
Interviewing and advising

2.1 Introduction

This chapter deals with the skills of interviewing and advising clients. In this chapter we focus particularly on

- the purpose of the initial client interview;
- the structure of an effective client interview;
- preparation for the interview;
- appropriate client care;
- listening and questioning techniques;
- providing appropriate advice and information;
- establishing a professional relationship with the client.

2.2 What are interviews for?

The purpose of interviews is to get and give information and decide what you are going to do with the information you have got. It is also an opportunity to establish and maintain high standards of client care. We cannot overstate the importance of first impressions that clients get from face-to-face meetings.

Although we are dealing principally with interviewing and advising clients, remember that you will also have face-to-face meetings with other lawyers, other professionals, witnesses and other parties, where your interviewing skills will play an important part. Whoever you are meeting, all your interviews will have a similar underlying structure.

When you interview clients you will usually be aiming to

- (a) help your client identify precisely what they want from the situation;
- (b) gather information in order to identify ways in which the client's aims can be achieved;
- (c) help your client to reach decisions about the most appropriate way to get what they want; and
- (d) create a feeling of confidence in your client as to your competence and commitment to their case.

2.3 How important is non-verbal communication?

Building a relationship of trust with your client is essential if you want to achieve these aims. This is not only a matter of the words you use, but also of the non-verbal behaviours you display. Moreover you need to be confident that you are accurately reading your client's non-verbal behaviour.

Researchers seem to agree that about 65 per cent of oral communication is made non-verbally; some would argue as much as 80 per cent.

Non-verbal communication (NVC) consists of a combination of posture, gesture, facial expression, relative position and touch. While the words you use convey information, your NVC communicates mood, attitude and emotion. If you want an example of the power of NVC you need only look at the early days of the cinema, where long and complex stories were told on screen by silent actors with only very limited on-screen written words.

While researchers agree about certain NVC signals being universal: smiling, frowning, scowling, etc., others are culturally determined. So signals like the thumbs-up, the V-sign and degrees of proximity are interpreted differently in different cultures.

We would suggest that you behave naturally (after all it takes professional actors years of training to alter their body language at will) but be aware that your NVC may be misunderstood by people from other cultures. Watch carefully for signs that your client has understood your intended message. If you are in any doubt, ask.

2.3.1 Clusters, context and congruence

Like all communicative behaviours, NVC behaviours should not be seen as individual, isolated signals.

As in verbal communication, NVC will involve clusters of behaviours: that is there will be several behaviours which all contribute to the message.

Try this exercise.

Sit upright on a chair with your legs tightly crossed. Put one arm across your waist with your hand resting in the crook of the elbow of your other arm. Raise this other arm towards your face, with your index finger against your cheek and your chin resting on your thumb. Your middle finger goes across your mouth.

What does this posture convey to you?

We found this example (along with many others) in Allan and Barbara Pease's book *The Definitive Book of Body Language* (London: Orion Books, 2005). If you want an overview of NVC this is a good place to start.

What we see here is a 'cluster' of non-verbal behaviours which all combine to reinforce the non-verbal message. The person's posture, positioning of arms, legs, hands and fingers, combined with facial expression, all contribute to the sense that this is a person listening critically to what is being communicated to them.

Of course, what we infer from observing a person's NVC, even in a cluster of behaviours, cannot be interpreted in only one way. A person with arms crossed tightly across the body, trembling, with their gaze to one side may well be experiencing terror. If we were to see someone pointing a gun at them, or threatening to hit them, then we could be reasonably sure that our inference was correct. If they were alone, standing outside in the cold wind and rain, then we would see this behaviour as expressing discomfort in

the cold. Perhaps observing the same cluster in a hospital A&E department, we would probably see it as indicating pain.

The point is that there is no one-to-one correlation between NVC behaviours and how we should interpret them. The context is equally important. We also have to take *congruence* into account.

By congruence, we mean that the NVC behaviours are consistent with the other aspects of communication in that interaction. If two people are shouting, and their NVC is angry and aggressive, we are entitled to infer that they are angry and aggressive. If the same scene involved the participants' laughing, we would have to interpret it differently.

However, the strength of the message from NVC is many times stronger than that from words alone. Pease remarks on a patient of Freud's who initially spoke positively about her marriage, whilst unconsciously slipping her wedding ring on and off her finger. Later discussions brought out her underlying unhappiness in her marriage.

2.3.2 Prosody

As well as the words we use and the body language, there is another way of adding to our meaning when we speak. This is the use of grunts, sighs, ejaculations; in other words, non-word sounds. In addition, English is rich in the subtlety of its intonation and emphasis.

Take this sentence:
 The cat sat on the mat.
 Now, put the emphasis on 'cat'.
 The *cat* sat on the mat. What question does this answer?
 You've probably come up with something like: What (or what animal) sat on the mat?
 Now change the emphasis.
 The cat *sat* on the mat.
 This answers the question: What did the cat do on the mat?
 One more change:
 The cat sat on the *mat*.
 Question: Where did the cat sit?

Combine all this with pauses, changes in pitch, rhythm and stress and you have what we call prosody. All of these things—words, body language and prosody—create an infinite range of subtle meanings which we are very comfortable with in our own language. It's much more difficult for speakers of other languages to pick up on these things.

The important thing to remember about non-verbal behaviour is that it is produced and 'read' largely unconsciously. This is not to say that we can't become aware of how our NVC affects others and, over time, make changes.

While you are learning, you can take the opportunity of seeing yourself on video in client interviews, negotiations, etc. You can get feedback from tutors and fellow-students.

Try these exercises:

EXERCISE 2.1

- (a) Carry on a brief conversation with a partner and describe your feelings when you are
 - (i) sitting too close for comfort
 - (ii) sitting too far apart for comfort.

What counts as too near?

What is too far?

- (b) Choose another member of your group.
- (i) What was your first impression of this person?
 - (ii) What caused you to form that impression?
 - (iii) Do you think your first impression was right?
 - (iv) If not, what do you think gave you that impression at the beginning?
 - (v) How much was to do with NVC?

Discussion point:

What are the implications of mistaken first impressions for the practising lawyer?

2.4 How should you prepare for an initial client interview?

Write down the main ways in which you think an interview with a client would be different from an interview with another professional (eg, a social worker, a police officer, a DTI official, a medical specialist).

We think some of the main differences would be:

- (a) Other professionals will have a detached and analytical view of the situation and will not be so emotionally involved as a client.
- (b) They are not running any financial risk in participating.
- (c) You might expect a high degree of shared knowledge about the way cases proceed, standards of proof, timescales, cost, etc.
- (d) Other professionals will be more likely to understand legal terminology in their own area of expertise.

You may well have thought of other differences. The implications of understanding these differences are important for the way you prepare for an initial client interview. You cannot make any assumptions about the client's knowledge, about the emotional impact that pursuing a case might have on the client, about the nature or level of financial or other risk the client is willing to accept. You don't even know whether the problem the client is coming to you with is capable of a legal resolution. Often all you have is a general indication of the client's concerns, from some initial contact between your organisation and the client. How the matter proceeds depends on your skills as an interviewer.

2.4.1 Preparing the environment

If you were a client who wanted to explore possible solutions to a problem you had, what minimum expectations would you have about where the interview took place?

As an absolute minimum, we would want the following:

- (a) To speak in private without our conversation being overheard by others in the room, passers-by, people in an outer office, etc.
- (b) Not to be interrupted by other people, telephones ringing etc.
- (c) To have enough time to discuss the matter without others wanting that room, for example.
- (d) To have the solicitor's full attention.
- (e) To sit in reasonable comfort.
- (f) No physical barriers between us and our solicitor to impede communication.
- (g) Not to be kept waiting.

The bare minimum, then, would appear to be a comfortable, quiet room where you won't be disturbed for the duration of the interview and a room that enables you to be as formal or informal as you and the client feel comfortable with.

2.4.2 Preparing yourself

You have an appointment with a client, Mrs Tyler, who is coming to see you about an accident she has had at work. How would you prepare yourself for the interview?

A word of warning! Don't assume that this really is the client's problem. You won't know until you have carried out the interview and have had the opportunity of exploring her concerns in detail. The information you have is merely a starting point. You may therefore decide that there is not a lot of point in researching the law in any great depth. So what should you do?

One thing you might begin with is to find out if this client has used your firm before. If so, you may be able to get some information about her and about other issues the firm has dealt with. You might also speak to any of your colleagues who have met this client previously. The more information you can garner about your client, the better prepared you will feel. However, in many cases you will know virtually nothing.

What you can plan is the interview structure, so that you can come at the main issues quickly, professionally and comprehensively. For example, there are some common features to any client interview. The client must have the opportunity to say what he or she needs to say. You need to provide advice on the legal issues. You also need to alert the client to the financial implications of taking on the case and confirm that the client wants to instruct you.

In order to ensure that nothing of importance is left out, we suggest you use the WASP approach to planning, structuring and carrying out your interview. WASP is an acronym which breaks the interview into four parts. It stands for

- (a) Welcome;
- (b) Acquire information;
- (c) Supply information and advise;
- (d) Part.

2.5 How does the WASP approach work?

2.5.1 Welcome

It is critically important to get this part of the interview right. It may very well be the first meeting the client has ever had with a member of your firm. It may even be the very first meeting with a solicitor. Make sure that when your client arrives they are greeted and made comfortable and that you do not keep them waiting. In our experience, many students refer to this process as the 'meet, greet and seat' part of the interview.

At this stage it is useful to let your client know what to expect from the meeting. You may wish to tell them

- (a) the purpose of the meeting—that is, to get details of the situation from your client, give legal advice, discuss options and provide information on costs etc.;
- (b) information on the service levels your firm provides, such as how frequently the client can expect to be updated on the progress of their case. We discuss this in more detail in the 'S' part of WASP.

EXERCISE 2.2

Work with a partner. One of you takes on the role of the solicitor, with the other role-playing Mrs Tyler.

- (a) Practise the welcoming phase of the interview up to the point where the solicitor begins to ask about the client's problem. Remember to arrange an appropriate environment as far as you can.
 - (b) Discuss what went well and why and what worked less well, and why.
 - (c) Switch roles and carry out the welcome phase again.
 - (d) Based on your reflections and feedback, write a brief set of guidelines for opening an interview.
 - (e) Compare your guidelines with those of other pairs. What do you find?
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Typically in this kind of exercise, participants discover the importance of things like

- (a) the impact of non-verbal communication on the interaction. This includes points such as whether or not someone smiled; the degree of eye contact; physical proximity and touch;
- (b) appearing confident;
- (c) appearing sympathetic and friendly;
- (d) speaking naturally and sincerely (hard to plan for, but it comes with experience);
- (e) not hiding behind a desk; and
- (f) not making your introductory remarks too long, so that several minutes elapse before your client has the chance to say anything.

The 'Welcome' part of the interview is very important. It gives you the opportunity to make a good first impression on your client. It affords you the opportunity to let your client know what to expect from the interview and to establish an appropriate level of formality for the proceedings. Before moving on to the 'Acquire' part of the interview, your client should be comfortable and ready to discuss their concerns with you.

2.5.2 Acquire information

You do this by inviting your client to tell you why they have come to see you and by listening to what they say.

2.5.2.1 Letting the client talk: questioning techniques

Ideally, you want your client to tell you everything in their own words. Some clients are perfectly capable of doing this with little prompting. Others need to be encouraged. Developing your questioning technique gives you the best chance of getting at all the relevant information. Most interviews fall on to a continuum. At one end we have what can only be described as an interrogation; at the other a free-flowing two-way conversation. The closer to a conversation your interview is, the more effective it is going to be. In an interrogation, one of the parties is an unwilling participant. In a free-flowing conversation, both parties are willing to communicate and do so openly. In the former, the agenda is totally controlled by the interrogator, whilst in the latter, the topics discussed are often wide ranging.

The danger is that if a client is unforthcoming, it is tempting to close questions down, or use leading questions, so that the interview tends more towards the interrogation than the conversation. Similarly, an inexperienced interviewer may move towards interrogation in order not to lose 'control' of the interview process.

How might this be avoided? The main focus of an interview is to get your client talking, explaining things in their own words and expressing their feelings. There are a number of techniques of questioning to help us in this.

To encourage your client to speak:

- (a) Use open questions. These are the 'what, why, how, when, where' questions. Such questions are impossible to answer in a single word or with a shrug. The respondent has to frame the answer in their own words. For example, 'What happened? Why did you think that?' etc.
- (b) Invite your client to talk. For example, 'Tell me about . . .', 'I'd like to hear a little more about . . .', 'Please go on', etc.
- (c) Use sympathetic body language such as a smile and a nod to encourage your client to go on speaking.
- (d) Summarise periodically to check your understanding and encourage your client to correct any misunderstandings; 'So the situation so far is that . . .', 'Have I got that right?'
- (e) Don't be afraid of silence. Sometimes interviewees need time to think through an answer, or to find the right words to explain themselves. The effective interviewer gives them that time. The ineffective interviewer jumps in and fills the silence with another question to encourage the client to say something. Often, this new question is a closed question which attempts to make the client's answer as easy as possible, but which restricts the available answers and reduces the opportunity for your client to use their own words. Like any conversation an interview is based on rules about taking turns. A silence on the part of one person may understandably, but wrongly, be interpreted as an indication that they have finished their turn or want to miss it. The temptation is to help them out and allow them to miss it. Often, silence means the client is struggling to find the right way to say something (eg, something embarrassing or something which doesn't show them in a good light or something which is painful for them to talk about). Don't therefore think that silence is a vacuum that you have to fill. Your client will almost always find the words to say what they want to say.

Things that will discourage your client from talking are:

- (a) Using closed questions. Closed questions are questions which require only 'yes' or 'no' or 'don't know' answers, or require very specific information, such as: 'You say you suffered an accident at work?'; 'Was this recently?' Too many questions like these will only move the interview forward uncertainly and may positively discourage your client from putting things in their own words. Not only that, but the initiative passes to the questioner, who is tempted to frame the situation in his or her own terms and construct an interpretation which differs from that of the client.
- (b) Using multiple choice questions. These are like closed questions in that they allow a very restricted range of possible responses. These are questions like: 'Did you report it to the supervisor or the manager?'; 'Are you after compensation or your job back or both?' The objections to this are the same as for closed questions.
- (c) Using leading questions. These questions expect a particular answer, eg, 'I don't expect you'll want to go back to that job, will you?' The problem with this type of question is that it suggests to the client that you have formed an interpretation of events which may not be the same as theirs, but which you are inviting them to agree with. They may well feel that the situation is being taken from their control.

Try to avoid leading questions. Closed and multiple choice questions have their uses though. For example, if you want to confirm your understanding of an event or an issue, they are perfectly permissible. Or, when you have heard the main thrust of the client's story, you can use a series of closed questions to probe the details. 'You've told me that you reported the accident. Was that to your manager or to someone else?'

EXERCISE 2.3

- (a) Read the dialogue below.
- (b) Identify the question types used by the interviewer.
- (c) Say how each question affected the interaction.
- (d) Could the interviewer have made the interview more effective? If so, how?

Interviewer: Please come in and take a seat, Mrs Tyler.

Client: Thank you.

I: How can I help?

C: Well, I don't really know where to start.

I: I gather you had an accident at work. Is that it?

C: Yes, that's right.

I: What sort of work do you do?

C: Well, I've hardly worked at all since the accident.

I: I see. But what exactly was your job?

C: I was a clerical officer for Social Services.

I: Had you been there long?

C: Eight years?

I: Right. Tell me about the accident.

C: It's hard to know where to start really.

I: When exactly did it happen?

C: Last December, about a fortnight before Christmas.

I: Right. Let's get the details, then. Tell me exactly what happened.

C: We were having an office move and my supervisor told me to help her move the photocopier from the table it was on, to just outside the lift, so the removal men could collect it. We had to manoeuvre it through the door.

- I: It's not normally part of your job to move equipment, then?
 C: Well, no, not really. But everyone was chipping in that day.
 I: Not everyone had an accident, though, did they?

You probably agree with us that this is not a particularly good way to get the information you need because:

- The lawyer doesn't allow the client to tell her story but, because she is a little hesitant, he tends to jump in with closed questions and diverts the client from the story she wants to tell. He might have been better advised to remain silent on some occasions to allow his client to gather her thoughts and frame her own answer.
- In his eagerness to get at some of the detail of the case, the interviewer doesn't seem to acknowledge his client's likely feelings in this situation. For example, he doesn't enquire about her injuries, or whether she is still in pain. He gives the impression of wanting to follow his (legal) agenda and may well forfeit the client's confidence as a result.
- The lawyer didn't seem to have thought about how best to get the information from the client.

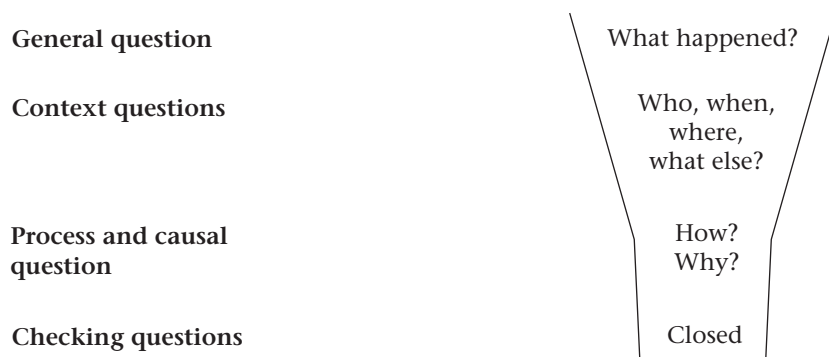
2.5.2.2 Funnelling

He might have used a questioning technique known as 'funnelling'. This technique is used to develop the discussion in greater detail. If the lawyer in the exercise had been listening carefully to Mrs Tyler he would perhaps have picked up several cues, which he could have followed up. Funnelling would have helped him follow up.

The funnelling process works like this:

- Ask a general, open, preferably factual question (what happened?).
- Follow this up by asking about the context of the event (who, when, where, what else?).
- Then you may find it useful to ask about the dynamics of the event (how, why questions).
- Finally you can confirm your understanding by using closed questions.

The idea behind funnelling is to work from the general to the detailed and it can be shown as follows:



In some interviewing situations you will find it helpful to use the 'inverted funnel'. In the inverted funnel the sequencing of questions begins with very closed questions and gradually opens out to embrace wider issues. This may be useful in advising a client to decide on action to be taken. You begin by exploring the key issues first and build up the broad picture from the mass of detail. Once you have a clear picture of the facts—the

estate of a client in a will case, for example—it may then be appropriate to consider the options that the client has in mind.

Let us see how the solicitor in the exercise might have funnelled had he been more receptive to what his client was saying. In a case like this, of course, the inverted funnel approach is not appropriate. We have no foreknowledge of the details of the case and need to get a general picture of what happened before we can focus on relevant issues.

We can start at the point where the solicitor asks Mrs Tyler to describe the accident:

I: Right. Tell me about the accident.

C: It's hard to know where to start really. I (pause) We were having an office move and my supervisor told me to help her move the photocopier from the table it was on, to just outside the lift so the removal men could collect it. We had to manoeuvre it through the door (pause). It was very heavy and we had to twist ourselves to get it through the door. We eventually got it through the door and outside the lift. I felt a bit of a twinge in my back then, but thought it was just having to carry something.

I: Can you describe exactly how you carried it through the door?

C: Well (pause) we had to unplug the machine and one of us took each end. Then we had to turn it because it would only go through the door one way. I took one end and Fran the other but I had to go backwards through the door (pause). I took most of the weight because I'm bigger than Fran. Then, because it wouldn't go through the door with me holding it, I had to put one hand on top and the other underneath. That meant me having to twist a bit to get it through and look where I was going.

I: What was Fran doing at this point?

C: Well she was on the other end. She didn't have to twist or anything because she was walking forwards.

I: Why is it that you and Fran did this when there were removal men around?

C: The office was a bit cluttered because we were all turning out our stuff, so Fran said we should move the photocopier while we still had a gangway to the lift.

I: You said Fran is your supervisor?

C: Well, more of an office manager, really, but she used to be my supervisor. We've worked together for a long time.

I: Were you normally expected to lift equipment?

C: Well, we usually move small things if we have to.

I: Have you ever been asked to move a photocopier before?

C: No.

I: And have you ever been asked to move anything that heavy before?

C: No, never.

There are clearly many more points an interviewer might have picked up, such as the nature of Mrs Tyler's injury, when she first noticed it, etc. Alternatively, he might have begun another line of questioning using the same funnelling technique. The critical factor in funnelling is the need to listen to what your client is telling you. Only when you do this can you ask further questions effectively. This may sound obvious, but interviews are often less effective than they might be because the interviewer is a poor listener and doesn't pick up the issues to follow up.

2.5.2.3 Active listening

Listening is an active process and it is about analysing the information you receive and fitting that information onto the framework of your understanding. As someone speaks, you are constantly checking and modifying your understanding of the situation. As a lawyer you have developed certain cognitive frameworks which enable you to understand, for example, the law of negligence or employment.

Active listening is therefore an important part of the process of building an initial perception of the client's legal position. For example, when Mrs Tyler first tells you she has had an accident at work, the legal framework of negligence will spring to mind, and you will be listening for clues in her story of evidence of breach of duty of care, causation, etc. Your questions will be directed towards verifying that you are using the right framework and modifying that framework so that it applies specifically to this case. For example, part of your framework on the law of negligence will tell you that you have to prove causation. This would lead you to ask Mrs Tyler whether she had previously suffered any back problems, or whether anything has happened to her since the accident which might also account for her condition.

Bolton in *People Skills* (Brookvale, New South Wales: Simon and Schuster, 1987, p. 30) discovered that 'even at the purely informational level, researchers claim that 75% of oral communication is ignored, misunderstood or quickly forgotten. Rarer still is the ability to listen for the deepest meanings in what people say.'

So how can you improve your active listening skills?

We can consider active listening as having three components:

- (a) checking what the client is saying against your frameworks of understanding;
- (b) following up points that you hear by appropriate questioning; and
- (c) checking that you have understood by summarising and reflecting back what you have heard.

EXERCISE 2.4

Do this exercise with a partner:

- (a) Both spend a few minutes preparing to talk about a controversial issue that you have strong feelings about.
 - (b) Give your talk to your partner.
 - (c) Your partner then restates what you have said, reflecting and summarising as accurately as possible. Your partner should try to reflect not only the information in the talk, but their perception of your feelings about it.
 - (d) Then make any necessary corrections to ensure you have been accurately understood.
 - (e) Now swap roles and repeat the exercise.
 - (f) Finally, feed back to each other (and the workshop) what you have learned about active listening.
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So far we have concentrated on getting information from the client which will help us understand the factual and legal aspects of their case. However, although this is important for the client, there is often also the need to have their feelings of anger, distress, disappointment, outrage, anxiety, etc., acknowledged. The effective interviewer does

this through the process of active listening, by paying attention not only to the factual information that is being transmitted but also to the complex of emotions that lies behind what is said. Often when a client persists in emphasising something which to the lawyer appears irrelevant, it is because this represents or touches on strong feelings about the issue.

You perceive that a client you are interviewing is very distraught, and that you are finding it difficult to get the information you need in order to advise them. How do you deal with this?

The main point to remember is that when we feel strong emotions, we need to express them. Until they have been brought out, very little else can be accomplished. Clients may be looking for you to acknowledge the strength of these feelings. It is important that you do this if you want to make progress with the client. One way of dealing with this is to confront this openly with your client rather than ignore it or pretend it is not happening. Look at the next exercise.

EXERCISE 2.5

Read the three short dialogues which follow and

- (a) say whether the interviewer responds satisfactorily and, if not,
- (b) how the responses could have been improved?

Dialogue (A)

Mrs Tyler: Apart from the first couple of weeks after the accident, none of my friends at work have kept in touch with me and I don't know why.

Interviewer: You sound upset about that.

Mrs Tyler: Well, I am a bit. We were all very friendly, not just the staff, but the managers as well. They just seem to ignore me now. Even when I see some of them in town, they pretend they haven't seen me. One of them, Jamie, crossed the road last weekend so he wouldn't have to talk to me. It's got to the point now where I don't even feel that I can phone them.

Interviewer: Have you tried phoning any of them recently? Is there anyone in particular you could phone? At least then you could find out if they really are ignoring you.

Mrs Tyler: I could try, I suppose.

Dialogue (B)

Mrs Tyler: Apart from the first couple of weeks after the accident, none of my friends at work have kept in touch with me and I don't know why.

Interviewer: It's probably nothing. Does your employer know you've contacted a solicitor? If they do, your friends may have been told not to talk to you.

Mrs Tyler: (Upset) But they're supposed to be my friends.

Interviewer: (Gets up) Look, let me get you a cup of tea. Then we can get on.

Dialogue (C)

Mrs Tyler: Apart from the first couple of weeks after the accident, none of my friends at work have kept in touch with me and I don't know why.

Interviewer: Yes, that's very upsetting. Now about the accident. When exactly did you report it to your employer?

Opinions about the relative merits of the approaches demonstrated above may vary. A great deal depends on your own feelings of confidence in handling situations like this. Our view is that the first represents a good try at letting the client have her feelings acknowledged without being driven by the interviewer. However, you may wish to reflect on how the interview might be brought back to more legally relevant issues.

The second dialogue shows a sympathetic response, but it is one which tries to explain away the client's feelings by providing a possible rationale for the behaviour of her former colleagues. It appears to make matters worse. The solicitor then offers his client a cup of tea, enabling him to escape from the conversation for a while. His parting remark is a clear indication that he wants to get away from what he feels are the more irrelevant aspects of the interview.

The third dialogue is a clear indication that the interviewer doesn't regard what his client is saying about her feelings as important or relevant. This is assuming he has picked up the cues from what Mrs Tyler has said.

Active listening ensures that you tune into your client's concerns and anxieties as well as the information you need to give good advice. It enables your client to put things in their own words and enables you to help them identify their goals. Failure to listen actively makes it likely that your client will not be able to uncover all their concerns and consequently your advice may be flawed.

2.5.2.4 Using checklists

Some people suggest you prepare checklists to use during the interview. We urge you to use these with great care.

Before the interview with Mrs Tyler, you prepare a checklist of questions, knowing that she wants to tell you about an accident at work. Some of the questions you might have noted are:

- What's the problem?
- What happened?
- Where did the accident take place?
- When did it take place?
- Who is your employer?
- What is the injury?
- Had you received any training?

These may all be legitimate questions to ask, but equally they may cause you problems during the interview. What problems could you envisage?

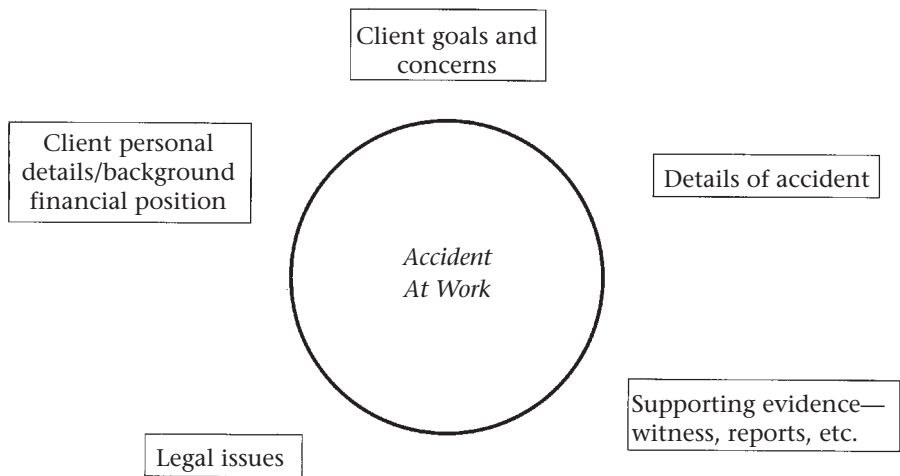
We can think of two problems with a checklist like this. First of all, you are assuming that Mrs Tyler is the victim of the accident at work and she therefore wants to bring an action in negligence against her employer. You are already thinking breach of duty and damage. You may well be correct, but you do not yet have enough information to be able to decide. It is possible, for example, that Mrs Tyler is an employer who would like to dismiss an employee who has caused an accident at work. Alternatively, she might be coming to see you because she thinks she is being victimised because of an accident she was involved in.

The second problem is that a list like this imposes an agenda on an interview which may prevent you from actively listening to your client and picking up cues from what she says and the way she says it. The danger is that you take a 'one question, one answer' approach and fail to follow up and funnel your questioning to probe the detail. For example, in one LPC assessment, the interviewer was asked to handle the purchase of a small terraced house in a run-down part of town. Instead of listening carefully to the client, the interviewer, following his prepared checklist, asked: 'Are there any fishing rights attached to the property?'

Both of these problems may prevent you from helping your client to identify her concerns and objectives and reach appropriate decisions about how to proceed. Moreover, you are hardly likely to instil a sense of confidence in your abilities!

Nevertheless, inexperienced interviewers tell us they like to have a checklist with them to make sure they cover all the ground. Furthermore, they say it helps them keep control over the interaction. A skilled interviewer is able to listen carefully, think quickly and continuously modify their perception of the situation. This is a very sophisticated set of skills and many students lack confidence in demonstrating the level of skill needed to interview effectively. Consequently they feel that the more preparation they can do in the form of checklists, the more confident they are that they will have something to fall back on if they lose concentration or dry up.

We see interviewing principally as a listening, not a questioning, activity. While we would not wish to completely discourage the use of checklists, we would suggest that rather than a list of questions, you frame them as a series of topics to be raised. In the past we have found it useful to write these topics not as a list, but in a circle. This means that you are not pre-empting or prioritising the order in which issues occur but you are making sure you cover all the issues you want to cover. It is also good practice to confirm with your client, as the interview proceeds, that the topics you have written down are in fact relevant. A topic list for Mrs Tyler’s interview might look like this:



Not everyone is comfortable with this approach to the interview. However, we recommend that you try it out a few times. As you become more confident we think you will find it more useful. If you really don’t like it, just bear in mind that any checklist you prepare must not have so much detail in it that during the interview you are over-dependent on it and cease to listen and think!

To summarise the ‘Acquire’ stage of WASP, here are some Dos and Don’ts:

Dos and don’ts for acquiring information

Do	Don’t
Use open questions and invitations to talk.	Be an interrogator.
Use funnelling techniques to get details.	Feel you have to break every silence.
Listen actively for facts, feelings and hidden agendas.	Assume you know what the problem is until you have all the information.
Summarise and reflect what you hear.	Ignore your client’s feelings.
Acknowledge that your client may have strong emotions and be ready to discuss them.	Use detailed checklists.

We now go on to look at the part of the interview where you supply information and give advice. It is important to remember that you don't start to give advice until you have as full a picture as possible of your client's situation. This is where your skill and experience play their part. Clients may not be aware of what is legally relevant or they may be unwilling to give you certain information if, for example, it shows them to be dishonest or incompetent. It may well take more than one interview to get all the relevant information, but bear in mind that meetings with clients are costly and you begin to look less than competent if you have to keep arranging meetings with clients to ask questions you should have asked at the beginning.

2.5.3 Supply information and advise

Note down all the types of information and advice you will give to your client in a first interview.

You may have thought of some of the following:

- (a) whether the facts fit the law;
- (b) the merits or otherwise of the case;
- (c) what has to be proved;
- (d) legal and non-legal options;
- (e) the risks involved in proceeding;
- (f) the costs;
- (g) details of the services you provide;
- (h) contact arrangements;
- (i) what happens next and by when; and
- (j) things the client has to do.

You may well have thought of other categories of information. However, when you are advising a client, the approach you take will not only depend on the information they give you, but will also be influenced by your own perceptions of your role as a solicitor as well as by the expectations of your employer as to how clients are dealt with.

Various writers have identified a number of roles. Some seem to overlap. The point, however, is that you will probably develop a preferred role along with one or two other roles you can play when the occasion demands. Avrom Sherr (in *Client Care for Lawyers*, 2nd ed. (London: Sweet & Maxwell, 1999)) summarises the lawyer's roles as follows:

- (a) The 'hired gun'—is highly adversarial and sees his task as getting the best possible deal for his client, regardless of the rights and wrongs of the dispute.
- (b) The 'high priest'—hands down advice as if from on high. There is no sense of a collaboration between client and solicitor.
- (c) The 'business person'—is concerned with handling cases efficiently and making a good living from his profession. This solicitor has little concern for the factual or emotional details of a case.
- (d) The 'problem-solver'—sees himself as a professional whose job is to help the client achieve their objectives, whether legal or not. He will be interested in seeing what lies behind the facts of the case and in helping the 'whole' client.

How do you think each of the stereotypes listed above would approach advising Mrs Tyler, given that you had obtained the following information from her?

- (a) Her employer has told her in writing that unless she is fit to resume work within two months, she will be retired on ground of ill health.
- (b) She is upset and angry about this.
- (c) She wants to go back to her job.
- (d) Her doctor thinks she may not be fit enough to go back to work in two months.
- (e) She is very upset that her relationship with her colleagues, especially Fran, seems to have broken down; she has talked at length about this and would like things to be as they were.
- (f) She has financial backing from her trade union.

The categories above are stereotypes, so we need to be careful in making predictions about how real people would behave in real situations. However, the lesson to be learned here is that your approach to giving advice is a negotiation between the culture of the firm which employs you, your own values about how you interact with your clients and your client's expectations about what solicitors do. It is not merely a technical question about getting the facts, applying the law to those facts and giving advice accordingly.

2.5.3.1 Giving legal advice at a first interview

In our experience novice interviewers tend to feel more anxious at this stage of the interview than at any other stage. There are a number of possible reasons for this. One is the perception that clients come to solicitors for expert legal advice and will question the interviewer's competence if they don't get it. One of the things they will certainly want to know is whether they have a strong case or not. Moreover, law students are not confident about the extent of their legal knowledge; they may not have 'covered' the legally relevant area, or if they have, may have forgotten all or most of the detail. It may even be the case, where facts and law are quite complex, that the interviewer is unable immediately to identify the areas of legal relevance. So what are they to tell the client, who is looking for answers?

As we said earlier, while the client is telling you their story you will be fitting the facts onto your cognitive legal frameworks—negligence, breach of contract, etc. Once you are satisfied that you have as full a version of the facts as possible, you should be able to give a preliminary opinion on the client's legal position. In many situations you won't be able to provide a real estimate of the merits or otherwise of the case until you have obtained further information (for example, witness statements, accident reports, medical reports) and researched the legally relevant areas in more detail. However, there are situations where you should be able to give more detailed advice. In circumstances where the client wants you to perform a specific task, such as deal with their house sale and purchase, or draft a will, you will be able to obtain sufficient information on which to base clear and detailed advice and to set out a plan of action.

EXERCISE 2.6

Based on the information Mrs Tyler has given you about her accident, what preliminary view have you formed as to her legal position?

- (a) Work with a partner. One plays the part of Mrs Tyler, the other the interviewer. The interviewer advises Mrs Tyler on her legal position.

- (b) Discuss what went well, what went less well and why.
 - (c) Swap roles and feed back to each other (and whole workshop).
-

You will probably have agreed that you need to give the client something meaningful so that they go away feeling confident about the situation and your handling of it. Consequently you will need to provide some information, even if it is only a preliminary evaluation of the merits of the case. In such a situation, you will also need to make clear that you cannot be more specific until you have investigated the facts further, eg, seen the accident report and obtained an expert medical opinion. Also, you need to do further legal research before you can advise her with more certainty.

An issue that may have arisen during this exercise is how to communicate your legal advice in a form which the client will understand. Your academic law study will have prepared you to apply law to facts and estimate the strength of a fictitious client's legal position. However, your 'advice' will have been given to lawyers (your tutors or examiners) who share with you the language of law and legal reasoning. Unless you have participated in a clinical legal education programme or had some practical legal work experience, you probably won't have advised a lay person who is not at all familiar with legal language.

EXERCISE 2.7

Look at the following scenarios:

- (a) A client comes to you wanting a divorce and tells you that they want to marry the person they are living with as soon as possible. A friend has told them they have to wait for a 'decree nisi'. The client asks you what a decree nisi is.
- (b) A client is very concerned that she is being threatened with a lawsuit for debt. It turns out that this debt was incurred by a former business partner who has now walked out on the business and has left the country. Your client no longer operates this business.
Explain to your client the implications of joint and several liability in this situation.
- (c) Your client is defending a small claim brought by a supplier of computer hardware and software. This supplier had agreed to install a networked computer system in your client's offices, together with the most up to date and appropriate software. What was actually installed however, was an older, less powerful system with older software.
Moreover, the supplier never sent the user licences as promised. Your client has refused to pay the agreed price. Explain clearly to your client the implications of 'caveat emptor', 'satisfactory quality' and 'fitness for purpose' under the relevant legislation.
- (d) You are called to the police station to advise a 12-year-old client. He is being interviewed about alleged repeated harassment of, and threatening behaviour towards, a particular group of families on a local housing estate. During the interview the interviewing officer says to your client, 'You're probably looking at an ASBO for this'.
'What's he on about?', your client asks you.
- (e) Your client is extremely distressed because she has been charged with intent to supply a class A drug. A friend had asked her to look after a small number of ecstasy tablets for a few days while his girlfriend's parents were staying at his flat. Driving home after taking possession of the drugs, your client was stopped by the police for speeding. They found the pills in a little plastic bag on the passenger seat of her car.
Your client says, 'I can understand I might get done for possession, but I wasn't going to sell them to anybody. I'm just keeping them for my friend. What's going on?'

Tasks:

1. Prepare your explanations to the clients.
2. Work with a partner. One plays the part of the client, the other the part of the lawyer. The lawyer gives their prepared answer to the client.

3. Swap roles and repeat the exercise.
 4. What have you learned from this exercise about explaining legal technicalities to lay clients?
-

There are two rules to follow when explaining legal issues to a client:

- (a) First of all, you need to explain legal matters in ordinary language. This is an important skill which you need to develop. It is of absolutely no use to a client to receive an explanation which they don't understand and which consequently explains nothing. Be careful not to overload your client with too much detail too quickly, particularly if it is not immediately relevant to their situation.
- (b) Secondly, you must then relate your explanation to the client's own situation in such a way as to make it clear how the law sees their problem.

For example, in (a) above you would need to point out first of all that the client's friend had got it wrong! Following our rules, here is one possible explanation: when you get a divorce, there are two court orders issued which are called 'decrees'. The first one is a provisional order—the 'decree nisi'. When this order is made, you are not yet divorced, but you have a period of at least six weeks to make any final arrangements with your husband/wife about children and property. When all these arrangements have been made the court will make a final order—the 'decree absolute', which means you are officially divorced. In this client's case, they will not be free to remarry until the decree absolute is granted.

2.5.3.2 Helping the client decide what to do

In any situation there is always more than one course of action available to the client. It is your role to help the client decide which course of action is most likely to help them achieve their objectives. This means that you have to be clear about what courses of action are available from the information the client has given you. You need to set these out clearly and comprehensibly and spell out their consequences. Any course of action will have costs, benefits and risks attached to it. It is your job to ensure that the client fully understands what these are. Some of the options that you have set out may be contingent on getting further information and doing legal research. Once again, you must make this absolutely clear to the client. It is vitally important that you do not mislead clients into expecting outcomes which further investigation of facts and law will make impossible to achieve. Finally, it is the client's decision as to which course of action is followed. The client bears the cost and the risk and only they can decide the level of cost and risk they are able to tolerate.

2.5.3.3 Supplying other important information

At some stage during the interview you must give the client information about what it will cost them to instruct your firm and what services the firm provides. Not only are you expected to do this by the Law Society, but such information plays a material part in the client's decision whether or not to proceed, and if so, which course of action they would prefer to pursue. Views differ as to when clients should be given information about costs. One view is that general information should be given at the beginning of the interview. We believe there is room for flexibility. If a client is to be billed for the interview, they need to know what the charge will be right at the outset, so they can

decide whether to continue or not. Ideally, this information should be given to clients when the interview is first arranged. As for the standard charges of your firm, we consider it good practice that they should be written down and supplied to clients as soon as the client decides to instruct you. However, clients should also be told about likely costs during the course of the interview, so that they can ask questions and clarify any misunderstandings.

It is just as important to tell the client what standards of client care they can expect from your firm. Therefore, you need to give them information on such things as how they can contact you, how regularly they will be updated on the progress of their case, how quickly you will deal with any queries or other communications from them. This information is important because it keeps the client informed and involved.

Dos and don'ts for supplying information and advising

Do	Don't
Set out all the options available to the client, once you have enough information.	Assume you have all the information you need from a first meeting.
Give clear information about costs.	Make the client's decisions for them.
Give clear information about standards of client service.	
Develop the skill of explaining legal issues in plain English for lay clients.	
Make sure that the legal explanations you give fit the client's circumstances.	

2.5.4 Part

The fourth part of the WASP process is 'Part'. It is important that at the end of an interview, your client has provided all relevant information and has been advised of their legal and non-legal options, the costs of proceeding, the risks they run by proceeding (or not proceeding) and what level of service they can expect from you. The last part of the interview process is to summarise and confirm all this.

What needs to be done during the final stages of an interview?
List what you think are the main things to deal with.

We think that you should finish an interview by

- (a) confirming that the client wishes to instruct you and understands what course of action is to be undertaken;
- (b) confirming that the client is aware of the costs and risks involved;
- (c) confirming that the client knows how to contact you or an appropriate colleague;
- (d) confirming that the client is aware of any action they have to take and by when it needs to be taken;

- (e) explaining that you will write to the client summarising these matters within a certain number of days; and
- (f) checking that the client has no further matters or queries to raise with you.

Your client should leave with a clear understanding of what they have committed themselves to and a grasp of the legal issues which relate to their circumstances. They should feel satisfied that you will be helping them to realise their objectives and confident in your professional competence.

2.5.5 When to be flexible

The WASP approach that we have outlined above is designed to make sure that the important aspects of the meeting are dealt with: client care, getting relevant information and making sure that your client articulates their concerns. If your interview structure is too rigid, you may fail to do one or more of these things. So it is important that you know when to be flexible. Although a general principle of interviewing is 'do not start to advise until you have enough information', there may be occasions where you need to break this rule. For example, a client may come to you convinced that they are in serious trouble. It quickly becomes plain to you that they are overstating the problem. In such a case it would be a good idea to tell them this as soon as possible, to put their mind at rest.

Similarly, you will need to be flexible where you need to make an urgent bail application in court. In such a situation you have very little time to get the details you need from the client to make the application properly. In this case, your client will be better served by your getting straight to the point than by following the usual interview structure rigidly.

2.5.6 How good is your note taking?

To be an effective interviewer you need to pay attention to your note-taking skills. Nothing is more off-putting to a client than the sudden scribbling down of something they have just said. On the other hand, you need to be able to recall accurately the details of the interview.

We suggest you develop the following techniques:

- (a) Explain to your client at the beginning of the interview that you need to take notes in order to recall the details of the case for further action.
- (b) Take a 'listen first' approach; this means that you begin by actively listening to what your client has to tell you. When you have checked your understanding of what they are telling you at each stage of the interview, then you can note it down.
- (c) At the end of the interview, use your notes to summarise the information; this will enable you to check that your notes are an accurate representation of what took place.
- (d) As soon as possible after the interview, write up your notes clearly and accurately. It is important to do this because notes taken at the time may serve your short-term memory well, but may cause you problems if you rely on them days or even weeks later.
- (e) Keeping accurate notes is a very important part of your work. You will rely on them to supply information on which further action may be based. If they are not accurate, you may make mistakes or irritate your clients by having to go back to them to ask again for information they have already given you.

2.6 Interviewing and advising: an exercise

2.6.1 Planning an interview

This is an opportunity for you to plan an initial interview with a professional client.

Your client's name is Joanna Lee. During a brief telephone call she gave you the following information.

She is currently a self-employed computer systems analyst, earning on average between £40,000 and £50,000 a year. She has been headhunted for and offered a senior management job in a Bristol-based company, Avon Systems International, at a salary of £58,000 plus benefits. She is presently deciding whether to take the job. The details of the post are provided in the draft employment contract which she has been sent to sign.

Ms Lee is happy with most of the package on offer but there are some issues raised by the contract which she is concerned about. Her main concern is the breadth of clauses 11.4 to 11.7. She is worried that these seem wide enough to prevent her leaving the company and working in the field for at least 12 months. She wants to know if the company is within its rights to demand this.

Her other main concern with the contract is clause 11.2. She has already done a lot of freelance software development work and holds copyright in the applications she has designed. The company want her to bring this software with her into the company and she wants to know whether copyright will transfer to the company under clause 11.2. At the job interview, she was told that in return for ceding copyright to the company, she would be given a share option in the company worth £20,000.

She is also being headhunted by another company, based in Manchester. Although the Manchester firm is in the same business as Avon, they have a much smaller market share, and are keen to employ Ms Lee, as her expertise would be a good fit with their medium-term strategy. They may be prepared to top Avon's financial package to get her, but there is an element of uncertainty about their long-term future. They have not yet interviewed her.

Ms Lee has sent you a copy of the draft contract for you to familiarise yourself with the relevant clauses. These are:

11.2 The copyright in all articles, designs, drawings, programs, calculations, specifications, photographs and similar documents and written material produced by you in the course of your duties with the Company shall belong to the Company and such matters and copies thereof in your possession shall be returned to the Company on termination of your employment.

11.4 You shall not during the period of 12 months after the Termination date, directly or indirectly, either on your own account or otherwise, canvass or solicit business from any Customer Connection with whom you have had any material dealings in the Contact Period in the course of the employment.

11.5 You shall not during the period of 12 months after the Termination Date either on your own account or otherwise, do business with any Customer Connection with whom you have had material dealings in the Contact Period in the course of the employment.

11.6 You shall not during the period of 12 months after the Termination Date, directly or indirectly, induce or seek to induce any Skilled Employee, with whom you have had material dealings in the course of your duties hereunder in the Contact Period, to leave the Company's Employment whether or not this would be a breach of contract on the part of such employee or offer employment or an engagement to any such employee.

11.7 You shall not during the period of 12 months after the Termination Date, carry on or be interested in Competitive Business in competition with the Company for Access Accounting Systems whether as principal, agent, owner, director, employee or otherwise.

11.8 Each of the restrictions contained in this section 11 are considered reasonable by the Contracting parties being no greater than is required for the protection of the goodwill of the business of the Company and are intended to be separate and severable.

Ms Lee has made an appointment to see you the day after tomorrow. Using the WASP structure, prepare your interview plan:

- (a) What are your objectives?
- (b) What do you see as the important information so far?
- (c) How will you verify this? and
- (d) What areas of law do you need to research as far as you can tell at the moment?

When you have carried out these tasks, compare your answers with those of a colleague. What are the similarities? What are the differences?

2.7 Learning outcomes

In this chapter we looked at the basic skills and processes involved in interviewing and advising clients. You should now be able to

- state the purpose of the client interview;
- use all information-seeking techniques confidently;
- listen actively and respond with appropriate follow-up to what you have heard;
- summarise information to check understanding;
- structure an interview so that necessary information is acquired and given;
- give appropriate advice to the client;
- state the processes whereby rapport with clients can be developed.

2.7.1 Solicitors Regulation Authority's Legal Practice Course Outcomes

Throughout your career as a solicitor you will be constantly reviewing and improving your skills. The Solicitors Regulation Authority provides a number of Outcomes for the Legal Practice Course, which we have reproduced below. These Outcomes will be used to assess your skills during your training. As your career progresses you should return to the Outcomes and check your own skills against them.

Students should demonstrate an understanding of the principles and techniques of the skills of interviewing and advising.

Element 1: Interviewing

Students should

- (1) be able to choose an appropriate way to obtain relevant information
- (2) be able to plan, prepare for and identify the objectives of an interview
- (3) understand how to conduct an effective interview that elicits the relevant information, allows the client to explain any concerns, anticipates the client's questions and has clear outcomes
- (4) be able to listen actively and use appropriate questioning techniques
- (5) be able to establish a professional relationship

Element 2: Advice and follow up

Students should be able to:

- (1) advise the client taking into account the client's objectives, priorities and constraints and addressing all relevant factual, practical and legal issues
- (2) identify possible courses of action, the legal and non-legal consequences of a course of action (including the costs, benefits and risks) and assist the client in reaching a decision
- (3) identify any further decisions to be made or steps to be taken and manage the client's expectations including likely outcomes and timescales
- (4) accurately record an interview, advice given orally, decisions made by the client and follow-up steps and, where appropriate, confirm instructions in each case in accordance with the outcomes for Writing
- (5) identify the circumstances in which to take instructions or seek advice from a supervising solicitor.

You can find the LPC Outcomes on the Solicitors Regulation Authority website at www.sra.org.uk/lpc/.

2.8 Self-test questions

- (1) Describe five techniques for encouraging your client to talk.
- (2) What is active listening?
- (3) Why is non-verbal communication important during an interview?
- (4) What does the client need to know at the conclusion of the interview?



For additional further reading suggestions and other selected online resources please visit the Online Resource Centre accompanying this manual at www.oxfordtextbooks.co.uk/orc/skills11_12/

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