

**SIMULATED AND REAL-WORLD EXPERIENCE – THE CHALLENGE OF
ADAPTING PRACTICE IN CLINICAL LEGAL EDUCATION IN
UNPRECEDENTED AND CHALLENGING TIMES**

Kaye Howells¹

March 2020 was undoubtedly the beginning of unprecedented and challenging times for all. From an education perspective, such challenges have resulted in the re-design of module delivery, consideration of how we ensure the students receive high-quality teaching and are afforded the same opportunities, albeit within a virtual environment. This paper will consider the challenges faced and how we can adapt practice in CLE in these unprecedented and challenging times.

Professor Richard Lewis states “the main advantage of clinical education is that compared to traditional teaching methods, it involves a different approach to the learning of law: it encompasses experiential learning or “learning by doing”². It is taught through both simulation and real-world experience across universities worldwide, such teaching (until March 2020) to the best of my knowledge, predominantly being face-to-face. However, whilst there is emphasis on “learning by doing”, where

¹ Kaye Howells is a Senior Lecturer in Law and Student Legal Advice Centre Lead at the University of Derby.

² Richard Lewis (2000) ‘Clinical Legal Education Revisited’ *Dokkyo International Review* 13, 149

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does it state that such learning by doing must be through face-to-face interactions?

The issue as educators is how we continue to ensure the same level of experience for the students through a virtual environment. However, that does not come without some challenges.

I commenced my career in Higher Education in September 2018 when I joined the University of Derby's Law School. My primary role was to establish the Student Legal Advice Centre and develop the Clinical Legal Skills (CLS) module. Prior to joining the world of academia, I was a practicing solicitor for 14 years, predominantly in Child Protection.

How the CLS module was delivered pre COVID-19

The academic year 2019/20 saw the first year of the CLS module and the operation of the Centre. The Centre is open all year round, bar one week at Easter, two weeks in the Summer and two weeks at Christmas. During the academic year 2019/20, the teaching of the CLS module was conducted face-to-face. Similarly, the students conducted face-to-face appointments with clients in the Centre. The module is a 40-credit bearing module. The module is designed such that all students undertake some level of simulation prior to undertaking real world experience. The schedule of delivery includes 3 hour lecture/workshops for 12 weeks in the Autumn semester and 6 hours of tutorials within the second semester, with emphasis on the work the students carry out within the Student Legal Advice Centre contributing significantly

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to the hours the students are required to complete. As the supervising solicitor and module leader, I also met with the students following client interviews to reflect and also to put together an action plan in respect of the client's case. March 2020 brought about significant changes, with the remaining teaching weeks of the academic year being moved to online delivery and clients being offered appointments online via Microsoft Teams.

At the point of Lockdown in March 2020, the Centre was temporarily closed. However, within six weeks a decision was made to move the provision online. I canvassed with the students enrolled on the CLS module to find how many could commit and feel confident with continuing to work in the Centre through online client meetings. I was confident in their ability having taught them and worked with them in the Centre since September 2019. Several students confirmed their commitment to continuing to work within the Centre.

The plan for Summer training

Pre COVID-19 I had timetabled voluntary Student Legal Advice Centre training for June 2020. At the point of timetabling, such training was to be delivered face to face. This was for students who wanted to shadow over the Summer months. I hoped it would be particularly appealing for those intending to take the module this academic year. Due to COVID-19 I informed students I would deliver the training online. Disappointingly, few students attended. Those that did attend expressed the view

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that the online element had been off-putting for some. This caused me some concern as to what effect such view would have on the number of students who enrolled on the CLS module this academic year. Despite low student numbers, I was able to keep the Centre open during the Summer months. Of note is the number of students enrolled on the CLS Module this academic year in comparison to last. 29 students were enrolled on the module 2019/20. This year 14 students are enrolled on the module. The theme from student feedback is that the online nature of what is such a practical module was off-putting for some students who had previously shown interest in the module.

Preparation and planning

Preparation and planning during the Summer months for delivery of the CLS module this academic year has been key. The CLS module continues to be afforded the same timetabled hours this semester as to that of the previous academic year. However, the 3-hour weekly lecture/workshop is wholly delivered online. The University of Derby has made a commitment to the students to provide 3 hours of face to face teaching per week of the semester (subject to any change in government guidelines). In the final year of the LLB at Derby, students study one 20 credit core module (Equity) and then have a number of optional modules of their choice. Due to the range of optional modules available and a varying number of students across the cohort taking different options, the only viable option for the 3 hour face to face provision was to attach the

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those 3 hours to Equity, the core module. From a timetabling and room booking perspective it was not viable to offer face to face across the optional modules. Thus, all optional modules, including the CLS module, are delivered online at this current time.

Part of the preparation for the move to online delivery involved re-examining the module specification and schedule of delivery to adapt the schedule, ensuring it complimented online delivery. In doing so, I considered the potential challenges to include: ensuring active engagement from the students online, a positive learning environment and inclusivity. As both the module leader and supervising solicitor for the Student Legal Advice Centre, I would need to be satisfied that the students are competent enough to become client facing, albeit in a virtual environment.

Educating those delivering

Aptly put by Beech, “most tech-platforms supporting higher education are well-matured and mainstream. Yet, problems can arise if the processes and people underpinning them have been slow to catch up.”³ Whilst the technology is available, clearly the onus is upon those delivering to ensure they have the skills required. I confess that pre COVID-19 my use of different technologies, particularly in my

³ Diana Beech. ‘Time for “co-opetition”? Unleashing the benefits of technology in higher education.’ (12.03.18) Higher Education Policy Institute. <https://www.hepi.ac.uk/2018/03/12/time-co-opetition-unleashing-benefits-technology-higher-education/>

teaching was arguably quite limited. I therefore welcomed the announcement at the end of the last academic year that teaching staff at the University of Derby were expected to engage with the Off-Campus Digital Learning Course during the Summer months. The Course was designed such that the following learning outcomes would be achieved:

1. apply a designed approach to help students navigate effectively through module content and activities
2. design and deliver an effective blend of synchronous and asynchronous learning experiences for students
3. apply a range of approaches to enable the socialisation of students in the off-campus digital learning space
4. design and deliver active learning approaches with and between students
5. deploy appropriate tools to ensure the accessibility of your course materials

There was an expectation that each academic would participate in all activities, to assist in supporting their own learning with others in specified groups from different disciplines. The course content was designed to prepare academics for their roles as a module tutor, teaching students in an online setting. To achieve course attendance sign-off by the facilitators, engagement with the activities set was compulsory, as was the drafting of a high-level module plan. The high-level module plan included

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breaking down in detail what would be covered in each asynchronous and synchronous session for each teaching week of the module.

Engaging in the course and completing the activities undoubtedly assisted in my preparation for the coming academic year. It enabled me to consider method of delivery and engagement of the students, which was of particular concern to me in respect of the CLS module, given the practical nature of the module. Whilst some may have been au fait with the terms “synchronous” and “asynchronous”, it was new terminology for me. Drafting the high-level module plan enabled me to be specific within the plan as to subject matter/area to be covered and how, be it synchronous or asynchronous. Completing the Off-Campus Digital Learning Course enabled me to be more prepared in terms of delivery of the module. Engagement with the course also gave me the opportunity to experience the course from a learner’s perspective, which I think is invaluable and enhanced my own abilities.

Given the challenges of COVID-19, I have become much more aware of the technologies available to assist in the delivery of teaching. Arguably, the current climate has forced my hand, which can only be a positive. Beech suggests that technology “enhances collaborative learning and helps institutions to maximise opportunities.... It also enhances student experience by allowing students to adapt to

new learning environments and be much more creative.”⁴ Arguably therefore we are enhancing the student experience through either blended or solely on-line delivery.

Increasing the use of technology within teaching practice, also acknowledges the fact that technology is undoubtedly a driving force in terms of employment and therefore, we are preparing the students for professional practice.

The significance of the learning environment and student engagement – formal and informal learning spaces

In the short number of weeks of delivering online during the last academic year, feedback was that students were less confident, and my own experience was that there was less student engagement in sessions. I was therefore concerned about ensuring how I could facilitate student engagement this academic year and gave specific thought to the learning environment.

In preparing for delivery of the CLS module, I considered how I could provide both formal and informal learning spaces for the students and continue to encourage a learning community amongst them. As a starting point, I introduced a discussion board, a ‘café forum’, to encourage students to engage and communicate with each other. Furthermore, to provide variety and an alternative, I set up a Team on

⁴ Ibid

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Microsoft Teams, with the students being encouraged to perceive it almost like a firm of solicitors and a virtual office space in which to engage with each other.

The café forum is set up as an informal meeting place for students to share their views and experiences. I have also introduced other discussion boards throughout the semester (with more planned throughout the academic year) which encourage discussions around specific topic areas students are learning about during the module. For example, one discussion board is titled “Reflection in Clinical Legal Education”. The students are encouraged to share articles about reflection and comment upon those articles. A further example is a mid-semester discussion board encouraging students to share experiences of their work in the Centre to date. One element of the assessments for the CLS module is a reflective essay. In planning the module, I was of the view that such discussion boards would encourage student engagement with each other, whilst assisting in preparation for assessment as well. Students have responded well, albeit initially through eager encouragement from me. I also respond to the threads within the discussion boards to encourage the students further.

The formal learning space (being the 3 hours weekly timetabled sessions) are delivered through Blackboard Collaborate. This enables me to deliver to the cohort, share material on screen and importantly, utilise the ‘breakout rooms’ for the workshops. I have found use of the breakout rooms an excellent mechanism for encouraging group discussion in smaller groups, which has proved an effective way

of the groups then reporting back to the whole cohort in the 'main room'. Simple use of the poll tool has also proved to be an excellent way of measuring student engagement and a tool I use frequently!

Is ensuring inclusion more challenging in online delivery?

One of the core elements of the University of Derby's Teaching and Learning Strategy⁵ is in respect of inclusion. It is our responsibility to:

*"Promote inclusive and flexible learning provision which meets the diverse needs of different learners, and provide an environment in which learners are effectively supported in their transition through the different stages of their higher education journey."*⁶

Whether delivering face to face or online, there is a commitment to ensure inclusivity. However, I raise the question as to whether it is potentially more challenging to ensure inclusivity within an online environment. Gauging a student's engagement, understanding and learning needs in a face to face setting is arguably less challenging. Perception of student complexities are perhaps more apparent in a face to face setting.

⁵ University of Derby Learning and Teaching Strategy (2016-2020)
<https://www.derby.ac.uk/media/derbyacuk/assets/organisation/about-us/learning-enhancement/documents/Learning-and-Teaching-Strategy.pdf>

⁶ Ibid

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In considering inclusivity and giving thought to challenges, I queried whether I could demand a student turns on their camera during online delivery. This may seem a relatively basic query to raise. However, it is a topic of discussion amongst educators. Tabitha Moses of Wayne State University highlights: “Although sticking with remote instruction may be the correct decision from the standpoint of Public Health, it is not without problems.”⁷ She suggests that “online instruction can pose a range of challenges for students if they are required to keep their cameras on”⁸ and lists such challenges as follows:

1. Increased anxiety and stress
2. ‘Zoom Fatigue’
3. Competing obligations
4. Right to privacy
5. Financial means (the assumption a student will have access to technology with camera access)

I propose that this is a challenge we face in delivering CLE. I submit that there is a preference for eye-contact and understanding body language, which clearly cannot be gleaned where students choose not to turn their cameras on, appreciating of course

⁷ Tabitha Moses ‘5 reasons to let students keep their cameras off during Zoom classes’ (17.18.20) The Conversation <https://theconversation.com/5-reasons-to-let-students-keep-their-cameras-off-during-zoom-classes-144111>

⁸ Ibid

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such as the identified challenges listed above. I am of the view that it is preferable where meetings are held with clients for student legal advisors to be visible. At the initial online session of the module this semester, I raised the concept of cameras with the students. I shared my preference for the use of cameras during some of the workshop elements of the module, in particular for example during simulated exercises. I also informed the students of the expectation of the use of cameras during client interview. I ensured that I justified my reasoning for the said expectation. Furthermore, I also wanted to reassure the students that if this would be cause for concern for any one of them, I would meet outside of the group setting to have a private discussion. Students have responded well to my request to date. There continues to be a reluctance for the use of cameras as a norm within class but where students meet with me individually for supervision or meet with clients, they have been happy to leave their camera on and can see the benefit, particularly in client interviews, to being able to make eye contact as it were.

Continuing to afford simulated and real-world experience in online delivery

Pre COVID-19, students had the opportunity to engage in simulated and real-world experience through face to face delivery. This academic year, the students enrolled on the CLS module continue to be afforded the opportunity of both simulated and real-world experience, albeit on an on-line platform, either via Microsoft Teams (when meeting with clients) or Blackboard Collaborate (when taking part in simulated

interviews). Currently, I schedule the client meetings through Microsoft Teams and have an option to join the meeting should I wish to do so. Whilst there is the option to join, I have reservations about the concept of joining the client meetings even in an observer role. My concern is that being present in the interview could have the potential to negatively impact upon the client relationship with the student legal advisors and in my view, potentially place the students under additional pressure. As the supervising solicitor of the Centre, I meet with the student legal advisors prior to the client meeting commencing for supervision (the student advisors also receive an email in advance, setting out the nature of the client meeting). I then meet for supervision following client interview. This assimilates to the structure pre COVID-19, albeit such meetings are now conducted through online platforms.

I am of the view that there is a place within CLE for both simulated and real-world experience be that face to face or through online provision. I share the view of Marson, Wilson and Van Hoorebeek that “no simulation or classroom based session can offer the student a true insight into the pressures and at times exhilaration of legal practice and this experience can only assist in producing better prepared trainee lawyers”.⁹ All educational institutions are driven by wanting to ensure graduates leave with the academic and practical skills to enable them to be successful on their journey into a

⁹ James Marson, Adam Wilson & Mark Van Hoorebeek, M. (2005) ‘The necessity of clinical legal education in university law schools: a UK perspective’ (2005) 7 *Int’l Journal of Clinical Legal Education* 29

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chosen profession. There is an increase in the use of technologies within the legal sector. Therefore, delivering CLE through online learning and through students advising in the Centre through an online platform, students are being provided with the opportunity to graduate with the skills and attributes that will be demanded by employers.

Where technology fails us....

At a very recent client appointment, it became apparent that the lead student legal advisor's microphone was not working. The other student legal advisor had not previously shadowed a live interview and had limited experience of simulation. I was therefore of the view that it would be inappropriate to expect him to lead the first interview. In the circumstances, I made the decision to lead the interview but essentially in the role of a student legal advisor as opposed to that of a solicitor. Our student legal advisors must not provide legal advice during their client meetings, such advice is provided in writing following the interview, to ensure it has been approved by me as the supervising solicitor before being sent to the client. In this instance, I was of the view that it was more beneficial for the student to observe me conduct the interview in the manner he would be expected to. The same level of service was being provided to the client in any event.

Perhaps, very simply, a risk of online delivery, be that through teaching or in a clinic setting, there is always the potential for technology to fail us!

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Access to justice

It would be remiss of me not to consider the significance of CLE in delivering access to justice.

When I deliberate about what was intended when the Student Legal Advice Centre was launched, the purpose was three-fold:

- i) to provide the students the opportunity through clinical legal education to develop knowledge and practical skills by providing advice and assistance to the public
- ii) to provide the community of with free advice and assistance
- iii) to signpost clients where the expertise required to an individual case is beyond that of the Centre

The purpose and what was intended at the launch of the Centre remains the same to date.

In 2018, Stevens, Kerr & Harper commented upon the future of law clinics:

“Technology could also lengthen the reach of law clinics to rural areas, offering a “virtual legal service”. This virtual process could be facilitated not only by Skype and video conferencing but through the creation of an app that allows documents to be

safely scanned and uploaded. With these tools in place, technology could be the way forward.”¹⁰

Whilst technological advances within the Student Legal Advice Centre are yet to reach advances such as the creation of an app, I can comment upon my own experience of delivering the Centre’s service through an online platform, in terms of increasing access for the public. Prior to migrating the Centre to an online service, all client appointments were face to face. The Centre experienced a number of clients who failed to attend appointments without notice. Since moving the service online, all clients have attended their appointments. Clients are no longer perhaps having difficulty in physically attending appointments. Furthermore, it is providing the opportunity to people who do not live within a comfortable travelling distance to utilise the Centre’s services.

When we initially moved the service online, I was concerned that we may see a reduction in the number of clients. For the students to gain the real-world experience we need to have the client base. Fortunately, I can report that the Centre continues to have a good client base and as stated above, is reaching out to people beyond the City and County.

¹⁰ Adam Stevens, Zoe Kerr and Sarah Harper, ‘The Role of Pro Bono Representation in Allowing Access to Justice’ (30.07.18) The writers were law student interns, participating in the WS Society Internship Programme in July 2018. The article summarises their research and presentation. <http://www.wssociety.co.uk/features/2018/7/30/8xxtiddcli1s5sosak8jj9wfwqzc9>

Close

At the time of writing, the students have experienced seven weeks of the first semester and the change in delivery methods. As previously discussed, delivery of the module is through Blackboard Collaborate. Being relatively new to world of academia and lecturing has meant that the use of such technologies has been as equally new to me as it perhaps is to the students. I am elated (and admittedly relieved) to report a positive experience to date. Through the use of tools such as polls, break-out rooms and asynchronously, the use of discussion boards the students are actively engaging with delivery. I have conducted simulated interviews using online platforms, which assimilates how students will see clients in the Centre and again, this was a positive experience - a view shared by the students. A challenge at the outset was around being satisfied as the module leader and supervising solicitor for the Centre, that the students would be competent to become client facing. In such a short period of time, I am satisfied that the method of delivery combined with the student engagement enables me to ensure competency. Despite the challenges of on-line delivery, we continue to afford the students the same opportunities, arguably more apt opportunities in line with how practice is developing.

The collaborative community of practice within CLE

As a solicitor in practice sharing practice certainly was not common to me. However, when I joined the University of Derby and started developing the Student Legal

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Advice Centre, it became very apparent that there was a strong support network of academics and practitioners in CLE. I am sure I am not alone in the view that such a collaborative community of practice is invaluable. I am further of the view that such a network has strengthened as a result of COVID 19 and that we can continue to share practice and learn from one another, which in turn will strengthen delivery of CLE to our students.

The continued provision of a Pro Bono service is key. The wider impact in terms of challenges of adapting practice in CLE is to ensure in facing and overcoming any challenges, we do so to enable continuing effective delivery of CLE to students and to enable the ongoing provision of clinics. We find ourselves in a changing landscape. Whilst we face challenges in such times, it is an opportunity to embrace the change with positivity, to enable the continued development of clinical legal education and in turn continue to deliver access to justice.