

Law Wise Law Clinic: Perspectives on Clinical Legal Education in Scotland

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I. INTRODUCTION

Clinical legal education, long the preserve of our American and Commonwealth cousins, is becoming a force to be reckoned with in Scottish legal education. Where University law clinics were once a rare occurrence in Scottish Higher Education Institutions, their value is now becoming recognized in addressing the wider agendas of access to justice, unmet legal need, student skills and employability. In the United States, law clinics have become an integral part of the law curriculum at almost every law school.¹ This process, however, has not been replicated until recently within the UK, let alone Scotland. A growing number of English law schools now have law clinics providing invaluable experience for volunteer student advisors. However, few offer credit bearing possibilities allowing students to work towards attaining their degree. This paper aims to outline the development of the Law Wise Law Clinic, a credit bearing venture at the University of the West of Scotland. Law Wise is the first Law Clinic in Scotland which brings together a Law Centre and a University and has been specifically designed to enhance employability skills for law students, as well as allowing them to gain credit towards completion of their degree.

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¹ Richard J Wilson, "Training for Justice: The Global Reach of Clinical Legal Education" (2004) 22:3 Penn St Int'l L Rev 421.

II. UNIVERSITY OF THE WEST OF SCOTLAND

The University of the West of Scotland (UWS) is Scotland's largest post 1992 University.² It has its origins in the Paisley School of Arts founded in 1836 and has undergone a number of name changes and mergers through to the present day. UWS currently has over 18,000 students and, as well as the main Paisley campus, has three satellite campuses in Hamilton, Ayr, and Dumfries. The law department at UWS is situated within the Business School and runs a large and vibrant BA(Hons) Law Programme catering for Paisley and the wider Renfrewshire locale. Paisley itself is a deprived area and has higher than average levels of recorded deprivation in eight of its eleven postcodes.³ The University operates a Widening Participation programme and aims to provide high quality and distinct education to those whose personal and domestic lives would normally prohibit them from engaging with traditional University structures. Consequently, UWS operates a successful Lifelong Learning Academy, Employability Link, and has a strong part-time as well as full-time student base.

Within this context, the Law programme has grown from a small servicing based degree in the early 1990s to a full Honours programme post 2000. The high number of part-time students applying to study law also led to the development of a flexible Graduate Certificate in Law which can be completed on a modular part-time basis. This qualification can be completed in as little as one academic year and allows students to study in depth three modular subjects in law during the evenings. It is often used as a stepping stone to further study in the full degree programme. Throughout the development and delivery of these programmes, what quickly became apparent was that our students were looking for much more, beyond the traditional 'lawyering' curriculum, since many would not be going on to undertake a professional LL.B qualification and enter practice as a solicitor. Students would routinely give feedback highlighting the need to learn

² The term 'Post 1992 University' refers to institutions of higher education in the UK that were granted university status under the *Further and Higher Education Act 1992* (UK), c 13; and *Further and Higher Education (Scotland) Act 1992* (UK), c 37, as well as colleges that have been granted university status since that time.

³ UK, The Scottish Government: Riaghaltas na h-Alba, *Final Report: The Independent Evaluation of Have a Heart Paisley* (carried out by the University of Glasgow) by Avril Blamey et al (The Scottish Government, 2005, available online: <<http://www.scotland.gov.uk/Publications/2005/03/20836/54354>>).

practical and workplace skills, along with the traditional academic knowledge and understanding. Thus the programme organically grew to encompass, at an early stage, a variety of employability skills and a high degree of personal development planning via the use of portfolio based learning.

III. EVOLUTION OF LAW WISE LAW CLINIC

In 2009 Law at UWS underwent a Subject Health Review as part of the normal internal quality processes of the University. It was noted during this Review that much more had to be achieved in order to facilitate student retention and success, as opposed to focusing upon ever more widening participation. It was suggested that one way to achieve this would be to further build upon the already well-established employability principles enshrined in the degree. The University was also of the view that widening participation and employability skills ought to work in tandem since it is the acquisition of such skills that lead to increased job prospects, and thus wider participation in the employment market. To this end, it was decided that the best way to install a solid employability skills base within our existing degree structure would be to set up a University Law Clinic. Now to those readers in other parts of the world, this may sound fairly unremarkable. However, in Scotland clinical legal education is still in its infancy, and in 2009 there was only one Scottish University Law Clinic being run at Strathclyde University.⁴ This Clinic had been set up in 2003 and in the following six years, no other University had achieved the same goal. The challenge that therefore lay ahead was how to set up a Law Clinic at UWS with virtually no infrastructure or academic support available in Scotland.⁵ Some months later, I was given the task of setting up a law clinic within the University. As an academic in the Law group with experience of research in unmet legal need and legal methods who also had links with a local law centre, Renfrewshire Law Centre (RLC), I was an obvious choice for the task. Very quickly it became overwhelmingly clear that it was going to be difficult to set up a new Clinic in Scotland.

⁴ University of Strathclyde Law Clinic, information available online: <http://lawclinic.org.uk/>. This Clinic was the first ever set up in Scotland by clinical legal education pioneer, Professor Donald Nicolson (who had formerly created the successful Law Clinic at the University of Bristol).

⁵ At this time, LawWorks, the charity and pro bono organisation which can assist in setting up a Law Clinic, had no Scottish branch.

Funding was practically non-existent and with austere times due to the economic recession, local solicitor participation and/or sponsorship was equally unavailable. There was also very little financial support available from within the University, which was itself struggling to meet employability requirements arising from an Enhancement Led Institutional Review report of the same year.

Thus, with no premises, and precious little support from practitioners, I decided to create an alternative model of clinic slightly different from the traditional models. My overarching vision was to create a permanent and full time University/Law Centre partnership, and I thought an external/placement clinic would have several advantages. Primarily, it would provide premises and a permanent supply of supervising solicitors and clients. Thus there would be a number of organisational and resource benefits. However, as a disadvantage, it would mean ceding a large degree of control to the Law Centre itself. Consequently, negotiations were opened with RLC in a bid to discover whether it might be feasible for the University and RLC to collaborate in setting up an independent Law Clinic jointly resourced by each institution. These negotiations were ultimately successful and several months (and much planning) later a partnership agreement was signed by both institutions leading to the launch of Law Wise Law Clinic in October of 2010.

IV. HOW LAW WISE OPERATES

The Clinic is currently open four days per week with drop-in surgeries running in both the mornings and afternoons. Law Wise is based around public drop-in advice sessions in which student legal advisors are the first point of contact for new clients, and various levels of advice (information, generalist advice and specialist advice) are given under the supervision of RLC solicitors. All students must complete an induction programme run by way of an intensive one week course which covers interviewing, office procedures, letter writing, and ethics. Students are then allocated to a Clinic Team (made up of two to three students) and allocated a day on which they will run their drop-in surgery on a weekly basis. The training of the students then follows three distinct phases.

In phase one of the Law Clinic training process, client interviews are conducted by the supervising solicitor, with the Clinic Team observing and taking notes. The supervising solicitor may choose to advise the client at the

time of the interview. If this is the case, the Clinic Team will prepare a letter summarising the supervisor's advice for the client within five working days of the interview. Generally though, the supervisor will not advise the client at the time of the interview. Instead, the Clinic Team will be asked to research the matter and draft a letter of advice. This process is overseen by the supervising solicitor, or any appropriate academic supervisor from within the University, and the Law Clinic Manager. Once the Clinic Team has completed a draft of the letter of advice, it is scrutinised by the supervising solicitor who will approve the advice or suggest appropriate amendments. It may take around two weeks for the Clinic Team to produce the letter and, where it is anticipated that it will take more than two weeks, they must write to the client to advise them of the delay. If the delay is considered prejudicial to the case, the Law Clinic Manager will intervene and take appropriate action. When the advice letter is eventually approved by the supervising solicitor, it will be signed by the Law Clinic Manager and dispatched to the client with a feedback questionnaire. In phase two, the same letter of advice model is followed as for phase one. The difference, however, is that, during this phase, the Clinic Team conducts client interviews themselves under the supervision of a solicitor. In phase three, the Clinic Team are given full autonomy and will be the only point of contact for clients during the drop-in surgery. They will interview clients, conduct any research and follow up work as necessary; essentially they will provide the full range of legal assistance short of representation in a tribunal or court.⁶ Phase three also witnesses the departure from the traditional letter of advice model and students become involved in giving face to face advice, whilst supervision is kept at arms-length. Discretion is used in progressing Clinic Teams through each phase and is based upon performance and ability in key areas, both of which are subject to assessment.

V. ASSESSMENT WITHIN LAW WISE

As one of the few clinics nationwide offering credit-bearing work, the issue of designing suitable forms of assessment has not been easy. The ultimate goal of Law Wise from an educational perspective was always to allow students to develop key legal and employability skills, apply the law in a

⁶ At the time of writing, preparations are being made for the first 'veteran' clinic teams to be trained in advocacy skills to prepare to them for representation.

workplace environment, and reflect upon the ethics and justice of legal practice. Traditional methods of assessment such as examinations and assessed essays are obviously unsuitable for this kind of work-based learning. Consequently, a decision was made to take a two tiered approach to the assessment of Clinic Teams. Firstly, each student is assessed by a solicitor in a wide variety of key skills bases.

The following table is illustrative of these areas:⁷

Tasks	Approximate % of Law Clinic Assessment
Attending induction	/10%
Taking instructions from clients Dealing with clients Obtaining relevant facts from clients Controlling the interview Communicating advice Assisting clients	/10%
Discussion with supervisor Communicating facts Perception of relevant facts Analysis of the legal problem Understanding the law Applying the law Awareness of other solutions Summary of advice	/10%

⁷ This chart is an example of the Supervising Solicitor Skills Assessment Sheet provided to students upon the completion of the clinical program through the clinic.

Follow-up work Showing initiative Undertaking research Formulating a tactical approach/on-going strategy Pursuing the matter Attention to detail Communication with client Written communication Telephone skills Maintaining files appropriately	/10%
Office procedure Working in a team Understanding office procedures and policies	/10%
Improvement in law clinic	/10%
Other Commitment - includes attending the law clinic punctually and without unexplained absence Professional attitude Professional attire Sensitivity Demonstrating an understanding of working in an ethical manner Showing initiative Seeking guidance	/10%
Total	

This part of the assessment is worth 70% of the student's overall mark and the final marks are allocated after discussions between the supervising solicitor, clinic manager, and academic director. The remaining 30% is assessed by way of an e-portfolio. The e-portfolio is completed entirely on-line using the University Virtual Learning Environment, and it allows students to reflect upon their development within the Clinic as an individual and on the learning process in general (thereby providing excellent feedback for

improvement to the assessment). There are obvious difficulties inherent in reflective portfolio assessment, especially where the supervisor's role in facilitating reflection may have been instrumental in shaping the student outputs.⁸ However, these challenges aside, students who perform well in the Clinic and successfully complete an e-portfolio are eligible to gain up to 40 credits towards their overall degree within the University programme structure.⁹

VI. CHALLENGES

In developing the Law Wise Clinic, a number of key challenges have presented themselves. These challenges are not unique to the University of the West of Scotland and they will be shared collectively by other institutions in Scotland venturing into clinical legal education.

Undoubtedly, the most obvious challenge has been cost. To be effective, every University Law Clinic must be run and supervised by staff with the knowledge base and time to ensure the smooth operation of any such initiative. If the requisite staff time is given voluntarily, then this does not present a major challenge. However, in times of austerity where academic work allocation models are pushed to their limits, finding the time to set up and run such programmes is difficult; they take considerable effort and dedication. At Law Wise, there is an Academic Director, a Director of Student Training, and a Clinic Manager, all of whom are full time academics within the University. The importance of the participation of law school staff is necessary for the preservation of continuity – reliable and identifiable staff are required to ensure the successful operation of the Clinic (even where that Clinic is student led/run). As a result, the staffing costs for a law department can be substantial. Additionally, clinical work tends to function best with a lower staff-student ratio (SSR) than is common now in our law schools (e.g. for live client work around 8:1 can be a reasonable workload).¹⁰

⁸ See e.g. David Baume, *A Briefing on Assessment of Portfolios* (York: Learning and Teaching Support Network, 2001) at 15-17.

⁹ At the time of writing, it is hoped that the credit bearing element of Law Wise can be extended to include the option for students to take 'clinical' versions of traditional core modules. For example, students may be able to take a traditional Public Law module or opt for a Clinical Public Law module by working on a suitable public law issue within the Clinic in tandem with lectures.

¹⁰ Julian Webb, *Designing and Delivering Clinical Legal Education*, United Kingdom Centre for

Start-up and running costs for a law clinic are also significant. Resources such as premises, equipment and day to day running costs can be a major, if not insurmountable, challenge. If the clinical activity is a formal part of student assessment then the law school must bear some, if not all, of the cost of provision. At the University of the West of Scotland, the Business School provided start-up costs for Law Wise, and has continued to support the initiative via some part-time teaching hours for staff. Other funds have been sought through grant applications, local sponsorship, and commercialisation projects.

Another cost concern is that of insurance. It is inevitable that in a student law clinic, mistakes may be made. Clear procedures and experienced supervisory staff cannot eliminate entirely the risks implicit in an advice giving situation. Thus it is essential that any law clinic has adequate indemnity insurance. In the case of Law Wise, the University has extended its own insurance policy to cover the activities of the Clinic.

A further challenge in setting up any law clinic is ensuring that quality assurance procedures are fully taken account of in the student learning experience. Clinical legal education raises 'quality' considerations both in relation to the work that the student becomes involved in and in an academic context (if the work forms part of the student's course of study). It is imperative that structured supervision is in place to monitor contact with the client and organisations external to the University. This can be carried out by professionally qualified staff at the law school and/or through the use of solicitors. In the case of Law Wise there is dual supervision by the solicitors of Renfrewshire Law Centre and the academics of the University.

An additional concern is that where the student work is assessed as part of a programme of study, then the work must be subject to the internal quality processes of the University. Furthermore, if the student is to be given academic credit for the work they undertake the assessment of that work poses particular challenges. The nature and equivalence of the student experience and the assessment of individual and group work are significant issues to be overcome.

VII. LAW WISE AND COMMERCIALISATION

As a direct result of the financial challenges already outlined above relating to the set up and continued running of a law clinic, Law Wise has had to diversify into some aspects of commercialisation in order to fund itself. This has involved the students undertaking work within the Clinic other than traditional advice giving. This work is primarily project-based and allows students to conduct research for research and development projects undertaken by the Clinic. One such recent project saw Law Wise undertake a six month project for a local Hillington based company, Create Ts and Cs. The company required legal research to be carried out into specific aspects of commercial law in Australia and New Zealand, with a view to expansion of their business. By applying for an Innovation voucher¹¹ UWS was able to secure £5,000 of funding for Law Wise to carry out this research. A further project has seen Law Wise take on work for the Association of Scottish Community Councils. This has resulted in legal issues affecting Community Councils being dealt with by Law Wise students, and has also involved some project work such as designing web-based legal information. This project brought in £2,000 of funding. Such 'diversification' is, I think, crucial for Law Clinics to survive.

VIII. REFLECTIONS ON THE FUTURE

Clinical legal education in Scotland is still in its infancy and has a long way to go to reach similar levels of activity as can be seen elsewhere on the international stage. Since the 'birth' of Law Wise, a small number of additional clinics have been set up at the Universities of Abertay, Edinburgh, and Dundee. Alongside ourselves and the University of Strathclyde, that now constitutes a significant group of institutions pioneering the way forward. June 2012 saw the launch of the Scottish Universities Law Clinic Network (SULCN), and UWS/Law Wise hosted its inaugural Conference. There is a strong and growing level of interest in clinical and work-based opportunities in Scotland with early evaluations showing that students respond very positively to clinical legal education. This is not simply because of the

¹¹ The Innovation Voucher Scheme is a Scottish Government-backed scheme which allows small businesses to work with Higher Education Institutes on research. Information is available online: <<http://www.interface-online.org.uk>>.

practical knowledge and experience it gives them but also because of the developmental and cognitive benefits to be attained. With ground level support beginning to appear from the Scottish Government, which in turn is faced with the eternal problem of funding civil legal aid, the future may just be bright for clinical legal education and law clinics in Scotland.

