



# Only connect

*In the last edition of PS, Vicky Ling discussed the use of webcams in delivering legal services. Here, she speaks to Philip Goldberg, managing director of the newly-merged Minton Morrill solicitors in Leeds, on how the firm uses webcam technology in its Court of Protection practice*



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In the November 2016 edition of *PS* ('Blue Skype thinking'), I explained how webcam technologies can deliver better quality legal services at lower cost. Here, I sit down with Philip Goldberg, managing director of Minton Morrill (formerly Lester Morrill) in Leeds, and discuss how the firm uses Skype and FaceTime extensively in their Court of Protection (CoP) practice.

### Why is Skype / FaceTime attractive in Court of Protection (CoP) work?

Minton Morrill's CoP work often flows from our clinical negligence practice. Clients will have secured damages due to a significant disability, and one of our solicitors will be appointed as their deputy to manage their property and financial affairs. The CoP's guidance stresses the importance of a deputy getting to know their client ([tinyurl.com/hdmba8m](http://tinyurl.com/hdmba8m)). The solicitor may already know the person through acting for them in relation to their claim, but Skype / Facetime can be very useful in maintaining and developing the relationship.

The estate can be used to maintain or improve the client's quality of life. The basic rule in making property and finance decisions for the client is that those decisions must always be in the client's best interests. Decisions also need to reflect the size of the client's estate, and take into account the client's wishes, beliefs and values. All these things mean that the better the solicitor and client can get to know each other, the easier it will be for the deputy to make decisions for the client's benefit. Clients can often be more responsive if they are in their familiar home environment.

Cost is also a factor. By using the client's internet connection, there is no cost to the call itself. As our clients can be anywhere in England and Wales, there is also potentially a significant saving in solicitor's fees, which would otherwise come out of the client's estate. It used to take a day to visit one client, who lives in

Dorset; now the deputy has no travel time or costs.

Without being tied to travel timetables, calls can be booked for the time of day when a client is generally at their best. It is also easier to work with the client's state of health on a particular day. If someone is not feeling up to a Skype call, it is much easier to rearrange a call than a visit.

### Do you have any plans to expand the use of Skype / FaceTime?

We have also used it in private-paying criminal defence cases eg for taking instructions in a road traffic case where the alleged offence happened in West Yorkshire, but the client lived in Scotland.

### What practical lessons did you learn?

It's a good idea to identify lawyers who are enthusiastic about the idea. Many will use Skype or FaceTime in their domestic lives.

Happily, there was no capital investment to make. The technology needed was already embedded in our hardware. I recommend using a mobile phone or an iPad, as these have good microphones and cameras built in. When using a PC, our BigHand software uses one of the best microphones in the market.

All that was needed was training for the fee-earners to make sure they knew how to use the software. The interpersonal skills needed are much the same as for an office-based interview. Eye contact is important; instead of watching the screen, it helps to look up when speaking, and to speak directly to the camera. It's a good idea to make a free test call to check that your speakers and microphone are working properly. There is information on how to do this on the Skype website.

### Did you experience any resistance from clients?

It is not suitable for all CoP clients, but those that can use Skype / FaceTime find it a novel and interesting way to speak to their lawyer.

The crime team has been using secure video conferencing from the Crown court and from prisons for about 10 years. Some crime clients were concerned about confidentiality at first, but now people seem to prefer it, as they do not have the disruption of leaving the prison.

Our lawyers find webcam technology a better way to assess someone's welfare than a phone call. Typical questions would be: 'What are you enjoying doing at the moment?'; 'What's your favourite video game?'; 'What's school like?'; 'Have you been on holiday?'

### What are the data protection issues?

There are few additional data protection issues over and above the ones which every firm needs to consider in any event. In some ways, Skype and FaceTime are more secure than phone calls – you see the other caller, so it is easier to be sure you are speaking to the right person!

On the technical side, FaceTime uses internet connectivity establishment (ICE) to establish a peer-to-peer connection between devices. Using session initiation protocol (SIP) messages, the devices verify their identity certificates and establish a shared secret code for each session. Apple has demonstrated that it designs robust systems, which even the FBI can't hack. The agency had to resort to litigation following a

2015 terrorist attack in California, in the hope of securing an order to unlock a mobile phone, because Apple refused to write a special program to hack its own device. It feared it would compromise security for all users. Because of end-to-end encryption and Apple's stance on privacy, FaceTime was accepted as Health Insurance Portability and Accountability Act-compliant for BabyTalk ([tinyurl.com/zyhq5fl](http://tinyurl.com/zyhq5fl)), which provides remote therapy to infants with cochlear implants. US data protection standards are generally considered to be extremely high.

Skype's website says: 'All Skype-to-Skype voice, video, file transfers and instant messages are encrypted. This protects you from potential eavesdropping by malicious users.' For each call you make, Skype creates a unique 256-bit advanced encryption standard (AES) encryption key for that session. This session key exists as long as communication continues and for a fixed time afterwards. When you place a call, Skype transmits the session key to the person you are calling and that session key is then used to encrypt messages in both directions. While Skype-to-Skype calls are encrypted, if you use Skype to call mobile phones or landlines, the part of your call that takes place over the ordinary phone network is not encrypted.

So, the answer is to make sure that calls are made over the internet, using a secure connection, as would be installed in someone's home or office. Wired connections provide the best quality, but wifi can be perfectly acceptable. Our clients would not be using a public wifi connection, such as in a coffee shop or local area, but if you offer services to a wider range of clients, it is worth considering preparing a briefing on the dos and don'ts from the client's point of view. It is also helpful to brief staff on the data protection issues, so that they are confident about security and can explain the position to the client at the start of the call in simple terms.

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We do not record or store the Skype / FaceTime interviews. The fee-earner makes an attendance note in the usual way. If they did record the interviews, they would need to consider:

why they were doing so; what the purpose of keeping the interviews was; how to keep them secure; how long to store them for; and how to dispose of them securely.

Some of the Data Protection Commissioner's Code of Practice on CCTV ([tinyurl.com/n3r38k2](http://tinyurl.com/n3r38k2)) may be relevant if a practice did decide to make recordings.

### **How do you deal with people with mental capacity issues?**

The majority of our Skype / FaceTime clients lack capacity by definition. The subject matter of the conversations is not confidential and is part of understanding the client's situation better. The CoP encourages deputies to consult family members, and as such, it would be appropriate for a carer to be present during a call. However, the view of a carer is only one factor a deputy should take into account. At the end of the day, the deputy will always take any decision in the client's best interest, after weighing up all relevant information.

### **Skype / FaceTime for legal services: at a glance**

- The latest Office for National Statistics figures show that 87.9 per cent of adults used the internet in the past three months.
- 17 per cent of adults worldwide now use Skype at least monthly, and there are around five million active users every day. It is no longer the preserve of a minority.
- Commercial lawyers have used Skype for some time, but private client lawyers have been slower to do so.
- Clients are increasingly expecting a digital service delivery option.
- In 2015, Advice Brighton and Hove set up an advice service on housing and benefits issues using Skype, FaceTime and Google Hangouts. Clients could book their own appointments online. 148 clients used the service in the first year. It reached a wider range of clients than first anticipated, including people with learning difficulties, mental health issues and some experiencing domestic abuse. This form of service can be particularly appropriate for:
  - people who have existing access to Skype, or can access it through an organisation they are working with, such as a support group
  - people who are not within easy reach of face-to-face services
  - people with mental health issues or learning disabilities
  - people who need support when accessing advice, such as a British Sign Language signer or advocate
  - people who have mobility issues or are home-based for other reasons
  - people with dependent children.

### **If you want to know more...**

- ...about setting up webcam and direct booking services, more information can be found in the Advice Brighton and Hove Webcam Advice and Online Project Toolkit ([tinyurl.com/j73xwff](http://tinyurl.com/j73xwff)). There is a Law Society practice note on providing services to D/deaf and hard of hearing people, which includes the use of webcams with sign language interpreters ([tinyurl.com/h4lcb8z](http://tinyurl.com/h4lcb8z)).