

Problematising Assessment in Clinical Legal Education: Through a glass darkly: Assessment of a real client, compulsory clinic in an undergraduate programme.

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At Northumbria Law School the real client clinic (the Student Law Office) is an integrated capstone experience in the four year Masters in law course. The programme's integrated approach with assessed clinic was introduced in 1992 and drew on the teaching hospital model in medical education where no distinction is made between education and training. In 1996 the ACLEC report referred to the Northumbria model as 'allowing for progressive learning of analytical skills and conceptual understanding of both substantive law and procedure, and the acquisition of basic professional skills and values.' At the time it was unique, integrating the 'academic stage' of legal education with the professional body requirements of the taught vocational stage of training so that students acquired an academic qualification and met the competence standards required for day one of a training contract .

However, the academic/vocational divide has persisted and whilst the model has been replicated it has not proliferated and featured in the recent LETR review as one of the examples of 'considerable flexibility ' in the system of legal education and training. There are many reasons that Law Schools may not wish or be able to deliver a similar model and as part of the flexibility agenda no one would want uniformity. However one of the prevailing misconceptions of the integrated approach is that it is only relevant for those wishing to become lawyers and therefore by implication the skills required to become a lawyer are in conflict or detract from the skills acquired as part of the academic study of law. As Tony Bradney succinctly states 'being a lawyer is not the same as studying law and being a lawyer is what only a minority of law students will be' . Taking this to its logical conclusion Van der Vleuten's longitudinal utilitarian model for assessment of medical training would have no place in the non-vocational law degree where the mastery of the subject is evidenced by traditional undergraduate methods.

Van der Vleuten argues for the use of a range of assessments because only by taking this approach can we reliably measure every aspect of competence. So what is being measured in legal education? At its most basic, testing knowledge acquisition does not differ a great deal between academic law and legal process. They will both involve memorising information and selecting correct answers probably in something along the lines of an MCQ test but, whilst this serves a purpose, it is not what is valued most in legal education. The aims for the undergraduate law programme are considered in the new draft QAA law benchmark for consultation which lists a range of abilities and qualities of mind including amongst others 'intellectual independence including the ability to ask and answer cogent questions about law and legal systems, identify gaps in their own knowledge and acquire new knowledge and engage in critical analysis and evaluation" and "self-management, including the ability to reflect on their own learning, make use of feedback. A willingness to acknowledge and correct errors and an ability to work collaboratively".

It is not surprising that this language has substantial overlap with attempts to define the qualities of a good lawyer. Twining identified the skills of the good lawyer as 'the ability to express oneself in writing and orally, to construct and present valid cogent and appropriate arguments, to identify issues and to ask questions in a sequence , problem solving skills, research skills and identifying ethical dilemmas'. The new SRA competency statement for day one qualified solicitors adopts an

approach of focussing on “the activities that that all solicitors need to be able to do competently, rather than describing the attributes that solicitors require in order to be competent”. It sets out four domains of solicitors’ competence; ethics, professionalism and judgement, technical legal practice, managing themselves and their own work, working with other people. Twining and the QAA acknowledge that many of the qualities they describe are generic and can be delivered through ‘most degree programmes in the humanities and social sciences’ though both acknowledge the existence of discipline specific knowledge, or as Twining refers to it, ‘local knowledge’. However, as the language of professional competency and academic programme aims and objectives come closer together and our grade descriptors and graduate attributes start to sound very like some of the professional body competencies it is a good time to review assessment and its place in the law curriculum as a whole and to consider how we can effectively assess these attributes and align them to the objectives and measure them. Van der Vleuten’s model seems as good a place as any to start.

How does clinic fit into this longitudinal approach? Clinic is a constructivist teaching methodology it can teach whatever it is required to teach as Grimes states “ it opens the eyes through experiential methods to the meaning and application of law”. In the SLO we draw on these transformational qualities and the impact of the real client on student learning. Whilst the knowledge may be delivered in the classroom the context of clinic is unique in that it uses a real client/ real emotions, has an unknown dynamic/ changing and evolving factual perspectives, has an unknown outcome/ uncertain content and is delivered through a distinctive working relationship with a supervisor. This is a powerful methodology and delivers many of the abilities and qualities of mind described above and through the reflective process makes students aware of the importance of these skills. In making clinic compulsory and assessing it we require this of all our students and we convey that this is important. As Biggs and Tang state “ Assessment is the senior partner in learning and teaching. Get it wrong and the rest collapses.” In addition it provides another facet to the measurement of the academic abilities provided through traditional exams and coursework. Embedded within the constructed curriculum, assessment in clinic has the capacity to be truly authentic and to assess the ‘does’ section of Miller’s triangle and as an unstandardised assessment within a range of more standardised assessment techniques it contributes to the reliability of the measure of overall student ability and attributes.

At Northumbria the clinical module is the largest credit bearing module in year four. Seventy per cent of the clinic mark is attributed to the practical work in clinic and the remaining thirty per cent to two pieces of reflective writing. The practical work is assessed with reference to a set of criteria described by grade descriptors (attached at appendix A). The criteria are evidenced by the collection of the students’ clinical work in a portfolio which is marked by the SLO supervisor and moderated by other members of the team. The criteria for the practical work are not treated as distinct components of the assessment and include professional attributes, intellectual qualities as well as the more predictable tasks associated with work in the clinic such as client interviewing and advising. The portfolio is not structured by criteria or competencies and its content is not prescribed. Supervisors will have given feedback on student’s work through the year but draw on it to remind themselves of the entirety of the student’s work and are asked to indicate broad grade banding for each of the criteria by way of explaining their grade. This is not a mathematical formula and by necessity expert judgement is called for.

The approach is holistic and not all the criteria are evidenced by the contents of the portfolio. This is the 'doing' level of Millers' triangle, students will be working on range of different cases with different levels of complexity and dynamics and requiring different skills. The students are learning by doing and as a consequence their learning will be in response to what they are doing; some students may commence their year with client interviews whilst others may be engaged in research on existing cases. Viewed through the lens of Van der Vleuten's utility index the immediate concern would seem to be that of reliability. Nevertheless as a capstone experience in an integrated degree it could be argued that to assess clinic by using professional judgement is legitimate against a background of more formal and standardised assessments. For example in year three students' interviewing skills are assessed using a standardised client process but the SLO mark does not draw on these previous experiences although the overall degree classification will do this.

The reality that assessment drives learning works on the modular level as well as the programme level and for this reason I would argue that we need to be mindful of effective assessment design in clinic. If the balancing act carried out by supervisors is not transparent and lends itself to a middle ground approach then students will interpret this for themselves and do only what is needed to achieve what they require. A non-aligned assessment regime has capacity to undermine the effectiveness of the method. Driessen and Van Der Vleuten described this tussle effectively when discussing the use of examinations in a problem based learning law programme "As usual the assessment programme gained the upper hand and slowly but progressively undermined the problem based learning approach". In addition clinic is a rare opportunity to reflect the development of student's professional skills and attributes in combination with discipline knowledge and unlike other assessments within the academy, has some reference to the wider graduate attributes. The balancing act for assessment in clinic is to find an authentic and reliable method of assessing the components developing professional practice without resorting to what Van der Vleuten refers to as 'atomisation' which has the capacity to 'trivialise' content and threaten validity.

To some extent the expert judgement approach to assessment of the practical work at Northumbria is counter balanced by the assessment of the two reflective reports submitted at the end of the module. The compulsory report is on skills in practice and the other can be selected from a range of optional subject areas including clinic and my career, clinic and legal education, justice and ethics, clinic and public discourse and law in action. Within these broad areas students can select any subject matter for discussion although there is an expectation that it relates to some experience they have had through clinic. Reflection is an integral part of clinic. Students are provided with reading lists and lectures on the theory of reflection during the course of the module, they will undertake preparatory exercises in firm meetings and the content of the firm meeting itself will frequently focus on reflection although not necessarily categorised as such. A practice reflective piece is submitted as part of the mid year appraisal process and students are encouraged to keep short reflective records on all they do in the SLO and are provided with a journal for this purpose (this is not part of the assessment). Nevertheless students are resistant to the assessment on reflection. As one of our student's reflected "Reflective practice is and should be personal; what is valuable reflection will be different for each individual. As such it is difficult to understand how a mark can have any significant meaning and how marking reflection can aid the learning process."

Ledvinka states that the purpose of assessing reflection is to 'assess the learning journey'. Moon refers to reflective practice a form of 'mental processing' or as Race puts it a way of making 'sense of what we've learned' and to "link one increment of learning to the wider perspective of learning - heading towards seeing the bigger picture". It is also a process for learning which is central to continuing professional development. Whilst the student above cannot see beyond the content of reflective reports being right or wrong we are looking for evidence of a process. The 'one off/ end of year' nature of the reflective report would appear to conflict with the utility approach primarily in terms of reliability which is increased with the additional number of samples. Whilst we might be able to assess the degree to which the student sees the links to the bigger picture it is considerably harder to draw from these isolated examples of reflection an approach to mental processing in line with the learning cycle. In addition the process of reflection does not always occur through a written process a more authentic place for reflection might be as part of an assessed interview or presentation around a case. Within clinic we can introduce reflection as a routine part of the process, a sort of think aloud commentary on the dilemmas faced when encountering day to day SLO work. We may also consider assessing reflective work at other points in the curriculum. At Northumbria we have a number of modules delivered in a PBL format both of which use reflection but only one of which currently assesses it on a pass fail basis.

The problems surrounding the assessment of clinical work have to some extent been aggravated by the difference in approaches between assessment of academic work (essays, coursework, dissertations meeting grade descriptors) and of assessment of skills (portfolios and competencies). Van der Vleuten urges us to look at the value of the assessment method outside of these boundaries and focus on their reliability, validity and educational impact. In one significant respect clinic lends itself to a range and number of assessment methods in that the level of scrutiny and feedback on the students' clinical work is so extensive that formative assessment is taking place on a task by task basis. With some consideration and imagination assessment points can be incorporated into the year to address the full range of criteria and to reinforce the learning delivered as part of the case work. It is not a major departure from the normal day to day work of the SLO to utilise oral presentations or feedback on letters and research reports in a way that feeds in to the students' grades in a more transparent way. We have only just started to explore the assessment toolbox and each clinical programme will have its own aims and limitations but we can start to draw on this widening pool of experience. Whilst the utility index does not introduce us to new concepts it might give us confidence to use a range of assessment activities in a combination which is designed to support learning as well as to measure it.

List of References:

The Quality Assurance Agency for Higher Education 2007, Subject *Benchmark Statement, Law: Draft for consultation*, March 2015 Section 2 available from www.qaa.ac.uk. This benchmark is currently being revised. The consultation period is due to end on 31.5.2015

J.Webb, J.Ching, P.Maharg, and A.Sherr, *Setting Standards: the Future of Legal Services Education and Training Regulation in England and Wales* (London: Legal Education and Training Review, (2013) (LETR Report). Available at: <http://letr.org.uk/the-report/index.html>.

Solicitors Regulation Authority, *Training for Tomorrow: A Competence Statement for Solicitors*. 20.10.14.

John Biggs and Catherine Tang, *Teaching for Quality Learning at University*, 4th Edition, Society for Research into Higher Education and Open University Press, 2011.

M Yorke, *Issues in the assessment of practice -based professional learning*, 2005, a report prepared for the project based professional learning CETL at the Open University.

D. Carney, F. Dignan, R. Grimes, G. Kelly and R. Parker, *The LawWorks Law School Pro Bono and Clinic Report 2014* Law Works supported by the Law Society available at www.lawworks.org.uk.

GE Miller, *The Assessment of Clinical Skills/Competence/ Performance*, 1990, *Acad Med*, 65(9)

Developing and maintaining an assessment system – a PMTEB guide to good practice, 2007
Postgraduate Medical Education and Training Board Guidance

Cees Van Der Vleuten, L W T Schuwirth, *Assessing professional competence: from methods to programmes* 2005, *Medical Education* 39

M Law Definitive Course Document

Georgina Ledvinka, *Reflection and assessment in clinical legal education: Do you see what I see?*
9 Int'l J. Clinical Legal Educ. 29 2006

Erik Driessen & Cees Van Der Vleuten, *Matching Student Assessment to Problem-based Learning: Lessons from experience in a law faculty*, *Studies in Continuing Education*, 22:2, 235-248,

Anthony Bradney SPTL reporter 21, Winter 2000

Twining, W. (1994) *Blackstone's Tower: The English Law School*, Hamlyn Lectures

ACLEC First Report of Legal Education and Training 1996 para 2.2

J. Moon, *Reflection in Higher Education Learning*, PDP Working Paper 4, LTSN (2001).

P. Race, *Evidencing Reflection: Putting the "w" into reflection*, ESCALATE Learning Exchange (2002)

R. Grimes, *Reflections on clinical legal education*, (1995) *The Law Teacher*, 29:2, 169-188

Appendix A

Grade descriptor for Student Law Office – 2014-15

This grade descriptor provides a description of the various levels of performance of a student completing the Student Law Office year 4 live client programme. The grades are **fail** (below 50%); **2:2** (50-59%); **2:1** (60-69%) **1st class** (70-79%) and **high 1st class** (80% and over). The assessment criteria are in the left hand column followed by the grade descriptors in ascending order from fail to high 1st. Each descriptor is linked to the assessment criteria and is differentiated from the other descriptors by qualitative statements (poor, fair, good etc.). The descriptors are not intended to be a comprehensive illustration of student performance but rather are meant to provide a guide to the likely performance level required for each criterion. Student performance will not necessarily match exactly against a descriptor or may have elements of more than one descriptor. The Supervisor will need to make a judgement about which grade band the student should fall within. It is not an exact science. The high 1st class band is reserved for students who have shown exceptionally good performance over and above that normally expected from 1st class students. An additional element (in italics) has been added to these descriptors to indicate the type of performance expected of such students.

The assessment criteria are equally weighted.

Assessment Criteria	Grade descriptor			
	F(below 50)	2:2 (50-59)	2:1(60-69)	1 st (70-79)
Autonomy and efficiency	Poor initiative shown; routinely relies on supervisor / routinely requires instruction / routinely requires prompting / requires significant correction of work	Fair/reasonable initiative shown, and often relies on supervisor / often requires instruction / often requires prompting / often needs significant correction of work	Good initiative shown but there is some evidence of the following; reliance on supervisor / requirement for instruction / prompting / significant correction of work	Very good initiative shown and there is evidence of the following; reliance on supervisor / requirement for instruction / prompting / significant correction of work
Knowledge and understanding of the law / legal practice	Poor knowledge and understanding of law / legal practice issues; rarely draws on appropriate prior knowledge or legal principles	Fair/reasonable knowledge and understanding of law / legal practice issues but little thinking across subject disciplines; sometimes draws on appropriate prior knowledge or legal principles	Good knowledge and understanding of law / legal practice issues including thinking across subject disciplines; regularly draws on appropriate prior knowledge or legal principles	Very good knowledge and understanding of law / legal practice issues including thinking across subject disciplines; routinely draws on appropriate prior knowledge or legal principles
Strength of oral communication skills	Poor oral communication skills indicating enduring difficulties in articulating legal and factual material; regularly fails to plan, listen or adapt to the	Fair/reasonable oral communication skills; sometimes shows strong ability to articulate legal and factual material, plans, listens and adapts	Good oral communication skills; regularly shows strong ability to articulate legal and factual material, plans, listens and adapts	Very good oral communication skills; routinely shows strong ability to articulate legal and factual material, plans, listens and adapts

	needs of the audience	to the needs of the audience	to the needs of the audience	to the needs of the audience
Strength of written communication skills	Poor written communication skills; rarely shows clarity, precision and accessibility; drafts routinely require significant amendment	Fair/reasonable written communication skills; sometimes shows clarity, precision and accessibility; drafts often require significant amendment	Good written communication skills; regularly shows clarity, precision and accessibility; drafts sometimes require significant amendment	Very good written communication skills; routinely shows clarity, precision and accessibility; drafts require significant amendment
Strength of research skills	Poor research skills; rarely shows appropriate depth, detail and comprehensiveness; reports rarely display effective practical awareness and application	Fair/reasonable research skills; sometimes shows appropriate depth, detail and comprehensiveness; report sometimes display effective practical awareness and application	Good research skills; regularly shows appropriate depth, detail and comprehensiveness; reports regularly display effective practical awareness and application	Very good research skills; routinely shows appropriate depth, detail and comprehensiveness; reports routinely display effective practical awareness and application
Commitment to clients and the Student Law Office	Demonstrates little commitment or enthusiasm for achieving the best solution for clients; rarely puts more than the minimum required to perform tasks; completes insufficient work	Demonstrates some commitment or enthusiasm for achieving the best solution for clients; performs tasks with fair/reasonable diligence; completes sufficient work	Demonstrates a good level of commitment or enthusiasm for achieving the best solution for clients; performs tasks with a high degree of diligence and shows pride in the work; completes sufficient work and shows willingness to help further	Demonstrates a good level of commitment or enthusiasm for achieving the best solution for clients; performs tasks with a very high degree of diligence and shows pride and zeal in the work; completes sufficient work and actively seeks to help further
Case management and strategising	Cases are progressed poorly; very few ideas about cases are offered or are poorly formed and not thought through; there is little or no evidence of proactivity or thinking about the overall strategic direction of clients' cases	Cases are progressed reasonably; some ideas about cases are offered – these are sometimes poorly formed or not thought through; there is some evidence of proactivity or thinking about the overall strategic direction of clients' cases but this tends to be limited and lacking imagination / insight	Cases are progressed effectively; quite a few ideas about cases are offered – these are often well formed and thought through but with inconsistency; there is good evidence of proactivity or thinking about the overall strategic direction of clients' cases with some imagination / insight	Cases are progressed highly effectively; ideas about cases are offered – these are regularly well formed and thought through; very good evidence of proactivity and thinking about the overall strategic direction of clients' cases with some imagination / insight
Organisation: time and file management	Displays poor organisational skills; makes little effective attempt to manage time; regularly fails to anticipate how long tasks	Displays fair/reasonable organisational skills; makes a real attempt to manage time; sometimes fails to anticipate how long tasks will take or to	Displays good organisational skills; makes a good attempt to manage time; generally anticipates how long tasks will take and plans	Displays very good organisational skills; makes a very good attempt to manage time; regularly anticipates how long tasks will take and plans

	will take or to plan use of time effectively; late on more than three occasions; files are often disorganised and not up to date; copes poorly under pressure and fails to achieve results when time is of the essence	plan use of time effectively; late up to three occasions; files are reasonably well organised but inconsistent and are sometimes not up to date; struggles under pressure but manages this	use of time effectively but with some defects; late up to two occasions; files are well organised and up to date with few significant defects; copes well under pressure	tasks will take an use of time eff with few defects; to one occasion; very well organis up to date with v significant defects very well under pr
Teamwork skills and contribution to firm meetings	Poor working relationship with Supervisor / partner / peers; ineffective or negligible or disruptive contribution to firm meetings; may sometimes fail to attend firm or other meetings; relies heavily on other people to achieve client goals	Fair/reasonable working relationship with Supervisor / partner / peers; some effort to contribute to firm meetings but mainly reactive / focused on own cases; contributes to achievement of client goals but provides limited support to others and little leadership	Good working relationship with Supervisor / partner / peers; good effort to contribute to firm meetings including discussions of other people's cases and general discussions; contributes to achievement of client goals; provides ideas and support to others and some leadership	Very good relationship with Supervisor / partner / peers; very creative contribu firm meetings in discussions of people's cases general disc contributes full achievement of goals; provides id support to other effective leadersh does not dominate
Understanding of client care and professional conduct	Displays a poor understanding of professional obligations; fails to take client care procedures seriously or fails to ascertain the appropriate office procedure; commits a significant breach of the Code of Conduct or error of professional judgment	Displays a fair/reasonable understanding of professional obligations; tries to comply with client care procedures but requires significant guidance; follows basic office procedure but is not always fully aware of the significance of this; struggles to articulate the rationale for ethical rules; treats clients well	Displays a good understanding of professional obligations; complies with client care procedures with limited guidance; follows office procedure and is aware of the significance of this; is capable of articulating the rationale for ethical rules; treats clients with care and respect	Displays a very understanding of professional obli complies precisely client care pro with very little gu follows office pro and is fully aware significance of clearly articulate rationale for ethic and appreciate context of SLO treats clients with degree of car respect