

Practice Note 1: Legal Advice by Telephone as a Response to the COVID-19 Pandemic

In response to the COVID-19 pandemic, many legal services providers to refugees and displaced persons have been forced to close their offices and provide services by telephone. Almost all legal service providers have previously used the telephone to communicate with clients. However, the current high demand for such services; exclusive reliance on telephone communication; and, demand for new services by telephone pose significant challenges for organisations. This Practice Note reviews the literature on the delivery of legal services by telephone ('telephone services'), including 'hotlines'¹ and 'telephone counselling'², and collates resources that might be of help in thinking through the use and expansion of telephone services.³

Access to telephone services

The global penetration of telephones (and now mobile phones and smart phones) has led to the development of a range of crisis hotline and telephone counselling services responding to a range of needs. Notwithstanding the lower levels of telephone penetration amongst refugees and displaced persons, a range of legal services have historically been provided by telephone, including information about asylum procedures, summary legal advice, receipt of complaints for further investigation, and signposting to other services.

Telephone services have been found in other sectors to remove some of the geographic

Four Key Considerations

- 1. Telephone services don't automatically mean increased access** Consider how your telephone services can be more accessible to individuals in vulnerable situations and those facing technological, social (including gender), linguistic, and economic barriers to access.
- 2. Telephone conversations take time** The lack of access to documents and in-person meetings means that telephone consultations will last longer and new techniques will be needed to establish a trusting relationship with clients.
- 3. Reconsider your systems** Managing a distributed hotline will require new systems for discussion and supervision of case management and revised data management protocols.
- 4. Providing telephone advice can be stressful** Pay attention to the wellbeing of staff as working from home, high workloads and separation from their clients and colleagues can cause significant stress and anxiety.

¹ There is no universal definition of 'hotline'. This practice note uses the term to refer to telephone advice responding to a specific crisis.

² 'Telephone counselling' generally is used to describe professional advice-giving over the telephone, often as part of a longer professional relationship.

³ There is limited literature on delivering legal services by telephone (as opposed to writing anticipating more advanced technologies, see for example Goodman, 2017; Susskind, 2008; and, Susskind & Susskind, 2015); this note draws from the larger literatures on medical, psychological, and domestic violence hotlines and telephone counselling.

and physical mobility barriers to access (Harris and Birnbaum, 2014); however, literacy, gender and disability barriers are not necessarily overcome, and often exacerbated, in a shift to telephone services for refugees (GSMA, 2019). Overall, the evidence suggests that individuals with physical, mental, linguistic or social characteristics which make it more difficult for them to manage their day-to-day affairs and which mean that they find it harder to cope when faced with problems are more likely to experience difficulties with using telephone-only services (Burton, 2018). Service providers should be sensitive to the level of technological literacy of their clients, particularly when more advanced technologies (video communication or chat services) are employed; counsellors should take precautions not to alienate clients and should present several options for clients to engage and contract for service (Elleven and Allen, 2004).

The pandemic is likely to heighten the risk of gender based violence (GBV) and exacerbate barriers to assistance by its survivors (UNHCR, 2020). Male members of the household may control access to telephones and may monitor communications. Collaboration with community-based health programmes responding to the pandemic can provide a ‘cover story’ for access to telephone legal services (or an intermediary for communication with survivors). Once a means of communication is established, the availability of female staff members answering general hotlines and the establishment of GBV-specific hotlines may mitigate some barriers to access; coordination with established refuges and a full and accurate understanding any local rules restricting movement (eg. exemptions from quarantine rules for responses to GBV) are necessary in order to allow survivors to make decisions based on accurate and up to date information.

(Not) choosing to use telephone services

The literature notes that non-legal telephone services often enable access for individuals reluctant to use in-person services (Alleman, 2002). However, in the current pandemic additional challenges will arise from telephone services being forced to serve even those who would (in ordinary circumstances) prefer in-person services. This is not unusual as the history of legal hotlines is marked by such forced shifts, often in response to demands for cheaper service delivery (Smith and Patterson, 2014; Burton, 2018).

Given a choice (which is currently absent with the pandemic), clients with more complex and serious problems prefer in-person meetings (Balmer et al., 2012). In legal matters, clients and advisors perceive that outcomes are better after in-person meetings (Patel and Smith, 2013; Smith et al., 2013) – though the literature from other types of professional telephone services is mixed about the actual (as opposed to perceived) impact of delivery of services by telephone on the outcome (Bennet et al., 2004). At the very least, where clients call a hotline while in crisis, they can immediately benefit from decreases in anxiety and are generally highly committed to follow-up plans of action to address their concerns (Kalafat et al., 2007).

The client relationship

“Relational, interpersonal qualities, such as empathy and trust” are critical to the lawyer–client relationship (Buck et al., 2010). This is particularly true of client-centred lawyering which gives

priority to the participation of the client and requires the lawyer to use their expertise to ascertain and then achieve, as much as is possible, the client's objectives (Binder et al., 2011).

Service providers need to be aware that telephone communication "lacks the same type of empathy that can be conveyed in face-to-face interactions" (Rawson and Maidment, 2011; Richards and Vigano 2013). A lack of verbal and non-verbal cues can leave the counsellor vulnerable to cultural insensitivity and unintentional discrimination (Mishna et al., 2013; Wiggins-Frame, 1998). The lack of non-verbal cues (Recupero and Rainey, 2005) and the often-short length of communications by phone, may be barriers to fully understanding the situation of clients (Wiggins-Frame, 1998; Haberstroh et al., 2007).

Obtaining detailed instructions and establishing a trusting relationship are more difficult in telephone services, though an advisor's pleasant manner, a deliberately less-controlled interview structure, and communicating the progress of the case can mitigate this difficulty (Burton, 2018). Clients may also be less likely to accept unpalatable advice when receiving it over the phone, given the weaker relationship with their advisor (Sommerlad and Wall, 1999; Burton, 2018).

Behaviour on the telephone

Telephone services can provide service users with a higher level of anonymity (Richards and Vigano, 2013; Ellison and Whyley 2012)). This may remove some concerns by users around bias and may also result in greater disinhibition, allowing clients to be more open and honest. However, anonymity may also prompt "role-play" (where individuals create a persona) (Gwinnell, 2003) and trolling (Strom-Gottfried et al., 2014).

Where asynchronous technologies are used (ie. chat services), the natural time delay can heighten anxiety for all participants (Richards and Vigano, 2013) and advisors may not respond quickly enough to the needs of clients facing crisis (Finn and Barak, 2010). Service providers should establish alternative means of service delivery where there are technological connection problems (Riemer-Reiss and Wacker, 2000), including gathering alternate contact details early in the call and articulating at the start of the call the protocol for re-connecting. Clients may run out of credit or face financial barriers to access that result in rushed calls; legal advisors may wish to offer a free "call back" service.

Confidentiality and security

Telephone services raise novel security issues. Organisations must ensure that advisors are able to provide confidential advice from a safe location. Advisors must also be aware that clients may not be in a location where it is safe to discuss all aspects of an issue fully. Telephone calls may also be subject to interception, from being overheard at either end of the call (Kemp, 2018) to State surveillance (United Nations, 2018). Refugees and displaced persons may be particularly mistrustful of telephone communications, worrying about phone-tapping and fraud (Burton, 2018).

Confirming identity, documenting appointment of counsel and determining capacity can be difficult or impossible over the phone (Reamer, 2013); opportunities to ask questions and obtain informed consent about courses of action are more restricted and limited than in a face-to-face session (Recupero and Rainey 2005). Professional regulatory bodies generally require the same high standard of advice regardless of the mode of delivery. For organisations, telephone services raise issues around quality control (and the risk of misrepresentation) by staff (Barak, 1999); feedback from clients about the effectiveness of the support received may also be less accurate (Beattie et al., 2009).

Interpretation and telephone communication

In some cases, legal advisors speak the same language as their clients – though, even then, there may be differences in dialect that impede communication. The language gap between client, legal advisor and the legal system is a chronic problem for those providing legal services to the displaced. Telephone services generally rely on interpretation that is either provided (i) simultaneously via a three-way call, or (ii) on site with either the client or advisor. With severe restrictions on local travel, the latter option is increasingly difficult (though family members and house-mates may continue to provide some interpretation ability either on site or by relaying concerns).

As a result of the goal-oriented nature of hotline communications in particular, interpreters are more likely (than in-person) to act as “independent agents who actively manage information needed to complete the [task]” (Oviatt and Cohen, 1992; Hsieh, 2006). While professionals frequently rely on “informal” interpreters, the use of these pose issues with respect to accuracy, lack of knowledge of (legal) terminology, and confidentiality (MacFarlane et al., 2008). In contrast, the use of “professional” interpretation has been noted by refugees signal a “responsibility to care” and solidarity with (and survival of) the larger (refugee) community (Phillips, 2013). As with other aspects of telephone communications, the length of calls with interpreters tends to be much (more than twice as) longer as without interpreters (Oviatt and Cohen, 1992). Legal service providers must recognise that the (personal and professional) lives of interpreters are also likely to be disrupted by the pandemic. Conversations are further disrupted by the inability to use non-verbal cues between participants, such as hand signals to clients to pause when interpreters need time to interpret what they have said. Where practical, video interpretation has been shown to improve client comprehension and recall (Lion et al., 2015). The organisational and programmatic and professional ethics issues noted below also apply to the management, supervision and conduct of interpreters.

Organisational and programmatic issues

The redeployment of legal services to delivery by telephone can have an impact on deliverables and staff activity and wellbeing. Consultations conducted solely over the phone will likely take longer (and be more tiring), due for example to advisors being unable to see documentation first hand and the additional time and effort needed to build trust with the client (Burton, 2018). A distributed hotline - where advisors are not at a central location - requires mechanisms to

coordinate staff and advice that is provided. This is particularly true at a moment when staff circumstances and local policies and practices can change rapidly. Organisations need to provide mechanisms for advisors to share strategies with and seek input from colleagues and supervisors; case management processes may also need to change to reflect the new working arrangements. Structured group discussion of cases is a common response to the risk of poor advice by telephone (Ernesater et al., 2012). In other sectors, hotlines have opened the door, in the long term, to the provision of support and advice by paraprofessionals (Rosenbaum and Calhoun, 1977).

Some hotlines have found that some people call frequently for inappropriate reasons. Suggested techniques for responding to such frequent callers include: limiting the number and duration of calls allowed; assigning a specific advisor to repeat calls; initiating calls to the client instead of waiting for (frequent) callers to contact the service; and, creating a specific management plan for each frequent caller. (Middleton et al., 2014).

Impact on staff

Providing advice by telephone may emphasise other skills less commonly used in in-person consultations, including working through intermediaries, and directing nonexperts in implementing responses (Broadhead, 1986). Staff shifting to telephone-only advice have expressed concerns about being less motivated (Burton, 2018). Although psychological detachment has been cited by lawyers as an advantage of telephone advice (Burton, 2018), such detachment has also been recently found to have longer-term negative consequences for psychological wellbeing (Avula et al., 2019). Working from home and the use of personal telephones for the provision of legal services can make it difficult for staff to draw boundaries between their personal lives and work, impacting on the professional relationship and the wellbeing of staff (Childress, 2000).

Professional Ethics

Professional ethical obligations to clients and professional standards of service are not decreased by the mode of delivery. Lawyers remain obligated to provide high quality professional advice regardless of whether the advice is provided in-person or over the phone. Furthermore, some (medical) professional bodies have mandated extra training requirements in order to be able to provide telephone advice (Proctor et al., 2002).

Service providers should be very clear about their personal and organisational identity in any telephone interaction as these may be less self-evident than when a client is visiting an organisation or where a business card is provided in-person (Goss and Anthony, 2009), particularly where clients may be new (such as is more likely in a hotline). Local professional regulatory bodies may restrict the provision of legal advice by phone; the location of staff and clients during telephone services may engage State regulation concerning the 'location' of civil society organisations and activities (for example, restricting an organisations to activities with a particular sub-national jurisdiction).

Clients must always be able to express concerns or raise complaints about legal services received (Nairobi Code, 2007). Organisations will need to adopt their complaints mechanisms to ensure access by clients to such mechanisms, including by providing an alternate phone number or name of a supervisor for such a purpose.

Works Cited⁴

Alleman, J. R. (2002). "Online counselling: The Internet and mental health treatment" *Psychotherapy: Theory, Research, Practice, Training*, 39(2), 199–20.

Avula, K., McKay, L., and Galland, S. (2019). *Amnesty International: Staff Wellbeing Review* (Amnesty International, London).

Balmer, N., Smith, M., Denvir, C. and Patel, A. (2012). "Just a phone call away: is telephone advice enough?" *Journal of Social Welfare and Family Law*, 34:1, 63-85,

Barak, A. (1999). "Psychological Applications on the Internet. A Discipline on the Threshold of a New Millennium" *Applied and Preventative Psychology* 8(4), 231 – 245.

Beattie, A., Shaw, A., Kaur, S. and Kessler, D. (2009). "Primary-care patients' expectations and experiences of online cognitive behavioural therapy for depression: a qualitative study" *Health Expectations*, 12, 45-59.

Bennett, L., Riger, S., Schewe, P., Howard, A., and Wasco, S. (2004). "Effectiveness of Hotline, Advocacy, Counselling, and Shelter Services for Victims of Domestic Violence: A Statewide Evaluation" *Journal of Interpersonal Violence*, 19(7), 815–829.

Binder, D., Bergman, P., Tremblay, P. and Weinstein, I. S. (2011). *Lawyers as Counsellors: A client centred approach (3rd edition)* (West Academic Publishing).

Resources for Managers¹

Operational guides and standards for hotlines

- ELRHA, [Hotline in a Box Toolkit](#) (2019)
- Missing Children Europe, [A practical guide for hotline operators](#) (2011).

Professional associations and regulatory organisations have begun to set standards on telephone and online advice:

- Kenneth Drude, [Standards and Guidelines Relevant to Telemental Health](#) (2013)

Research on refugees and technology, including mobile phone usage:

- UNHCR [Connecting refugees: How internet and mobile connectivity can improve refugee well-being and transform humanitarian action](#) (UNHCR, September 2016); and,
- GSMA [The digital lives of refugees: How displaced populations use mobile phones and what gets in the way](#) (2019).

⁴ A zipped archive of the full-text of works cited (each in PDF format) is available by email upon request to martin.jones@york.ac.uk.

Broadhead, R. (1986). "Directing Intervention from Afar: The Telephone Dynamics of Managing Acute Poisonings" *Journal of Health and Social Behavior*, 27(4), 303-316.

Buck, A., Smith, M., Sidaway, J., and Scanlan, L. (2010). *Piecing it together: Exploring one-stop shop legal service delivery in community legal advice centres* (Legal Services Commission, London: Legal Services Research Centre).

Burton, M. (2018). "Justice on the line? A comparison of telephone and face-to-face advice in social welfare legal aid" *Journal of Social Welfare and Family Law*, 40(2), 195-215.

Childress, C. A. (2000). "Ethical issues in providing online psychotherapeutic interventions" *Journal of medical Internet research*, 2(1), E5, 1 – 7.

Elleven, R. K., and Allen, J. (2004). "Applying Technology to Online Counselling: Suggestions for the Beginning E-Therapist" *Journal of Instructional Psychology*, 31(3), 223–227.

Ellison, A., and Whyley, C. (2012). *Debt advice channel strategy research volume two – The potential for channel shift* (Money Advice Trust, London).

Ernesäter, A., Winblad, U., Engström, M., and Holmström, I. K. (2012). "Malpractice claims regarding calls to Swedish telephone advice nursing: what went wrong and why?" *Journal of Telemedicine and Telecare*, 18(7), 379–383.

Finn, J. and Barak, A. (2010). "A descriptive study of e-counsellor attitudes, ethics, and practice" *Counselling and Psychotherapy Research*, 10(4), 268 – 277.

Goodman, J. (2017). "Legal technology: the rise of the chatbots" *Law Society Gazette* (20 March 2017).

Goss, S. and Anthony, K. (2017). "The Development of Ethical Guidelines for Online Counselling and Psychotherapy" in Langrial, S. U. ed. *Web-Based Behavioral Therapies for Mental Disorders* (Medical Information Science Reference).

GSMA (2019). *The digital lives of refugees: How displaced populations use mobile phones and what gets in the way* (GSMA).

Gwinnell, E. (2003). "Unique aspects of internet relationships" in Wooton, R. Yellowlees, P. and McLaren, P. (eds.), *Telepsychiatry and e-Mental Health*, (Royal Society of Medicine Press, London) 327- 336.

Haberstroh, S., Duffey, T., Evans, M., Gee, R. and Trepal, H. (2007). "The Experience of Online Counselling" *Journal of Mental Health Counselling* 29:3 269-282.

Harris, B. & Birnbaum, R. (2014). "Ethical and Legal Implications on the Use of Technology in Counselling" *Clinical Social Work Journal* 43(2), 133 – 141.

Hsieh, E. (2006). "Understanding Medical Interpreters: Reconceptualising Bilingual Health Communication" *Health Communication*, 20, 177–186.

Kalafat, J., Gould, M. S., Munfakh, J.L., and Kleinmann, M. (2007) "An Evaluation of Crisis Hotline Outcomes Part 1: Nonsuicidal Crisis Callers" *Suicide and Life Threatening Behaviour* 37(3), 322 – 337.

Kemp, V. (2018). *Digital legal rights for suspects: users' perspectives and PACE safeguards* (University of Nottingham, Nottingham).

Lion K., Brown J., Ebel, B., et al. (2015). "Effect of Telephone vs Video Interpretation on Parent Comprehension, Communication, and Utilization in the Pediatric Emergency Department: A Randomized Clinical Trial" *JAMA Pediatrics*, 169(12), 1117 – 1125.

MacFarlane, A., Glynn, L.G., Mosinkie, P.I. et al. (2008). "Responses to language barriers in consultations with refugees and asylum seekers: a telephone survey of Irish general practitioners" *BMC Family Practice* 9, 68.

Middleton, A., Gunn, J., Bassilios, B., and Pirkis, J. (2014). "Systematic review of research into frequent callers to crisis helplines" *Journal of Telemedicine and Telecare*, 20(2), 89–98.

Mishna, F., Bogo, M., Root, J. et al. (2012) "'It just crept in': The Digital Age and Implications for Social Work Practice" *Clinical Social Work Journal*, 40, 277–28.

Nairobi Code (2007). *Model Rules of Ethics for Legal Advisors in Refugee Cases* (Southern Refugee Legal Aid Network, Nairobi).

Oviatt, S. and Cohen, P. (1992). "Spoken language in interpreted telephone dialogues" *Computer Speech and Language* 6:3, 277 – 302.

Patel, A. and Smith, M. (2013). "Provision of Telephone-Based Advice Services: Summary of Findings on the Perspective of Advisors" (Legal Services Research Centre, London).

Phillips, C. (2013). "Remote Telephone Interpretation in Medical Consultations with Refugees: Meta-Communications about Care, Survival and Selfhood" *Journal of Refugee Studies* 26:4, 505 – 523.

Proctor, J., Hishberg, A., Kazzi, A., and Bellinger Parker, R. (2002) "Providing telephone advice from the emergency department" *Annals of Emergency Medicine*, 40:2, 217 – 219.

- Rawson, S. and Maidment, J. (2011). "Email counselling with young people in Australia: A research report" *Women in Welfare Education*, 10, 14-28.
- Recupero, P.R., and Rainey, S.E. (2005). "Informed consent to e-therapy" *American Journal of Psychotherapy*, 59(4), 319-331.
- Reamer, F. (2013). "Social work in a digital age: ethical and risk management challenges" *Social Work*, 58(2), 163-172.
- Reimer-Reiss, M. and Wacker, R. (2000). "Factors Associated with Assistive Technology Discontinuance Among Individuals with Disabilities" *Journal of Rehabilitation*, 66, 43 – 50.
- Richards D, Viganó, N. (2013). "Online counselling: a narrative and critical review of the literature" *Journal of Clinical Psychology*, 69(9), 994 - 1011.
- Rosenbaum, A., and Calhoun J. F. (1977). "The use of the telephone hotline in crisis intervention: A review" *Journal of Community Psychology* 5(4): 325 – 339.
- Smith, M. , Balmer, N., Miles, J., Denvir, C. , and Patel, A. (2013). "In scope but out of reach? Examining differences between publicly funded telephone and face-to-face family law advice" *Child and Family Law Quarterly*, 25(3), 253–269.
- Sommerlad, H. and Wall, D. (1999). *Legally Aided Clients and their Solicitor: Qualitative Perspectives on Quality and Legal Aid* (Law Society, London).
- Strom-Gottfried, K., Thomas, S., and Anderson, H. (2014). "Social work and social media: Reconciling ethical standards and emerging technologies" *Journal of Social Work Values and Ethics*, 11(1), 1–12.
- Susskind, R. (2008). *The End of Lawyers? Rethinking the nature of legal services* (Oxford University Press, Oxford).
- Susskind, R. and Susskind, D. (2015). *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, Oxford).
- United Nations (2018), *Report of the Special Rapporteur on the situation of human rights defenders* UN Document number A/HRC/37/51 (16 January 2018).
- United Nations High Commissioner for Refugees (UNHCR) (2020). *Gender-based violence prevention, risk mitigation and response during COVID-19* (20 March 2020).
- Wiggins-Frame, M. (1998). "The ethics of counselling via the Internet" *The Family Journal: Counselling and Therapy for Couples and Families*, 5(4), 328–330.

About this Practice Note

This practice note is the product of a collaboration between the **Access to Justice in Displacement (A2JD)** project of the University of York and **Asylum Access**. The goal of the collaboration is to support the response of providers of legal services to displaced persons to the COVID-19 pandemic. For more information on this collaboration, please see www.frontierofasylum.net/a2jd. The research for this practice note was conducted in March and April 2020 by Martin Jones.

This practice note can be cited as:

Jones, Martin (2020) *Practice Note 1: Legal Advice by Telephone as a Response to the COVID-19 Pandemic* (Access to Justice in Displacement Project, University of York, 15 April 2020) available online at www.frontierofasylum.net/a2jd.

The Access to Justice in Displacement project is supported by the UK government's Global Challenges Research Fund, the Centre for Applied Human Rights and York Law School of the University of York, and Hogan Lovells.

For further information, please contact:

Access to Justice in Displacement Project
York Law School and Centre for Applied Human Rights
University of York
York YO10 5DD
Tel: +44 (0)1904 325834
www.frontiersofasylum.net/a2jd or email martin.jones@york.ac.uk.