

ACCESS TO LEGAL REPRESENTATION IN POLICE STATIONS DURING COVID-19 RESTRICTIONS

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RESEARCH BRIEFING, OCTOBER 2021

This policy briefing concerns research investigating the impact of COVID-19 restrictions on the legal representation and advice for suspects of crime. It is part of a wider project on [The interviewing and legal representation of crime victims and suspects using digital communication methods](#). We surveyed 127 legal professionals across England and Wales to establish their personal views. Our results found there has been a continuation of legal assistance during restrictions, but often using remote technology to communicate with clients. Respondents in this study believed they adapted well to the restrictions, with the exception of some difficulties relating to the use of technology and dealing with vulnerable groups.

KEY FINDINGS

- **Reduced attendance at police stations.** Remote legal assistance during the COVID-19 pandemic became the 'normal' or even the 'preferred' way in which lawyers and accredited representatives in our sample (hereafter referred to as 'legal professionals') provided legal assistance to clients in police interviews. However, the majority stated that they did so for their own safety, reporting few problems with such an approach.
- **Positives changes.** Our respondents believed there were various positive impacts of providing remote legal assistance. They cited quicker progress of the case and reduced delays, particularly between arrest and interview, and less travel.
- **Problems with representing clients in police interviews.** Our respondents did not have serious concerns about the quality of assistance they provided remotely. However, many recognised several aspects that were more challenging: (i) either seeing or hearing their client; (ii) reviewing materials presented by the police; (iii) building relationships (and rapport) with their clients, and; (iv) having adequate influence over the process.
- **Suspects' vulnerability.** Respondents reported their client's vulnerability was the key factor in deciding whether to give advice face-to-face (F2F) or remotely. Most legal professionals in our study agreed that children and vulnerable suspects were more negatively affected by the lack of F2F legal assistance, but some appeared to believe that it is appropriate for legal advice to be provided remotely even in these cases.

WHY ARE THESE FINDINGS IMPORTANT?

Prior to the COVID-19 pandemic, legal representation and advice in England and Wales was almost always conducted F2F. The subsequent lockdown and social distancing measures forced the majority of police station work to move to remote operations / technologies. Our findings show that despite these changes, legal professionals have continued to provide legal assistance to clients in police custody 'as often', or 'even more often', than before the first lockdown. On the whole, our respondents (from their own perspectives) believed they adapted well to remote working, suggesting that most stages of the police interview were possible to carry out this way.

However, remote legal assistance was also said to be associated with significant challenges, including not being able to hear or see the client, reviewing materials presented by the police, and building a rapport with the client. These are important components of legal advice and, as such, these findings should be taken into consideration when deciding whether remote or F2F assistance is to be provided. In relation to vulnerable suspects, respondents in our study considered vulnerability as one of the main factors when deciding whether to give F2F advice or via remote means. Many felt not being there *in person* was detrimental to being able to identify a client's vulnerability. However, despite this point, our respondents still felt that providing assistance to vulnerable groups was sometimes appropriate.

RECOMMENDATIONS

Although this study provides useful information surrounding remote legal assistance, further research is needed before offering concrete policy recommendations. However, based on the results of this study:

- **If remote legal advice must be given, video-conferencing should be prioritised over audio-only. This may help with highlighted difficulties of reviewing materials and building sufficient rapport with clients.**
- **F2F assistance should be provided to children and adults whose vulnerabilities have been identified.**
- **F2F assistance should be strongly favoured in all other circumstances given the practical difficulties in identifying vulnerabilities**

RESEARCH OVERVIEW

BACKGROUND

The COVID-19 pandemic has forced Governments around the world to implement changes to the way that suspects receive legal advice prior to being interviewed by the police. Indeed, legal professionals had to adapt to accommodate social distancing measures. Given that there is (to date) very little empirical research on the impact of remote versus F2F legal representation of suspects, the present study aimed to understand the experiences of legal professionals and their perceptions of risks and benefits of providing remote assistance to suspects in police custody. Thus, the focus of this policy briefing is to provide findings from a survey of legal professionals across England and Wales regarding their personal experiences of providing legal advice to those who were to be interviewed by the police (as suspects of crime) following lockdown restrictions.

THE POSITION SINCE THE UK'S FIRST LOCKDOWN IN MARCH 2020

Overall, the majority of respondents in this study (75%) have provided legal assistance to clients in police custody once a week or more, and for most of them (around 70%), this has been about 'as often' or 'more often' than before the first lockdown began.

USE OF REMOTE TECHNOLOGY

As part of legal assistance given, over 55% of our respondents reported using audio and video remote technology for their police station work in 'almost all cases', and a further 21% reported using it 'more than half of the time'. For pre-interview consultations particularly, the most common choice of remote technology was 'audio only' (i.e., no camera), with around two-thirds of participants reporting to use this method in 'almost all cases'. For the main interview itself, around a quarter of respondents used audio only, with just under a third using full video-conferencing in 'almost all cases'. Remote technology was viewed as offering substantial confidentiality in communication with the client, with around three-quarters reporting minimal or no problems using it. However, the quality of such interactions can sometimes be poor, with over a third of respondents stating they had problems with the ability to see or hear their client 'more than half of the time'. This finding raises concerns about the overall quality of legal assistance provided and the interaction that can be offered to clients using remote technology.

More than 75% of our respondents agreed that it was possible to carry out various stages of the interview remotely 'most of the time', including:

- Obtaining information about the reason for a person's arrest;
- Conducting a confidential pre-interview consultation;

- Intervening during the interview;
- Suspending the interview to advise their client accordingly;
- Consulting with the client confidentially after the interview.

More than half of participants stated that providing advice remotely had neither a positive or negative impact on: (i) gathering information to prepare for later stages of criminal proceedings; (ii) ensuring that suspects understood their rights, and; (iii) protecting suspects' rights in police custody. During police interviews, 42% of our respondents reported that they had difficulties in reviewing materials effectively in more than half of the interviews they attended remotely (with some saying that this was always the case). Forty-six percent of respondents stated that providing remote legal advice had a negative impact on building a relationship with the suspect, and around 53% said that remote advice had a negative impact on identifying potential vulnerabilities. These concerns were also highlighted by several respondents in their open text, qualitative responses, stating that:

- "...the ability to calm or reassure a client is more challenging";
- "...the client suffers from not having the reassurance that a physically-present solicitor gives during the interview", and;
- "...the severity of intoxication, any vulnerability or mental health condition/episode can be misleading with audio only".

ASSISTING VULNERABLE CLIENTS

Despite our respondents reporting that they frequently experienced difficulties identifying vulnerability when giving advice remotely, they also reported this to be a main concern. That is, 89% of respondents stated that consideration of their client's vulnerability was either 'somewhat' or 'highly relevant' when advising their client whether to consent to remote legal assistance. That said, when asked about specific vulnerable groups, not all respondents agreed that it was inappropriate to assist young children or vulnerable adults remotely. Just over half of respondents stated that providing remote legal assistance to children aged 10 to 14 years was 'always inappropriate', and around a third reporting that remote legal advice was 'always inappropriate' for clients with mental illness, learning disabilities, Autism Spectrum Disorders (ASD) and those with any other vulnerabilities.

In addition to vulnerability, when advising the client on whether to consent to remote legal assistance, various other aspects were viewed as relevant by our respondents. Just over half stated that: (i) familiarity with the client and/or the case; (ii) the client's prior experience with police interviews, or; (iii) the impact on time in custody were 'somewhat' or 'highly relevant' when advising whether to consent. Three-quarters considered their own safety to be 'highly' or 'somewhat' relevant when deciding whether to give F2F or remote advice, but only around a quarter considered their travel and cost savings to be 'highly' or 'somewhat relevant' when advising whether to consent to remote legal advice.

FURTHER INFORMATION

For more information on the overall project, please visit our website [HERE](#) or:

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