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## Clinical Legal Education and Experiential Learning: Looking to the Future

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# **Clinical Legal Education and Experiential Learning: Looking to the Future**

**A Report**

**2016**

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## Foreword

As this report rightly notes we are at a crossroads in terms of the future direction of legal education. Changes to the nature and structure of the legal profession coupled with demands from and on the academy, students, prospective employers and the wider public inevitably means that attention is now focused on what we, as a society, want from our future lawyers and consequently how we might get that.

Whilst reviews and discussions have addressed what might be taught (and perhaps learnt) in law schools relatively little attention has been given, at least by non-law teachers, to pedagogic considerations, in terms of how content might best be delivered.

At the same time law schools have been voting with their feet with an exponential rise in the number of law schools engaging with what might broadly be termed as learning by doing – or clinical legal education. It is now the exception, rather than the rule, not to see clinical or hands-on approaches to study featuring as either extracurricular activity or (increasingly) as part of the credit-bearing programme. Considering the wealth of educational theory on experiential methods of learning this is perhaps of no surprise albeit that the relevant regulators and the legal profession have been slow to recognise this crucial part of the educational formula.

This report, based on thorough research of the literature and an analysis of clinical activity on the ground at home and abroad, helpfully sets out the advantages of, and challenges presented by clinical legal education.

In addition the report gives, in the context of likely changes to the required route(s) for professional qualification, a pragmatic account of how a contemporary law school might embrace experiential learning methods to serve the needs of both future law students and, depending on the model(s) adopted, those with unmet legal need. Whilst the report understandably focuses on education and public service it also identifies the potential value of the clinic as a vehicle for scholarly activity and its likely worth when measuring impact for the purposes of the Research Excellence Framework. In a nutshell the whole provides a platform for informed choice.

As one of the post 2000 pioneers in clinical legal education, with the benefit of the overview and insight that this report provides, the University of Manchester now has the opportunity to further realign its law portfolio to cater for academically, professionally and socially relevant legal education in the 21<sup>st</sup> century.

### **Professor Richard Grimes**

Former Director of Clinical Programmes, York Law School, University of York and previously Professor and Director of Pro Bono Services, The (then) College of Law. Richard is now a senior adviser with Les Deux Ltd, an access to justice and experiential learning consultancy.

**September 2016**

## Acknowledgements

This study would not have been possible without the support and cooperation of all those who agreed to participate. We are particularly grateful to all those clinicians, both in the United Kingdom and the United States, who gave up their time to discuss their arrangements for clinical legal education with us and what was happening on the ground. This included visits to a number of clinics, and it was extremely helpful to see students working within a clinical setting. With the research team comprising two social scientists and a lawyer it was not easy for clinicians to get across to non-clinicians some of the complexities and nuances involved. We are conscious that a more detailed exploration could usefully examine a number of important issues and we hope that by working with clinicians we can gain their support for working with social scientists in a large-scale empirical study in the future. It is important for us to comment that we were very impressed with the clinics we visited and we recognise that such excellence has only been achieved by the dedication and commitment of those involved in clinical work. It is our view that the legal education reforms will lead to clinical methods being integrated into the law degree and we would see this as a positive step in engaging law students in 'learning by doing'.

We are also very grateful to the academics, regulators and consultants who agreed to meet and/or speak with us. Particular thanks go to Rebecca Sandefur, an Associate Professor at Illinois University and a Fellow of the American Bar Foundation, who was an invaluable source of information for us when considering innovations in practice in the United States.

It is also important for us to give our thanks to the School of Law at the University of Manchester for funding this research project. The study could have been focused more specifically on clinical legal education in Greater Manchester but with thanks to Professor Toby Seddon, Head of the School of Law, and Dr Graham Smith, Director of Social Responsibility at the School of Law, we were able to examine this topic within a national and international context. With the potential for change, particularly in relation to the legal education reforms, we feel that their foresight has enabled us to highlight the importance of clinical legal education both in pedagogical terms and also when considering issues of social justice. We are also indebted to Dr Graham Smith for taking the time to proof-read this report. His very thorough and thoughtful approach has been invaluable in helping to shape the final document.

Finally, we want to say many thanks to Professor Richard Grimes who kindly peer-reviewed this report. With his knowledge and expertise of clinical methods and experiential learning his input has been invaluable. While he has provided us with extremely helpful comments on this report we stress that any remaining errors and omissions are ours alone.

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## Executive Summary



### 1 Introduction

There has been a gradual increase in law schools adopting clinical methods and pro bono work over recent years; with now around 70% of universities providing students with such opportunities. It is not always evident from the descriptions of clinical and pro bono work on websites and in reports what activities are being supported by law schools, how and if the work is supervised and assessed. There is at the present time a number of factors which are encouraging the expansion of clinical methods and experiential learning in law schools. These include the economic recession leading to the retrenchment of legal services. This has led to fewer training contracts and job opportunities being available for new lawyers and their involvement in clinical methods and pro bono work is seen to increase their employability and give them a competitive edge when applying for such positions. Cuts in public spending have reduced the number of legal advice suppliers and changes to legal aid have removed from scope altogether some areas of social welfare and family law. This undermines access to justice and has led to an increase in unmet legal need.

Law schools are not able to fill this gap in legal services, but over the years law students have assisted thousands of poor and vulnerable people with their legal problems and recovered millions of pounds in compensation. Clinical work, therefore, could usefully fit in to the ecosystem of legal advice providers. The current economic climate is also encouraging innovation in the delivery of legal services and students could assist in identifying new ways of working in helping to improve access to justice, particularly through technological developments. Proposed changes to legal education are also intended to encourage law schools to adopt clinical methods through an integrated law degree. With law schools preparing for the future, it is timely to undertake this review of clinical legal education (CLE).

### 2 A global perspective and developments in the United States

A global perspective is first adopted in this report when seeing how CLE has been used in making a connection between legal education, public interest and social justice. By focusing on a global clinical movement we can see the struggles law schools have been through when establishing clinical projects, particularly in the developing world. Such struggles are inspirational and can be used to help invigorate clinical approaches in the developed world when highlighting the importance within a civilised society for people to have access to justice.

It is useful to look to the United States of America (US) when considering the background to CLE, including developments in educational theory and availability of capital funds, which has led to most law schools having some form of clinical activity. There are differences in the route to qualification for lawyers when comparing developments in the US with the United Kingdom (UK), but there are also observable similarities. These include the 'perfect storm' that has followed the 2008 recession: retrenchment of legal services, high costs of legal education, regulators encouraging law schools to expand clinical

work, and fewer job opportunities for new attorneys. There is also identified a market failure within legal services as private practice attorneys are targeting the wealthiest 20% of the population, which leaves many people without having access to a lawyer to resolve their legal problems. This is leading to innovation in practice, particularly through the use of technology which is providing new ways for lawyers to communicate with their clients and provide legal services, including on-line initiatives, which are helping improve access to justice.

### 3 Practice on the ground in the United Kingdom

Developments in the US provide a useful context for examination of developments in the UK. After setting out a brief summary of CLE from the 1970's, we consider the assessment of clinical and pro bono activity, including the importance of reflective practice. We next explore practice on the ground by examining clinical initiatives supported by twelve law schools and pro bono work undertaken in three universities. The law schools selected were those with a reputation for excellence and/or are adopting innovative practices. Within the context of this study, however, we must stress that we have not been able to include all law schools having a good reputation for clinical work. Nevertheless, we are able to examine a wide range of activity and we adopted a thematic approach when considering the following issues:

- Whether the primary goal of the activity is legal education or community service;
- The potential for a fee-generating 'teaching law firm' model;
- Examining relatively new models of clinical activity;
- Exploring clinical activity within traditional Russell Group law schools;
- Considering pro bono activities supported by a number of law schools.

### 4 Proposed legal education reforms

We next explore the proposed legal education reforms in England and Wales and the potential for universities to work with students on the new 'solicitors qualifying

examination' throughout their five or six years of study. This could include law schools offering an integrated law degree, which will exempt students from taking the legal practice course, and to then work with legal providers in finding work-based placements over the next two years. With the expansion of CLE it is important to consider the potential for law schools to work with others in the ecosystem of legal providers. While the pedagogic aims of universities have to be dominant as education providers, we have seen the potential for law schools both working on their own and in partnership with others to help address unmet legal need and increase access to justice. It would also be useful to explore within an ecosystem of legal providers the extent to which a 'judicare' model of providing legal aid through private practice can continue in the future. We explore in Manchester the early-stages of a local initiative which involves a collaboration between legal advice agencies, law schools and lawyers in private practice to work together in seeking to target legal services to the poorest and most vulnerable people in society. Examples of innovation in practice are also highlighted in order to encourage local responses both in relation to criminal justice initiatives and through the use of technology.

### 5 Recommendations

We have only been able to scratch the surface of what is happening with CLE and pro bono activities when looking at activity on the ground. It is in this context of change, and particularly with the proposed legal education reforms in England and Wales, that we feel law schools could usefully engage with the Solicitors Regulation Authority (SRA). The SRA would benefit from having the knowledge and expertise of clinicians working in established law clinics and we also recommend that law schools consider working with the SRA as an 'early adopter' of the proposed reforms, including the more traditional universities in the Russell Group. This would help to ensure that the adoption of clinical methods complements rather than detracts from high-quality teaching methods.

With the potential for expansion in CLE, we also recommend that an empirical study is undertaken. Clinicians are best placed to inform the research agenda but there will be limits to what can be learned about clinical practice from people studying their own programmes. We therefore propose that a study is undertaken in which clinicians and social scientists collaborate to consider the following key issues arising out of this study:

- Creating a taxonomy of CLE;
- Exploring approaches to CLE: a bolt-on clinic or integrated into the curriculum;
- Measuring the quality of clinical legal advice;
- Considering the student perspective on the 'clinic effect';
- Exploring law clinics and the ecosystem of legal providers;
- Examining technology and innovations in practice.



## 6 Next steps

In the interest of taking forward the findings and recommendations contained in this report commissioned by the School of Law at the University of Manchester it is proposed that the School convenes a seminar in association with the Clinical Legal Education Organisation, at which clinicians, regulators and academics can discuss the issues raised in this report. The suggested aim of the seminar would be to craft a framework for the future that makes sense of the complexities and uncertainties currently associated with the teaching of law.



## 1 Introduction

The original purpose of this study was to evaluate the viability of a new approach to clinical legal education (CLE) in the School of Law at the University of Manchester, including the possibility of setting up a 'teaching law firm'. It soon became apparent that uncertainty in a number of policy areas would shape the study, including proposed reforms of legal education and, following the 2008 recession, an increase in unmet legal need for the poor, marginalised and disadvantaged in society. Cost-cutting measures have also had a dramatic impact on reducing publicly funded legal services available to such individuals and groups. In particular, implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), led to whole areas of law being removed from scope of public funding. Similar developments in the United States (US) over recent years have led to reforms in legal education and innovations in CLE intended to help improve access to justice (Goldfaub, 2012; Krantz and Millemann, 2015). With the potential for legal education reform in England and Wales encouraging law schools to integrate clinical methods into the curriculum we have taken the opportunity to examine what is currently happening on the ground and to consider how this might change in the future.

It is helpful to begin by briefly placing CLE in a global context and we then look at its background and development within the US. Having examined three different legal advice clinics in Chicago, we consider a recent coalescing of factors which have influenced clinical methods and innovation in the delivery of legal services.

There are important differences between the US and the United Kingdom (UK) in the way that students qualify to practice law, but in our view developments across the Atlantic are useful when looking to the future over here. In Section Four we set out the background to CLE in the UK and look at some of the issues arising out of the assessment of clinic work. A thematic exploration of 12 clinics that operate across the UK is followed by examination of proposals to introduce the 'solicitors qualification exam'. In our view the proposal would see a shift in legal education towards the American model. The advice ecosystem in which law clinics operate within the context of cuts in public spending is then considered in Section Seven. This provides the framework for exploring the potential for clinical service innovation in the civil and criminal justice systems. We conclude this report by setting out recommendations and outlining the next steps that we believe should be taken when looking to the future of CLE.

### 1.1 Clinical models, experiential learning and pro bono activities

It is helpful in this introduction to set out what we mean by a law clinic and identify key models. Grimes (1996:138) defines a law clinic as "a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised". Here, the term 'experiential learning' refers to an approach to education in which students are exposed to real or realistic legal issues and problems (Grimes and Gibbons, 2016).

Although CLE and pro bono activities are conceptually distinct, it is exceedingly difficult to pin down “one all-encompassing definition that will meet with the approval of everyone” (Kerrigan and Murray, 2011:1). Sandefur and Selbin (2009:58) note that CLE in the US is a “catchall term for a wide variety of practices and methodologies not easily summarised”. When considering a taxonomy of CLE, Richard Grimes notes that there are essentially two models: the law school clinic (run within or external to the law school but staffed and run by the law school) and the non-law school clinic (based on externships but where the law school provides the students and deconstructs the students’ experience afterwards).<sup>1</sup> Each model can then be subdivided into different types of clinical activity and this classification can be further analysed in terms of whether it has an educational or service focus. CLE can mean different things in different contexts, and the different types of clinical activity and pro bono schemes summarised by Kerrigan and Murray (2011:1-3) are helpful:

- In-house advice and representation clinics – often referred to as a ‘teaching law firm’, the type of service clients would expect if they went to a firm of solicitors is replicated in the law school.
- Advice-only/gateway clinics – providing initial advice and/or referral to other services and covering a wide range of activities, such as a drop-in/telephone advice and email research.
- Placement or externship schemes – absent from law school supervision, students go out to work with law firms or other external agencies.
- Simulation activities – students act in roles as lawyers performing realistic but standardised tasks set by a tutor.
- Specialist clinical projects – a range of projects which do not fall clearly into one of the above categories, such as ‘Innocence Projects’ and the Free Representation Unit.
- Streetlaw projects – students work as a member of a team to educate community groups about an area of law or legal rights relevant to members of the group.
- Voluntary pro bono activities – a range of activities that take place as part of or as an adjunct to study at law schools.

## 1.2 Methods

The methods adopted in this study have included a literature review of CLE initiatives both nationally and internationally and legal education reform in England and Wales and the US. We have visited eight clinics, and spoken to clinicians (either in person, over the telephone or via email) at four other law schools in the UK, and Dr Vicky Kemp visited three legal advice clinics and interviewed clinicians and academics in Chicago. Web-based research into CLE initiatives and pro bono work was undertaken at four other universities.<sup>2</sup>

Research interviews were held with Associate Professor Rebecca Sandefur, an Associate Professor at Illinois University and a Fellow of the American Bar Foundation (25 May 2016), Michelle Waite from Fieldings Porter (7 June 2016), Matthew Bown from Police Actions Lawyers Group (7 June 2016), Dr Graham Smith, Director of Social Responsibility at the School of Law, University of Manchester (21 June 2016) and telephone interviews were held with Julie Brannan from the Solicitors Regulation Authority (SRA) (17 June 2016), Professor Nigel Savage, former President of the University of Law (21 June 2016) and John Nicholson, barrister from the Greater Manchester Law Centre (23 June 2016).

<sup>1</sup> Without this reflective component it is work-experience and not a clinic.

<sup>2</sup> Details of the clinics visited and clinicians spoken to are set out in the Appendix.



## 2 Clinical legal education in a global context

CLE programmes exist in one form or another at law schools throughout the world. Whereas local approaches to the study of law are outdated CLE is different. As Bloch (2011) points out, clinical law teachers use experiential learning methods that place students in the role of a lawyer in a social justice context. Thus, CLE is taught on the ground and teachers rely on their experience in the field and ties to local communities and legal professionals. Despite this 'localism', Bloch (2011) shows why CLE is global. First, he notes there is now the global reach of CLE, particularly over the past 15 to 20 years. Second, there is a commitment to legal education and legal system reform, which has a social justice mission of global significance. Third, clinical law teachers and their collaborators have joined together in a global clinical movement.<sup>3</sup>

Committed to achieving justice through legal education, the Global Alliance for Justice Education (GAJE) was set up by clinicians in 1999 with the intention of involving people, including law students, from as many countries in the world as possible. A bi-annual conference is held at locations which are accessible and affordable for people from developing countries.<sup>4</sup> As part of the 'Global Clinical Movement', Bloch (2011) has published an edited collection of essays with contributions from 50 CLE scholars from six continents. For Asher (2012), this is one of the first books which is exclusively focused on clinical legal practice and encourages coherent thinking about law school clinics as a subset of public interest law.

In many developing countries CLE has emerged, after much struggle, to play an important role in supplementing the work of national legal aid bodies (McQuoid-Mason *et al.*, 2011:34). Law clinics also provide backup legal services to clusters of paralegal advice offices, as occurs in South Africa, which helps to make law clinics more financially viable.

Bloch (2011) comments that struggles for CLE provide a credibility that helps reformers establish new programmes, which also help invigorate clinical projects in the developed world. Take Streetlaw projects, for example, where students work as a member of a team to educate community groups about an area of law relevant to members of the group. Having first developed in the US, such initiatives are popular in law schools in the UK, but often these are run by students with little or no supervision. In other countries Streetlaw is being used as a "tool for social change" (Ikawa, 2011:209): indeed, Grimes *et al.* (2011:225) describe it as a "vehicle through which the public can be made more aware of their rights and responsibilities". This is seen to be effective when carried out by law students whose task is to learn the material themselves before helping others to understand it. In South Africa, for example, in the post-apartheid era Streetlaw has highlighted the role of legal literacy as a powerful tool for social change and, at the same time, demonstrated the capacity of law students to promote greater awareness of basic civil rights. The Streetlaw programme also helped break down racial barriers

<sup>3</sup> See further Bloch's (2011) introduction to 'Global Clinical Movement'.

<sup>4</sup> For further details of the GAJE see <http://www.gaje.org/>

## Clinical legal education and experiential learning: Looking to the future

between young people by enabling Black and White school children to share experiences and debate important societal issues (Grimes *et al.*, 2011:228).

In articulating a vision for what the global clinical movement should strive to accomplish, Maisel (2011:335) comments on three goals: increased access to justice for previously unrepresented groups; a system of legal education that ensures future lawyers have the knowledge, skills, and values needed to help solve the world's complex problems; and a legal profession that is more diverse, skilled and committed to serving social needs. For Asher (2012), there is the need to question the contested meaning and purpose underlying CLE at law schools both within and outside of the US. An important step forward, he proposes, is to have a 'thick description' of the content of clinical work and the contexts in which clinics operate. Asher (2012:197) argues that "the goal of subsequent scholarship in this area should be to develop taxonomies of institutional form that allow us to assess and further develop clinical legal education". In so doing, we need to know about legal practice in the various settings to understand how it might constitute a model of work that is shared across borders.



### 3 Clinical legal education in the United States

It is important to note from the outset the way in which students have to qualify as an attorney in the US. It involves them having to complete their first degree, generally a four-year course (three years at some universities), before postgraduate study of law under the Juris Doctor (J.D.) degree, which is usually of three years duration. During years two and three of the J.D. degree programme law students tend to be involved in CLE, that is after a minimum of four years in higher education.<sup>5</sup> Having completed the J.D. degree, and having successfully taken the bar exam, they go straight into legal practice as an attorney.

Factors informing changes in legal education in the US over recent years include the impact of the economic crisis on reducing student recruitment and increasing encouragement from regulators for law schools to expand clinical and pro bono activities. Resources are the dominant factor when US law schools make decisions on how to engage students in clinical activity, and significance also attaches to the legal services market: most legal services are targeted at the wealthiest 20% of the population. This leaves gaps in legal advice provision, not only for poor and marginalised communities but also for middle-income earners. Recent innovations in the US are, therefore, aimed at improving support for students and new attorneys and also improving the delivery of legal services.

#### 3.1 A brief history of clinical legal education

CLE and experiential learning first developed in the US and today almost all law schools offer clinical modules. In the early 1900's Harlan Fiske Stone (1911:733), lawyer and Dean of Columbia Law School, declared:

"If it is true that the function of the law school is to approach the study of law from the theoretical and scholarly side, it is equally true that it must not become so academic as to separate itself from the profession which it represents and for the practice of which it undertakes to train its students".<sup>6</sup>

Clinical methods began to be adopted in the US in the 1930's (Llewellyn, 1930) and gathered pace during the 1950's, when funding was made available. This was partly motivated by the legal aid movement and in 1958 the Ford Foundation awarded \$800,000 to set up the National Council on Legal Clinics. In the 1960s the Ford Foundation shifted the focus towards educational rather than legal aid and the Council was renamed the Council on Legal Education for Professional Responsibility (CLEPR). A \$12 million Ford Foundation grant followed and the number of clinics set up by law schools increased dramatically. When funding from the Ford

<sup>5</sup> In the UK students tend to be involved in CLE from the second year of studying for law as their first degree (see Section 4).

<sup>6</sup> It is due to such concerns today that the SRA in England and Wales have proposed educational reforms which seek to integrate the theory and practice of law into the curriculum.

Foundation was withdrawn the US Department for Education took over CLE funding and, with spending of \$87, million clinics proliferated in law schools between 1978 and 1997 (Joy, 2012).

The organised bar in the US has repeatedly called for students to be better prepared as lawyers and for law schools to integrate 'experiential learning' which involves more practical and professional training in legal education. In the American Bar Association's (ABA, 1992) most influential report, the MacCrate Report, law schools were called upon to place greater emphasis in developing professional skills and values for law students. The Clinical Legal Education Association (CLEA) was formed in 1992 and now has more than 1,000 teacher members who regularly publish in the *Clinical Law Review*.

The Carnegie Report (Sullivan *et al.*, 2007) has been seen as perhaps the most influential document in current debates about the future of legal education (Thomson, 2014). Emphasising that law schools should teach less about what the law is and more about what the law does and what lawyers do with it, the authors argue that students must encounter law not just as a set of doctrinal principles but also as a set of systemic processes. The curriculum, therefore, should be organised around foundational professional skills and the contexts for using them, aimed not at having knowledge but at using knowledge.

The third important US report, 'Best Practices for Legal Education', was published by CLEA in 2007 (Stuckey *et al.*, 2007). The Committee spent six years adopting a collaborative approach in order to develop a statement of best practices for legal education. In the report, Professor Roy Stuckey and his colleagues identify six attributes of effective, responsible lawyers, which include intellectual and analytical skills, professional skills and professionalism.<sup>7</sup> The Best Practices report supported the concept that experiential learning is an effective method of integrating doctrine, skills, and professional formation. Experiential courses are identified as those which involve students' experiences in the roles of lawyers or their observations of practising lawyers and judges to guide their learning. Experiential education is seen to integrate theory and practice by combining academic inquiry with actual experience (Stuckey *et al.*, 2007:165).

By 2010, almost all law schools in the US have multiple clinics (Bintliff and Alford, 2010).

### 3.2 Educational theory in experiential learning

In 1984 Professor David Kolb (2014) wrote about experience as the source of learning development and he produced a cyclical model for reflective practice. The model was adapted by Gibbs (1988) in a six-step 'reflective cycle'. This sets out, in summary, that when reflecting on an interaction with clients, students needs to think round: describing what happened – what were they thinking and feeling – what was good or bad about the experience – what sense they can make of the situation – what else could be done – if it arose again what would they do.

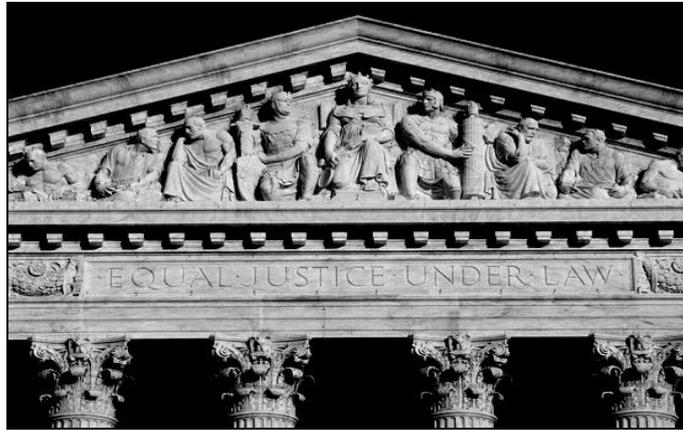
Schön (1983) used the theory of the reflective practitioner to encourage a debate about the nature of professional knowledge and the role of reflection in professional education. Crucially, Schön (1991) observed that professional education tended to distinguish between knowledge and action by assuming that professional practice is merely the application of a body of knowledge to a practical situation. In real life, he pointed out that things are not so simple and professionals are often presented with difficult situations which are vague, messy and ill-informed.

Within a professional field Casey (2014) notes that experts need to have the capacity to exercise judgement and they do so quickly, seamlessly and repeatedly. They draw on experience to distinguish relevant information from the irrelevant, and to assess the risks of different courses of action. Professional experience for an attorney comes to inform their intuition and helps to shape the exercise of judgement. Over time the attorney comes to rely on their 'gut instinct' or intuition in the exercise of their professional judgement. Their experience also allows them to analyse immediately factors that could affect the professional performance

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<sup>7</sup> The other three related attributes include self-reflection and lifelong learning skills, core knowledge of the law, and core understanding of the law (Stuckey *et al.*, 2007:65-66).

or outcome. New attorneys lack experience and it is in this context that Schön (1983) writes about the 'reflective practitioner'. Without experience new attorneys cannot rely on intuition and instead they must "de-couple the action from the thinking about the action" and thereby consciously activate a process to assist in exercising professional judgement (Casey, 2014:319). This is not to say that experienced lawyers have no need for reflective practice but that they integrate reflection in their practice. The way in which students are assessed on reflective practice is considered below when examining the assessment of clinical work.



### 3.3 Three different models of legal advice clinic

As part of this study three law clinics were visited in Chicago, USA. The first CLE initiative presented below is run by an elite university and the impressive work undertaken is resource intensive. Next observed is a law office based in a university, with employed attorneys providing pro bono legal services and charging a fee for clients who can afford to pay. A general legal advice clinic operating outside of a university with students on placement assisting attorneys is the third model examined.

#### 3.3.1 The Mandel Clinic – University of Chicago Law School

It is now over 50 years since the University of Chicago set up the Mandel Clinic with twin goals of assisting those who need help and teaching students the practicalities of legal practice. Since inception the Mandel Clinic has been regarded as an exemplary law school-affiliated legal aid clinic and it is reported that hundreds of thousands of people have been helped by the clinic.<sup>8</sup>

Professor Jeff Leslie, Director of Clinical and Experiential Learning at the Mandel Clinic, said that in the 1950's there was a drop-in centre with long queues of people waiting for advice. The focus at that time was family law followed by contract and debt advice. With a high volume of cases students tended to be used as paralegals, supporting attorneys, rather than seeing clients and doing the work themselves. The clinic was seen as separate from the law school and in the 1970's attorneys were not recognised as teachers within the law school. With increasing interest the need to integrate the clinic into the law school became evident. A new director was appointed in 1970 with the aim of creating more individualised and personal legal training for students. Jeff said that the clinic's pedagogical mission became more dominant around 20 years ago. The attorneys appointed were experts in their specialism which gave students more sophisticated and relevant legal practice experience. This specialisation, according to Jeff, led to the Mandel Clinic's reputation as an exemplar of CLE.

Jeff said students register for clinics in their second and third years of studying law and are selected on the basis of an algorithm. In the clinics they learn through classroom instruction, simulation and representation of clients under the close supervision of clinical teachers and attorneys. There are at present around 150 to 175 students involved in clinic work, which is about half of the student body, and the clinics handle more than 1,000 cases annually. Clinic

<sup>8</sup> For further details of the Mandel Clinic see University of Chicago (2016a).

work started with an access to justice focus and then switched to pedagogical concerns with Jeff stressing that a balance needs to be struck between the two. The subject areas available to students under the clinics include environmental law, civil rights and police accountability, criminal and juvenile justice, employment discrimination, federal criminal justice, housing initiative, international human rights, mental health, social services law and recently the setting up of the new Supreme Court and Appellate Advocacy Clinic.<sup>9</sup>

Jeff describes the housing initiative project as a transactional clinic in which students provide legal representation to community-based housing developers, tenant groups and other parties involved in affordable housing development. Working with non-profit housing developers it addresses issues concerning contracts, acquisition on construction and financing. Students, he said, serve as deal lawyers, advising clients on structuring issues, which include negotiating, drafting and reviewing construction loan documents, construction contracts, purchase and sale agreements, partnership agreements, and other contracts.

Professor Craig Futterman is responsible for the work of the Civil Rights and Police Accountability Project (PAP), a leading US civil rights clinic that focusses on criminal justice issues. As an expert in the field he is able to influence policy and practice and, for example, in a recent case he released hundreds of Chicago police video and audio clips. He explains that if there has been a police shooting or an allegation of police brutality it is important that the Department is held to account for its action from day one: "If there's a video taken in a public area, the video should be released within 24 to 48 hours of the incident. That's what better and more effective police departments are doing".<sup>10</sup>

Jeff explained that the Mandel Clinic does not charge fees for any of the work undertaken, although the clinic will claim fees from the court for cases won. More generally, however, Jeff confirmed that the cost of CLE is covered by the law school, mainly through student fees and endowments. It is at the elite universities, including the University of Chicago which is ranked joint fourth in the list of best law schools in the US (US New Education, 2016), that there are large endowments from alumni which help fund CLE work. Indeed, in the world rankings of the richest universities the University of Chicago is in 15<sup>th</sup> position with an endowment of \$7.55 billion.<sup>11</sup>

With the University of Chicago's status as an elite institution students are highly employable. Jeff said that work in the clinic is important to employers who want new attorneys to have embraced problem-solving approaches, experience of working with clients and skills which help them understand legal practice. By investing heavily in CLE work, therefore, the Mandel Clinic are able to provide a 'Rolls Royce' model which is beyond the financial reach of many universities.

### 3.3.2 The Law Offices of Chicago-Kent College of Law

Within Chicago-Kent College of Law a teaching Law Office has been set up which operates on the same basis as a private law firm. Its dual mission is to provide high-quality clinical education to over 150 students each semester<sup>12</sup> and deliver outstanding and competitively priced legal services to clients. A unique aspect of the Chicago-Kent CLE programme is that it is a fee-generating model which is reported to bring both educational and financial benefits for students. The Law Offices are staffed by 10 clinical professors and another 10 'staff attorneys'. Of the 10 professors, the directors of the externship program and the ADR training program are funded by the University and the other eight are self-funded.<sup>13</sup>

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<sup>9</sup> It is interesting to visit the Mandel website and see the brief descriptions given about the work undertaken in the different clinics as this helps to highlight the specialist nature of the legal work that students can participate in (University of Chicago, 2016a).

<sup>10</sup> University of Chicago (2016b).

<sup>11</sup> See The Best Schools (2016).

<sup>12</sup> The students receive academic credit for working with one of the clinical professors in the area of their choice.

<sup>13</sup> For further information see Chicago-Kent College of Law (2016a).

## Clinical legal education and experiential learning: Looking to the future

Director of Clinical Education Professor Richard Gonzalez, with over 30 years of legal experience, is acclaimed as one of the nation's best-known and successful employment attorneys. Richard described that Law Offices clinicians' salaries are linked to the fees they generate and bonuses allow them to earn more than highly paid academic faculty members. Clinicians are appointed on a long-term contract basis and are required to supervise students and teach in the clinic classroom components. With the fee-generating model Richard explained that their experienced practitioners also become experienced teachers.

The in-house clinic programme covers criminal defence, employment discrimination and civil rights, entrepreneurial, environmental, family, health and disability, intellectual property areas of legal practice along with mediation and alternative dispute resolution, a tax clinic and a centre for open government. Nine clinicians support these activities and annual caseload is around 1,000.

Prior to joining the Chicago-Kent faculty in 1988, Richard was a litigator in a law firm, attorney with the Legal Assistance Foundation of Chicago and administrative law judge for the State of Illinois Human Rights Commission. In the Law Offices Richard concentrates on representing employees in discrimination and wrongful discharge cases. He described how students are exposed to clients and potential clients and get involved in the preparation of pleadings and discovery, trial preparation and discussion of related strategic issues.

Professor Daniel Coyne is one of the two clinicians who practices criminal law in the Law Offices. Before joining the faculty at Chicago-Kent in 2005, he headed a private practice working on criminal cases. As an experienced attorney, Daniel said that he is one of around 70 attorneys locally who are certified as 'first chairs' and able to take on cases of murder and other offences which, until recently, attracted the death penalty. This means that Daniel and his colleague, Professor Richard Kling, who worked in a Public Defender's Office and was a member of the Special Homicide Task Force, can deal with the most serious of offences heard at the Federal Supreme Court. Daniel explained that the Criminal Law Office deals with more pro bono work than private firms with around half of their cases being court-appointed and funded. A sliding-scale of fees operates and people who can afford to pay are only asked to contribute towards their costs.

Students working in the Criminal Clinic not only assist clinicians on preparing cases, the State of Illinois allows them to obtain a 711 Licence to make representations in the criminal courts. Students may only apply for the Licence after completing a fixed number of credits, which can only be achieved in the third year of their J.D. degree, and may then do anything in court that Daniel does so long as he is present and supervising them. He said that students routinely deal with jury trials and some have argued cases all the way to the Supreme Court. This, he said, gives students an excellent opportunity to try out their advocacy skills in front of a judge who knows their trainee status while under the watchful eye of a clinician who can intervene if problems arise.

Daniel also commented on how students' exposure to criminal cases in the clinic, and to prosecutors, public defenders and judges, helps their future employability. When commenting on what distinguishes the Law Offices from other non-paying clinics, Daniel said: "I think it's the wake-up call – when our students not only see the law but how the practice of law works ... They have to have an understanding that litigation does cost money. If you've never been faced with that and you have a client out on the street what you don't have from the perspective of a young lawyer is how to manage the client".

Professor Rhonda de Freitas, a family and matrimonial attorney who deals predominantly with child custody and visitation issues, complex financial settlements, and collaborative law, joined the Chicago-Kent faculty in 2008. Rhonda was an experienced attorney in family law prior to joining the Law Offices and explained that with three children to look after she was finding it difficult to manage the 18-hour days required. The majority of her clients at the Family Law Office do not have the funds to pursue all issues arising and after establishing what they can afford to pay she then negotiates with them about the best way to proceed. Such negotiations Rhonda said were an important part of her job and central to the learning experience of students in the Family Clinic.

In such a large city as Chicago there is a vibrant legal services market and Rhonda described how she runs a successful practice helping poor and 'middle-income' people who, like firefighters, earn around \$70,000 a year. Although this may seem like a lot of money it does not go far for a family with children who have to split up and survive on \$35,000 each, and with private lawyers charging at least \$400 an hour only the well-off can afford representation. Rhonda said that working in the clinic helps students by allowing them to experience family law in the real world and recognise that most people do not have the financial means to bring everything to bear on a case. Indeed, in some cases she said that a client may only have \$100 to spend on legal fees and the case could then come down to who is going to pick up the electricity bill.

Also at the Chicago-Kent College of Law is the Center for Access to Justice and Technology (CAJT).<sup>14</sup> The Director, Professor Ron Staudt, is a pioneer and national leader in the field of legal technology education. Ron, together with Alex Rabanal, Access to Justice Fellow, talked about a number of interesting initiatives within CAJT which are explored further below when looking at technology and clinical work (see Section 3.6).

### 3.3.4 Chicago Legal Clinic

The Chicago Legal Clinic is of relevance to this study because although not attached to a university it operates student placement schemes. The clinic was founded in 1981 by Ed Grossman, who is the Executive Director, and the Most Reverend Thomas Paprocki, both alumni of a local university. Since setting up the clinic, which now comprises four offices with the main one in South Chicago, they have provided assistance to tens of thousands of low-income residents of Chicago.

Veda Dmitrovich, the Pro Bono Programme Director and Director of the Intern Programme, explained that there are 38 employees and 23 attorneys based over the four offices. The clinic also supports a number of court-based advice desks which assist litigants in person understand processes and prepare documents. A pro bono programme matches people on low incomes with meritorious civil legal problems with private attorneys who are willing to represent them on a voluntary basis. The clinic also operates a virtual advice desk where litigants can seek advice in relation to family, housing and consumer law by speaking to an attorney over the telephone. Through its neighbourhood offices and advice desks the Chicago Legal Clinic dealt with around 24,000 clients during 2015/16.

Veda said that some law schools credit volunteer law students for work undertaken in the clinic; this is known as an externship. She also explained that the Public Interest Law Initiative (PILI) helps by funding law students work in legal service organisations. This includes funding of \$5,000 each for three students to work at the clinic for 10 weeks over the summer. There are also the PILI Fellowships which are available to students who have graduated and been hired by large law firms. The firms pay the Fellows a salary to work at a legal aid agency during the summer months. The Fellows work five part-time weeks, take time off for the bar exam, and return for five full-time weeks. Coordination is evidently an important part of the clinic's contribution to the legal services network operating in Chicago.

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<sup>14</sup> See further Chicago-Kent College of Law (2016b).



### 3.4 Recent changes in legal education and legal services

CLE in the US has to be understood in the context of developments that indicate traditional means of access to the legal profession are unsustainable. These include the high costs of legal education and a radically changed job market following the financial crisis of 2008. This has led to the retrenchment of law firms, reduced salaries and many new attorneys struggling to find work. In pursuing their education it is not uncommon for law graduates to accumulate \$125,000 to \$150,000 in debt. Goldfaub (2012:281) notes that the emerging concern is that “law schools cost too much and deliver too little of what our brave new world requires”. Even after having paid for their law degree, on average, around 40% of students fail to pass the bar exam, which is required to obtain a licence to practice as an attorney. In 2015, for example, just 59% taking the bar exam passed (National Conference of Bar Examiners, 2016).<sup>15</sup> Over the years the pass rate has dropped and is now at the lowest point since the 1980’s (Kitroeff, 2015).

Media reports suggest that this trend is due to high costs of education, which discourages students from applying to study law. Across the US, for example, enrolment in law schools was down 24% from 2010 to 2013; as high as 38% in New York (Weissmann, 2013). Academics point out that by enrolling an increasing number of students with lower grades and LSAT (Law School Admission Test) scores it is not surprising that a higher proportion fail the bar exam. In effect, the majority of law schools in the US are not only shrinking in size but also admitting less qualified students (Rivard, 2015). The media blames universities for this decline in student numbers because since the introduction of tuition fees they have been criticised for treating legal education as a ‘cash cow’. In an attempt to attract students some universities are offering compressed programmes, an innovation pioneered by North Western School in Illinois in 2009, and Brooklyn Law School launched a two-year option for the J.D. (Loftus, 2015).

It is interesting to reflect that while there are concerns in the US about unmet legal need there is no shortage of lawyers. Janelle Orsi (2013) seeks to address this by encouraging innovations in the delivery of legal services. Orsi is a cofounder of the Sustainable Economies Law Centre which promotes a new legal landscape based on community resilience and grassroots economic empowerment. A mismatch, she says, has developed over the years between the legal needs of society and the way in which legal services are targeted at the most wealthy group. In the 1970s, for example, the ABA identified that the middle 70% of society were not getting their legal needs met. With attorneys focusing their attention on the 20% of people who hold 93% of wealth, and the poorest 10% of society relying on legal aid, advice clinics and pro bono attorneys, the 70% of the population holding just 7% of the wealth have difficulties in accessing legal services (Orsi, 2013; 2014).

A ‘perfect storm’ appears to be on the horizon in the US. It is estimated that there will be around 300,000 new lawyers before the year 2020 and only 73,000 jobs created (Orsi, 2014). In California it was noted that in 2014, 55% of law graduates did not have a full-time job in law. The solution for Orsi (2013) is for law schools to support graduates in setting up their own practices and provide services to the 70% of people who cannot currently afford representation

<sup>15</sup> 70% passed at their first sitting and 33% at a repeat sitting.

by private law firms. Some law schools are seeking to help new attorneys set up in practice, the 'Incubator scheme' (Krantz and Millemann, 2015), for example, and at this time of uncertainty other innovations are being encouraged which are explored further below.

With the legal profession in the US under pressure the key regulators are intervening to encourage the expansion of CLE initiatives and experiential learning. From 2014, for example, the ABA has placed new responsibilities on law schools to better prepare students for practice and require them to satisfactorily complete one or more experiential courses of at least six credit hours (ABA, 2014a). CLEA (the association of clinicians) considers this insufficient and recommends that every J.D. student complete the equivalent of at least 15 semester credit hours (Krantz and Millemann, 2015). The New York State Court of Appeals took this further when introducing a new rule in 2015 which requires candidates seeking admission to the bar of the State of New York to file documentation showing that they have completed 50 hours of qualifying pro bono work.<sup>16</sup> While Krantz and Millemann (2015) welcome some of the recommendations made by regulators they urge legal educators to oppose externally generated proposals that they consider to be ill-advised. Instead, they encourage law schools to assert leadership in both proposing and making necessary changes, a useful lesson perhaps for legal education reform in England and Wales.

On the 'seismic shift' facing the legal profession, Goldfarb (2012:279) notes that it is difficult to see where it is headed as "it is animated by changes in social, economic, and cultural forces such as the internationalisation of markets, the incursion of technology, and a series of economic and global cataclysms occurring since the turn of the millennium". In Goldfarb's (2012:280) opinion the traditional law school model appears to be economically and educationally unsustainable, a view shared by Rebecca Sandefur, a Fellow of the American Bar Foundation. In looking to the future, Rebecca highlights the need for innovation, which could include clinics charging fees on a sliding-scale for the purpose of becoming more resilient to other financial pressures within the university. She also comments on what academics refer to as the 'market failure' of legal services and points out that with an excess of unemployed lawyers and millions of people with no access to legal advice, there is latent demand which the legal profession ought to be connecting with.

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<sup>16</sup> As required by Rule 520.16 of the Rules of the Court of Appeals.



### 3.5 Innovations in clinical legal services

There have been a number of innovations in CLE in response to the financial, educational and legal challenges; some of which have been initiated by regulators. The ABA (2014b:26-27) recommended that law schools should more effectively teach “core competencies needed by people who will deliver legal services to clients” and that the ABA should revise its standards to encourage law schools engage in more experimentation and innovation. In the State of New York, for example, students are allowed to take bar exams early, in February instead of July. In return they provide legal services for the poor during their last semester under supervision of a legal services provider, law firm, or corporation in partnership with the law school (Lippman, 2014). At Northeastern University in Boston, the main model is now based on dividing the year into ten or eight week terms. The first term comprises course work and the next an outplacement with a legal employer. A student has three or four different placements over the course of their J.D. degree and they ‘tack back and forth’ against book learning and applying it in the real world (Northeastern University, 2016). In the State of California, which has the highest proportion of lawyers in the US, by 2017 the regulators have imposed a bar licence pre-condition requiring students to undertake 15 units of practice-based experiential case work or apprenticeship during law school (State Bar of California, 2013).

Following the 2008 recession there have been innovations in CLE during the final year of J.D. programmes and the first year of practice which involve partnerships with other legal organisations (Krantz and Millemann, 2015). One university, for example, in partnership with a commercial company – Cisco – offers students completing their second year of study paid intern opportunities with the company’s legal department for seven weeks (Cisco also pay their tuition fees in the fall).

Some law schools in the US are creating post-J.D. opportunities for their graduates. These programmes have variously been described as ‘incubators’, ‘fellowship’, ‘residency’, ‘apprenticeship’, and ‘job corps’.<sup>17</sup> It was noted above when examining the Chicago Legal Clinic that some student interns had been placed under a fellowship scheme. The incubator/residency programmes are becoming increasingly popular, albeit on a small-scale at present there were 21 programmes affiliated with law schools in 2015.<sup>18</sup> Having set up ‘Incubator for Justice’ in 2007, a more recent City University of New York development is Civil Justice, Inc., which provides a no-cost model of post-J.D. education and job opportunities (Blom and Robinson, 2014). This is a non-profit law office that supports an online network of solo and small-firm

<sup>17</sup> Once again see Krantz and Millemann (2015).

<sup>18</sup> A prototype is the ‘Incubator for Justice’ Programme in New York, which has a ‘Community for Legal Resource Network’. This provides training over an 18-month period in basic business issues such as billing, record-keeping, technology, bookkeeping and taxes, while also facilitating participants’ involvement in larger justice initiatives (CUNY School of Law, 2014).

lawyers. Affiliated with a local university its purpose is to increase the delivery of legal services to clients of low and moderate income while promoting a state-wide network of solo, small firm and community based lawyers who share a common commitment to increasing access to justice through traditional and non-traditional means. In addition to providing much needed support to new attorneys, this type of civil justice project also has the potential to develop clinical components so that students can be placed in solo and small firms to work under the joint supervision of private lawyers and clinical professors.

### 3.6 Technology, clinics and the delivery of legal services

When visiting the Chicago-Kent College of Law, Professor Ron Staudt and Alex Rabanal talked about their work on various technological initiatives which provide access to justice. One initiative involves a collaboration between CAJT, CALI and the Idaho Legal Aid Services in the Access to Justice Clinical Course Project (A2J Clinic Project). This project includes work on the A2J Author, a software tool which enables users to build and implement customer friendly web-based interfaces for document assembly.<sup>19</sup> The project produces course kits created by law school clinics which are intended to encourage the growth of future A2J Clinics and at the same time deliver new automated content to legal aid websites across the country. Ron said that the aim of the project is to introduce law students to the skills required by a lawyer in a 21<sup>st</sup> century law office and to produce guided interviews and other technical resources that legal organisations can use to lower the barriers to justice for low-income people. Although developed primarily for use in the US, Alex said that the A2J Author has made inroads into Canada and Australia, but not as yet into the UK.

The CAJT also works with legal aid organisations to develop self-help resources. Working with Illinois Legal Aid Organisation, for instance, has led to the setting up of the Illinois Online Initiative which helps to improve access to legal advice for people on low-incomes.<sup>20</sup> The A2J Author can be used by litigants in person as it allows them to complete and print court documents. With CAJT students identifying access to justice issues they can then use “document assembly and the A2J Author software to solve the problem for low-income people who face that problem every day” (Staudt and Mederios, 2013:711). This service is invaluable to the high proportion of people who are unrepresented at court when important matters are being dealt with, such as their home and immigration status. The initiative can also assist attorneys who offer pro bono services which are not in their specialist area of law. In a number of web-based seminars Ron and others comment on how technology can address some of the unmet legal need.<sup>21</sup>

Rostain *et al.* (2013: 743-745) describe a similar technology and innovation law practice at Georgetown Law Centre which has students build web-based applications that help people identify and understand legal problems they may face and assess their legal options. At Michigan State University College of Law there is a ReInvent Law Laboratory through which students create business plans and develop improved business models that match appropriately qualified lawyers with clients (Hornsby, 2013).

Developments in technology have led to ‘gaming’ being used to help people understand legal problems and how to resolve them. In a conference video, for example, Stephanie Kimbro talks about how to educate and encourage people to engage by using ‘gaming’, which can also help gain access to justice (Stanford Law School, 2014).<sup>22</sup> Working with the Illinois Legal Aid Online initiative, for example, she has developed a game which helps to educate people about eviction issues. The person playing the game takes on the role of the landlord and they are taken through different situations which can arise with tenants which helps them to learn about

<sup>19</sup> This software tool was developed by CAJT in collaboration with the Center for Computer-Assisted Legal Instruction (CALI).

<sup>20</sup> For details see Illinois Legal Aid Online (2016).

<sup>21</sup> See further Staudt and Lauritsen (2013) and also the web-based seminar at Stanford Law School (2014).

<sup>22</sup> Stephanie Kimbro is a Fellow at Stanford Law School Centre on the Legal Profession and Co-Director of the Centre for Law Practice Technology.

eviction law. As an estate planning lawyer, she has also developed 'Estate Quest', a game designed to help people understand the importance of estate planning. In the game she introduces important terms such as 'guardianship' and 'executors' and she uses a virtual time-machine to take people forwards and backwards in time so that they can appreciate what can happen if they do not plan ahead and deal with their legal affairs. Kimbro feels that gaming could be used not only to encourage people to search for legal tools online but also to educate them and help to prevent problems arising in the first place.<sup>23</sup>

Through technology clinics students can learn how to operate 'virtual law practices' through which lawyers can deliver services online, help their clients to identify legal problems and provide information, advice and documents to assist in resolving those problems (Hornsby, 2013). Operating in virtual space, by simply using a laptop and a mobile phone, technology is seen to assist solo and small firms – and it will also help new attorneys – by reducing overheads and using 'computer technologies' and 'automated document assembly' to provide legal information and limited representation to low-income and moderate-income clients. Through these 'unbundled legal services', Staudt and Mederios (2013) note that clients can determinate how much attorney involvement they want, need, or can afford.

There are many other examples of innovative practice, and for Krantz and Millemann (2015) such initiatives indicate that law schools need to both teach the application of technology in legal practice and research the development of these applications. Further, as Staudt and Lauritsen (2013:687) state: by "studying – or better yet, building – software systems that perform some of the tasks that lawyers and judges do", the next generation of lawyers can "gain insight into emerging technologies at the centre of modern law practice and also develop core competencies across a range of new and traditional lawyering skills". They also comment that understanding technology increases the potential of employment and success in practice. Clinical experience in delivering legal services through technology also helps students think about and participate in important access to justice reforms.

However, there are evidently limitations when using technology. Indeed, as Marc Lauritsen (2013) notes, mistakes can rise from the impersonal nature of this source of legal help. He points out, for example, that "Software applications lack common sense. They cannot hear what is not being said. They do not detect nuance or emotion. Moreover, as with people, they can operate on unspoken assumptions, create the illusion of expertise and engender unwarranted trust" (Lauritsen, 2013:945-953). By itself, therefore, technology will not solve the huge access to justice problems in the US but it is an important tool of both change and reform. Indeed, Krantz and Millemann (2015) argue that law schools should be at the forefront of developing and evaluating the best legal uses of artificial intelligence, both to narrow the access to justice gap and also to train students in the uses of technology that will help them to succeed as lawyers. Accordingly, Staudt and Mederios (2013:697) propose that law schools need to add a technology clinic to assist law practice and prepare students for a "more technology-driven workplace".

The use of technology is likely to be resisted by those who recognise the need for clients to receive face-to-face advice, particularly when dealing with complex issues and/or with vulnerable people. However, through advances in technology it is also important to recognise that this is an area where lawyers need to engage because otherwise there is the potential for non-regulated websites to capture part of the market for legal services. Since the recession there has been a rise in the number of commercial online service providers, many of which are unregulated and thus pose formidable challenges to the smaller firms and solo practitioners who comprise almost half of the lawyers in private practice (Krantz and Millemann, 2015). While lawyers are using 'virtual offices' to 'battle back' against unregulated entities they are fighting over a lucrative business. LegalZoom is such an entity which is not licensed to practice law but it reported having more than two million customers and in 2011 revenue of more than \$100 million. In addition, the eLawyering Task Force estimates that in an 18-month period more than 50,000 no-fault divorces were processed by online services, translating into approximately \$100,000,000 in lost revenue to family law attorneys nationwide (see Herrera, 2012:887-899).

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<sup>23</sup> Also see Hornsby (2013).

## Clinical legal education and experiential learning: Looking to the future

Having examined recent developments and innovations in the US we now turn our attention back to the UK, and more specifically to England and Wales where there are similar issues concerning the reform of legal education and in providing access to justice.



## 4 Clinical legal education and experiential learning in the United Kingdom

How students qualify to practice law is different in the UK to the US. In the UK the traditional route to becoming a solicitor is to first obtain a qualifying law degree (QLD), which is generally of three to four years duration, followed by the Legal Practice Course (LPC), a one-year postgraduate vocational training course. Completion of a two-year training contract at a law firm is then required in order to qualify.<sup>24</sup> It is while undergraduates study for their QLD, generally in the second year or later, that they first experience CLE. In the US, as noted above (Section 3), law students are generally in their fourth year of higher education before being involved in CLE. There are no vocational training requirements for law students in the US and after completing the J.D. degree and after passing the bar exam they are ready to practice as an attorney. Another important difference between the UK and the US is that in the former universities are free to decide whether or not to engage in clinical teaching methods whereas in the US the ABA (2015) has mandated that a law school “shall provide substantial opportunities to students for law clinics or field placement(s)”.

### 4.1 A brief history of clinical legal education - 1970's to 2014

The Law School at the University of Kent opened the first clinic in 1973, followed by the University of Warwick in 1976. However, the Kent Law Clinic closed in 1976<sup>25</sup> and by the 1980's, just four clinics were in existence at Birmingham, Warwick, South Bank and Northumbria. In the 1990's, Grimes (2000) noted that there was a “flurry of activity on the clinical front”, led by the University of Northumbria at Newcastle and followed by Sheffield Hallam University, and these ‘in-house’ clinical programmes continue to be recognised as exemplary models of CLE. It was also in the 1990's that the nationwide Clinical Legal Education Organisation (CLEO) was formed.<sup>26</sup>

<sup>24</sup> There is a similar route to qualification in Scotland with postgraduate students taking the Diploma in Professional Legal Practice and then completing a period of in-office training. In Northern Ireland students have to complete a law degree but thereafter the vocational study and practical training aspects are combined.

<sup>25</sup> After a number of controversial cases were taken on.

<sup>26</sup> CLEO was set up to help support law schools develop CLE and pro bono work, advance the law curriculum and teaching methodologies and promote research and other scholarly activities. The Northumbria Law School publishes the *International Journal of Clinical Legal Education*, which is a peer-reviewed open access journal, and organises the International Journal of Clinical Legal Education Conference.

Towards the end of the 1990's, more law students were involved in practical legal work, yet the model of the in-house real client clinic based in the law school and acting as a solicitor's office was only operating at Northumbria, Sheffield Hallam, Queen's Belfast and Kent Universities (Sylvester, 2003). It was only at the University of Northumbria that the clinical course was, and remains, a compulsory element of their exempting degree with all fourth year LLB students participating in an assessed clinical course of study. At the other three universities CLE programmes were offered to students on an optional basis as part of their undergraduate degree programmes.

### 4.2 LawWorks findings of clinical activity and pro bono work

Regular surveys of law schools are undertaken by LawWorks (formerly the Solicitors' Pro Bono Society) in order to assess the extent to which CLE and pro bono activities are supported. In the first 1994/95 survey it was noted that 23% of the new universities (the former polytechnics and colleges of higher education that were given university status in 1992) in England and Wales offered real client clinics and 5% of old universities doing the same (see Grimes, 2000). Subsequent surveys show there has been an increase in CLE activity over the years.

Pro bono and clinical activity is continuing to expand. In the most recent LawWorks survey (Carney *et al.*, 2014) the 80 responses received represented 73% of all law schools surveyed: 96% did pro bono work and, on the assumption that those law schools who failed to respond did not carry out such work, at least 70% of all law schools were involved in pro bono and/or clinical activity. The 2014 survey revealed a greater range and number of pro bono clinics in law schools compared to previous years. The number of advice-only clinics increased from 12 in 2006 to 56 in 2014 and the number of law schools offering more than one clinic also increased: 35% had more than one clinic and 24% offered three or more distinct clinic types. Just over half of clinics reported that they offered generalist advice-only help and 40% provided more specialist services, and 20% went beyond advice in generalist cases rising to just over 30% for subject-specialist clinics.

Specialist advice was most prevalent in the categories of employment, family, welfare benefit and housing law. Although few clinics offered specialist advice on commercial and intellectual property law, 17 reported they offered services to small businesses and 20 offered other areas of commercial work. While providing advice is their main activity, law schools reported that placements and Streetlaw (and other public awareness programmes) were also popular. In addition, 21 institutions reported that they ran an Innocence Project (addressing miscarriages of justice); down from 24 in 2010. Just 14 institutions reported student involvement in representation on social security, employment and housing cases.

The 2014 LawWorks survey revealed 6,119 students were involved in pro bono activity: an incomplete picture as only 48 of the 80 respondent law schools gave figures. If the average number of students involved in pro bono work was adopted across all respondents, Carney *et al.* (2014) estimated that over 10,000 students were engaged in voluntary activities. More clinics also reported that work was assessed as a credit bearing part of the curriculum: rising from 10% in 2010 to 25% in 2014. The amount of money provided by external donors, however, decreased in relative terms: 80% of clinics reported that they received no external funding in 2014 (Carney *et al.*, 2014:5).

Seeking to identify the extent to which university law clinics provide access to justice, a survey was recently undertaken by Drummond and McKeever (2015) of 62 university law schools which run clinics. 32 responded and the findings point to the increasing popularity of clinical work with 16 of the clinics set up between 2011 and 2015. Interestingly, the survey showed law schools trying to encompass multiple ambitions within CLE – such as delivering access to justice, providing high quality teaching and research, improving the student learning experience and employability – so as to justify additional resources (Drummond and McKeever, 2015:14). The survey also showed clinics cover a diverse range of areas of law, including

housing, consumer, family, employment, health and social care, immigration, criminal, education, social security, asylum, human trafficking, property, probate and wills.

In the survey, 13 out of 22 clinics reported that they provided an advice-only service and nine provided advice and representation. On average clinics carried a caseload of 104 cases a year, although the median figure was 70, and the mode 100. Three-quarters of respondents reported collaborating with external partners on client cases, mainly with solicitors, independent advice organisations and barristers, through both formal and informal arrangements. Collaboration was seen to be particularly important for enhancing casework supervision, expertise and capacity, and enabling clinics to extend their services (Drummond and McKeever, 2015:5). While clinics identified the value to external partners of increasing the capacity of publicly funded organisations to meet need, opinion differed among clinicians about the role of CLE. Some clinicians argue that universities should do more to improve access to the law and others are adamant that it is the responsibility of government rather than universities to ensure adequately funded services (Drummond and McKeever, 2015:13).



### 4.3 Assessment of clinical activity

The word 'clinic' or 'clinical' is applied where real or realistic situations serve for students to engage in legal casework or address and analyse legal issues. It follows that learning of this type is experiential, and involves both the experience and a structured facility for reflection and (possibly) re-application (Grimes and Gibbons, 2016). Without having some form of structured opportunity for reflection, most clinicians agree that student exposure to real or realistic cases is little more than 'work experience'. Clinic also describes a constructivist teaching methodology in which learning is not something that happens passively but requires students to participate actively and construct their own knowledge (Ledvinka, 2006:34). According to Sylvester (2016:37), although constructionist teaching methodology facilitates discipline and procedural legal knowledge it is recognised more for teaching legal and intellectual skills and inculcating professional values and ethics as a result of involvement in social justice.

There is much debate among clinicians about whether clinical and pro bono activity should be assessed (Kerrigan and Murray, 2011). Sylvester (2003) notes that law schools which facilitate voluntary student participation offer different experiences to in-house, real client programmes which are incorporated and assessed as part of a course of legal study.

For Grimes and Gibbons (2016) 'assessment' refers to measurement of both the quality and extent of student learning and the perceived value of what is being delivered, irrespective of whether academic credit is gained. A pre-requisite of assessment is the setting out of clear learning outcomes. Clinicians then have to decide how to ensure that outcomes/competencies are expressed so as to embrace the range of experiences and fit the clinical programme offered (Grimes and Gibbons, 2016; Sylvester, 2016). Particular forms of assessment have a certain

resonance in experiential learning and Grimes and Gibbons (2016) identify these as follows: learning portfolio; simulation tasks; oral examination; and on-line assessment of the appreciation of applicable professional standards.

Teaching reflective practice, which is seen to integrate intention, thought, specific action and self-appraisal within a professional context, is not easy. It includes giving consideration to rules and norms in a given field and provides guidance for the skilful application of professional ethics (Schön, 1983). Reflective practice requires an ingrained habit of constant reflection and Moon (1999:23) first described 'reflection' as "a form of mental processing with a purpose and/or anticipated outcome that is applied to a relatively complex or unstructured ideas for which there is not an obvious solution". Casey (2014) notes that there are two problems typically associated with introducing a reflective component into a law school course. The first is resistance from students who consider reflection to be 'touchy-feely' and that it does not contribute to substantive knowledge; and the second is the tendency of teachers to be disappointed with what they perceive to be fairly low levels of performance in this area.

Reflection is seen by some to be a vital part of the learning process. Indeed, Ledvinka (2006:29) describes it as "the magical ingredient which converts legal experience into education". By encouraging students to be reflective, Moon (2001) explains that clinicians help them develop the habit of processing cognitive material which may lead to ideas that go beyond the curriculum, learning outcomes and their teachers. In similar vein Añón (2016:48) notes that "reflection about learning is an exercise that promotes life-long learning" including among future lawyers.

Clinicians are not in agreement on assessment of reflection, particularly as it is difficult to assess and student resistance may lead to validity problems (Sylvester, 2016). For Ledvinka (2006), students take a learning journey from beginning to end of their course and written reflection provides evidence of this journey. Grimes and Gibbons (2016) include a learning portfolio as a component of assessment which they see as a vehicle for reflection. At the Northumbria Student Law Office, Sylvester (2016) describes how assessment comprises two reflective reports: one on skills in practice and the other selected from a range of optional subject areas.<sup>27</sup> Moon (2006) takes the view that if reflection is not assessed then some students will view it as less important than work that is assessed, which makes it less likely that they will engage in this process when in practice.

Quality control is another important element of the CLE debate. In some law schools pro bono work is student-led with little or no supervision and is seen as the provision of a service rather than education. These schools focus on raising student awareness of pro bono work and instilling professional habits, including providing pro bono services, in preparation for practice. The Quality Assurance Agency (QAA, 2015) in their benchmarking report on law sets out key attributes and minimum requirements for undergraduate law students. Although the QAA emphasises knowledge, skills and values it does not deal with how to 'teach and learn'.<sup>28</sup> The programme of the Student Law Office at Northumbria University was designed to meet the Quality Assurance Framework for undergraduate programmes. For Sylvester (2016) the intention is to reflect the panel's view that "a law graduate is far more than a sum of their knowledge and understanding and is a well skilled graduate with considerable transferable generic and subject-specific knowledge, skills and attributes" (QAA, 2015:4).

Finally, there is the question of whether clinics should assess themselves. In clinics where students provide legal advice to live clients, Grimes and Gibbons (2016:133) point out that one measure of assessment is clinicians compliance with professional standards.<sup>29</sup> For in-house clinics which provide legal advice there is also a route to accreditation through the 'Advice

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<sup>27</sup> These include 'clinic and my career', 'clinic and legal education', 'justice and ethics', 'clinic and public discourse' and 'law in action'.

<sup>28</sup> Despite some objections the review panel did not address delivery (personal email communication from Professor Richard Grimes who was a member of the review panel (4 July 2016)).

<sup>29</sup> It is the operation rules which should provide the framework and these need to be monitored to make sure that any relevant changes to professional practice are taken into account and disseminated to everyone working in the environment.

Quality Standard'. This is the quality mark for organisations that provide advice to the public on social welfare issues. In order to achieve the standard clinics have to demonstrate to the Advice Services Alliance (ASA, 2016) that they are "easily accessible, effectively managed, and employ staff with the skills and knowledge to meet the needs of their clients". Also, for assessed clinical modules there is a 'quality check' as they are subject to institutional scrutiny (Grimes and Gibbons, 2016).<sup>30</sup> Interestingly, there appears to be no requirement check on the quality of legal advice provided, although some clinics do ask clients to complete satisfaction surveys. A research study could usefully interview clients in order to establish to what extent the advice they received was helpful and if their problem was resolved. It would also be helpful for students to be asked to complete exit surveys allowing their views to be obtained on issues of quality, engagement, assessment and how clinical work may be improved.

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<sup>30</sup> See Kerrigan and Murray (2011:12) for differences between intra and extracurricular CLE and pro bono activities.



## 5 Exploring clinical models and pro bono practices on the ground in the United Kingdom

Law clinics vary in terms of staff, student profiles and numbers, and tend to be bespoke creations set up to meet needs defined by individual law schools (Drummond and McKeever, 2015). This section begins with a thematic examination of some of the different types of law clinic operating in the UK: a key theme is whether the primary goal is the education of students or social justice. Next, we consider the 'teaching law firm' model, which is able to generate fees, and explore how financial pressures could lead to some clinics becoming more commercially-oriented. An examination of some relatively new law clinics, set up by law schools following the economic downturn and retrenchment of legal aid follows, and we then explore CLE initiatives supported by traditional law schools in the Russell Group of universities. We end this section by examining different pro bono services supported by a number of law schools and look at some of the recent winners of the LawWorks and Attorney General's pro bono awards.

### 5.1 Legal education or community service?

The tension explored here is whether the primary goal of CLE is education, skills teaching and exposing students to the law in action and legal ethics, or whether it should be the provision of legal services to those in need. Nicolson (2006) argued that putting the educational needs of students first reduces a clinic's potential to serve the community and instil an altruistic ethic in students, and also runs the risk of unethically treating clients as means to educational ends. Other clinicians, however, promote clinic work as being about the process of learning and not about running a service for financial, political or altruistic reasons (Grimes, 1996; Brayne *et al.*, 1998). When exploring tensions between clinics, Nicholson (2006) identified those which have a primary goal of educating students as being 'education-oriented' and those wanting to serve the community's legal needs, being 'social justice-oriented'.

#### 5.1.1 Northumbria University Student Law Office (SLO)

The SLO has been in operation for over 20 years and the education of students is its primary goal. Northumbria's M Law degree is unique in that it incorporates all of the elements of academic and vocational study needed to train as a solicitor or barrister. Instead of being a separate entity within the law school the SLO is integrated into the curriculum. Director Carol Boothby described the SLO as a 'legal practice model' run by a core team of six members of staff and two full time administrators. As a full casework legal service the SLO provides advice and representation to clients "just like any other firm of solicitors".

While the primary goal of the SLO is education-oriented, a full casework model is supported which involves entering into a retainer with the client to deal with all aspects of their case. There evidently is a social justice dimension, and the primary emphasis is on providing a good

service to clients whilst providing valuable learning opportunities to students. This full casework model can put supervisors under increased pressure when students finish working at the SLO, between May and October, and they and the core team of six supervisors have to continue working on retained cases. However, the approach adopted means that the SLO attracts interesting cases and students can gain experience of all aspects of case work, including representation at tribunals and court. With CLE incorporated into the curriculum, the Northumbria SLO has adopted a resource-intensive approach which can be described as a 'Rolls Royce' model.

Carol said that the SLO is run as a law office with students allocated into teams of six, each representing a 'firm', and around 30 firms are active during each academic year. There are 22 supervisors, all of whom were formerly legal practitioners (and still hold their practising certificates) and now work as lecturers and/or supervisors. A supervisor is allocated to each firm, and their role is to work closely with students and ensure that clients receive a professional service. Each member of staff may supervise up to a maximum of three firms. Based on procedures in private practice, the SLO manual sets out the procedures required of students, including guidance on recording time spent on cases, opening case files, notes of interactions with clients, and so on.

The 2014/15 annual report revealed that in that year 415 students were involved in the SLO (217 in year three of their studies, 174 in year four and 24 elective students), 853 enquiries were received, and 306 new and existing cases were worked on. It was also reported that in excess of £92,000 was recovered in compensation claims for clients. The main areas of law covered by the SLO include civil litigation, crime and criminal appeals, employment, housing, welfare benefits, planning, family, business and commercial law. Over the years, Carol Boothby said that the SLO had dealt with many thousands of cases and achieved compensation for clients in excess of £1 million.

### 5.1.2 York Law School Clinic – University of York

The approach to CLE adopted by York Law School is unique in that the law curriculum is based on problem based learning. Professor Richard Grimes, former director of the York Law Clinic, explained that students are guided and supported by tutor-facilitators through simulation exercises. Students are presented with problems which encourage them to reflect on deeper social and theoretical issues, including questions concerning justice, fairness and human rights. Students work on simulated problems throughout their law degree and when allocated to the Law Clinic they have the opportunity to work with 'live' clients.

The Law Clinic provides an opportunity for second and third year undergraduate students to engage with clients, and since 2014 postgraduates on a new LLM on the theory and practice of 'clinic', under the supervision of a qualified solicitor. Adopting Northumbria's SLO model students are allocated into law firms, which comprise groups of five to six students, and they deal with real problems presented by clients in a realistic way.

In the 2014/15 annual report it was noted that 67 students were involved in the clinic as part of their studies and they assisted 54 clients (University of York, 2015). The Law Clinic is said by Richard to offer a simple advice-only service and from the outset clients are made aware of its limitations. Nevertheless, cases are turned round quickly. In the two-year period from 2011 (when the clinic opened) to 2013 student advisers helped over 250 clients on a wide-range of issues, including civil litigation, family, immigration and business set up, landlord and tenant, housing, welfare benefits, employment and criminal matters, and recovered or saved clients in excess of £200,000.

The model adopted by both Northumbria and York Law Schools is based on academic staff with practising certificates closely supervising advice given by students. This model allows law schools control over the law advised upon and, because it is not reliant on external supervisors, helps create a sustainable clinic (Bleasdale-Hill and Wragg, 2014). The model also helps ensure that students are supervised in a way which enhances their learning opportunities. The model does, however, carry significant resource implications as staff time needs to be allocated

to overseeing students and cases. While this model of supervision is important educationally, enabling students to support each other and work together as a team, it is not an efficient model of caseload management. With a ratio of cases per student at around two, rather than deal with a high volume of cases, the intention is to enhance the educational experience of the student.

### 5.1.3 Kent Law Clinic – University of Kent

Kent Law Clinic was the first law clinic in the UK, set up in 1973 by Adrian Taylor a pioneer of CLE. Following disagreement on the role of universities in the provision of legal advice, the University closed down the clinic in 1976 (Winkler, 2013), but students and staff continued to provide pro bono legal support to people in the community.

The Law Clinic was relaunched in 1992 under the directorship of Professor John Fitzpatrick, who continues in this post. Based on our observations the clinic has an overarching social justice orientation: it is noteworthy that the Director and five other solicitors involved in the clinic previously worked in law centres. John commented that a successful clinic requires 'lawyers with attitude' who are prepared to push cases in order to get a successful outcome. However, providing a first class legal education is of equal importance, as is underlined in the twofold aims and ethos of the Law Clinic: a) to provide a legal service to local people who need but cannot afford to pay for such a service, and b) to enhance the education of students in the Kent Law School.

John explained that the Law Clinic was established as an unincorporated association within the Law School. This allows staff, students and volunteer lawyers in private practice to work together, and identifies those staff and student members of the legal practice for client confidentiality and legal privilege purposes.<sup>31</sup> The cost of the clinic is borne by the Law School. Two large capital donations were recently received from alumni enabling construction of a 'state-of-the-art' building, into which the clinic will move in autumn 2016.

Six solicitors work in the clinic office, all must obtain a practising certificate and a post graduate certificate in education. The office is open weekdays during office hours, for telephone advice and client appointments. All student participation is voluntary. Around 65 assessed students work on cases. Places are allocated by annual ballot. A further 250 students work on an extracurricular basis on reception, advice sessions, cases, projects etc. In 2015, the clinic dealt with 1,442 telephone enquiries, covering a wide range of legal issues, and 380 clients received legal advice; 115 new cases were also taken on, in addition to many cases still active from the previous year.

Students working on cases assist solicitors by researching the law, interviewing clients, drafting proceedings, submissions and applications, negotiating with opposing parties and, from time to time, advocacy work. This sometimes includes students advocating, under supervision, in local county courts, employment tribunals, public inquiries and mediation proceedings. Specialist teams address certain topics including immigration and asylum, mortgage repossession and eviction proceedings, criminal justice and public access to land.

The proximity of Kent Law School to the Port of Dover prompted the Law Clinic to respond to unmet legal need by raising funds in 2012 to cover the costs of an immigration solicitor and part-time administrative support. The lawyer appointed, Sheona York, is a specialist solicitor who has worked in this area for over 30 years. She works with the Immigration and Asylum team in the clinic previously established by Catherine Carpenter. Commenting on unmet legal needs, Sheona said that there were around 900 failed asylum seekers in Kent each year and that annually she deals with around 100 children in relation to asylum issues. In this area of work she describes how it is important to work with other specialist advisers and support agencies, including local legally-aided lawyers, the Kent Refugee Help, the Red Cross and others. Between 2012 and 2014 the team dealt with 59 new cases, including five judicial reviews and five appeals. Highlighting the dominant social justice aspect of this area of work,

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<sup>31</sup> Issues concerning client confidentiality are covered by the SRA's (2011) Code of Conduct.

Sheona said that she will take on test cases and is involved in lobbying to raise awareness of important issues (see, for example, Bowcott, 2014).

Over the years John reports that the Law Clinic has helped hundreds of clients remain in their homes, keep their jobs or gain asylum in the UK. It has also helped clients secure monetary gains totalling over £2million in sums obtained or retained, by court order or settlement.

### 5.1.4 Strathclyde Law Clinic – University of Strathclyde

The Strathclyde Law Clinic was set up in 2003 and is the largest in Scotland. The Law Clinic's website states: "While its main priority is providing access to justice to its clients, the Law Clinic also serves as a valuable learning resource for the Strathclyde law students who help to run it".<sup>32</sup> Kate Laverty, Acting Director,<sup>33</sup> advised that it is a student-run clinic overseen by a large Executive Committee. There are six 'firms' within the clinic, each with an appointed Coordinator who is a member of the Executive Committee. Much emphasis is placed on training and students must complete four four-hour sessions at the start of the academic year, some of which are student-led.

The staff of the clinic are funded by the Law School and other costs are met by a legacy and other donations. Extending the student-run ethos of the clinic students are involved in fundraising, including planning and hosting alumni and donor events as well as applying for grants.

Places in the clinic are highly sought after and students have to apply by submitting a CV and going through an interview process. Students also have the opportunity to apply for nine part-time paid internships, which allow the clinic to maintain its caseload over the summer.

Kate said that there are over 300 student advisers working in teams of three in the Law Clinic and supervision is provided in-house by a team of legally qualified employees. All letters and emails must be checked before they are sent out to clients and all advice run past supervisors, who do not directly advise or participate in the transactional side of the cases.

Strathclyde recently introduced a Clinical LLB which runs alongside their four year undergraduate LLB: they also offer a post graduate diploma in legal practice. Kate said that the clinical programme was developed because students were devoting a considerable amount of time to their clinic roles and wanted academic credit for their efforts. Now in its fifth year the programme has around 40 students across all years. Students are trained in the legal theory of cases and required to complete a percentage of their work clinically. In their third year Clinical LLB students have to prepare a portfolio of five cases for the Clinical Legal Practice module, and keep a reflective diary throughout their degree programme. Innovation is encouraged in the clinic: for example, co-ordinated by a third year student the Small Business Project is in the early stages of development.<sup>34</sup>

Technology is used to help improve access to justice. The online advice clinic provides initial legal advice and assistance to people seeking to solve common legal disputes (but not complex or urgent matters),<sup>35</sup> and video-conferencing is used as a way of communicating with clients in the Small Business Project. The clinic also uses an electronic case management system devised by a former student.

### 5.1.5 Discussion

With different but effective models of CLE, whether the primary goal of the above four law schools is education or social justice appears to depend on the background of the clinicians

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<sup>32</sup> See University of Strathclyde (2016a).

<sup>33</sup> Professor Don Nicholson, the founder and current Director of the Law Clinic was on sabbatical at the time of this study.

<sup>34</sup> Fergus Lawrie won a 2016 LawWorks/Attorney General Student Award for this work.

<sup>35</sup> See University of Strathclyde (2016b).

involved. The important point from our analysis is that CLE is not 'either or' education or social justice: education has to be at the core of teaching methods delivered by a university. By focusing on social justice issues, law schools help provide access to justice and expose students to law in the real world when helping vulnerable people and those living in deprived communities. Such experiences may influence a student's career choice and their future involvement in pro bono work. While the aims of education or social justice are at different ends of the spectrum various management techniques can mean that that both objectives are met even if one might outweigh the other in terms of priority.

Another issue which has arisen in our discussions with clinicians is whether they have a responsibility as 'trainers' of future lawyers. At present, many clinicians do not see themselves as 'trainers' of lawyers when dealing with students on a law degree. Kent Law Clinic's aims and ethos paper stresses that CLE is "firmly on education rather than training" and that clinical legal work "is by no means only for those students who intend to practise law".<sup>36</sup> Sylvester (2016:37) comments on a prevailing misconception that the integrated approach to legal education is only relevant for those wanting to become lawyers: "clinic is a constructivist teaching methodology – it can deliver discipline and procedural legal knowledge but more often its role is emphasised in terms of teaching legal and intellectual skills and as a method of inculcating professional values and ethics through its traditional involvement in social justice". There are many ways in which students can be given experience of law in the real world and provided with transferrable skills which they can then use in occupations other than being a lawyer.



## 5.2 'Teaching Law Firm' - A fee-generating model?

The Law Clinic at Nottingham Trent University (NTU) was set up in 2006 and following substantial investment by the University in 2014 was renamed the Legal Advice Centre (LAC) and moved into new purpose-built premises. Nick Johnson, Director since 2006, said that initially only postgraduate students on the Graduate Diploma in Law,<sup>37</sup> LPC and Bar Professional Training Course (BPTC) were involved in the LAC but increasingly undergraduate and other postgraduate students became involved. By year two of their LLB studies students could do outreach work, provide advice, write letters and tribunal work under supervision.

Since 2006, Nick reported that the LAC has advised over 700 clients and more than 1,000 students have participated in some form of pro bono work. After the LAC was opened in 2014 up until October 2015 over 220 law students have provided more than 10,000 hours of free legal advice and represented clients at tribunal cases, recovering around £40,000 in

<sup>36</sup> This 'in-house' document was shown to the researchers.

<sup>37</sup> This is a law conversion course for non-law graduates before going on to take the LPC.

compensation in employment claims. The clinic has traditionally dealt with legal problems in relation to housing, property and environmental cases, as well as welfare and employment issues. More recently, Nick said that the work of the LAC has extended to small business advice, work which has partly grown out of the LAC being a resource for staff and students as well as the local community. For example, an increasing number of recent design and fashion graduates, a strength of NTU, have sought legal advice on intellectual property issues relating to their designs and how to set up in business.

In 2015 NTU successfully applied to the SRA for Alternative Business Structure (ABS) status and the LAC became a teaching law firm. Nick said that the main reason was to expand into new areas of law, and ABS status addresses regulatory issues associated with reserved work and provides opportunities to explore other ways of delivering access to justice (by bringing together legal advice and education, for example). ABS status also enables the LAC to generate fees for legal services. When Nicholson (2006) wrote about tensions over education and social justice goals in CLE the potential for law clinics to charge fees was unthinkable. As Nick explains, they do not intend to charge for legal advice to clients on welfare benefits or on low incomes<sup>38</sup> but for services to middle-income clients and those involved in small and medium-sized enterprises (SMEs) where there is currently unmet need. The ABS vehicle is a charitable entity and any fee charging would only be a small proportion of the LAC's work and the vast majority of funding will continue to come from the University.

For NTU the primary goal of having ABS status is to increase opportunities for experiential learning within a regulated environment. In continuing to provide legal advice on social welfare issues to people unable to afford legal services and exploring different methods of delivering access to justice, the LAC also has a social justice orientation. In the current economic climate it will be interesting to see if other law clinics come under pressure to charge fees to people who can afford to contribute to their legal costs, particularly when providing legal services to SMEs.

### 5.2.1 Discussion

The teaching law firm CLE model with capacity to generate fees, seen to be successful at the Law Offices of Chicago-Kent College of Law, is just emerging in the UK. In discussion with some clinicians the thought of charging clients was anathema, mainly because the perception was that this would involve imposing legal fees on the poor. In the UK as in the US, however, there are increasing numbers of people on middle-incomes who cannot afford high legal fees but can afford to contribute to their legal costs. Having obtained ABS status, NTU's LAC now has the potential to charge fees. Strathclyde Law Clinic does not seek to generate fees, but the Small Business Project applies a rough means test before offering support to people who are not eligible for legal aid and unable to afford the fees of private practice.<sup>39</sup>

An important issue for law schools that may be considering a fee-generating model of CLE is the impact this could have on the legal services market. This is a developing area and it is envisaged that soon to be implemented legal education reforms will increase the role of universities in supporting work-based elements of students' route to qualification, and it will be critical that they engage with legal providers in so doing. Successful relationships will require trust and engagement which is of benefit to both the university and legal provider. For solicitors' firms, a positive effect of engagement with law schools may be the opportunities that arise to represent clients that are eligible for legal aid. Given the cut backs in legal aid, on the other hand, it is important for universities to work with private practice lawyers and address 'advice deserts' where there has been a sharp decline in the number of solicitors providing advice on issues including mental health and social welfare law (Taylor-Ward, 2016). In areas like small business and family law, when generating fees in assisting people on middle-incomes it is important that a law school clinic would not be seen to undercut the fees of lawyers in private practice that they may be in competition with.

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<sup>38</sup> Nick acknowledged that it was conceivable that they would charge someone appealing a non-means tested benefit (e.g. a PIP) but this would depend on their means and they have no plans to do so as yet.

<sup>39</sup> Some clinics do means-test potential clients but this is in order to identify those clients who would not otherwise be able to access justice due to their inability to pay (Kerrigan and Murray, 2011:17).



## 5.3 New models of clinical activity

A number of law clinics have been set up in recent years. Below, three different approaches adopted by law schools in the climate of austerity following the 2008 recession are presented.

### 5.3.1 London South Bank University's (LSBU) Legal Advice Clinic

The Legal Advice Clinic (LAC) at LSBU was set up as a drop-in centre in 2011. Both the Director and former Director, Catherine Evans and Alan Russell, respectively, who are solicitors and lecturers in the School of Law, explained that they previously worked in law centres. Alan was recruited to set up the LAC and develop the CLE provision at LSBU. To ensure the LAC was manageable when combined with teaching Alan decided that a drop-in centre would be the most effective way of providing CLE and addressing unmet need locally. Catherine and Alan said that annually they have 35 undergraduate student volunteers work in the LAC on a merit-based application process and there are a small number of placements specifically dedicated to Dispute Resolution LLM students. Students have to complete a two-day training event before they start and are supervised by solicitor/lecturers who have practising certificates. The LAC gives students the opportunity of working with 'live' clients and acquiring a wide range of legal and transferable skills. The work of undergraduate volunteers is assessed by way of a reflective work placement log. Placements in the LAC are mandatory for LLM students, credit bearing and assessed by way of a reflective log and a mock interview. Working in the LAC gives students the opportunity to demonstrate their interest and commitment to law in furtherance of their career development.

When dealing with clients' problems, Alan explained that students set out to identify the key issues, conduct research (using professional subscription materials and on-line legal text books) and provide advice. In some cases the client might be attending a court hearing without legal representation and the advice may involve referring them to a solicitor or, if this is not possible, the student may advise them on discrete issues such as disclosure and court procedure.

The unique feature of the drop-in centre at LSBU is that clients can be interviewed, their problem researched and advice given within a one-hour session.<sup>40</sup> Catherine explained that providing advice in this tight timescale is only possible when dealing with relatively non-complex issues and having a high ratio of one supervisor to two students. For more complex cases involving family, housing and employment issues, the LAC may refer clients on to their specialist advice service which is staffed by local solicitors one evening a week. Solicitors interview clients and provide advice, and students sit in and observe.

With Catherine and Alan's law centre backgrounds it is not surprising that they are both concerned that legal aid and public interest law should be used in a way which helps promote the interests of poor or marginalised people and effect change in public policy. One aim of the clinic is to achieve social justice and dealing with relatively straightforward issues quickly

<sup>40</sup> This innovation in providing legal advice by LSBU's LAC was highly commended recently at the LawWorks and Attorney General Student Awards.

illustrates the emphasis placed on service provision. The LSBU's approach is innovative, particularly as most clinical models rely on providing advice through an advice letter which is sent some days after the initial consultation. Alan explained that the LAC model also has the pedagogic advantage of making students the first point of contact with clients and having them contend with clients' problems unmediated by the prior assessment of a supervisor. During the drop-in sessions, however, he also commented on there being a high level of supervision and all advice and information provided by students is checked with a legally qualified and experienced supervisor.

This is a clinic operating in its early days and in the future Catherine and Alan said that they would like to develop an assessed casework module. Alan also commented on the importance of the Law School linking up with local community advice agencies, such as law centres. He said that the LAC is now established as a key member of a local legal advice network and the London Borough of Southwark has continued to invest and support local legal advice services which has helped to mitigate some of the devastating impact that LASPO and cuts in public spending for legal advice have had on reducing the number of local services London-wide.

### 5.3.2 Warwick Law Clinic – University of Warwick

The University of Warwick was the second law school to set up a law clinic in 1976, but due to the problems which led to the closure of the Kent Law Clinic Warwick outsourced its clinics and distanced the service element from the campus and University (Giddings *et al.*, 2011). Around that time Professor William Twining (1994) focused on the intellectual qualities required by the good lawyer and transformed legal education at Warwick towards an active, situational, student-centred, independent and skills-based learning. Professor Avrom Sherr (1995) also showed how the legal clinic could be used as an educational and research tool, with the main objective not to provide a service but to provide a different and more effective education experience. The Law in Practice course, which involved students in cases, was set up in the 1970's as part of this fresh approach to teaching. Warwick developed distinctive programmes intended to explore and develop alternative approaches to student learning and development and to understand the possibilities and pitfalls of lawyers' work. The distinctive element was their inclusion in the curriculum as 'for credit' modules.<sup>41</sup> Human Rights in Practice replaced the Law in Practice module in 2012 and different approaches adopted include the Death Penalty Internship programme, Discrimination Awareness Campaign, Community Justice Project, and a long-established simulation clinic (Giddings *et al.*, 2011).

It was in this context that law students and others set up the Student Law Society with the intention of finding opportunities to intervene in the local community. A recent initiative has included setting up a 'law clinic' with students working in collaboration with a law firm to provide legal advice to live clients. Advice is available during term time to residents through a drop-in centre held at a local community centre. Both law students and trainee solicitors ask residents about their legal problems, which the students research and their proposed advice is checked by a supervisor (a qualified solicitor at the law firm), prior to being sent to the client. The clinic provides advice on divorce and family law, property relations, negligence claims, employer/ employee liability. This is not assessed work, but the experience is seen to help increase students' employability within an increasingly competitive graduate job market.

### 5.3.3 Ulster Law Clinic – Ulster University

In 2011 Ulster University set up the LLM in Clinical Legal Education, which is a one year full-time (two years part-time) course which trains postgraduate law students to provide advice and representation to the public on social security and employment law. Dr Gráinne McKeever, Reader and Director of the Law Clinic, said that the Law Clinic was created as a vehicle for students to provide free legal advice to the public under staff supervision and with placements available for students at the Law Centre (Northern Ireland), Citizens Advice as well as the Law Clinic. Gráinne said that the LLM Clinical Legal Education programme is an innovation in the UK

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<sup>41</sup> Information provided by Professor Roger Burridge (personal email 1 August 2016).

and Ireland in setting up a unique postgraduate legal education course.

According to the 2014/15 Annual Report (Ulster University, 2015), in that year students on the LLM Clinical Legal Education course provided over 350 hours of free legal advice and representation; the clinic dealt with 16 cases, which were closed or substantially completed, by ten student clinicians and a further eight cases remained open to be taken over by the 2015/16 student cohort. Gráinne explained that the Law Clinic arose out of Nuffield Foundation funded research she had conducted with Brian Thompson (University of Liverpool) for the Law Centre (NI) on the needs of tribunal users in Northern Ireland. In developing its case load, some of which is complex, the clinic has become a victim of its own success in attracting more cases than it has the capacity to absorb. Ideally, Gráinne said they would like to extend the clinic to include undergraduates, and that this development is currently being planned by colleagues.

Similar to the model identified at Northumbria and York, therefore, the primary goal of the Ulster University Law Clinic is education with CLE mainstreamed into the curriculum. By focusing on social security and employment law the clinic also has a social justice orientation by seeking to address unmet legal need.

### 5.3.4 Discussion

Different approaches are observable in the three relatively new schemes outlined above which reflect the bespoke nature of clinics on the ground. Only a limited amount of information can be gleaned from a brief visit, a telephone call, email and/or by searching the internet for information. Accordingly, this study highlights the need for social scientists to engage with clinicians in an attempt to better understand some of the complexity and nuance of clinical practice.



## 5.4 Clinical activity within traditional Russell Group law schools

In this section we examine some of the CLE initiatives supported by traditional law schools which are part of the Russell Group.

### 5.4.1 Manchester's Legal Advice Centre – University of Manchester

The Legal Advice Centre (LAC) was set up by the School of Law at the University of Manchester in 2000 by Dinah Crystal OBE, Director of Clinical Legal Education with support from LawWorks (formerly Solicitors Pro Bono Group). It was an innovative project which arose out of employers' concerns that law graduates did not have the skills required when entering into practice. LawWorks at that time were looking for a university to pilot a new initiative and Dinah said that it is still going strong 16 years later.

Students in the LAC interview clients under the supervision of local lawyers, they research the law, draft letters of advice, which have to be approved by the supervising lawyers - including trainee solicitors and paralegals, and when approved, the letters are signed off by the LAC's Director or her Deputy Directors. The aims of the LAC include giving both undergraduate and postgraduate law students clinical experience in a 'real life' setting and to encourage them to develop skills when applying the 'black letter of the law' into practice.

The main LAC office is close to the Law School (to be integrated into the School when it moves to new premises). The East Manchester Legal Advice Centre was the second site to be opened in 2009.

In 2014, with funding from Manchester Legal Services and supported by LawWorks, Dinah developed Manchester Free Legal Help (MFLH). This is a unique project based in the Civil Justice Centre (CJC) in Manchester. The initiative involves the LAC providing legal advice, mainly through solicitors who volunteer to work with students, running a drop in family law clinic and immigration clinic, providing pro bono representation and liaising with lawyers, the Personal Support Unit (PSU) and other voluntary organisations based at the CJC. As Manchester Legal Services is no longer being able to cover costs, the School of Law funds a postgraduate intern to assist in the running of this service. In the first year MFLH dealt with 730 clients.

In 2014/15, over the other two sites, the LAC dealt with a total of 590 enquiries and 387 student volunteers worked on cases. The three main types of legal problem dealt with concerned property (including landlord and tenant issues), family matters (including divorce) and employment issues.

An Advocacy and Law course was set up by Deputy Director Neil Allen (barrister) in 2013 in which workshops are conducted in the School of Law's mock courtroom and students' advocacy performances are filmed, with one-to-one feedback given. Skills are taught through a combination of lectures, practice in workshops, reflective observation of videos, Crown Court attendance, and reading materials.

Neil Allen also set up the Dementia Law Clinic in 2015. This clinic enables students to provide advice under his supervision to clients on a range of dementia issues. Cases are referred by Dementia UK and the Alzheimer's Society, and students mainly provide advice to carers and sometimes to clients with dementia. The Dementia Clinic has incorporated Skype so that clients may communicate with student advisors from their homes. The LAC has also been working recently with the Deaf Centre and they are setting up a special clinic in British sign language.

First year law students may work as receptionists in the LAC, and then go on to provide advice in their second and third years. All students in the LAC undergo compulsory training and the LAC runs three training sessions per year, each of which is over one day. Although not sufficient, Dinah explained that without additional resources it was all that could be managed.

Students work at the LAC on an extracurricular basis. Dinah said that in the past an optional assessed module was available, and she felt that this provided a more extensive experience for students as it gave them the opportunity to examine problems in more detail. In an ideal world, Dinah would like to see CLE as a compulsory part of the law curriculum with more training on clinical skills and practice management.

The LAC runs a vacation scheme for two weeks in the summer. This year, 2016, Dinah said that 60 students signed up to work in the LAC, with each taking on a minimum of two cases in the first week. In the second week there is an employability workshops programme on topics such as commercial awareness, preparing CVs, mock interviews etc. This scheme is supported by law firms, both locally, nationally and internationally. Students also participate in a Dragons Den programme which is judged by lawyers and run by sponsoring law firms.

### 5.4.2 Clinical legal education at the University of Sheffield

In 2006 law students set up the pro bono initiative 'Sheffield Volunteering' and in 2008 the Law School set up its 'Pro Bono Unit' which offers undergraduate and postgraduate students opportunities to do clinical work. There are two well-established projects, FreeLaw and the Miscarriages of Justice Review Centre (set up in 2008 and 2007 respectively) which offer students credit-based modules. CLE activity is supported by a small group of people in the Law School and the two main projects are based in the Lodge, a building which is separate from the Law School. Usefully, there is an entrance to the Lodge just off the main road which makes it easier for members of the public to attend drop-in sessions.

The student run FreeLaw Clinic operates an open door drop-in advice session twice a week. It is managed by the coordinator Gill Hutchens (solicitor) and two Student Managers. Gill and Professor Sarah Blandy (formerly a solicitor) supervise the student volunteers.

Gill advised that there are 90 student members of FreeLaw<sup>42</sup> who work in eight groups of ten, two of whom are Group Leaders (required to have at least one year of experience in the clinic). Group Leaders are responsible for the day-to-day organisation of the clinic and liaison between student members. New members are required to attend six one-hour skills sessions at the start of the semester. The FreeLaw Handbook outlines procedures for students when interviewing clients, undertaking legal research and drafting advice letters. FreeLaw dealt with 135 clients in 2015/2016 and the areas of law covered include consumer, employment, property, family law and wills and trusts.<sup>43</sup> An electronic Case Management System has been introduced this year to assist the supervisors check work progress and manage risk. Gill stressed the importance of managing from a distance due to the unique student-led nature of FreeLaw, and Sarah explained that advice letters are not sent to clients until checked by legally-qualified members of Law School staff.

The Miscarriages of Justice Review Centre is also a student-led pro bono project which started out as an Innocence project in 2007.<sup>44</sup> The centre is managed by two directors, Dr Andrew Green and Professor Claire McGourlay, who are both based in the School of Law. The 2014/15 annual report stated that 34 students dealt with 14 cases in that year.<sup>45</sup> Case files can be enormous, and one of the first tasks for students is to scan the information so that they can manage this electronically. Students then have to rigorously pour over cases and painstakingly go through bundles of evidence. Claire said the reality in undertaking case reviews requires tenacious investigation and often involves students visiting clients in prison, liaising with family members, working with expert witnesses and legal practitioners, as well as conducting hours of library based research.

Director of Civic Engagement, Professor Sarah Blandy, is responsible for other pro bono activities. In 2015/16 the School of Law added the Criminal Justice Initiative and Commercial Law pro bono advice to its in-house projects. These and student voluntary advice work for six local agencies including the Refugee Law and Justice projects are soon to be incorporated into a general Pro Bono credit-based module.

### 5.4.3 Cardiff's Law Clinic – Cardiff University

CLE at Cardiff University also centres around pro bono activity, although unlike Sheffield there is a Head of the Pro Bono Unit – Professor Julie Price (also Director of Engagement and Employability). There are three substantive CLE initiatives: the NHS Continuing Health Care

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<sup>42</sup> Student members are taken in the first, second or third year of undergraduate study, or from postgraduate courses.

<sup>43</sup> The clinic does not deal with crime, debt or immigration issues because there are no members of staff in the Law School who could supervise these areas of law. See the Annual Report 2014/15 (University of Sheffield, 2015).

<sup>44</sup> Set up in 2004 the Innocence Network UK was an umbrella group that assisted over 30 universities manage 'Innocence Projects': the network was disbanded in 2014.

<sup>45</sup> A copy of the annual report is available from the Miscarriages of Justice Review Centre.

Scheme (NHSCHC), the Welsh Rugby Union Legal Advice Scheme and the Cardiff Innocence Project.

Julie explained that the NHSCHC scheme<sup>46</sup> involves working with the families of people suffering from Alzheimer's disease who are paying privately for a nursing home when they may be entitled to have the cost met in full by the NHS.<sup>47</sup> Relying heavily on a partnership with Hugh James solicitors, the leading UK law firm in this area of practice, paralegals are paired with students to progress cases.

Julie is the driving force behind the Welsh Rugby Union/Cardiff University Legal Advice Scheme which was set up in 2012. The Pro Bono Unit works in partnership with the Welsh Rugby Union and students, supported by a law firm and barristers' chambers, provide free legal advice to amateur Welsh rugby clubs, and in due course plan to prepare basic legal information packages.

Set up in 2006, Cardiff Law School Innocence Project, with Dr Dennis Eady as Case Consultant, has been responsible for submitting more than half of all university Innocence project applications to the CCRC,<sup>48</sup> and is the only UK university innocence project to have had a conviction overturned by the Court of Appeal. In total, Julie explained, 22 high-quality evidence-based pieces of work, many involving years of painstaking research, have been prepared largely by students under staff supervision, and submitted to the CCRC.<sup>49</sup> Furthermore, Cardiff is one of six law schools that work in a partnership with the Centre for Criminal Appeals, which offers a different model to innocence project casework.

Following a successful pilot in 2014/5, three years' funding has been secured from the Welsh Government to extend another pro-bono scheme in partnership with Mencap Cymru from 2016/7. Supervised by academic staff students will design and update Mencap 'toolkits' to help the charity when providing legal advice to adults with learning disabilities.

CLE initiatives at Cardiff University are extracurricular, and student volunteers may be given a reference which confirms their involvement in the pro Bono Unit. Students are also encouraged to submit a reflective portfolio, for which they receive a Personal and Professional Development Certificate, and discussions are ongoing about the desirability of converting some of the schemes into assessed clinical modules.

In addition to the above projects, a range of other pro bono activities are supported. For example, students assist litigants in person in partnership with the PSU; serve as appropriate adults and attend police stations with the mental health charity Hafal; and assist asylum seekers with Asylum Justice, Cardiff Asylum Support Advocacy and have participated in some observational research for the Bail Observation Project. Cardiff has also recently piloted a successful 'Global Justice' partnership with human rights law firm Deighton Pierce Glynn, and in the coming year will pilot a Cardiff Environmental Law Foundation clinic. Julie considers that these schemes have the potential to become long-term partnership initiatives that complement existing provision.

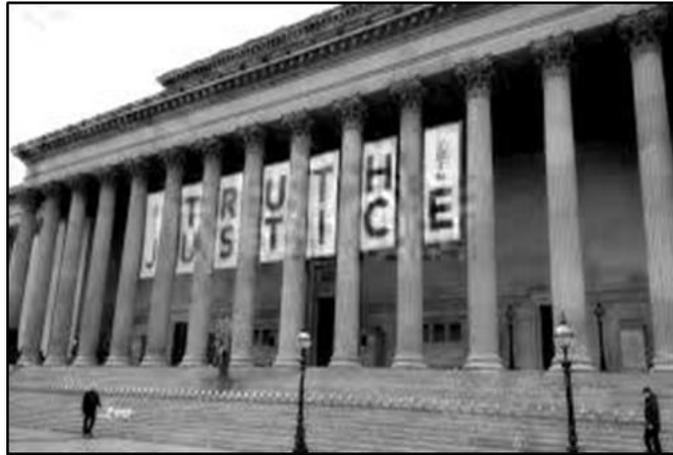
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<sup>46</sup> Originally inspired by Professor Luke Clements who has moved to the University of Leeds.

<sup>47</sup> The scheme won a project award at the LawWorks and Attorney General Student Pro Bono Awards in 2008 and was shortlisted for Best Contribution by a team of students in 2012.

<sup>48</sup> 15 applications in all, including three re-applications.

<sup>49</sup> See further Price (2016) and the University of Cardiff (2013).



#### 5.4.4 Liverpool Law Clinic – University of Liverpool

Located in the School of Law and Social Justice, the Liverpool Law Clinic places great emphasis on promoting access to justice and widening access to education and the legal profession. Providing free legal advice in a number of areas of law, including family, employment, consumer rights and statelessness, immigration and asylum, final year law students work under the supervision of qualified lawyers.

Originally modelled on the Manchester Legal Advice Centre, the University of Liverpool reviewed and reformed CLE provision five years ago, and Dr Sarah Woodhouse (solicitor) and Frances Meyler (non-practising barrister) were appointed Clinic Co-Directors. Immigration law specialists, Sarah and Frances dramatically increased the capacity of the clinic and in 2013 another solicitor, Christine Ball, was appointed. From September 2016 the clinic will have five full-time lawyers: three of which work full-time on immigration and asylum cases and two full-time in other areas of advice work.

The Law Clinic currently offers two third-year assessed modules, Clinical Legal Skills and Human Rights and International Law Practice, which are run by the General Advice and Specialist Immigration and Asylum Services, respectively. Clinical Legal Skills is run and assessed by an in-house solicitor, although cases are supervised by external solicitors. The module begins with training lectures and workshops on topics such as client confidentiality and the SRA Code of Conduct, practical legal research skills, file management, letter writing and client interviewing.

Law Clinic administrators arrange appointments over an intensive four-week period, and students are given basic information about the case and any paperwork which the client may have provided beforehand. Working in pairs students open a file and start research in preparation for a case meeting with the module leader, who will decide if they may interview the client. They meet with their supervising solicitor to discuss the case shortly before interviewing the client, which usually last about 30 minutes. Students have one week to produce a draft letter of advice, which is sent directly to their supervising solicitor who has two days to provide initial feedback. Further feedback is provided by a member of clinic staff, and students must submit the advice letter for assessment within a three-week period. The case file has to be kept fully updated and in good order at all times as students are not told at what point during this process it will be checked and assessed.

The Law School also provides pro bono opportunities for undergraduate students, some of which are run by academic members of staff not based in the clinic. The Law Clinic's Summer Placement scheme ran for two weeks and there were places for 30 students each week on an intensive programme of legal training and activities. Students can apply for administrative jobs within the clinic or work on the Litigation Project supporting judicial reviews and appeals. The clinic also offer a Criminal Appeals Project as well as the chance to work on pro bono projects with local lawyers, including the now concluded Hillsborough Inquests and the ongoing Orgreave

Truth and Justice Campaign. In 2014 the Law Clinic won the LawWorks and Attorney General Student award for Best Contribution by a Team of Students.

The Liverpool Law Clinic team have contemplated applying for a legal aid contract to cover the specialised work undertaken, but due to the bureaucracy and regulatory requirements and competing academic obligations, decided against such a move. Sarah said that they do occasionally apply for legal aid for judicial review proceedings in immigration cases but all other work is pro bono. General advice work is limited to providing a letter of advice and it is only in immigration and asylum cases, where the clinic has significant expertise, that litigation is pursued.

In contrast to many other traditional universities it is clear that Liverpool have put considerable resources into developing their CLE programme and it is an important selling point for the University. They have received national awards and much positive publicity for their work in recent years, particularly on the Hillsborough Inquests.

### 5.4.5 Discussion

The Russell Group universities selected for this study have traditional law schools and a reputation for supporting CLE activities. What is striking from this analysis, particularly in comparison to the support for CLE in some of the more recently founded universities within the Russell Group (York and Warwick Universities, for example) and with some of the 'new' universities (former polytechnics) is the relatively low level of support for CLE activities provided by traditional law schools. Part of the reason for this could be due to traditional law schools in the Russell Group being more likely to adopt the conventional doctrinal or the black-letter approach to legal scholarship. In addition, many of the 'new' universities offer postgraduate training courses, which attract funding for clinical initiatives as well as bringing into law schools practising (and former practising) lawyers. Vocational courses can facilitate clinical work and this may be a reason why Sheffield and Cardiff Universities support successful clinical initiatives. The extent to which CLE activities are assessed is another important indicator of the commitment of law schools to this area of work: the universities of Sheffield and Liverpool run assessed courses and Cardiff and Manchester do not.

Without assessment (irrespective of whether academic credit is gained) there is a risk that universities may market themselves as CLE providers when this is not necessarily the case. In addition to the experiences and opinions of clinicians presented in this study, we spoke informally to clinicians and academics at other Russell Group universities. An important issue raised by a number of people concerned the lack of financial support coming from law schools for their clinical work. Indeed, as mentioned by a couple of clinicians, while their universities seem keen to market CLE activity as a way of attracting students, when it comes to the issue of resources clinical work was not prioritised. A similar situation is reported in the US where law schools celebrate and even extoll experiential learning but, on closer inspection, Porter (2015:79) notes that "the experiential learning movement in law school may be more marketing and spin than an honest shift in pedagogy, curriculum and culture". Despite this cautionary tale, there is evidence that law schools in the UK are struggling to integrate the innovative possibilities brought forward by CLE and experiential learning.

Another factor which can lead to the marginalisation of clinical work by law schools in the Russell Group of universities, mentioned by a number of clinicians, is the dominance of the Research Excellence Framework (REF). A relatively new system for assessing the quality of research in UK higher education institutions the REF is seen to influence decisions over the allocation of resources. Submissions by law schools are ranked on the basis of quality in research outputs, environment and impact. In the 2014 REF the law subject panel (which conducts the quality ratings) welcomed the inclusion of research on legal education but noted its concern that the "methodological rigour and significance exhibited by some of these outputs was uneven" (REF, 2015:71). As Drummond and McKeever (2015) note, such variations or gaps in the quality of legal education research has the potential to stymie research in this area if universities are not convinced that the quality threshold cannot be met. While there is the potential to develop rigorous, high quality research based on clinical legal work this will not

happen unless law schools recognise the value of this work and provide resources to clinicians to enable them to contribute to the research agenda. They are well placed to do so. As Drummond and McKeever (2015:11) point out, clinics provide a microcosm of the legal advice landscape and the potential to identify systemic barriers to justice, and thereby provide rich data on which research can build and contribute to policy agendas while meeting both quality and impact research targets.

The next assessment, following on and drawing conceptually from the REF, is to be based on the quality of teaching within the 'Teaching Excellence Framework' (TEF). With the proposed reforms of legal education it would be helpful if the TEF were to include a focus on the pedagogic strengths of CLE. As Drummond and McKeever (2015:14) put it, this could make an important contribution to demonstrating high quality, student focused and professionally relevant teaching, and would help to provide stability for the future of law clinics. Without such a focus we could see the same problems arising as occurred with the REF, with some law schools not recognising the potential value of CLE's contribution to the REF agenda. An important issue arising, therefore, is the extent to which assessments under the TEF will take into account decisions made by law schools, and particularly from the Russell Group, in the wake of the legal education reforms.



### 5.5 Law schools and pro bono initiatives

A number of pro bono initiatives have been commented on above when considering the involvement of clinics in a number of extracurricular activities. Here, some of the interesting pro bono work supported by law schools is highlighted. At Sheffield Hallam University, for example, there is the successful HKC Law Clinic and the Law School also run a number of pro bono initiatives. Their website states that Streetlaw is one of the main projects, where students work in a team to research and deliver advice and guidance about particular areas of law (Sheffield Hallam University, 2016). There is also a Law in Practice project, where students apply to spend one day each week with a legal service provider in order to gain experience in a professional setting. The Criminal Appeals Clinic enables students to work with a supervisor on alleged miscarriages of justice, and in the Human Rights Project students choose an organisation to work with on human rights issues or equality law, including a local authority or a charity. There is also the Prison Clinic where students can work on live cases in collaboration with an external firm of solicitors. In addition, advocacy and mooting are supported activities, seen as an essential for students wanting to train as a barrister. Law in Practice (International) is a project where students can apply to spend the summer working at law firms across the US, usually on

criminal law cases and mainly through the public defender's office. Students can also apply to study overseas in their second year, which counts towards their final degree. Many law schools will provide similar opportunities for students but rarely on such a large scale. Indeed, Sheffield Hallam's pro bono work was recently praised by the former Attorney General as 'outstanding' (Sheffield Hallam University, 2012).

At the University of Warwick pro bono work supported by the Warwick Law Society, in addition to the Law Clinic and other credit-bearing modules commented on above, is also noteworthy.<sup>50</sup> Volunteers working on the Death Penalty Project support US attorneys and UK human rights charities defend men and women across the world who are on Death Row. The Women's Project aims to raise awareness of sexual abuse and domestic violence, and volunteers are involved in campaigns, talks and fundraising events in aid of Coventry Rape and Sexual Abuse Centre. In the Law Trek Project students talk to pupils from secondary schools and the neighbourhood about legal education and how to become a lawyer. You\*th Inspire is a project which aims to inspire young people to take part in society and encourage them to engage in making the world a better place. For providing such support for pro bono activities, Warwick was the winner of the 'Best Law Society' awarded by LawCareers.Net in 2016.

Launched by Keele University School of Law in 2012, the Community Legal Outreach Collaboration Keele (CLOCK) is a new and interesting initiative. Together with a number of partners, CLOCK creates a platform for Keele law students to provide help and support to disadvantaged communities through legal research, policy work and community legal education. Students receive extensive training and are given the opportunity to work with partner organisations ranging from charities to legal firms. The skills they learn through the interactions with clients and partners help to strengthen their key employability skills.<sup>51</sup>

We have highlighted a number of interesting pro bono initiatives supported by law schools but while such activity is important in giving students' access to clients in some cases it is important for law schools to consider what level of support and/or supervision is required, depending on the type of work involved. While pro bono schemes offer students a different experience to the in-house, real client programmes which are assessed as part of a course of legal study, they have gained the attention of the legal academy and the profession alike. Sylvester (2003) notes that while resourcing clinical programmes remains an issue it is helpful that the commitment of law schools to pro bono initiatives can give CLE a huge impetus in the UK. Nevertheless, she also comments that CLE should be recognised as an essential element of legal education and that its inclusion should be an addition to, not a distraction from, rigorous and specialist legal education.

### 5.5.1 Discussion

There are a number of interesting and exciting pro bono initiatives which are supported by law students and which improve access to justice. Importance attaches to the level of help and support which law schools provide to students in these voluntary schemes. In some law schools support is available as part of the clinical team, but in others students are left to their own devices. For some clinicians pro bono is not clinical activity unless it is assessed but for others this is not the case. If pro bono initiatives do involve students in providing legal advice to the public, however, it is important that supervisors check the quality of advice and information provided. The extent to which CLE is distinguished from pro bono work could usefully be explored further when considering a classification of different types of activities.

### 5.6 LawWorks and Attorney General Student Awards

These awards are run annually in order to celebrate innovation and excellence in CLE and pro bono activity, and also to raise awareness of the valuable contribution made by students and law schools (LawWorks, 2016). A number of clinicians pointed out that the awards were helpful in promoting CLE and pro bono activity and we highlight some recent winners. In 2016,

<sup>50</sup> See Warwick Law Society (2016).

<sup>51</sup> See Keele University (2016).

Nottingham Trent University won the award for the best contribution by a law school for the work of the Legal Advice Centre.<sup>52</sup> The award for the best contribution by a team of students was Queen Mary Legal Advice Centre for their work on sharing and publishing images to embarrass (SPITE project), which provides advice to people who have had private sexual images of themselves shared and campaigns on surrounding issues.<sup>53</sup> The Dementia Law Clinic, based in the Legal Advice Centre at the University of Manchester won the 2016 award for best new student pro bono activity.



## 6 Proposed legal education reforms in England and Wales

Commissioned by the Solicitors Regulation Authority (SRA), Bar Standards Board (BSB) and Institute for Legal Executives Professional Standards, the Legal Education and Training Review (LETR, 2013) was the first comprehensive review of legal education and training across the legal profession in England and Wales for 40 years. Rejecting a radical overhaul of the system the report calls for 'incremental reform', and proposes set standards of assessment across all education and training providers and more flexibility in how people enter the legal profession. Allowing for greater flexibility and setting consistent standards, however, are not easily reconciled with incremental reform. The need for new entrants to be given more training to plug skills gaps in professional ethics, communication, management and equality and diversity awareness is also highlighted (LETR, 2013). The report has triggered reviews being undertaken by both the SRA and BSB and while this has led to Professional Competence Statements being introduced it is not yet known what impact the reforms will have on the qualifying law degree, Legal Practice Certificate (LPC) or Bar Professional Training Course (BPTC).

The ways to qualify as a solicitor are diversifying. The traditional route is by obtaining a qualifying degree, the LPC and, then, a two-year training contract at a law firm. The SRA set up the first alternative route in 2014. The 'equivalent means' or paralegal pathway to qualification enables LPC graduates working as paralegals to qualify as solicitors, providing that they can demonstrate that their experiences, skills and knowledge are equivalent to what they would have gained during a formal period of recognised training.<sup>54</sup> The SRA also introduced the Solicitor Apprenticeship scheme in 2015, which expands on the existing legal apprenticeships framework to allow school leavers to bypass university and train as legal apprentices to qualify as solicitors (Smith, 2015). The first apprenticeship is due to start in September 2016.

<sup>52</sup> The Strathclyde Law Clinic was last year's winner of this award and Northumbria's SLO in 2014.

<sup>53</sup> Since early 2015, 25 students have worked on the project dealing with around 10 cases each and spending around 20 hours per client. The students have also visited secondary schools seeking to educate young people on online safety. The project has reached 400 school students and 40 law practitioners have attended seminars on the sharing of intimate images (see LawWorks, 2016).

<sup>54</sup> The same regulatory position also allows chartered legal executives to qualify as solicitors, although the process can be complicated.

The traditional qualification route has been criticised for providing inconsistent results. Julie Brannan, the SRA Director of Education, said that with so many education and training providers, "it would be remarkable if they all assessed to the same standards".<sup>55</sup> Set out in the SRA's (2015) consultation document, 'Training for tomorrow: assessing competence' are proposals for introducing a centralised 'solicitors qualifying examination' (SQE). The proposed exam includes multiple choice tests, similar to those adopted by the New York bar exam, which has proved to be controversial both for academics and legal practitioners. In particular, Northumbria Student Law Office Director Carol Boothby raised concerns that a centralised examination could lead to law schools setting up 'crammer' courses which, through commercial imperatives, could lead to students being taken through the examination 'quickly and cheaply'. Professor Anthony Bradney (2016) criticised the SRA's proposals saying that these reflected a legal age which has long since passed.

The SRA had intended that if they were to proceed with the SQE they would consult on entry requirements and pre-qualification work-based experience in the summer of 2016 and by early 2017 publish guidelines on regulatory changes and transitional arrangements and announce the organisations appointed to run the SQE in mid-2017 (LawCareers.Net, 2016). At the end of the consultation period (March 2016) over 240 responses were received and the SRA acknowledged that there was strong opposition to their proposal, particularly from universities. Many respondents were reported to want more detail about how the qualification process would work in practice and others questioned whether the current system was in fact broken. Accordingly, the timetable was extended and the SRA announced that a final decision on the assessment has been put back until spring 2017 (SRA, 2016). The SRA will consult again on the detail of the SQE in the autumn of 2016. Interviewed for this study, Julie Brannan said the autumn consultation would also cover proposals on how intending solicitors might prepare for the SQE, and how the training contract might be regulated.

Julie also commented that the SRA proposal includes the potential for combining elements of the LPC into a three-year law degree. While it will be a matter for law schools to decide whether or not to incorporate practice-based skills and experiential learning into their law degrees, this offers the possibility of reducing the time taken to qualify as a solicitor from six to five years. For students on an integrated degree this might involve assessment at the end of three years on their functioning legal knowledge (by demonstrating their ability to apply legal principles and problem solve) as part of the first-stage SQE, and also on their practice legal skills (including legal research and writing skills). This assessment would integrate substantive and procedural/transactional law. It could replace the LPC and students would then move on to the second stage, which involves two years of work-based learning through qualifying legal experience. At the end of this second stage students would be further assessed on their practical legal skills – including client interviewing, advocacy, case and matter analysis, legal research and written advice and drafting. With the introduction of work placements, rather than training contracts, CLE and pro bono activities may be recognised as counting towards the period of work-based placement. For Professor Nigel Savage, this will lead to opportunities for law schools to work with legal providers and provide work-based placements for students.

There are also proposals emanating from the BSB to reform the current training programme for barristers in order to attract a more diverse group of candidates, and to better equip future barristers for a changing market and the needs and expectations of users of legal services (BSB, 2016). To qualify as a barrister at present, students have to complete a law degree, pass the BPTC vocational training course, and complete a one year period of training ('pupillage') at a barristers' set of chambers. In the autumn the BSB is to consult on three proposed options for future routes to qualification. These include the 'evolutionary' option, which proposes to keep the current academic, vocational and pupillage sequences but to make the BPTC less prescriptive and pupillage more flexible. The second route is via the 'managed pathways' option, where the existing route to qualification would remain but three further options would be introduced: a combined law degree and vocational training; a vocational training programme that is integrated with pupillage; or a modular approach that enables candidates to commit to

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<sup>55</sup> There are at present 104 providers of the QLD, 33 of the GDL and 26 PLPC providers and over 2,000 law firms that take on trainee solicitors (see Harris, 2015).

training one step at a time. The third approach is the 'bar specialist option' which proposes to establish a qualifying examination to test legal skills and knowledge. Upon passing the examination, candidates would be required to undertake a training course, shorter than the current BPTC, which would focus on developing foundation skills for advocacy and pupillage would follow the completion of this course (BSB, 2016). The 'bar specialist option' would be open to any candidate, which in theory could include non-graduates.

This is a time of uncertainty: law schools not knowing how the qualifying law degree, LPC and BPTC might change makes curriculum planning difficult. It was interesting to discuss how the SRA sees the future of legal education with Julie Brannan. Critically, the SRA want to reduce the separation that has occurred between the 'learning and doing of law'. During their academic degree law students should be introduced to experiential learning and practice-based skills in addition to the theory of law. There have been similar developments in the US, where regulators require law schools to encourage students to undertake pro bono activities; but this has been accompanied by significant capital investment to support such activities.

At present the law schools that have embraced CLE, particularly those that run vocational training courses and where practising lawyers play a core teaching role, appear best placed to adapt to the proposed changes. It is interesting to reflect that CLE has effectively been pioneered by recently established universities. Both Kent and Warwick Universities were founded in 1965, and subsequently the universities of York (established 1964) and the post 1992 universities of Northumbria, Nottingham Trent, and Sheffield Hallam have embraced CLE. While employability is a core benefit of CLE, and key to student recruitment marketing strategies, the emphasis of clinicians is clearly on pedagogy and testament to this are the numerous articles written in the *International Journal of Clinical Legal Education* and elsewhere.

With legal education reform on the horizon, law schools have to face up to the possibility of deciding whether or not to change their curriculum and introduce CLE and experiential learning into an integrated law degree. For Russell Group universities at the top of the league table for standards in teaching this will be a difficult decision. While there has been a recent increase in CLE and pro bono activities in some of the more traditional universities in the Russell Group, the tendency is to focus on extracurricular activities as a vehicle for enhancing student employability. Without CLE counting towards a student's degree, it will be interesting to see in the future whether increased competition between students puts pressure on law schools to integrate clinical methods and assess the work undertaken. It is anticipated that top law schools will seek to continue teaching in the traditional way, and how students respond to the SRA and BSB reforms may prove to be decisive. Obtaining a law degree from a top-ranked university will continue to be a priority for students, but student-demand is likely to influence the extent to which traditional approaches to teaching survive. The attraction to students of an integrated degree will be that they can study law in the real world and avoid the time and cost of having to complete a separate vocational training course.

### 6.1 Clinics and the regulation of legal services

When considering the potential expansion of CLE within law schools it is important to recognise the restrictions placed on the type of work which can be undertaken by non-solicitors when dealing with 'reserved legal activities'.<sup>56</sup> In order to liberalise and regulate the market for legal services in England and Wales the Legal Services Act 2007 encourages more competition by allowing organisations that are owned or managed by non-lawyers to provide regulated legal services through an 'alternative business structure' (ABS). Nottingham Trent University (NTU) and the University of Law, both providers of vocational training courses for trainee solicitors and barristers, are the only two universities which have successfully applied for ABS status to date. As noted above (Section 5.2), while NTU include undergraduates in its CLE work, it is due to the clinical demands of running both the LPC and the BPTC that the University has adopted ABS status for the Legal Advice Centre so that they can expand CLE activities. Accordingly, as Nick

<sup>56</sup> Including the exercise of rights of audience, conduct of litigation, conveyancing, reserved instruments (including land registration and real property), probate, notarial activities and administration of oaths.

Johnson from NTU explained: "having ABS status means that we can provide trainee lawyers with experience of working directly with clients and this then equips them for the legal and commercial challenges they face when going out to practise law". Many other law schools are not sure of what steps they need to take in the future as they are currently in a transitional grace period, which has recently been further extended by the SRA.

While providing legal advice is not a reserved activity there are 14 law schools which currently offer representation, which is a reserved activity (Carney *et al.*, 2014:21). There are concerns that once the transitional grace period ends these law schools will require ABS status in order to represent clients: not an attractive proposition for some. Elaine Campbell (2014) points out that some clinicians are of the opinion that if they are required to set up as an ABS, to stop doing reserved work would be an option. She notes that this would be a backwards step as clinics would no longer be able to represent clients in court, which would undermine their work in providing access to justice. This would also be contrary to the aims of the Ministry of Justice as the regulatory reforms of the Legal Services Act 2007 were intended to reduce the burdens which hold back the legal industry.

Campbell (2014) proposes two possible ways forward for law school clinics which fall within the remit of the 2007 Legal Services Act. First, she suggests broaching this topic head on and engaging with the regulators as much as possible.<sup>57</sup> The other suggestion is to wait and see what will happen as the transitional grace period might be further extended or continue indefinitely, in which case the problem will disappear. However, when exploring how universities can conduct reserved legal activities Linden Thomas, a solicitor and manager of the Centre for Professional Legal Education and Research (CEPLER) at the University of Birmingham, raised concerns over the current status of law clinics in undertaking reserved legal activities and how such uncertainty can stifle innovation.<sup>58</sup> She identifies five options for university law clinics – limiting the work undertaken to that which is not reserved; only doing reserved activity that does not form part of your employer's business; rely on the exemption at section 23 of the Legal Services Act 2007; set up an ABS; or partner with external organisations to supervise and deliver reserved activities.

As a non-executive director of a commercial ABS, Professor Nigel Savage is of the opinion that the ABS route is inappropriate for most university law schools because "the compliance issues are huge". He feels that this would be a distraction from the day-to-day clinical work and he is optimistic that other options will emerge. This was seen to be the case for law centres when responding to budget cuts following implementation of LASPO. Before LASPO came into force law centres were not allowed to charge for their services and they were reluctant to become an ABS in order to do so. Indeed, the Director of the Law Centres Network commented that becoming an ABS would have "been cumbersome and costly". Instead, the SRA agreed initially to consider waivers for individual centres, before allowing them to charge across the board (Baksi, 2014a), although this exemption is subject to the transitional grace period. There have been similar issues arising in the US, with regulators putting universities under pressure to change and some law schools are taking ambitious steps and creating innovations in clinical activities. As Krantz and Millemann (2015:1) put it, "Innovation is breaking out all over, and the pace of change is accelerating". It is in this context of change that Nigel Savage urges clinicians in England and Wales to engage with policy makers and regulators in helping to shape the future of CLE.

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<sup>57</sup> Which she states includes bringing to the attention of the SRA the problems, misunderstandings and the reduction in pro bono service that the licensing regime may cause.

<sup>58</sup> Presentation given by Linden Thomas at the CLEO conference in Preston on 1 June 2016.



## 7 Public funding, partnership and the delivery of legal services in England and Wales

England and Wales in the mid-1980's could claim to provide access to justice due to the extensive network of not-for-profit agencies, primarily funded by local authority grants and a generous legal aid scheme. From surveys of legal need we know that most issues, including problems involving social welfare, debt, family issues, housing and mental health, were dealt with by advice agencies, legally-aided solicitors and law clinics (Plesence *et al.*, 2004). We also know that a number of groups were, and remain more susceptible to justiciable problems including lone parents, those with long standing ill-health and disability, those living in the rented housing sector, those living in high density housing, those aged between 25 and 44, the unemployed, those on means tested benefits and those on very low incomes (Plesence and Balmer, 2014). These are mainly the people and type of problems which CLE initiatives target. Surveys have also helped identify some of the difficulties people face when trying to navigate the maze of advice providers. Plesence *et al.* (2004) note that people can become disenchanted if instead of having their legal issue resolved they are referred on to another advice agency. This is referred to as 'referral fatigue'; people simply give up after having been constantly referred on to other advisers.

Sommerlad and Sanderson (2013) document how a range of factors have coalesced to have a devastating impact on legal aid and the advice sector. These include delivery of legal aid services overwhelmingly by solicitors in private practice, leading to the criticism that it had become "a hostage to law firms" overheads, hourly rates and inefficiencies (Dyer, 1995). This led to funding for advice agencies being focused on what is absolutely necessary, which obliges agencies to make business as well as professional judgements on casework, with priority given to the former (Sommerlad and Sanderson, 2013). As part of the efficiencies drive, in 2007 the Legal Services Commission began to introduce fixed fees for legal aid work as an alternative to paying for the time spent on cases. This was to have a devastating impact on advice agencies particularly as the change meant that instead of regularly receiving a guaranteed sum of money they received a fixed fee when billing for work undertaken. In one large Law Centre, for instance, instead of receiving a guaranteed £90,000 per month, following the introduction of fixed fees they got just half that amount and the Law Centre reserves were depleted by 70% (Sommerlad and Sanderson, 2013).

In the context of spending cuts and efficiency savings following the 2008 recession, LASPO has led to a dramatic curtailment of access to justice which has disproportional impact on marginalised groups and individuals (Hynes, 2012; Sommerlad and Sanderson, 2013; Low

Commission, 2014; Sandbach, 2016).<sup>59</sup> The effect of the Act was to remove “whole swathes of law” from the scope of public funding;<sup>60</sup> effectively excluding 650,000 people from gaining access to legal advice (Baksi, 2014b). For Drummond and McKeever (2015:11), “sectoral capacity – both private and third sector – to respond to the legal needs of vulnerable individuals has been impacted in Britain by the implementation of LASPO”. This is due to the undermining of an ecosystem of legal services which had, prior to LASPO, been built on a complex network of mutually supporting generalist and specialist advice provision.

In response to LASPO the Legal Action Group set up the ‘Low Commission’ with a brief to gather evidence and develop a strategy for responding to the cuts in public spending.<sup>61</sup> The Low Commission’s report (2014:101) subsequently noted some of the consequences of the dramatic cuts in public spending. In particular, it pointed out that when people get into difficulty in their daily lives over issues involving their home, job, welfare benefits, immigration status or health, these issues can often be resolved if they have access to legal advice and representation. Without this people can become unemployed, homeless or in debt and not only will they suffer personal distress the state will ultimately incur increased costs when meeting their needs.

The Low Commission (2014) recognises that these are changing times and the drive for austerity means that there are fewer resources available now than in the past. Accordingly, the Commission seeks to develop a fresh approach, which involves measures to reduce the need for advice and legal support in the first place; developing more cost-effective approaches to service provision; and drawing on a wider range of funding sources. Some of the key principles underpinning this approach include early intervention and action; investment for prevention to avoid the wasted costs generated by the failure of public services; simplifying the legal system; developing different service offerings to meet different types of need; investing in a basic level of provision of information and advice; and embedding advice in settings where people regularly go, such as GP surgeries and community centres (Low Commission, 2014:viii).

In a period of austerity, the Low Report notes that this is a time of innovation and rapid change in the provision of legal services and dispute resolution. It is also a time to question the effectiveness of relying on a ‘judicare’ model which relies on solicitors in private practice. Particular problems arise as the overheads and staff costs of solicitors’ firms increase and reduced fees are paid for legal aid work. This means that while almost £2 billion pounds is currently spent on legal aid for civil and criminal justice matters (Legal Aid Agency, 2015) far fewer people are able to access legal help and support. This provides the context for considering the potential for law schools to tackle unmet need and support innovation in the delivery of legal services.

Concerns have been raised by clinicians over the potential for law clinics to be expected to plug some of the gaps in legal service provision following LASPO and the retrenchment of civil legal aid. The Low Commission (2014:101) notes that while lawyers acting pro bono along with university law schools make a significant contribution to access to justice, it is unrealistic to expect that voluntary services could replace publicly funded legal help and representation. Nevertheless, it is evident from our examination of CLE activities that taken together clinics have provided access to justice for a huge number of people. In recognising the limitations of clinics, however, as the Director of the Northumbria Student Law Office Carol Boothby points out, the educational emphasis and high level of specialist supervision required limits the volume of cases which can be dealt with.

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<sup>59</sup> LASPO imposed cuts of £89 million in legal aid each year on social welfare law, as well as reductions in local authority funding of advice and legal support, estimated to be at least £40 million per annum (Low Commission, 2014).

<sup>60</sup> This includes most private family cases (except those involving evidenced domestic violence, child abuse or abduction); welfare benefits; clinical negligence; employment; housing disputes (other than serious disrepair, homelessness or anti-social behaviour); debt; immigration; and education (except special needs cases).

<sup>61</sup> The Commission was named after the Chair, Lord Low of Dalston.

## 7.1 Developing partnerships with legal providers

When considering changes to the ecosystem of advice agencies, Drummond and McKeever (2015:11) are right to point out that access to justice is not solely dependent on an individual's financial circumstances or the provision of free legal services by the state (although these factors have significant impact). Also required is the delivery of innovative legal solutions which respond more effectively to what citizens need. They identify some successful initiatives, including online dispute resolution and information provision<sup>62</sup> and the potential to reconfigure existing and traditional solutions, including CLE. Their survey also highlights the fact that clinics generally do not have the capacity to respond to the increase in unmet legal need following implementation of LASPO. While 85% of clinics recorded an increase in demand for their services from between 2012 and 2015, only 64% registered an increase in their annual caseload: mainly because the volume of case work is determined by staff numbers rather than in response to demand.

## 7.2 The potential for developing local partnerships in Manchester

It is useful to explore here in a local context the potential for a law school to develop partnerships with other legal advice providers and consider developments in Manchester. A key development on the horizon within the Manchester legal market is the forthcoming opening of the Greater Manchester (GM) Law Centre. John Nicholson, a barrister from Kenworthy's Chambers with a distinguished career in the advisory sector, is the Chair of the Management Committee and is at the heart of the developing organisation (Fouzder, 2016). Having gauged the level of support for this venture at three public meetings, the Law Centre have secured premises in Moss Side only a short distance from the University's Legal Advice Centre (LAC).

John describes the GM Law Centre as a fluid concept and they are open to a number of options in terms of future collaborations with other third sector organisations and educational institutions. They are currently working with Salford University Law Centre to develop a model where students will undertake PIP benefit appeals on behalf of clients of the GM Law Centre. A similar project in Bristol had over a 90% success rate.

The GM Law Centre would welcome the involvement of students in both campaigning and fundraising. John aired some frustration with the lack of campaigning by university law schools in the past, noting that they are not subject to the contractual restrictions which prohibit some organisations from such activity. He is anxious that the GM Law Centre should serve as a training ground for the legal aid lawyers of tomorrow, particularly in regard to social welfare law. He hopes to obtain funding to develop this work within the law centre and clearly feels that working with students to help engender a passion for the cause of social justice at an early stage in their legal careers would be highly beneficial to this process.

Rather than doing the majority of work themselves, the GM Law Centre aims to fill the legal advice lacuna which has developed in recent years by working in collaboration with other firms, voluntary organisations and educational establishments to provide a comprehensive level of legal advice across Greater Manchester. The GM Law Centre intends to concentrate initially on the areas of employment law, welfare rights, housing and benefits sanctions. An early initiative, which adopts a collaborative approach, is concerned with the provision of welfare rights advice to be provided by internal caseworkers under the supervision of solicitors from Stephenson Solicitors, who will be acting on a pro bono basis. The open and collaborative approach of the GM Law Centre in working with existing advisory organisations, highlights the potential for the University's LAC to develop new partnerships and new areas of work.

Having spoken to other local lawyers, another potential area for working collaboratively with partners is in relation to housing law. Michelle Waite, a Housing Solicitor at Fieldings Porter Solicitors, expressed an interest in developing a project with the Manchester LAC. Having

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<sup>62</sup> See also Smith and Paterson (2014).

## Clinical legal education and experiential learning: Looking to the future

previously worked at Rochdale Law Centre, she is interested in looking at benefit sanction appeals and there is potential to develop a project within the LAC. This would provide students with an opportunity to gain advisory and advocacy experience in an area of law with a high success rate and which makes a significant difference to the clients affected.

Another potential area of law to develop was suggested by Matthew Bown, the Convenor of the Police Action Lawyers Group in the North of England. This is an area of legal advice which has not been as badly hit as others by cuts in legal aid and some of the work is still eligible for public funding. This work would provide students with experience of engaging with the police and police complaints system as well as providing a valuable service to clients.



## 8 Potential innovations in clinical legal education in the United Kingdom

CLE and experiential learning in the UK has tended to focus on civil justice and social welfare issues (with the exception of 'Innocence Projects') and clinicians are well placed to consider the potential for innovation in relation to these areas of law. Below we first explore the potential for innovation if law schools turn their attention to developing CLE initiatives within the criminal justice system. In addition, and following on from what is happening in the US in relation to technology clinics, we explore some technological innovations taking place in the UK in relation to the delivery of legal services.

### 8.1 Clinical work and criminal justice initiatives

Clinicians tend not to consider criminal justice issues when developing clinical methods. To a large extent this has been due to legal aid providing comprehensive cover for suspects at police stations and in court proceedings. With the introduction of fixed fees for police station legal advice (instead of paying for the time lawyers spend on cases) lawyers now focus on the police interview, which means that other important safeguards may be neglected (Kemp and Hodgson, 2016). In addition, and following the introduction of means-testing at court (as part of the assessment for legal aid), there has been a significant increase in the number of defendants appearing unrepresented at court, particularly in magistrates' courts. We also examine the potential for students to be involved in restorative justice initiatives.

#### 8.1.1 Clinical legal education and police station legal advice

Only solicitors' firms that hold a criminal contract with the Legal Aid Agency are able to provide publicly-funded legal advice and both lawyers and non-lawyers providing advice have to be accredited to do so. In the current situation, therefore, it is not possible for law students to provide police station legal advice, but this would change if proposed legal education reforms are implemented (see above Section 6). It can be extremely daunting for lawyers, never mind students, when first providing legal advice in police custody, not least because of the secure environment and the adversarial context within which this takes place. Accordingly, it would be appropriate to first use simulated exercises with students in order to familiarise them with the environment, criminal process, and roles of practitioners. In their first postgraduate year of work-based placements, students could shadow legal advisers and, then, train as accredited representatives in their second year. This would involve them undertaking the assessment and training programme as a probationary representative and, for up to one-year, they can provide legal advice under the supervision of a duty solicitor. On qualification they would be able to act as a police station duty solicitor, a clear advantage in a competitive jobs market.

The availability of probationary police station advisers would be a useful resource for legal advisers, many of whom tend to arrive at the station when the police are ready to conduct an interview and which may be several hours following a suspect's detention. When a suspect first requests legal advice, for instance, a probationary adviser could attend at the station and speak to the client to advise them of the process and that they, or a lawyer, will be present at the time of the police interview. Any issues and/or concerns raised by the client at that time can be dealt with either directly by the probationary adviser or after seeking advice from their supervisor. Once the police interview has finished lawyers tend to leave the station and it can be some hours before the police decide on the case outcome. A probationary representative could remain at the station and advise a client once a police outcome decision has been made. Again, either directly or through the solicitor, the probationary representative would be able to advise the suspect about the consequences of the police decision and help uphold their legal protections. If a caution is on offer, for example, it can be very tempting for suspects to accept as an alternative to court and after having spent many hours in custody. However, research has shown that the police sometimes offer cautions illegally; either because the offence is not admitted and/or there is insufficient evidence to prosecute (Kemp, 2014). A probationary representative could also make representations to the police over any remand/bail decisions, including the proposed imposition of any bail conditions.

A different route through which students could assist lawyers in the police station would be to train as an 'appropriate adult' and assist vulnerable suspects. As an appropriate adult the student would be unable to offer a suspect legal advice but, through their training, may encourage them to request legal advice. Appropriate adults sit in on the police interview and it would be interesting for students to observe this part of the process and examine the role undertaken by the different practitioners involved. If students were to be involved police station work it would be helpful for them to reflect on what happened when acting either as a probationary adviser or an appropriate adult, which would be invaluable to understanding the efficacy of procedural safeguards.

Law students could also have a useful role in assisting criminal defence practitioners by working on cases in the office. During police investigations, for example, there is a tendency for the police to pursue prosecution rather than defence leads and the investigative work by students could help address that imbalance by checking the veracity of the prosecution case and interviewing possible defence witnesses. Students could also examine how and where litigation fits into broader efforts to improve police accountability, and ultimately the criminal justice system, along the lines of the Civil Rights and Police Accountability Project at the Mandel Clinic in Chicago. They could also follow up on complaints people make about the police and provide an early alert if patterns of behaviour highlight problems of police corruption. It is pertinent to consider a similar scheme in the 1990's when in response to dissatisfaction over the way the police dealt with complaints a self-help group investigated local police officers. An investigation by this group helped bring police corruption to the fore, the Court of Appeal quashed several convictions and a number of officers were imprisoned for offences of corruption and violence (Smith, 1999).

### **8.1.2 Clinical legal education and the criminal courts**

There have always been unrepresented defendants in the magistrates' courts, particularly in traffic cases, but it seems that there has been a significant increase in the number of people representing themselves who do not choose to do so. Quite remarkably, no statistics are available on the extent to which people attend court unrepresented, but three reasons have been identified for people not having a lawyer: they are ineligible for legal aid due to their income or the type of offence; their lack of awareness of the rights to legal aid; or lack of organisation in arranging a lawyer (Transform Justice, 2016:2). There is the potential for students to assist unrepresented defendants in magistrates' courts, but first students would have to familiarise themselves with court proceedings and the roles of the different practitioners involved.

Once again it would be during the postgraduate stages of the proposed new law degree that students would be able to provide assistance in magistrates' courts. They could start by helping unrepresented defendants complete court forms and explain the process to them; checking their eligibility for legal aid at the same time. As part of their work-based placement, there is the potential for students in a criminal practice to gain the knowledge and skills required to assist unrepresented defendants and, under the supervision of a solicitor, provide legal advice. The role of the student in assisting unrepresented defendants could be similar to that of a 'McKenzie Friend'.<sup>63</sup> There has been some controversy over people charging a fee for this role and who are unregulated, uninsured and mostly unqualified (Bar Council, 2016). Students approaching qualification, on the other hand, would be regulated and insured and while under the supervision of a lawyer would be qualified to give advice.

There is also the potential for law students to gain experience of Crown Court work. Prior to the introduction of fixed fees, for example, it was common for a solicitor's clerk to attend from the instructing solicitor's firm to assist counsel in court. In undertaking this role, students would gain a valuable insight into the daily routines and procedures at the Crown Court. They would also be able to observe counsel's interactions with their clients and their performance when advocating in court. It would be important in upholding the client's trust in his/her legal adviser, for the solicitor's firm to ensure that only experienced and competent students would take on this role.

### 8.1.3 Clinical legal education and restorative justice

The government are keen to promote the use of restorative justice initiatives both as an alternative to cases being prosecuted and also, for cases being dealt with at court, particularly when dealing with young offenders (Taylor, 2016). When dealing with young offenders the police can impose a youth caution and this can include a referral to the local youth offending team for an intervention to address the offence and/or the offending behaviour (Ministry of Justice, 2013). The intervention can include a restorative justice approach, which involves the offender and the victim seeking to restore the harm caused by the offence and/or the offending behaviour. Law students could be involved by helping to facilitate meetings and/or discussions taking place between victims and offenders. In addition, most first-time offenders in the youth court receive a 'referral order' which requires an intervention by a 'youth offender panel'. Student volunteers could be part of that panel which has to agree with the young offender a programme of behaviour, including adopting a restorative approach, which is coordinated by the local youth offending team (Ministry of Justice, 2015).

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<sup>63</sup> A 'McKenzie Friend' does not have to be legally qualified and is entitled to provide assistance in court to unrepresented defendants.



## 8.2 Innovation and the use of technology

For many years now, Professor Richard Susskind (2010) has encouraged lawyers in the UK to change the way they work by embracing digital technology. When looking to the future, Susskind (2013) makes a plea for legal education and training to take on board how technology is changing the role of lawyers. At present, he argues we are teaching lawyers to be something they no longer need to be, which are traditional, one-to-one, bespoke face-to-face consultative advisers who specialise in individual jurisdictions and charge by the hour. He argues that the legal profession can no longer ignore the march of technology, particularly when the average desktop computer has more processing power than all of humanity put together. While the internet is transforming all corners of society and the economy, Susskind (2013) notes that it does not yet apply to lawyers.

When looking into the future legal services the Legal Services Consumer Panel's report (2014) stated that technology will be central to all aspects of legal services, it will change how legal problems are identified, people and businesses resolve their disagreements, the way consumers choose providers, how legal services are delivered and law firms run their businesses. Technology, it has also been noted, has the potential to greatly enhance access to justice. Thanaraj and Sales (2015) recognise that the concept of digital lawyering as a theoretical framework within legal education is a reasonably new idea in the UK and that there are, therefore, many uncertainties. Such as what does the legal professional need to know about how technology functions to be competent in the practice of law - and what methods can be employed to educate law students entering a legal field which is technology-driven. Both the legal profession and law schools have been slow to embrace the use of technology in the delivery of legal services, particularly when compared to developments in the US.

The need for reform of courts and tribunals has also been highlighted recently by a Working Party coordinated by JUSTICE (2016), a UK based human rights campaigns organisation. With the current system being recognised as "outdated and underperforming", the Working Party recommends a radical rethinking of what constitutes a court and what the delivery of justice demands in the modern-day; with a particular emphasis being placed on providing technology-driven solutions to access to justice problems.

There are innovations taking place in CLE through the use of technology. We have seen how the Universities of Manchester and Strathclyde are respectively using Skype and video-conferencing and other online ways of communicating with clients while they remain in their own home. Bramall (2016) notes that research has found advice agencies which provide contact via a webcam and online booking of appointments is particularly beneficial to elderly and disabled clients who find it difficult to leave the house. A client experiencing domestic abuse might also find it difficult to leave their home and the webcam appointment offers a discreet

alternative. Through electronic communication legal advisers can more easily provide access to people living in rural communities.

At the forefront of using technology in clinical legal education in the UK is the University of Cumbria Law School, which recently launched 'The Cumbria Virtual Law Clinic' (VLC). The VLC is an online clinic partnership between students, supervising tutors and local pro-bono solicitors. Set up as a 'virtual law office', it has been designed to enhance the legal education of students through direct experience of legal practice. It provides access to justice for people who need legal advice but cannot afford to pay the legal fees charged by solicitors in private practice. Similar to other law school legal advice clinics, the VLC students are expected to take full responsibility for cases, undertaking such tasks as legal research, corresponding, drafting statements of case, interviewing clients and expert witnesses and to undertake online dispute resolution under supervision (Thanaraj and Sales, 2015).

The VLC offers students insights into an emerging way of lawyering and it gives them the opportunity to develop, understand and experience online dispute resolution, using the practice of digital lawyering skills and e-practice management, gaining an insight into the future of legal services and the profession. It also helps students to understand the role of technology, privacy and security and how it affects legal ethics and limits associated with this, gaining transferable skills in maintaining personal responsibility and accountability online, working efficiently with others online and undertaking decision-making (Thanaraj and Sales, 2015).

There are a number of 'virtual law firms' being set up in the UK with the intention of bringing together a number of lawyers but without the overhead costs of running an office. Lucy Scott-Moncrieff, for instance, a former president of the Law Society, founded the virtual law firm 'Scom'. The firm now has more than 50 self-employed consultants, undertaking both legal aid and privately funded work. In return for payment under a fee-sharing arrangement, the consultants have access to Scom's case management system (which is accessible from anywhere in the world); PII cover; guidance on meeting compliance requirements; back-office services and referrals gleaned through its website (Rayner, 2014). Michael Mansfield QC, a leading barrister, set up 'Mansfield Chambers' as a 'virtual' chambers which only has small premises at which the three QC's and ten barristers involved can 'hot-desk'. Improvements in technology will no doubt lead to more lawyers setting up 'virtual law firms' in the future. Such arrangements will encourage lawyers to communicate with their clients and other bodies through email, text, blogs, Twitter or other media. In addition, there are now many court and government bodies which are prepared to communicate over the internet and increasingly this will lead some of the court tasks performed by lawyers to be dealt with over the internet. Students in technology clinics could usefully learn from developments in the US when considering how emerging technologies can be at the centre of modern law practice (see above, Section 3.6).

It is evident that technology will increasingly have a role to play in the way in which clinicians communicate with their clients as well as on how legal advice is delivered. Indeed, Smith and Paterson (2014) have shown how harnessing the communications power of the digital revolution can go a long way to filling the access to justice gap created by legal aid cuts. In particular, innovations in the private sector have shown how low-cost legal services are possible and that government-led initiatives could bring significant improvements and provide viable alternatives to face-to-face legal advice. Janis (2014) predicts that available computing power is likely to increase up to three times by 2020 and this increase in power and introduction of new devices is likely to improve lawyering technologies such as document automation, decisions engines, e-discovery tools, communication and collaboration tools, legal research tools, and legal expert systems. These are likely to continue to mature and progress in functionality and availability over the coming years.

This trend will continue and it is considered that by 2020 most of the viable solutions will be available either exclusively over the internet or with very limited desktop interfaces. Trending industry concepts, such as 'big data' and 'unstructured databases', will allow vendors to provide more robust, higher performance, and increasingly feature-rich applications (Janis, 2014). When looking at the implications for CLE and providing access to justice we can see how the

## Clinical legal education and experiential learning: Looking to the future

lawyers of the future need to understand and embrace developments in technology in order to access clients and stay competitive.

Students could also usefully get involved in initiatives designed to communicate with people about their legal rights. Dr Vicky Kemp, for example, is currently working with the Computer Science Department at the University of Nottingham to develop a web-based application which will inform people of their legal rights. Working with the police, Home Office, Ministry of Justice, Law Society, Youth Justice Board, children's rights groups and other academics, the intention is to use the 'app' within police custody, so that people can be advised of their rights in an interactive way through the use of a computer tablet. The 'app' will be available publicly and the use of 'gamification' is being explored as a way of encouraging people to engage and improve their knowledge and understanding of their legal rights (see Kemp, 2016).



## 9 Recommendations

We have only been able to scratch the surface of what is happening with CLE and pro bono activities when looking at activity on the ground. We are at a time of change and a number of factors have the potential to revolutionise legal education and transform the delivery of legal services. The proposed legal education reforms are intended to encourage law schools to integrate clinical methods and experiential learning into the law degree in order to achieve a mix of theory, doctrine and practice.

There are cost implications for law schools when adopting clinical programmes. This is particularly the case for in-house clinical courses which require low student-to-staff ratios where students are closely supervised by clinicians: ratios as high as one supervisor to six students compared to one lecturer to 150 or more using traditional didactic teaching methods. Joy (2012), however, is critical of those who question the cost of in-house clinics for often failing to compare its cost to other costs within the law school. He notes that critics tend not to take into account the law school's mission to prepare students for effective and ethical legal practice, the role taken on by in-house legal education or student demand for real-life educational experience.

Emerging global factors have implications for change, including the 'internationalisation of markets', 'incursion of technology' and a 'series of economic and global cataclysms' (Goldfarb, 2012:279). The impact of such factors since the 2008 recession in the US has led to a sharp decline in the number of students applying to law schools, fewer jobs available for new attorneys in law firms and an increase in unmet legal need. Goldfarb (2012) warned law schools that their choice was either to go into the future "without a deliberate sense of purpose", or to join those who have begun to consider what the likely changes in society and the legal profession will mean for the future of legal education. It is our opinion that with a 'perfect storm' brewing in the UK a similar warning should also be heeded by law schools on this side of the Atlantic.

It is in this context of change, and particularly with the proposed legal education reforms in England and Wales, that we make a number of recommendations.

### 9.1 Law Schools to engage with the legal education reforms

We recommend that law schools engage with the SRA over the proposed legal education reforms. The SRA would benefit from having the knowledge and expertise of clinicians working in established law clinics. We also recommend that law schools consider working with the SRA as an 'early adopter' of the proposed reforms, including the more traditional universities in the Russell Group where there tends to be a conventional doctrinal approach to legal scholarship.

This would help to ensure that the adoption of clinical methods complements rather than detracts from high-quality teaching methods.

## 9.2 Conducting an empirical study into clinical legal education

With the potential for expansion in CLE, we recommend that an empirical study is undertaken as a baseline of current practice and which can be used as a benchmark for future evaluations of CLE. Clinicians are best placed to inform the research agenda but there will be limits to what can be learned about clinical practice from people studying their own programmes. We therefore propose that a study is undertaken in which clinicians and social scientists collaborate to address key issues arising out of this study as detailed below.

### 9.2.1 Creating a taxonomy of clinical legal education

It has been noted how law clinics vary in terms of staff and student profiles and numbers, and this shows them often to be bespoke creations set up to meet needs defined by individual law schools (Drummond and McKeever, 2015). A research study, therefore, could usefully create a taxonomy of CLE by including a 'thick description' of the content of clinical work and the context in which clinics operate. This would assist in developing taxonomies of institutional form that allow for these to be assessed and further developed (Asher, 2012). Creating a taxonomy of CLE would need to involve clinicians in documenting what they are already doing and for them to identify, describe and measure important aspects of their work and how it is funded. This research could produce new knowledge about clinical training by: a) identifying the specific lawyering skills and civic attitudes and behaviours that clinical instructors seek to teach; b) describe the methods deployed; and c) measure how effectively clinics achieve these instructional goals.<sup>64</sup>

### 9.2.2 Bolt-on clinic or integrated curriculum

The proposed legal education reforms are intended to encourage law schools to integrate CLE and experiential learning into the law degree. This is likely to be resisted by traditional law schools in the Russell Group of universities, particularly those with an international reputation for excellence. There is a danger that instead of the reforms leading to CLE being integrated into the curriculum, law schools resistant to change could simply bolt-on a law clinic and/or extend pro bono work. A similar situation was noted in the US where law schools were seen to celebrate and even extoll experiential learning but on closer inspection it was seen to be more marketing and spin than an honest shift in pedagogy, curriculum and culture (Porter, 2015). It is also important, particularly within traditional law schools in the Russell Group, to consider the positive impact which CLE can have on the research agenda. In addition, it would be helpful for the Teaching Excellence Framework (TEF) to include a focus on the pedagogic strengths of CLE as this could help to make an important contribution to demonstrating high quality, student focused and professionally relevant teaching (Drummond and McKeever, 2015).

### 9.2.3 Measuring the quality of legal advice

There are quality frameworks for in-house clinics which provide advice to live clients.<sup>65</sup> In this study, however, a number of clinicians raised questions about how helpful advice letters are to clients and the extent to which they are able to follow the advice received. This is an important point but, to date, there has been no research study which has examined the quality and impact of clinical legal advice. A couple of clinicians did raise concerns over advice letters being too

<sup>64</sup> This was the approach adopted by Sandefur and Selbin (2009) in their longitudinal study of US law students and the impact of the 'clinic effect'.

<sup>65</sup> Solicitors have to comply with professional standards when involved in clinical work and there is a route to accreditation through the 'Advice Quality Standard' awarded by the Advice Services Alliance for social welfare issues.

long and 'legalistic', particularly if the concern was to protect the university from any complaints that could arise. It is also not known to what extent clients are able to follow advice set out in the advice letters.

A research study could usefully undertake a survey of clients who have received legal advice from students at a number of law clinics. They could be asked questions about the advice: How was it received? Did they understand the advice? What action was taken? Did this resolve their legal problem? If not, was further action taken? Did their engagement with the law clinic help to enhance their legal capability? The research study could also usefully explore whether clients had sought advice from other advice providers, either before or after visiting the clinic, and the impact of that advice. This will assist our understanding of people's advice seeking behaviour and whether or not the advice provided was effective in helping people resolve their legal problems. An outcome of the study could be to develop a generic 'client satisfaction survey' which clinics could be invited to use in adopting a standardised approach to gathering information on clients in the future.

A survey could also usefully explore the effectiveness of legal advice depending on the way in which it was received. Drummond and McKeever (2015:12), for example, note that clinical legal advice tends to be based on the traditional model common in legal practice of an individual attending a legal advice point to engage in advice seeking "that adopts a standard legal interviewing technique which itself tends to rely on a hierarchical, paternalistic approach". It seems that the 'advice letter' model is used in most law clinics, and the impact of this mode of advice delivery could be compared to others, such as drop-in advice centres and on-line legal advice providers. This will assist understanding of the efficacy of the different ways in providing legal advice and how legal problems may best be resolved.

When considering the quality of legal advice provided by law clinics it would be helpful to examine what arrangements are in place, or could usefully be adopted, in order to routinely monitor and evaluate clinical work with live clients. One approach, for example, could be to use 'peer review', where independent lawyers review case files in order to assess the quality of legal advice provided.<sup>66</sup>

### 9.2.4 The student perspective on the 'clinic effect'

The experience of students involved in clinical activities, and the effect of that experience later on in their careers and involvement in pro bono work, could usefully be explored. In an 'exit survey', for example, students could be asked about their experience in the law clinic and their views on what they considered to be some of the strengths and weaknesses of the clinical approach adopted. This information would not only be helpful when examining clinical activity from the students' perspective, it would also assist clinicians improve clinical work. Sandefur and Selbin (2009) examined the 'clinic effect' when conducting a longitudinal study of students both when they were in the law school and subsequently as new attorneys. They considered this research focus to be important because CLE is intended to be a pedagogic corrective to perceived deficits in law schools which teach lawyers to think like lawyers but not to act like them and noted that "little research exists to inform our understanding of whether – much less how, when why and for whom – clinics deliver on this promise" (Sandefur and Selbin, 2009:57). In the US they found that new lawyers rated clinical training more highly for making the transition to the actual practice of law than many other law school experiences, particularly the doctrinal core that is commonly the object of the standard assessment.

In considering the different approaches adopted to CLE, Sandefur and Selbin (2009:102) make the important point that while undoubtedly various models and methods will produce different effects on students, we cannot begin to investigate these effects until we know what kind of clinical training students are actually receiving. A prospective study of the impact of

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<sup>66</sup> This is the model adopted by the Legal Aid Agency (2016) when using independent experienced legal practitioners to assess the quality of work of other professionals against a set of criteria and levels of performance.

legal education on law students' careers could usefully follow students from the start of law school into their future careers. Researchers could compare the lawyering skills (and the transferability of such skills into other occupations), pro bono, community participation, employability, job choices and other experiences of students who were otherwise similar before they did or did not participate in clinics.

### **9.2.5 Law clinics and the ecosystem of legal advice providers**

Within the context of providing legally-aided services predominantly through a *judicare* model, which relies on lawyers in private practice, a research study could usefully explore what impact increasing levels of state retrenchment and cuts to legal aid are having on the delivery of such services. Pedagogical demands mitigate against law schools managing a high volume of legal cases, but through clinical activities they can work in partnership with others in the ecosystem of legal advice. It was interesting to discover that new partnership arrangements between lawyers in private practice, legal advice agencies and law schools are being considered by the incipient Greater Manchester Law Centre, for the purpose of providing legal services to clients who are unable to access legal help from private solicitors. A research study could also usefully examine the efficacy of different partnership arrangements and how innovations in practice are helping to improve access to justice.

### **9.2.6 Technology and innovations in practice**

It is evident that technology will in the future play a central role in courts, tribunals and the delivery of legal services. Having examined developments in the US, we recommend that law schools consider adopting 'technology clinics' so that students can be involved in identifying technological solutions to a range of problems. These could include students being involved in studying and even building software systems that perform some of the tasks of lawyers, help educate people about their legal problems and provide legal advice online. Through technology clinics students can gain an understanding of the 'emerging technologies' which are at the centre of modern law practice and develop core competencies across a range of new and traditional lawyering skills (Staudt and Lauritsen, 2013:687).



## 10 Next steps

In the interest of taking forward the findings and recommendations contained in this report commissioned by the School of Law at the University of Manchester it is proposed that the School convenes a seminar in association with CLEO, at which clinicians, regulators and academics can discuss the issues raised in this report. The suggested aim of the seminar would be to craft a framework for the future that makes sense of the complexities and uncertainties currently associated with the teaching of law.

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## APPENDIX

### Clinics involved in this study

Details of the visits to clinics and/or discussions with clinicians undertaken as part of this study are as follows:

#### United Kingdom Clinics

- University of Sheffield – visit and interviews with Professors Claire McGourlay and Sarah Blandy, Dr Andrew Green and Gill Hutchens – 12 January 2016.
- University of Liverpool – visit and interview with Dr Sarah Woodhouse and Naomi Fathers – 23 February 2016.
- Nottingham Trent University – visit and interview with Nick Johnson – 11 March 2016.
- University of Northumbria at Newcastle – visit and interviews with Carole Boothby and Cath Sylvester – 23 March 2016.
- University of York – interview with Professor Richard Grimes – 23 March 2016.
- University of Kent – visit and interviews with Professors John Fitzpatrick and Sheona York – 13 April 2016.
- University of Strathclyde – visit and interview with Kate Laverty and Fergus Lawrie – 6 May 2016.
- London South Bank University – visit and interviews with Catherine Evans and Alan Russell – 10 May 2016.
- Ulster University – telephone interview with Dr Gráinne McKeever – 31 May 2016.
- University of Cardiff – telephone interview with Professor Julie Price – 20 June 2016.
- University of Manchester – visit and interview with Dinah Crystal OBE – 21 June 2016.
- University of Warwick – discussions via email with Professor Roger Burrige – 1 August 2016.

#### United States Clinics

- University of Chicago – visit and interview with Professor Jeff Leslie – 24 May 2016.
- Legal Advice Clinic, Chicago – visit and interview with Veda Dmitrovich – 25 May 2016.
- Chicago-Kent College of Law – visit and interviews with Professors Richard Gonzalez, Ronald Staudt, Daniel Coyne, Rhonda de Freitas and Alex Rabanal – 26 May 2016.