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Maintaining Academic Standards and Protecting Student Interests in UK Law Schools Following Covid-19

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Abstract: This paper focuses on how universities responded to the disruption in learning of the Covid-cohort, focusing specifically on the introduction of ‘no detriment’ policies or ‘safety nets’, and the assessment changes that materialised in its wake. Universities were required to act quickly in adapting their teaching, learning and assessment practices to suit unprecedented circumstances which saw wide-spread campus closures and face-to-face teaching replaced with online delivery. Most universities sought to ensure that assessments could go ahead, albeit under very different circumstances, which required changes to the ways in which students were assessed and the extent to which their grades would affect their overall results. Throughout this period of change, universities had to carefully balance the interests of the students with the university’s regulatory obligations to maintain academic standards. This paper sets out some of the challenges faced by universities, and Law Schools in particular, and explores how universities responded to these challenges. It then considers what actions could be taken relating to assessment in Law Schools in light of the longer-term effects of the Covid pandemic.

Keywords: Covid-19, No Detriment Policy, Assessment, Safety Net, Authentic Assessment, Legal Education

Introduction

At the start of the Covid-19 crisis, universities hastened to make their online teaching and assessments suitable for socially distanced working in order to ensure that students could continue with their studies on schedule. At the start of this academic year (September 2020), efforts to bring teaching and learning back to some sense of normality were attempted as universities redesigned and/or adapted their courses to allow for hybrid or blended learning. However, much of these efforts were undone when a third national lockdown was announced at the start of 2021 resulting in universities, once again, moving back to a purely online operational mode for teaching, learning and assessments. For now, the overall impact of Covid-19 on the higher education sector continues to be felt by students and staff alike. A return to 'business as usual' is some time away and what that might entail in a post-Covid world remains uncertain. There is ongoing uncertainty as to when teaching on campus may resume this academic year, but the likelihood is that most courses, including law courses, will be delivered 'online' for the majority of this academic year so that students who are compelled by circumstances to study remotely can do so. At the time of writing this article, the United Kingdom is in the midst of its third national lockdown (UK Government 2021) due to the ongoing effects of the Covid-19 pandemic. Even when lockdown restrictions are lifted, it will be some time before full student confidence to resume studies on campus is restored to the levels that existed in the days before the pandemic.

This paper focuses on how universities responded to the disruption in learning of the Covid-cohort, focusing specifically on the introduction of 'no detriment' policies or 'safety nets', and the assessment changes that materialised in its wake. Universities were required to act quickly in adapting their teaching, learning and assessment practices to suit unprecedented circumstances which saw wide-spread campus closures and face-to-face teaching replaced with online delivery. Most universities sought to ensure that assessments could go ahead, albeit under very different circumstances, which required changes to the ways in which students were assessed and the extent to which their grades would affect their overall results. Throughout this period of change, universities had to carefully balance the interests of the students with the university's regulatory obligations to maintain academic standards. This paper sets out some of the challenges faced by universities, and Law Schools in particular, and explores how universities responded to these challenges. It then considers what actions could be taken relating to assessment in Law Schools in light of the longer-term effects of the Covid pandemic.

2. Universities' Initial Response to Covid-19

The majority of UK universities introduced 'no detriment' policies or 'safety nets' at the outset of the pandemic as an 'emergency' (Epigram 2021) response to the unprecedented situation. In essence, the 'no detriment' arrangements assured students that they would not be disadvantaged by the disruption caused to their assessments. However, there is considerable variance in the scope and implementation of this response not only between institutions, but also in how it has evolved during the Covid era.

Changes to assessments were also made to make them more suitable for the new socially-distanced remote-learning arrangements. The changes enacted during the initial stages of the crisis arose as an emergency response and took place without due process. The normal procedures and policies that universities employ to action changes to courses were thus shelved for the sake of expediency. Pre-Covid, universities would typically have in place lengthy and multi-stage processes to permit changes to programmes of study, including assessments. This approach generally works to mitigate the risk that any change could have a negative impact on the quality of provision or the student experience, by involving a broad range of people from across the institution at each level of the process, and by providing significant amounts of time for the consideration of proposed changes. In a Covid environment, this multi-layered approach to change management and decision-making would inhibit the introduction of immediate and emergency changes which needed to be made as a result of campus closures and the move to online and remote assessments (QAA 2020c, 14).

The decisions around implementing a 'no detriment policy' and assessment changes were made with due consideration for the universities' overarching duty of care to their students, along with the need to ensure that students could continue and complete their studies as scheduled.

3. Duty of Care to Students

Universities have a general duty of care to their students in the delivery of the educational activities. Whilst recognising that universities are 'under immense pressure' to act in response to Covi-19, the Office for Students (OfS) did make it clear that universities 'still have a duty of care to all their students, and a responsibility to continue teaching and learning activities where possible.' (OfS 2020a) In October 2020, this duty was emphasised once again by the OfS as it assured students that it was actively monitoring the quality of the online teaching:

‘We issued guidance in April making it clear that we expect universities and colleges to ensure that the quality of provision is maintained, and to make all reasonable efforts to provide alternative teaching and support for students that are broadly equivalent to their usual arrangements, where face to face contact is no longer possible’ (OfS 2020c).

Part of the university response to Covid-19 was to look beyond the delivery of teaching and learning by considering how student performance was to be measured during the Covid era. In response to the pandemic, several universities did take steps to adopt ‘no detriment’ arrangements as they aimed to ‘protect their students interests in the exceptional circumstances’. Comparisons can be made to how students are normally accommodated when their studies and assessments are negatively impacted by extenuating circumstances beyond their control (e.g. medical issues or serious changes to personal circumstances). The ‘no detriment’ arrangements go a step further and instead of looking at the specific circumstances of an individual student, it recognises that the effect of the pandemic is much more widespread and thus seeks to alleviate the negative impact on the cohort as a whole because:

‘By introducing a ‘no detriment’ (or related) approach, the intention is that students are free to focus on their learning and realising their academic ambitions rather than worrying’ (QAA 2020b).

The duty of care owed to students has a number of dimensions. As consumers, students are protected by the Consumer Rights Act 2015, and universities are under an obligation to deliver on promises they make as part of their marketing activity. Universities were therefore under an obligation to ensure that the quality of its provision was not compromised, while also ensuring that students – and the sector – remained confident that the marks awarded to students were fair and reflective of the student’s capability. At the same time, inflating grades or over-compensating students for the disruption caused by Covid, risked undermining academic standards.

4. Academic Standards

The QAA’s initial guidance to Higher Education providers on 23 March 2020 included a warning:

‘For degree-awarding bodies, the responsibility to maintain standards remains yours. Governing bodies need to be satisfied that academic standards are being achieved no matter what adjustments you need to make to the learning and assessment strategies in light of Covid-19’ (QAA 2020).

A careful balancing act is required between the duty of care owed to students on the one hand, with the need to maintain academic standards on the other. In the pursuit of the former, it is important to ensure that the pendulum does not swing so far that the protections afforded by introducing ‘no detriment’ arrangements ultimately manifest in the unwanted occurrence of an advantage to the Covid-cohort compared to previous cohorts. Not only would this be unfair to previous cohorts, but it would also bring the value of the degrees awarded in the Covid era into question and could harm the employment prospects of the very students that the arrangements had sought to protect. In January 2021, the Higher Education Statistics Agency for the UK (HESA) published its annual statistics on student performance and degree attainment for 2019/20 (HESA 2021). 35% of 2019/20 graduates achieved a first-class degree compared with 28% the previous year, with 82% of graduates attaining either a first class or upper second classification; the two highest classifications awarded which collectively are often referred to as ‘good honours degrees’. While HESA does not go so far as to say that the rise in good honours degrees is a direct result of the adoption of ‘no detriment’ policies, it recognises that the rise in attainment coincides with the implementation of ‘no detriment’ policies which sought to ensure that students would be awarded a final grade not lower than their previous results (HESA 2021). The rise in ‘good honours’ awards has contributed to a reticence by many UK universities to continue to honour their ‘no detriment’ commitments. The quality and value of a degree issued during the pandemic needs to be protected and measures that were adopted during the initial panic and crisis mode may be difficult to justify as an ongoing long-term solution.

5. No Detriment Policy

Many universities introduced ‘no detriment policies’ as part of their revised assessment regimes in immediate response to the closure of university campuses and the move to online teaching and learning in March 2020. Whilst there is no single uniform definition of ‘no detriment’ policy that has been settled on, the main aim of these arrangements was to assure students that they would not be disadvantaged by the disruption caused to their studies once they had been assessed. According to the QAA, a ‘no detriment’ policy is an examination of ‘outcomes’ to find the one that is ‘more favourable to the individual’ student (QAA 2020b). This decision is formed by comparing the ‘outcome as it would have been if the change had not been implemented’ to ‘the outcome after the implementation of the changes’ (QAA 2020b). These policies were designed to mitigate against the impact of the pandemic

on the students' education by ensuring that individual students, or cohorts of students, were not unfairly disadvantaged by the pandemic.

A broader understanding of 'no detriment' is that it involves a package of measures being introduced to ensure that students are not disadvantaged. This could happen at any of the stages in the academic assessment and feedback cycle, including assessment scheduling, extension/deferral requests and approvals, grading, moderation process, and overall award classification calculation.

Those universities who did not adopt a 'no detriment' policy came under increasing pressure from student bodies and the Higher Education media to do so (Bedworth 2020). While there were calls for a national standardised approach which would quell growing student anxieties and avoid perceived unfairness treatment, universities were free to create their own policies (NUS 2020). In deciding whether to adopt a 'no detriment' policy, and thereafter determining the nature and extent of such a policy, universities had to balance student concerns around fairness on the one hand, and the need to maintain academic standards as required by the Higher Education regulatory bodies. Those universities which decided to adopt a 'no detriment' policy had to ensure that the operationalisation of the policy would meet its own aim – that is, to ensure that students were not adversely affected by the impact of the Covid pandemic – while also ensuring that they were not placed in an advantageous position when compared to previous student cohorts. To do otherwise would risk devaluing the students' awards and fail to meet the needs of accrediting bodies, thereby jeopardising students' chances of progressing into their chosen professions.

Most providers sought to strike this balance by requiring students to sit – and pass – all assessments, including any modified assessments. By doing so, universities were able to assure regulatory bodies that standards were not being compromised and that the integrity of awards remained intact. At the same time, these providers also assured students that performance in these assessments would not have a negative impact on their overall results. Usually this was achieved by basing the final module marks on previous assessments, and only including the affected assessments if they had the effect of raising the student's overall result. Some providers went a stage further by creating a 'benchmark' result for each student based on their overall performance from across their programme, and assuring students that the affected assessments would not be taken into consideration if doing so would have a detrimental effect on the result.

Other providers took alternative approaches where their course structures or dates of their academic year meant that students had only recently commenced their studies prior to the effects of the pandemic, or had otherwise

not sat sufficient assessments to establish a ‘benchmark’. In these instances, some universities adopted a ‘no detriment’ Policy based on longitudinal comparisons, comparing the performance of the current cohort of students with that of previous cohorts. Where there was a noticeable difference in outcome, the Covid-cohort could have their marks adjusted to bring them in line with performance of previous cohorts.

Universities have faced growing criticism around perceived grade inflation, (for example, Bachan 2017) and adopting generous ‘no detriment’ policies which risked giving the Covid-cohort an advantage over previous cohorts would only add to concerns around sacrificing standards for the sake of improving league table performance, student satisfaction, and ultimately, future student recruitment. Beyond the initial emergency Covid planning phase within Higher Education, the rhetoric around ‘no detriment’ policies has narrowed slightly. The Office for Students has more recently asked all UK universities to consider appropriate ‘safety nets’ for *individual students* affected by the pandemic through exercising the institution’s mitigating circumstances policies. With such measures in place, the Office for Students suggests it may no longer be necessary to re-implement the more sweeping (and potentially more generous) ‘no detriment’ policies put in place in Spring 2020 (Lapworth 2021). Indeed, for those providers which adopted a Policy whereby students may be graded on the basis of their performance in pre-covid assessments, a new approach will likely be required for 2021 as there will be no unaffected pre-Covid assessments on which to base students’ final grades. The Russell Group of universities, which represents 24 research-focused UK universities, has ruled that a ‘no detriment’ policy is no longer necessary or appropriate. Instead, the Russell Group will take into account a student’s individual circumstances by, for example, relaxing rules around assessment deadline extension and deferral requests, and university Exam Boards will put in place processes to ensure that the students, as individuals and as a cohort, receive comparable outcomes to those in previous years (Russell Group 2021). This signals a move away from the ‘safety net’ type of ‘no detriment’ policy toward the longitudinal approach that some universities previously adopted in 2020. If this is seen by student bodies as a less generous package of measures, universities will inevitably face a further wave of criticism that they are putting academic standards before the interests of its students.

5.1 No Detriment and Legal Education

There is considerable variance in the scope and implementation of this response not only between institutions, but also in how it has evolved during

the Covid era. Differences exist not only between providers, but also courses especially where professional, statutory or regulatory body requirements are a key consideration, as is the case with institutions that are qualifying law degree (QLD) providers for professional purposes.

The Solicitors Regulation Authority (SRA) maintains regulatory oversight of the QLD framework in England and Wales on behalf of the legal professions. While the SRA does not specify the forms of assessment to be used to maintain QLD status, it has stipulated that Law Schools must continue to assess the Foundations of Legal Knowledge which constitute the basis of a QLD throughout the pandemic. Since the SRA does not regulate the methods of assessment, Law Schools were free to amend the nature of assessments to reflect the challenges posed by the pandemic. Similarly, they could opt to postpone assessing the foundation subjects until later in the student's programme of study (SRA 2020). On whether Law Schools could adopt 'no detriment' Policies for students enrolled on a QLD, the SRA provided:

'Universities can make their own decisions about assessing students through alternative arrangements, such as coursework assessments, or take-home, open-book examinations or online, timed examinations. However, some form of assessment for Foundation of Legal Knowledge subjects is required. By the time students graduate they should have been properly assessed in all [Foundation] subjects. All foundation subjects on a QLD must be passed with at least 40% to fulfil the requirements of the academic stage of training'(SRA 2020).

Thus the SRA approved of Qualifying Law Degree providers making changes to assessment methods as a result of campus closures, but said nothing about other forms of 'no detriment' Policies that Schools might have implemented. The final clause from the SRA – that all foundation subjects must be passed in order to fulfil the requirements of training - could be construed as a directive that the pass threshold must be maintained, and that those students who fail to meet the learning outcomes of a foundation module should not have their mark raised to a pass through a 'no detriment' mechanism.

6. Assessments

In February 2020, mere weeks before the World Health Organisation declared the outbreak of Covid-19 as a pandemic (WHO 2020), a report on the future of assessments was released by JISC and stated:

'Assessment is crucial to the educational process. Done properly, it drives improvement, shapes learner behaviour and provides

accountability to employers and others. It can also be a source of dissatisfaction, frustration and anxiety. Does it assess the right things? Is it getting the best from learners? Does it take place at the right points in the learning journey? Is it susceptible to cheating? Does it involve a sustainable workload? Existing and emerging technologies are starting to play a role in changing assessment and could help address these issues, both today and looking further ahead into the future, to make assessment smarter, faster, fairer and more effective' (JISC 2020).

An eerie foretelling of the eventual reliance on technology to facilitate assessments during the pandemic. Not only were these questions valid pre-Covid, they are even more pertinent points when considering assessments in the Covid era and beyond. If the objective is to maintain standards, then a reconsideration of the suitability of the existing assessments is needed.

The JISC report outlined five targets for 2025 to ensure that the vision for Education 4.0 (JISC n.d.) is met, namely that assessments should become more 'authentic, accessible, appropriately automated, continuous and secure' (JISC 2020) and that technology could be used to enable this transformation of assessments. The report found that:

'...while there is an appetite for change in UK education, in reality the pace of this change is slow. Much of the good practice we highlight in this report still seems to be in small-scale pockets of activity rather than organisation-wide examples.'

The report goes on to say that 'Organisational culture and readiness are key for the kind of transformational programmes required to change assessment' (JISC 2020). However, the effect of the pandemic was to force change on institutions and to escalate the use of the technology in order for delivery of courses to continue, whether or not the institution was culturally or technologically ready for such mass scale changes. Thus, it is an opportune time to reconsider the role and purpose of these assessments. This includes due consideration of the relationship they have with the teaching and learning, the continuing suitability of an 'examination' as a mode of assessment, and the diversification of assessment under the umbrella term of 'coursework'.

Whilst presentations, portfolios, and multiple-choice assessments do feature in many law courses, traditional coursework and examination still feature prominently within the legal education sector. That said, there is considerable variance in the meaning that has been attributed to a 'coursework' type assessment. As the module descriptors often provide limited information, a broad interpretation can be adopted by module teams

when designing assessments leading to a wide variety of assessments falling underneath this umbrella term. In the main, the only unifying feature is that they are not ‘examination’ assessments and that the task is presented to students prior to preparation.

Historically, the willingness to move away from traditional interpretations of these methods of assessments has been piecemeal. However, a new understanding of these assessments that make greater use of authentic assessments could be beneficial. This approach could arguably improve the connection between teaching and learning and assessment practices whilst ensuring that law courses remain viable and responsive to ongoing changes in higher education, the legal sector and the world of work.

7. Changing Assessments in Light of Covid-19

Strict adherence to some traditional assessment methods was just not possible due to lockdown restrictions (including limits placed on travel, prohibited mass gatherings, and social distancing measures). Institutions differed in their approach to dealing with assessments, but broadly speaking the responses could be categorised in the following ways. First, universities could retain some assessments without any change. This was possible for some existing written coursework assessments requiring online submission, most often where the submission date was some way from the initial campus closure. Second, universities could revise existing assessments – without changing the nature of the assessment - to make them suitable for online and remote delivery. This could include face-to-face oral presentations revised into virtual presentations, and traditional examinations revised for open-book online conditions. Third, assessments could be substituted with alternatives of a different nature: replacing a traditional examination with a coursework, or practical assessments assessed by way of documentary submission. Fourth, assessments could be postponed, either to the next assessment period, or by delaying the start of the assessment period. This option may have been particularly attractive where institutions wanted to retain certain assessment arrangements and where Covid disruption was anticipated to be short-term, thereby enabling a swift return to ‘business as usual’. The on-going impact of Covid-19 and the associated series of national lockdowns has necessitated a reconsideration of initial plans to temporarily postpone assessments. Finally, some institutions may have decided to cancel assessments entirely. This might have been possible where students had already completed sufficient assessments to meet the learning outcomes, or where multiple assessments could be combined into a single task.

For Law Schools, it was possible to exercise wide discretion as to which approach, or combination of approaches, could be adopted. As discussed above, there were limited constraints imposed by the professional regulatory bodies in relation to the assessment of modules required for a qualifying law degree status, thereby fulfilling the academic stage of qualifying as either a barrister or solicitor (SRA n.d.). Thus, a green light for making alternative arrangements for law courses was given, including allowing for open book or remote assessments to be used (SRA 2020). The only stipulation was that students would still be required to undertake the assessments. Thus, the option to cancel assessments for the Foundation of Legal Knowledge (FLK) subjects was categorically denied, but a pragmatic approach was taken so that the timing of such assessments was left to the institutions to determine. Institutions merely needed to ensure that the students were assessed in all FLK subjects by the time that they graduated. Thus, apart from a request to be kept apprised of decisions involving alternative assessment arrangements, there was little else asked of Law Schools at this juncture.

8. Re-designing Assessments during Covid-19

Most students were midway through a teaching semester when the first lockdown occurred and as such immediate action was necessary to address concerns whether existing assessments could and should operate in these circumstances for higher education courses. As universities face another assessment year which is disrupted by Covid-19, they must again decide how to adapt their assessment plans, policies and practices. The simplest solution may be to replicate their practices from 2020, whether that involved adjusting the nature of assessments to suit online and remote conditions, or indeed postponing assessments and basing results on students' previous achievements, or some combination of these.

As Law Schools face further disruption as a result of Covid-19, they will once again need to consider how students can be assessed. The answer will depend on a number of internal factors, such as the nature of existing assessments, when assessments are due to take place, programme and module learning outcomes, available resources, and the nature of the student population. Assessments should also be designed to ensure that students can engage with them, and should avoid unnecessary disruption. Changes should only be made where assessments cannot proceed as planned in a fair and robust manner. Where changes to planned assessments are necessary, decisions should be made according to the following three underlying principles:

8.1 Viability

First and foremost, Law Schools should ensure their assessments can take place. Cancelling or postponing assessments may have been an accepted initial response to the pandemic, but this cannot be a long-standing solution. As the effects of the pandemic continue to be felt across the education sector, it is important that Law Schools continue to assess students so far as possible. To do otherwise risks affecting students' opportunities to progress and complete their studies on schedule. Some providers may hope that their normal assessment practices can resume shortly, and they may therefore plan to assess students in the usual way, and according to normal timeframes, rather than revising the assessment types or delaying assessment periods. Where this is the case, these providers will need agreed contingency plans to ensure that assessments can still take place under Covid-safe circumstances. Other providers may prefer to plan for further disruption, and may therefore discount any types of assessment which cannot be made Covid-safe.

8.2 Integrity

Law Schools will also need to ensure that students are assessed at the appropriate level, and that grades awarded are fair to students whilst also ensuring that academic standards are maintained. Assessment tasks will usually be written with the nature of the assessment in mind, meaning that a traditional unseen examination question may not be appropriate were it set as part of an untimed seen assessment. Seen assessments which students complete with full access to a range of resources need to be written in a way which ensures that the work is the student's own, perhaps through the inclusion of a reflective element, or by setting a task for which a 'stock' answer is not readily available online.

8.3 Engagement and Inclusivity

Learning outcomes are usually designed to assess a range of skills alongside the demonstration and development of legal knowledge. Learning outcomes which assess subject knowledge should not create too many difficulties when re-designing assessments to make them Covid-safe as knowledge can usually be demonstrated in various ways. Equally most learning outcomes which assess skill (such as research, communication, legal application, analysis, problem-solving, and self-reflection) could equally be met through a variety of assessment types. Some learning outcomes may offer fewer alternative means of assessment, particularly those which require collaborative learning. For most students, even these learning outcomes may still be able to be met, albeit relying on virtual collaboration. But some students may

lack the infrastructure to be able to effectively engage, either because of a lack of technological hardware, or because they are studying in their home country and the time-difference precludes them from engaging with other students. Hopefully such situations will be relatively rare, but Law Schools will need to ensure that *all* students can engage equally, and that none are placed at a material disadvantage over others. Where this is the case, individual arrangements will need to be made to ensure that assessments remain inclusive for all students. The most appropriate arrangements will inevitably depend on the type of assessment and the circumstances of the students. Furthermore, student expectations around assessment should be met wherever possible in order to maintain engagement in their learning. If a module was due to be assessed by way of a group presentation, substituting this with an individual essay based on the topic of the presentation may be too great a departure from what students had envisaged and what they had already worked towards.

9. Diversifying Assessments

Traditionally, Law students have been assessed individually through written essays, problem scenarios and sitting unseen written exams. Law students are often seen as highly employable, having developed a wide range of transferrable skills, and they are expected to enter the workplace with these skills at their disposal, including the ability to communicate clearly and collaborate with others (Smith 2020, 210). While there has been a steady move towards adopting diverse assessment methods and incorporating practical and collaborative assessments, many law programmes retain traditional assessment methods as a key component of their assessment practices.

Irrespective of how traditional or diverse the range of assessment methods adopted, most individual assessments will fall into one of three broad categories: coursework, examinations, and practical assessments. What follows next is an outline of how each assessment category may be affected by the pandemic, and how each could be made Covid-safe. In response to Covid-19, necessary changes to existing assessments were made. The degree of change implemented by universities varied for different types of assessments. For law courses, assessments can be broadly categorised as: courseworks, exams, and practical skill assessments. In the Covid era many of the traditional written ‘courseworks’ were able to continue to operate online with relative ease. However, skills based courseworks struggled to adapt easily to an online delivery mode. Additionally, the decision for some universities to utilise, *inter alia*, online open book exams with limited

modifications to replace closed book traditional on-site examinations inevitably raised questions of continued suitability of such assessments.

9.1 Coursework

Broadly defined, coursework can include a range of written assignments which students complete under untimed conditions. Often including essay questions and problem-based scenarios, a coursework might also include dissertations, portfolios of written work, journals, case studies, or blog posts. For current purposes, we consider a coursework to include any assessment which is given to the students before they embark on preparing a written answer. For the most part, courseworks will likely be the assessment method which is least affected by Covid, although any providers which require students to submit a physical copy of their work may need to adapt their practices to permit electronic submissions. Some assignment may include collaborative elements, with students working in groups to complete the task, and students will need to be guided as how they may achieve this through virtual means. Assignments may also require students to undertake detailed research in order to fully address the task. Where electronic sources are not available, Law Schools may need to adapt coursework questions to ensure that students can complete with the sources made available to them.

9.2 Examinations

Examinations may conjure up images of rows of individual desks with students answering unseen questions under timed conditions. This traditional perception of an examination is difficult to replicate outside of the controlled conditions of an examination hall, and it is this type of assessment which is likely to have been the most disrupted by Covid. Less traditional open-book examinations would usually still take place in controlled conditions, with students only permitted access to certain resources, and the insistence on strict time-controlled conditions. Some Law Schools responded to Covid-19 by substituting closely-controlled examinations with ‘take-home’ exams which students complete outside of a formal examination hall and with full access to all available resources. This raises inevitable concerns around the integrity of the assessment, making it easier for students to collude or plagiarise their answers.

Pre-Covid, Dagilyte and Coe argued that take-home exams can present an effective way of assessing students’ legal knowledge and professional skills (Dagilyte & Coe 2019, 117-120). They argue that take-home exams are a more authentic means of assessing students compared with traditional exams, as they closely resemble the working environment in legal practice

by requiring students to research the law and present their findings within a timed deadline. Unlike traditional exams which test memory, open-book take-home exams provide an opportunity for students to further develop their knowledge and understanding of the law during the actual assessment by performing a research task as part of the assessment. The key concern with open-book exam arrangements centres around academic dishonesty (including collusion, plagiarism, and purchased essays). This concern can be overcome to by limiting the window for students to complete the assessment, and by requiring students to include a short reflective report on what they have learnt. The students' work will need to be submitted electronically, and it will be standard practice to check all submissions using plagiarism-detection software. Nevertheless, it is better to prevent academic misconduct rather than to rely on detection, and Law Schools need to ensure that students are fully briefed on good academic practice, and that expectations for each assessment are clearly set in advance.

9.3 Practical Assessments

Practical assessments are often used to test non-written communication skills, and might be particularly common when assessing practical legal skills such as mooting and advocacy, client interviewing, and negotiation exercises. They may also be used as a means of assessing collaborative learning and group work. As with examinations, campus closures will have rendered it impossible to undertake many practical assessments as originally designed. There are two aspects of practical assessments which were disrupted by Covid-19. First, practical assessments will inevitably include a live performance element, and students may be assessed on their ability to respond to questions or to react to the words and conduct of others (such as in mooting or interviewing exercises). Second, practical assessments often include a collaborative element with students working together in small groups to answer a question or present an argument (as with mooting). Reasonable adaptations would mean that many of these practical assessments could take place virtually, either as live assessments or pre-recorded, depending on the associated learning outcomes, and technology such as break-out rooms on video conference platforms could be used to ensure that students still have the ability to collaborate, discuss and respond to issues as they arise during the course of the exercise. Given that many legal professionals will have been working remotely during the pandemic, practical assessments maintain their authenticity, even when completed virtually. Some complications could arise, as with all online assessments, for which Law Schools need to adopt fair and appropriate policies: supporting

students who through digital poverty do not have access to the requisite hardware, students studying abroad without equal access to materials and working in different time zones, and disruption to internet services.

10. Authentic Assessments

Within this reconceptualisation of assessments brought about by Covid-19, there is a new opportunity to revitalise and embed authentic assessments in an online teaching and learning environment, so that a modern transformative legal education can continue to be provided which enhances the quality of the student experience. One question that does arise following the pandemic breakout is whether an online assessment can be, or perhaps even more, ‘authentic’?

To answer this, the scope and meaning attributed to ‘authentic’ assessments needs to be drawn. Whilst it is accepted that there is no single uniform definition of ‘authentic assessments’, it is possible to broadly describe it as replicating tasks and the standards of performance that are typically found in the workplace. According to Jon Mueller an authentic assessment is one ‘in which students are asked to perform real-world tasks that demonstrate meaningful application of essential knowledge and skills’(Mueller 2015). Replicating ‘real world tasks’ is, in some ways, a relatively easy concept to envision when the assessment is focused on practical legal skills. A moot is reflective of advocacy and an interview of a client may mirror the expected client care that is integral to the work of a law firm. However, it is possible for authentic assessments to be designed so that ‘meaningful application’ is extending to beyond practical legal skills and replication. Solving problems (real, hypothetical, theoretical) using substantive legal knowledge is integral to all modules and authentic assessments can be ‘vehicles of learning’ rather than assessing performance at the end of the learning. Ultimately, authentic assessments should provide students with opportunities to deal with ‘engaging and worthy problems or questions of importance, in which student must use knowledge to fashion performances effectively and creatively. The tasks are either replicas or of analogous to the kinds of problems faced by adult citizens and consumers or professionals in the field.’(Wiggins 1993, 229)

Conclusion

The ongoing impact of the Covid pandemic on Higher Education has meant that educational providers have now experienced very significant disruption to teaching, learning and assessment across two consecutive academic years.

Campus closures in March 2020 necessitated a mass migration to online learning. While on-campus delivery could resume in September 2020 in time for the new academic year, some universities continued with online-only delivery while many offered both online and on-campus delivery, albeit with limited face-to-face contact hours. Lectures and other mass gatherings were prohibited, and any face-to-face delivery which did take place was remained subject to social distancing requirements, meaning that collaborative learning and group activities were all but abandoned. The third UK national lockdown imposed in December 2020 again replaced all face-to-face teaching in UK Law Schools with online provision. The disruption to universities – and to students – has been immense, and this disruption has provided the student body with a strong argument for the continuation of the special dispensations made as part of the ‘no detriment’ policies adopted. Nevertheless, these policies were designed as an immediate response to the initial effects of the pandemic, and if universities have been able to establish viable, robust and engaging assessments while offering online delivery which is comparable to the face-to-face teaching it replaces, the case for the continuation of ‘no detriment’ policies begins to fall away. The situation in 2020 where delivery was cut short and universities had to respond quickly to ensure that students could continue with their studies by rapidly moving to online delivery and changing assessment plans, is very different to the situation in 2021 where teaching and learning has been planned for online delivery, and assessments have been designed with the Covid disruption in mind. While disruption continues, the case for extending ‘no detriment’ policies does not.

One of the repercussions of introducing ‘no detriment’ policies is the lack of appetite of a growing number of students to surrender its application to their degrees. This has spawned online petitions demanding for the continuation of ‘no detriment’ policies for this current stage of the pandemic (Shead 2021). There is an aversion amongst a growing number of students to surrender the perceived ‘safety net’ or the promise of ‘no detriment’ even though most institutions arguably only introduced such measures as an emergency response that was never intended to be applied in the long term to the courses.

Universities are autonomous (HEPI 2017) institutions and have ultimate control over the design, delivery and assessment of their courses. This is all conducted under the watchful eyes of the Office for Students and QAA to ensure that quality standards are met in the provision of higher education. However, this autonomy of universities is under threat as students have mobilised at local (university) and national level to call for the ‘no detriment’ policy to be imposed on all universities. A recent attempt (January 2021) to petition Parliament to forcibly implement a no determinant policy for

all universities was rejected on this basis, ‘Universities are autonomous institutions so the way they deliver courses and assess students is a matter for individual universities, not the Government or House of Commons’(UK Government and Parliament 2021). In response to the petition, reference was made to the guidance provided by the OfS that the introduction of such measures may be deemed appropriate in the circumstances:

‘Some providers have adopted approaches to assessment and the award of qualifications that promise ‘no detriment’ or a ‘safety net’ to students as a result of performance in assessments during the pandemic. The OfS recognises that such approaches are likely to be appropriate, particularly to reduce pressure on students in the current difficult circumstances. Individual awarding bodies should, however, ensure that standards remain secure’(OfS 2020b, para 50).

The vaulted autonomy to determine the implementation of core aspects of a university’s service and business is no longer on firm ground. Whilst a national change is not likely to be imminent, the pressure on individual universities to bend to meet these demanded changes is not to be underestimated.

Moving forward, educational providers should shift attention away from the macro-level (overall student body) and focus on the micro-level (individual student), ensuring that appropriate measures are in place to protect students who have been particularly affected by disrupted learning. This might include making alternative arrangements for students who cannot access physical materials, or cannot complete live or group practical assessments due to differences in time zones or reliable access to digital technology. Policies that cater for extenuating circumstances already exist and can be utilised to protect students who face greater difficulties as a result of Covid.

In addition to accommodating individual students with particular need, universities are giving effect to their duty of care by revisiting their assessment arrangements to ensure that the interests of the wider student body are fully protected by taking a longer-term view. Beyond dealing with the initial and emergency changes to teaching and assessment, education providers could decide to view Covid-19 as a catalyst for disruptive change; an opportunity to systematically rethink teaching, learning and assessment practices. Having determined which assessments are feasible during the Covid period, providers can then move their attention to explore what is desirable post-Covid. If students can complete their course during Covid without undertaking formal examinations, which are expensive for universities to administer, there may now be reason to question whether examinations

should have such a prominent position in Law programmes. Similarly, Universities and individual Law Faculty members have had to engage with new ways of teaching supported by different digital technologies. As awareness of these technologies has grown within the academic community, there are fewer barriers to using them, and there may be opportunities to retain some in the post-Covid world.

Redesigning assessment arrangements provides further opportunity to ensure that Law degree programmes continue to prepare students for the global world of work by placing emphasis on the development of key transferable skills. The Confederation of British Industry identified seven key transferable skills sought by graduate employers in the UK: self-management, teamwork, commercial and customer awareness, problem-solving, communication, numeracy, and application of information technology. These were listed in addition to attributes of a positive attitude and an enterprising mindset (CBI 2012). Many law programmes seek to develop these skills through their teaching, learning and assessment practices which helps to ensure that law graduates remain attractive to employers, and could in fact help to further advance some skills (particularly digital literacy and self-management). Changes to assessment required in light of Covid should not detract from the ability of Law students to develop and demonstrate these skills. Indeed, adapting to changing circumstances shows a degree of resilience and adaptability which will further help the Covid-cohort to demonstrate key skills in preparation for graduate-level employment. Moreover, the move to online teaching, learning and assessment has provided new opportunities to escalate innovation of digital fluency skills, which are highly prized by graduate employers.

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