Practice Report

THE SILVER LINING IN THE BLACK CLOUD OF COVID-19

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Abstract

Little did we imagine that the effects of COVID-19 would ultimately make us a stronger and more accessible clinic. The sudden halt of providing in-person services clouded the entire University of Exeter clinical programme with uncertainty. However, we could not simply stop our clinical provision – we had existing clients that still needed assistance, as well as students who were taking the clinic as a module. Furthermore, we wanted to continue servicing the community. To consider converting to a remote service, there are fundamental questions a university clinical programme must address: Why does the clinic exist? What are the goals of the clinic and can they still be achieved by a remote service? This paper outlines the process of converting our in-person clinic to a remote service, by detailing steps taken such as developing a remote operating student training manual, establishing a new case triage

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system, utilising Zoom sessions, and developing a user focused website. It reflects upon the process of finding effective ways of communicating and collaborating with students and clients, while managing and mitigating the potential barriers to technology. Both the successes and the challenges taught us more about the human connection and the human experience. Ultimately, the lessons learned from a swift shut down to reopening a fully remote clinic made us better organised, better communicators, and more accessible for clients. Once we safely return to in-person meetings, the value gained in providing a remote service will remain embedded in our offering, committing us to a hybrid service of in-person and remote meetings to provide a better service to our clients. For the next academic year, our strengthened service enables us to move seamlessly between a fully remote service and our new hybrid model with minimal disruption, should COVID-19 continue to cast a dark cloud.

Introduction

A relationship of trust between a lawyer and a client is something that is developed through a series of positive interactions. These interactionns tend to begin with an in-person meeting. Through this initial meeting the lawyer establishes a rapport, sets the client at ease, and instils confidence in the client of the lawyer's ability to assist the client with their legal problem. Being in-person for the initial meeting means there is a human connection. The client and the lawyer can read each other's body language,

assess emotions, and respond through a sort of human experience. What happens when the in-person meeting is replaced with a phone call or video on a screen? The dynamics change in such a setting. You can't hand someone a tissue through the screen or the phone.

This report examines the uncertainties faced by the University of Exeter's Community Law Clinic caused by the black cloud of Covid-19. It outlines the trials and tribulations of quickly moving from an in-person service to a fully remote service and the unexpected benefits and lessons learned as a result of this challenging time.

Background

The University of Exeter Law School's Community Law Clinic offers a free legal advice service in the South West region of England. 150 third year law students, supervised by lecturers/legal practitioners and supported by volunteer legal practitioners, provide aid in areas such as immigration, housing, employment, consumer, benefits, and environmental law. Over the last year, the clinic assisted over 200 clients.

In February 2020, the clinic was at a point of needing to expand. The clinic had a strong foundation, but demand was far exceeding resource. We needed more staff and a physical presence in the community. We had secured accommodation in a university building in the city centre and were scheduled to have our opening the first week of

May 2020. This would allow us to expand our hours and bring in more practitioners to assist. However, late March arrives, the pandemic was peaking, and like the rest of the country, the university went into lockdown. All in-person classes ceased, and campus was closed. Moreover, many future funding projects were put on hold, which included the funding for the space we had secured and the hiring of another solicitor and clinic coordinator. We had ongoing cases coupled with national and international students needing to get home. This necessitated an immediate assessment of our current situation and the viability of our service moving forward.

Our duty of care both for our students and our clients provided us, as a university clinic, with an interesting dynamic. Our main priorities at that time were (1) making sure the students could get home and get settled, and (2) making sure that there was not any detriment to the clients due to our service. Thankfully, we were in a position where we could continue with our current clients and we were able to wrap up those cases swiftly and effectively.

Once we dealt with the immediate concerns, we needed to assess whether our in-person service could effectively be converted to a remote service. A main driver for setting up the clinic was to provide a much-needed community service in an area of dire need. The provision of a consistent service was important to us.

We began the process by asking ourselves several questions: Who are our clients? Was there an alternate provider for these individuals? How did these individuals come to us? The clinic had formed several key partnerships with regional organisations such

as the judiciary, solicitors' firms, barristers' chambers, and advice charities, which enabled us to provide a more comprehensive approach to services in the region. After an assessment, we realised that most of our clients came to us through referrals from these key partnerships. The referring organisations were either over capacity or couldn't provide legal advice. Our service was invaluable to the local community. We also noted that many of our clients had internet access or at least telephone access. Initially, we may see them in-person, but after this initial contact, most of our communications were electronic. Next, we asked ourselves, if we were to convert to a remote clinic, can we still achieve the same access and same level of assistance? We built strong relationships and good rapport with our clients. We needed to be able to keep that bond and trust with the community.

Our initial questions focused on the clients, but then we needed to ask ourselves would students still benefit from this changed service? We are a university and needed to evaluate the educational needs of our students. In a remote service, would students still gain the skillset and in the in-depth critical thinking and learning obtained from being part of an in-person clinic? Believing more firmly that "[l]earning the law in isolation of the social context in which it operates can be seen as a significant gap in legal education which leaves those emerging into at least the solicitor's branch of the profession inadequately equipped to perform competently as practising lawyers"[4] it became clear that we needed to continue. Operating a remote clinic during

4 Lawyers and Clients: The First Meeting (Modern Law Review, Vol 49, issue 3, May 1986)

a pandemic, when so many firms and chambers also needed to operate remotely, was an opportunity to give our students a social context to their learning experience.

Next, we set out to determine how a remote clinic would operate. We began with a list of things that we needed: another solicitor, a full-time clinic coordinator, and reliable technology for interviews. The technology must be reliable and accessible for us as supervisors, for our students, and for our clients. One of the key things for our clients' accessibility is that we needed something that was accessible by video or by phone. After hiring a new solicitor and a coordinator, we turned to our documentation. This needed to be updated with our new way of operating. It should incorporate step-by-step instructions of how our new service operated, how to find us and how to connect through the technology. The student training had to be completely revamped with updating all training manuals and techniques. Training to interview on a virtual platform is different than training for an in-person platform. Establishing rapport and trust through the phone or video is a whole new skillset. Even us supervisors had something to learn.

We also knew that if we were going to have clients connecting with us more virtually, then we needed to build a website. A website that was client-focused for clients to come and get practical answers, as well as being able to directly engage with us. We also needed to inform those partners, that usually referred clients to us, of our new service. The referrers needed to know exactly how to refer clients to us and how we would operate so that they could prepare clients for this new type of service.

The redesign was the easy step. We then held practice training sessions and practiced with the technology to see how it would function. We created training videos for sessions that we would normally deliver live. We even made a training video tour of our case management system. Digitising most of the practical elements of the clinic meant that we could focus on the human connection side in our online client interviewing training We found quite easily that we were able to convert to a remote clinic almost seamlessly and that was something quite unexpected.

The Conversion

The new remote operating clinic has a very streamlined operating system. Probably, more streamlined than before going remote. Clients come to us through email either directly or through a referral. Once we receive that email, the case is triaged by one of our internal solicitors. This triage is used to determine if this is a case suitable for students. It is still just as imperative that we are taking on cases that are not only beneficial for students but also manageable by students. One immediate benefit of running the remote clinic is that we can put more time and consideration into the triaging of cases compared to what we normally would. Although it is rare for us to reject a client, when we do, we can refer them out to a more tailored referral due to the ability to take time and research who may be able to assist them. Typically, a client would just come into the in-person drop-in clinic without a chance for us to assess the suitability or who might be a good referral for them.

After triage, we decide whether that case needs to be scheduled for an interview prior to receiving written legal advice, or it might be that someone is only looking for some information that we can give quite quickly through email. Next, we assign students and supervisors, and an appointment is booked on Zoom for those seeking legal advice. If it is a case requiring only information by email, the students will begin working on it immediately. After the virtual appointment, the students proceed with preparing our standard client care documentation, any necessary continued client communication, followed by their research, and finally provide a one-off advice letter advising the client of their legal position and the suggested next steps. Depending on what those next steps are, we may offer to assist the client further. We continue to monitor client and student feedback to ensure that moving to a remote clinic has still allowed us to maintain the high level of client and student satisfaction.

Engaging with a remote clinic is quite different than a client being able to just walk into somewhere and talk to someone and for the students in how they explain things or do things in-person. We found that doing everything remotely was not only working just as efficiently, but in fact, enabled us to expand our service despite not being able to move into the city premises. We were indeed still managing to establish that trust and confidence, it is just a bit harder earned.

Challenges

Moving to a remote service has been a positive experience, however it has not been without its challenges. Managing technological barriers for our clients to ensure they can access the service effectively all while continuing to receive a high standard of service was essential. Moreover, a remote service continues to raise questions with regards to whether the students are able to fully develop their skills and gain the necessary experience of client interviewing and advising ordinarily obtained via the invaluable experience of meeting with clients in-person.

Technology

A major hurdle to overcome with a fully remote service is access for both the clients and the students. Both need adequate internet provision and equipment to be able to participate in online meetings and corresponding solely by e-mail and other remote communications such as Zoom and Microsoft Teams.

Some of the issues we have faced as a clinic when attempting to arrange a meeting with clients are inadequate internet speeds, the lack of a device which can connect to the internet, or indeed no internet at all. In our experience these barriers have been particularly difficult to overcome with elderly clients, clients with disabilities affecting their ability to communicate and otherwise vulnerable clients. We needed to overcome these hurdles to ensure we were able to provide the same level of service to every client.

It is extremely difficult to remove the barriers to technology for a fully remote service especially in a short timeframe. We used Zoom for our client meetings which most of our clients were able to successfully use with or without their cameras on. Using this platform meant we had the ability to arrange for clients to call into the meeting using a mobile phone or landline without the need to connect to the internet. Clients asking for straightforward advice often asked for advice by e-mail only with no meeting. This meant all communication was by e-mail, which we were happy to provide in cases where this was appropriate. In deciding which cases were appropriate for email communication only, we considered whether it would affect the level of service, the complexity of the issues involved and the type of assistance the client was seeking. This has gone someway to alleviate access issues, but some clients will always prefer an in-person meeting and will not feel comfortable having a meeting in any other form.

We were fortunate that all students on the clinic had access to the necessary technology allowing them to easily transition to remote working along with the supervisors. We also always have students working in pairs, so if one loses internet connection or is having issues, the other can take over. We purchased a clinic mobile phone to enable our coordinator to safely make calls to clients and protect her privacy. We once had a client lose internet connection and a supervisor was able to call the client by phone using the country's 141 option which hides someone's phone number and put the call on speaker next to the computer so that the students and the client

could still hear each other. A remote service means needing to be creative and adaptive.

As a clinic we were of course concerned about data protection and internet security with all meetings being on-line and we had to quickly decide the best forum for meetings taking into consideration our duty of confidentiality towards the client and duty of care to the students. We were already obliged to and did follow the university's procedures and practices. Our case management system could already be accessed remotely by the students, but we reviewed and reorganised our files to ensure that both accessibility and confidentiality could be maintained as far as possible. Upholding our regulatory duties in such times is paramount.

Client and student relations

We know as practitioners how important it is to build a rapport with a client when you meet with them. This builds trust and confidence in your ability as an adviser and enables the development of a successful professional relationship between client and lawyer. Whilst our students are not legal professionals, we always instil in them the need to remain professional. This can be something much harder to achieve in a remote setting where informality can creep in or participants can accidentally speak over one another and there is a risk the human connection can be lost. Our students interview in pairs and so we recognised that it is much harder for them to communicate with each other in order to manage the interview. We covered these

issues as part of our training prior to re-opening the clinic as a remote service. Always having one person to keep that human experience going is crucial.

A remote service also throws up problems with being able to read body language and picking up on subtle cues. It is more difficult to react to the client and gauge their emotions when you are not in the same room. Again, it is difficult to build rapport and develop trust when you are not in the same room and able to look the client in the eye. The fear for us as supervisors is that the students are not gaining experience at the same level of human connection with the client. Video calls go some way to help with better reading a client, but this is not an option for everyone. Regular checking in and reframing issues for the client through more frequent email communications enabled students to attempt to gauge where their client was at with a dispute. Time often needed to be given to some clients who became upset and students were encouraged to demonstrate empathy with the client's predicament as well as empathy with the COVID-19 situation where this too had had an impact on the client's wellbeing.

In addition to the physical barriers to technology, our experience was that many clients were not confident in using an on-line platform such as Zoom and many have struggled to follow the instructions to access meetings. This added an extra layer of stress and anxiety for many clients and an extra issue to worry about in addition to their legal case for which they had come to us for assistance. We ensured that instructions were sent out to clients in good time, we were relaxed and reassuring

about any missed or late-starting appointments, and we had our intern on hand at the beginning of meetings in case a client needed help joining an online meeting. We developed and regularly reviewed our instructions to ensure they kept up with any changes made by the provider or the University to accessing Zoom calls (such as having to have a registered account) and we did our best to accommodate any alternative means if the technology we were using was not working.

A serious worry for the clinic supervisors was and continues to be that students may feel less supported during client meetings and through their research and writing their advice to clients when all contact is remote. The usual practice as detailed above was for supervisors to be in the room when students met with clients meaning students could quickly ask questions of the supervisors and the supervisors could pick up on the body language of the students to ascertain if there were any problems or questions arising. There is the ability on the remote meetings on Zoom to enter into a private chat with the students if issues arise but this risks interrupting the student's concentration which can leave them feeling flustered and can affect their confidence during a remote meeting. In addition, students are not having the in-person contact with their peers and supervisors. They may feel less able to bounce ideas off each other and there is the real risk that students may start to feel isolated working remotely. We regularly check in with our students and encourage them to virtually meet with their group and us as supervisors to discuss cases. We give open and constructive feedback

to them, whilst praising them for their efforts under the difficult circumstances which they have had to work.

Another problem the clinic faces is that we cannot see who is in the room with the client and often a client does not turn on their video function during a Zoom. This means there is no way of knowing who is present with the client which raises the question of who is listening to the meeting and the advisers cannot tell if there is any issue of undue influence or duress. Although the clinic does not record meetings this does of course not mean that clients are not recording the meeting on a separate device, which we have no control over. This does raise the question of liability on what is said. However, we already mitigate this through our established practice of the students only providing advice in writing after the meeting as this is also a challenge in an in-person meeting should a client later say they were given incorrect advice. It is nonetheless still a point that needs to be considered together with the potential impact this has on our duty of care to our students and our clients.

Together with the issue of who may be present with the client there is also the issue of the student's environment when they are taking part in a remote meeting. Students may be in shared houses or be living with younger siblings at home which may not be conducive to providing an ideal environment allowing the student to concentrate on the meeting. We emphasise to our students that it is important they take client meetings in rooms where they cannot be overheard to ensure confidentiality is maintained.

Student Learning and Development

As supervisors and university lecturers a big question for us is whether running a fully remote clinic provides students with the best opportunity to learn. We were concerned about whether students would get the same experience that in-person interactions with clients provide and whether their development of client interviewing skills would be limited. Coupled with this, the limited ways to communicate with their peers and supervisors has changed the way students are taught. All this raises the question as to whether the students are feeling supported and confident in their work and has an impact on us building rapport with our students, which is more of a challenge. We offer students drop-in Zoom meetings to discuss any concerns or issues and we seek to regularly check in with them. It is however much harder to gauge and obtain engagement remotely but through regular training sessions and the provision of a variety of opportunities to engage, we hope this support mirrors an in-person meeting with us. The need for a human experience and connection is vital in a student to teacher relationship, as well. We have found that many students are more open about what they are struggling with over email than in-person, but we recognise each student is different and that some may struggle to approach us in a remote setting.

Benefits

Despite the numerous challenges we faced in moving to a fully remote service, there are many benefits, some of which are quite surprising and many that we would seek to carry forward in a hybrid service.

Accessibility

Now that the clinic offers a remote service, we have been able to reach clients that would not have attended an in-person meeting. This could be for a variety of reasons including anxiety and physical practicalities.

Remote working results in less travel by the clients, students and supervisors reducing the carbon footprint of the clinic. No travel saves time for all parties and eliminates the risk of clients being late to appointments or not showing altogether due to traffic or other travel issues.

Student Learning and Flexibility

On-line meetings allow for flexibility. The clinic can offer a range of times and dates compared to the former more rigid appointment times. Additonally, remote communication with students provides for more flexibility and greater availability of supervisors. Both new arrangements make us more accessible to students to support them and encourage their development, while meeting clients' needs.

When you develop such things as social presence and supportive discourse, research has shown that on-line learning produces just as good results as in-person learning.[5] We believe we have done this with our frequent communication and increased availability. Turning most of our training into videos allows students to revisit and refresh, as needed. However, this presence and discourse does not necessarily consider the developing of the less conventional skill of interviewing and dealing with clients. This is a skill that needs to be nurtured overtime and an in-person meeting is always going to be needed to perfect it. Creating our online clinic community enables us to provide for the flexibility of this service and the changing needs of our students, as well, as our clients. In many ways, it allows us to keep trying to get it right.

Now more than ever, it is important that we maintain our standard reflective piece as a form of assessment for our students to maintain that supportive discourse and presence. In Brayne, Duncan and Grimes, learning from experience "occurs not in the doing but in the reflection and conceptualisation that takes place during and after the event."[6] This reflection impacts the way students learn from what they are doing and ultimately, we gain the critical thinkers we set out to make. The lack of in-person time cannot be compensated by reflection only, but the reflection can give students the opportunity to understand the needs and differences in the approaches. Once they can

5 Swan, K., Garrison, D. R., & Richardson, J. C. (2009). A constructivist approach to online learning: The Community of Inquiry framework. In C. R. Payne (Ed.), Information technology and constructivism in higher education: Progressive learning frameworks. Hershey, PA: IGI Global, 43–57.

6 Brayne, H., Duncan, N. &. Grimes, R. (1998) Clinical Legal Education: Active Learning in Your Law School (London, Blackstone Press Ltd).

go back to in-person meetings, they will be able to take the lessons of remote operating with them to make them even better lawyers.

Another extremely important part of the clinic is ensuring the safety of students and applying a strict risk assessment. Meeting clients on-line and not in-person does significantly reduce the risk of potential harm to students. In addition, if the clinic experiences a difficult client, the meeting can easily be terminated by the supervisor or student, which is not so simple at an in-person meeting.

Adaptability

Now that the clinic has successfully moved to remote working, if another full lock down is imposed due to Covid-19 or another problem arises where in-person meetings are not possible, the clinic is fully prepared to continue to provide a high level of service with no interruption ensuring the continuation and longevity of the clinic. For our students, we realised that creating independent learners at the same time as critical thinkers is a challenge. We continue to challenge the students, with minimal guidance from ourselves, to find the information that they need. As we tell them, "be comfortable with the unexpected".[7] We can guide them to feel comfortable with the challenge of their newly required independence. They are gaining the valued skill of being capable to adapt quickly.

7 Balachandra, L. et al., 'Improvisation and Negotiation: Expecting the Unexpected' (2005) Negotiation Journal 415

Going forward

We discussed the challenges and benefits of a clinic offering a fully remote service compared to an in-person service. Going forward we now can offer both an in-person and a remote service to cover all needs and practicalities. Such a hybrid service will allow the clinic to overcome the hurdles and barriers to technology we have experienced with a solely remote clinic and take advantage of the benefits of both a remote and in-person service. The new hybrid service will benefit the community since it offers greater accessibility to our services and should the necessity arise to go fully remote, the clinic is fully prepared to continue to seamlessly provide, without interruption, a high level of service.

This new way of working will also enhance the University of Exeter School of Law clinic module and provide greater opportunity for students to be able to develop their practical skills using different forums and technologies and broaden their understanding and experience. They now have the skills of operating a remote clinic to take forward with them to firms and chambers. These skills will no doubt be desirable for future employers in the legal sector.

Conclusion

Remote working was thrust upon us as a clinic. The experience showed us how vitally important the human connection is between client and lawyer and teacher and

student. Although, we have navigated ways to attempt to alleviate the loss of the in-person human connection, through technology and frequent communication, there is a real risk that a fully remote service will never be able to replicate the level of human connection as an in-person service.

The uncertain effects that the dark cloud of COVID-19 cast on our clinic ultimately made us a stronger and more accessible clinic. Our shared human experience of the pandemic meant we all needed to find ways to adapt. For the clinic, our silver lining was recognising our ability to adapt, reflect, and take forward the newly presented opportunities. Ultimately, we remembered, virtually or in-person, we all want to be heard and to have a chance to tell our story. That is the real human connection.