs of this policy and not to let this moment pass unremarked. This research has shown that, if we carry on down this path to telephone and even more remote online provision, more and more people in acute situations will be denied the social welfare law advice they need. The call, then, as this thesis comes to a close is for a change in government policy and a return to adequate funding for face-to-face legal aid services, properly integrated with telephone provision. I understand that this is not a message that policy makers are keen to hear – the voices that will be heard are of those who are eager, often despite the evidence, to believe that technology is the answer to current access to justice ills. Yet it is evident from the findings of this research that claims that telephone advice provision is targeting legal aid resources at those most in need are simply untrue.

It is for this reason that I end this thesis with more words from E. M. Forster:

‘Men made it, do not forget that ... The Machine is much, but it is not everything.’

E. M. Forster, *The Machine Stops*

It would be wise to remember this as we develop legal aid services for social welfare clients into the future.

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Appendices

Appendix A: Client sample characteristics

Appendix B: Lawyer/adviser sample characteristics (interviewees only)

Appendix C: Topic Guides (first and last versions)

Appendix D: Observation Schedule

Appendix E: Information letters and consent forms

Appendix F: Participating organisation case data

Appendix A: Client sample characteristics

Total sample: 29 clients – 22 seen in observations (with 13 follow-up interviews) and 7 interview-only clients

Face-to-face: 16 clients – 11 seen in observations (with 8 follow-up interviews) and 5 interview-only clients

Telephone: 13 clients – 11 seen in observations (with 5 follow-up interviews) and 2 interview-only clients

Table A.1

Gender

Face-to-face clients

Observations	Female	8	Interview only	Female	3
	Male	3		Male	2

Telephone clients

Observations	Female	7	Interview only	Female	1
	Male	4		Male	1

Table A.2

Ethnic background

Face-to-face clients

Observations	White British	5	Interview only	White British	4
	White Other	0		White Other	0
	Black or Black British	4		Black or Black British	0
	Asian or Asian British	0		Asian or Asian British	0
	Mixed	0		Mixed	1
	Other (Arabic)	1		Other (Arabic)	0
	Not known*	1		Not known*	0

Telephone clients

Observations	White British	4	Interview only	White British	1
	White Other	1		White Other	0
	Black or Black British	2		Black or Black British	0
	Asian or Asian British	2		Asian or Asian British	1
	Mixed	0		Mixed	0
	Other (Arabic)	0		Other (Arabic)	0
	Not known*	2		Not known*	0

(* 'Not known' means it was not possible to obtain this information from the observation and a follow-up interview was refused or not possible to arrange)

Table A.3
Mental health issues

<i>Face-to-face clients</i>	Observations	7	Interview only	2
<i>Telephone clients</i>	Observations	3	Interview only	1

Table A.4
Physical health issues (NB: some clients have more than one type of health issue)
Face-to-face clients

Observations	Mobility issues	2	Interview only	Mobility issues	2
	Health issues	6		Health issues	3
	Hearing impairment	0		Hearing impairment	0

Telephone clients

Observations	Mobility issues	0	Interview only	Mobility issues	1
	Health issues	5		Health issues	2
	Hearing impairment	0		Hearing impairment	1

Table A.5
Age
Face-to-face clients

Observations			Interview only		
	20s	3		20s	0
	30s	0		30s	0
	40s	2		40s	2
	50s	3		50s	1
	60s	1		60s	2
	not known*	2		not known	0

(* 'Not known' means it was not possible to obtain this information from the observation and a follow-up interview was refused or not possible to arrange)

Telephone clients

Observations			Interview only		
	20s	1		20s	0
	30s	4		30s	0
	40s	3		40s	1
	50s	1		50s	1
	60s	2		60s	0
	not known	0		not known	0

Table A.6
Employment status

Face-to-face clients

Observations	Employed/Self-employed	1**	Interview only	Employed/Self-employed	0
	Unemployed	10		Unemployed	5

(**This client was seen at during a drop-in session and her query was outside the scope of legal aid for housing)

Telephone clients

Observations	Employed/Self-employed	4	Interview only	Employed/Self-employed	1
	Unemployed	7		Unemployed	1

Table A.7
Housing status (at time of seeking help)

Face-to-face clients

Observations	Homeless (eg temporary accommodation, living with family and friends)	3	Interview only	Homeless (eg temporary accommodation, living with family and friends)	1
	Private tenant	2		Private tenant	2
	Social Housing Tenant	6		Social Housing Tenant	2
	Owner occupier***	0		Owner occupier***	0

(***Mortgage cases have to go through the Mandatory Telephone Gateway and are very rarely referred for face-to-face advice)

Telephone clients

Observations	Homeless (eg temporary accommodation, living with family and friends)	0	Interview only	Homeless (eg temporary accommodation, living with family and friends)	0
	Private tenant	6		Private tenant	1
	Social Housing Tenant	2		Social Housing Tenant	0
	Owner occupier	3		Owner occupier	1

Table A.8
Presenting problem
Face-to-face clients

Observations			Interview only		
	Homelessness	4		Homelessness	3
Rented property	Possession notice	2	Rented property	Possession notice	0
	Possession proceedings	3		Possession proceedings	2
	Eviction warrant	0		Eviction warrant	0
	Post-eviction	0		Post-eviction	0
	Disrepair	1		Disrepair	0
	Other landlord and tenant	1		Other landlord and tenant	0

Telephone clients

Observations			Interview only		
	Homelessness	2		Homelessness	0
Rented property	Possession notice	5	Rented property	Possession notice	1
	Possession proceedings	0		Possession proceedings	0
	Eviction warrant	1		Eviction warrant	0
	Post-eviction	0		Post-eviction	0
	Disrepair	0		Disrepair	0
	Other landlord and tenant	0		Other landlord and tenant	0
Mortgaged property	Possession proceedings	2	Mortgaged property	Possession proceedings	1
	Eviction warrant	0		Eviction warrant	0
	Post-eviction	1		Post-eviction	0

Appendix B: Lawyer/adviser characteristics (interviewees only)

Total sample: 20 lawyers and advisers

Face-to-face: 5 lawyers and 5 advisers

Telephone: 10 advisers

Table B.1

Experience

Face-to-face lawyers/ advisers	Number of years' experience		Telephone advisers	Number of years' experience	
	Under 5	0		Under 5	4
	5 - 10	5		5 - 10	6
	More than 10	5		More than 10	0

Table B.2

Gender

Face-to-face lawyers/ advisers			Telephone advisers		
	Female	6		Female	8
	Male	4		Male	2

Table B.3

Ethnic background

Face-to-face lawyers/ advisers			Telephone advisers		
	White	7		White	9
	BME	3		BME	1

Appendix C: Topic Guides (first and last versions)

Lawyer/Adviser Topic Guides

1. Topic guide and sample questions for lawyer/adviser interviews – 28.6.13 (with observation)
2. Topic guide and sample questions for lawyer/adviser interviews – 28.1.14 (without observation)
3. Topic guide and sample questions for lawyer/adviser interviews – 8.5.14 (with observation)
4. Topic guide and sample questions for lawyer/adviser interviews – 8.5.14 (without observation)

Client Topic Guides

5. Topic guide and sample questions for telephone client interviews – 28.6.13
6. Topic guide and sample questions for face-to-face client interviews – 28.6.13
7. Topic guide and sample questions for telephone client interviews – 8.5.14
8. Topic guide and sample questions for face-to-face client interviews – 8.5.14

1. Topic guide and sample questions for interviews with lawyers/advisers – 28.6.13 (with observation)

Interview topic guide: lawyers and advisers

Research objective: to identify the differences between giving advice over the telephone and giving advice face-to-face from the perspective of lawyers/advisers and to explore the impact these differences have on the advice experience and the lawyer-client relationship

[Due to time constraints – prior to interview:

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to tape
- Give written information detailing the above
- Get lawyer's details re professional background, field of expertise etc]

1: Caseload profile

Establish what proportion of lawyer's work that is legally-aided and the amount of legal aid work that is telephone-only

2: Preparation for interview

Explore what the lawyer did in advance of the meeting or phone call with the client to prepare.

Consider: the arrangements made regarding time and place of interview; physical arrangements made by the lawyer for the interview (eg arranging the interview room or to make the call). Discuss whether this is usual for them.

3: Interview management

Explore what techniques the lawyer uses during the meeting to facilitate and control the interview

Eg, techniques to: put the client at their ease; begin the meeting; get the client to start/continue/stop talking; end the meeting.

4: Comparing telephone and face-to-face encounters

Explore with the lawyer how the encounter with the client is different if it is over the telephone rather than face-to-face

Look at differences in: the time they spend on the interview; the way the client explains their story/gives instructions; the way the lawyer questions the client and/or gives advice

5: Visual cues

Explore the use of body language – whether body language helps the lawyer and client to understand each other better and/or assess each other better for truthfulness and understanding

Explore what effect the lack of body language has on understanding and mutual assessment

6: Consider the effect

Explore with the lawyer how any differences identified may have an impact on how lawyer and client behave towards each other – particularly look at whether the client is more or less willing to challenge the lawyer and vice versa.

Explore how these differences between telephone and face-to-face advice may have an impact on the relationship on lawyer and client in terms of trust and empathy between them.

Explore whether any differences identified in relation to behaviour and emotional connection have an impact on conduct of the case.

7: Case types (complexity and sensitivity)

Explore whether any types of cases are more suitable for face-to-face than telephone-only.

Explore whether any types of case are better-suited to telephone-only.

Explore whether there are any situations where is critical to see a client in person.

[Possible areas: Legally/factually complicated cases; lots of documents; sensitive issues]

8: Client groups (vulnerability)

Explore whether any types of client should be dealt with face-to-face rather than telephone-only.

[Possible areas: vulnerability, language issues, age-related (young and old)]

9: Client preference

Explore whether particular types of clients seem to prefer telephone-only advice and whether any particular client groups seem to prefer face-to-face service.

10: Place

Explore whether the composition of the lawyer's client base is affected by the type of service they provide because of client preferences for one type of service delivery over another.

Consider any differences between legal aid and non-legal aid clients.

[Possible areas: vulnerable/capable, old/young, male/female, housed/homeless]

11: Personal preference

Establish the lawyer's preferred method of client interaction and explore why.

12: Additional comments

Give the lawyer an opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for lawyers/advisers – 28.6.13	
Question	Prompts
Q1: How much of your work is legal aid and how much of that work involves traditional face-to-face meetings with clients and how much is telephone-only?	
Q2: Can you describe what you did to prepare for the interview I observed/listened in on?	<ul style="list-style-type: none"> a. Do you arrange the interview in advance? b. What physical arrangements do you make (eg interview room or to make the call)?
Q3: Can you describe any techniques you have for managing the interview ie making sure that you and the client get through everything in the time allowed?	<p>Any techniques for putting the client at their ease?</p> <p>How do you start/end the interview?</p> <p>How do you get the client to start/continue/stop talking?</p>
Q4: How is the encounter between you and the client different if it is on the telephone rather than face-to-face?	<ul style="list-style-type: none"> a. Are there differences in the way the client tells their story/gives instructions? b. Are there differences in the way you give advice? c. Are there differences in the time you spend talking? <p>[If applicable – ‘I noticed in the interview...]</p> <p>Do you think these factors have any effect on the case?</p>
Q5: How does body language affect the ability of lawyer and client to understand/assess each other? What impact does the lack of body language have?	
Q6: What effect, if any, do you think the differences between telephone and face-to-face meetings have on how you and the client behave towards each other?	<p>In terms of:</p> <ul style="list-style-type: none"> a. Whether you challenge the client and s/he challenges you? b. Trust? c. Emotional support/empathy?
Q7: What effect, if any, do you think the differences you have described between telephone and face-to-face meetings have on the case?	
Q8: Are there any particular types of cases that you think are better dealt with a) in person or b) over the telephone?	<ul style="list-style-type: none"> a. Legally/factually complicated cases? b. Lots of documents? c. Personally sensitive issues? <p>Do you think there are any situations where it is critical to see a client in person?</p>
Q9: Are there any types of client that should be dealt with face-to-face?	<ul style="list-style-type: none"> a. Vulnerable? b. Language issues c. Young/old?

Q10: Do you think that there are particular types of client that favour a) face-to-face contact or and b) telephone only advice?	<ul style="list-style-type: none"> a. Vulnerable/capable? b. Old/young? c. Male/female? d. Housed/homeless
Q11: How would you say the diversity of your client base is affected by the type of service that you provide?	<ul style="list-style-type: none"> a. Are there certain client groups you tend not to have if your service is a) telephone-based or b) in person? b. Is there a difference between legal aid and non-legal aid clients?
Q12: If you could choose freely, which method of client contact would you prefer and why?	
Q13: Is there anything that you weren't able to say in the interview, that you would like to mention now?	<ul style="list-style-type: none"> a. Anything to clarify? b. Anything to add? c. Anything you expected me to ask about but I didn't?

2. Topic guide and sample questions for lawyer/adviser interviews – 28.1.14 (without observation)

Interview topic guide: lawyers and advisers

Research objective: to identify the differences between giving advice over the telephone and giving advice face-to-face from the perspective of lawyers/advisers and to explore the impact these differences have on the advice experience and the lawyer-client relationship

1: Introduction

[If possible, due to time constraints – prior to interview:]

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to tape
- Give written information detailing the above
- Get lawyer's details re professional background, field of expertise etc]

2: Caseload profile

Establish what proportion of lawyer's work is legally-aided and the amount of legal aid work that is telephone-only

3: Preparation for interview

Explore what the lawyer does in advance of the meeting or phone call with the client to prepare.

Consider:

- arrangements made regarding time and place of interview
- physical arrangements made by the lawyer for the interview (eg arranging the interview room or to make the call)

4: Interview management

Explore what **techniques** the lawyer uses during the meeting to facilitate and control the interview

Eg, techniques to:

- put the client at their ease;
- begin the meeting;
- get the client to start/continue/stop talking;
- end the meeting.

5: Visual cues

Explore the use of body language

Does body language help the lawyer and client to:

- understand each other better
- assess each other better for truthfulness and understanding

6: Effect on communication

Look at differences in

- time they spend on the interview
- how the client explains their story/gives instructions
- how the lawyer questions the client
- how the lawyer gives advice

7: Effect on behaviour towards each other and relationship

Explore with the lawyer how any differences identified may have an impact on

- how lawyer and client behave towards each other - whether the lawyer and client are more or less willing to **challenge** each other
- the relationship on lawyer and client in terms of **trust and empathy** between them

Explore whether any differences identified in relation to behaviour and emotional connection have an **impact on conduct of the case**.

8: Case types and client groups (complexity, sensitivity, vulnerability)

Explore whether any types of cases or client groups are **more suitable for face-to-face advice**

Explore whether any types of case or client groups are **better-suited to telephone-only**.

Explore whether there are any situations where is **critical to see a client** in person.

[Possible areas: Legally/factually complicated cases; lots of documents; sensitive issues]

[Possible client groups: vulnerability, language issues, age-related (young and old)]

9: Client preference

Explore whether particular types of clients seem to prefer telephone-only advice and whether any particular client groups seem to prefer face-to-face service.

10: Place

Explore whether the composition of the lawyer's client base is affected by the type of service they provide because of client preferences for one type of service delivery over another.

Consider any differences between legal aid and non-legal aid clients.

[Possible areas: vulnerable/capable, old/young, male/female, housed/homeless]

11: Personal preference

Establish the lawyer's preferred method of client interaction and explore why.

12: Additional comments

Give the lawyer an opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for advisers/lawyers – 28.1.14	
Question	Prompts
Q1: How much of your work is legal aid and how much of that work involves traditional face-to-face meetings with clients and how much is telephone-only?	
Q2: Can you describe what you do to prepare for the interviews?	<ul style="list-style-type: none"> c. Do you arrange the interview in advance? d. What physical arrangements do you make (eg interview room or to make the call)?
Q3: Can you describe any techniques you have for managing the interview ie making sure that you and the client get through everything in the time allowed?	<p>Any techniques for putting the client at their ease?</p> <p>How do you start/end the interview?</p> <p>How do you get the client to start/continue/stop talking?</p>
Q4: How does body language affect the ability of lawyer and client to understand/assess each other? What impact does the lack of body language have?	
Q5: What effect, if any, do you think the differences between telephone and face-to-face meetings have on the way that you and the client communicate?	<ul style="list-style-type: none"> d. Are there differences in the way the client tells their story/gives instructions? e. Are there differences in the way you give advice? f. Are there differences in the time you spend talking? <p>Do you think these factors have any effect on the case?</p>
Q6: What effect, if any, do you think the differences between telephone and face-to-face meetings have on how you and the client behave towards each other?	<p>In terms of:</p> <ul style="list-style-type: none"> d. Whether you challenge the client and s/he challenges you? e. Trust? f. Emotional support/empathy?
Q7: Are there any particular types of cases or clients that you think it is better to deal with a) in person or b) over the telephone?	<ul style="list-style-type: none"> d. Legally/factually complicated cases? e. Lots of documents? f. Personally sensitive issues? g. Vulnerable clients? h. Language issues? i. Young/old clients?
Q8: Do you think there are any situations where it is critical to see a client in person?	Same categories as above
Q9: Do you think that there are particular types of client that prefer a) face-to-face contact or and b) telephone only advice?	<ul style="list-style-type: none"> e. Vulnerable/capable? f. Old/young? g. Male/female? h. Housed/homeless

<p>Q10: How would you say the diversity of your client base is affected by the type of service that you provide?</p>	<p>c. Are there certain client groups you tend not to have if your service is a) telephone-based or b) in person?</p> <p>d. Is there a difference between legal aid and non-legal aid clients?</p>
<p>Q11: If you could choose freely, which method of client contact would you prefer and why?</p>	
<p>Q12: Is there anything that you weren't able to say in the interview, that you would like to mention now?</p>	<p>d. Anything to clarify?</p> <p>e. Anything to add?</p> <p>f. Anything you expected me to ask about but I didn't?</p>

3. Topic guide and sample questions for lawyer/adviser interviews – 8.5.14 (with observation)

Interview topic guide: lawyers and advisers (post-observation)

Research objective: to identify the differences between giving advice over the telephone and giving advice face-to-face from the perspective of lawyers/advisers and to explore the impact these differences have on the advice experience and the lawyer-client relationship

1: Introduction

[If possible, due to time constraints – prior to interview:]

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to tape
- Give written information detailing the above
- Get lawyer/adviser's details re professional background, field of expertise etc]

2: Caseload profile

Establish what proportion of lawyer/adviser's work is legally-aided and the amount of legal aid work that is telephone-only

3: Open question

Ask the lawyer/adviser whether they think there is any difference between telephone and face-to-face advice. Explore with the lawyer/adviser the reasons for any differences they identify.

NB: After this question, all questions below are optional, depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues.

4: Preparation for interview

Explore what the lawyer/adviser did in advance of the observed meeting or phone call with the client to prepare.

Consider:

- arrangements made regarding time and place of interview
- physical arrangements made by the lawyer/adviser for the interview (eg arranging the interview room or to make the call)

Explore what the lawyer generally does by way of preparation before a meeting with the client

5: Interview management

Explore what **techniques** the lawyer/adviser used during the observed meeting to facilitate and control the interview/and what **techniques** the lawyer uses generally for that purpose

Eg, techniques to:

- put the client at their ease;
- begin the meeting;
- get the client to start/continue/stop talking;
- end the meeting.

6: Visual cues/body language

Explore the use of body language during the observed meeting

Did body language help:

- the lawyer/adviser and client to understand each other better?
- the lawyer/adviser to assess the client's truthfulness better?
- enable the lawyer/adviser to assess client understanding better?

Explore the lawyer's views on the use of body language generally with regard to these issues

7: Power: Effect on willingness to challenge each other

Explore with the lawyer how any differences identified may have an impact on whether the lawyer/adviser and client are more or less willing to **challenge** each other in relation to this client observed and more generally with clients

8: Emotional connection: Effect on relationship

Explore how any differences between face-to-face and telephone advice may have an impact the relationship on lawyer/adviser and client, particularly in terms of **trust and empathy** in relation to the client concerned and more generally with clients

8a: Emotional connection: dealing with sensitive issues

Explore how any differences between face-to-face and telephone advice may affect the ability to deal with **sensitive issues**

9: Cumulative effect

Explore whether the differences between telephone and face-to-face advice have any overall effect on how the client gives instructions and the way the lawyer/adviser gives advice in the case observed and more generally

Consider differences in:

- time they spend on the interview
- time spent on the case in total
- how the client explains their story/gives instructions
- how the lawyer questions the client
- how the lawyer gives advice

10: Impact on conduct of the case

Explore whether not being able to see the client has ever affected the lawyer/adviser's ability to deal with a case effectively. Has the lawyer ever reached a stage in a telephone-only case where they felt that to conduct the case properly the client had to be seen?

11: Effect on case outcome

Explore whether not being able to see the client has ever affected the outcome of a case

12: Situations where it is critical to see the client

Explore whether the lawyer/adviser thinks there are any situations when it is **critical** to see the client

13: Case types and client groups (complexity, vulnerability)

Explore whether any types of cases or client groups are consider **more suitable for face-to-face advice or more suitable for telephone-only advice**

[Possible areas: Legally/factually complicated cases; lots of documents]

[Possible client groups: vulnerability (mental health, care leavers, drug and alcohol addiction), language issues, age-related (young and old)]

14: Client preference

Explore whether particular types of clients seem to prefer telephone-only advice and whether any particular client groups seem to prefer face-to-face service.

[Thinking about the categories we have just discussed, but also more broadly [possibly introduce gender here?], are there any groups that seem to prefer either telephone or face-to-face?]

14a: Client preference: Place

Explore whether client preferences have affected the types of client base of the service. Also, consider any differences between legal aid and non-legal aid clients.

15: Place

Explore what impact local knowledge (or the lack of it) has on the lawyer/adviser's casework

16: Personal preference

Establish the lawyer/adviser's preferred method of client interaction and explore why. Ask the lawyer what they would prefer if they were the client.

17: Additional comments

Give the lawyer/adviser an opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for advisers/lawyers (post-observation) – 8.5.14	
Question	Prompts
Q1: Introduction [possibly off tape - time constraints]	Get consent to record interview on tape
Q2: Warm up: Caseload profile How much of your work is legal aid and how much of that work involves traditional face-to-face meetings with clients and how much is telephone-only?	
Q3: Open question I would like to ask you whether you think there is a difference between telephone and face-to-face advice and if so, what you think the difference is?	
After this question, all questions below are optional depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues.	
Q4: Ritual: Preparation Can you describe what you did to prepare for the interview? What do you normally do to prepare?	a. Did you arrange the interview in advance? b. What physical arrangements did you make (eg booking interview room /in order to make the call – as applicable)?
Q5: Ritual: Interview management Can you think of any techniques you used to manage the interview I observed? Can you describe any other techniques you have for managing interviews with clients? Are these different over the telephone and ftf?	Any techniques for : a. putting the client at their ease? b. starting/ending the interview? c. getting the client to start/continue/stop talking?
Q6: Body language: Overall use/impact 1) Observation – (If applicable) Can you think of how you used body language in the interview I observed? <ul style="list-style-type: none"> Did body language or the lack of it affect your ability to assess client understanding? Did body language or the lack of it affect your ability to assess whether the client is being straightforward/honest? 2) General – a) How do you normally use body language in a face-to-face interview? b) What impact, if any, does the lack of body language have in a telephone-only encounter? Q6a: Body language: Assessing the client: How does body language or the lack of it affect your ability to assess the client's straightforwardness or honesty? Q6b: Client understanding: How does body language or the lack of it affect your ability to assess client understanding?	

<p>Q7: Power: Challenge and confrontation What effect, if any, do you think the differences between telephone and face-to-face advice have on whether you and the client are prepared to challenge each other?</p> <ul style="list-style-type: none"> • In this case • Generally 	
<p>Q8: Emotional connection: Overall What effect, if any, do you think the differences between telephone and face-to-face meetings have on trust and empathy between you and the client?</p> <ul style="list-style-type: none"> • In this case • Generally <p>Q8a: Sensitive issues: What effect, if any, do you think the differences between telephone and face-to-face advice have on how you are able to deal with sensitive issues?</p>	<p>Do you think you would have the same relationship with the client I observed if it was telephone/ftf (as applicable)</p>
<p>Q9: Cumulative effect What overall effect, if any, do you think the differences between telephone and face-to-face meetings have on the way that the client gives instructions and the way that you advise?</p> <ul style="list-style-type: none"> • In this case • Generally 	<p>a. Are there differences in the way the client tells their story/gives instructions?</p> <p>b. Are there differences in the way you question the client?</p> <p>c. Are there differences in the way you give advice?</p> <p>d. Are there differences in the time you spend talking?</p> <p>e. Are there differences in the time the case takes overall?</p>
<p>Q10: Effect on conduct of the case Has not being able to see the client ever affected your ability to deal with the/a case effectively? Have you ever reached a stage in a telephone-only case where you felt that you had to see the client in order to deal with the case properly?</p>	<p>In what way?</p>
<p>Q11: Effect on case outcome Has not being able to see the client ever affected the outcome of a case?</p>	<p>Can you give an example?</p>
<p>Q12: Critical situations to see client Do you think there are any situations where it is critical to see a client in person?</p>	
<p>Q13: Complexity: Case or client Are there any particular types of cases or clients that you think it is better to deal with a) in person or b) over the telephone?</p>	<p>a. Legally/factually complicated cases?</p> <p>b. Lots of documents?</p> <p>c. Language issues?</p> <p>d. Young/old clients?</p> <p>e. Mental health?</p> <p>f. Care leavers?</p> <p>g. Drug/alcohol addiction?</p>

<p>Q14: Client preference Do you think that there are particular types of client that prefer a) face-to-face contact or and b) telephone only advice</p> <p>Q14a: Client preference: Place Has that had an impact on the client groups that your service deals with?</p>	<p>a. Thinking about the categories we have just discussed, but also more broadly [possibly introduce gender here?], are there any groups that seem to prefer either telephone or face-to-face?</p> <p>b. [If applicable] Is there a difference between legal aid and non-legal aid clients?</p>
<p>Q15: Place How important is local knowledge to your work?</p>	
<p>Q16: Lawyer/adviser preference If you could choose freely, which method of client contact would you prefer and why? If you were the client, what would you choose and why?</p>	
<p>Q17: Additional information Is there anything that you weren't able to say in the interview, that you would like to mention now?</p>	<p>a. Anything to clarify?</p> <p>b. Anything to add?</p> <p>c. Anything you expected me to ask about but I didn't?</p>

4. Topic guide and sample questions for lawyer/adviser interviews – 8.5.14 (without observation)

Interview topic guide: lawyers and advisers (without observation)

Research objective: to identify the differences between giving advice over the telephone and giving advice face-to-face from the perspective of lawyers/advisers and to explore the impact these differences have on the advice experience and the lawyer-client relationship

1: Introduction

[If possible, due to time constraints – prior to interview:]

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to tape
- Give written information detailing the above
- Get lawyer/adviser's details re professional background, field of expertise etc]

2: Caseload profile

Establish what proportion of lawyer/adviser's work is legally-aided and the amount of legal aid work that is telephone-only

3: Open question

Ask the lawyer/adviser whether they think there is any difference between telephone and face-to-face advice. Explore with the lawyer/adviser the reasons for any differences they identify.

NB: After this question, all questions below are optional, depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues.

4: Preparation for interview

Explore what the lawyer/adviser does in advance of the meeting or phone call with the client to prepare.

Consider:

- arrangements made regarding time and place of interview
- physical arrangements made by the lawyer/adviser for the interview (eg arranging the interview room or to make the call)

5: Interview management

Explore what **techniques** the lawyer/adviser uses during the meeting to facilitate and control the interview

Eg, techniques to:

- put the client at their ease;

- begin the meeting;
- get the client to start/continue/stop talking;
- end the meeting.

6: Visual cues/body language

Explore the use of body language

Does body language help:

- the lawyer/adviser and client to understand each other better?
- the lawyer/adviser to assess the client's truthfulness better?
- enable the lawyer/adviser to assess client understanding better?

7: Power: Effect on willingness to challenge each other

Explore with the lawyer how any differences identified may have an impact on whether the lawyer/adviser and client are more or less willing to **challenge** each other

8: Emotional connection: Effect on relationship

Explore how any differences between face-to-face and telephone advice may have an impact the relationship on lawyer/adviser and client, particularly in terms of **trust and empathy**

8a: Emotional connection: dealing with sensitive issues

Explore how any differences between face-to-face and telephone advice may affect the ability to deal with **sensitive issues**

9: Cumulative effect

Explore whether the differences between telephone and face-to-face advice have any overall effect on how the client gives instructions and the way the lawyer/adviser gives advice

Consider differences in:

- time they spend on the interview
- time spent on the case in total
- how the client explains their story/gives instructions
- how the lawyer questions the client
- how the lawyer gives advice

10: Impact on conduct of the case

Explore whether not being able to see the client has ever affected the lawyer/adviser's ability to deal with the case effectively.

11: Effect on case outcome

Explore whether not being able to see the client has ever affected the outcome of a case

12: Situations where it is critical to see the client

Explore whether the lawyer/adviser thinks there are any situations when it is **critical** to see the client

13: Case types and client groups (complexity, vulnerability)

Explore whether any types of cases or client groups are consider **more suitable for face-to-face advice or more suitable for telephone-only advice**

[Possible areas: Legally/factually complicated cases; lots of documents]

[Possible client groups: vulnerability (mental health, care leavers, drug and alcohol addiction), language issues, age-related (young and old)]

14: Client preference

Explore whether particular types of clients seem to prefer telephone-only advice and whether any particular client groups seem to prefer face-to-face service.

[Thinking about the categories we have just discussed, but also more broadly [possibly introduce gender here?], are there any groups that seem to prefer either telephone or face-to-face?]

14a: Client preference: Place

Explore whether client preferences have affected the types of client base of the service. Also, consider any differences between legal aid and non-legal aid clients.

15: Place

Explore what impact local knowledge (or the lack of it) has on the lawyer/adviser's casework

16: Personal preference

Establish the lawyer/adviser's preferred method of client interaction and explore why.

17: Additional comments

Give the lawyer/adviser an opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for advisers/lawyers (without observation) – 8.5.14	
Question	Prompts
Q1: Introduction [possibly off tape due to time constraints]	Get consent to record interview on tape
Q2: Warm up: Caseload profile How much of your work is legal aid and how much of that work involves traditional face-to-face meetings with clients and how much is telephone-only?	
Q3 Open question I would like to ask you whether you think there is a difference between telephone and face-to-face advice and if so, what you think the difference is?	
After this question, all questions below are optional depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues.	
Q4: Ritual: Preparation Can you describe what you do to prepare for the interviews?	<ul style="list-style-type: none"> c. Do you arrange the interview in advance? d. What physical arrangements do you make (eg interview room or to make the call)?
Q5: Ritual: Interview management Can you describe any techniques you have for managing the interview ie making sure that you and the client get through everything in the time allowed?	<ul style="list-style-type: none"> d. Any techniques for putting the client at their ease? e. How do you start/end the interview? f. How do you get the client to start/continue/stop talking?
Q6: Body language: Overall use/impact How do you use body language in a face-to-face interview? What impact does the lack of body language have in a telephone-only encounter? Q6a: Body language: Assessing the client How does body language or the lack of it affect your ability to assess whether the client is being straightforward/honest? Q6b: Client understanding How does body language or the lack of it affect your ability to assess client understanding?	
Q7: Power: Challenge and confrontation What effect, if any, do you think the differences between telephone and face-to-face advice have on whether you and the client challenge each other?	

<p>Q8: Emotional connection: Overall What effect, if any, do you think the differences between telephone and face-to-face meetings have on trust and empathy between you and the client?</p> <p>Q8a: Sensitive issues What effect, if any, do you think the differences between telephone and face-to-face advice have on how you are able to deal with sensitive issues?</p>	
<p>Q9: Cumulative effect What overall effect, if any, do you think the differences between telephone and face-to-face meetings have on the way that the client gives instructions and the way that you advise?</p>	<p>f. Are there differences in the way the client tells their story/gives instructions?</p> <p>g. Are there differences in the way you question the client?</p> <p>h. Are there differences in the way you give advice?</p> <p>i. Are there differences in the time you spend talking?</p> <p>j. Are there differences in the time the case takes overall</p>
<p>Q10: Effect on conduct of the case Has not being able to see the client ever affected your ability to deal with the case effectively?</p>	In what way?
<p>Q11: Effect on case outcome Has not being able to see the client ever affected the outcome of a case?</p>	Can you give an example?
<p>Q12: Critical situations to see client Do you think there are any situations where it is critical to see a client in person?</p>	
<p>Q13: Complexity: Case or client Are there any particular types of cases or clients that you think it is better to deal with a) in person or b) over the telephone?</p>	<p>h. Legally/factually complicated cases?</p> <p>i. Lots of documents?</p> <p>j. Language issues?</p> <p>k. Young/old clients?</p> <p>l. Mental health?</p> <p>m. Care leavers?</p> <p>n. Drug/alcohol addiction?</p>
<p>Q14: Client preference Do you think that there are particular types of client that prefer a) face-to-face contact or and b) telephone only advice</p> <p>Q14a: Client preference: Place Has that had an impact on the client groups that your service deals with?</p>	<p>a. Thinking about the categories we have just discussed, but also more broadly [possibly introduce gender here?], are there any groups that seem to prefer either telephone or face-to-face?</p> <p>b. [If applicable] Is there a difference between legal aid and non-legal aid clients?</p>

Q15: Place How important is local knowledge to your work?	
Q16: Lawyer/adviser preference If you could choose freely, which method of client contact would you prefer and why?	
Q17: Additional information Is there anything that you weren't able to say in the interview, that you would like to mention now?	d. Anything to clarify? e. Anything to add? f. Anything you expected me to ask about but I didn't?

5. Topic guide and sample questions for telephone client interviews – 28.6.13

Interview topic guide: telephone clients

Research objective: to understand the client experience of being advised over the telephone; to investigate whether and how it differs from being advised in person from the client's point of view and to explore the impact of these differences on the client and the lawyer-client relationship

1: Introduction:

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to record
- Ask for any questions

2: Client's background and current circumstances

- Family circumstances
- Housing situation
- Employment situation
- Health

[NB: Some information in 1 and 2 above may be gathered before the interview and it may not be necessary to repeat that information during the interview]

3: The case

Ask the client to explain about their case. Go over issues such as what it is about, when it started, when [lawyer/adviser – 'x'] first got involved.

4: Place

Ask the client to describe how they found [x]. Explore why they chose a telephone service rather than a face-to-face service and whether they considered using a face-to-face service.

5: Ritual

Explore with the client what they did to get ready for the conversation with [x] that I observed. Establish whether conversations like that are usually arranged in advance. Explore whether they took the call somewhere private and how they felt when the call came. Explore whether this is usual for them.

6: Face-to-face comparator

Ask client to think of an example of a professional service they have received face-to-face – ask them to use it to compare with the telephone advice service they received in the questions that follow. [**Suggestions:** other legal advice, bank/financial services, doctor]

7: Lack of visual cues

Explore with the client what difference they think it made that they could not see [x] during the interview. Explore whether they think it made any difference to their ability to explain themselves to [x], understand [x] or ask [x] questions. [Include any relevant observations from the meeting.]

Explore whether they think their appointments with [x] would be different if they happened face-to-face and how [in same terms as above].

8: Speed imperative

Ask client to think about the pace of their telephone interview with [x]. Referring to their face-to-face example, explore whether the client was comfortable with the pace of the interview and how easy they found it to get their point of view across over the telephone. Explore with the client whether they think the pace of the interview might be different face-to-face and what effect that might have on their ability to get their point of view across. [Include any relevant observations from the meeting.]

9: Power

Explore with the client how easy they find it to disagree with [x] over the telephone. Ask the client to consider how that might be different if they were dealing with [x] face-to-face. [Include any relevant observations from the meeting.]

10: Complexity/sensitivity

Ask the client whether they have ever found it difficult to speak to the lawyer over the telephone. Explore with the client why it was a problem on that occasion. Explore whether they would have preferred to do it face-to-face. [Include any relevant observations from the meeting.]

11: Emotional/psychological impact

Explore their relationships with [x]. Cover issues such as trust and emotional support. Explore whether they think their relationship with [x] would be different if they had met face-to-face and the reasons why.

12: Mental image

Ask if they have a mental picture of [x] when they speak to her and where they think she is sitting.

13: Personal preference

Establish what method of service delivery the client would prefer if given the choice - telephone or face-to-face – and explore why.

14: Observer effect

Explore with the client whether they think my presence during their interview affected them or [x] at all and, if so, what effect it had.

15: Additional information

Give the client the opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for telephone clients – 28.6.13	
Question	Prompt
Q1 Warm up: What is your case about?	When did it start? When did [x] get involved?
Q2 Place: Why did you choose a telephone service rather than a face-to-face service?	How did you find [x]? Did you consider using a face-to-face service?
I recently listened in on your phone call with [x]:	
Q3 Ritual: Is there anything that you did to get ready for that call with [lawyer/adviser - x]?	Are those sorts of calls usually arranged in advance? Did you sit somewhere private to take the call? How did you feel when you took the call? Is that how you usually feel during those calls? [‘I noticed in the interview...’ - if applicable]
Q4 Find a face-to-face comparator: Can you think of a professional service that you have received face-to-face? In the questions that come next, I’d like you to compare that situation [y] with the telephone advice service that you received.	Will need to probe for something appropriate: Eg Legal advice/bank/financial advice, doctor [Issue: finding equivalent non-opponents]
Q5 Lack of visual cues: What difference, if any, do you think it made that, when you were speaking to [x], you could not see her?	When you were: a. Explaining yourself to [x]? b. Understanding [x]? c. Asking [x] questions? [‘I noticed in the interview...’ - if applicable]
Q6: How do you think your conversations with [x] would be different if they happened face-to-face?	Same as Q5
Q7 Speed imperative: How comfortable were you with the pace of your interview with [x]? How does it compare with a face-to-face interview with [y]?	How easy was it to get your point of view across to [x]? Would it be different face-to-face with [y]? Is a face-to-face interview faster/slower/the same? [‘I noticed in the interview...’ - if applicable]
Q8 Power: If you don’t agree with something [x] says or does how easy is it to say so?	How does it compare to when you disagree with [example] face-to-face? Is it easier/harder/the same? [‘I noticed in the interview...’ - if applicable]
Q9 Complexity/sensitivity: Have there been any times in your case when it has been difficult to speak to [x] about the case over the telephone? Can you tell me what happened?	Why was it difficult to speak to [x] about it over the telephone? Would you have preferred to do it face-to-face? Why? [‘I noticed in the interview’ - if applicable]
Q10 Emotional/psychological: What is your relationship with [x] like?	Is it a close relationship? Do you trust her?

Q11: Do you think your relationship would be any different if you had met [x] face-to-face?	If yes: how would it have been different? If no: why not?
Q12 Mental image: Do you have a mental picture of [x]?	What do you think she looks like? Where do you think she is sitting when you speak?
Q13 Personal preference: If you could choose the type of legal service you got, would you prefer telephone or face-to-face?	Why?
Q14 Observer effect: When I listened in on your call, do you think it affected you or [x] at all?	If yes: how?
Additional information Q15: Is there anything that you weren't able to say in the interview, that you would like to mention now?	g. Anything to clarify? h. Anything to add? i. Anything you expected me to ask about but I didn't?

6. Topic guide and sample questions for face-to-face client interviews – 28.6.13

Interview topic guide: face-to-face clients

Research objective: to understand the client experience of being advised in person; to investigate whether and how it differs from being advised over the telephone from the client's point of view and to explore the impact of these differences on the client and the lawyer-client relationship

1: Introduction:

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to record
- Ask for any questions

2: Client's background and current circumstances

- Family circumstances
- Housing situation
- Employment situation
- Health

[NB: Some information in 1 and 2 above may be gathered before the interview and it may not be necessary to repeat that information during the interview]

3: The case

Ask the client to explain about their case. Go over issues such as what it is about, when it started, when [lawyer/adviser – 'x'] first got involved.

4: Place

Ask client to describe how they found [x]. Explore why they chose a face-to-face service rather than a telephone service and whether they considered using a telephone service.

5: Ritual

Explore with the client what they did to get ready for the meeting with [x] that I observed. Discuss whether meetings are usually arranged in advance. Explore what their journey to [x]'s office was like and how they felt when they got there. Explore whether this is usual for them.

6: Telephone comparator

Ask client think of an example of a professional service they have received over the telephone – ask them to use it to compare with the face-to-face advice service they received in the questions that follow. [**Suggestions:** other legal advice, bank/financial services, NHS Direct]

7: Lack of visual cues

Explore with the client what difference they think it made that they could see [x] during the interview. Explore whether they think it made any difference to their ability to explain themselves to [x], understand [x] or ask [x] questions. [Include any observations from the meeting.]

Explore how they think their appointments with [x] would be different if they happened over the telephone [in same terms as before].

8: Speed imperative

Ask client to think about the pace of their face-to-face interview with [x]. Explore whether the client was comfortable with the pace of the interview and how easy they found it to get their point of view across face-to-face. Referring to their telephone example, explore with the client whether they think the pace of the interview might be different over the telephone and what effect that might have on their ability to get their point of view across. [Include any relevant observations from the meeting]

9: Power

Explore with the client how easy they find it to disagree with [x] face-to-face. Ask the client to consider how that might be different if they were dealing with [x] over the telephone. [Include any relevant observations from the meeting.]

10: Complexity/sensitivity

Ask the client whether they have ever found it difficult to speak to [x] over the telephone. Explore with the client why it was a problem on that occasion. Explore whether they would have preferred to do it over the telephone. [Include any relevant observations from the meeting.]

11: Emotional/psychological impact

Explore their relationship with [x] with the client. Cover issues such as trust and emotional support. Explore whether they think their relationship with [x] would be different if they had never met [x] face-to-face and the reasons why.

12: Personal preference

Establish what method of service delivery the client would prefer if given the choice - telephone or face-to-face - and explore why.

13: Observer effect

Explore with the client whether they think my presence during their interview affected them or [x] at all and, if so, what effect it had.

14: Additional information

Give the client the opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for face-to-face clients – 28.6.13	
Question	Prompt
Q1 Warm up: What is your case about?	When did it start? When did [x] get involved?
Q2 Place: Why did you choose a face-to-face service rather than a telephone service?	How did you find [x]? Did you consider using a telephone service?
I recently sat in on your meeting with [x]:	
Q3 Ritual: Is there anything that you did to get ready for meeting with [lawyer/adviser - x]?	Are meetings like that usually arranged in advance? How did you get to [x]'s office? How did you feel when you got there? Is that how you usually feel when you meet [x]? ['I noticed in the interview' - if applicable]
Q4 Find a telephone comparator: Can you think of a professional service that you have received over the telephone? In the questions that come next, I'd like you to compare that situation [y] with the face-to-face advice service that you received.	Will need to probe for something appropriate: Eg Legal advice, bank/financial services, NHS Direct [Issue: finding equivalent non-opponents]
Q5 Visual cues: What difference do you think it made to your interview that you could see [x] when you spoke to her?	In terms of: d. Explaining yourself e. Understanding [x]? f. Asking [x] questions? ['I noticed in the interview' - if applicable]
Q6: How do you think your appointments with [x] would be different if they were on the telephone?	Same as Q5
Q7 Speed imperative: How comfortable were you with the pace of your interview with [x]? How does it compare with a telephone interview with [y]?	How easy was it to getting your point of view across? Would it be different over the telephone with [y]? Is a telephone interview faster/slower/the same? ['I noticed in the interview' - if applicable]
Q8 Power: If you don't agree with something [x] says or does how easy is it to say so?	How does it compare to when you disagree with [y] on the telephone? Is it easier/harder/the same? ['I noticed in the interview' - if applicable]

Q9 Complexity/sensitivity: Have there been any times in your case when it has been difficult to speak to [x] about the case face-to-face? Can you tell me what happened?	Why was it difficult to speak to [x] about it in person? Would you have preferred to do it over the telephone? Why? ['I noticed in the interview' - if applicable]
Q10 Emotional/psychological: What is your relationship with [x] like?	Is it a close relationship? Do you trust her?
Q11: Do you think your relationship would be any different if you had only spoken to [x] over the telephone?	If yes: how would it have been different? If no: why not?
Q12 Personal preference: If you could choose the type of legal service you got, would you prefer telephone or face-to-face?	Why?
Q13 Observer effect: When I sat in on your meeting, do you think it affected you or [x] all?	If yes: how?
Q14 Additional information: Is there anything that you weren't able to say in the interview, that you would like to mention now?	j. Anything to clarify? k. Anything to add? l. Anything you expected me to ask about but I didn't?

7. Topic guide and sample questions for telephone client interviews – 8.5.14

Interview topic guide: telephone clients

Research objective: to understand the client experience of being advised over the telephone; to investigate whether and how it differs from being advised in person from the client's point of view and to explore the impact of these differences on the client and the lawyer-client relationship

Introduction:

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to record
- Ask for any questions

Client's background and current circumstances

- Family circumstances
- Housing situation
- Employment situation
- Health

[NB: Some information in the above may be gathered before the interview and it may not be necessary to repeat that information during the interview]

1: The case

Ask the client to explain about their case. Go over issues such as what it is about, when it started, when [lawyer/adviser – 'x'] first got involved.

2: Place

Ask the client to describe how they found [x]. Explore why they chose a telephone service rather than a face-to-face service and whether they considered using a face-to-face service.

3: Open question

Ask the client whether they think there are any differences between telephone and face-to-face advice. Explore with the client the reasons for the differences they identify.

4: Comparison

Ask the client whether they get any services face-to-face. Explore their experience of those services. [**Suggestions:** other legal advice, bank/financial services, doctor]

NB: After this question, all questions below are optional, depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues.

5: Ritual

Explore with the client what they did to get ready for the conversation with [x] that I observed. Establish whether conversations like that are usually arranged in advance. Explore whether they took the call somewhere private and how they felt when the call came. Explore whether this is usual for them.

6: Lack of visual cues

Explore with the client what difference they think it made that they could not see [x] during the interview. Explore whether they think it made any difference to their ability to explain themselves to [x], understand [x] or ask [x] questions. [Include any relevant observations from the meeting.]

7: Explore whether they think their appointments with [x] would be different if they happened face-to-face and how [in same terms as above].

8: Speed imperative

Ask client to think about the pace of their telephone interview with [x]. Referring to their face-to-face example, explore whether the client was comfortable with the pace of the interview and how easy they found it to get their point of view across over the telephone. Explore with the client whether they think the pace of the interview might be different face-to-face and what effect that might have on their ability to get their point of view across. [Include any relevant observations from the meeting.]

Explore whether they think the time their interview took would have been any different face-to-face and also the time spent dealing with their case overall.

9: Power

Explore with the client how easy they find it to disagree with [x] over the telephone. Ask the client to consider how that might be different if they were dealing with [x] face-to-face. [Include any relevant observations from the meeting.]

10: Complexity/sensitivity

Ask the client whether they have ever found it difficult to speak to the lawyer over the telephone. Explore with the client why it was a problem on that occasion. Explore whether they would have preferred to do it face-to-face. [Include any relevant observations from the meeting.]

11: Emotional/psychological impact

Explore their relationship with [x]. Cover issues such as trust and emotional support. Explore whether they think their relationship with [x] would be different if they had met face-to-face and the reasons why.

12: Benefits and disadvantages

Explore with the client any benefits for them and/or [x] over dealing with the case over the telephone

Explore with the client any disadvantages for them and/or [x] over dealing with the case over the telephone

13: Mental image

Ask if they have a mental picture of [x] when they speak to her and where they think she is sitting.

14: Personal preference

Establish what method of service delivery the client would prefer if given the choice - telephone or face-to-face – and explore why.

15: Observer effect

Explore with the client whether they think my presence during their interview affected them or [x] at all and, if so, what effect it had.

16: Additional information

Give the client the opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for telephone clients – 8.5.14	
Question	Prompt
(If applicable) I recently listened in on your telephone conversation with your adviser:	
Q1 Warm up: What is your case about?	When did it start? When did [x] get involved?
Q2 Place: Why did you choose a telephone service rather than a face-to-face service?	How did you find [x]? Did you consider using a face-to-face service?
Q3 Open question Do you think that there is a difference between getting advice over the telephone and getting advice face-to-face? If so, what differences do you think there are?	
Q4 Comparison Do you get any services face-to-face? Which ones? How do you find that?	Eg Legal advice/bank/financial advice, doctor
After this question, all questions below are optional, depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues	
Q5 Ritual: Is there anything that you did to get ready for that call/ calls) with [lawyer/adviser - x]?	Are those sorts of calls usually arranged in advance? Did you sit somewhere private to take the call/calls? How did you feel when you took the call/calls? [‘I noticed in the interview...’ - if applicable]
Q6 Lack of visual cues: What difference, if any, do you think it made that, when you were speaking to [x], you could not see her?	When you were: g. Explaining yourself to [x]? h. Understanding [x]? i. Asking [x] questions? [‘I noticed in the interview...’ - if applicable]
Q7: How do you think your conversations with [x] would be/would have been different if they happened face-to-face?	Same as above

<p>Q8 Speed imperative: How comfortable were you with the pace of your call/calls with [x]?</p> <p>Q8a (if applicable) Your interview took [x time] / How long was the interview? Do you think the time the interview took would have been different if it had been face-to-face?</p> <p>Q8b (If applicable) What about the time spent on your case overall? Do you think that would have been different if it had all been face-to-face?</p>	<p>How easy was it to get your point of view across to [x]?</p> <p>Would it be different face-to-face?</p> <p>Is a face-to-face interview faster/slower/the same?</p> <p>['I noticed in the interview...' - if applicable]</p>
<p>Q9 Power: If you don't agree with something [x] says/said or does/did how easy is/was it to say so?</p>	<p>How does it compare to when you disagree with someone face-to-face? Is it easier/harder/the same?</p> <p>['I noticed in the interview...' - if applicable]</p>
<p>Q10 Complexity/sensitivity: Have there been any times in your case when it has been difficult to speak to [x] about the case over the telephone?</p> <p>Can you tell me what happened?</p>	<p>Why was it difficult to speak to [x] about it over the telephone?</p> <p>Would you have preferred to do it face-to-face? Why?</p> <p>['I noticed in the interview' - if applicable]</p>
<p>Q11 Emotional/psychological: What is your relationship with [x] like?</p>	<p>Is it a close relationship?</p> <p>Do you trust her?</p>
<p>Q12: Emotional/psychological: Do you think your relationship would be any different if you had met [x] face-to-face?</p>	<p>If yes: how would it have been different?</p> <p>If no: why not?</p>
<p>Q13 Benefits and disadvantages</p> <p>Can you think of any benefits you got from dealing with [x] over the telephone?</p> <p>Can you think of any benefits [x] got from dealing with you over the telephone?</p> <p>Can you think of any disadvantages for you because of dealing with [x] over the telephone?</p> <p>Were there things that would have been better for you face-to-face?</p> <p>Can you think of any disadvantages for [x] because of dealing with you over the telephone? Were there things that would have been better for them over the telephone?</p>	
<p>Q14 Mental image: Do you have a mental picture of [x]?</p>	<p>What do you think she looks like?</p> <p>Where do you think she is sitting when you speak?</p>
<p>Q15 Personal preference: If you could choose the type of legal service you got, would you prefer telephone or face-to-face?</p>	<p>Why?</p>
<p>Q16 Observer effect: When I listened in on your call, do you think it affected you or [x] at all?</p>	<p>If yes: how?</p>

<p>Additional information</p> <p>Q17: Is there anything that you weren't able to say in the interview, that you would like to mention now?</p>	<p>m. Anything to clarify?</p> <p>n. Anything to add?</p> <p>o. Anything you expected me to ask about but I didn't?</p>
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8. Topic guide and sample questions for face-to-face client interviews – 8.5.14

Interview topic guide: face-to-face clients

Research objective: to understand the client experience of being advised in person; to investigate whether and how it differs from being advised over the telephone from the client's point of view and to explore the impact of these differences on the client and the lawyer-client relationship

Introduction:

- Introduce self and research
- Explain re confidentiality
- Give approximate length of interview
- Confirm consent to interview and consent to record
- Ask for any questions

Client's background and current circumstances

- Family circumstances
- Housing situation
- Employment situation
- Health

[NB: Some information in the above may be gathered before the interview and it may not be necessary to repeat that information during the interview]

1: The case

Ask the client to explain about their case. Go over issues such as what it is about, when it started, when [lawyer/adviser – 'x'] first got involved.

2: Place

Ask client to describe how they found [x]. Explore why they chose a face-to-face service rather than a telephone service and whether they considered using a telephone service.

3: Open question

Ask the client whether they think there are any differences between face-to-face and telephone advice. Explore with the client the reasons for any differences they identify.

4: Comparison

Ask the client whether they get any services over the telephone only. Explore their experience of those services [**Suggestions:** other legal advice, bank/financial services, NHS Direct].

NB: After this question, all questions below are optional, depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues.

5: Ritual

Explore with the client what they did to get ready for the meeting with [x] that I observed. Discuss whether meetings are usually arranged in advance. Explore what their journey to [x]'s office was like and how they felt when they got there. Explore whether this is usual for them.

6: Lack of visual cues

Explore with the client what difference they think it made that they could see [x] during the interview. Explore whether they think it made any difference to their ability to explain themselves to [x], understand [x] or ask [x] questions. [Include any observations from the meeting.]

7: Explore how they think their appointments with [x] would be different if they happened over the telephone [in same terms as before].

8: Speed imperative

Ask client to think about the pace of their face-to-face interview with [x]. Explore whether the client was comfortable with the pace of the interview and how easy they found it to get their point of view across face-to-face. Referring to their telephone example, explore with the client whether they think the pace of the interview might be different over the telephone and what effect that might have on their ability to get their point of view across. [Include any relevant observations from the meeting]

Explore whether they think the time their interview took would have been any different over the telephone and also the time spent dealing with their case overall.

9: Power

Explore with the client how easy they find it to disagree with [x] face-to-face. Ask the client to consider how that might be different if they were dealing with [x] over the telephone. [Include any relevant observations from the meeting.]

10: Complexity/sensitivity

Ask the client whether they have ever found it difficult to speak to [x] over the telephone. Explore with the client why it was a problem on that occasion. Explore whether they would have preferred to do it over the telephone. [Include any relevant observations from the meeting.]

11: Emotional/psychological impact

Explore their relationship with [x] with the client. Cover issues such as trust and emotional support.

12: Emotional/psychological impact

Explore whether they think their relationship with [x] would be different if they had never met [x] face-to-face and the reasons why.

13: Benefits and disadvantages

Explore with the client any benefits for them and/or [x] over dealing with the case face to face

Explore with the client any disadvantages for them and/or [x] over dealing with the case face to face

14: Personal preference

Establish what method of service delivery the client would prefer if given the choice - telephone or face-to-face - and explore why.

15: Observer effect

Explore with the client whether they think my presence during their interview affected them or [x] at all and, if so, what effect it had.

16: Additional information

Give the client the opportunity to add to what they have already said, including anything they want to clarify and anything they thought I would ask about but haven't.

Topic guide: Sample questions for face-to-face clients – 8.5.14	
Question	Prompt
(If applicable) I recently sat in on your meeting with your adviser:	
Q1 Warm up: What is your case about?	When did it start? When did [x] get involved?
Q2 Place: Why did you choose a face-to-face service rather than a telephone service?	How did you find [x]? Did you consider using a telephone service?
Q3 Open question Do you think that there is a difference between getting advice face-to-face and getting advice over the telephone? If so, what differences do you think there are?	
Q4 Comparison Do you get any services over the telephone? Which ones? How do you find that?	Eg Legal advice, bank/financial services, NHS Direct
After this question, all questions below are optional depending on the time available, the topics that naturally arise and the inclination of the interviewee to explore the issues	
Q5 Ritual: Is there anything that you did/do to get ready for meeting [lawyer/adviser - x]?	Are meetings usually arranged in advance? How did you get to [x]’s office? How did you feel when you got there? Is that how you usually feel when you meet [x]? [‘I noticed in the interview’ - if applicable]
Q6 Visual cues: What difference do you think it made to your interview/meetings that you could see [x] when you spoke to her?	In terms of: j. Explaining yourself k. Understanding [x]? l. Asking [x] questions? [‘I noticed in the interview’ - if applicable]
Q7: How do you think your appointments with [x] would be/would have been different if they were on the telephone?	Same as Q5

<p>Q8 Speed imperative: How comfortable were you with the pace of your interview/interviews with [x]?</p> <p>Q8a (If applicable) Your interview took [x time] / How long was the interview? Do you think the time the interview took would have been different if it had been over the telephone?</p> <p>Q8b What about the time spent on your case overall? Do you think that would have been different if it had all been over the phone?</p>	<p>How easy was it to getting your point of view across? Would it be different over the telephone?</p> <p>Is a telephone interview faster/slower/the same?</p> <p>['I noticed in the interview' - if applicable]</p>
<p>Q9 Power: If you don't agree with something [x] says/said or does/did how easy is/was it to say so?</p>	<p>How does it compare to when you disagree with someone on the telephone? Is it easier/harder/the same?</p> <p>['I noticed in the interview' - if applicable]</p>
<p>Q10 Complexity/sensitivity: Have there been any times in your case when it has been difficult to speak to [x] about the case face-to-face?</p> <p>Can you tell me what happened?</p>	<p>Why was it difficult to speak to [x] about it in person?</p> <p>Would you have preferred to do it over the telephone? Why?</p> <p>['I noticed in the interview' - if applicable]</p>
<p>Q11 Emotional/psychological: What is your relationship with [x] like?</p>	<p>Is it a close relationship?</p> <p>Do you trust her?</p>
<p>Q12 Emotional/psychological: Do you think your relationship would be any different if you had only spoken to [x] over the telephone?</p>	<p>If yes: how would it have been different?</p> <p>If no: why not?</p>
<p>Q13 Benefits and disadvantages</p> <p>Can you think of any benefits you got from dealing with[x] in person?</p> <p>Can you think of any benefits [x] got from dealing with you in person?</p> <p>Can you think of any disadvantages for you because of dealing with [x]in person? Were there things that would have been better over the telephone?</p> <p>Can you think of any disadvantages for [x] because of dealing with you in person? Were there things that would have been better over the telephone?</p>	
<p>Q14 Personal preference: If you could choose the type of legal service you got, would you prefer telephone or face-to-face?</p>	<p>Why?</p>
<p>Q15 Observer effect: (if applicable) When I sat in on your meeting, do you think it affected you or [x] all?</p>	<p>If yes: how?</p>

<p>Q16 Additional information: Is there anything that you weren't able to say in the interview, that you would like to mention now?</p>	<p>p. Anything to clarify?</p> <p>q. Anything to add?</p> <p>r. Anything you expected me to ask about but I didn't?</p>
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Appendix D: Observation Schedule

Date:

Lawyer:

Client:

Anyone else present:

Place:

Face-to-face/Telephone

Start time:

End time:

Client vulnerabilities:

Tasks

- Enabling client story (CS)
- Lawyer questioning and filling in gaps(LQ)
- Lawyer advice/plan of action (LA)

(Using Sherr, 1986 & 2000 categories)

Topics:

Body language

[Body language = facial expressions, posture, hand gestures etc]

Face-to-face

- How does body language feature in the interview?
- When is body language used?
- How is it used?

Telephone-only

- Instances when the lack of body language affects the interview?
- Use of verbal cues as substitute?
- Use of body language – even though not seen?

Overall impression: Relaxed or tense?

Time	Task	Notes

<p>Speed imperative</p> <p>How does conversation flow?</p> <ul style="list-style-type: none"> • Are there any silences, pauses? How do they feature in the interview? • How relaxed do people seem? How naturally does information emerge? • What is the balance in terms of questioning and answering between lawyer and client? • Who speaks most? • How do they speak – pace, long or short sentences, level of interruptions? • How attentive do they seem to each other in terms of listening? <p>Overall impression: How fast?</p>		
Time	Task	Notes
<p>Ritual</p> <p>Social niceties – meet and greet, settling in period, goodbye</p> <p>Does that seem to have an impact?</p> <p>Overall: At ease or uncomfortable?</p>		
Time	Task	Notes

Understanding

Look out for:

- Repetition
- Misunderstandings
- Inattention/distractedness
- Missed opportunities (eg failure to probe)

Time	Task	Notes

Relationship

Who dominates the conversation?

How relaxed with each other do they seem?

Time	Task	Notes

Challenge Tension/conflict in the discussion Interruptions How are disagreements resolved? [Power]		
Time	Task	
Miscellaneous: Unanticipated occurrences of interest		
Time	Task	

Appendix E: Information letters and consent forms

Clients

1. Information for telephone advisers to give to clients – November 2013
2. Letter to clients from telephone service – December 2013
3. Letter/e-mail to clients – July 2014
4. Consent form – telephone clients
5. Consent form – face-to-face clients

Lawyers and advisers

6. Consent form – telephone advisers
7. Consent form – face-to-face advisers and lawyers

1. Information for telephone advisers to give to clients – 20.11.13

Research into legal aid: comparing telephone and face-to-face advice

Initial information for potential client participants – telephone services

[Organisation] is helping with some independent research into telephone advice and legal aid. The aim of the research is to make legal aid services better for people that get legal aid.

The research is being carried out by a researcher at the London School of Economics called Marie Burton. She would like to find out about how clients like you feel about getting legal aid advice over the telephone.

For the research, Marie would like to interview you about your experience of getting advice over the telephone. She can come and interview you at home or in whatever place suits you best. If possible, if you agree, she would also like to listen to one of our telephone conversations about your case.

Your name and personal details would remain confidential. Marie would use the information you give her in the final written report of her research, but it would all be anonymous. No one else would know that it was you.

I have agreed to be involved in Marie's research. It would help Marie a lot if you would take part in her research too.

I need your agreement to be able to pass on your details to Marie, so that she can contact you and tell you more about the research. At this stage, you are just agreeing to Marie being able to get in touch with you. Once you have spoken to Marie, you can decide whether or not you want to go ahead and take part in the research.

Note of client permission

Date:

Adviser:

This client has given permission for their contact details to be passed on to Marie Burton for the purposes of her research.

Name:

Address:

Telephone number:

E-mail:

2. Letter to clients from telephone service – 16.12.13

Date:

Dear [client's name]

Research into legal aid: comparing telephone and face-to-face advice

[Organisation] is helping with research into telephone advice and legal aid. The aim of the research is to make legal aid services better for people.

The research is being carried out by Marie Burton, a researcher at the London School of Economics. She would like to find out about how you feel about getting legal aid advice over the telephone.

Marie would like to interview you about your experience of getting advice over the telephone. She can come and interview you at home or in whatever place suits you best. If possible and you agree, she would also like to listen to one of our telephone conversations about your case.

Your name and personal details would remain confidential. Marie would use the information you give her in the final written report of her research, but it would all be anonymous. No one else would know that it was you.

I have agreed to be involved in Marie's research. It would help Marie if you would take part in her research too.

If you are interested in taking part in the research, please let me know and I will pass your details on to Marie, so that she can contact you. Alternatively, you can complete the form below and return it to me.

At this stage, you are just agreeing to Marie being able to get in touch with you. Once you have spoken to Marie, you can decide whether or not you want to go ahead and take part in the research.

Thanks very much.

Yours sincerely

[Caseworker]

[Organisation]

Research into legal aid: comparing telephone and face-to-face advice

Date:

Name:

Address:

I give my permission for my contact details to be passed on to Marie Burton for the purposes of her research.

Signed:.....

Telephone number:

E-mail:

3. Letter/e-mail to clients – 4.7.14

Research into legal aid: comparing telephone and face-to-face advice

Dear

My name is Marie Burton. I am a researcher at the London School of Economics. [Organisation] is helping me to carry out independent research into telephone advice and legal aid. The aim of the research is to make legal aid services better for clients.

I am writing to you, because you previously received some advice from [organisation] and you said you would be willing to stay in contact after your case ended.

For my research, I would like to find out about how clients feel about getting legal aid advice from [organisation]. That means, I would like to interview you about your experience of getting advice. I can come and interview you at home, by telephone or in whatever place suits you best.

If you take part in my research, your name and personal details will remain confidential. I will use information that you give me in the final written report of my research, but it would all be anonymous. No one else would know that it was you.

Please get in touch if you are willing to be involved in my research. To get in touch, you can call me on 07749 982290, e-mail me at [address] or send the form below to Marie Burton, [address].

Research into legal aid: comparing telephone and face-to-face advice

Date:

Name:

Address:

I am willing for Marie Burton to contact me about her research.

Signed:.....

Telephone number:

E-mail:

4. Consent form – telephone clients

Marie Burton

[Address]

Date:

Dear

Thank you for agreeing to take part in my research. I know you already have some information about this project, but this letter is to make sure that you know what your role will be in my research. At the end of the letter, there is a section where I would like you to confirm that you consent to taking part.

I am a researcher at the London School of Economics (LSE). I would like your help to make the legal aid service better for people who get legal aid like you.

I would like to interview you in person about your experience of receiving advice over the telephone. I am happy to come to your home or anywhere else you suggest to interview you. I expect the interview to last about an hour. I will also be interviewing your lawyer about their side of things. If you agree, I will record my interview with you.

If possible, with your agreement, I would also listen into telephone conversation between you and your lawyer/adviser. I will not be involved in the telephone conversation. I will stay silent and will not make any comments during the telephone conversation. I will make a record of this telephone conversation if you agree.

Any recordings I make will be kept confidential and stored securely.

I would like to reassure you that your identity will remain confidential at all times. I will use the information you give me in my final written report (called a 'thesis'), but it will be anonymous. When the report is approved and I pass my examination (called a 'PhD'), the report will be a public document and it will be available on the internet. Please note it will not be possible for you to be identified from any information in the report.

It is likely that I will write a report for [organisation] and other articles (not just my final 'thesis' report) using the information from my research with you. My final report may be turned into a book after it is finished. Some of the things that I have seen and heard in your meeting with your adviser or that you and your adviser have said in your interviews with me will be in these other documents, but it will not be possible for you to be identified from any of them.

I need your consent for you to be involved in this research. If you are willing to be involved, please fill in the form at the end of this letter. It is your decision, but it will help me a lot if you take part. If at any time during the research you have any questions or there is anything you are not sure about, please let me know and I will be happy to talk it over with you.

I look forward to working with you on this project. I hope you find it interesting.

Kind regards.

Marie Burton
(PhD student funded by the Economic and Social Research Council)

Consent section: to be completed and returned to Marie Burton

Name:

Address:

Telephone number:

I confirm that I have read and understood this letter and I give my consent to being involved in this project.

Signed.....

Name.....

Date.....

5. Consent form – face-to-face clients

Marie Burton

[Address]

Date:

Dear

Research into legal aid: comparing telephone and face-to-face advice

Thank you for saying that you will take part in my research. I know you already have some information about this project, but this letter is to make sure that you know what your role will be in my research. At the end of the letter, there is a section where I would like you to confirm in writing that you agree to taking part.

I am a researcher at the London School of Economics (LSE). I am doing research into legal aid. I would like your help to make legal aid services better for people.

With your agreement, for my research, I would like to observe a meeting between you and your adviser. I will not be involved in the meeting. I will not make any comments at all during the meeting.

I would like to also interview you in person about your experience of receiving advice face-to-face. I am happy to come to your home to interview you, or anywhere else that would suit you. I expect the interview to last about an hour. I will also be interviewing your adviser about their side of things.

If you agree, I will record my interview with you and also your meeting with your adviser. The records will be kept confidential and stored securely.

I would like to reassure you that your name and personal details will remain confidential at all times. I will use the information you give me in my final written report (called a 'thesis'), but it will be anonymous. When the report is approved and I pass my examination (called a 'PhD'), the report will be a public document and it will be available on the internet. Please note it will not be possible for you to be identified from any information in the report. No one else will know that it is you.

It is likely that I will write a report for [organisation] and other articles (not just my final 'thesis' report) using the information from my research with you. My final report may be turned into a book after it is finished. Some of the things that I have seen and heard in your meeting with your adviser or that you and your adviser have said in your interviews with me will be in these other documents, but it will not be possible for you to be identified from any of them.

I need your agreement for you to be involved in this research. It is your decision, but it will help me a lot if you take part. If you are willing to be involved, please fill in the form at the end of this letter. If at any time during the research you have any questions or there is anything you not sure about, please let me know and I will be happy to talk it over with you.

I look forward to working with you on this project. I hope you find it interesting.

Kind regards.

Marie Burton

(PhD student funded by the Economic and Social Research Council)

**Consent section: to be completed and returned to
Marie Burton**

Name:

Address:

Telephone number:

**I confirm that I have read and understood this letter
and I give my consent to being involved in this
project.**

Signed.....

Name.....

Date.....

6. Consent form – telephone advisers

Marie Burton

[Address]

Date:

Dear

PhD Research Project: Comparing face-to-face and telephone advice

I'm very pleased that you are willing to help me with my PhD research project. It is an important study of the recent changes to legal aid and I am grateful for your help. This letter is to obtain your written consent to be involved. Please complete the form at the end of the letter for this purpose.

As I have previously explained, I am a Law PhD student at the London School of Economics. My PhD is funded by the Economic and Social Research Council. My PhD supervisors are Professor Linda Mulcahy and Dr Jo Braithwaite. I am a mature student and I previously worked as a solicitor in social welfare law for many years.

My PhD project is a study of the differences between face-to-face and telephone advice, particularly in respect of legally-aided clients. This is because the recent changes to legal aid mean the majority of legal help under legal aid will be provided by telephone-only providers.

For my research, with your agreement, I will interview you about your experiences of giving advice face-to-face and over the telephone. I expect my interview with you to last about an hour. With your consent, I will record the interview.

In addition, with your and your client's agreement, I would like to listen into (and if possible record) a telephone conversation between you and your client.

Any recordings and transcripts will be confidential and stored securely. The only people with access to the recordings and transcripts will be myself and my supervisors. It is also possible that I will use a transcriber to type up the interview for me and they will also be bound by confidentiality.

Your identity will remain confidential at all times. I will use the information I obtain in my final thesis, but it will be anonymised. It is likely that I will write a report for [organisation] using this research material and also other articles that will be published before and after I finish my thesis. Once the thesis is finished and I get my PhD, my thesis will be a public document and it will be available on the internet. Another possibility is that my thesis will be turned into a book. It will not be possible for you to be identified from any of these documents.

I need your consent in writing in order to proceed. To confirm you are willing to be involved in this project, please complete the consent section at the end of this letter and return it to me. Please let me know if you would like a copy of the form for your own records.

I look forward to working with you on this project. I hope you find it interesting.

Yours sincerely

Marie Burton

**Consent section: to be completed and returned to
Marie Burton**

Name:

Address:

Telephone number:

**I confirm that I have read and understood this letter
and I give my consent to being involved in this
project.**

Signed.....

7. Consent form – face-to-face advisers and lawyers

Marie Burton

[Address]

Date:

Dear

PhD Research Project: Comparing face-to-face and telephone advice

I'm very pleased that you are willing to help me with my PhD research project. It is an important study of the recent changes to legal aid and I am grateful for your help. This letter is to obtain your written consent to be involved. Please complete the form at the end of the letter for this purpose.

As I have previously explained, I am a Law PhD student at the London School of Economics. My PhD is funded by the Economic and Social Research Council. My PhD supervisors are Professor Linda Mulcahy and Dr Jo Braithwaite. I am a mature student and I previously worked as a solicitor in social welfare law for many years.

My PhD project is a study of the differences between face-to-face and telephone advice, particularly in respect of legally-aided clients. This is because the recent changes to legal aid mean the majority of legal help under legal aid will be provided by telephone-only providers.

For my research, with your agreement, I will interview you about your experiences of giving advice face-to-face and over the telephone. I expect my interview with you to last about an hour. With your consent, I will record the interview.

In addition, with your and your client's agreement, I would like to observe (and if possible record) a meeting between you and your client.

Any recordings and transcripts will be confidential and stored securely. The only people with access to the recordings and transcripts will be myself and my supervisors. It is also possible that I will use a transcriber to type up the interview for me and they will also be bound by confidentiality.

Your identity will remain confidential at all times. I will use the information I obtain in my final thesis, but it will be anonymised. It is likely that I will write a report for [organisation] using this research material and also other articles that will be published before and after I finish my thesis. Once the thesis is finished and I get my PhD, my thesis will be a public document and it will be available on the internet. Another possibility is that my thesis will be turned into a book. It will not be possible for you to be identified from any of these documents.

I need your consent in writing in order to proceed. To confirm you are willing to be involved in this project, please complete the consent section at the end of this letter and return it to me. Please let me know if you would like a copy of the form for your own records.

I look forward to working with you on this project. I hope you find it interesting.

Yours sincerely

Marie Burton

Consent section: to be completed and returned to Marie Burton

Name:

Address:

Telephone number:

I confirm that I have read and understood this letter and I give my consent to being involved in this project.

Signed.....

Appendix F: Participating organisation case data

Table F.1

Physical disability and mental ill health

The tables below show the organisation's data for 2013/14 in relation to the most common categories of disability. These figures should be approached with caution, because face-to-face advisers can record more than one category of disability, whereas telephone advisers can only record one category of disability. Therefore the extent of disability will be over represented in the face-to-face client population in comparison to the telephone population. There are 1844 disabilities recorded for face-to-face clients, but only a total of 1285 of clients in this group report some form of disability.

Telephone: Housing and Debt		
Long Standing Illness Or Health Condition	402	12%
Mental Health Condition	274	8%
Mobility Impairment	136	4%
Total records	3235	100%
Face-to-face: Housing		
Long Standing Illness/Health Condition	538	18%
Mental Health Condition	819	28%
Mobility/Physical Impairment	239	8%
Total records	2957	100%

Table F.2

Advice outcomes

The table below shows the organisation's casework statistics for 2013/14 for advice outcomes in Housing cases. However, the number of 'unrecorded' items in the Controlled Work Housing category (626, 20% of the total) undermines the robustness of these figures:

2013/2014		
Outcome	Telephone (n2869)	Face-to-face (n3014)
Client advised and enabled to plan and or manage their affairs better	29%	25%
Client advised - taking action themselves or with 3rd party help	19%	2%
Client housed, re-housed or retains home	19%	36%
Matter stopped on adviser's recommendation	8%	0%
Matter concluded otherwise	6%	6%
Client referred to another organisation	5%	
Matter proceeded under other LAA Funding	2%	5%

Outcome not known/client ceased to give instructions	3%	2%
Other categories (eg other party action delayed/prevented)	6%	3%
Unrecorded	4%	20%
Total	100%	100%

Table F.3

Tenure

In this organisation, the data on tenure is captured differently for telephone and face-to-face advice, as reflected in the table below.

Telephone (CLA)			Face-to-face		
Owner-occupier (assumption all debt cases are mortgages)	480	15%			
unrecorded	1	0%	unrecorded	4	0%
Client has local authority Landlord	610	19%	LA Introductory	27	1%
			LA non Secure	99	4%
			LA Secure	302	11%
Client has other social Landlord	410	13%	RSL Assured	433	16%
			RSL Assured Shorthold	75	3%
			RSL Demoted Tenancy	1	0%
Client has Private Landlord	895	27%	Private: Assured	13	0%
			Private: Assured Shorthold	815	29%
			Private: Protected/Regulated	4	0%
			Tied Accom- Other	4	0%
Client is owner occupier	58	2%	Homeowner: freeholder	17	1%
			Homeowner: leaseholder	2	0%
Client is Landlord	5	0%			
Client is homeless	623	19%	No Tenure / street homeless	318	11%
			Excluded/unprotected occupier	243	9%
			Licensee/Occupier with basic protection	364	13%
			No tenure - squatting	31	1%
Client has NASS accommodation	19	1%			
Other	177	5%	Not known	17	1%
Total	3278	100%	Total	2769	100%