

**SPECIAL EDITION - POLICY CLINICS ACROSS THE GLOBE: DEVELOPMENT,  
IMPACT AND COLLABORATION**

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Welcome to this special edition on policy clinics. This edition was inspired by our work creating and developing the Policy Clinic at Northumbria University Law School and our conversations with law school academics supervising policy work elsewhere. Policy clinics enable law students to engage in a different type of clinical legal education where, instead of providing legal advice to clients, they carry out research that aims to influence policy and/or law reform. Policy work allows students to develop a range of academic and professional skills through conducting desk-based and empirical research for their clients who may be charities, non-governmental organisations or academics. This type of work encourages students to be curious about the law and to challenge how it operates through their research. As this edition demonstrates, the type of research projects that students can participate in are very wide-ranging. In the Policy Clinic at Northumbria Law School, students' research projects have involved domestic abuse, environmental law, animal law, child-friendly justice in mental health settings and primary school legal education outreach.

Our first article, 'Law Reform Clinical Programmes Should be Promoted in Law Schools: An Explanation' by Kris Gledhill and Robin Palmer, sets out the rationale for undertaking law reform work in clinics, documenting the benefits it brings to students, law schools and society. This article reviews the current extent of law reform clinics in America, Australia and the United Kingdom. The authors offer details of their experiences of running law reform clinics in New Zealand and a guide to the stages of a law reform project. This article contends that undertaking such work should produce more multi-skilled graduates whilst enabling law schools to engage more with communities, bringing broader benefits to society.

Engagement with communities is a theme seen in our second article by Tabea Wilkes, Ben Pontin, Guy Linley-Adams and Julie Price, 'Not a Blueprint: Reflections on the Cardiff Environmental Law and Policy Clinic.' This article documents the evolution of the Environmental Law and Policy Clinic at Cardiff Law School. It highlights the important work that this clinic has conducted, particularly in environmental law. The authors offer valuable reflections on the experience of participating in this type of clinical work and the benefits it can bring.

Liz Hardie's article "'Training is Everything" How to Prepare Students for Policy Clinic Projects' offers insight into running online policy clinics at the Open University. This article explores the skills law students need to do policy work and highlights the new

skills like research design that they need to develop. Liz's research considers the student perspective of the training needed before beginning policy work. Her findings show the importance of providing guidance on research ethics, interviewing, research methods and policy analysis to properly prepare students for the research they are about to undertake.

Further work by the Open University in this area is examined in Emma Curryer and Carol Edwards's article 'The Impact of Policy Work on Employability Skills in the Policy Project Connected to the Criminal Appeals Clinic at the Open University'. The Criminal Justice Clinic at the Open University works with clients wrongly convicted of serious criminal offences. In order to help law students to develop their professional and academic skills before working in this clinic, students were required to complete a policy project. Emma and Carol's research considers the impact of this approach on students' perspectives of their employability skills.

The experience of running a cross-institutional environmental law policy clinic at Lancaster University and the University of Central Lancashire is examined in Lucy Blackburn, Sadie Whittam and Kathryn Saban's practice report, 'Teamwork Makes the Dream Work: The Value of Cross Institutional Policy Law Clinic Collaboration in the Fight Against Climate Change'. This article helps in developing our understanding of the benefits and challenges of setting up and running a policy clinic.

Our final piece is a practice report by Shania Aurelio from Exeter University, 'When Worlds Collide: Reflections on Casework and Policy Work in Law Clinics and Policy Clinics'. Shania considers working in a clinic from multiple perspectives, having been a student legal adviser at Exeter's clinic and then a research intern and support officer in its policy clinic. Like other articles in this edition, Shania highlights the benefits of policy work to students and to local communities.

This edition showcases the important work of the growing community of law school academics who enable law students to conduct policy work. The articles demonstrate the benefits to law students and law schools in engaging with this type of work. In particular, we can observe how policy clinics provide further ways in which clinical legal education can have a tangible and measurable impact on social justice, beyond the traditional 1-1 model of live client advice. As law schools continually seek to develop their law degrees, for example in England and Wales following the introduction of the Solicitors Qualifying Examination and the revised QAA Subject Benchmark Statement for Law, it is hoped that this edition will provide inspiration to readers interested in setting up a policy clinic in their law school.

If anyone is interested in joining our Policy Clinic Network (organised through the Clinical Legal Education Organisation) that provides information and resources on policy clinics please do contact us.

Finally, if you would like to participate in our short survey exploring policy clinic provision in law schools, please click on the QR code below or follow this link.

<https://app.onlinesurveys.jisc.ac.uk/s/northumbria/policy-clinic-survey>



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## **LAW REFORM CLINICAL PROGRAMMES SHOULD BE PROMOTED IN LAW SCHOOLS: AN EXPLANATION**

Kris Gledhill (AUT Law School, New Zealand) and Robin Palmer (University of Canterbury Law Faculty, New Zealand)

### **Abstract**

This paper suggests that experiential education involving law reform is particularly suited to the academic stage of legal training. We review the current extent of clinics engaged in law reform, provide examples from our own practice, and then explain why law reform clinics are particularly beneficial. This is for several reasons. These include (i) the range of desirable graduate attributes and skills developed through involvement in law reform; (ii) the understanding that law reform is a career option; and (iii) the benefits to law schools and society generally from better laws, from legal academics using their skills to push for law reform, and from students being introduced to the civic obligation of the legal profession to be involved in seeking to improve the law. We also provide guidance from our own experience as to what can be done to establish a law reform clinic, whether as a dedicated course or as a way of running an existing course, and set out the steps that should produce good suggestions for reform.

## **1. Introduction**

In this paper, we make the suggestion that law reform clinics should be more prominent and that if clinical legal education opportunities in a particular law school are limited, a law reform clinic is a good starting point. The structure of the article is first, to present a survey of the extent to which there are law reform-based clinics in three major jurisdictions, the USA, Australia and the UK; and second, to outline in more detail our own experiences of running law reform clinical processes in New Zealand. This is done in Parts 2 and 3 below. In Part 3 we explain how a law reform clinic can be organised as a distinct course or as a component of a more general clinical course or indeed as an experiential version of the commonly-offered independent legal research option and we outline a 10-step process for law reform that allows law reform projects to be carried out by successive cohorts of students.

We then develop, in Part 4, our case for why law reform clinics should be more prominent. In summary, we suggest that those who have accepted the value of experiential education as part of the academic part of a law school curriculum should be enthused by law reform clinics, but also that colleagues who do not see themselves as part of the clinical legal education movement are more likely to be introduced to it via a law reform clinic. Perhaps most importantly, we suggest that participation in the process of law reform is an excellent way of building the core graduate attributes that a law degree should aim for, whilst also providing additional skills, knowledge and exposure to values that are important. In addition, we suggest that law reform clinics

expand the student horizon in terms of understanding career opportunities that might be available and that they allow students to know that academic and practising lawyers have civic obligations to be involved in law reform.

## 2. The Extent of Law Reform Clinics

The Center for the Study of Applied Legal Education, hosted by the University of Michigan, regularly surveys the extent and types of clinical legal education in the USA. Its 2022-23 survey results, resting on responses from more than 1200 participants in 95% of US law schools, indicated that most in-house clinic work deals with litigation but 13% have a focus on “legislative or policy” work;<sup>1</sup> and 9% of field placements have the latter focus.<sup>2</sup>

There is a trend of growth in this. The first survey, for 2007-08, reported that 1% of in-house clinics, 8 of 809, and 2.9% of field placements, 26 of 895, were involved in legislative matters.<sup>3</sup> The figures for 2010-11 were 15 of 1036 in-house clinics, 1.3%, and 23 of 1393 field placements, 2.3%;<sup>4</sup> for 2013-14, 1.5% of 1322 in-house clinics and 3.3%

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<sup>1</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 25. The full figures are 49% litigation, 7% alternative dispute resolution, 18% transactional, 8% regulatory/ administrative law, 5% other, plus the 13% legislative or policy work.

<sup>2</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 40.

<sup>3</sup> David A Santacroce and Robert R Keuhn, Report on the 2007-2008 Survey (Center for the Study of Applied Legal Education, Michigan, 2008, available at <https://www.csale.org/#results>) 8 and 9; there was no reference to “policy”.

<sup>4</sup> David A Santacroce and Robert R Keuhn, The 2010-11 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2012, available at <https://www.csale.org/#results>) 7 and 8.



of field placements.<sup>5</sup> For the 2019-20 survey, 9% of in-house clinics had a primary policy or legislative focus and 9% of field placements.<sup>6</sup>

Another statistic helping to confirm the trend is the percentage of law schools offering an in-house clinic with a focus on legislative or policy work: this has grown steadily from 11% to 16% in the period from the 2013-14 survey to the 2022-23 survey.<sup>7</sup> Field placements in a legislative or policy setting are much more available, 82% of law schools offering such an opportunity at the time of the 2019-20 survey and 79% at the time of the 2022-23 survey,<sup>8</sup> which may suggest that involvement in this work is still viewed as primarily something that should be arranged and supervised outside academia.

In Australia, the Kingsford Legal Centre's Clinical Legal Education Guide to CLE courses offered in 2019/20 reveals that 26 law schools – the majority – have some form of clinical education.<sup>9</sup> Half of these mention issues of law reform or policy work when outlining what their clinics do. However, there are only limited instances of law reform being central to a clinical course. The opportunities at Macquarie University

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<sup>5</sup> Robert R Keuhn and David A Santacroce, 2013-14 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2015, available at <https://www.csale.org/#results>) 8 and 9.

<sup>6</sup> Robert R Kuehn et al, 2019-2020 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2020, available at <https://www.csale.org/#results>) 27 and 43 (though at 10 it is stated that 11% of placements are in legislative or policy settings). The 2016-17 survey report is not clear on what the precise figures are for that survey period.

<sup>7</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 7.

<sup>8</sup> Robert R Kuehn et al, 2022-23 Survey of Applied Legal Education (Center for the Study of Applied Legal Education, Michigan, 2023, available at <https://www.csale.org/#results>) 10.

<sup>9</sup> Kingsford Legal Centre, Clinical Legal Education Guide 2019/20 (UNSW Sydney, available at <https://www.klc.unsw.edu.au/publications/reports-guides>).

involve one working with various groups “to generate law reform proposals”, those at Monash University include reference to a placement with the Australian Law Reform Commission, and one of the clinical courses at the University of Sydney has a focus in one semester of working with non-governmental organisations (NGOs) to learn about law reform processes, and being involved in a campaign. In addition, one of the courses at the University of Technology Sydney also involves working with community groups with aims including introducing the “dynamics of law reform,” and potential outputs being a law reform submission. The University of Woollongong’s internship programme might include placement in a law reform commission. The majority of mentions of law reform do not portray it as the focus: rather, it is mentioned as a type of work that might be involved in a clinical course, with different levels of emphasis as to how prominent it might be.<sup>10</sup> Accordingly, the

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<sup>10</sup> In brief: (i) Australian National University: there is a law reform component referenced in an external placement with an environmental NGO, a clinic working with prisoners, and two community law placements; (ii) Deakin – law reform opportunities mentioned in several clinical areas (civil and commercial law, criminal law, employment law and family law), and one aim of a legal internship was exposure to law reform; (iii) Griffith – a partnership with an NGO included “public policy issues and the need for law reform”; (iv) James Cook University – its clinical course, which involves a community placement, includes legal reform projects as one of the options; (v) Macquarie – in addition to its specific law reform course, an international placement could involve policy or law reform; (vi) Monash – in addition to its Australian Law Reform Commission externship, appreciation of law reform is an intended outcome from placements in law clinics or a programme assisting people in family law disputes; (vii) University of Melbourne – an externship option involving various partners could include work on law reform; (viii) University of Adelaide – its clinical programme, involving placements in legal advice settings or externships with various bodies, notes that many of the projects focus on law reform; (ix) University of Queensland – of its multiple clinics, four reference the possible involvement of law reform or policy work (homeless persons, prison law, mental health law, environmental law); (x) University of Sydney – see its specific law reform option; (xi) University of Technology Sydney – see its specific law reform option; (xii) University of Woollongong – see its specific option as part of its internship programme; (xiii) UNSW Sydney – in addition to a programme overview referencing that placements could involve policy or law reform work, several of the clinics also expressly mention this (community law, employment law, human rights, police powers).

picture presented is, as with the USA, that there are various possibilities for involvement in law reform: but that it is not a premier focus for clinical legal education.

For the UK, LawWorks (formerly known as the Solicitors Pro Bono Group) occasionally surveys clinical and pro bono activities in law schools. Its 2020 survey showed that 30% of the law schools responding to the survey offered “law reform or research projects”; more prevalent were instances of advice or involvement in miscarriage of justice situations or public legal education/street law projects.<sup>11</sup> The Clinical Legal Education Handbook, which aims to be the text for those involved in clinical education in the UK, also makes various references to law reform work, albeit that there is not a dedicated section on it.<sup>12</sup> For example, Grimes and Rizzotto, in their guidance on assessment processes, note that a commonly-used assessment tool, a portfolio, “might ... include identifying shortcomings in the law and practice and how this might be reformed”.<sup>13</sup> They add that “there is nothing to prevent (and many reasons in favour) assessment of student performance by way of a substantial written submission on a topic relevant to the student’s clinical studies”, meaning that a

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<sup>11</sup> James Sandbach and Richard Grimes, Law School Pro Bono and Clinic Report 2020 (LawWorks, London, 2020, available at <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2020>) 12.

<sup>12</sup> Indeed, in Part 1, which sets out the types of clinic, there is no mention of law reform clinics: there is, at the end of the chapter, reference to street law/public legal education and to doing research projects, which is the closest it comes: Lydia Bleasdale et al, Part 1 Law clinics: What, why and how? in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 54-56.

<sup>13</sup> Richard Grimes and Beverley Rizzotto, Part 3 Assessment in clinics: Principles, practice and progress in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 247.

student who has provided advice in an area may wish to consider law reform in the area and submit a dissertation on it, at least if one of the learning outcomes for the course is law reform.<sup>14</sup> Similarly, reflecting on regulatory changes that precluded university clinics from providing advice relating to consumer credit and debt, it was suggested that clinics could instead work with other legal advice organisations “in areas including the development of public legal education sessions, or on law reform projects”.<sup>15</sup> It is also noted that the CPD regime for barristers can be satisfied by them doing law reform projects:<sup>16</sup> this allows us to make the point that an introduction to law reform at the academic stage represents a useful skill for those who graduate into the profession.

What emerges from this survey is that law reform is more of a background feature in the clinical legal education space: in the USA, it is growing but more opportunities arise in externships, in Australia, there are mentions but it is not central, and in the UK, it is offered in a minority of law schools.

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<sup>14</sup> Richard Grimes and Beverley Rizzotto, Part 3 Assessment in clinics: Principles, practice and progress in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 249. The authors clearly mean to say “(and many reasons in favour of)” or “(and many reasons to favour)”.

<sup>15</sup> Lee Hansen, Part 2.16 Provision of debt advice by university law clinics in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 213; see also 218.

<sup>16</sup> Frances Rideout, Part 2.18 Regulation of barristers and university law clinics in Linden Thomas and Nick Johnson (Eds) *The Clinical Legal Education Handbook* (University of London Press, London, 2020) 237.

### 3. Our Experience of Law Reform Clinics in Aotearoa New Zealand

This background status is also true of New Zealand. Clinical legal education itself is best described as developing rather than established in the country, and our impression is that it depends more on the interests of individual academics rather than resting on any planned introduction in response to, for example, the legal profession calling for students to be more or less practice-ready on completing their LLBs,<sup>17</sup> or those leading on teaching and learning pointing out the educational value of experiential education.<sup>18</sup>

Nonetheless, we can point to a range of law reform projects that have been done by students in a clinical legal education context. Accordingly, the standard Clinical Legal Education course at AUT Law School is constructed to have a series of seminars on such topics as the purposes of law schools, the history and aims of experiential education in the law school setting, workplace dynamics and reflective practice, following which students undertake an externship placement in a social justice setting. Most often, students supplement the work of legal aid or law centre lawyers, but there have also been placements in law reform work. For example, several students have worked on a longer-term project under the auspices of the Aotearoa

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<sup>17</sup> See, for example, the account by Ramsden and Marsh of the call for more clinical legal education in Hong Kong as a way of making legal education fit for purpose, made in a report commissioned by the government there: Michael Ramsden and Luke Marsh, *Using Clinical Education to Address an Unmet Legal Need: A Hong Kong Perspective* (2014) 63(3) *Journal of Legal Education* 447-459. There has been nothing similar in New Zealand.

<sup>18</sup> Both authors are familiar with a plan in the middle of the last decade by the then Dean of Law at the University of Canterbury to require students to participate in some pro bono work as a graduating requirement: but this was not put into effect.

New Zealand Human Rights Foundation that is making the case for economic, social and cultural rights to be added to the main human rights statute, the New Zealand Bill of Rights Act 1990.

Placements may also be extended by combining this clinical legal education course programme with AUT's supervised research paper option; this can also be used as a stand-alone law reform paper. In short, the coverage of the supervised legal research paper was amended from one involving the traditional formulation of a student doing an extended essay on a legal topic agreed with the supervisor: now, in addition, students can – as part of the goal of building research and writing skills – take the experiential route of preparing a document relevant to a real-life situation or a simulation (such as mooting). The former can include such matters as involvement in an amicus brief or a submission as part of a law reform process. As with the traditional research paper option, the supervisor and student or students have to agree what is to be done, including as to the assessment process: this can include the marking of the submissions made, although reflective essays can also be important, perhaps particularly where students are working in groups. In this latter situation, working out how to give credit for what each member of a group has done may be difficult, though perhaps less so if the academic involved has had a close coordinating role.

An example of how these separate courses have been combined involved a group of students who worked with a charity and a local Member of Parliament assessing the

legal framework behind food waste and the barriers to having unused food diverted to address food poverty. Having completed this project as part of the Clinical Legal Education course, some of the students wanted to continue their work on this issue, and that was achieved by having them engage in a law reform process as part of the separate legal research paper. The end result was that they determined that an appropriate process for their aims was the development of a petition to the New Zealand House of Representatives. There is a process whereby anyone can present a petition to the New Zealand Parliament,<sup>19</sup> which can involve the petitioners then making submissions to the Select Committee that is assigned to consider a particular petition. The Select Committee can investigate the issues raised in the petition, hear evidence and then report the matter to a Minister or to Parliament.<sup>20</sup> The students also succeeded in getting support for their petition from the Human Rights Commission, New Zealand's statutory human rights watchdog.

Another example comes from the University of Canterbury's Clinical Legal Education course, which has developed a process (and manual) for multi-year law reform projects. This has also involved links, this time with the drop-in law clinic that is available for students and with external advocacy organisations, but also with

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<sup>19</sup> See <https://petitions.parliament.nz/>. Parliamentary practice in relation to petitions can be found at <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-36-petitions/>.

<sup>20</sup> The presentation of the petition and the questioning of the lead student was captured on the Committee's Facebook page: <https://www.facebook.com/petitionscnz/videos/petitions-committee-nz-parliament/637753224483486/>.

independent research options for students. As such, there are parallels with what has happened at AUT.

The focus at the University of Canterbury has been the regulation of tenancies, a matter of regular concern to students, and a topic raised frequently at the campus law clinic. One repeated problem was that landlords did not abide by requirements as to minimum standards. The enforcement mechanism, a Tenancy Tribunal, could order that work be done but would often instead accept an offer by the landlord to pay a small sum of damages to the tenant, permitted by s78(2) of the Residential Tenancies Act 1986. In 2017, the 1986 Act was amended by the Healthy Homes Guarantee Act 2017, which requires better standards in rental accommodation, and in 2019, the Residential Tenancies Amendment Act 2019 added s78A to the 1986 Act to preclude the use of s78(2) when there is a breach of healthy home standards unless there are exceptional reasons. In short, landlords cannot “buy out” of those standards. The steps taken by students that led to this amended regime were: (i) a student wrote an LLB Honours research paper on the problem, working with an NGO linked to the Anglican Church; and (ii) students in the Clinical Legal Education course then engaged in a variety of law reform activities as part of pushing for the statutory amendments to be made, including meeting government officials, liaising with interested NGOs, lobbying MPs, and making submissions to Parliament.



Having that success as a model, the project current at the time of writing involves seeking to amend the regime whereby bonds (deposits) paid by tenants at the outset of a tenancy are often unfairly or illegally retained in whole or in part by landlords at the end of the tenancy for various inadequate reasons: for example, contentions that the tenant has failed to have the leased premises professionally cleaned when this had not been a requirement of the tenancy and not necessary to abide by an obligation to leave the property in a reasonably clean condition. As part of this, and working with an academic colleague at the University of Canterbury who was formerly a Law Commissioner, a manual to identify the process of law reform has been developed, which allows students to see how their work fits with the entire process and to understand the wider picture. The stages are:

1. *Identify a source for law reform proposals*: in this case, it was repeated complaints for clients at a law clinic, suggesting that there was a systemic problem.
2. *Research and state the problem*: to know what has to be reformed, it is necessary to identify the root cause – an omission in the regulatory framework or other problems with the law is different from a failure to enforce, and may require a different approach to the relevant remedy.
3. *Issues Paper*: develop an Issues Paper to discuss such matters as whether new policies or improved practices within the existing legal framework might be sufficient, or whether legislative intervention will be needed.

4. *Research the issues further*: this may involve more in-depth research on the issues, interviewing advocacy groups and affected persons to gain further insights, and comparative research on overseas regimes to respond to any similar problem.

5. *Analyse potential solutions*: using a cost-benefit analysis to identify the preferred solution.

6. *Prepare a draft Law Reform Proposal report*: reflecting the Regulatory Impact Statement format used by Departments in the New Zealand government when proposing reform, the report should set out:

(i) an introduction setting out briefly the key reasons reform is needed,

(ii) a succinct summary of the exact problem to be rectified,

(iii) an analysis of the current legal framework and its shortcomings (policy, implementation, other),

(iv) a summary of research done as to solutions, including any surveys, focus groups or interviews done to collate relevant socio-legal material<sup>21</sup> and any comparative legal research done that might help to identify any best practice solutions, and

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<sup>21</sup> Naturally, in this context, care will have to be taken to determine the parameters of any research that is such as to require ethical approval. The evidential value of existing social science research, and hence introducing students to the prospect of relying on non-legal sources to explain why reform is needed and what it should look like, is also worth noting.

(v) an analysis of potential solutions and the identification of a preferred solution (with an explanation of the various cost-benefit elements), complete with any relevant draft legislative language.

7. *Circulate to stakeholders*: and seek feedback within a given timeframe.

8. *Prepare a final Law Reform Proposal report*: the final report modifies the draft report by responding to the feedback, explaining why the solution proposed was adopted and outlining support and opposition to it (with relevant commentary to counter the opposition).

9. *Draft a Law Reform Action Plan*: this plan is based on a project management template, in which the methods to secure law reform are identified and there is analysis of what will work best for the proposal made – the many options including lobbying interest groups (including law reform bodies within the legal profession) and/or developing media interest, approaching government officials or ministers, and identifying individual MPs who might champion reform. In accordance with good practice in project management, this plan will require timescales and review processes, and, in the context of a process which will proceed over several semesters and classes, a way of incoming students being briefed to carry on and build on what has already happened.

10. *Monitor progress*: continual monitoring of the progress of any proposals for legislation introduced into the legislature, including making relevant submissions to legislators where opportunities to do so arise.

#### 4. Why Should Law Reform Clinics Be More Prominent

The need for law schools to engage with societal policies has pedigree. In 1915, future Associate Justice of the US Supreme Court, Felix Frankfurter, noted that society was experiencing “a changing set of ideas” and “a change in direction”, which required an “immense work of readjustment, ... of assimilating social and economic facts, of adapting old principles to present needs, of working out modern premises necessitated by new conditions” that could not be done by the judges alone.<sup>22</sup> The response, he contended, was that law schools should be involved in “the work not merely of training practitioners ... equipped to become skillful practitioners” but also the work “of helping to develop the law, of participating in a great state service” by making clear to students that the law is “a vital agency for human betterment”.<sup>23</sup>

Similarly, Jerome Frank’s famous article calling for legal education to train lawyers for practice not just for discussions about theory,<sup>24</sup> which has been credited with playing an important part in the subsequent growth of clinical legal education in the USA,<sup>25</sup>

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<sup>22</sup> Felix Frankfurter, *The Law and the Law Schools*, (1915) 1 ABA J 532, 533 and 537.

<sup>23</sup> Felix Frankfurter, *The Law and the Law Schools*, (1915) 1 ABA J 532, 539.

<sup>24</sup> Jerome Frank, *Why Not a Clinical Lawyer-School?* (1933) 81 U PA L Rev 907.

<sup>25</sup> See Deena Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics* (2003) 28 Yale J Intl Law 505 at 523.

set out a 16-part plan. Point 13 was the need for students to understand that “an important part of their future task is to press for improvements of the judicial process and for social and economic changes through legislation, and wise administration”.<sup>26</sup>

Hence, calls for involvement in policy work more generally and law reform work more specifically have a significant history. From the material set out in Parts 2 and 3, it is evident that there are two broad formats that can be adopted to allow students to be involved in law reform projects as part of their legal education. There are examples of courses set up for the purpose of law reform but there are also examples of courses that are set up for all the reasons that experiential education is valued and which can be operated in the law reform space. It is our contention that law reform activities contribute strongly to:

- (i) the pedagogical value of clinical legal education, namely active research and learning and the application of that to a practical situation; and
- (ii) the social justice ethos that pervades clinical legal education, since by definition law reform is trying to make the situation better, by improving the regulation of an area (or matters such as enforcement of the law) to ultimately promote access to justice.

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<sup>26</sup> Jerome Frank, *Why Not a Clinical Lawyer-School?* (1933) 81 U PA L Rev 907, 922.

As such, law reform activities should be supported by those who have already made the commitment to clinical legal education as not only a valid but as an important part of law school teaching

Moreover, we contend that law reform activities have various features and functions that make them attractive even to those in the academy who are not involved in (or those who even object to) clinical legal education as part of the law degree, because:

- (i) anyone who can supervise a legal research project can supervise a law reform project, from old-school black-letter law traditionalists to the most innovative, student-focused of legal academics;
- (ii) they inevitably involve core academic skills, namely research – perhaps including comparative and socio-legal research - and persuasive writing,
- (iii) they invariably involve various other transferable skills that are usefully part of the law degree, including teamwork;
- (iv) they provide an introduction to career options that might not have been obvious to students, including involvement in policy and law reform work, and
- (v) they provide an introduction to a core obligation of both academic lawyers (the critic and conscience role) and of practitioners (civic responsibilities), which can be met through law reform.

Before developing these points, one thing that some colleagues may point out is that students can be involved in such things as law reform projects or working with NGOs

without these activities being linked to course credits: rather, they help to build a student's CV. This is true, and it is not our contention that *all* student involvement in such matters should be monopolised through some form of clinical legal education programme. However, particularly as many countries require students to pay fees for their education, many students also work significant hours in paid employment to seek to minimise their debt levels: it may be unrealistic for many students to engage in such activities without receiving credit.

#### *A. Active research and its application*

Experiential education is valuable for various reasons: it is an active rather than a passive process; it caters for those whose learning style is kinaesthetic (active learning with practical applications) whilst also usually involving reading, writing and, through explanations from supervisors, auditory learning experiences.<sup>27</sup> A law reform experience clearly is a form of active education, as is illustrated by the manual developed at the University of Canterbury: students are actively engaged in the analysis of a legal problem and grappling with potential solutions to it. Just about every lawyer will be familiar with being able to explain the law in the context of a matter that revealed a gap in the law, and a clinical course engaged in law reform has that at its core.

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<sup>27</sup> The popular VARK model of learning styles suggests that there are four types of learners, visual, auditory, reading/writing and kinaesthetic.

*B. Social justice*

Again, it seems self-evident that improving the law is providing a benefit to society. This meets the traditional association between social justice and clinical legal education. Naturally, this will be the case in a much wider variety of settings than might be common in a live-client clinic. Although some developments in clinical legal education under the pressure to create practice-ready law graduates may mean that not all clinical activities are true to its social justice tradition, the end-result of developing better laws should meet the 'benefit to society' criterion. Of course, there might be room to debate whether each instance of law reform is good for society: for example, there will no doubt be people who argue that the tenancy law reform mentioned above distorts the market and, from their perspective, causes harm to society generally.

Another aspect to the social justice component associated with clinical legal education should be noted. One reason for concern about live-client clinics is that they reduce the pressure for adequate funding of the system, because governments may point to basic needs being met by these clinics. It can be argued that this leads to the creation of a two-tier system in which some people have and pay for lawyers of their choice, and others are left with the assistance of students who may be doing their best and are supervised, but do not have the same legal expertise as more experienced lawyers in private practice.



We are not arguing against live-client clinics, particularly as the dominant political model of neoliberalism means that adequate legal aid funding is unlikely in most countries in the foreseeable future: we are simply pointing to a concern that filling the gap helps to justify decisions by those in power who are not concerned about the gap. This does not fully apply in the context of law reform, because funding mechanisms such as legal aid have never had as their primary role the provision of assistance in relation to law reform.

### *C. Expanding the pool of legal clinicians*

The fact that law reform can be applied in any legal area means that practically any member of the academy can become involved in a clinical legal education project involving law reform. The core skills required are: the abilities to form a view that an area of law needs reform, to consider what might represent an improvement, and to communicate the research and writing process to be followed. This might mean that it is possible to have a dedicated law reform course that is staffed in different semesters or years by different lecturers, or there might be a team of lecturers who can offer a range of choices to students. This could be particularly beneficial in opening up the value of experiential learning to different parts of the legal curriculum. This might be important, since students invariably have different primary interests: some will want to do social justice law, but others will want to do constitutional or public law, or criminal law, or areas of private or commercial law. Some will want to cover a variety of areas, and some will not have a particular preference and may use elective

courses to help to determine a career path. As such, the wider the range of options made available to students, the better.

Since law reform can occur in any area of law, colleagues who do not consider themselves to be clinical legal educators could find that they indeed become legal clinicians by default by teaching a law reform course where the reform identified is in one of their areas of expertise. This can be put into practice through a collaborative approach between subject lecturers and clinical teachers, using various models. For example, the initial law reform issue might be identified by the subject lecturer, and then the process of implementation of the actual law reform is done under the auspices of the legal clinician. The level of engagement of the subject lecturer would depend on their practical expertise, preferred extent of engagement, and the relevant course structure. They could be a consultant to the clinical course or a co-teacher, building experience that might lead to their involvement in further projects.

In addition, it is always possible that elements of law reform can feature in a more traditional black-letter law course, for example by allocating time to consider a law reform proposal as part of a capstone element to a course.

#### *D. Meeting core graduate attributes and skills*

Law reform projects done well will assist the development of core skills in students that will feature in any statement of graduate attributes required by the completion of

a law degree.<sup>28</sup> These skills will include identifying problems, legal research (primarily doctrinal research, but also including types of qualitative, quantitative, comparative and socio-legal research that are less common in law curricula), and persuasive writing. In addition, law reform as a focus for clinical legal education is likely to develop various other multi-disciplinary graduate attributes that can be split into areas of useful knowledge, skills and also values.

Taking these in turn, the useful knowledge that should be acquired relates to various parts of the law, in addition obviously to the learning about the area of law that is the subject of the law reform project. The question of how to go about law reform will illustrate features of the modern state: although the discussion above has focussed on legislative reform, the problem might be one of interpretation (and so perhaps open to be solved by litigation designed to secure a changed interpretation), or it might be enforcement (which allows discussion of the constitutional role of the executive to enforce the law and a realisation that lawyers might have to challenge enforcement). In addition, students will learn about the machinery that exists for law reform, including within governments, legislatures and the NGO sector; and there will be a reminder of the process of legislation and an exposure to how it operates in practice.

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<sup>28</sup> Indeed, to take an example from Victoria University of Wellington in New Zealand, its current statement - <https://www.wgtn.ac.nz/law/study/graduate-attributes> - references as the first of 9 attributes the Faculty seeks to secure in its graduates that they will “Have a specialised and contextualised understanding of core legal principles, important legal concepts, and law reform processes”.

A variety of skills should be acquired through a law reform project. In addition to the research and advocacy skills noted above, there could also be exposure to and hence the development of skills in relation to legislative drafting, project management (which reflects the fact that legal work is not all about simple cases), teamwork in both the narrow sense of working with colleagues in a team, and in the wider context of collaborating with other stakeholders interested in the same reform project objectives, and lobbying skills.

In addition, law reform allows students to assess their personal values, and also the values and wider principles that underpin the law. By definition, asking questions about whether a particular law is working or not turns on an assessment of its objectives and the societal values it supports. If one uses the example from the University of Canterbury of residential tenancies, whether landlords should be required to meet relevant standards or be able to “buy out” from compliance may be answered differently from a law and economics perspective than from the perspective of securing human dignity: the law reform process and experience requires students to confront the higher-level values, some of which will be jurisprudential, to assess where they stand, and enable them to make comparative value judgments. By having a focus on a recurring problem rather than an individual case, law reform requires people to step back and review the role of law in regulating society for the general benefit.

### E. *Introducing additional graduate opportunities*

There is a good deal of popular culture relating to lawyers, and so law students will be familiar with – and many will have been motivated to come to law school by – the role of the lawyer dealing with clients. But there are many other roles for which legal training is beneficial, including policy roles, advocacy within campaigning organisations, and working for law reform organisations. Law reform clinical opportunities will illuminate these possibilities.

### F. *Explaining professional obligations*

A final area we suggest is an important outcome of engaging in law reform projects as part of the academic journey is that it helps to illustrate that “pro bono publico” is a core component of the legal profession. This is true both for academic lawyers in light of one of the central features of university status, but also true for practitioners.

Taking the academic role first, New Zealand has a handy statutory codification of an important aspect of the role of academic generally: namely the critic and conscience role in society. This was recently restated in s268 of the Education and Training Act 2020 (NZ), which inter alia sets out that an institution can only qualify to call itself a university if it accepts “a role as critic and conscience of society”. By noting that this is a role, and hence an obligation, the New Zealand legislature has confirmed neatly that is not just a role than is *permitted* (and reinforced by rights to freedom of expression) but it is a legal *obligation*. It may be that the university is publicly funded, in which case the public benefit is not just the teaching of students, but this wider

function of seeking a better society. Of course, many universities are private but will often have charitable status, which comes with many benefits (such as no or reduced taxation) for which the quid pro quo is the similar obligation to assist society.

An obvious part of the critic and conscience role for academic lawyers is engagement in law reform. Many colleagues will do that through critiquing cases and legislative developments. Engaging in an active process of law reform through making submissions to law reform bodies and legislatures is also an obvious thing for academic lawyers to do. It is something we should be able to do because of the supposed freedom we get to stand back and review the forest as well as the trees. Developing a law reform clinical opportunity allows this overall obligation to be combined with the role of teaching, supervising and developing opportunities for law students to be involved in law reform.

In addition, the legal profession is a key stakeholder in law reform. Again, in New Zealand, this is on a statutory footing in that the New Zealand Law Society is required by s65 of the Lawyers and Conveyancers Act 2006 (NZ) “to assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law”. Section 4 of the same statute points out that one of the fundamental obligations of a lawyer is “to uphold the rule of law”, and another is “to facilitate the administration of justice”. As such, for the good of the public, law reform is a professional obligation of those who join the profession. This being so, it is arguably a deficiency in a law school curriculum if students are not properly equipped

to participate in law reform: or to put it another way, experiential courses on law reform should be seen as an important introduction at the academic stage to skills relevant to law reform and inculcating a mindset that involvement in it is part of the civic duty of a member of the profession.

## **5. Summing Up**

In Part 2 above, we have noted from reviewing materials relating to the USA, Australia and the UK that law reform is accepted as a component of clinical legal education but that it has a relatively low prominence. In Part 3 above, we have outlined our own experiences of working on law reform with our students in New Zealand: as such, we are clearly enthused by its possibilities. As a result, we have sought in Part 4 to explain our enthusiasm. This turns on a variety of features that can be categorized as to the benefits they bring law students, the law school and society (which benefits obviously also overlap with each other).

From the student perspective, law reform projects require a deep dive into an area of law, building research skills and including exposure to research beyond the usual review of cases and statutory language. The application of comparative legal research, and other research skills not normally applied in law schools, is likely to be of huge future benefit to students. There is a requirement to engage with putting law in context: to move beyond the question of describing the law, to asking the question of whether it is fit for purpose and how it can be improved. This in turn exposes students

to jurisprudential frameworks and systems of values that allow a judgement to be made about what is the best route to achieve law reform objectives. Their conclusions then have to be turned into persuasive writing and advocacy, again core skills. This whole process occurs in the context of raising students' eyes from the micro-level of individual cases and decisions, to the macro-level of assessing whether the law works in societal context, by identifying causes of failure and what techniques may lead to improvement. After all, as we noted in the opening to Part 4, the role of law in regulating and improving society has led to long-standing calls for law schools to train students not just to know the law but to know how to improve the law and improve the way society is regulated by law.

The overall outcome should be more rounded and multi-skilled graduates, with a deeper understanding of how the law really works in society, as well as getting exposure to the option of law reform as a potential career, whether as a lawyer, academic, government official, NGO member or a politician. In addition, many soft skills, including teamwork skills and working on large projects, should be acquired.

From the perspective of the law school, the benefits of a law reform clinic are that it is something that any academic can do with minimal training, even if they do not view themselves as clinical teachers. It allows research expertise to be brought into teaching; and it allows the law school to play its "critic and conscience" role and often to do so in conjunction with a range of partners from the profession and the community. It is also relatively easy to set up in two respects. First, objections that might be raised



about the academic side of legal education maintaining its independence from the more practical focus of professional training courses should be much reduced because law reform – critiquing the current law and suggesting how to improve it – is very much core to the academy. Second, the university administration concerned about budget implications can easily be persuaded of its value, as law reform components of courses can be established by any academic with minimal training and guidance.

From society's perspective, the benefits of more rounded and critically-aware law graduates, and of law schools carrying out their critic and conscience role, are supplemented by the utility of having better laws for the benefit of society - especially the promotion of access to justice in all its iterations.

In short, a law reform clinic is experiential education at its best.

## NOT A BLUEPRINT: REFLECTIONS ON THE CARDIFF ENVIRONMENTAL LAW AND POLICY CLINIC

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### Introduction

This article addresses the evolution of environmental clinical legal education at the School of Law and Politics at Cardiff University, with particular reference to the shift in its clinical focus from 'law' to 'policy'.<sup>1</sup> Law and policy are of course deeply intertwined, and the shift under consideration is to be understood neither as abrupt nor comprehensive. It is one of emphasis, which in turn is a reflection of the richness and complexity of the discipline of law within which clinical legal education, like all legal education, operates.<sup>2</sup> The article examines the nature of, and factors shaping, the shift in Clinic emphasis towards law and policy. It addresses some of the practical implications of this for a host of clinical considerations (including resourcing, training and expertise, relationships with clients and management of outputs and impacts in

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<sup>1</sup> The focus on 'purely' legal aspects within Cardiff's 'cluster of clinics' has been analysed. See: J Tucker, 'Third-Sector Funded Clinical Legal Education in the United Kingdom: A Reflection and Proposal for Future Partnerships' in L Thomas, S Vaughan, B Malkani, and T Lynch (eds), *Reimagining Clinical Legal Education* (Hart 2018) 77, 79-96

<sup>2</sup> For early recognition of the complex array of 'legal' and 'political' or 'policy' dimensions to legal education see L Gower, 'English Legal Training' (1950) 13 *Modern Law Review* 137, 170.

the real world). It is hoped that this case study will feed into a wider literature around environmental clinical legal education, and the policy dimension in particular.<sup>3</sup>

The Cardiff Clinic is housed in a multi-disciplinary School of Law and Politics, which contains a wider clinical provision beyond the 'Environment', including a world-leading Innocence Project. This is the broader institutional context within which the Environmental Law and Policy Clinic is situated, and it is with this that our analysis begins in Section 1. We highlight what we call the 'strategic accident' and 'accidental design' underpinning the School's clinical provision, as a core dynamic which is carried through in the analysis of the environment-focused Clinic. Section 2 elaborates on the substantive environmental law and policy context within Wales and the UK as a whole, and how this has shaped the increasingly policy-oriented nature of work of the Clinic. Section 3 critically reflects on the Cardiff experience, drawing in part on feedback the authors have obtained from student participants, as well as the authors' own perspectives, to evaluate the developments under scrutiny.

## **I Accident by Design: Clinical Legal Education at Cardiff**

This section introduces the institutional context within which the Clinic under consideration has evolved. The section takes the form of an interview conducted in

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<sup>3</sup> See R Dunn, L Bengtsson, and S McConnell, 'The Policy Clinic at Northumbria University: Influencing Policy / Law Reform as an Effective Educational Tool for Students' (2020) 27 *International Journal of Clinical Legal Education* 67; W Patton, 'Getting Back to the Sandbox: Designing a Legal Policy Clinic' (2011) 16 *International Journal of Clinical Legal Education* 96; M Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2007-2008) 39 *University of Toledo Law Review* 233; L Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' (2004) 6 *International Journal of Clinical Legal Education* 162

Summer 2023 between the Head of Law (co-author 2), in conversation with the Co-Head of Pro Bono and Clinical Legal Education (co-author 4). Interviews between co-authors are a means of providing the reader with insight into the relational nature of the subject matter at hand, including in this instance the relationship between leader of a clinical programme on the one hand of leaders of a specific environmental cluster within that programme on the other.<sup>4</sup> The interview highlights the roles in the environment Clinic's evolution played by accident and design. This is referenced in the title of the article, which speaks to the extent to which the Clinic is neither adopting or proposing a 'blueprint'.

Q. I'm intrigued by the beginnings of the Cardiff model of the Clinic. Could you share a bit about its origins and initial goals? How did you design it and what was the initial focus?

*The evolving Cardiff model of Clinic is unique – by accidental design! In 2005, armed with a blank sheet, the task (led by me) was to create a Clinic befitting the capital city of Wales, capitalising on its devolved status and proximity to national government. Cautious strategic planning was absent. "Give it a go" was the order of the (less risk averse) day. In those days, academic freedom seemed to extend to the prerogative of never allowing lack of substantive knowledge to stand in the way of ambition!*

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<sup>4</sup> For some examples, see: A Blick and B Dickson, 'Why Does the United Kingdom Now Need a Written Constitution?' (2020) 71 Northern Ireland Legal Quarterly 59; E Stokes and B Pontin, 'Historical Futures and Future Futures in Environmental Law Pedagogy: Exploring 'Futures Literacy'' (2022) 18 International Journal of Law in Context 40. The Cardiff Ethics Committee did not consider that its approval was required for interviews 'internal' to the authorial team.

Q. I'm curious: what was the first priority you identified for the Clinic, and how did you go about addressing it?

*First shopping list priority was to acquire a new-fangled 'Innocence Project'. A bunch of young students trying to free someone wrongly in prison – a cinch. The only exposure to criminal law being three points on my driving licence was no barrier for the naïve me. So, we proudly emerged from a visit to the genre-pioneers at Bristol University<sup>5</sup> with a handful of serious crime cases to review. We were in business.*

Q. Impressive start! After addressing that initial priority, in what other areas did the Clinic expand, and how did those partnerships come about?

*Murders in the bag, what next then for Cardiff? Rugby, naturally. A collaboration with the WRU and legal advice for amateur Welsh rugby clubs soon followed.<sup>6</sup>*

*Then, in partnership with Hugh James law firm, we opened a NHS Continuing Healthcare scheme. Working on cases for dementia patients, our students recovered more than £300,000 in wrongly-paid nursing home fees.<sup>7</sup>*

Q. Can you talk about how the Clinic continued to grow into different areas of law and policy? Any key achievements or partnerships during this period that you'd like to highlight?

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<sup>5</sup> Innocence Network UK, 'Impacts' <http://www.innocencenetwork.org.uk/impacts> accessed 1 August 2023.

<sup>6</sup> For more information, see 'Access all areas for Law students on rugby pro bono scheme' (15 December 2016) <[WRU scheme](#)> accessed 1 August 2023.

<sup>7</sup> For more information, see 'Celebrating 16 Years Of Our Pro Bono Scheme With Cardiff University' <[Hugh James' Pro-bono scheme welcomes next-generation lawyers Blog](#)> accessed 1 August 2023.

*Elements of long-term planning still thin on the ground, we expanded ad hoc, based on research interests of academic colleagues. We peaked at 23 separate projects, and won an award for best Pro Bono Clinic.<sup>8</sup> Working with a human rights law firm on cases involving abuses in African mines, our Global Justice scheme was mentioned in a Westminster parliamentary committee.<sup>9</sup>*

Q. Turning to the topic of this paper, could you share more about the partnership with the Environmental Law Foundation and the significant cases the Clinic worked on as a result?

*A partnership with the Environmental Law Foundation was brokered by co-author 2, and through this connection we started environmental client work. The cases were commonly not straightforward (in fact they were highly complex), and we roped in a sage practitioner - co-author 3 - on a pro bono basis. One of the first cases centred on the energy company EDF's plans to dispose of nuclear waste contaminated sediment in Cardiff Sands, under a public law decision-making process, which included the UK Government and Natural Resources Wales. This can be understood as a classic 'legal' case. It led to the Clinic drafting a complaint against the UK before the European Commission. Our subsequent focus has involved less emphasis on litigation, although this aspect remains open to us.*

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<sup>8</sup> For more information, see Cardiff University, 'Students providing vital legal assistance to those in need' (19 December 2019) <[Students providing vital legal assistance to those in need - News - Cardiff University](#)> accessed 1 August 2023.

<sup>9</sup> For more information, see 'Global Justice Pro Bono students mentioned at parliamentary Human Rights committee' <[Global Justice Pro Bono students mentioned at parliamentary Human Rights committee - News - Cardiff University](#)> accessed 1 August 2023.

Q. Can you describe how the Clinic's focus on policy work evolved and how you responded to the growing student interest and demand?

*Within this expansion, our "policy" work was growing, despite us not attaching a policy label at that point. Student demand for Innocence Project involvement was growing along with our "fame" as we became the only UK innocence project to have overturned a conviction.<sup>10</sup> In an attempt to accommodate growing student numbers, we created a prisons policy study group, which considered the effects of excessive cell confinement in UK prisons. Students analysed the human rights context and the effects on health, family contact and developments in technology. We did a piece of work for the grassroots campaign group JENGBA (Joint Enterprise Not Guilty by Association), to consider the possible scope for appeals based on the Court of Appeal Ruling in *R v Jogee* 2016<sup>11</sup>. Then we conducted a review of historical sex offence convictions worked on by our Innocence Project, identifying recurrent themes that featured in these cases. Our partnership with adult learning disabilities charity, Mencap Cymru, won a prestigious national award.<sup>12</sup> Under this "public legal education" initiative, students created a series of legal toolkits,<sup>13</sup> downloaded thousands of times by the charity's stakeholders and user-groups.*

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<sup>10</sup> For more information, see 'Cardiff University Innocence Project overturns second case at Court of Appeal' <[Cardiff University Innocence Project overturns second case at Court of Appeal - News - Cardiff University](#)> accessed 1 August 2023.

<sup>11</sup> *R v Jogee* [2016] UKSC 8

<sup>12</sup> For more information, see 'Mencap Cymru and Cardiff Law Students Launch Toolkit for Adults with Learning Disabilities' <[Mencap Cymru and Cardiff law students launch toolkit for adults with learning disabilities - News - Cardiff University](#)> accessed 1 August 2023.

<sup>13</sup> For more information, see 'Learning Disability Legal Guides - Know Your Rights' <[Learning Disability Legal Guides - Know Your Rights | Mencap](#)> accessed 1 August 2023.

*Co-author 1 had been an early innocence project student, and led a piece of policy work for an organisation working on a miscarriage of justice case with a partner firm, and ended up leading a student team on environmental casework. Lending her hand to policy as well as casework, she organically contributed to the breadth of our policy work, her enthusiasm readily courted by the other co-authors.*

*Then came the covid years. As for everyone else, online everything became the new norm. We had to deal with hugely increased student numbers, so we recalibrated two of our activities under a Grand Challenges umbrella – our miscarriages of justice work, and Climate Change – both capitalising on in-house expertise. Wanting to embrace our newly-merged school of Law, Politics and International Relations, a colleague led a mixed student cohort writing for the Welsh Government website on Wales Climate Week, which fortuitously followed COP26 being hosted in Glasgow. Parallel to this, co-author 3 rewrote his extra-curricular module to become Stage 1 that could accommodate hundreds of students if need be, followed by a selection process for Stage 2, where “real” policy work would take place.*

*So our environmental policy footprint was expanding by stealth, albeit once again not by strategic planning...*

## **II Experimental and Experiential: Teaching Environmental Law and Policy in Wales**

It was in a similar, rather spontaneous, way that the introduction of an Environmental Clinic at Cardiff coincided with the increasingly active environmental movement,



both in the UK and overseas, and the increasingly urgent demands made by communities for governments to act on the nature and climate crisis.<sup>14</sup> The story of environmental law in Wales is primarily one of legislative reform, and it is within this context that an Environmental Law and Policy Clinic at Cardiff has come to fruition.

In 1999, seven years after the inaugural Earth Summit<sup>15</sup> had brought forth the Rio Declaration<sup>16</sup> and set out an unprecedented ambition at a global scale to make sustainable development the new status quo for developed and developing economies, Wales became a devolved nation. Under the original Government of Wales Act of 1998,<sup>17</sup> environmental matters fell under the remit of the newly formed National

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<sup>14</sup> House of Commons, 'The Rise of Climate Change Activism?' June 2020. Available at: <https://commonslibrary.parliament.uk/the-rise-of-climate-change-activism/> (Accessed 1 August 2023). The rise of environmental activism since 2019 has largely been attributed to the publication of report by the UN Intergovernmental Panel on Climate Change concluding that only 12 years remain to limit the predicted climate change catastrophe. See: IPCC, 'Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C' (2018). Available at: <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/> (Accessed 1 August 2023). The environmental movement, both in the UK and across the world, reached a peak when the youth movement Fridays For Future coincided with protests organised by the activist group Extinction Rebellion in Autumn 2019. See: M Taylor, H Pidd, and J Murray, 'Hundreds of Thousands of Students Join Global Climate Strikes' *The Guardian* (29 November 2019). Available at: <https://www.theguardian.com/environment/2019/nov/29/hundreds-of-thousands-of-students-join-global-climate-strikes>; V Bennett, '2019, The Year the World Woke Up to Climate Change' (November 2019) European Bank for Reconstruction and Development. Available at: <https://www.ebrd.com/news/2019/2019-the-year-the-world-woke-up-to-climate-change.html>.]; A Sabherwal et al, 'The Greta Effect: Familiarity with Greta Thunberg Predicts Intentions to Engage in Climate Activism in the United States' (2021) *Journal of Applied Social Psychology*. <https://doi.org/10.1111/jasp.12737>. See also the emergence of the Greener UK Alliance of environmental non-governmental organisations around Brexit, discussed in C Abbot and M Lee, *Environmental Groups and Legal Expertise: Shaping the Brexit Process* (UCL Press 2021).

<sup>15</sup> United Nations Conference on Environment and Development (UNCED), 'Agenda 21', Rio de Janeiro, Brazil, 3-14 June 1992 UN Doc A/CONF.151/26 (vol I), 31 ILM 874 (1992).

<sup>16</sup> United Nations Conference on Environment and Development (UNCED), 'Rio Declaration on Environment and Development', Rio de Janeiro, 1992.

<sup>17</sup> United Kingdom Parliament, 'Government of Wales Act 1998', c. 38, 1998.

Assembly for Wales – now the Senedd – which met for the first time in May 1999.<sup>18</sup> Sustainable Development – then a term almost synonymous with environmental policy – was amongst many considerations on the agenda at this first meeting,<sup>19</sup> but over time has become *the* dominant area of Welsh law and policy.<sup>20</sup> Out of this has evolved ‘world leading’ substantive environmental legislation.<sup>21</sup>

The first was the Government of Wales Act 2006,<sup>22</sup> which required Welsh Ministers to set out how they would promote sustainable development.<sup>23</sup> A decade later, Wales saw the Well-being of Future Generations (Wales) Act 2015<sup>24</sup> and the Environment (Wales) Act 2016<sup>25</sup> passed into law. The Well-being of Future Generations (Wales) Act fully entrenched the principle of sustainable development in law,<sup>26</sup> reflecting the ambitions of what are now the UN Sustainable Development Goals,<sup>27</sup> committing

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<sup>18</sup> The National Assembly for Wales (First Meeting) Order 1999, SI 1999 No 944, pursuant to the Government of Wales Act 1998. For an early history of Welsh environmental policy and law, see V Jenkins, ‘Environmental Law in Wales’ (2005) 17 *Journal of Environmental Law* 207

<sup>19</sup> R Stevenson and T Richardson, ‘Policy integration for sustainable development: Exploring barriers to renewable energy development in post-devolution Wales’ (2003) 5 *Journal of Environmental Policy & Planning* 95–118.

<sup>20</sup> V Jenkins, ‘Sustainable Development of Natural Resources: Lessons from Wales’ (2018) 30 *Journal of Environmental Law* 399.

<sup>21</sup> H Davies, ‘The Well-being of Future Generations (Wales) Act 2015 – A Step Change in the Legal Protection of the Interests of Future Generations?’ *Journal of Environmental Law* (2017) 29, 166–175.

See also: H Davies, ‘The Wellbeing of Future Generations (Wales) Act 2015: Duties or Aspirations?’ (2016) 18(1) *Environmental Law Review*

<sup>22</sup> s. 79, United Kingdom Parliament, ‘Government of Wales Act 2006’, c. 32, 2006.

<sup>23</sup> A Ross, ‘Why Legislate for Sustainable Development? An examination of Sustainable Development Provisions in UK and Scottish Statutes’, *Journal of Environmental Law* 20 (2008) 35–68.

<sup>24</sup> National Assembly for Wales, ‘Well-being of Future Generations (Wales) Act 2015’, anaw 2, 2015.

<sup>25</sup> National Assembly for Wales, ‘Environment (Wales) Act 2016’, anaw 3, 2016.

<sup>26</sup> First articulated in the Brundtland Report in 1987; World Commission on Environment and Development, ‘Report of the World Commission on Environment and Development: Our Common Future’ (20 March 1987) UN Doc A/42/427.

<sup>27</sup> Welsh Assembly Government, ‘One Wales, One Planet’ – The Sustainable Development Scheme of the Welsh Assembly Government. Access: <https://sdgs.un.org/partnerships/one-wales-one-planet>

public bodies in Wales to make decisions in the pursuit of economic, social, cultural and environmental well-being for both this and future generations.<sup>28</sup> The Environment (Wales) Act, perhaps more pragmatically, established the principle of ‘Sustainable Management of Natural Resources’, based on an ecosystem services approach and designed to deliver ecosystem services. One of the words pertinent to our discussion commonly used to describe this legislation, especially the 2015 Act, is ambitious. Another is ‘symbolic’.<sup>29</sup> Entrenching well-being in statute is considered to symbolise an aspiration for a better future, driven by values. On this reasoning the ‘law’ is not straightforwardly ‘legal’, in the sense of a duty enforceable in the court.<sup>30</sup> It is political. The years since these ambitious enactments can be described as an invisible tug of war between the Senedd finding its feet as a devolved power, while remaining intertwined with the ever-present power of Westminster, with Wales enacting ambitious pieces of environmental legislation, while the UK Government continues to influence the availability of the requisite funding, locked behind an intricate Barnett approach to distribution. Moreover, while the Well-being Act in particular is a landmark in municipal environmental legislation viewed globally– for the first time ‘enshrining’

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<sup>28</sup> See: I Carter and E MacKillop, 'Can we promote plural local pathways to sustainable development? Insights from the implementation of Wales's Future Generations Act' (2023) *Journal of Environmental Policy & Planning* 25(5) 554-569; S Nesom & E MacKillop, 'What Matters in the Implementation of Sustainable Development Policies? Findings from the Well-being of Future Generations (Wales) Act, 2015' (2021) 23 *Journal of Environmental Policy & Planning* 432–445.

<sup>29</sup> B Pontin, E Stokes, Z. Hayward and G Xenophontus, 'Government Reporting on Significant Developments in Environmental Legislation around the World: The Challenges of Symbolic Legislation' (2023) 35 *Journal of Environmental Law* 149, 151

<sup>30</sup> Lord Thomas, 'Thinking Policy Through Before Enacting Aspirational Legislation', Lord Renton Annual Lecture, Statute Law Society, IALS, 21 November 2019.

the rights of future generations in law<sup>31</sup> - it continues to lack any explicit mechanism to enforce practical implementation of these ambitions.<sup>32</sup>

The 2016 EU Referendum introduced a further pivot through the removal of the EU framework for environmental governance and is currently giving rise to a new generation of ambitious environmental legislation in Wales. The Agriculture (Wales) Bill, on the floor of the Senedd at the time of writing, introduces a framework for Sustainable Land Management, while a White Paper, published in January 2024, introduces a new framework for post-EU environmental governance as well as legally-binding nature recovery targets to echo those agreed on the international stage at CoP27<sup>33</sup> last Autumn.

The Welsh environmental agenda has over the past decades therefore brought forth an exciting – though arguably still experimental – national framework for the delivery of the commitments first set out for the world in Rio. This fast-moving legislative landscape of environmental law in Wales provides a rich ground for any aspiring lawyer, leaving room for policy development while maintaining strong ties to international law and capturing an ongoing dynamic interplay between devolved and reserved matters, all within the challenges and opportunities arising from Brexit.

An Environmental Law and Policy Clinic in Cardiff therefore provides a practical forum for students to engage with environmental law and policy in the context of

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<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> '27th Conference of the Parties to the United Nations Framework Convention on Climate Change'

wider questions of governance, politics, law and policy at the local, national, EU and international level. And, for Cardiff Law School, it provides an opportunity to facilitate students having a real impact on the future of environmental law and justice in Wales. The remainder of the article explores some of the details in this respect.

### **The Cardiff Model(s)**

The Environmental Law and Policy Clinic has broadly followed a specialist model,<sup>34</sup> working on environmental issues spanning climate change and conservation law, as well as key peripheral areas of law such as this extensive work on freedom of information that provide wider transferable tools to achieve environmental justice. It has concentrated on cases in or near Wales, or has used Wales as a good standpoint for addressing issues elsewhere, as with the Palestine project (discussed below, as linked to the well-being goal of a 'globally responsible Wales').

#### *Climate Change Legal Project*

The Project examined the law on climate change mitigation in Wales, particularly how it applies to transport and to biodiversity conservation. In the first two years of the project, the students were tasked with analysing the law in the UK and in Wales on climate change adaptation and mitigation. This was introduced initially by a series of generalist lectures, setting out the history of climate change, how scientific consensus emerged, and the international efforts, through events such as the Rio 'Earth Summit'

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<sup>34</sup> E Winkler, *Clinical Legal Education: A Report on the Concept of Law Clinics* (2012)

and the UN Framework Convention on Climate Change<sup>35</sup>, which lead to the UK Climate Change Act 2008<sup>36</sup>. The students then chose a subject area – transport, conservation, agriculture – to examine in more detail in small, self-led groups.

The students examined the practical effect on the procedural structures laid down in the 2008 Act and how that might be applied in their chosen subject area. For example, students explored how pattern of land use in farming in Wales might be precipitated by the procedures laid down in the 2008 Act, following recommendations by the UK Committee on Climate Change. It is fair to say that the students were generally concerned that the reporting cycles and budgeting processes set down in the 2008 Act would not create what they felt to be the required urgency. In the run up to CoP26 in Glasgow<sup>37</sup>, the students were highly engaged and, on their own initiative, produced a number of differing outputs.

These ranged from a detailed response to a Welsh Government consultation on agriculture, a briefing on the blockages to full electrification of trains within Wales, to a formal Petition to the Senedd on a very specific aspect of urban biodiversity, which students then promoted widely to their peer group. All of these outputs showed how an initial critical consideration of the law quickly shifted to generating what might be considered to be more traditionally ‘political’ outputs.

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<sup>35</sup> United Nations Framework Convention on Climate Change. United Nations, FCCC/INFORMAL/84 GE. 05-62220 (E) 200705, Secretariat of the United Nations Framework Convention on Climate Change, Bonn, Germany

<sup>36</sup> Climate Change Act 2008 c 27

<sup>37</sup> ‘26<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change’

## FOI Project

Over the last academic years, the Clinic has focused on the public right of access to environmental information, led by co-author 3.

Access to justice is a fundamental right in democracy, allowing individual citizens to challenge the decision making of the government. This right is secured through the European Convention on Human Rights<sup>38</sup> and the Charter of Fundamental Rights of the European Union<sup>39</sup>.

The Aarhus Convention<sup>40</sup> specifically allows individuals to challenge the decisions of governments when these break environmental law. It sits alongside the EU Directive on public access to environmental information<sup>41</sup> and the Environmental information Regulations 2004,<sup>42</sup> and enshrines the public's right to access environmental information, public participation in environmental decision making and access to justice. It is therefore a crucial pillar of environmental justice.

Of course, logically, you cannot have *full* access to justice or *informed* public participation in decision-making, without there being a right of access to environmental *information*. Freedom of Information has been one of the unsung environmental success stories in the UK in the last 40 years, during which the UK has

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<sup>38</sup> Article 47 of the European Convention on Human Rights

<sup>39</sup> Article 47 of the Charter of Fundamental Rights of the European Union

<sup>40</sup> The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted 25<sup>th</sup> June 1998, Aarhus, Denmark

<sup>41</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

<sup>42</sup> The Environmental Information Regulations 2004, UK Statutory Instruments 2004 No. 3391

moved from being a closed system, with information on environmental policy and related matters held in Whitehall and, *in extremis*, protected by Official Secrets Acts, to one where the public has a right of access to environmental information held by all and any public authorities, including privatised utilities, a right that applies without the public even having to explain any purpose for wanting the information.

Co-author 3 recalls the excitement at the Major Government's tentative steps towards Open Government,<sup>43</sup> towards informing and involving the public in government, and the arrival of the first iteration in UK law of the right to environmental information, the Environmental Information Regulations 1992<sup>44</sup>. This right is heavily relied upon by environmental NGOs in a way that, prior to the Aarhus Convention was simply not possible.

Students have examined the practical effect on the procedural structures laid down in the 2004 Regulations – the initial request, the request for internal review, referral to the Information Commissioner – and have come up with a number of proposals to streamline and make more effective the public right of access, particularly within Wales. Based on this, students produced a mini-report. It is hoped the proposals in that report will yet be considered by the Senedd, as part of the Petitions Committee process, off the back of a Petition the students also lodged concerning the threat to the

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<sup>43</sup> UK Government new Transparency Strategy: 'Making Open Data Real' (2011), <<https://www.gov.uk/government/consultations/making-open-data-real>> accessed 1 August 2023, along with the UK Government's First National Action Plan (2011-2013) on Open Government <<https://www.opengovpartnership.org/documents/united-kingdom-first-national-action-plan-2011-2013/>> accessed 1 August 2023

<sup>44</sup> Environmental Information Regulations 1992, implementing the *Council Directive 90/313/EEC*



right of access to environmental information that the Retained EU Law Bill,<sup>45</sup> at that stage, posed. The students gathered the requisite number of signatories to require a response from the Senedd Petitions Committee. The Petition Committee has since passed the report the Climate Change, Environment and Infrastructure Committee, who is considering the report at the time of writing.

The EU formally approved the Aarhus Convention in 2005, and today's cohort of students (though perhaps not all of Cardiff University's students from countries outside the EU remit) may take this right for granted. However, access to justice is a right that's often overlooked and not properly implemented in national and EU law, with Brexit presenting a direct challenge to this revolutionary treaty which must be cherished and guarded at all costs. The Clinic, within the wider context of the changing legislative landscape set out above, therefore also plays a key role in bridging the gaps left in access to environmental justice.

### *Hedgerow Project*

In the same year, the Clinic was commissioned by the Interim Environmental Protection Assessor for Wales (IEPAW) to undergo a systematic review of consultation responses to the Assessor's review of the UK Hedgerow Regulations. The IEPAW role was established in Wales as a temporary stop-gap following the loss of

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<sup>45</sup> Retained EU Law (Revocation and Reform) Act 2023, the way for which was paved by the European Union (Withdrawal) Act 2018

EU oversight following the EU Exit referendum to oversee the function of and compliance with environmental law.

Led by co-author 1, the work allowed students to engage in a specialised, albeit niche, deep dive into the heart of the modern landscape of conservation policy in Wales, exploring the cultural, as well as environmental, significance of hedgerows in the British and Welsh landscape. Crucially, by discussing existing shortcomings of the law and discussing potential reform, students had to develop a working knowledge of hedgerows as particular, and vital, ecosystems, and understand that a functioning environmental framework is one that is informed by the laws of the natural environment.

The students reviewed the consultation responses that had been submitted to the Assessor as part of a formal Call for Evidence, and produced a report summarising the breadth of responses to highlight existing concerns with the Regulations. The students then produced a supplementary report to provide recommendations for legislative reform, based on their review of the submissions. This included, amongst other recommendations, an exercise in legislative drafting to understand how UK Regulations could be adopted in Wales as a devolved piece of law. The work went beyond legal recommendations and let students explore the potential of solutions outside of legal reform. The Interim Assessor of Wales is expected to publish the final recommendations, based on the report, in Spring 2024.

*Palestine – Environmental Justice Project*

At the beginning of their second year a student member of the Cardiff Student Lawyers Without Borders Society approached co-author 2 to ask if there was scope for taking forward a report of 2014, *Remedying Environmental Injustice in Occupied Palestinian Territory*,<sup>46</sup> which the co-author had written.

The student wanted to help victims of environmental nuisance at the hands of Israeli companies operating in Palestine, and they considered that the Welsh policy context outlined above made the Clinic a suitable forum for taking this forward.<sup>47</sup> This led to co-author 2 corresponding with the NGO Al Haq which published the report, out of which the Clinic was invited to take part in a summer school on issues raised by the report.

The summer school in Ramallah (the administrative capital of Palestine) in August 2023 was attended by 20 Palestinian law masters students, and academics from many universities in Palestine, as well as two Clinic members, co-author 2 and a colleague. It lasted a week. Clinic students and academics began the week by giving a presentation to the group. This was followed by attendance at three days of field visits to farms and residences whose environment was adversely affected by the Israeli occupation of the West Bank.

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<sup>46</sup> B Pontin, V de Lucia, J Gamero, *Remedying Environmental Injustice in Occupied Palestinian Territory: Problems and Prospects* (Al Haq 2014).

<sup>47</sup> See in particular 'Well-Being Goal 7: A Globally Responsible Wales', under the Well-being of Future Generations (Wales) Act 2015.

The project concluded with the Clinic members giving a presentation feeding back on what had been learned, and listening to students doing likewise. One outcome was the beginnings of a collaboration between the Clinic and clinicians in Palestine, around publicising injustices and researching any legal or political avenues for redress.

### **III Not a Blueprint:<sup>48</sup> Reflections on the Cardiff Environmental Law and Policy Clinic**

Over the course of its short history, the Cardiff Clinic has illustrated this shift away from advising on the application of the black letter law, to the examination and challenging of law in the context in which it operates, thereby allowing students to understand how law as it could be. Cardiff Law School, as an academic institution, has an established 'law in context' culture, recognising the need to situate black letter law within the wider cultural, social, political and economic context in which it operates.<sup>49</sup> Policy provides a particularly useful lens through which to understand law in this very context. In 1950, the Gower Survey, exploring the future of legal education, highlighted that:<sup>50</sup>

"It is no longer true, if it ever was, that all a lawyer has to do is to advise his client on what his legal position is and to translate into legal phraseology policy decisions

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<sup>48</sup> C King and D Jones, 'Cui (pro) bono: Working in Partnership: A Possible Blueprint for the Future of Legal Education', in *Reimagining Clinical Legal Education* (Hart 2018) 25.

<sup>49</sup> W Twining, *Blackstone's Tower: The English Law School* (Hamlyn Lectures 1994); W Twining, *Law in Context: Enlarging a Discipline* (Clarendon Press 1997).

<sup>50</sup> Gower, 170 – 171.

already reached by the client. He [sic] is also expected to advise on what the policy should be.”

Referring to the practitioner (which many students hope to be), Gower stated that, “the barrister and solicitor has, in the broadest sense, to make law as well as to advise on what it is at present; to be a legislator as well as an ` adjudicator’ .<sup>51</sup>

The value of students understanding not just how the law operates in context, but the context itself, has only grown in pertinence with changing demands for legal practice careers. With law student numbers rising nationally,<sup>52</sup> additional pressure is put on both staff and students. To date, our effective strategy has involved providing an option for pro bono or clinical work to our growing student body (with the exception of first-year students). It's important to note that students may not always get their preferred choice; sometimes, the opportunities might involve simulated client interactions instead of actual client or policy engagements. Our Innocence Project, the most sought-after program, demands a rigorous application process where students undertake a detailed analysis task mirroring real casework. Out of the 170 second-year students enrolled in our optional Miscarriages of Justice module, which supports the project, 110 expressed interest in applying, leading to 53 actual applications.

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<sup>51</sup> *Ibid.*

<sup>52</sup> The Higher Education Statistics Agency figures released in January 2023 (Higher Education Student Statistics: UK, 2021/22 - Subjects studied | HESA, accessed 16th January 2024) show totals for 2019/20 as 122,795, for 2020/21 as 138,080 and for 2021/22 as 142,320.

For staff, this process is demanding in terms of resources, as each application must be carefully reviewed and feedback provided, consuming approximately 50 hours of staff time. We have the capacity to accept only around 35 new participants, in addition to about 30 returning students. This inevitably results in some students not being selected. The 'massification' of education, where universities must accommodate increasingly large cohorts to meet the demands of the current economy has added a particular pressure to law schools. Thornton argues that, as a result, 'even though [...] the vastly increased number of law graduates are not all able to obtain positions as practising lawyers, the institutional aspiration that they will do so remains a powerful determinant'.<sup>53</sup> With a 4:1 ratio of graduates to training contract,<sup>54</sup> it is more crucial now than ever for law students to be prepared for a career that takes them outside of law.

Clinics, in the employability context, have a crucial role to play in helping students understand, as Strevens et al. write, the 'wider picture than the black letter law applied to a given set of facts' as a key element of commercial awareness.<sup>55</sup> Research by McConnell has shown that students themselves are aware of the importance commercial literacy plays at this early stage in their legal career, regardless of future

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<sup>53</sup> M Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2010) 8(1) *International Journal of the Legal Profession* 43.

<sup>54</sup> The Law Society, Trends in the solicitors' profession, annual statistics report 2021, September 2022. [Access here: Annual statistics report 2022: what does the solicitor profession look like? | The Law Society](#)

<sup>55</sup> C Strevens, C Welch, and R Welch, 'On-line Legal Services and the Changing Legal Market: Preparing Law Undergraduates for the Future' (2011) 45 *The Law Teacher* 328-347.

career paths.<sup>56</sup> Our own experience with students more than supports this. When asked to reflect on their participation with the Clinic during the 2022-2023 academic year, one student noted that it was 'very useful' to learn about the legislative process, since it is 'the basis of law.' The student's reflection on the importance of understanding the legislative process demonstrates a successful grasp of the concept that law emerges from and exists within a wider context of the political landscape, where policy makers are elected by citizens and informed – or influenced – by stakeholders.

### **'Bridging the Gap' between Education and Skills**

Over the course of the past years, students have been allowed to develop skills that – we hope – will be of use to them regardless of their chosen career. The importance of 'bridging the gap' between academic skills and more practical skills is well established.<sup>57</sup> This seems particularly pertinent at a time when skills-based recruitment is on the rise, with recruitment based on academic transcripts alone falling.<sup>58</sup>

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<sup>56</sup> S McConnell, 'Commercial Awareness and the Law Student Journey into the Legal Profession – Definitional Challenges and the Lived Experience of the Graduate Interview' *International Journal of the Legal Profession* 30:2, 189-215 (2023).

<sup>57</sup> See: D Binder and P Bergman, 'Taking Lawyering Skills Training Seriously' (2003) *Clinical Law Review* 10, 301; J Dickson, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (2000) *International Journal of Clinical Legal Education* 1, 33-46; R Grimes, 'Legal Skills and Clinical Legal Education' (1995) *Web Journal of Current Legal Issues* 3; Tribe Mkwebu, *Research on Clinical Legal Education: Unpacking the Evidence in The Clinical Legal Education Handbook* (Institute of Advanced Legal Studies, 2019).

<sup>58</sup> Institute of Student Employers, 'ISE Student Recruitment Survey 2023'.

The substantive output of the Clinic covers a wide range of topics. As just one example, the Climate and Environment Project has, over its three years, taken a particular environmental topic and encouraged and facilitated students to look closely at the law and practice in that area. This is often in far greater detail than the students would anticipate in core undergraduate modules.

Rather than an exercise in learning a new area of law, this Project aimed to encourage students to analyse critically the application of law on a particular environmental topic, and then give students 'free rein' to consider how things might be improved. The aim is not to make the student 'expert' on the area of environmental law, but to get used to picking apart the detail of the law and making constructive suggestions on potential legal reform.<sup>59</sup>

A core component of the Clinic's work therefore also involves enabling students to understand the decision-makers within the relevant project; for instance, students were required to develop an in-depth understanding of the role of the Information Commissioner and the Interim Environmental Protection Assessor for Wales in particular, for the FOI and the Hedgerow project respectively, against the wider backdrop of the role of the Welsh Government and the working of the Senedd. For those students with environmental law electives, the Clinic of course also becomes a

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<sup>59</sup> The skills/substantive knowledge dichotomy is complex, but in this setting the Clinic is addressing the concern of MacFarlane that emphasis on 'skills' can lead to an uncritical acceptance of the substantive law status quo: MacFarlane, 'Look Before You Leap: Knowledge and Learning in Legal Skills Education' (1992) 19 *Journal of Law and Society* 293, 296.



platform to expand and test academic knowledge, and to understand the role of those organisations, as well as environmental NGOs, as potential future employers.

The Clinic has actively encouraged a more experimental approach to policy, allowing students to propose alternative legal solutions and explore the process of law drafting. This innovative approach fosters a level of creativity that traditional legal clinics might not encompass. Moreover, students begin to understand the wider forces at play, the decision-making process behind pieces of legislation, and that law does not operate in a vacuum.<sup>60</sup>

Most importantly, students are given the chance to become themselves decision-makers in this space, developing an understanding of the shortcomings of existing law and in turn providing their own recommendations for reform. Ultimately, the students really are given the chance to ‘make their voices heard and contribute to how the law can be, not just how it is already’.<sup>61</sup>

### **Student Experience**

Research conducted by McConnell suggests a diversity of experience by students with clinical education, where ‘some students perceived that they had developed commercial awareness in clinic and that some developed it more than others’.<sup>62</sup> There is no doubt that in the past year’s cohort, students have had varied experiences with

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<sup>60</sup> Dunn et al (2020), p 68

<sup>61</sup> *Ibid*, p 69

<sup>62</sup> S McConnell, 'A Study of Supervisor and Student Views on the Role of Clinical Legal Education in Developing Commercial Awareness' (2022) IJCLE 61 61

the Clinic. However, in each cohort, the same pattern emerged. The students were often hesitant at first, but once reassured that there was not necessarily any correct answer to the questions their own analysis had raised, and in the absence of any formal assessment forming part of their degree courses, they felt increasingly able to provide potential solutions for discussion within the group. In time, student noted the value of learning 'communication with policy makers and gain[ing] their views'. These reflections paint a picture of students who are coming to terms with the fact that the law is created, written, shaped, influences, and implemented by real people, and that they, too, have a role in a system in which the law is constantly changing.

Crucially, when we asked students from the 2022/2023 cohort about their future career choices, one student responded that, while they are more interested in working in the commercial sector, they 'really enjoyed having the power and knowledge to change / reinforce policies', while another noted that while they were more interested in advocacy, their involvement in the project has allowed them to better interpret the law. One student observed that 'having an insight into both law and policy has helped [them] recognise the limits of both.' These reflections show these projects are going some way in preparing students not just for a career in law, or indeed for a career in environmental law, but is providing them with the skills needed in any variety of vocations they might be passionate about.<sup>63</sup>

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<sup>63</sup> Responses from students in the 2022/2023 cohort. Reproduced here with permission.

In 1950, Gower argued that 'every lawyer, whether he devotes himself to private practice or the public service, has to make policy decisions demanding a knowledge of economics, political science and sociology, and that somehow an attempt should be made to teach him something about them.'<sup>64</sup> The current Cardiff cases outlined above regarding FOI, climate, hedgerows and Palestine are examples of this reality being taken seriously by the Clinic. On reflections of the past year's work, one student said that it would be useful as 'legal practitioners should strive to create laws that are coherent with policy' and that, 'by understanding the policy reasoning, it allows us to interpret the law in a socio-legal way.'

### **Reflections on Environmental Justice**

One of the most remarkable aspects of the Cardiff Environmental Project, and the Clinic as a whole, is that it is, for the most part, underpinned by volunteers – whether this is internal staff committing more time than allocated, external staff contributing on a true 'pro bono' basis, or, of course, students. It goes without saying that, particularly in the early days of creating a clinical portfolio, many academic staff, keen students, and supportive pro bono practitioners go over and above to make a clinic work. Weekends sometimes merge into weekdays, and with it a lot of mutual goodwill is generated and appreciated, often with and by alumni. This remains central to the success of a clinic. The Clinic's contribution to overturning miscarriage of justice cases is not just exceptional in its own right, but even more so in that, compared to

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<sup>64</sup> Gower, p 170

similar clinics, it has continuously and consistently been underfunded, especially when considering the amount of output – measurable in terms of referrals, and in terms of invaluable support to victims and their families - it has provided.

However, the intrinsic value of clinical work in harbouring this passion for pushing the boundaries of the law in a pursuit to address real social and environmental injustices must be finely balanced against the values of higher education measured in economic terms, both for the university in sustaining a clinic financially, and for students faced with an already competitive job market in law<sup>65</sup> as well as the increasingly competitive graduate market,<sup>66</sup> all while making student debt feel worth it.<sup>67</sup> This balance is captured in perennial tensions, and has at Cardiff played out primarily in the discussion of voluntary contributions, by both staff and students, on which the Clinic has had to rely.

In the Cardiff Environmental Law and Policy Clinic, much of the early work was rather loosely funded, if funded at all. Some came under co-author 2's 'Collegiality' workload bundle, but much was led by co-author 3, who gave time pro bono prior to fractional employment. This enabled the Clinic to bring proceedings on behalf of a

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<sup>65</sup> In 2021/2022, the number of total law graduates was 19,913, with 14,751 second class graduates and 4,417 first class graduates. The number of traineeships available in 2021/2022 was 4,952. See Law Society Report, footnote 54.

<sup>66</sup> Institute of Student Employers found that graduate applications per vacancy increased through 2023, with an increase of 38%, with an average of 86 applications per vacancy. 'ISE Recruitment Survey 2023' [https://ise.org.uk/page/ISE\\_Recruitment\\_Survey\\_2023](https://ise.org.uk/page/ISE_Recruitment_Survey_2023) accessed 28 January 2022.

<sup>67</sup> The cap on student loan interest rates were increased by 7.5% in December 2023, the highest level ever. See: P Bolton, 'Student Loan Statistics', House of Commons Library, 1 December 2023 <https://commonslibrary.parliament.uk/research-briefings/sn01079/>.

client against the UK in respect of nuclear waste. Without voluntary efforts the case would not have been brought. Likewise, in the Palestine project, the university funded the travel costs to Palestine, whilst the client supplied accommodation, some food and local transport. But students and staff gave their unpaid time. The project would not have taken place without the volunteer element. Even with the Hedgerow project, which received funding from the client, much of the labour on both the students' and staff side was given gratuitously.

To some extent, the flexibility afforded through an informal build on voluntary contributions allows the Clinic to consider cases that would not, despite obvious injustices, make it past the cost/benefit assessment of a law firm, and highlights the real value that clinics can add to achieving social and environmental justice. While the consistent stream of voluntary contributions in Cardiff tells a remarkable story about the Clinic itself, and the generosity of voluntary contributions is invaluable, we feel it is critical to acknowledge the real risks of a clinic *relying* on a model that has no funding for sustaining it. This reliance brings forth real issues regarding both internal structures within the university space as well as wider systemic issues prevalent in the pro bono work and of particular concern when moving in the environmental sector.

### *Internal Structures*

For one, there can be institutional non-recognition of the significant extra time it takes to run activities that involve both student learning, facilitating their ongoing

reflection, and maintaining a professional and efficient relationship with clients and prospective clients. In a higher education landscape that increasingly utilises non-flexible workload allocation models to dictate a sometimes unreasonable hours/minutes time framework for academic roles, there is less room for colleagues to devote their valuable time to work that is not recognised by their employer. Sometimes it can be positively framed under a civic mission or engagement banner with its own time allowance, but that's not always the case, and colleagues on Teaching and Scholarship contracts often find themselves using the Scholarship element to try to develop clinical activity linked to their own interests.

This leads to a further, critical, question of the voluntary contributions of students at the centre of the Clinic. 'To assess or not to assess' is a regular discussion for clinicians. The revised QAA Benchmark statement in Law makes a clear feature of the importance of Law in society, and the impact of Pro Bono activity within it.<sup>68</sup> On the one hand, credit-bearing clinical activity has to attract core teaching funding. But many employers want to see students "going over and above" their studies. So most law schools provide a balance of assessed and voluntary opportunities. The latest survey conducted by LawWorks and the Clinical Legal Education Organisation shows that 77 of 78 responding UK law schools had clinical provision.<sup>69</sup> The survey ranked

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<sup>68</sup> QAA Subject Benchmark Statement – Law (March 2023) (especially para 2.8 and 3.7).

<sup>69</sup> Law School Pro Bono and Clinic Report 2020 – [LawWorks Law Schools Report 2020\\_0.pdf](#).

educational value and employability as very important for around 90% of respondents, but 71% also ranked social justice as very important.

Above all, the question of voluntary contributions on behalf of both staff and students perpetuates barriers to accessing the sector; arranged around the academic timetable of students, and in part also aligned with other commitments of staff, the Clinic runs in the evening, from around 5pm onwards, immediately excluding those with family commitments. The issue of timing also raises a wider question of access – the Clinic, built around voluntary contributions, is only really accessible to teaching staff with jobs flexible enough to allow this additional commitment, and, more crucially, only open to those students who have the financial security to not need to spend this time with a part-time, paid job to support themselves.

The success of the Cardiff Clinic as a whole, built as it is on generous contributions of passionate practitioners, academics and current (sometimes even former) students, is a story we are proud of. But as with other clinics,<sup>70</sup> a lack of adequate, strategic funding has hampered medium-term planning and has led, necessarily, to ad hoc reactionary decisions about student numbers and about which schemes will run year-on-year, often at short notice. Ultimately, this also undermines the ambitions of the Clinic in delivering valuable work for clients and genuine work experience to

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<sup>70</sup> M Katz, 'Understanding the Costs of Experiential Legal Education' (2015) 1(1) *Journal of Experiential Learning* 28.

students.<sup>71</sup> But, ironically, our very success story can have a perverse consequence: the Clinic shooting itself in its volunteer foot when it has to persuade institutional budget holders that core funding is essential for sustainability and scalability.

### *Systemic Issues*

The Clinic as such, immediately and inevitably, excludes everyone else. This is a particular concern in the environmental sector, which is already under heavy criticism for being inaccessible, and, as a sector, has a complicated and indeed uncomfortable contemporary culture of being exclusive. This systemic challenge of the environmental sector in the UK pervades both across conservation as a knowledge base,<sup>72</sup> as well as the sector itself, which has been found to be the second least diverse sector in the UK, after Farming.<sup>73</sup>

The exclusivity of this sector is particularly sensitive given the role of conservation in colonial exploitation, both in resource exploitation and environmentally degrading practices on the one hand, and conservation practices that excluded indigenous

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<sup>71</sup> T Mkwebu, 'Unpacking Clinical Scholarship: Why Clinics Start and How They Last' (2016) 4(1) *Asian Journal of Legal Education*. See also, Mkwebu, 'A Systematic Review of Literature on Clinical Legal Education' (2015) 22(3) *International Journal of Clinical Legal Education* 238-274.

<sup>72</sup> L F Rudd et al., 'Overcoming Racism in the Twin Spheres of Conservation Science and Practice' (2021) 288 *Proceedings of the Royal Society B*.

<sup>73</sup> R Norrie, 'The Two Sides of Diversity: Which Are the Most Ethnically Diverse Occupations?' (2017) *Policy Exchange*. <https://policyexchange.org.uk/wp-content/uploads/2017/03/The-two-sides-of-diversity-2.pdf>.



communities from land on the other.<sup>74</sup> This consideration provides a further complexity to the ongoing discourse untangling legal knowledge from its 'euro-modern' origin,<sup>75</sup> as well as the ongoing need to tackle a lack of diversity within higher education.<sup>76</sup>

The reliance on informality provided through voluntary contributions by both staff and students, of course, also carries risks. For example, the Hedgerows Project unfolded without any clear contractual framework as to how the work would be done. When unpacked, this is linked to the reputation of the University and its employees (and quality of students in a 'Russell Group' Law School). The 'upside' of this is that the projects can proceed speedily, with flexibility. They can be responsive to evolving circumstances. And, fortunately, from feedback, the clients have been satisfied with the results.

In the case of the Palestine project, the inherent risks had to be explicitly acknowledged and acted on in the form of a risk assessment. The Clinic was required to follow Foreign Office guidance in sticking to territory within Palestine which it was safe to visit. Yet the assessment was generic, rather than tailored to the project. Much, therefore, again relied on trust, as some risks were difficult to fit within the

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<sup>74</sup> R Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600–1860* (Cambridge University Press, 1995).

<sup>75</sup> F Adebisi, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (Bristol University Press, 2023).

<sup>76</sup> UUK 2020. Equality, Diversity and Inclusion last Accessed February 2023 <https://www.universitiesuk.ac.uk/topics/equality-diversity-and-inclusion?pageREportSummary=2>.

University's assessment template. That is particularly true of the 'political' and 'emotional' risks arising from a historical and contemporary 'white saviour industrial complex' often associated with British volunteers working on addressing post-colonial problems in situ.<sup>77</sup>

Moreover, returning to the issue of the Clinic in the context of wider structural issues, as Bethany Elce explains in her doctoral thesis devoted to British human rights activism in Palestine,<sup>78</sup> British volunteers are liable to being seen by Palestinians as part of the colonial problem out of which the occupation – and its human rights legacy – has arisen. Applied to our case, when that volunteer is a student working within a Welsh Law and Policy Clinic, issues of 'safety' extend beyond risk of physical harm.<sup>79</sup>

While internal structures continue to provide financial limitations for the future of the Clinic as it stands, especially as a clinic set out to achieve social and environmental justice, it feels imperative for us to acknowledge the real risks associated within the wider systemic context, both on a personal level in excluding those with less privilege

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<sup>77</sup> T Cole, 'The White-Savior Industrial Complex' *The Atlantic*, 21 March 2012. <https://www.theatlantic.com/international/archive/2012/03/the-white-savior-industrial-complex/254843/>. (accessed on 01 February 2024). See also: D Gillborn, 'Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform' (2005) 20 *J. Educ. Policy* 485-505 and Joe Flaherty, *No More Heroes: Grassroots Challenges to the Savior Mentality* (AK Press, Edinburgh, UK, 2016), noting on specifically the complex history and US and global relationship with Palestine as a key target for white saviourism.

<sup>78</sup> Bethany Elce, *The Accompanied and the Accompanier in Occupied Palestine: Human Rights Activism and the Self who Intervenes*, PhD Thesis Submitted to SOAS, 2023.

<sup>79</sup> The clinician here is having to grapple with profound questions of collective and personal responsibility, arising from their being 'implicated subjects (Bethany Elce, 'The Balfour Conversations: British human rights activists and the call to reckon with implication' (2022) *International Journal of Postcolonial Study* 1)

and in perpetuating the real challenge of engaging with environmental issues – locally and internationally – in a conscientious way. If acknowledged, and addressed, clinical education, especially when situated within socio-legal academic environment as in Cardiff, allow for real ‘room to break these seals’<sup>80</sup>.

### Teaching the Lawyers of the Future

The value that clinics add to wider communities has long been established with reference to their ability to ‘fill the gap’ that law firms and other providers of legal advice leave in what are primarily social justice concerns: housing, care, unsafe convictions.<sup>81</sup> In turn, Nicolson names the creation of social justice lawyers as one of the ‘principal pedagogical goal[s]’ of clinical legal education.<sup>82</sup>

The experiential – and, in the case of the Cardiff Clinic, often experimental – approach appears crucial in achieving this pedagogical goal by empowering students to apply and interrogate legal principles within a wider social – end environmental – justice context,<sup>83</sup> and ultimately fosters a real ‘social justice ethos’.<sup>84</sup> Such an educational

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<sup>80</sup> Adebisi, p 2

<sup>81</sup> L Bengtsson and A Speed, 'A Case Study Approach: Legal Outreach Clinics at Northumbria University' (2019) 26 *International Journal of Clinical Legal Education* 179. See also: R Voyvodic and M Medcalf, 'Advancing Social Justice through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor' (2004) 14 *Washington University Journal of Law and Policy* 101-132; J MacFarlane, 'Bringing the Clinic into the 21st Century' (2009) 27(1) *Windsor Yearbook of Access to Justice* 35; P McKeown, 'Can Social Justice Values be Taught Through Clinical Legal Education?' in *Social Justice and Legal Education* (Cambridge Scholars Publishing, 2018) 84-110; F Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011).

<sup>82</sup> D Nicolson, 'Our Roots Began in (South) Africa: Modelling Law Clinics to Maximize Social Justice Ends' (2016) 23(3) *International Journal of Clinical Legal Education* 87-136.

<sup>83</sup> T Mkwebu, 'Research on Clinical Legal Education: Unpacking the Evidence' in *The Clinical Legal Education Handbook* (Institute of Advanced Legal Studies, 2019).

<sup>84</sup> Dunn, Bengtsson and McConnell: Building a policy clinic network: from the field: (p. 246)

approach is anchored in experiential learning, which not only empowers students to apply and interrogate legal principles within a wider social justice context but also enables them to see the real-world impact of their work. Crucial to this experience, however, is not just the teaching of a rights-based values system, but the conveying of the skills, knowledge, and confidence needed for students to themselves be able to deconstruct values and value systems.<sup>85</sup>

One student on the FOI project who reflected that it was valuable to learn ‘how legislation overlaps and how it can be omitted or manipulated by extending deadlines by using ambiguity’ was a useful insight, while a student on the Hedgerow project noted that it was useful to understand ‘the difficulty in reality outside the black and white letter law’. The student also observed that it is was useful to learn ‘the interpretation of the law in practice and its impact.’

This speaks to a more personal and – although less tangible - perhaps more valuable output of the Clinic: the ability of a student to be allowed to take ownership of their own work, not accountable to a tutor or a grade, but to a system operating in ‘the real world’. Allowing students to measure themselves against the expectations of the real work, and watching them, in some cases, go beyond those expectations, is a teaching experience that goes beyond the academic, allowing students to contribute to ‘how the

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<sup>85</sup> P McKeown and E Hall, 'If We Could Instill Social Justice Values through Clinical Legal Education, Should We?' (2018) 5(1) *Journal of International and Comparative Law* 143-180.

law can be, not just how it is',<sup>86</sup> and build the foundations for socially- and environmentally-conscious lawyers of the future.

This pedagogical approach is particularly pertinent in the context of an unfolding global environmental crisis, as well as the precarious governance systems at the centre of holding to account those who perpetuate this crisis, including basic access to information as outlined above, which leave an increasingly grave role for future lawyers, and the clinics who train the lawyers of the future, to fill the emerging and expanding gaps in environmental justice.<sup>87</sup>

## Conclusion

The Cardiff 'story' around the environment and clinical legal education described above has been one of strategic, yet organic, evolution. Much of it is unique, and necessarily so. The projects highlighted owe almost everything to the personalities involved, the 'local' problems and opportunities which have presented themselves,

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<sup>86</sup> Dunn, Bengtsson and McConnell, p. 246

<sup>87</sup> In 2018, the International Panel on Climate Change (IPCC) published its report on limiting global emissions to 1.5C. The panel concluded that emissions would have to "decline by about 45% by 2030 and reach a net zero around 2050. Access: [Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments – IPCC](#). In 2019, the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES) published its report on the unprecedented decline of species and the real risk of ecosystem collapse. The new Global Biodiversity Framework sets out to halt the decline of biodiversity by 2030 and reverse biodiversity loss by 2050. Access: [Global Assessment Report on Biodiversity and Ecosystem Services | IPBES secretariat](#). In 2021, the IPCC and the IPBES published their first joint report to highlight the need to tackle the nature and the climate crisis as one. Access: [20210609\\_workshop\\_report\\_embargo\\_3pm\\_CEST\\_10\\_june\\_0.pdf \(ipbes.net\)](#). At the same time, the UN Environment Programme has found that the number of climate change cases to hold governments and the private sector to account has more than doubled since 2017. See: Sabin Center for Climate Change Law, 'Global Climate Litigation Report: 2023 Status Review' (July 2023) Access: <https://climatecasechart.com/>

and the resources at the Clinic's disposal, whether that be the students, the University (in allocating limited funds), the staff who have given their time, and the clients who have placed trust in the Clinic.

As a result of letting the Clinic evolve more by accident than design, steering into the opportunities that present themselves, not all of our activities fit neatly under a traditional law clinic or policy clinic banner. Some are hybrids and might even be seen as non-assessed extensions to other typical undergraduate law modules. All, however, contribute to a dynamic, wide-ranging clinical portfolio open to students. Nevertheless, what has appeared to the outside as a 'strategic' shift in the Clinic's focus from 'law' to 'policy', has been of general interest. While the value of integrating policy into legal education has been long recognised, the experience in Cardiff of a Clinic evolving from law into policy in a circumstantial, rather than designed, way, is not an unusual one. In fact, reflecting on the past years, it is difficult to see how the dynamic could have been otherwise, given the circumstances at hand.

Students, least of all, care about labels, provided the activities are enjoyable and enhance their employability – so who needs labels? Indeed, if we paid more attention to classification of 'law' or 'policy' clinic, the latter might result in a more difficult recruitment exercise for us, given traditional student enthusiasm to acquire 'law clinic' experience. Might there be more reluctance for students to sign up for 'policy' clinic opportunities? Strict labels – or models, as it were – run the risk of creating a false

dichotomy, and would itself undermine the very assumption that law and policy go hand in hand.

One student observed that 'studying and practising law on its own [...] began to feel tiresome. Indulging in policy has made me appreciate law again and feel rejuvenated in my decision to study law.' Regardless of label, what the Clinic has so successfully done is develop a real experience in exposing weaknesses in current environmental law, and empowering students to put forward recommendations for real legal change.

Looking ahead to the 2023/2024 academic year, increasing student numbers within a School that has combined Law with Politics and International Relations means that pragmatism prevails for our clinical offerings. Annual internal forces, such as changes in leadership and ongoing financial constraints, and well as current external factors, such as changes to Qualifying Work Experience under the Solicitors' Qualifying Examination regime, will no doubt have an impact on the future of the Clinic.

And amongst all of this, current resourcing and size means that our clinical portfolio has reached a perfect watershed. As we look to the future of the Clinic, perhaps the only thing we can know for certain is that it will continue to evolve - perhaps by strategic accident, as it always has.

## “TRAINING IS EVERYTHING” HOW TO PREPARE STUDENTS FOR POLICY CLINIC PROJECTS

Liz Hardie, The Open University

### **Abstract**

As more students carry out policy work as part of their law degrees, the different skills needed for policy work have become clearer. Policy work differs from traditional legal studies in a number of key ways, and so requires different, or more developed, skills to effectively participate and engage in projects. This article reviews the literature on the skills required for policy work. It summarises the evaluation of the online training provided to Open University policy clinic students in 2022-23, analysing the attendance and engagement data and the findings of a student survey to draw conclusions about the value and effectiveness of the training.

In order for law students to carry out policy work, there is a need for training in policy research and analysis skills and the research suggested students found this of value. Whilst the literature suggested the need for further communication skills training, it was not possible to reach an evidenced conclusion about this from the research. Students expressed a strong preference for online synchronous training sessions provided at the start of a project. The recording of those sessions allowed students to re-visit the training throughout the project as and when needed, which was of value to them.



## Introduction

The above quote from Mark Twain<sup>1</sup> reminds academics of the importance of preparing students effectively for policy clinic work. The evolution of clinical legal education to include policy work has led to a re-evaluation of the training needed as students need to develop a different range of skills to work on policy projects.<sup>2</sup> Many students are strategic learners and therefore choose carefully which learning to engage with,<sup>3</sup> and this can be amplified when they are time poor (for example, managing their studies alongside employment and other commitments).<sup>4</sup> Having a greater understanding of the skills required for policy work enables supervisors to target their training at the skills which students lack and to communicate the need for the training clearly to students, as well as contributing to a more efficient and effective project.

Policy and advocacy work within Law Schools can take many forms, from voluntary extra-curricular activities (such as responding to consultation papers), policy work incorporated into an already established module (such as a report on an area of law

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<sup>1</sup> "Training is everything. The peach was once a bitter almond; cauliflower is nothing but cabbage with a college education" Mark Twain, Pudd'nhead Wilson's Calendar in Pudd'nhead Wilson (1894), <https://libquotes.com/mark-twain/quote/lbw7w1b> (accessed 12-01-23).

<sup>2</sup> Dunn, R. and Glancey, R. 'Using legal policy and law reform as assessment.' in Bone, A. and Maharg, P. (eds) *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press 2019) p.143

<sup>3</sup> Weinstein, C.E., 'Strategic learning/strategic teaching: Flip sides of a coin' in Pintrich, P.R., Brown, D.R. and Weinstein, C.E. *Student motivation, cognition, and learning: Essays in honor of Wilbert J. McKeachie* (Routledge 1994) p.258

<sup>4</sup> Xavier, M. and Meneses, J. 'Persistence and time challenges in an open online university: a case study of the experiences of first-year learners', [2022] *International Journal of Educational Technology in Higher Education*, 19(1), pp. 1–17.

needing reform) through to a credit bearing policy reform modules.<sup>5</sup> At the Open University our online policy clinic, established in 2019, is part of a final undergraduate year credit bearing module. Students work in small groups to carry out empirical legal research for external organisations, with the ultimate aim of influencing policy and/or law reform.<sup>6</sup> Students undertake a literature review of the topic, carry out the empirical research, analyse it and propose recommendations for law reform. The research, analysis and recommendations are written up in a report which is provided to the client.

Drawing upon previous literature and an evaluation of the training programme provided for our policy clinic, this article will explore the skills needed to work in a policy clinic and the most effective training to support the development of those skills within a policy clinic in an online setting. From this conclusions have been reached regarding both the substantive topics which need to be covered by policy clinic training and the best methods of providing this training. However some of the findings and recommendations could be transferred to policy clinics using other modes of delivery (hybrid or face to face).

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<sup>5</sup> Dunn, R., Bengtsson, L., and McConnell, S. 'Building policy clinic network Cleo workshop 13th May 2021' [2021] *International Journal of Clinical Legal Education*, 28(1), p244

<sup>6</sup> Dunn, R., Bengtsson, L., & McConnell, S. 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students'. [2020] *International Journal of Clinical Legal Education*, 27(2), p68.

## Policy clinics and skills

Skills teaching within university degrees has a mixed and inconsistent history, initially being largely left to the vocational stage of training, while university degrees tended to focus on a liberal arts curriculum emphasising critical evaluation skills.<sup>7</sup> From the 1970s onwards there was increasing pressure to introduce more generic skills training and practical employability skills into the curriculum.<sup>8</sup> The introduction of the Legal Practice Course and Bar Vocational Course in the 1990s accelerated the incorporation of skills teaching into the law curriculum, although it was inconsistent and unregulated.<sup>9</sup>

Some consistency was encouraged by the 2013 Legal Education and Training Review (which set out a number of recommendations for core knowledge and skills of legal education training and services) and the introduction of the QAA's Benchmark statements. These reports and recommendations have almost universally

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<sup>7</sup> Slapper, G. 'The History of Legal Education' [2011] *Journal Of Commonwealth Law And Legal Education* vol 8(1); Giddings, J., Burrridge, R., Gavigan, S.A.M. and Klein, C.F. 'The first wave of modern clinical legal education: The United States, Britain, Canada, and Australia' in Bloch, F.S. (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice*. (Oxford University Press 2011) p.6

<sup>8</sup> Boon, A. 'History is Past Politics: A Critique of the Legal Skills Movement in England and Wales', [1998] *Journal of law and society*, 25(1), p.158

<sup>9</sup> Boon, A. 'History is Past Politics: A Critique of the Legal Skills Movement in England and Wales', [1998] *Journal of law and society*, 25(1), p139

recommended the development of skills required to work in the legal profession, and the adoption of clinical legal education approaches.<sup>10</sup>

Clinical legal education (CLE) is distinctive in its emphasis on providing professional skills training and instilling professional values of public responsibility and social justice, through the methodology of experiential learning.<sup>11</sup> The inclusion of CLE into law degrees also offered an opportunity to focus on students' employability skills and improve students' opportunities of obtaining graduate employment.<sup>12</sup> A LawWorks survey in 2014 of clinical activity in the UK found that CLE was primarily carried out through law clinics and public legal education projects, involving advising a member of the public on a legal query or providing legal education on a specific area of law to the public.<sup>13</sup> A survey of law clinics in three different countries found that participation in the clinic improved a number of employability skills including problem solving, writing, speaking, thinking and collaborative skills.<sup>14</sup> In putting their

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<sup>10</sup> Giddings, J., BurrIDGE, R., GAVIGAN, S.A.M. and Klein, C.F. 'The first wave of modern clinical legal education: The United States, Britain, Canada, and Australia' in Bloch, F.S. (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice*. (Oxford University Press 2011) p.17

<sup>11</sup> Bloch, F.S. and Madhava Menon, N.R. 'The global clinical movement' in Bloch, F.S. (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice*. (Oxford University Press 2011) p.269

<sup>12</sup> Hardie, E., McFaul, H. and Ryan, F. '50 years of Clinical Legal Education; Looking Back to the Future', in Claydon, L., Derry, C. and Ajevski, M. (eds) *Law in Motion: 50 Years of Legal Change* (Open University 2020) p215

<sup>13</sup> Carney, D., Dignan, F., Grimes, R., Kelly, G. and Parker, R. 'The LawWorks Law School Pro Bono and Clinic Report 2014' (LawWorks, 2014). < <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> > accessed 26 January 2024, p4

<sup>14</sup> Cantatore, F., McQuoid-Mason, D, Geldres-Weiss V. and Guajardo-Puga J.C. 'A comparative study into legal education and graduate employability skills in law students through pro bono law clinics' [2021] *The Law Teacher* 55:3, p.332

legal knowledge into practice, students are also exposed to the ethical constructs and rules that confine the practice of law.<sup>15</sup>

However policy work has a different focus: rather than using legal knowledge to provide legal information to the public, students use their knowledge to suggest reforms to the law, making it more responsive to the needs of the community that lawyers serve.<sup>16</sup> Traditionally many Law Schools focus on teaching law students to ‘think like a lawyer’ which has led to a situation where “law reform and legal education have traditionally been separate worlds, rarely in danger of collision or even constructive combination”.<sup>17</sup> Ross argues that law schools should be facilitating the development of “citizens of the world” who “know how to think” through exposing students to the key policy debates in each area of the law, with some non-legal data that gives insight into the directions those debates might head.<sup>18</sup> This is a valuable employability skill for lawyers: Coper argues that “the best and most effective lawyers .... are those with a deep understanding of the law and the legal system”.<sup>19</sup> Indeed,

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<sup>15</sup> Duncan, N. and Kay, S.I. ‘Addressing lawyer competence, ethics, and professionalism’ in Bloch, F.S. (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice*. (Oxford University Press 2011) p183

<sup>16</sup> McCrimmon, L. and Santow, E. ‘Justice education, law reform, and the clinical method’ in Bloch, F.S. (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice*. (Oxford University Press 2011) p223

<sup>17</sup> Coper, M. ‘Law reform and legal education: uniting separate worlds’ [2008] *University of Toledo Law Review*, 39(2) p.233

<sup>18</sup> Ross, N.J. ‘Beyond skills and doctrine : the need for policy skills and interdisciplinarity’. [2017] *Victoria University of Wellington Law Review*, 48(2) p.362

<sup>19</sup> Coper, M. ‘Law reform and legal education: uniting separate worlds’ [2008] *University of Toledo Law Review*, 39(2) p.237

Lady Hale made the same point when reflecting on the way in which her time at the Law Commission prepared her for her work as a Supreme Court judge.<sup>20</sup>

Identification of the additional skills required for policy clinic work is based on literature from the field of policy analysis, which emerged as a standalone discipline with its own degree programs since the 1970s, initially in America and then in other countries.<sup>21</sup> Policy analysis involves assessing the underlying problem, identifying possible solutions (including maintaining current policy) and providing a recommendation after a systematic assessment of the alternatives.<sup>22</sup> This is very similar to the task students are asked to complete within policy clinics. The skills taught within policy analysis qualifications include problem definition and data collection, stakeholder identification, a rationale for government involvement, evaluation criteria, identification and analysis of policy alternatives, and a recommendation.<sup>23</sup>

Some of these skills are required for legal academic study: problem definition, evaluation, identification of alternatives and making a recommendation are all part of the Law Benchmark Statement. As the majority of policy clinics take place at FHEQ6,

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<sup>20</sup> Hale, B. 'Impact in the Courts'. Impact and Law Reform Conference 2019 (*Supreme Court*, 2019) <https://www.supremecourt.uk/docs/speech-190611.pdf> accessed 26 January 2024

<sup>21</sup> Coulthart, S. 'What's the problem? Frameworks and methods from policy analysis for analyzing complex problems', [2017] *Intelligence and National Security*, 32:5, p637

<sup>22</sup> Weimer, D.L. 'The Universal and the Particular in Policy Analysis and Training' [2012] *Journal of Comparative Policy Analysis: Research and Practice*, 14:1, p.3

<sup>23</sup> Durrance, C.P. 'Teaching public policy analysis: Lessons from the field', [2022] *The Journal of Economic Education*, 53:2, p143

these skills are likely to have already been introduced within a law degree; the Benchmark Statement describes a progressive attainment of skills at each level.

However other skills identified by Durrance such as data collection, stakeholder identification, a rationale for government involvement and analysis of policy alternatives are not routinely included in law degrees and do not form part of the Benchmark Statement for Law. The first skill which may be new to students is data collection, or empirical research. Students may need to develop their research skills beyond traditional legal doctrinal research to understand the different methodologies available and research ethics, for example if they are carrying out focus groups or interviews.<sup>24</sup> Dunn and Glancey noted that law students may find it relatively easy to look up what the law is currently, but harder to gather research on what needs changing to make it better.<sup>25</sup> Students will therefore need enhanced research skills (or an understanding of data collection by the clinician, depending on the methodology adopted).

As well as training on data collection or research methods, an analysis of policy alternatives is not routinely included within law degrees. In order to articulate policy alternatives and make a reasoned recommendation, students will need to consider the role of values. Aiken expresses concern that too often the message that students

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<sup>24</sup> Dunn, R., Bengtsson, L., & McConnell, S. 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students'. [2020] *International Journal of Clinical Legal Education*, 27(2), p81.

<sup>25</sup> Dunn, R. and Glancey, R. 'Using legal policy and law reform as assessment.' in Bone, A. and Maharg, P. (eds) *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press 2019) p.144

receive is that justice is merely the product of the application of neutral rules.<sup>26</sup> This is challenged by policy work, where students have to identify how values have influenced the policy behind the development of the law and agree what principles should underpin suggestions for reform. Students may therefore have to consider more abstract ideas such as justice or fairness. Whilst this can be challenging for students, questioning what the law should be can lead students to develop a social justice ethos.<sup>27</sup>

As well as an enhanced focus on values, an analysis of policy alternatives involves understanding the policy implications of changing the law.<sup>28</sup> Students must analyse arguments about the policy which the statute should be based on, in order to demonstrate that what is proposed will be better than what went before. They also need to take into account the views and experiences of relevant stakeholders. As most law reform in the UK is carried out by statute, this requires a focus on the design of statutes rather than common law methodology.<sup>29</sup> Policy clinic work involving empirical data may also require analysis methods derived from the social sciences

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<sup>26</sup> Aiken cited in Curran, L. 'University Law Clinics and their value in undertaking client-centred law reform to provide advice for clients' experiences' [2007] *International Journal of Clinical Legal Education* Volume 12, p127

<sup>27</sup> Dunn, R., Bengtsson, L., and McConnell, S. 'Building policy clinic network Cleo workshop 13th May 2021' [2021] *International Journal of Clinical Legal Education*, 28(1), p245

<sup>28</sup> Hale, B. 'Impact in the Courts'. Impact and Law Reform Conference 2019 (*Supreme Court*, 2019) <https://www.supremecourt.uk/docs/speech-190611.pdf> accessed 26 January 2024 p.1

<sup>29</sup> Palmer 2015 cited in Ross, N.J. 'Beyond skills and doctrine: the need for policy skills and interdisciplinarity' [2017] *Victoria University of Wellington Law Review*, 48(2) p.362



(such as statistical analysis or a thematic approach) in place of more traditional doctrinal legal analysis.<sup>30</sup>

Finally, communication has been highlighted as an important skill needed for policy work. An initial evaluation of the policy clinic at Northumbria University noted that students considered their written communication skills had been 'really put to the test'.<sup>31</sup> Reporting on their research, analysis and recommendations will involve communicating in a style different from what students may be used to. For example, responding to consultation papers requires students to write for a different and more technical audience.<sup>32</sup> A policy clinic report must be detailed enough to address the concerns of those with an in-depth knowledge of the area being considered, yet written in a style that can be understood easily by decision-makers and members of the public.<sup>33</sup>

When we set up the policy clinic in 2019, we initially provided additional training on an ad hoc basis, believing that most of the skills needed would already be possessed by the final year students. This proved to be both an overestimation of the students' skills level and an underestimation of the distinct nature of the skills required for

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<sup>30</sup> Coulthart, S. 'What's the problem? Frameworks and methods from policy analysis for analyzing complex problems', [2017] *Intelligence and National Security*, 32:5, p637

<sup>31</sup> Dunn, R., Bengtsson, L., & McConnell, S. 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students'. [2020] *International Journal of Clinical Legal Education*, 27(2), p87

<sup>32</sup> Dunn, R. and Glancey, R. 'Using legal policy and law reform as assessment.' in Bone, A. and Maharg, P. (eds) *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press 2019) p.144

<sup>33</sup> McCrimmon, L. and Santow, E. 'Justice education, law reform, and the clinical method' in Bloch, F.S. (ed) *The Global Clinical Movement: Educating Lawyers for Social Justice*. (Oxford University Press 2011) p215

policy work. Over the next three years we worked on an evolving and developing training programme for students. An evaluation of this training in 2022-23 has highlighted the value students place upon the different training elements and their views on the most effective ways of providing this training.

### **Case study: Open University online policy clinic**

The Open University is the largest university in the UK with over 160,000 students in 2020-21 (equating to 44% of UK HE market) and a further 45,000 studying with validated partners. The Open University Law School started in 1998 and has over 7,000 students a year studying at undergraduate, postgraduate and PhD level, primarily in the four nations (England, Wales, Scotland and Northern Ireland) with some living abroad. With an open access policy, our students often have no or low levels of previous educational qualifications (34%) as well as being students with a disability (25%), from deprived communities (26%), or already in work (70%). With this diversity of students, flexibility in when, where and how to study is key to their success and is reflected in our learning design of the policy clinic.

Our students study online at a distance from each other and their tutors. Interactive learning materials are provided through the university VLE for students to study at a time and place to suit them. The materials are designed to be engaging and reflective, containing multiple interactive activities to promote students 'learning by doing'. This

is based on a constructivism learning theory which prioritises students as an active participant in their learning.<sup>34</sup> In addition to these asynchronous teaching materials, students have the opportunity for live synchronous interaction with both tutors and students, sometimes face to face but more frequently using online collaboration tools. Students can also collaborate asynchronously using online forums.

The Law School founded the Open Justice Centre in 2016 to provide opportunities for law students to carry out voluntary pro bono work for members of the public and not-for-profit organisations. The online policy clinic began in 2019 to provide students with an opportunity to carry out research for client organisations. The policy clinic runs between October and April as part of a 30-credit, assessed final year undergraduate optional module. Students work together in small groups to plan and carry out the project and produce a written report in response to a brief from an external organisation. They are assessed on their reflections of their time in the clinic, including what they have learnt about their skills development and the module themes (social justice, professional identity and legal values and ethics).

To provide maximum flexibility for students, the policy clinic is fully online. Students mostly work independently at a time to suit them and from their own homes. Regular online meetings with their group and supervising tutors are held using Teams, usually in the evenings or at weekends. Emails to external bodies are sent from a central

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<sup>34</sup> Elliott, S. N., Kratochwill, T.R., Littlefield Cook, J. and Travers, J. *Educational psychology: Effective teaching, effective learning* (3<sup>rd</sup> ed, McGraw-Hill College 2000)

policy clinic Open University email address. Students work together on documents which are kept securely in a MS Teams shared folder, accessed by all students and staff. Any interviews with stakeholders are carried out online using Teams or Zoom.

During the first four years of its operation, students have worked on ten projects for a variety of client organisations including the Environmental Law Foundation, Scottish Sentencing Council, Royal National Institute for the Blind, Just Rights Scotland (a human rights charity) and the Bridges Programmes (a charity working with migrants, refugees and asylum seekers). We have also worked on projects jointly with Northumbria University policy clinic. Our student's projects have informed the Law Commission's Weddings project and a government consultation on open justice.

The training provided to our students has evolved over the last four years. Initially the training was provided as part of the regular online meetings between students and tutors. However we realised during the first year that this was not sufficient and the students needed more focused training on a wider range of skills to be able to successfully complete the project. As many of our students have other work and caring responsibilities, training also needed to be provided using asynchronous methods to ensure everyone could benefit from it. During 2022-23 we provided a programme of synchronous and asynchronous training to 20 students working on 4 different projects. At the end of the academic year we evaluated the training through analysis of students' engagement with the resources provided and a student survey.

The training provided had evolved organically over the previous four years and in 22-23 included five synchronous online sessions covering different topics (policy clinic briefing; vicarious trauma; research ethics and design; interview plans and practice; and interview analysis). With the exception of the vicarious trauma training, all sessions were designed to be short to accommodate students' busy lives. They were therefore lecture-based followed by a question and answer session. The sessions were carried out in either Adobe Connect (a version of Blackboard which students are familiar with as the platform for Open University online tutorials) or MS Teams. They were led by either one or two of the supervising tutors. All sessions were recorded and the recordings and slides were made available to those who could not attend to listen to at a later date. The vicarious trauma session was longer and interactive, with whole class discussions and interactive activities. Due to the personal nature of the discussion, it was not recorded.

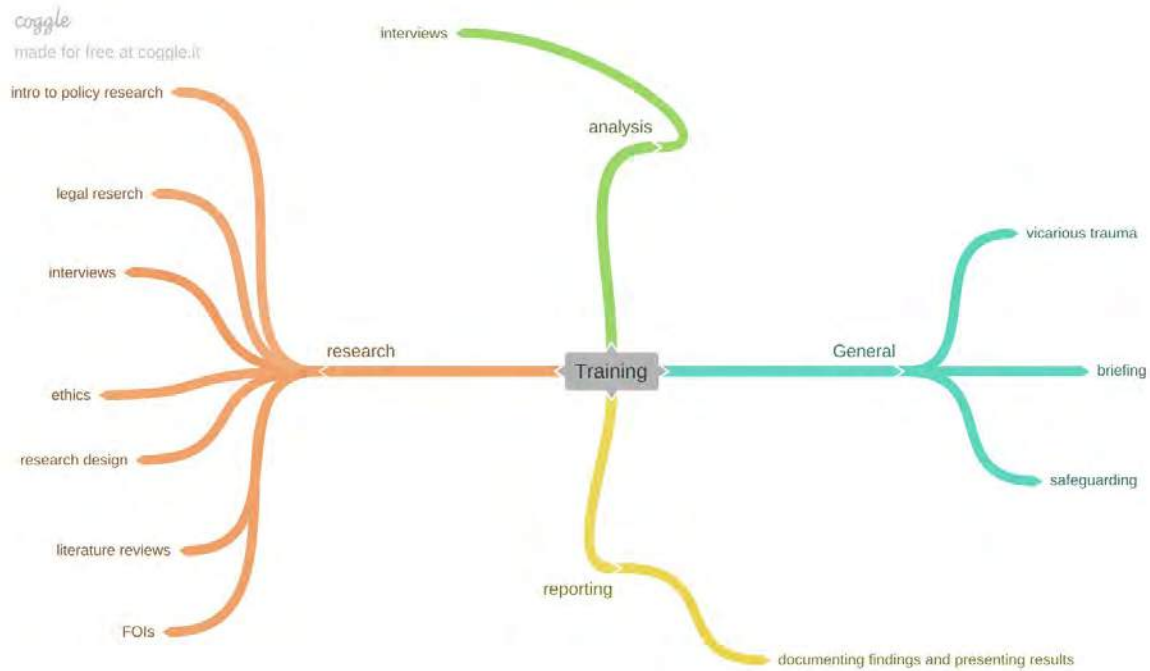
There were also ten asynchronous training resources made available to the students. This included three online courses, four pre-recorded training sessions and three online written units comprising written and interactive materials. All of these could be accessed at any time by the students from their own devices via the internet. The online courses included safeguarding training, legal research, and carrying out a literature review. The recorded sessions covered research for policy and advocacy work, documenting findings and presenting results, Freedom of Information requests,

and literature reviews. The online written units included working as part of a team, interviewing and legal writing, and presentation skills.



Picture 1: Mind map of training by method

When considering the content of the training, nine of the twelve suggestions focused on distinct skills needed for policy work which students had not already developed through their previous legal study. These were identified through the policy clinic tutors' previous experience of delivering the clinic and informal student feedback from previous policy clinic projects. Three of the suggestions were more general. Seven of the suggestions focused on research, with only one training suggested for analysis and one suggested training for communication or reporting. Given the importance of analysis for policy work, this imbalance was something we considered during the evaluation.



Picture 2: Mind map of training by skills

All of the asynchronous training resources were made available to students at the start of their time in the policy clinic. The online training sessions occurred once a week during the first five weeks of the clinic, although the recordings were then available during the remainder of the students' time in the clinic. In addition to the formal training programme, students met regularly with their supervising tutor and could email them with additional questions at any time.

## Evaluation

### Methodology

The training was evaluated through collection of the student attendance and engagement data from MS Teams. This included the number of students attending online synchronous sessions, the number listening to the recordings of synchronous and asynchronous sessions, and the number of students accessing supporting documentation such as agendas and PowerPoint slides. As the training was voluntary, we considered that attendance or engagement with the training suggested that students found it useful and of value.<sup>35</sup>

In addition, we surveyed the 20 students who took part in policy clinic projects in 2022-23 to ascertain their views on the training provided. We considered that a survey had the potential of reaching as many students as possible. All questions were drafted by the research team and were approved by the university's Human Ethics Research Committee. The survey had 17 questions, divided into 5 sections. The first section included a number of closed questions asking students which of the recommended training they had completed, and the reasons they had not engaged with any of it. The second section asked how useful students found the training, using a Likert scale and open questions. We used a Likert scale to compare the responses from different students; although this is subjective and does not always represent how people think, its limited use did enable us to compare students' views.<sup>36</sup> The third section contained a number of open and closed questions about the method and timing of the training.

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<sup>35</sup> Massingham, P., & Herrington, T. 'Does Attendance Matter? An Examination of Student Attitudes, Participation, Performance and Attendance' [2006] *Journal of University Teaching & Learning Practice*, 3(2), 20-42. <https://doi.org/10.53761/1.3.2.3>

<sup>36</sup> Salopek, J. 'Rethinking Likert' [2004] *ProQuest Educational Journals* 58:9 26.



The fourth section had a number of open questions about students' motivations for carrying out policy clinic work whilst the final section had closed questions about the student's background.

#### *Engagement with online sessions*

The online sessions were all held in MS Teams, from which information has been obtained regarding the numbers attending the live session, listening to the recording and viewing the PowerPoint slides and agenda (if available). Information about the vicarious trauma training is limited as attendance data was not available through MS Teams and the session was not recorded. The author was at the session and noted that 14 students attended; however as there is no attendance data to confirm this the attendance data below has been left blank.

There were a total of 20 students who could attend each session. It was not compulsory to attend the sessions. In particular, of the four projects which ran in 2022-23, only two projects (involving 11 students in total) involved interviewing participants as part of the research; the other students did not need to attend the interview plans and interview analysis sessions. With regards to the vicarious trauma training, it was anticipated that only two projects (also involving 11 students) would benefit from the training due to the nature of the projects. However all students were advised of the sessions and able to attend.

Given that these sessions were optional, and the students were time poor, it was expected that they would only attend sessions they felt was relevant to their project and from which they would obtain benefit. Attendance at a session (or engagement through viewing the recording or slides) is therefore taken as an indication that students considered they may need additional development of that skill as preparation for the policy clinic work.

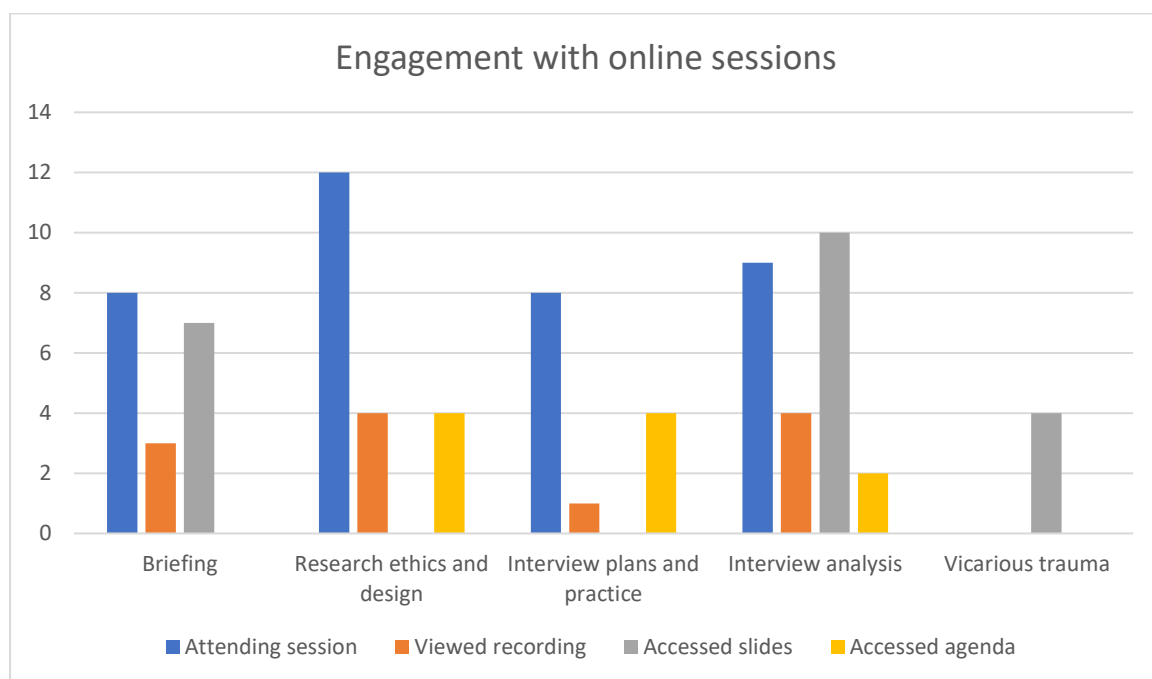


Table 1: Engagement with the online sessions

Most students (12 students) attended the research ethics and design session: this is one of the three training sessions relevant to all of the projects. Nine students attended the interview analysis session and eight students attended the policy clinic briefing and

the interview plans and practice session. Further students engaged through viewing either the recording of the session, the agenda, the PowerPoint slides or a combination of all three.

Amalgamating the number of students attending the session, the number of viewers of the recording and the number of viewers of the slides gives an indication of the total number of students who engaged with each of the online sessions. A limitation of this approach is that MS Teams does not provide individual identification of students. It is therefore possible that one student may have attended live and also listened to the recording or accessed the slides.

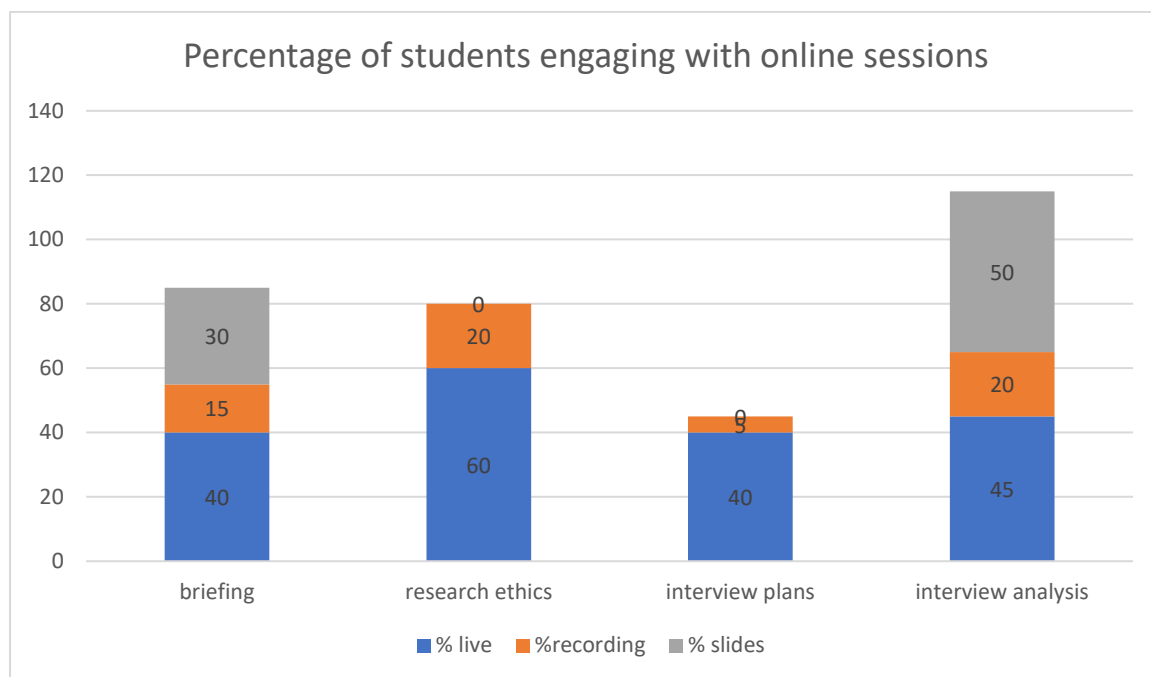


Table 2: Percentage of students engaging with online sessions.

The percentage of students have been calculated against the total number of student in the policy clinic (20 students). However, as noted before only 11 students were involved in projects which would have involved interview plans or interview analysis.<sup>37</sup> The two online sessions applicable to all students (the briefing and research ethics and design) had high levels of participation with 85% and 80% of students engaging with the training. The two sessions on interviewing and analysis had lower numbers attending; however higher engagement with asynchronous methods meant the interview analysis session overall had the most participation.

MS Teams records the numbers of viewers and the number of times the document or recording has been viewed. Most of the recordings and documents were accessed more times than the numbers of viewers, suggesting that individual students accessed them on more than one occasion.

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<sup>37</sup> The average of students engaging with these sessions, calculated against 11 students, is as follows:  
Interview plans – 75% attended, a further 8% watched the recording making a total of 81%.  
Interview analysis – 82% attended, a further 36% watched the recording and 92% accessed the slides, making a total of 209%.

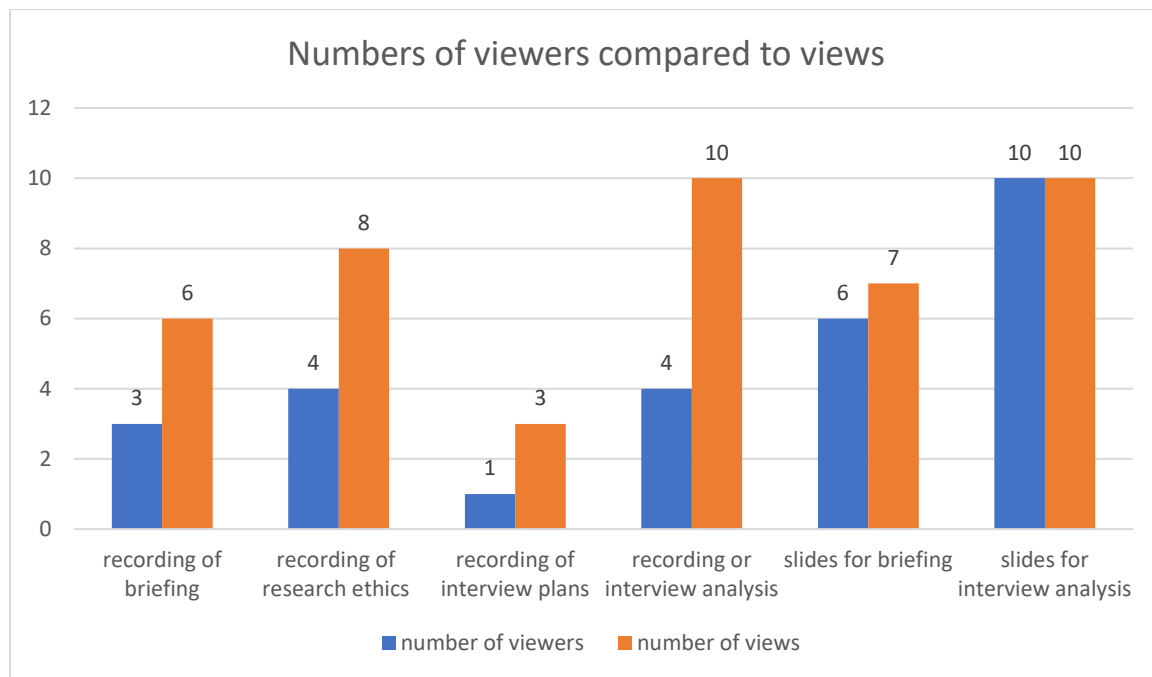


Table 3: Number of viewers compared to views.

Eleven students viewed the recordings of the four sessions a total of 27 times; an average of 2.5 times per individual. This suggests that students found value in the recordings and watched them on multiple occasions. By contrast, students were less likely to view the slides or agenda on multiple occasions, averaging just over 1 viewing per student.

*Engagement with asynchronous sessions*

There were four pre-recorded sessions which were available to view asynchronously by students.

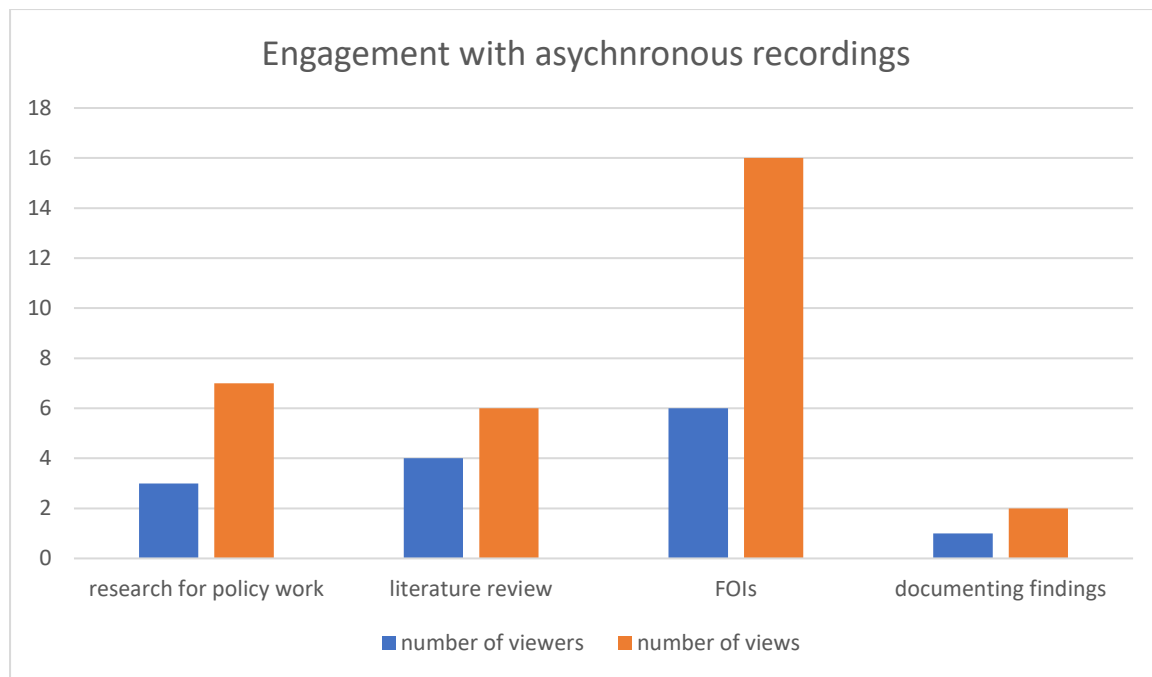


Table 4: Engagement with asynchronous recordings

As with the online sessions, there were more viewings of the recordings than the number of viewers which suggests that students watched multiple occasions – particularly the recording on Freedom of Information requests, where each viewer on average watched the recording 2.6 times. However overall a smaller percentage of students engaged with the recorded sessions (between 5 – 30%, compared to 45 – 115% for the live online sessions).

Of the remaining asynchronous training, it was not possible to collate engagement data for the three online courses (safeguarding, legal research, literature reviews) as this data is collated on VLEs outside of the Open University. It was also not possible to identify how many policy clinic students engaged with the written interactive units

(teamworking, interviewing and legal writing, presentation skills). The number of readers of these units included all students on the module across five projects and it was not possible to separate out the policy clinic students.

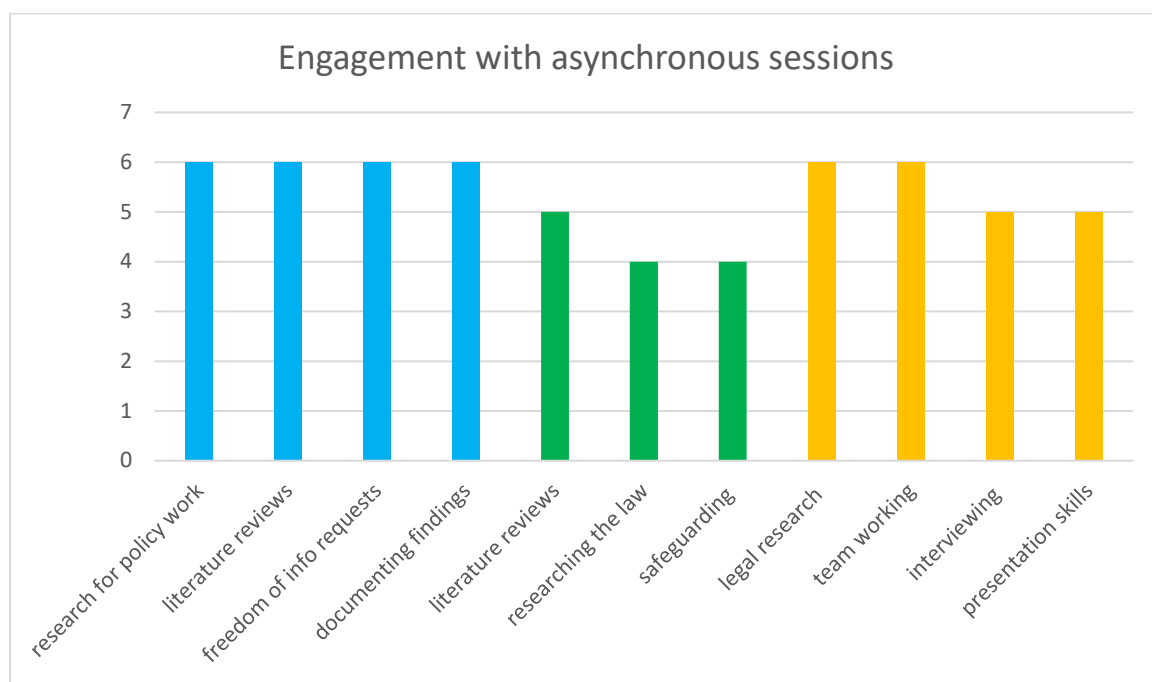
### *Survey responses*

Following the end of the module, a survey was sent to the 20 students who participated in the policy clinic. Six students responded, representing 30% of the students. Whilst this is a small data set, it is difficult to obtain large data sets given the small numbers of students involved in policy clinic work and the competing demands on students' time. However their responses have been included as by correlating their responses with the attendance data, it is possible to draw some conclusions about the value and effectiveness of the training.

When considering the students who responded to the survey, there were more females and students from black and ethnic minorities than is representative of the law students overall. They were also slightly older than the average law student. However the numbers of those with disabilities was consistent with Open University Law School averages.

Students were asked which training they had completed as part of their time in the policy clinic. All six students reported that they had attended three live online sessions: the policy clinic briefing, research ethics and design, and vicarious trauma

training. In addition four had attended the interview plans training and the interview analysis session. Four students had also listened to the recordings of the sessions in addition to attending live. One student had listened to the interview plans recording but had not attended live. On average therefore, 90% of surveyed students engaged with the online sessions, which is slightly higher than all of the policy clinic students (80%, as captured by the attendance data). All six students reported they had also listened to the four recorded trainings (100% of students) which was significantly higher than all of the policy clinic students (17.5% average).



Blue – recorded sessions  
 Green – online courses  
 Yellow- interactive written units

Table 5: Survey results – asynchronous sessions



From the survey, the most popular method for asynchronous training was listening to pre-recorded sessions (100%) followed by the written, interactive units (92%). The online courses were least popular, but these were still completed by an average of 72% of students surveyed.

If students had not completed the training, they were asked to provide a reason why. Of the 15 responses received, seven indicated that specific training was not relevant for their project (responses focused on the interview plans, interviews analysis and vicarious trauma sessions, which was expected given these applied to only two of the projects). Four responses indicated the student was already confident in the skills or topic being taught (research skills, documenting findings and teamwork), whilst four responses stated they were not aware of the training. These all came from the same student and concerned the asynchronous training, notwithstanding that these were all detailed in the policy clinic handbook.

Students were asked how useful they found the training overall, using a Likert scale from 0 – 5 where 0 is not useful and 5 is very useful. The mean average score was 3.7, indicating the training overall was between useful (3) and quite useful (4). The median score was 4 – quite useful, selected by three students. Students were also asked which training was most useful: two selected the training on Freedom of Information requests, and one student respectively selected researching the law, ethics research and design and vicarious trauma. One student referred to the ongoing support and help of the supervising tutor.

Students were also asked which training they found least useful and only three students responded to this question. One student referred to the Freedom of Information requests and one to the interview analysis session, both of which were stated to not be relevant to their project. One student found none of the training useful as: "I found the level of training very basic so it didn't actually better the skills I already had".

Students were asked if there was any other training they would have wanted to receive. Again only three students responded, requesting training on working in a group, and writing a project report and synopsis. These two students had both declared a disability: none of the students who did not declare a disability suggested additional training. The third student commented that the pre-existing skills of students should be accounted for rather than training being aimed at those with no prior knowledge.

In order to situate students' responses within a broader context of skills development, students were asked in a free text answer which skills they thought they had developed through their time in the policy clinic. Two students referred to research skills and teamwork/collaboration skills. One student referred to each of the following skills respectively: increased confidence, reflective skills, interviewing skills, soft skills and analysis skills.

### *Training method*

In addition to the substantive training topics, students were also asked in the survey when and how they preferred the training to be provided. All six students expressed a preference for online synchronous sessions over asynchronous methods, noting that this allows for “instant answers to questions” (3 students), “a better exchange of ideas” (2 students) and “interaction with other students” (1 student). Four of the six students also preferred longer, interactive sessions in place of lecture and Q&A style sessions. Their reasons included “I always find interaction helps to reinforce learning” and “I can get a better understanding of the subject”. Two students preferred a short lecture style presentation followed by questions and answers but no reasons were given for this.

Interestingly though, when students were asked which training was most useful, three of the suggested trainings were provided asynchronously and only two were online synchronous sessions. The attendance data also shows that many students listened to the recordings of the sessions afterwards, including on multiple occasions by the same student. Students also accessed the slides for some sessions in large numbers. This suggests that online sessions which are recorded and made available to students afterward may be the most effective way of providing training.

All six students preferred for the training to be provided at the start of the project, rather than at relevant stages throughout the project. Their reasons for this included that it helped prepare the student (3 students), that they needed all the skills from the start (1 student) and being “able to carry out my own training in areas I still felt unsure of/not covered by the policy training” (1 student). The fact that the training was also available afterwards asynchronously meant that students could re-visit and refresh their knowledge at the relevant time when they needed to use those skills.

When asked whether there was any additional information they wanted to share, one student indicated that they would have liked the training to have started even earlier, and a second response requested more clarity about which parts of the training were relevant to which projects.

## **Discussion**

There are some limitations when considering the evaluation of the policy clinic training. The data set, particularly in relation to the survey, is small. The students who responded to the survey also indicated they had completed more of the training than the average, which suggests these students were the more committed and engaged students.

Small data sets is common when researching policy work, as the numbers of students involved tend to be small.<sup>38</sup> This research was exploratory to provide a basis for improving the training of students involved in policy clinic work, and can contribute to future research in this area. In order to mitigate the limitations of the survey size, it has been correlated with the attendance data to avoid drawing too wide ranging conclusions from it.

The attendance and engagement data is more robust, as it is applicable across all of the students who participated in the clinic. As students are generally time poor, engagement with the training suggests students found a value in the events.<sup>39</sup> However the attendance data does not show how long each participant engaged with the training resource, and so students may have looked at it briefly for 5 minutes or worked through it in its entirety. It is also not possible to track an individual student's participation, and so the same student may have both attended an online event and listened to the recording.

Comparison of the attendance data with the survey results reveals some inconsistencies. The survey responses indicated all six students had watched the four recorded training sessions. However the attendance data from MS Teams indicated that the sessions were watched by three, four, six and one student respectively. It has

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<sup>38</sup> Dunn, R., Bengtsson, L., & McConnell, S. 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students'. [2020] *International Journal of Clinical Legal Education*, 27(2), p83

<sup>39</sup> Massingham, P., and Herrington, T. 'Does attendance matter? An examination of participant attitudes, participation, performance and attendance' [2006] *Journal of University Teaching & Learning Practice*, 3(2)

not been possible to determine whether the survey responses were inaccurate, or the attendance data from MS Teams. Without a clear understanding as to why this inconsistency exists, this must be born in mind when drawing conclusions from the data.

Finally the research was based on a specific setting which may be different in other policy clinics. At the time the evaluation took place, there was no possibility of providing joint training with other projects or courses and the policy clinic had to provide all the training needed to students. As there were similarities in the methodology of the projects, training was made available to all of the students. The evaluation therefore did not consider whether it would be better to teach some skills in larger groups and provide more bespoke sessions for individual projects, which may be more appropriate in other settings.

Notwithstanding the above, it is possible to draw broad conclusions about the skills which students need to develop to undertake policy work effectively and the best way to provide such training, to inform future training for policy clinic work.

*Substantive training topics*

Limited conclusions can be drawn about training for generic skills identified by Dunn *et al* such as teamwork, time management and project management;<sup>40</sup> this training was covered by online courses, for which there is no attendance or engagement data. However the survey responses indicated that the students had engaged with all three online courses, suggesting they found benefit from them. One student noted the vicarious trauma training was the most useful training, indicating that it helped them to reflect critically on themselves. In addition, of the two suggestions made for additional training, one related to teamwork or collaboration. Whilst students have received skills training on group work previously at FHEQ five and six, the collaboration required earlier in the law degree is more limited than working in a group on policy clinic work, both in terms of the size of the group, the duration of the task and the complexity of the work. Students typically do find policy clinic collaboration difficult and so further advice and guidance on effective teamworking would benefit policy clinic students.<sup>41</sup>

The literature suggested there are three skills needed for policy clinic work which may be new to students. These are research skills, analysis of policy alternatives, and communicating clearly their recommendations and solutions. When considering research skills, the training on research ethics was the most popular synchronous

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<sup>40</sup> Dunn, R., Bengtsson, L., & McConnell, S. 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students'. [2020] *International Journal of Clinical Legal Education*, 27(2), p87

<sup>41</sup> Hussein, B. 'Addressing Collaboration Challenges in Project-Based Learning: The Student's Perspective' [2021] *Education sciences*, 11(8), p. 434

online session (60% of students). Students also engaged to a high level with the other training resources on research, and the number of students viewing the sessions multiple times suggests they found value in them. This is corroborated by the survey results: of the six nominations for the most useful sessions, four related to research (two suggested the FOI training, one the research ethics session and one the online course on researching the law).

Research skills required for policy clinic work are very different from doctrinal legal research students might have engaged with previously. It includes determining the methodology of the research, the collection and then the recording of empirical data where appropriate. In doing this students also need to be aware of any ethical concerns (including consent from participants) and be able to respond in order to mitigate any risks. Research methods will vary according to the specific project but may include literature reviews, comparative research into other jurisdictions, freedom of information requests, surveys or interviews. It is unlikely that students will have experienced these types of research previously. Interestingly, students may not appreciate the different research skills needed for policy work. Two students in the survey indicated that they did not engage with research training as they were already confident in their skills. Good communication is therefore needed to explain the differences between more traditional legal research and policy clinic research, and consideration given to making the training sessions compulsory.



Secondly, once the data has been collected, students have to analyse it and consider policy alternatives.<sup>42</sup> This may include analysis methods from the social sciences<sup>43</sup> as well as consideration of the values on which policy alternatives should be based on. The session on research analysis had the highest level of engagement of all of the online sessions provided, and each student watching the recording viewed it an average of 2.5 times. This suggests that students found value in the analysis training, and given the smaller amount of training offered on analysis (compared to research) may suggest the need for further training in analysis methods.

Finally, students engaged in policy work will need to communicate clearly and effectively their evidence based, well-reasoned recommendations as to how the law should be reformed. Durrance noted that effective communication is a key component of policy analysis, both in public speaking and writing.<sup>44</sup> The method of communication will vary according to the specific type of policy work, but could include a report to a client organisation, a verbal presentation, a response to a consultation or a letter to legislators or the media. Reporting on their research, analysis and recommendations will involve communicating in a style different from what student may be used to. For example, students may not have any experience of clearly

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<sup>42</sup> Ross, N.J. 'Beyond skills and doctrine : the need for policy skills and interdisciplinarity'. [2017] *Victoria University of Wellington Law Review*, 48(2) p.362

<sup>43</sup> Coulthart, S. 'What's the problem? Frameworks and methods from policy analysis for analyzing complex problems', [2017] *Intelligence and National Security*, 32:5, p637

<sup>44</sup> Durrance, C.P. 'Teaching public policy analysis: Lessons from the field', [2022] *The Journal of Economic Education*, 53:2, p146

presenting statistical information, or reporting on a large set of data in a clear and detailed manner.

Attendance data shows that the pre-recorded session on documenting findings was the training which least students engaged with, suggesting they may not have found any value in it. This may have been because students were presented with a detailed template for writing up their findings into a written report, and they therefore did not consider they also needed to listen to a recording. However of the two suggestions made by surveyed students for further training, one concerned communication (further training on writing a project synopsis or report). The need for training in communication is therefore unclear from this evaluation and needs to be researched further.

## **Conclusion**

In order to carry out policy clinic work, students need training in order to develop the skills they will need to carry out their projects. Some of these will be existing skills which students will develop further in their policy work, whilst others are likely to be new.

When considering new skills, our evaluation suggests two areas where students are likely to need further training. The first is research methods: students are unlikely to have used the research methods required in policy work previously, such as research

ethics, interviews and collections of statistical data. The numbers engaging with the research training and the responses to the survey suggests that that students found training in research methods useful. The second area where training is required is policy analysis. Students need to be able to use different analytical methods (including those from social sciences), and to consider the values behind the different policy alternatives. Again, both the attendance data and the survey results suggest that students found value in this training.

The literature also suggests that policy clinic work involves new skills in communicating clearly the students' findings and recommendations. However the evaluation was unclear as to whether students found training on documenting results useful or not. The attendance data suggested this training was not well engaged with by students, while the survey suggested students would value more training in this area.

In addition to the new skills required by students in policy clinic work, they may also need to develop their general skills further. The two areas highlighted by the evaluation were collaboration and vicarious trauma training.

Finally students expressed a strong preference for training to be provided synchronously online in longer, interactive sessions. Recording the training and making it available afterwards enables students to listen again to the sessions to refresh their knowledge and skills. Students also expressed a unanimous preference for training to be front-loaded and provided at the start of the project. Whilst the

survey on which this is based was small, the unanimity of the responses suggests that this may be the view of the majority of students.

We hope that these suggestions are of use to those responsible for overseeing students carrying out policy work, so that they can ensure students are well prepared to work on policy projects.

## THE IMPACT OF POLICY WORK ON EMPLOYABILITY SKILLS IN THE POLICY PROJECT CONNECTED TO THE CRIMINAL APPEALS CLINIC AT THE OPEN UNIVERSITY

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### Abstract

The impact of policy work in allowing students to obtain skills in case work should not be understated. At the Open University (OU) one of our modules on our law degree incorporates clinical legal education. The Criminal Justice Clinic (CJC) is a digital clinic that sits within that. The purpose of the CJC is to assist clients that state they have been wrongly convicted of serious criminal offences and are serving long sentences in prison. It aims to assist with social justice and provide students with professional skills. Students research and advise on live criminal cases under the supervision of a solicitor. They apply legal principles to determine whether there are any grounds for an appeal to be made. Students have full access to case papers. It is an innovative project as it aims to teach students legal professional skills working on difficult cases in a digital only setting.

Last year we set up a system where students undertake a policy project before commencing work in the clinic. This assists them with acquiring the skills that they need when they work on live criminal cases and helps them understand the background to what they are doing. Students were split into groups and given a

policy project to look at and at the end they provided a report. They worked collaboratively to do so and needed to complete the project within a specific time frame. This paper looks at the practicalities of doing such a project digitally and considers the impact on employability skills.

### *Introduction*

This article considers whether participation in policy work can assist students in obtaining the necessary skills to actively participate in criminal law casework that takes place within clinical legal education, and in particular a digital pro bono Criminal Appeals Clinic (CAP) at the OU. It will look at the project and consider what it was, why it was needed and how it was integrated into the existing structure before considering the results of an employability skills pilot that took place and evaluate the effectiveness of the project.

Many universities and higher education institutions provide students with an opportunity to take part in pro bono work during their studies. A LawWorks and Clinical Legal Education joint report in 2020 showed that the number of institutions providing pro bono work is on the increase. Of the 78 institutions in the UK responding, 77 did pro bono work. The types of pro bono offered included, 75% providing generalist advice, around 30% undertook 'Innocence' or miscarriage of justice programmes with around 20% undertaking criminal pro bono work<sup>1</sup>. 90% of

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<sup>1</sup> J. Sandback, R Grimes 'Law School Pro Bono and Clinic Report' (2020), LawWorks and CLEO

the providers anticipated an increase in demand. Despite this there appears to be little research in this area in the UK.

As part of the OU law degree students have an opportunity to study a final level optional module called 'Justice in Action'. This allows students to participate in Clinical Legal Education (CLE). At the OU, the Policy Project discussed in this article is completed prior to participation in the pro bono CAP that is delivered at a distance using online facilities. There is also an existing separate online Policy Clinic that also takes place within the Open Justice Centre (OJC) of the Open University Law School (OULS). A number of projects are offered in the OJC including the following clinics: a law clinic, law reform, international law, criminal appeals, mediation, digital justice, and policy. Some of these clinics are permanent whereas others will change from year to year. The OJC also offers projects as extra-curricular opportunities for students such as Streetlaw.

In addition to the main policy project that sits within Justice in Action, in 2021 the Criminal Appeals Clinic (CAP) set up a policy project that students participated in prior to casework being completed in the CAP. The CAP was associated with an outside provider that gave students an opportunity to work on live criminal appeal case work. The CAP assisted criminal clients that were protesting their innocence or perceived that they had received a substantially excessive sentence. The cases reviewed involved serious criminal offences such as murder, manslaughter, multi-handed conspiracies, and other offences. The CAP took place in the second term of

the module and lasted 12 weeks. Feedback from students the previous year had noted a gap in their writing and professional skills that needed to be filled before they could fully participate in the CAP. It is this background that led to the introduction of policy work prior to the CAP taking place. At the same time a research project was run that considered the employability skills that students obtained whilst undertaking work in the CAP.

This article has four parts. Firstly, there will be a background discussion of the context that led to the introduction, and the features of the Policy Project and details of why and how it was run. Secondly, consideration will be given to the methodology of the pilot research project that was completed. Thirdly, the results of the research will be given, together with some analysis and fourthly, a conclusion and final thoughts on whether the Policy Project worked.

### *Background and Context*

The OU is different from a lot of other universities as its mission is to be: “open to people, places, methods and ideas”<sup>2</sup>. As a result, it prides itself on accepting all students, including those that would not be able to attend a traditional brick university. This means that students can attend the OU without any other

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<sup>2</sup> Open University ‘Mission Statement’ available at: <https://about.open.ac.uk/policies-and-reports/mission#:~:text=The%20Open%20University's%20mission%20is,ambitions%20and%20fulfil%20their%20potential> accessed 24<sup>th</sup> August 2023



qualifications. Historically referred to as: 'The University of the Air'<sup>3</sup> the concept was originally designed by Harold Wilson, then prime minister, in 1963 and Jennie Lee took the idea forward as Minister of the Arts. Launched in 1969 by Royal Charter, it celebrated its 50th anniversary in 2019 by which time it had taught 2.3 million students<sup>4</sup>. Other universities in England and Wales have entry requirements and are selective in the students that they accept on to their degrees, not so with the OU. The OU has a diverse range of students with 208,308 students registered in 2021/22, 71% of whom were in work, 75% had no previous higher education qualifications when they started with the OU and 25% came from the most deprived areas and 37,078 students had a declared disability<sup>5</sup>. In addition, the OU is a distance learning university where most work is completed online.

The OULS was created 25 years ago. It is the largest law school in Europe and all teaching is now completed online. It has around 9,000 current students who come from 45 countries<sup>6</sup>. The OULS vision is: "To make outstanding legal education accessible to all who pursue it". It is that vision, together with the social ethos of the OU, that feeds into clinical legal education at the OULS, the Open Justice Centre (OJC) and 'Justice in Action'.

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<sup>3</sup> Wilson, H (1963) 'White Heat of Technology' speech available at <https://www.open.ac.uk/library/digital-archive/download/1963WilsonGlasgow.pdf> accessed 24<sup>th</sup> August 2023

<sup>4</sup> <https://about.open.ac.uk/strategy-and-policies/facts-and-figures>

<sup>5</sup> <https://www.open.ac.uk/about/main/strategy-and-policies/facts-and-figures>

<sup>6</sup> <https://law-school.open.ac.uk/about>

The Open Justice Centre (OJC) was established in 2016 and sits within the OULS and within that, there are various projects and clinics. In 2021 they included the CAP offering through an outside provider. More latterly there is now an inhouse Criminal Justice Clinic (CJC) run directly by a CJC lead with the assistance of other academics, a legal practitioner, and caseworkers. The CJC was being run as a pilot and extra-curricular project in the same year that the policy project was introduced to the CAP.

The module *Justice in Action* is an optional module at the final level of the law degree and has two distinct but connected sections. In the first section students study the themes of the module that include professional identity, social justice, and professional ethics. They also learn about the skills that are needed in the legal profession. These skills include collaboration, writing, interviewing, advising, legal writing, presentation, and legal research. In the second section students then participate in one of the projects on offer and are required to put their new-found skills into practice. All of these projects are run online, and students may live in different geographical locations and often never meet in person. In 2021 there were 205 students on the module of whom 42 were in the CAP. The CAP had the largest cohort of students on the module in 2021/22 and its successor the CJC has followed this forward.

The Justice in Action module is assessed through tutor marked assessments and an end of module assessment. Students are also required to keep reflective journals.

There are no examinations. The assessments are primarily based on the importance of pro bono work, reflection on their development of professional skills, including collaboration and their specific participation in the activity that they did. This separation of assessments directly from the clinic works well but can appear disjointed at first. CLE is experiential learning that is reflective in nature and extra care has to be taken in relation to the grading and feedback strategy used. Work that takes place in all of the clinics and projects in the OJC and Justice in Action module is not graded nor directly assessed, and very different from other modules. It mirrors feedback given in professional practice. Some students can take the feedback they receive from assessments in other modules personally. As Nicol and Macfarlane (2006)<sup>7</sup> note, receiving a mark can be demoralising. However, in the CAP the feedback centres around professional skills and writing in a collaborative manner and students view it as professional rather than personal feedback. It is about mentoring students to achieve the best outcome for the client. The lack of graded work in the CAP assists with cohesion and the quality of the work, as students are not distracted by the need to impress the supervising solicitor in relation to the outcome of the case or otherwise. As Yeatman and Hewitt (2021)<sup>8</sup> note when discussing CLE, this type of learning lends itself to the concept of self-regulated learning and the seven principles framework

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<sup>7</sup> Nicol, D.J, Macfarlane-Dick, D (2006) '*Formative Assessment and self-regulated learning: a model and seven principles of good feedback practice*'. *Studies in Higher Education* 31:2, 199-218.

<sup>8</sup> Yeatman, L and Hewitt, L (2021) *Feedback: a reflection on the use of Nicol and MacFarlane-Dicks feedback principles to engage learners*, *The Law Teacher*, 55.2, 227 to 240.

established by Nicol and MacFarlane-Dick (2006)<sup>9</sup>. The feedback given in the clinic is less formulaic than standard feedback given in other modules. Feedback tends to be spontaneous around conversations rather than just formal written feedback. During the CAP, students' draft advice and research notes and feedback happens more naturally during student group meetings and in the supervision meetings. Feedback centres around verbal comments. However, once documents start to be produced, feedback is also given in a written format. Given the nature of the work such as advice, work is often drafted and re-drafted several times before final submission to the supervising solicitor and onward journey to the client. Reflection is a continuous process and helped with collaboration within the small teams as students reflect on each other's work, enhancing team cohesion. Students write reflective pieces in their assessments, but these are not linked directly to the work that takes place within the clinic. As Yeatman and Hewitt (2021)<sup>10</sup> acknowledged a series of conversations together with peer review is best practice in CLE. They reflect that good communication is key to students being able to be self-directed learners and this is what we attempt to achieve in the CAP.

This is important to the reasons why a policy project was introduced prior to time in the CAP as students found it difficult to adapt to this new way of education. Whilst

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<sup>9</sup> Nicol, D.J, Macfarlane-Dick, D (2006) '*Formative Assessment and self-regulated learning: a model and seven principles of good feedback practice*'. *Studies in Higher Education* 31:2, 199-218.

<sup>10</sup> Yeatman, L and Hewitt, L (2021) *Feedback: a reflection on the use of Nicol and MacFarlane-Dicks feedback principles to engage learners*, *The Law Teacher*, 55.2, 227 to 240.

at first glance this feedback appears relaxed, in reality it can cause issues with collaboration. It was hoped that the opportunity for students to work on a policy project and research and draft written documents prior to the clinic would help them with the inevitable jump from academic to professional work, whilst also expanding their employability skills.

In 2021 the casework part of the CAP was outsourced to an external provider who supervised the students for 12 weeks. During this period students participated in criminal casework considering whether a client had any grounds for appeal that might need to be referred to the Criminal Cases Review Commission (CCRC). Students found the transition from pure legal studies to the practical element of casework difficult and many commented that they felt overwhelmed by the serious nature and amount of work they were expected to do. There were issues over student engagement, collaboration, and satisfaction with the project. Students also commented that they found professional skills difficult. It was clear that a different pedagogical approach was needed, and that students needed more support whilst also acknowledging the continuing commitment to further social justice and to be open to different ways of working that benefit society as a whole.

In addition, it was hoped that students would benefit from learning about how laws were created and the influence that comes out of policy work and that would lead to a better understanding of the importance of pro bono work and better-quality output for clients. The projects selected for the Policy Project considered the work that would

be done in the CAP, providing a bridge between them. It was also felt that students would then be able to understand the need for pro bono criminal appeals work and obtain a better understanding of the role of the Criminal Cases Review Commission (CCRC) and how publicity surrounding real cases and events can lead to change. It meant that students were not considering criminal appeals cases in isolation but had a more holistic view of criminal appeals and process.

Employability was also key. Defining employability is not as easy as it first seems. The Cambridge online dictionary defines it as “the skills and abilities that allow you to be employed”<sup>11</sup>. As you would expect those skills and abilities are not listed. It would be impossible to do so given the wide variety that there are, and the different theories about what they are. Blandy (2019) uses Yorke’s definition in her article: “a set of achievements, understandings and personal attributes that make individuals more likely to gain employment and to be successful in their chosen occupations”<sup>12</sup>. It is this definition that we rely on during this article. There is often discussion about ‘hard’ skills and ‘soft’ skills, the difference between the two and which are more important. It has been acknowledged that students participating in CLE are able to obtain “soft” skills needed for professional practice. Blandy (2019) argues that whilst her research into employability skills at Sheffield didn’t achieve what was wanted, at

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<sup>11</sup> <https://dictionary.cambridge.org/dictionary/english/employability>.

<sup>12</sup> Blandy, S ‘Enhancing Employability through Student Engagement in Pro Bono Projects’ *IJCLE vol 26 no 1* (2019) available at <https://northumbria-journals.co.uk/index.php/ijcle/issue/view/78> accessed 24th August 2023.

least partly due to the design of the questions, there were other responses that were helpful and indicated that students used it to stand out from other applicants for jobs<sup>13</sup>.

With these points in mind, the OULS appointed an experienced criminal practitioner solicitor, who was also an academic, to supervise students and provide extra support whilst considering a way forward that would benefit students in the longer term. This led to the introduction of a policy project to allow students to practice professional skills before they commenced work with the outside provider. The following year the clinic was brought totally in house and became the Criminal Justice Clinic (CJC).

### *Literature Review*

As employability skills in higher education have become more significant in recent years, there has been increasingly a need for students to develop employability skills and be “job ready” when they leave university (Moore and Morton (2017)<sup>14</sup> and McFaul (2020)<sup>15</sup>. There are a range of competencies that can be seen as important in employment, not least communication, critical thinking, teamwork and creativity

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<sup>13</sup> Blandy, S ‘Enhancing Employability Through Student Engagement in Pro Bono Projects’ *IJCLE vol 26 no 1* (2019) available at <https://northumbriajournals.co.uk/index.php/ijcle/issue/view/78> accessed 24th August 2023.

<sup>14</sup> Moore, T & Morton, J (2017) The myth of job readiness? Written communication, employability, and the ‘skills gap’ in higher education, *Studies in Higher Education*, 42:3, 591-609, DOI: 10.1080/03075079.2015.1067602 To link to this article: <https://doi.org/10.1080/03075079.2015.1067602>

<sup>15</sup> McFaul, H. (2020). Does Clinical Legal Education Need Theory? *Asian Journal of Legal Education*, 7(2), 152-163. <https://doi.org/10.1177/2322005820916891>

(Moore and Morton (2017))<sup>16</sup>. This is particularly true for legal students who will enter a competitive environment to obtain employment that will start their legal careers. It follows that clinics such as the CAP and CJC should be at the forefront of providing these employability skills as they mimic what happens in legal practice.

Theoretical approaches to embodying employability in higher education were investigated at the BPP law school in 2018 (Knox and Stone (2018))<sup>17</sup>. In that study the four-staged process of defining employability, reviewing, and mapping current employability skills, prioritising action and measuring impact was used (Higher Education Academy's Framework on Embedding Employability (2017) )<sup>18</sup> to embed employability skills within the law curriculum supporting a holistic strategy for skills development. Reference was also made to Biggs' taxonomy of learning. The authors argue that "From the educational theory perspective, the project represents a way to embed employability skills in a FHEQ level appropriate way, with reference to Biggs' "structure of the observed learning outcome" (Biggs and Collis (1982))<sup>19</sup>. Whilst the emphasis was on the benefit to the new solicitors qualifying examination, the findings

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<sup>16</sup> Tim Moore & Janne Morton (2017) The myth of job readiness? Written communication, employability, and the 'skills gap' in higher education, *Studies in Higher Education*, 42:3, 591-609, DOI: 10.1080/03075079.2015.1067602 To link to this article:

<https://doi.org/10.1080/03075079.2015.1067602>

<sup>17</sup> Jenny Knox & Melanie Stone (2019) Embedding employability skills for the legal professionals of the future, *The Law Teacher*, 53:1, 90-101, DOI: [10.1080/03069400.2018.1490472](https://doi.org/10.1080/03069400.2018.1490472)

<sup>18</sup> Higher Education Academy, "Framework for Embedding Employability in Higher Education" (HEA 2016) accessed 23 March 2017.

<sup>19</sup> John Biggs and Kevin Collis, *Evaluating the Quality of Learning: The SOLO Taxonomy* (Academic Press 1982)



resonate with what is trying to be achieved in embedding employability skills into clinical legal education and more importantly, the CJC.

CLE provides an opportunity for students to experience law in action and develop their legal practice skills ([The Law Society](#) (2023))<sup>20</sup>. Legal education should prepare law students to engage with the world around them and not be simply confined to the 'law in action' in their own jurisdiction (Madhloom and Antonopoulos, (2022))<sup>21</sup>.

Whilst in recent years there appear to be more literature discussing CLE, some of which considers the increased use of online clinics in law schools, the literature around policy clinics in law schools is limited, with little research easily located on the use of policy projects to scaffold other learning such as completed in this project. This is especially so when the policy project is specifically used to build skills prior to participation in a criminal justice clinic and not a simultaneous project.

As McFaul et al (2020) note about setting up the OJC: "The challenge was to develop pro bono activities that could be accessed remotely but which did not dilute the essence of the clinical experience that students at 'brick' universities are able to access

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<sup>20</sup> [Clinical Legal Education and pro bono | The Law Society](#) (2023) available at <https://www.lawsociety.org.uk/topics/pro-bono/clinical-legal-education-and-pro-bono>

<sup>21</sup> Madhloom, O and Antonopoulos, I (2022) Asian Journal of Legal Education, Volume 9, Issue 1, Pages 23-35.

through traditional clinical programmes”<sup>22</sup>. This needed to be taken into consideration.

Research into clinics at other universities that operate the same model that we did in 2021, has not shown any other similar model in relation to the CAP. However, Dunn et al (2020)<sup>23</sup> discuss their experience of running a Policy Clinic (PC) alongside a non-criminal law clinic at Northumbria University. There the students work in firms of eight and either work on a standalone policy project or on both a policy project and clinic at the same time, however the policy project is not linked to the work that takes place within the clinic. Whilst this is slightly different from the model used at the OU, and the authors acknowledge that their research centred around a focus group of only three students which is too small a pool to be general of other PCs, the result of their research is interesting and in line with the experience that we have found in the CAP. Northumbria University’s thematic analysis demonstrated six major themes, three of which echoed our experience in the clinic: skills/attributes, difference in terms of the curriculum and live client work and employability.

### *Why Policy?*

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<sup>22</sup>McFaul, H, Hardie, L, Ryan, F, Lloyd Bright, K Graffin, N (2020) ‘Taking Clinical Legal Education Online: Songs of Innocence and Experience’ available at <https://journals.northumbria.ac.uk/index.php/ijcle/article/view/1052> accessed 24<sup>th</sup> August 2023

<sup>23</sup> Dunn, R, Bengtsson, L, McConnell, S, (2020) ‘The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Tool for Students’, Northumbria University, IJCLE vol 27 no 2 (2020) available at <https://northumbriajournals.co.uk/index.php/ijcle/issue/view/90> accessed 24<sup>th</sup> August 2023

The OU's mission statement to be 'open to people, places, methods, and ideas' was pivotal here to the reasoning behind introducing a policy project at the start of the clinic. We also needed to assist students with the development of professional identity and skills to broaden their horizons, especially in relation to employability, promoting pro bono and social justice.

The policy projects were brought in to assist students with their development of professional skills such as writing and verbal skills. Anecdotal evidence and feedback from previous students had been that whilst they enjoyed the challenge of working in an online CAP, they had felt overwhelmed by the amount and nature of the work that they needed to do. There was a need to scaffold professional skills such as required for writing a letter, a report, advice, and professional emails. There was also a requirement for support in acquiring verbal skills required for presentations, meetings and in asking questions to gain information. One of the main issues that kept being raised was the difficulties that students faced in working collaboratively in teams.

It was decided to introduce a written policy project, that allowed students to practise their research and written skills appropriate to the final level of the law degree before starting with the outside provider. This was partially done because feedback from students and tutors indicated that students had insufficient research and written skills, hindering their ability to participate. There was a need to scaffold learning and improve academic and professional practice outcomes for students.

Later, anecdotal evidence from students that participated in the written policy document confirmed that they benefitted from collaboration and learning research and writing skills that they used during the CAP. Furthermore, the outside provider confirmed that students participated more fully when they were doing casework and were better prepared in terms of skills set.

The law degree in place in 2021 meant that students would not have needed to work collaboratively until they commenced this module. Whilst this may not have been the case in other universities, it was at the OU. It is important to note that the demographic of students at the OU is different to universities that set minimum criteria for entry and the wide range of students that study ensures a breadth of life experience. This is usually an asset with study, but in some circumstances can lead to conflict in collaboration situations.

As the policy project would be run in the same groups that would eventually work together in the clinic, it was hoped that the experience of working on policy with the exchange of ideas and joint research that would be required, could assist students in forming strong cohesive groups to maximise the input they could give to the CAP.

In addition, it was hoped that widening student experience in terms of types of work completed would assist students with interviews, study and employment going forward.

*What Policy Areas?*

The policy projects selected were:

- 1 Covid -19 - This policy project considered the impact of covid on any one group of people with a 'protected' characteristic. The aim of which was to consider the impact of Covid-19 on the criminal justice system in England and Wales and suggest policy that could be introduced or improved, to assist this category of people and show how events outside law can have a profound effect on criminal appeals in future years.
- 2 Criminal Cases Review Commission – This policy project was to consider the question “Is the Criminal Cases Review Commission fit for purpose?” The aim was to consider the role of the CCRC and if, why and how it could be reformed, with a view to influencing policy in this area. This Policy Project was already connected to the CAP whose students were reviewing cases to see if any could be sent to the CCRC. Often with cases where grounds for appeal against conviction or sentence were provisionally found by students, a referral to CCRC was anticipated because of their wider powers in terms of evidence.
- 3 Sarah Everard murder – This policy project asked the question “Are the police being undermined by the recent cases, including the Everard case, and will this have an impact on their credibility and open up grounds for

referral to the CCRC in the future and will this mean more appeals?" The aim was to consider how cases can lead to a comprehensive review of policy that in turn leads to reform of criminal law and practice and how this might affect appeals.

### *How was the policy project run?*

There were 42 students that took place in the project, and they were split into groups of 14 and then into subgroups of seven. Each group of 14 students was allocated to a tutor and given one of the three policy areas. Students had no choice as to which area they were going to consider. The tutor assisted the students to write a student agreement, gave guidance on working collaboratively and supported students with pastoral care during the module. There was also a supervising solicitor with an overview of all of the groups' work and a policy expert to assist where necessary. Students were then placed into two subgroups of seven to work collaboratively together on the policy project assigned. This group of seven then went on to work in the clinic with the same group, assisted by the same supervisor, ensuring continuity of working relationships for the duration that students were on the module.

Students were required to produce an end report and blog on the area they had been given. They commenced by carrying out a literature review and considered the background of the project before deciding what the output might include. The

students did not carry out any research that required ethical approval due to the shortness of length of time the project lasted for. In the report they were required to explain the current position, and give an opinion, backed with research evidence, on what might be done to improve that area. As you can imagine this led to a lot of research and some lively discussion. With hindsight students did struggle to complete the policy project in the time allocated to do so.

Training was given to all students prior to the start of the policy project, but after students had completed the first part of the Justice in Action module. The training was completed over two weeks and included sessions on public policy, working collaboratively, criminal appeals and an introduction to vicarious trauma. The training had two purposes, to impart information and encourage collaboration. All the training was interactive and led by an experienced solicitor, who was also a Mental Health First Aider, and academic.

After the training had taken place, students met with the supervisor to discuss the project and the policy project was then taken over by the small groups who had been given instructions to meet regularly, abide by their own group rules set in the agreement and allocate roles such as chair, deputy chair, minute taker and liaison manager. Some groups decided to do the roles on rotation while others had the roles for the duration of the project. At various intervals students met with their tutor who provided reflection on how the project was proceeding and gave advice.

All meetings took place online, either in an OU Adobe Connect room or on Teams and the use of a camera was mandatory. All written communications for the policy project were completed by email, albeit students were allowed to use WhatsApp for arranging meetings and for general housekeeping. The projects allowed students to work in their own time and to their own schedule, as agreed by their group. Students had various other responsibilities, and whilst arranging meetings was a challenge, the convenience of working independently on a part of the project for some of the time embedded a degree of flexibility needed by OU students. Students used their meetings to keep their work on track and to share ideas and any issues that might arise. Some students wrote together while others did all their writing independently and then they all came together to blend the writing into a final report. The production of the report was often reported to be the most difficult part of the whole project.

The students' vicarious trauma training allowed them to be aware of the issue of vicarious trauma in the legal profession and when working with casework as a student. It taught them the signs of vicarious trauma to look out for in themselves and others. It was designed to encourage a sense of cohesion and empathy with their fellow students as well as to open up discussion, where appropriate. Anecdotal student feedback showed that it did make a difference to the way the students approached the scheduling of meetings and absence of individuals.



Alongside this Policy Project, some students took part in a very small-scale pilot research project undertaken by the authors. Students assessed their own employability skills prior to, and then again, after taking part in the policy project and the CAP. Analysis of the data showed that at the start of the project students felt that teamwork, time management, research and analytical skills would be the most important ones to use during the project. Data afterwards showed that participation in the policy project and clinic, enabled students to develop written and verbal communications skills, together with skills in time management and collaboration before working with a live client.

### *Methodology*

Anecdotally there was feedback evidence to show the development of employability skills for students participating in the CAP and we therefore decided to undertake what we hoped would be a quantitative study. However, numbers of students that could participate in the study were limited. A total of 42 students took part in the policy project prior to going into the CAP. As a result of the OU approval system only 15 were eligible to take part in the pilot study and only eight responded to requests to take part. This does mean that the data is limited and only relevant to that project at that time. However, as research in this area is scarce it is worthy of discussion.

The pilot research study was developed consisting of two questionnaires. We selected questionnaires because of their ease to administer, particularly in a distance environment and the literature suggests that they are easy to analyse (Cohen,

Lawrence , Morrison, 2000)<sup>24</sup>. However consideration needs to be given to the inflexibility of questionnaires and the lack of opportunity to develop dialogue with the participants regarding their answers. In reflection our questionnaire was quite complex and challenging to analyse due to the complicated ranking system. Were we to undertake this research again we would simplify the ranking system that we used. One of the questionnaires was issued before the students took part in the policy project and CAP. The other was issued after the CAP was completed. The aim was to investigate whether students' perception of their own experience and skills had shown an improvement since completing the policy project and the CAP. Initially in the first questionnaire, students were asked detail about what they were expecting from the CAP and concerns they had. They were then asked to rate their experience and skills in various legal professional practice skills areas. The last questionnaire asked students to re-rate the same, their experience and skills and asked what had been most challenging.

The OU process for research was followed and relevant authorisations obtained, including ethics approval. Students signed a full consent form prior to completion of both questionnaires which were completed anonymously by using an online survey platform. An online survey platform was used because it was felt this was the easiest way to reach students and would allow for simple analyses.

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<sup>24</sup> Cohen L, Lawrence M, Morrison K. (2000), *Research Methods in Education 5<sup>th</sup> edition*, Routledge Falmer

At the same time as this took place, students who were working in the CJC were asked the same set of questions. One of the aims was to compare students' skills before and after they took part in the policy project, and the CAP as compared to the CJC.

Therefore, it should be noted that the return for students just participating in the CJC was much lower as in this year, 21/22, the CJC was itself a pilot project being run as extra-curricular with a view to it being part of the Justice in Action module from 22/23. Only four students in that cohort could take part due to OU approvals and only two chose to do so. Therefore, limited comparisons could be made between those that completed the Policy Project and CAP and those that completed just the CJC. As a result, this article will just refer to the Policy Project and CAP students only.

The questionnaires commenced with two open questions where students could answer with whatever they chose. In both questionnaires these were the first questions the students answered before going onto the main research questions. In questionnaire one, students were asked what they thought the three most important employability skills for work in legal practice were and what three most important skills they would need for working in the CAP. Questionnaire two returned to those questions and asked what they thought they were now they had completed the CAP. This was in order for comparisons to be made.

In relation to the open questions the results were broken down into themes using a thematic analysis approach based on the work of Braun & Clarke (2006)<sup>25</sup>. The main themes from the open questions before and after participation in the clinic are demonstrated in the following chart:

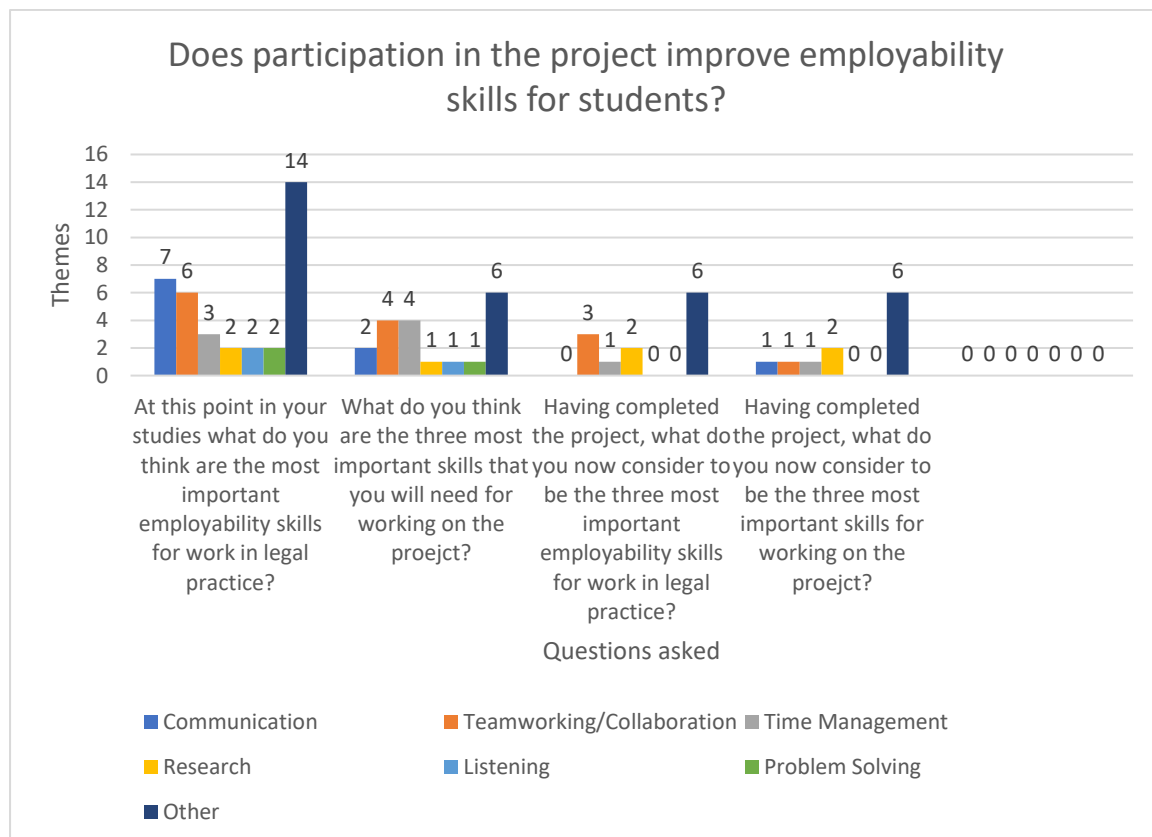


Figure 1 – Chart showing students perception of skills needed for the Policy Project and CAP and legal practice prior to taking part in Policy Project and CAP and the ones they felt were important after taking part.

<sup>25</sup> Braun V & Clarke V. (2006) Using thematic analysis in psychology, *Qualitative Research in Psychology*, 3:2, 77-101, DOI: 10.1191/1478088706qp0630a

As you can see it is difficult to come to any specific general conclusions through attempting to interpret the freestyle question and this is no surprise given the students could answer as they wanted to. Whilst this data is therefore very limited, it does give an indication of what that specific set of students thought. The other category covers purely individual answers with none matching other students. This could be argued to show how students interpret the concept of skills widely.

However, the main research revolved around a set of experience and skills with a series of closed questions where only one answer could be given for each question. These questions involved students rating their skills and competencies in a range from 1 to 5 with 1 being the lowest and 5 the highest. The Likert scale approach was used (Likert (1932)<sup>26</sup>. However whilst the scale allows for comparisons it can be subjective (Salopek (2004)).<sup>27</sup>

The set of skills being considered were formulated into sections, with subsections, as follows:

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<sup>26</sup> Likert, R. (1932). A technique for the measurement of attitudes. *Archives of Psychology*, 22 140, 55.

<sup>27</sup> Salopek, J. (2004). Rethinking Likert. *ProQuest Educational Journals* 58:9 26.



Figure 2 – Chart showing the skills being considered in themes used during the research.

Interpretation for this data is easier than the open questions but still problematic. Less students answered the questionnaire after the project ended, possibly because their studies on that module, and usually with the university, had ended. However, the data held can be seen below and in the main supports the theory that students’

perception of their employability skills was enhanced after taking part in the Policy Project and CAP:

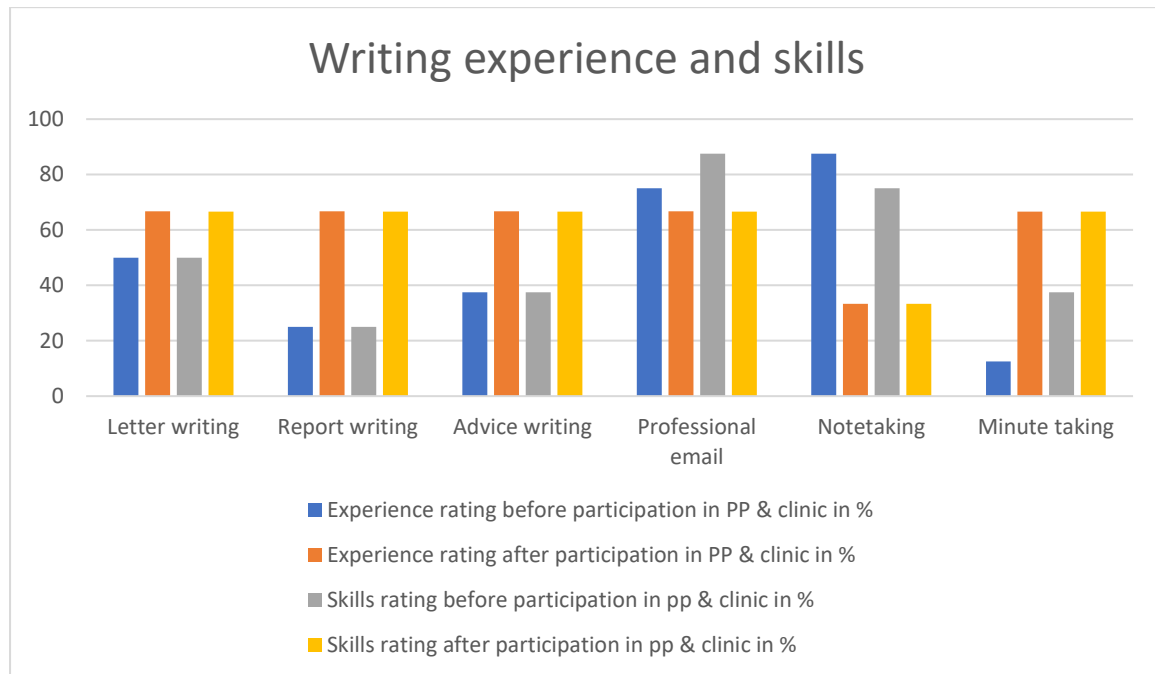


Figure 3 – Chart showing students rating of their perception of experience and skills in writing.

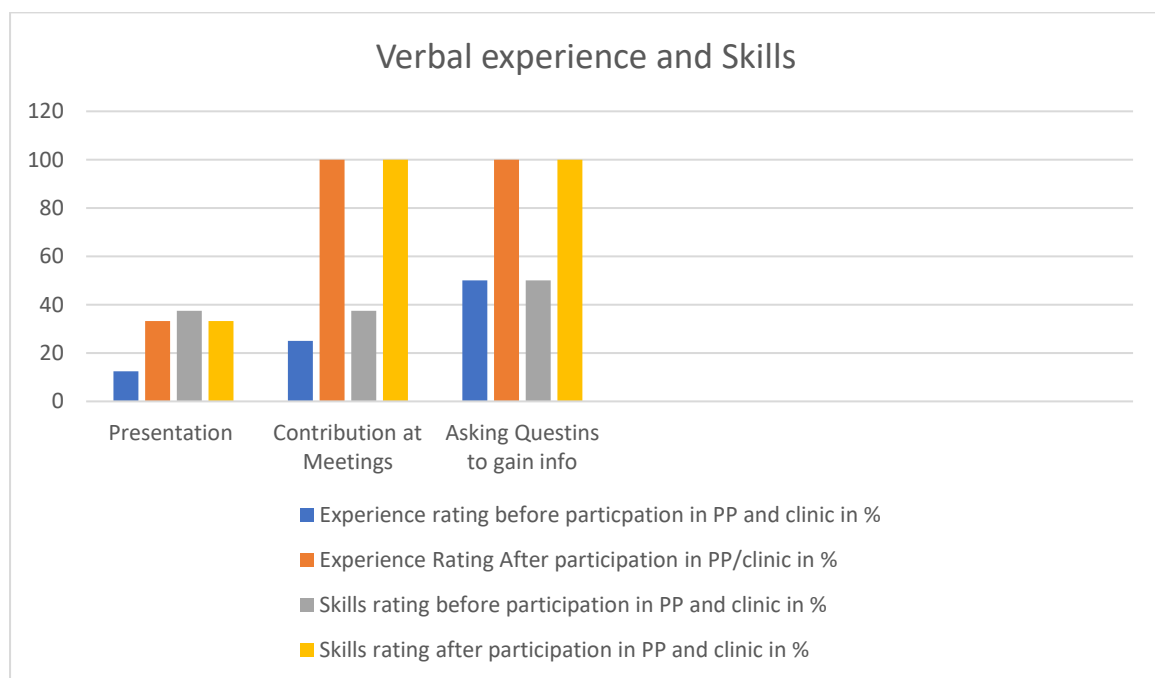


Figure 4 – Chart showing students rating of their perception of experience and skills in verbal skillset.

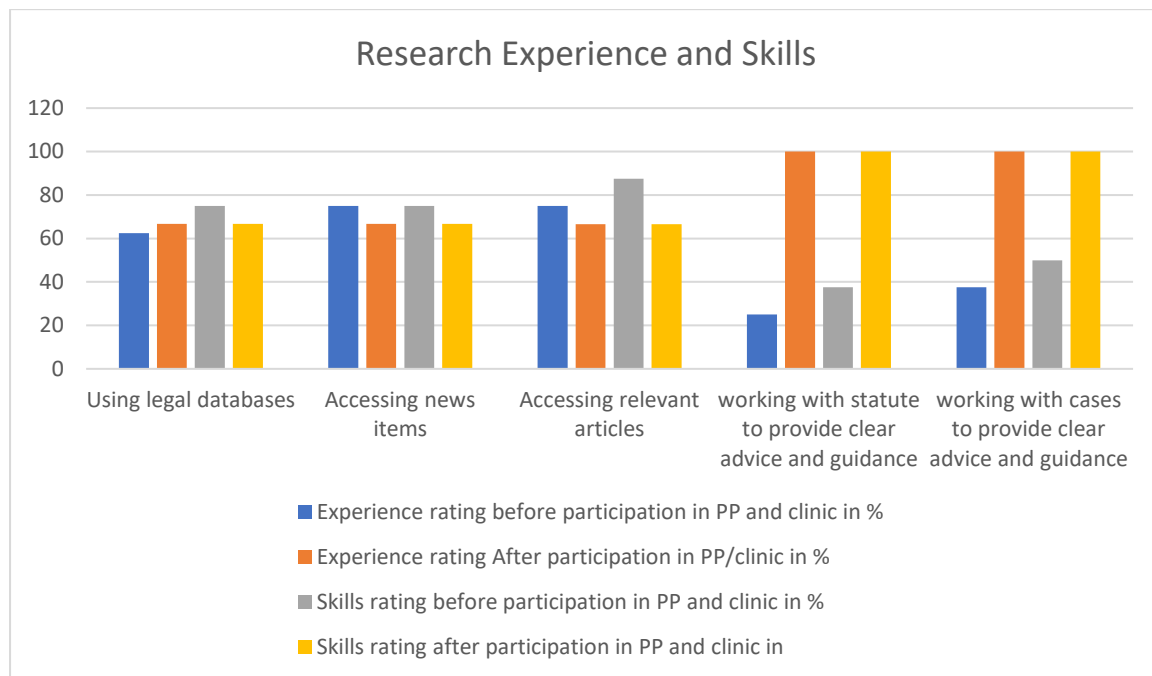


Figure 5 – Chart showing students rating of their perception of experience and skills in research.

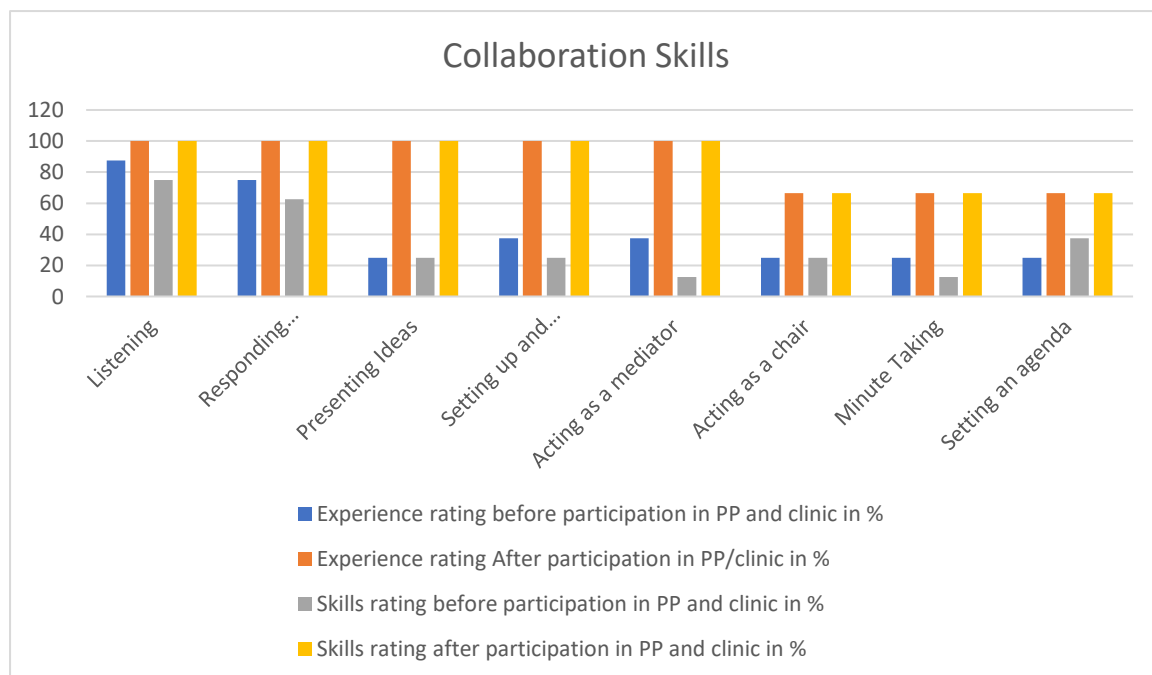




Figure 6 – Chart showing students rating of their perception of experience and skills in collaboration.

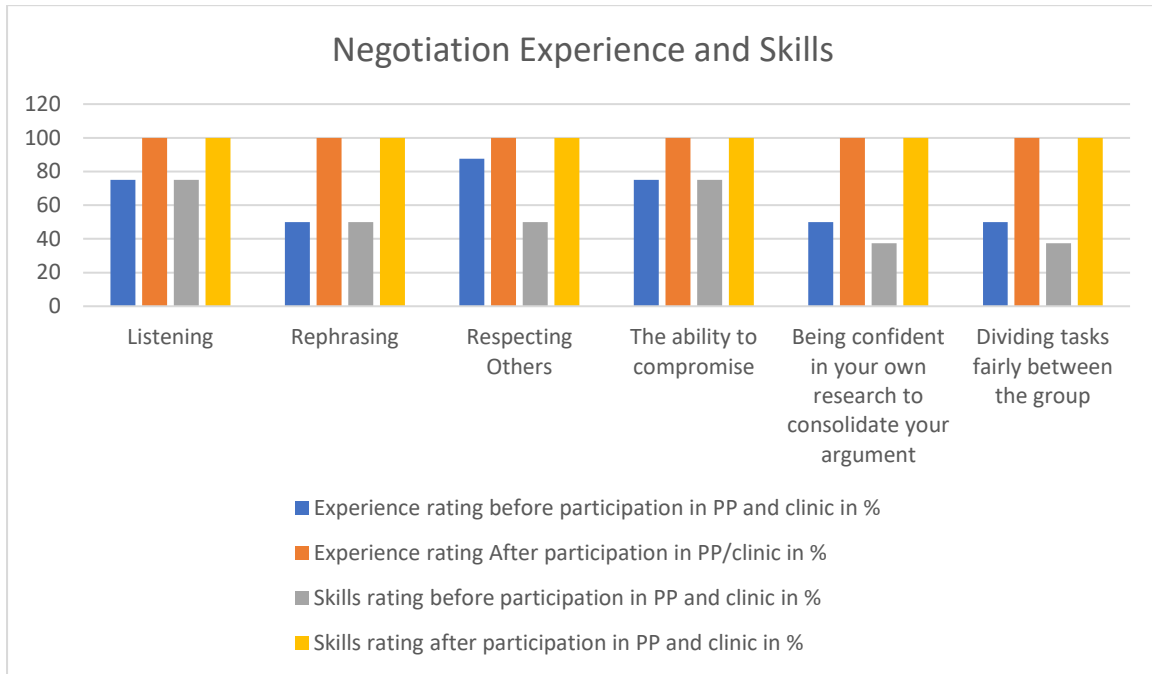


Figure 7 – Chart showing students rating of their perception of experience and skills in negotiation.

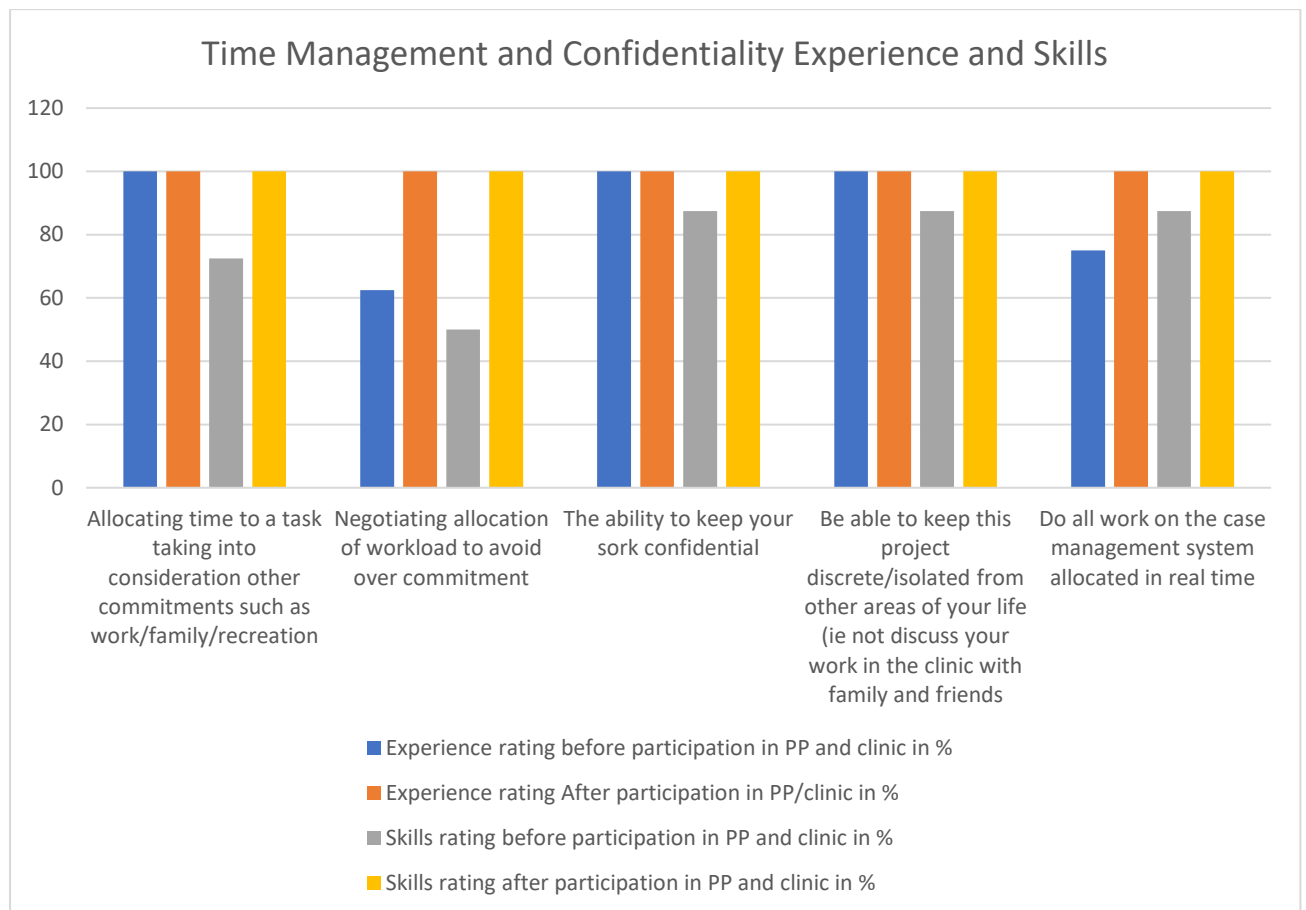


Figure 8 – Chart showing students rating of their perception of experience and skills in time management and confidentiality.

What can we draw from this? Before we go on to consider the individual areas explored with students, it is important to remember the nature of OU students. As stated above, OU students do tend to break the mould of a ‘typical’ student if one even exists. They are of all ages, come from all socio-economic backgrounds, most work

full time in other fields, some declare a disability, some have no qualifications on starting their degree and others will already have studied at higher education and some have doctorates. Therefore, it was important for the researchers to ask about experience as well as skill set. The complete data can be seen above, but for evaluation here, the skills element will only be considered.

### 1. Writing

It can be seen that the majority of students felt their skills had increased after taking part. Letter writing, report writing and advice writing, were included within this. However, the exceptions were professional emails and minute taking. There may be many reasons for this, but given the groups were autonomous in the decisions around role allocation, not everyone had a chance to try all roles and not everyone will have taken minutes. There was also not much opportunity for writing professional emails.

### 2. Verbal

Again, students felt their skills had increased except for presentations and that might be because students did not have the opportunity to present their Policy Project orally to a group as it all involved written work.

### 3. Research

Students noted an increase in skills in working with statute and cases to provide advice and guidance whereas they did not feel they improved in the other areas.

#### 4. Collaboration

In this skill area, students perceived that their skill set had increased in all areas. This is probably no surprise given that the students were working in small groups and needed to collaborate to get the work done.

#### 5. Negotiation

In this skill area, students perceived that their skill set had increased in all areas. This is probably no surprise given that the students were working in small groups and needed to negotiate with their peers in terms of allocation of work.

#### 6. Time Management and confidentiality

Students perceived that their skill set had increased in all areas. This is probably no surprise given that the students were working to tight deadlines and confidentiality was reinforced at every step of the way.

#### *Conclusion*

This article has outlined a specific research project that took place within the Policy Project and CAP at the OU in the year 21/22 where the Policy Project runs prior to the student's involvement in the CAP rather than simultaneously with it.

Did the policy projects achieve what they set out to do? The limited empirical data from the research completed by academics, together with the anecdotal evidence

would suggest that it did. However, it needs to be acknowledged that the data is limited and specific to some of the OU students that took part in the Policy Project and CAP. There is a need for further research to be undertaken in this area, not least of all to quantify the employability benefits of students engaging in such projects. It has to be said that the intensity of the policy project over an eight-week period followed by an intense 12 weeks working on complicated, sensitive, and voluminous criminal case work was rewarding, but also time consuming and exhausting for students and staff alike. It also required a lot of resources, especially academic and professional support from appropriate staff. We have not followed the format in later years partly because our CAP is now run inhouse as the CJC, so we have more autonomy over the way it is run, and also due to this issue of time and exhaustion. Institutions need to carefully weigh up the benefit to students of running a Policy Project before a CAP due to the time commitment and impact on staff.

The data shows that the students felt the Policy Project together with the CAP enhanced their skills and experience. The introduction of policy work prior to the clinic work is an innovative way to provide students with a thorough basis and holistic view of the law to enable them to contextualise their practical work and build a deeper understanding of the work they are undertaking. In the future it would be interesting to see whether the students' skills and experience improved due to specifically having a policy project experience prior to the CAP. At our own institution we only have one supervising solicitor who was one of the team that undertook this research. However

at other institutions it may be possible for, research to be undertaken in investigating supervisors' views on the use of policy work prior to clinic work. Therefore, there may be scope for cross institutional research to compare the results of skill development with students who conduct policy work before criminal appeals work and those who go directly into appeals work.

There is no doubt that in the year the policy project ran in this format, students did work well collaboratively but there are real difficulties over research projects run in CLE due to the lack of a control group and number of different styles of CLE nationally and internationally.

Bearing in mind the experiential nature of clinical legal education and lack of research in this field, it is difficult to back this up with hard evidence and to a certain extent we therefore rely on anecdotal evidence and experience.

Please do contact the authors if you would like to consider joint research or discuss anything contained in this article or CLE related.

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## TEAMWORK MAKES THE DREAM WORK: THE VALUE OF CROSS INSTITUTIONAL POLICY LAW CLINIC COLLABORATION IN THE FIGHT AGAINST CLIMATE CHANGE

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### **Abstract**

In the spring of 2022, clinicians from the University of Central Lancashire's Advice and Resolution Centre and Lancaster University's Law Clinic launched a pilot environmental law policy clinic. A primary motivation for starting the policy clinic was to involve a wider range of students in clinic work, including those who may not have volunteered for the main legal advice clinic due to either a lack of confidence or a lack of desire to enter the legal profession.

Through participation in a CLEO workshop on policy clinics, the writers were introduced to the work of the Environmental Law Foundation (ELF). ELF provides free information and guidance on environmental issues for individuals and communities through a university-based law clinic policy network. The aim of our policy clinic project with ELF was to investigate the extent to which local authorities in a UK region are considering climate emergency declarations in their decision making and are on track to achieve net zero emissions. Participation in the project did not require any previous experience in environmental law or policy work, and the supervisors of the project did not have expertise in this niche area of law.

This paper will reflect on the experiences of running a pilot, cross-institutional environmental law policy clinic and the lessons learned (both good and bad) from the undertaking.

## **Introduction**

The genesis of this Policy Law Clinic occurred after the authors attended a Policy Clinic workshop organised by CLEO in May 2021.<sup>1</sup> The discussions that ensued from that workshop realised a joint aspiration to establish a policy law clinic but a (perceived) collaborative lack of expertise and specialism. Rather than establish two separate policy clinics, we decided to create a cross-institutional project, bringing together two universities based in the North-West of England. The rationale for this was that we considered it would be beneficial for students and staff alike. For students, we wanted to develop a sense of community between peers, facilitating occasions for teamwork and networking. For staff, working on a shared project allowed us to draw upon each other's expertise, providing a forum to share ideas and creativity, and offering a chance to learn from one another's practice. From a purely practical sense, it also increased our ability to offer supervision to the students and to share the workload.

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<sup>1</sup> CLEO is the Clinical Legal Education Organisation and is a UK based charity with the aims of fostering, promoting and developing Clinical Legal Education (in all forms) through education, training, collaboration and research [www.cleo-uk.org](http://www.cleo-uk.org)

This article will chart the progress of the Lancaster/UCLan Environmental Law Policy Clinic from inception to establishment. The benefits and challenges encountered will also be discussed, along with observations on how the joint policy clinic has evolved and recommendations for the future.

### Establishing a cross-institutional Policy Law Clinic

Policy clinics identify areas where the law operates unsatisfactorily and work with campaign or interest groups to try and change law or procedure.<sup>2</sup> Students engaged in these clinics can expect to undertake literature reviews, design research methodologies, collect and analyse data and write up research findings.<sup>3</sup> Policy clinic supervisors do not need to be legally qualified, as they are not supervising the provision of legal advice, rather they can be any member of academic staff who is able to supervise research activities.

In order for a joint policy law clinic to work, it had to be truly collaborative. Mattessich and Mansey state that collaboration is

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<sup>2</sup> These clinics can also be referred to as 'law reform' or 'research' clinics. Kevin Kerrigan, 'What is Clinical Legal Education and Pro Bono?' in Kevin Kerrigan and Victoria Murray, *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave MacMillan, 2011) p3.

<sup>3</sup> R Dunn, L Bengtsson & S McConnell, 'The Policy Clinic at Northumbria University: influencing policy/reform as an effective educational tool for students' *International Journal of Clinical Legal Education* 27 (2) 2020 68, 73.

‘a mutually beneficial and well-defined relationship entered into by two or more organisations to achieve common goals’<sup>4</sup>

The project needed to have a set of values and goals, that needed to be examined and agreed at the outset.<sup>5</sup> The values and goals centred around partnership, project, students and working practice.

There has been a rich history of Clinical Legal Education (CLE) at both UCLan and Lancaster University, with both institutions offering various forms of pro bono/CLE activity. However, the one initiative that was missing from these portfolios was a policy law clinic and for the reasons stated in the introduction, a collaborative project was created by both clinics. Collaboration within the CLE community is a common occurrence. In 2020, 89% of university law clinics worked collaboratively or in partnership with external organisations. However, the vast majority of these were with solicitors in private practice or local advice centres.<sup>6</sup> Collaboration with another law school allowed for an easy alignment of agendas, both pedagogic and institutional. Collaboration between these two clinics made particular sense, as whilst the universities are physically close (less than 20 miles apart), they are demographically distinct. Having identified that a policy law clinic could be set up

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<sup>4</sup> PW Mattessich & BR Monsey, ‘Collaboration -What Makes it Work: A Review of Research Literature on Factors Influencing Successful Collaboration’. Wilder Research Centre <https://files.eric.ed.gov/fulltext/ED390758.pdf> accessed 30/08/23 p11.

<sup>5</sup> R Kirkup, ‘Collaborative public legal education: a case of ‘many hands make light work’, or ‘too many cooks?’ International Journal of Public Legal Education 3 (1) 2019, 75, 80.

<sup>6</sup> J Sandbach and R Grimes, ‘Law School Pro Bono and Clinic Report 2020’, LawWorks and CLEO (2020) [https://www.lawworks.org.uk/sites/default/files/files/LawWorks%20Law%20Schools%20Report%202020\\_1.pdf](https://www.lawworks.org.uk/sites/default/files/files/LawWorks%20Law%20Schools%20Report%202020_1.pdf) accessed 30/08/2023 p18.

with minimal resources, the two universities had a willingness to run a pilot to see whether this could become an established project.

### Identifying the right project

After our initial decision to explore the possibility of a joint policy law clinic, we spoke with clinicians in our network who were experienced in running policy law clinics to get their insight and share best practice. One factor that posed an issue was that our combined three practice specialisms of real estate, education law and commercial litigation did not lend themselves naturally to a combined project. We were wary of what we would be undertaking and wanted to make sure that we were suitably qualified to supervise the clinic activities.

One of the attendees at the May 2021 CLEO workshop was a representative from the Environmental Law Foundation (ELF), who discussed the policy clinic network they had established with university law clinics. ELF exists primarily to help socially and economically disadvantaged communities that want to address environmental concerns but lack the resources or information to do so.<sup>7</sup> ELF works with over 20 universities and their policy clinics provide an opportunity for students to undertake in-depth empirical research on issues raised by ELF's community enquiries.<sup>8</sup>

ELF's objectives aligned exactly with the social justice objectives of both UCLan and Lancaster University Law Clinics. We wanted to participate in an environmental

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<sup>7</sup> <https://elflaw.org/about-us/> accessed 30 August 2023.

<sup>8</sup> <https://elflaw.org/get-involved/university-network/> accessed 30 August 2023.

project to raise awareness of climate change within the UK. However, we did not have the expertise in this niche area of law to provide legal advice. After initial discussions with ELF, this was deemed not to be an issue, as participation in their policy clinic network did not require any previous experience in environmental law or policy work. We would also ‘not be going it alone’ as ELF would provide support in the form of an extended network, guidance and template documents.<sup>9</sup>

### Getting the foundations right: the case for piloting

ELF set an objective for the collaborative clinic, which was to investigate the extent to which local authorities (LAs) in a UK region were considering climate emergency declarations (CEDs) in their decision making; whether they were on track to achieve net zero targets and the extent to which they were taking into account COP 26 outcomes in their work. Previous regional research reports carried out by ELF’s policy clinics indicated that while there is some evidence that CEDs are being considered in LA decision making, data on this was lacking. Similarly, there was limited data on the amount of community involvement. In both instances, data was often incomplete, LA draft plans were subject to consultation at the time of the research, or reports were due after the research projects were submitted. The purpose of the clinic was to fill the gaps in the research, update progress and to analyse the impact on LA in these areas.

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<sup>9</sup> It should be noted that a donation was required by the university to ELF in order to join the policy clinic network.



To achieve this the student volunteers had to:

- Conduct a desktop research exercise into their assigned LA;
- Further this research by submitting Environmental Requests (EIRs)<sup>10</sup> to the LA, based on a template provided by ELF; and
- Write up their research findings in a draft report to ELF to highlight good practice at local authority level and identify what further action may be required to meet climate change targets.

For the pilot study, only postgraduate law students were permitted to volunteer to contain the recruitment process to a smaller cohort for the purpose of piloting. A call for students was circulated by email and students had to apply by submitting a covering letter and a CV. In the first year of the pilot, we recruited five students to the policy clinic. Given the success of the first-year pilot, eighteen students were recruited in academic year 2022/23. The students received joint training sessions over Teams, including workshops on how to conduct desktop research, draft EIRs and write up the report.

Even though the two universities are geographically close, we decided to pilot as a virtual policy clinic and all meetings were held via Teams. A joint Teams site was created which housed the repository of documents required by the students to allow the students to upload their research and draft independently, which aided

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<sup>10</sup> An EIR is akin to a freedom of information request.

supervision and monitoring. There were no extra insurance burdens to assume, as the policy clinic was not engaging in providing legal advice. Finally, as the data being requested was either in the public domain or provided in the EIR, there was no requirement to obtain approval from the universities' ethics panels.

### **Benefits of establishing a Policy Law Clinic**

Introducing a Policy Law Clinic into a University's CLE programme brings with it a wealth of benefits for all key stakeholders, including the university, the client organisation, and the students working within the clinic.

Developing an innovative learning experience for those students with a desire to gain practical legal experience was the motivating factor for establishing the collaborative UCLan and Lancaster University Policy Law Clinic. Policy Law Clinic work provides a valuable opportunity for students to conduct empirical legal research on behalf of charities and external organisations ('the client'), with the aim of using the findings to influence policy and law reform. This is a distinctive offering to that of a traditional live-client Law Clinic.

#### **An exciting hybrid**

Both UCLan and Lancaster University wanted to enhance their CLE programmes by diversifying the engagement projects available to students. Establishing a Policy Law Clinic allowed us to create a project for those students who wanted a clinical legal

experience, but who did not wish to conduct live-client work. Where there was uncertainty about future career aspirations, students could use the experience to make an informed choice about whether to pursue a career in the legal profession.<sup>11</sup> The Policy Law Clinic therefore provided an exciting hybrid for those students who were interested in research and legal reform but were unsure of whether a traditional Law Clinic experience was for them.

Policy Law Clinics allow students to ‘think of the law in a different, but still practical, sense’,<sup>12</sup> where students are encouraged to consider ‘the mechanics of the law, how laws are made and how they are influenced’.<sup>13</sup> Additionally, students are introduced to pro bono work. Pro bono is beneficial to both students and society.<sup>14</sup> For students, pro bono work provides a practical learning experience which develops legal skills and provides networking opportunities. Some academics argue that by engaging in university pro bono projects, law graduates can cultivate a sense of altruism, and a desire to advance access to justice.<sup>15</sup>

By working on behalf of ELF, students were given insight into some of the most contemporary legal issues surrounding environmental justice and the climate

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<sup>11</sup> See findings in, R Dunn, L Bengtsson & S McConnell, ‘The Policy Clinic at Northumbria University: influencing policy/reform as an effective educational tool for students’ *International Journal of Clinical Legal Education* 27 (2) 2020 68-102, 97.

<sup>12</sup> R Dunn and R Glancey, ‘Using legal policy and law reform as assessment.’, 139-163, in Bone, A. and Maharg, P. (eds), *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press, 2019).

<sup>13</sup> L Curran, ‘University Law Clinics and their value in undertaking client-centred law reform to provide a voice for clients’ experiences’ (2007) 12(1) *International Journal of Clinical Legal Education* 105-130, 105

<sup>14</sup> F Cantatore, ‘Pro bono in Law Schools: Tracking the Effect of Pro Bono Service in an Australian University Law Clinic’ (2020) 27 (1) *International Journal of Clinical Legal Education* 101-136.

<sup>15</sup> Cantatore, F (n 14) 101-136.

emergency. The project gave students an opportunity to conduct impactful legal research, which will ultimately be used by ELF in their continued national campaigns.<sup>16</sup> By engaging in this work, students were benefitted the opportunity of deepening their understanding of the law, whilst seeing how lawyers can play a role in its development.<sup>17</sup> It is the authors' hope that by engaging in such important societal work, and gaining an appreciation of its impact on the communities that ELF supports, students will gain a social justice ethos that they will take forward into their future careers.<sup>18</sup>

### The Value of a Clinical Legal Experience

Policy Law Clinics fall under the umbrella of CLE. The value and benefits of CLE are well-recognised and extensively covered within current academic literature.<sup>19</sup> Like any form of CLE, Policy Clinics offer an abundance of learning benefits for students. Grimes notes that CLE allows students to gain a hands-on, practical, and participatory learning experience, whereby legal knowledge and skills are acquired, and where students have an opportunity to consider "the meaning and application of law".<sup>20</sup> CLE also provides an opportunity for students to see how the law interacts with society.<sup>21</sup>

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<sup>16</sup> For an overview of the work of the Environmental Law Foundation, see: <[www.elflaw.org](http://www.elflaw.org)> accessed July 2023

<sup>17</sup>For a full discussion on the role of Policy Clinics, see: Dunn, Bengtsson & McConnell (n 3), 68.

<sup>18</sup> Previous research conducted demonstrates that Policy Law Clinics can create a social justice ethos in students, see: Dunn, Bengtsson & McConnell, (n 3) 75.

<sup>19</sup> For a discussion see: R Dunn, 'A Systematic Review of the Literature in Europe Relating to Clinical Legal Education' (2017) 24(2) *International Journal of Clinical Legal Education* 81

<sup>20</sup> R Grimes, 'Reflections on Clinical Legal Education' (1995) 29 *The Law Teacher* 169, 171-173.

<sup>21</sup> For a discussion on how CLE and how the law interacts with society, see: M Combe, 'Selling intra-curricular clinical legal education' (2014) 48(3) *The Law Teacher* 281-295, 281.

Current academic literature contends that Policy Law Clinics provide an avenue for students to expand their professional skills, including, amongst others, research skills, time management, analytical skills, written skills, and efficiency.<sup>22</sup> Advancing our students' legal research skills was a key remit of the Policy Law Clinic. Students were tasked with not only conducting research about environmental law, but also conducting fact-finding research to examine whether Local Authorities are meeting their climate emergency goals. Students were required to conduct desk-based research, along with gathering further data through drafting EIRs. The drafting of the EIRs ensured that students could develop their legal letter writing skills.

By asking each student to be responsible for drafting a specific section of the overall research report (which would eventually be used by ELF), our students were able to practise their written communication skills, along with refining their attention to detail. Setting work completion deadlines throughout the project assisted our students with advancing their efficiency, time-management, and organisational skills.

It is well recognised that the graduate employment market, especially for those students pursuing a career within the law, is competitive.<sup>23</sup> Participating in a Policy Law Clinic provides students with legal experience which they can use to evidence

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<sup>22</sup> For a full discussion on how policy clinics can develop student skills, see: R Dunn R Glancey, 'Using legal policy and law reform as assessment.', 139-163, in Bone, A. and Maharg, P. (eds), *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press, 2019) and also: Dunn, Bengtsson & McConnell (n 3) 68.

<sup>23</sup> For a discussion on CLE and employability see: J Alexander, 'Modelling employability through clinical legal education: building confidence and professional identity.' (2023) 57(2) *The Law Teacher* 135-154

transferable employability skills.<sup>24</sup> Participating in CLE has been found to enhance a student's ability to find placements, training and employment.<sup>25</sup> Research conducted by Alexander also notes that CLE helps graduate prospects by building confidence and instilling students with a professional identity.<sup>26</sup>

### **Challenges, reflecting and perfecting**

Career enhancing or just one more thing for the students to think about? The challenge of running a Policy Law Clinic on an extracurricular basis

As explored above, students gain a plethora of benefits from participating in the Policy Law Clinic, including enhanced employability and skills development. However, a distinctive feature of the Lancaster/UCLan Policy Law Clinic is that it operates on an extracurricular basis. This presents several unique challenges. One reason for running the Policy Law Clinic on an extracurricular basis is that it is still in a pilot phase and is only in its second year of running. The authors adopted a "quick and dirty" Policy Law Clinic launch, piloting the Clinic as quickly as possible with the aim of acquiring key insights and effectively fine-tuning the project in a short period of time. Developing and testing a project rapidly is common in the start-up sector, where commencing a project quickly, failing, taking key learnings, and adapting, is a well-

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<sup>24</sup> See, Dunn, Bengtsson, & McConnell (n 3) 93.

<sup>25</sup> S Blandy, 'Enhancing Employability through Student Engagement in Pro Bono Projects' (2019) 26(1) *International Journal of Clinical Legal Education* 7-45.

<sup>26</sup> For a discussion on CLE and employability see: J Alexander (n23) 153.

recognised route to business success.<sup>27</sup> Piloting the Policy Law Clinic on an extracurricular basis allowed us to avoid the bureaucracy often involved in module creation, and quickly test the viability of the project.

Running the Policy Law Clinic on an extracurricular basis also provides another avenue for more students to participate in clinical work. Lancaster operates traditional Law Clinic modules, which are embedded into the curriculum, whilst UCLan's Clinic offering is solely extracurricular. However, not all law students choose to participate in either the modules or the projects, spaces are limited and there is a competitive application process. In light of the well-documented benefits of clinical legal education<sup>28</sup>, the authors recognised that introducing an extracurricular Policy Law Clinic would provide an additional route for students to gain valuable clinical experience.

The benefits of engaging in extracurricular activities such as the Policy Law Clinic are several, including enabling students to enhance and showcase their employability to graduate employers in a tangible way<sup>29</sup>, gain insight into their future career aspirations<sup>30</sup> and broaden their access to different networks and career opportunities.<sup>31</sup> Students also acquire important life and employment skills from extracurricular

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<sup>27</sup> J. Scheinrock and M. Richter-Sand, *The Agile Startup: Quick and Dirty Lessons every Entrepreneur Should Know* (Wiley Entrepreneurship 2013).

<sup>28</sup> Dunn, Bengtsson and McConnell (n 3) 68.

<sup>29</sup> J. Dickinson, T. Griffiths and A. Bredice, 'It's just another thing to think about': encouraging students' engagement in extracurricular activities' (2021) 45(6) *Journal of Further and Higher Education* 744, 752.

<sup>30</sup> Dunn, Bengtsson and McConnell (n 3) 97.

<sup>31</sup> Dickinson, Griffiths and Bredice (n 29) 752.

activities, such as tenacity and time management.<sup>32</sup> However, despite the multitude of benefits to students from engaging in the extracurricular Policy Law Clinic, the authors were concerned that: (a) the extracurricular nature of the Policy Law Clinic might mean that only certain types of students are able to participate; and (b) for some students who did participate, there was a noticeable waning of engagement with the project as the academic year progressed, and some students dropped out of the Policy Law Clinic altogether.

Students who volunteer in the Policy Law Clinic commit to several mandatory training and check-in sessions (roughly five in total), alongside unsupervised research and drafting responsibilities. While the time commitment is not overly onerous, and the training sessions and independent work can be completed remotely, the authors recognise that for some students the time demand associated with extracurricular activities is a barrier to involvement.<sup>33</sup> Buckley and Lee's research indicates that some students "identify extracurricular activities as being a potential cause of stress", noting that this can be caused by both the time commitment and possible scheduling issues.<sup>34</sup> Lack of time is a particularly relevant barrier considering the current cost of living crisis, as many students are increasingly taking on paid work to help fund their

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<sup>32</sup> G. Clark, R. Marsden, J. Whyatt, L. Thompson and M. Walker, "It's everything else you do...": Alumni views on extracurricular activities and employability' (2015) 16(2) *Active Learning in Higher Education*, 133, 143.

<sup>33</sup> P. Buckley and P. Lee, 'The impact of extra-curricular activity on the student experience' (2021) 22(1) *Active Learning in Higher Education*, 37, 42.

<sup>34</sup> Buckley and Lee (n 33) 42.



studies.<sup>35</sup> The need to work alongside studying disproportionately affects students from a lower socioeconomic background, reducing the time that these students have available to engage in extracurricular activities such as clubs, societies and voluntary work.<sup>36</sup> Similarly, for students who have caring responsibilities, lack of time can prevent engagement with extracurricular activities.<sup>37</sup> In light of this, an extracurricular Policy Law Clinic may not be accessible for students with paid work and/or caring commitments. A lack of time and multiple competing responsibilities can also explain why some Policy Law Clinic students became disengaged with the project as the academic year progressed. Anecdotal evidence from informal discussions with students suggests that, for some, the demands of coursework, exams and paid work understandably resulted in their Policy Law Clinic work falling to the bottom of an already extensive to-do list.

The solution(?): The one-day Policy Law Clinic hackathon

The authors aim to make the Policy Law Clinic as accessible and as engaging as possible for the broadest range of students. Time commitment has been identified as a primary barrier to extracurricular engagement, and the Policy Law Clinic currently requires a sustained commitment over one academic year. To increase Policy Law Clinic engagement, the authors intend to trial a one-day Policy Law Clinic hackathon

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<sup>35</sup> J. Neves and R. Stephenson, 'Student Academic Experience Survey 2023' (Advance HE, 22 June 2023) < [https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/Student%20Academic%20Experience%20Survey%202023\\_1687527247.pdf](https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/advance-he/Student%20Academic%20Experience%20Survey%202023_1687527247.pdf) > accessed 25 July 2023.

<sup>36</sup> Dickinson, Griffiths and Bredice (n 29) 746.

<sup>37</sup> Dickinson, Griffiths and Bredice (n 29) 751.

in the academic year 2023/24. A hackathon can be described as an event or competition in which a team comes together to rapidly develop a prototype solution to a problem facing a business or organisation.<sup>38</sup> In our legal hackathon, students will meet (both in person and virtual options will be available) and will receive training, problem solve, conduct legal research and draft EIRs, so that almost one year's worth of extracurricular Policy Law Clinic work is condensed into one intense and exciting day of work.

Holding the hackathon over one day reduces the time commitment for students which, it is hoped, will encourage as many students as possible to get involved. Of course, an in-person hackathon may also present accessibility issues for some students. For example, some students may be working on the day of the hackathon or have conflicting lectures. However, the authors' aim is to maximise the hackathon's flexibility. For example, it will be possible for students to join the hackathon via Teams and work in small breakout groups. This enables students who have part-time work or class to drop in and out of the hackathon, as there will always be lecturers on hand (both in person and online) to provide support. In addition, the hackathon will be hosted by either Lancaster University or UCLan, and transportation will be funded for students attending in person, removing any cost barrier for student participation. It is anticipated that a one-day Policy Law Clinic hackathon will increase student

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<sup>38</sup> S. Rojas, 'Legal Hackathons: What Even is a Hackathon and How Do I Organise One?' (18 January 2023) < <https://zegal.com/en-gb/blog/post/legal-hackathons-what-even-is-a-hackathon-and-how-do-i-organise-one/> > accessed 25 July 2023.

engagement, remove time commitment concerns and foster a cross-institutional sense of community among students. The effectiveness of the authors' proposed solution falls within the purview of another paper, after the inaugural hackathon has run next academic year.

### Time and resource pressures for academics

As discussed above, time commitment can act as a barrier to student participation in extracurricular Policy Law Clinics. However, the time and resource commitment for academics is also an important factor to consider when establishing a Policy Law Clinic. From identifying and developing a relationship with a third-party client, familiarising academic staff with a potentially unfamiliar area of law, developing training resources, recruiting students, delivering training sessions and ongoing supervision, starting and running a Policy Law Clinic is a multi-faceted, complex process. For academics considering piloting their own Policy Law Clinic, the time and resource commitment involved should not be underestimated. In Higher Education, work-life balance is an ongoing challenge for academics, caused in part by heavy workload, time and resource constraints and role overload.<sup>39</sup> This is exacerbated by the expansion in student numbers in UK Higher Education and a more "consumer oriented" approach to study, alongside the open-ended nature of much academic

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<sup>39</sup> G. Kinman and F. Jones, 'A life Beyond Work? Job Demands, Work-Life Balance, and Wellbeing in UK Academics' (2008) 17(1/2) *Journal of Human Behavior in the Social Environment*, 41, 43.

work.<sup>40</sup> Starting and running a Policy Law Clinic is a significant academic project that brings benefits to the third-party client, the students involved and the institution.<sup>41</sup> In light of this, starting and running a Policy Law Clinic should be recognised in workload and resourcing considerations, and should be given significant weighting in the institutional promotion process. Securing departmental buy-in and having the time and resource to trial and refine a pilot Policy Law Clinic is an essential element of the process. In addition, the authors commend the benefits of collaborating with other institutions when designing and establishing a Policy Law Clinic, as this spreads the workload and allows for shared learning.

### **Concluding Remarks**

Participation in a Policy Law Clinic benefits students in numerous ways. It provides invaluable practical experience and through the development of transferable employability skills such as research, time management and teamwork. By working on real world problems, our students have made a tangible impact on members of the community experiencing environmental poverty. This real-life experience uniquely challenges students and enhances their personal development; as Webb suggests, ‘the

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<sup>40</sup> Kinman and Jones (n 39) 42 and 45.

<sup>41</sup> Buckley and Lee (n 33) 46.

student will not realise his or her potential unless challenged by something more pressing than an essay on the sovereignty of Parliament'<sup>42</sup>

Considering the benefits of Policy Law Clinic work, the authors recommend adopting a 'quick and dirty' approach to piloting a Policy Law Clinic, and using lessons learned to refine the end model. For example, from our 2-year pilot, the authors have learned that student engagement with the extracurricular Clinic sometimes wanes as the academic year progresses due to student study and work commitments. The authors are therefore piloting a one-day Policy Law Clinic hackathon in 2023/24, to reduce the time commitment involved. Testing ideas, starting small and failing forward is a key part of the iterative process when establishing a new Policy Law Clinic. In addition, the authors highly recommend the benefits of partnering with another institution when establishing a Policy Law Clinic. Doing so enables the workload to be shared, provides a valuable sounding board for ideas and fosters a cross-institutional sense of camaraderie.

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<sup>42</sup> J Webb 'Inventing the good: A prospectus for clinical legal education and the teaching of legal ethics in England', (1996) 30 *The Law Teacher*, 272.

## WHEN WORLDS COLLIDE: REFLECTIONS ON CASEWORK AND POLICY WORK IN LAW CLINICS AND POLICY CLINICS

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### Abstract

In the United Kingdom, policy clinics are generally established as an extension of a university law clinic. Policy clinics give students the opportunity to undertake empirical research, often for the first time in their legal studies, to further investigate societal issues which impact diverse communities. The University of Exeter's Policy Clinic is no exception. As a new component of the University of Exeter's Community Law Clinic, the Policy Clinic aims to influence public policies that are relevant to the legal issues that Community Law Clinic clients collectively face.

This practice report will explore the author's first-hand experiences of working in the Community Law Clinic as a *student legal advisor* within the 'Access to Justice Clinic' undergraduate module at the University of Exeter, as a *research intern* collaborating with the Policy Clinic on a scoping project in its nascent year and, finally, as a *support officer* in a developing Policy Clinic. In the context of these three roles, this report will

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<sup>1</sup> LLB (Hons) Exon. The author expresses her utmost gratitude to Dr Emma Marshall for her advice and guidance throughout her time at the Exeter Policy Clinic as well as the writing process for this report. She also extends her gratitude to Professor Tia Ebarb Matt, Natasha Bellinger, and Kim McDonald for their unwavering support within and beyond the Exeter Community Law Clinic. Finally, the author warmly thanks the IJCLE's editorial team and reviewers for their hard work and kind words.

discuss the differences between research practices, the extent of academic and professional involvement, client interactions, and relationships in both clinics. Despite these differences, this report concludes that working at both clinics allows for developing skills in various contexts, which leads to the constant redefinition of integral values such as *collaboration*, *trust*, and *respect*. Ultimately, working at both law clinics and policy clinics are complementary, seeing that the fascinating interplay between casework and policy work reiterates the distinction between legal theory and “*real world law*”—providing invaluable insight and experience to law students regardless of jurisdiction.

## Introduction

Clinical legal education (CLE) bridges the gap between legal education and the legal profession by expanding on the doctrinal aspects of “traditional legal education”,<sup>2</sup> as the latter teaches students how to “*think like a lawyer*” whilst the former gives them the opportunity to also “*act like a lawyer*” through live client casework in law clinics.<sup>3</sup> Law clinics are an integral practical component of CLE and are widely defined as ‘a learning environment where students identify, research and apply knowledge in a

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<sup>2</sup> See Cath Sylvester, ‘Bridging the Gap? The Effect of Pro Bono Initiatives on Clinical Education in the UK’ [2003] 3 IJCLE 29 ; Jeff Giddings and Jaqueline Weinberg, ‘Experiential Legal Education – Stepping Back to See the Future’ in Catrina Denvir (ed), *Modernizing Legal Education* (CUP 2020) 38.

<sup>3</sup> See Rebecca L Sandefur and Jeffrey Selbin, ‘The Clinic Effect’ (2009) 16(57) Clin L Rev 57.

setting which replicates, at least in part, the world where it is practised'.<sup>4</sup> Policy clinics, on the other hand, are an emerging approach to CLE in the United Kingdom.<sup>5</sup> Instead of live client casework, policy clinics conduct empirical research to investigate a socio-legal issue further and, with it, influence public policy and law reform.<sup>6</sup> Whilst the differences between the two clinics may appear that they exist in different worlds, the incorporation of policy clinics in existing law clinics serves as a catalyst for these two worlds to collide—giving students the opportunity to examine and address the wider implications of the legal issues that they encounter in live client casework.

The 'Access to Justice Clinic' undergraduate module at the University of Exeter was first offered in 2017,<sup>7</sup> coinciding with the launch of the university's Community Law Clinic.<sup>8</sup> As part of the 2020-2021 cohort, I worked as a *Community Law Clinic student legal advisor* throughout the academic year. We were assigned cases in various legal

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<sup>4</sup> Richard Grimes, 'The Theory and Practice of Clinical Legal Education' in Julian Webb and Caroline Maughan, *Teaching Lawyers' Skills* (Butterworths 1996) 138.

<sup>5</sup> Granted that policy clinics have been operating in the USA from as early as the 1980s. See Rachel Dunn and Richard Glancey, 'Using legal policy and law reform as assessment' in Alison Bone and Paul Maharg (eds), *Critical Perspectives on the Scholarship of Assessment and Learning in Law Volume 1: England* (ANU Press 2019) 142. In the United Kingdom (UK), more and more policy clinics are being established since 2018. Notable examples include Northumbria University's Policy Clinic, the Open University's Online Policy Clinic, Goldsmiths, University of London's Law and Policy Clinic, and City, University of London's Environmental Law Pro Bono Policy Clinic. See also Rachel Dunn, Lyndsey Bengtsson, and Siobhan McConnell, 'The policy clinic at Northumbria University: Influencing policy/law reform as an effective educational tool for students' (2020) 27(2) IJCLE 68.

<sup>6</sup> Rachel Dunn, Lyndsey Bengtsson, and Siobhan McConnell, 'The policy clinic at Northumbria University: Influencing policy/law reform as an effective educational tool for students' (2020) 27(2) IJCLE 68.

<sup>7</sup> University of Exeter Law School, 'Undergraduate Module Descriptor – LAW3167: Access to Justice Clinic – Overview' < <https://law.exeter.ac.uk/currentstudents/undergraduatemodules/2020-21/module/?moduleCode=LAW3167&ay=2020/1> > accessed 5 June 2023.

<sup>8</sup> University of Exeter Law School, 'Community Law Clinic' < <https://law.exeter.ac.uk/communitylawclinic/> > accessed 5 June 2023.



areas<sup>9</sup> and were given a final grade through four main assessment modalities: (1) professionalism in the clinic,<sup>10</sup> (2) a written case study which focuses on our chosen client's issue or problem, (3) an oral presentation based on the case study, and (4) a reflective portfolio on our experiences working in the clinic.<sup>11</sup> There were also formative opportunities within the module via simulation tasks.<sup>12</sup>

The Policy Clinic at the University of Exeter was established to give students the opportunity to undertake socio-legal empirical research, which is vastly different from doctrinal research,<sup>13</sup> to closely study the issues that Community Law Clinic clients collectively face and to help strengthen connections between the university and the local community through collaborative research projects with community partners. In 2021, I was onboarded as a *Policy Clinic research intern* for one of the clinic's early scoping projects in collaboration with one of the Community Law Clinic's community partners. In 2022, I was employed as a *Policy Clinic support officer* to assist with the further development of the Policy Clinic and help concretise the practicalities involved in the working relationship between both the Community Law Clinic and the Policy

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<sup>9</sup> Such as employment, housing, social welfare, criminal, and contracts. See *ibid.*

<sup>10</sup> The constitutes live client casework which includes attendance to training sessions and meetings with clients and supervisors as well as completing tasks related to casework and case management. See University of Exeter Law School, 'Undergraduate Module Descriptor – LAW3167: Access to Justice Clinic – Assessment' < <https://law.exeter.ac.uk/currentstudents/undergraduatemodules/2020-21/module/?moduleCode=LAW3167&ay=2020/1/assessment> > accessed 5 June 2023.

<sup>11</sup> *ibid.*

<sup>12</sup> For example, writing an advice letter for a fictional client. See *ibid.* See also Richard Lewis, 'Clinical Legal Education Revisited' (2000) 13 *Dokkyo Intl Rev* 149 ; Elliott S Milstein, 'Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations' (2001) 51(3) *J Leg Ed* 375.

<sup>13</sup> Seeing that doctrinal research forms the majority of legal research that is expected and taught in a standard Bachelor of Laws (LLB) degree in the UK. See Terry Hutchinson and Nigel Duncan, 'Defining and describing what we do: doctrinal legal research' (2012) 17(1) *Deakin L Rev* 83.

Clinic; this was primarily done by providing additional research support to the Community Law Clinic where needed. Alongside research support, I also helped to maintain the Community Law Clinic and Policy Clinic's external (i.e., community) partnerships.

CLE champions *experiential learning*, or “learning by doing”,<sup>14</sup> providing an environment where students are ‘exposed to real or realistic legal issues and problems’ as active participants in those processes and interactions.<sup>15</sup> Existing literature describes this learning method as *supervised skill and personal development*, which breaks experiential learning down into three main components: skills acquisition, personal development, and supervision.<sup>16</sup> Through clinical work, students are equipped to ‘sharpen their understanding of professional responsibility and deepen their appreciation for their own values [and] those of the profession as a whole’,<sup>17</sup> which may lead to the development of their professional identities—a ‘complex construct’ constituted by objective and subjective determinants.<sup>18</sup>

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<sup>14</sup> Richard Lewis, ‘Clinical Legal Education Revisited’ (2000) 13 *Dokkyo Intl Rev* 149, 155.

<sup>15</sup> Richard Grimes and Jenny Gibbons, ‘Assessing experiential learning – us, them and the others’ (2016) 23(1) *IJCLE* 107 ; Kevin Kerrigan, ‘What is Clinical Legal Education and Pro Bono’ in Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011) 5.

<sup>16</sup> See Carolyn Grose, ‘Beyond Skills Training, Revisited: The Clinical Education Spiral’ (2013) 19(489) *Clin L Rev* 489 ; Wes Porter, ‘When Experiential Learning Takes Center Stage – Not Yet’ (2015) 1(1) *J Experiential Learning* 1 ; Gemma Smyth and Marion Overholt, ‘Framing Supervisory Relationships in Clinical Law: The Role of Critical Pedagogy’ [2014] 23 *JLSP* 62.

<sup>17</sup> See American Bar Association, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) (MacCrate Report) 238 ; Ann Thanaraj, ‘Understanding how a law clinic can contribute towards students’ development of professional responsibility’ (2016) 23(4) *IJCLE* 89.

<sup>18</sup> These objective determinants may include professional conduct regulations, technical knowledge, and skills, whereas subjective determinants may include one’s personal identity and purpose for

Despite experiential learning being heavily associated with live client casework in law clinics,<sup>19</sup> it is arguable that policy clinics also provide students with similar learning experiences. Both law clinics and policy clinics inherently encourage “hands-on learning” for students to actively engage with law and public policy as they function in society—diverting from their doctrinal aspects as taught in traditional legal education. Law clinics and policy clinics achieve this objective by offering similar opportunities for students: to research a *legal* or, more widely, *societal* issue further and to develop communication and interpersonal skills by interacting and forming connections with a diverse set of people—all whilst being supervised and supported by professionals in the field.

Hence, given the limited number of literature discussing ‘the pedagogical benefits of carrying out [policy clinic] work alongside live client work’,<sup>20</sup> this practice report aims to contribute to this by giving an account of my experiences working across both clinics as a way to build on existing literature on experiential learning. With reference to the similar opportunities that both clinics offer to students, this practice report will explore the facets of experiential learning in CLE by discussing (1) how ‘active learning’ is guaranteed by both clinics, (2) how working on people’s real-life

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choosing their profession. See Jennifer L Whelan, ‘Grounding Inside/Out Professional Identity Formation by Developing Wholehearted Lawyers with Therapeutic Intent’ (2022) 29(1) IJCLE 32.

<sup>19</sup> See Deborah Maranville, ‘Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning’ (2001) 51(1) JLE 51 ; Francina Cantatore, ‘Boosting Law Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects’ [2015] 25 Legal Educ Rev 147 ; Steven M Virgil, ‘The Role of Experiential Learning on a Law Student’s Sense of Professional Identity’ [2016] 51 Wake Forest L Rev 325.

<sup>20</sup> Dunn and others (n 6) 68.

experiences with law and public policy reinforces the importance of empathy in professional environments, and how learning in both clinics is facilitated by (3) reflective practice and (4) supervisor guidance. This will be followed by a discussion on the role of both clinics in reiterating (5) the importance of *collaboration, trust, and respect* as professional values—ultimately demonstrating (6) how live client casework and policy work ultimately complement each other in gaining a comprehensive understanding of how the law and the legal system behave and interact with various other factors in society.

### **I. On ‘active learning’ in dynamic clinical legal environments**

Change is a constant in clinical legal environments. Both law clinics and policy clinics provide students with the opportunity to work and learn in real-life environments by being involved in real-life projects—may it be a live client case or an ongoing research project. Consequently, students are simultaneously exposed to different experiences at a pace that is dependent on changing contexts. As a result, students are constantly pushed outside of their comfort zone as they are forced to adapt to quickly-changing situations as well as acquire and develop skills over time—thus increasing the likelihood of them becoming agile thinkers and workers. This dynamic nature of CLE is particularly made evident by the different types of legal research and professional interactions that are expected in both clinics.

Considering that casework and policy work follow different processes, it is inevitable for both law clinics and policy clinics to employ different types of legal research.<sup>21</sup> Live client casework requires practical legal research,<sup>22</sup> which focuses on using the law as a tool to understand and solve an issue that the client is facing. Conversely, policy work requires a more academic approach to examining how the law interacts with multiple societal facets: empirical socio-legal research.<sup>23</sup> This can involve quantitative,<sup>24</sup> qualitative,<sup>25</sup> and literature-based research, allowing students to be directly involved in project design and data collection methods such as surveys and

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<sup>21</sup> On the importance of legal research in CLE, see Vicenç Feliú and Helen Frazer, 'Embedded Librarians: Teaching Legal Research as a Lawyering Skill' (2012) 61(4) J Leg Ed 540 ; Sarah Valentine, 'Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools' (2010) 39(2) U Balt L Rev 173 ; Rebecca A Cochran, 'Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service' (1999) 8(3) B U Pub Int L J 429.

<sup>22</sup> Which involves consulting practical legal sources and general advice provision resources to acquire information, which will be applied to the clients' legal issues. Practical legal sources include Thomson Reuters' Practical Law and LexisNexis Practice Notes, while general advice provision resources could include Citizens Advice, which is an independent third-sector organisation which primarily provides advice to people on various issues, free of charge. See Thomson Reuters Practical Law, 'UK Home | Practical Law' < [https://uk.practicallaw.thomsonreuters.com/Browse/Home/PracticalLaw?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://uk.practicallaw.thomsonreuters.com/Browse/Home/PracticalLaw?contextData=(sc.Default)&transitionType=Default&firstPage=true) > accessed 13 June 2023 ; LexisNexis, 'Practice Notes | Legal Guidance | LexisNexis' < <https://www.lexisnexis.co.uk/legal/practice-notes/> > accessed 13 June 2023 ; Citizens Advice, 'Citizens Advice' < <https://www.citizensadvice.org.uk/> > accessed 13 June 2023.

<sup>23</sup> See Lisa Webley, 'The *why* and *how to* of conducting a socio-legal empirical research project' in Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2020) 58, 59.

<sup>24</sup> Quantitative research methods in empirical social science research corresponds to working with 'statistics or numbers' in order to 'numerically describe phenomena' and 'determine relationships between [...] variables'. See Daniel Stockemer, *Quantitative Methods for the Social Sciences – A Practical Introduction with Examples in SPSS and Stata* (Springer 2019) 8.

<sup>25</sup> Qualitative research methods in empirical social science research corresponds to working with text-based data in order to '[understand] the underlying social phenomenon and processes by using direct observation and communication'. See Susan McVie, 'Challenges in Socio-Legal Empirical Research' < <https://www.create.ac.uk/methods/methodological-challenges/socio-legal-empirical-research/index.html> > accessed 16 June 2023.

interviews.<sup>26</sup> Having worked in both clinics, I learned about the constituent stages within both types of research, which developed my knowledge of each method by directly applying them to my work. Seeing that the purposes of research tasks heavily depend on the type of project at hand, I was introduced to various legal systems around the world as well as disciplines outside of law,<sup>27</sup> which not only expanded my knowledge on how data is presented and prioritised across subject areas, but it also tested how well I can effectively find information from a diverse range of sources and apply them to the overall objectives.

Existing literature has demonstrated the benefits of CLE to students who are looking to develop their oral and written communication skills,<sup>28</sup> which may be brought on by the different types of professional interactions that students get to actively participate in across both clinics. From clients in the Community Law Clinic to external partners in the Policy Clinic, students explore different communication styles and learn about different group dynamics through each interaction. From my experience, the atmosphere in a Community Law Clinic interview is more client-focused, usually only comprising of the student advisors and the client.<sup>29</sup> If done well, interviews flow like a conversation, with the student advisor informing the client on how the process will

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<sup>26</sup> In the case of qualitative research methods. See also Rachel Dunn and others, 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) 27(2) IJCLE 68, 73.

<sup>27</sup> Such as Psychology, Sociology, Criminology, Medicine, and Health & Social Care.

<sup>28</sup> See Francina Cantatore, 'The impact of Pro Bono law clinics on employability and work readiness in law students' (2018) 25(1) IJCLE 147 ; Lydia Bleasedale and others, 'Law Clinics: What, why and how?' in Linden Thomas and Nick Johnson (eds), *The Clinical Legal Education Handbook* (UoL Press 2020) 7.

<sup>29</sup> Granted that clinical supervisors are also present during these interviews for safeguarding purposes.

move forward—which is similar to conducting interviews for data collection in the Policy Clinic. On the other hand, Policy Clinic meetings with external partners and academics resemble a group discussion, with both parties sharing ideas and expertise before collectively deciding how to move forward. Working in both clinics gives students the opportunity to *lead* conversations as interviewers or *facilitate* group discussions as team members. Whilst the format of email correspondences between clients and external partners may vary depending on the context, effective supervision in the Community Law Clinic ensures that all forms of written communication are professional, concise, and easy to follow. Working in both clinics increases the chances of meeting a diverse set of people, all having their own personalities, communication styles, and temperaments; clinic students gradually learn to work with them as time goes on.

Whether it be research practices or interpersonal relationships, there is no “one size fits all” approach in both clinics. This is perhaps why Atkinson and Castle observed the first five weeks of clinic work to have a ‘very steep’ learning curve;<sup>30</sup> during this time period, students are still learning how to make sense of—and appropriately respond to—ever-changing situations within their respective environments. Indeed, by “rolling up one’s sleeves” and learning through making and fixing mistakes,<sup>31</sup>

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<sup>30</sup> Matthew Atkinson and Margaret Castle, ‘Blogging, Journaling and Reflective Writing: A Snapshot of Students’ Preferences & Perceptions from Two Australian Universities’ (2020) 27(2) IJCLE 155, 163.

<sup>31</sup> Becky Beaupre Gillespie, ‘The Evolution of Experiential Learning’ (The University of Chicago | The Law School, 3 October 2017) < [https://www.law.uchicago.edu/news/evolution-experiential-learning?utm\\_content=bufferff089&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=b](https://www.law.uchicago.edu/news/evolution-experiential-learning?utm_content=bufferff089&utm_medium=social&utm_source=twitter.com&utm_campaign=b) > accessed 28 July 2023.

students gradually develop a growth mindset over time; thus becoming ‘active participants in their own learning’.<sup>32</sup> Learning and developing skills in dynamic clinical legal environments encourage students to undertake ‘higher-level thinking’<sup>33</sup> as they interact with many types of people and scenarios—all of which are unpredictable in their diversity. As a result of this, students are able to adapt to different environments whilst being aware and mindful of the different expectations within those different scenarios, which can help them work more effectively in the future. This is particularly relevant vis-à-vis the sudden switch to remote working as a result of the COVID-19 pandemic, as students had to not only grasp how to use new technologies at a much faster rate,<sup>34</sup> but also learn how to develop those relationships with clients, academics, and external partners through this new medium.<sup>35</sup> That said, while it is true that actively learning in dynamic real-life situations can be beneficial in skills acquisition, it could also have emotional repercussions to students who encounter difficult issues and hardships in their work.

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<sup>32</sup> Adrian Evans and others, ‘7 Reflective practice: The essence of clinical legal education’ in Adrian Evans and others, *Australian Clinical Education: Designing and operating a best practice clinical program in an Australian law school* (ANU Press 2017) 153, 164.

<sup>33</sup> Alyson M Drake, ‘The Need for Experiential Legal Research Education’ (2016) 108(4) L Libr J 511. See also Gerald F Hess, ‘Principle 3: Good Practice Encourages Active Learning’ [1999] 49 J Leg Ed 401.

<sup>34</sup> See Jacqueline Weinberg and Jeff Giddings, ‘Innovative Opportunities in Technology and the Law: The Virtual Legal Clinic’ in Ann Thanaraj and Kris Gledhill (eds), *Teaching Legal Education in the Digital Age* (Routledge 2022) 47 ; Sarah Nason, ‘Holistic Legal Support for Litigants in Person: the North and Mid Wales Law Clinic Partnership’ (2022) 29(2) IJCLE 68, 97.

<sup>35</sup> See Hugh McFaul and others, ‘Taking Clinical Legal Education Online: Songs of Innocence and Experience’ (2020) 4(2) IJCLE 6 ; Tia Ebarb Matt and others, ‘The Silver Lining in the Black Cloud of COVID-19’ (2020) 4(2) IJCLE 135, 145 ; Kaye Howells, ‘Simulated and Real-World Experience - The Challenge of Adapting Practice in Clinical Legal Education in Unprecedented and Challenging Times’ (2020) 4(2) IJCLE 196, 208.



## II. On empathy, professionalism, and the complexity of “law as lived”

In both legal practice and research, working with empathy and emotional intelligence is traditionally seen as a threat to the professional ideals of objectivity and impartiality.<sup>36</sup> However, considering that both casework and policy work revolve around “law as lived” by real people, in real time, with real-life consequences,<sup>37</sup> it is almost impossible to be unemotional or emotionally unaware when working in both clinics. Casework and policy work require sensitivity, empathy, and kindness — all of which must not be compromised to satisfy the traditional perception of “professionalism”.

The application process for the Access to Justice Clinic module is exclusively open to final year students who have already studied the compulsory foundational law subjects.<sup>38</sup> These subjects should equip them with a sound knowledge of domestic law

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<sup>36</sup> For legal practice, see Rajvinder Samra and Emma Jones, ‘Fostering empathy in clinical teaching and learning environments: A unified approach’ (2019) 6(1) *Austl J Leg Ed* 1, 6–7. For legal research, see P Ishwara Bhat, ‘3 Objectivity, Value Neutrality, Originality, and Ethics in Legal Research’ in P Ishwara Bhat, *Idea and Methods of Legal Research* (OUP 2019) 55–57.

<sup>37</sup> Nathalie Des Rosiers, ‘Confidentiality, Human Relationships, and Law Reform’ in Christine M Koggel and others (eds), *Confidential Relationships. Psychoanalytic, Ethical, and Legal Contexts* (Rodopi 2003) 229, 230. See also Michele M Leering, ‘Enhancing the Legal Profession’s Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice’ (2017) 34(1) *Windsor Access Justice* 189, 207.

<sup>38</sup> These subjects are called ‘qualifying modules’ in the UK, which pertain to the seven law modules that students must pass in order to graduate with a qualifying law degree (LLB) in England and Wales. These modules are criminal law, tort law, contract law, land/property law, equity & trusts, public law, and European Union law. See The Law Society, ‘Qualifying with a law degree | The Law Society’ < <https://www.lawsociety.org.uk/career-advice/becoming-a-solicitor/qualifying-with-a-degree/qualifying-with-a-law-degree> > accessed 18 June 2023 ; Bar Standards Board, ‘The Bar Qualification Manual | Part 2 - Academic Component of Bar Training | 2A: Foundations of legal

and how their legal system works in a doctrinal capacity in traditional legal education.<sup>39</sup> Working in both law clinics and policy clinics enriches students' theoretical legal knowledge through experiential learning, as they come face-to-face with people who have previously experienced, or are still experiencing, these legal issues first-hand. This introduces a layer of complexity in CLE, as working with people who are directly affected by law and policy inevitably invokes the need to effectively consider and respond to emotional behaviours.<sup>40</sup>

On investigating the role of empathy and emotional intelligence in clinical client casework, Lawton et al. discuss the unprecedented 'emotional dialogue' that comes up in client interviews, where students tend to 'freeze' and rely on the safety of their pre-prepared set of questions 'without acknowledgement of the client's upsetting or difficult situation' because they are not used to accommodate this type of emotional response.<sup>41</sup> This 'emotional dialogue' also exists in policy work, as external partners and research participants share and discuss their lived experiences of socio-legal issues and economic hardship in meetings and interviews. As previously discussed,

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knowledge' < <https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual-new.html?part=CC6E51DC-0FF4-45C8-A0CE31EA825C4692&q=> > accessed 18 June 2023.

<sup>39</sup> This appears to be the case in some law schools in Australia, India, and the UK. For Australia, see Atkinson and Castle (n 30) 160. For India, see K Rajashree and Sonika Bhardwaj, 'India's Law School Legal Aid Clinics: The Gaps Between Aspiration and Practice' (2021) 28(2) IJCLE 38, 57. For the UK, see Lyndsey Bengtsson and Bethany A'Court, 'The Law in the Community Model of Clinical Legal Education: Assessing the Impact on Key Stakeholders' (2023) 30(2) IJCLE 54, 60–61 ; Matt and others (n 35) 137.

<sup>40</sup> Mainly because people's emotional and cognitive processes are inextricably linked. See Colin James, 'Seeing Things As We Are. Emotional Intelligence and Clinical Legal Education [2005] 8 IJCLE 123, 134 ; John D Mayer and Peter Salovey, 'What is Emotional Intelligence' in Peter Salovey and David J Sluyter (eds), *Emotional Development and Emotional Intelligence: Educational Implications* (Basic Books 1997) 3.

<sup>41</sup> Amy Lawton and others, 'Do we want a human first, and a lawyer second? Developing law student empathy through clinical legal education' (2022) 29(1) IJCLE 4, 5.

clinical work exposes students to various types of people who behave and process information differently. Having undertaken people-centric work in both clinics, one of the main things I learned is the need to be comfortable with *being* uncomfortable when ‘emotional dialogues’ start. Making sure that people feel heard and understood is paramount to establishing rapport and, consequently, a ‘relationship of confidence and trust’;<sup>42</sup> this cannot be achieved without empathy and kindness.<sup>43</sup>

Samra and Jones maintain that empathy should be viewed and treated ‘as an integral part of professionalism’, despite the concern that showing empathy in professional interactions is ‘traditionally [...] viewed as antithetical to the neutrality and objectivity’ associated with professional practice.<sup>44</sup> After all, ‘in the field of social science, knowledge is not—nor can it be—impersonal’.<sup>45</sup> That said, there is a fine line between actionable empathy and emotional overinvestment when working in both clinics—and students learn to tread that line with every professional interaction they have in law clinics and policy clinics. Lawton et al. recognise this, stating how important it is to ‘maintain objectivity and impartiality’, but not at the expense of the ‘authenticity of emotional empathetic connection’.<sup>46</sup> It is therefore unsurprising that communicating emotionally is found to be one of many skills that students develop

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<sup>42</sup> *ibid* 10.

<sup>43</sup> Evans et al. recognise client sensitivity and empathy as an integral ‘[aspect] of the clinical process’. See Evans and others (n 32) 154.

<sup>44</sup> Rajvinder Samra and Emma Jones, ‘Fostering empathy in clinical teaching and learning environments: A unified approach’ (2019) 6(1) *Austl J Leg Ed* 1, 6–7.

<sup>45</sup> As opposed to pure sciences, where objectivity is a ‘laboratory-made product’. See Bhat (n 36) 58.

<sup>46</sup> Lawton and others (n 41) 11.

in clinical environments.<sup>47</sup> Across both clinics, I have observed that treating people kindly and respectfully through empathy have tangible effects on clients, external partners, and research participants alike. Seeing them visibly relax and exhale as they share their experiences tells me that they feel comfortable and safe enough to open up and collaborate. By navigating more of these “uncomfortable” interactions, students can gradually improve on undertaking the balancing act of achieving the main objectives of interviews and meetings whilst also establishing and maintaining rapport with others.

Ultimately, these experiential learning opportunities in both clinics make it clear that empathy is not just a desirable competency in professional settings—it is a necessity. To be “professional” is *not* to discount kindness nor ‘cerebral’ skill.<sup>48</sup> The recognised importance of ‘having human skills [...] in addition to an excellent legal mind’ is particularly relevant here,<sup>49</sup> especially with the ‘false dichotomy’ often established between emotional awareness and ‘rational’ technical skill acquisition in legal practice and research,<sup>50</sup> which is reminiscent of the distinction between hard and soft skills.<sup>51</sup> As observed from both clinics, soft skills inform how well hard skills are to be applied;

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<sup>47</sup> See Bengtsson and A’Court (n 39) 75.

<sup>48</sup> On the equivalence of emotional labour to technical labour, see Ann E Juergens, ‘Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching’ (2005) 11(901) Clin L Rev 901, 901.

<sup>49</sup> Lawton and others (n 41) 9.

<sup>50</sup> *ibid* 10. See also Chalen Westaby and Emma Jones, ‘Empathy: an essential element of legal practice or ‘never the twain shall meet’? (2018) 25(1) IJLP 107, 108.

<sup>51</sup> Hard skills refer to qualification-based technical knowledge, whereas soft skills refer to relational behaviours. See Jiří Balcar, ‘Is it better to invest in hard or soft skills?’ (2016) 27(4) Econ & Lab Rel Rev 453.

knowledge is nothing without effective communication, and further knowledge acquisition cannot be pursued without collaboration—both of which can be achieved through emotionally-minded connection. It is therefore reassuring to see experiential learning being recognised as capable of ‘[fostering] the notion of empathy as a positive part of professionalism’.<sup>52</sup>

Undoubtedly, being exposed to real-life work can be overwhelming for students—especially for those who have primarily been learning through doctrinal methods. This is where reflective practice, an essential component of CLE, can be used to help students process what they are experiencing and, more importantly, what they are learning from those experiences.

### III. On “learning how to learn” through reflective practice

In CLE, students are expected to primarily learn from their *own* experiences alongside literature and primary sources. This is very different from traditional legal education, where students learn solely from academic literature and primary legal sources such as statutes and case law. Going into this uncharted territory, therefore, could take students by surprise and overwhelm them. Reflective practice is a useful tool for students to not only remember what they have experienced, but it also puts them in the mindset of being present and mindful in their work—encouraging them to focus

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<sup>52</sup> Samra and Jones (n 44) 7.

on how they felt and what they think caused their actions when responding to various situations.

A well-known component of CLE,<sup>53</sup> reflective practice is ‘the magic ingredient which converts legal experience into education’.<sup>54</sup> Evans et al. even went as far as to describe the almost-symbiotic relationship between reflection and experiential learning: it is impossible to reflect without experience, and not reflecting on one’s experience would render the latter meaningless.<sup>55</sup> Ultimately, reflective practice ensures student-centric learning as students are encouraged to consider their personal thoughts on—and actions towards—their own experiences,<sup>56</sup> making clinics a *truly* ‘self-directed learning environment’.<sup>57</sup> Through my experience, I identified three main purposes of reflective practice: to think *within* oneself to look after their own wellbeing, to think *beyond* oneself to contextualise the issues witnessed through casework and policy work, and to develop one’s overall professional practice and performance of the roles they undertake.

The Access to Justice Clinic module was instrumental in developing my reflective skills. I definitely resonate with Evans et al.’s statement that students’ exposure to ‘new, strange and previously unimaginable experiences’ through CLE helps them

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<sup>53</sup> Atkinson and Castle (n 30) 156 ; Kerrigan (n 15) 5.

<sup>54</sup> Georgina Ledvinka, ‘Reflection and assessment in clinical legal education: Do you see what I see?’ [2006] 9 IJCLE 29, 29–30.

<sup>55</sup> Evans and others (n 32) 158.

<sup>56</sup> Anthony G Amsterdam, ‘Clinical Legal Education - A 21st Century Perspective’ (1984) 34(4) J Leg Ed 612, 616.

<sup>57</sup> Lawton and others (n 41) 7.

realise that they can no longer ‘fall back on conventional classroom teaching’ and thus start to independently ‘develop new strategies and approaches to problem-solving’ through reflective practice.<sup>58</sup> As previously discussed, students gradually improve their skills and understanding over time within law clinics and policy clinics; this would be impossible without reflection. I used reflective practice to evaluate my performance—especially when I did things for the first time—and think about how I can improve for future clients and projects.<sup>59</sup> For example, if I thought that I unsatisfactorily responded to a client’s concern, I identified exactly *what* I did to make it unsatisfactory, figured out *why* I may have done it, and thought about *how* I can do better next time; the *how* must be realistically actionable. By focusing on my own actions *and* reactions during each interaction and task, I consistently found approaches that worked best for my personal working style.

As I was no longer a mere ‘spectator’ of a legal issue, it was easier for me to ‘feel the weight of responsibility’ when advising clients;<sup>60</sup> reflective practice helped me tremendously with self-regulation. Undertaking reflective practice within the Access to Justice Clinic module invited me to focus on not only what was happening around me, but also to how I was feeling before, during, and after these events. This was particularly useful during those ‘emotional dialogues’ with clients, external partners, and research participants; reflecting gave me the space to not only *feel* the emotions

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<sup>58</sup> Evans and others (n 32) 160–161. See also Ledvinka (n 54) 34.

<sup>59</sup> Either during the client interview, legal research process, or drafting the advice letter.

<sup>60</sup> Evans and others (n 32) 161.

evoked by those interactions, but to also *think* about what brought on those emotional responses.

I definitely agree that students ‘who are taught how to reflect, and who are exposed to the benefits arising from reflection, are unlikely to stop reflecting’ after the CLE period.<sup>61</sup> I found myself applying the same reflective practices that I have learned from the Access to Justice Clinic module to my work in the Policy Clinic and beyond; ‘genuine reflective skills’ became a habitual practice that helps me understand myself and my work better.<sup>62</sup> Having learnt these skills in an educational environment, I found it easier to make the link between learning and making mistakes—helping me to reframe my thinking when I face obstacles in my work and seeing them as learning opportunities instead of reverting to relentless self-criticism caused by often impossibly high standards.

By shifting the focus from theoretical perspectives to people’s lived experiences of law, public policy, and the legal system, reflective practice enables students to ‘find meaning and context’ from their work,<sup>63</sup> re-evoking the notion of “being comfortable with the uncomfortable” but in a different way. Here, the discomfort is brought on by sobering realisations on students’ personal perceptions and beliefs. It is very easy to go into CLE thinking that everyone receives equal treatment through the rule of law.

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<sup>61</sup> *ibid* 165.

<sup>62</sup> *ibid*.

<sup>63</sup> Atkinson and Castle (n 30) 157. See also Ross Hyams, ‘Assessing Insight: Grading Reflective Journals in Clinical Legal Education’ [2010] 17 *JCULR* 25, 27 ; Richard Grimes, ‘Reflections on Clinical Legal Education’ [1995] 29 *The Law Teacher* 169, 171.



However, after being exposed to the realities of law and public policy through casework and policy work, it quickly appears that it is not the case, especially for marginalised communities.<sup>64</sup> Through my work at both clinics, I developed a deeper understanding of the different ways in which underfunded and under-resourced public services detrimentally affect individuals and communities,<sup>65</sup> especially within the Policy Clinic. That said, whilst reflective practice is highly beneficial to experiential learning in CLE, the only way to ensure the effectiveness of these exercises is through careful supervision—which also provides students with more learning opportunities within clinical work.

#### **IV. On the value of professional supervision and guidance**

Professional supervision is one of the most important and distinguishable aspects of CLE, and it is present in both law clinics and policy clinics. Whilst both clinics are supervised by legal academics, practicing or otherwise, it is imperative that law clinics have accredited and regulated legal professionals such as solicitors and barristers to supervise live client casework. As experts in their respective fields, clinical supervisors provide students with invaluable insight into their professions and consistent

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<sup>64</sup> On confronting how the law is politicised and applied to people living in poverty through CLE, for example, see Smyth and Overholt (n 16) 66.

<sup>65</sup> See also Evans and others (n 32) 167.

feedback opportunities in order to help enrich their skills acquisition and personal development.

Clinical legal teaching spaces utilise one-on-one or small-group sessions. This is different from their doctrinal counterparts, which typically feature medium to large classes and lectures.<sup>66</sup> The employment of small-group teaching in CLE facilitates experiential learning,<sup>67</sup> since supervisor feedback plays a significant role in enabling students to ‘learn how to learn from their experiences’.<sup>68</sup> Due to real-life work in law clinics and policy clinics, it is imperative for all pieces of work to be examined by clinical supervisors. Students are constantly given direct and specific feedback to improve their work, which can only be sent to clients and external partners upon supervisor approval. This aspect of CLE is greatly beneficial in my experience, as every piece of technical knowledge, advice, and feedback that I received in both clinics were unique to not only the case or research project I was working on, but also to my working style.<sup>69</sup> Being guaranteed feedback each time contributes to the development of a growth mindset, as there were always express indications of which aspects were done well and could be improved.

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<sup>66</sup> Smyth and Overholt (n 16) 66.

<sup>67</sup> Liz Curran and Tony Foley, ‘Integrating Two Measures of Quality Practice into Clinical and Practical Legal Education Assessment: Good client interviewing and effective community legal education’ (2014) 21(1) IJCLE 69.

<sup>68</sup> *ibid* 70.

<sup>69</sup> Which is in accordance with Porter’s view that ‘students greatly benefit from [particularised] feedback on their written work product or presentation’. Porter (n 16) 90.

Clinic work is ‘a bundle of unpredictable,<sup>70</sup> often contradictory, facts, feeling and impulses’.<sup>71</sup> As previously discussed, reflective practice within experiential learning in CLE establishes a link between *thinking* and *doing*, thus acting as a ‘bridge of meaning that connects one experience to the next that gives direction and impetus to growth’.<sup>72</sup> Clinical supervisors heavily contribute to guiding students towards that ‘direction’, especially when students ‘find reflective writing very difficult’ because they have not done this type of learning exercise before.<sup>73</sup> In the Access to Justice Clinic module, online student-to-teacher journaling was implemented to help students practice reflective writing; we were guaranteed feedback every time, regardless of how many entries we submitted. In this type of guided reflective practice, Atkinson and Castle found that students employed ‘more casual’ language as they provided ‘easier reference to personal feelings and reactions’.<sup>74</sup> My experiences heavily resonate with this; given the informal nature of the exercise, I felt more comfortable writing “in my voice” as I did not feel that I needed to “say the right thing”. This exercised helped me improve my capacity to learn from my experiences, as my supervisor not only gave me direct feedback on my account, but she also asked me questions to guide my

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<sup>70</sup> James attributes this unpredictability to the ‘built in dissonance’ of life. See James (n 40) 131.

<sup>71</sup> Even though Evans et al. wrote this in the context of live client casework, this is easily applicable to policy work as well, as discussed in the section prior. Evans and others (n 32) 160.

<sup>72</sup> Evans and others (n 32) 165. See also Carol Rodgers, ‘Defining Reflection: Another Look at John Dewey and Reflective Thinking’ (2002) 104(4) T C Rec 842, 850.

<sup>73</sup> Claire Sparrow, ‘Reflective Student Practitioner - an example integrating clinical experience into the curriculum’ (2009) 14 IJCLE 70, 74 ; Lyndsey Bengtsson and others, ‘The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool’ (2021) 28(1) IJCLE 111, 123.

<sup>74</sup> Atkinson and Castle (n 30) 158.

reflections and think deeper. In the Policy Clinic, this exercise took the form of weekly live meetings, where my supervisor provided feedback to my work, prompted me to consider its wider impact, and encouraged me to be mindful of it moving forward—which I found just as useful. Even though these meetings were live, I still felt comfortable enough to share my thoughts and feelings with my supervisor, as I felt that the Policy Clinic promotes that same atmosphere of support and willingness to help. In both clinics, I was empowered to raise my concerns and ask questions to my supervisors without the fear of being judged.

Ultimately, small-group and one-on-one teaching within clinics makes it easier for students to develop professional working relationships with their clinical supervisors,<sup>75</sup> which is ‘conducive to what [students] will experience in the workplace’.<sup>76</sup> Having had various supervisors across both clinics,<sup>77</sup> I was exposed to different approaches and perspectives. During joint meetings with academics and practitioners, it was interesting to see how—despite how differently they prioritise and approach the same issues—they ultimately work together to achieve a common goal. Working in close proximity to professionals while doing real-life work also helps to develop a sense of collegiality, seeing that academics and legal practitioners are

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<sup>75</sup> Bengtsson and others (n 73) 128.

Lyndsey Bengtsson and others, ‘The Law in the Community module at Northumbria University: Working in Partnership with Citizens Advice as an Effective Educational Tool’ (2021) 28(1) IJCLE 111, 128.

<sup>76</sup> Bengtsson and A’Court (n 39) 90.

<sup>77</sup> For a discussion on how students learn under different supervisors in the community model of CLE, see Bengtsson and A’Court (n 39), 78–79.

working with the students to achieve the best possible result by being actively involved in the clinics' advice and research cycles. This collaborative aspect emphasises the supervisor's role, which is to support but not take over. Additionally, working closely with professionals fosters the 'role model dynamic of experiential learning',<sup>78</sup> where students learn through observing their clinical supervisors—especially when it comes to situational decision-making and problem-solving in circumstances that they have not come across before. Arguably, learning by observing is equally important to learning by doing,<sup>79</sup> as the former gives students the opportunity to emulate the actions and behaviours that they wish to apply to their own practice.

Giving students the time to research and draft independently with relatively minimal check-ins demonstrates that supervisors trust their students' ability to accomplish tasks. This trust helps to foster a mutually respectful environment, as supervisors are effectively treating students as capable advisors in the same way that students respect their supervisors as experts in their respective fields. This shared responsibility is particularly important when forming a 'strong support network of academics and practitioners in CLE' which is valuable for everyone involved,<sup>80</sup> and policy clinics provide the opportunity for students to establish connections in the legal profession, academia, and local communities. These relationships further highlight the need for

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<sup>78</sup> Porter (n 16) 90.

<sup>79</sup> See *ibid* 91.

<sup>80</sup> Kay Howells, 'Simulated and real-world experience – The challenge of adapting practice in clinical legal education in unprecedented and challenging times' (2020) 4(2) *IJCLE* 196, 213.

collaboration, trust, and respect—all of which are learned and developed in both clinics.

## V. On the importance of *collaboration, trust, and respect* in experiential learning

As previously discussed, law clinics and policy clinics work with *lived experiences* of people from the local community,<sup>81</sup> which holds relationship-building paramount. When forming and developing these relationships, it is important to establish *trust*, encourage *collaboration*, and maintain *respect* throughout. Whilst existing literature has highlighted the importance of collaboration in clinical environments, notably in problem solving,<sup>82</sup> experiential learning makes it clear that successful collaborations cannot exist without trust and respect.<sup>83</sup> Having been exposed to different contexts and people while working in both clinics, I witnessed how collaboration, trust, and respect are woven into the clinical working framework as professional values. Experiential learning enriched my definitions for these values; it led to a more

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<sup>81</sup> Of clients at the Community Law Clinic, external partners of the Policy Clinic, and of research participants at the Policy Clinic (such as people working at third sector organisations, or clients of external partners).

<sup>82</sup> See Andrea M Seielstad, 'Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education' [2002] 4 Clin L Rev 445 ; Susan R Jones, 'Current Issues in the Changing Roles and Practices of Community Economic Development Lawyers [2002] Wis L Rev 437.

<sup>83</sup> Margaret Martin Barry and others, 'Teaching Social Justice Lawyering: Systematically including Community Legal Education in Law School Clinics' (2012) 18(2) Clin L Rev 401, 458.

nuanced understanding of what they respectively involve and, more importantly, how interconnected they are.

Barry et al. recognise the importance of collaboration as a means of mutual education,<sup>84</sup> which is evident within the Policy Clinic. In policy work, all parties share an ultimate goal and conduct research alongside each other. In casework, however, whilst student legal advisors and clients have a shared goal of informing the latter on their legal issue and position, clients are not directly involved in the legal research process and the ultimate goal attached to that information (i.e., what will be done with the information presented in the advice letter) is up to the client. In the context of *external partner-researcher* and *advisor-client* relationships,<sup>85</sup> therefore, lies the distinction between *collaboration* and *cooperation*; the former signifies all parties working towards a shared goal and conducting coordinated tasks, while the latter allocates different tasks between parties without a shared purpose for the work completed. Despite this difference, it is clear that collaboration and cooperation must be *reciprocal* in a successful working relationship, in the same way that trust and respect must be *mutual*.<sup>86</sup> With trust and respect being traditionally seen as a value shown to the authority figure, this perception is quickly quashed in clinic work; there

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<sup>84</sup> *ibid* 439.

<sup>85</sup> In this context, the 'researcher' and 'advisor' in these working relationships refer to student researchers and student legal advisors respectively.

<sup>86</sup> On the importance placed on the mutuality of respect, see Kathleen Kelly Janus and Dee Smythe, 'Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic' [2012] 56 N Y L Sch L Rev 445, 469 ; Peggy Maisel, 'The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration' [2008] 14 Clin L Rev 465, 504

is no official “authority figure” in *external partner-researcher* and *advisor-client* relationships. Trust and respect are very easily learned as two-way streets in both clinics,<sup>87</sup> as students get to witness firsthand not only how other people trust and respect them in their capacity as legal advisors or researchers, but also pay attention to how they trust others and treat them respectfully.

Whilst collaboration and its advantages are more easily observable in both clinics (e.g., seeing a group of people working together in a room, sharing ideas, and completing tasks more efficiently), the objective indicative markers relating to the principles of trust and respect are more difficult to ascertain. Nevertheless, the way in which these professional values are integrated into clinical practices invokes students’ awareness, development, and appreciation of these values. Firstly, whilst confidentiality is widely recognised as a formality requirement to concretise legal professional obligations,<sup>88</sup> experiential learning helps students realise that it is much more than that, as it helps to foster trust and respect. Maintaining client confidentiality in the Community Law Clinic and data-related research ethics obligations in the Policy Clinic help to gain clients’ and research participants’ trust throughout the clinical process (especially

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<sup>87</sup> On the importance for lawyers to be trusted by their clients as well as for them to trust their clients, see David A Santacroce, ‘Learning to Trust: Thoughts from a Law Clinic’ (2003) 82(5) Mich B J 30.

<sup>88</sup> On confidentiality as a professional obligation of legal practitioners, see Arts 6.3–6.5 of the Solicitors Regulation Authority Code of Conduct < <https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/> > accessed 18 August 2023 ; Art CD6 of the Bar Standards Board Handbook < <https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=E3FF76D3-9538-4B97-94C02111664E5709&audience=&csrfToken=C83F50672C2FF2D12636323F4BB3363A&q=confidentiality> > accessed 18 August 2023.



during interviews),<sup>89</sup> as well as to reassure them that legal advisors and researchers respect their privacy. Secondly, completing tasks that you set out to do helps to gain the other party's trust and, in so doing, could lead to an increased level of respect as they realise your capability to finish the job and keep your promises.<sup>90</sup> Thirdly, how you communicate with, listen,<sup>91</sup> and present information to other people show respect for their time and efforts—especially as you consider how they will best understand and use the information given to them. This helps to build trust in accommodating their needs and 'conveying legal information' as 'legitimate partners'.<sup>92</sup> Finally, client autonomy and external partners' agency evoke the need to trust that they will make the best decisions for them and their circumstances, especially because you respect them as capable of acting in their best interests and as experts in their fields respectively. In the Community Law Clinic, the advice letter is the main driver for client autonomy as it explains the client's legal position and *suggested* next steps;<sup>93</sup> if a client wants to pursue something, they can do so and are more than welcome to get back in touch with the Community Law Clinic to get further support.<sup>94</sup> In the Policy Clinic, external partners are to take the lead when deciding what they want to achieve

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<sup>89</sup> On confidentiality and data protection obligations of law-orientated clinics, see Gregory C Sisk and Nicholas Halbur, 'A Ticking Time Bomb - University Data Privacy Policies and Attorney-Client Confidentiality in Law School Settings' (2010) 2010(4) 1277.

<sup>90</sup> Alicia Lam and others, 'Integrating Social Work Within Legal Clinics: An Inter-Professional Perspective to Address Social-Legal Needs' [2022] 38 Windsor Access Justice 10, 20 ; Barry and others (n 83), 438.

<sup>91</sup> On the importance of listening intently to clients in order to develop trust, see Matt and others (n 34), 136, 145 ; Santacrose (n 87), 30.

<sup>92</sup> Barry and others (n 83), 434–438.

<sup>93</sup> On client autonomy, see Susan R Jones, 'Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice' (1998) 4(1) Clin L Rev 195, 226.

<sup>94</sup> For example, when going into court or contacting a government body.

for the project and when considering research models and methods that work best with their schedules, capacities, and resources. Whilst we can help by sharing information related to the research process, discussing their options with them based on their needs, and assisting with the completion of the research project, we are not to—and *cannot*—make the decisions for them.

Experiential learning in both clinics highlights the equal importance of collaboration, trust, and respect. That said, working in the Policy Clinic widened the scope of these values from the individual focus in casework to the more collaborative focus in policy work—both of which are reflected in the perspectives they give on how law and public policy affect people in society.

## VI. On the complementary nature of the *individual* and the *collective*

Despite the law being ‘generally recognised [as a] potential solution’ to clients’ problems in CLE, it is also recognised as ‘part of a larger, multidisciplinary approach that includes community partners and diverse strategies’.<sup>95</sup> Live client casework in the Community Law Clinic gives students the opportunity to work directly with the law and with members of the community on a case-by-case basis, which is more *reactive* in nature—seeing that the issue has already materialised and students are finding ways to remedy it (i.e., a more *curative* approach focusing on the *effect* of the issue).<sup>96</sup> On the

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<sup>95</sup> Smyth and Overholt (n 16) 66.

<sup>96</sup> Leering (n 37) 193.

other hand, policy work at the Policy Clinic gives students the opportunity to ‘better understand a problem’ and ‘create the necessary change to improve the situation as part of the research process’,<sup>97</sup> which is more *proactive* in the fact that the main objective of Policy Clinic research projects is to find the cause(s) of a socio-legal issue and ways to ‘create change’ by sufficiently addressing and tackling them (i.e., a more *preventive* approach focusing on the *cause* of the issue).<sup>98</sup> Indeed, these can be interchangeable: policy work can be *reactive* (i.e., the socio-legal issue at hand is already impacting communities, and therefore research is done to find ways in which its impact can be sufficiently addressed) and clinic work can be *proactive* (i.e., reading through a client’s employment contract and informing the client on ambiguous clauses that can cause conflict in the long run; the client can then negotiate or clarify these clauses with their employer to avoid issues that may arise later on). Simultaneously having both reactive and proactive approaches to addressing the needs of the community harbours the opportunity to meet in the middle—both approaches ‘synergistically [contributing] to a more reform-oriented and responsive legal culture and justice system’.<sup>99</sup>

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<sup>97</sup> *ibid* 191.

<sup>98</sup> *ibid* 193, 209. See also Stephen Kemmis and Robin McTaggart, ‘Participatory Action Research: Communicative Action and the Public Sphere’ in Norman K Denzin and Yvona S Lincoln (eds), *The SAGE Handbook of Qualitative Research* (3rd edn, Sage 2005) 271.

<sup>99</sup> Leering (n 37) 191.

More widely, working at law clinics and policy clinics helps to emphasise the meaning of “impact” in their respective rights. Through live client casework at the Community Law Clinic, students gain an insight into how the law affects their clients’ lives and are therefore invited to think about the impact of law at an individual level. Conversely, policy research work at the Policy Clinic shifts the focus from the *individual* to the *collective*—thus ‘extending the community lawyering model’<sup>100</sup>—as students are now prompted to see the bigger picture, learn more about how the law affects communities, and even ‘think outside the legal system’.<sup>101</sup> Policy work enriches the knowledge gained from live client casework by contextualising socio-legal issues through the intersecting relationship between law, public policy, economics, and politics,<sup>102</sup> which is invaluable to recognising the role of law and public policy in society. Both perspectives are equally important to appreciate the law as not only a dynamic academic discipline, but also a living, breathing entity with real-life implications. This shift between the *theoretical* and the *practical* further encapsulates the notion of “learning by doing” within clinic environments, providing students with opportunities to ‘create positive change within... communities’ by working to

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<sup>100</sup> Judith McNamara, Catherine Campbell, and Evan Hamman, ‘Community Projects: Extending the Community Lawyering Model’ (2014) 21(2) IJCLE 1.

<sup>101</sup> Bengtsson and A’Court (n 39) 78.

<sup>102</sup> See *ibid* 78 ; Morten Levin and Davydd J Greenwood, ‘Pragmatic Action Research and the Struggle to Transform Universities into Learning Communities’ in Peter Reason and Hilary Bradbury (eds), *Handbook of Action Research: Participative Inquiry and Practice* (Sage 2001) 103, 112.

implement 'local change and systemic responses to challenging human rights and access to justice issues' faced in the sector.<sup>103</sup>

## Conclusion

Experiential learning in law clinics and policy clinics could be compared to a story being brought to life, as it helps us to better understand socio-legal phenomenon by taking the law from doctrinal sources and making us see it in different angles through various perspectives. Overall, it emphasises that law clinics *cannot*, and *do not*, work in a vacuum. An effective law clinic not only seeks to help members of the community individually, but also seeks to understand how overarching issues can be tackled in the best way.

In a pedagogical sense, working in both law clinics and policy clinics effectively fulfil the three main components of experiential learning in CLE: students are placed in a guided and dynamic real-life learning environment which allows them to explore and discover new things—thus supporting their skill acquisition and personal development. By learning about professional values and responsibilities within legal practice and academia, they start to develop their sense of professional identity, which is integral when entering the world of work. Beyond this, students could also

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<sup>103</sup> In the context of community-based action research, see Leering (n 37) 195.

appreciate the role of law and public policy in society, as reflective practice helps students to revisit their surface-level expectations of what these types of legal work entail.

As demonstrated in this practice report, law clinics and policy clinics are invaluable and complementary components of CLE because of the learning opportunities that they provide to students as they serve the local community. Ultimately, law clinics act as a bridge connecting legal professionals and students to the community, while policy clinics act as a bridge connecting the community to the academy. Whilst law clinics give students a glimpse of legal practice by showing them how law and policy affect individuals and families, policy clinics urge them to expand their understanding by investigating how law and public policy affect communities as a whole. Whether it be live client casework or policy research work, students can choose to work at either clinic, or both, depending on their personal interests and career aspirations.