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## A STUDY OF SUPERVISOR AND STUDENT VIEWS ON THE ROLE OF CLINICAL LEGAL EDUCATION IN DEVELOPING COMMERCIAL AWARENESS

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### **Abstract**

This article examines the role of clinical legal education in developing commercial awareness, a key employability skill. Using data collected from a mixed-methods research study involving a visual data collection tool (a diamond), this research contributes to understanding of whether, and how, clinical legal education develops law students' commercial awareness. This study provides the first detailed empirical evidence of the importance of commercial awareness to those teaching and learning in clinic, the teaching activities that supervisors use and that students identify as developing commercial awareness, and the impact of those activities in a graduate recruitment context. This data is important because commercial awareness is required across a range of graduate sectors, including the legal profession, and law students have a variety of available career options. The results indicate that whilst students and supervisors deem commercial awareness very important, there are differences between the two groups in terms of their understanding of what it means, and the type of clinic activities identified as developing commercial awareness. The results

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suggest that there is a genuine, but yet not fully realised, opportunity for students to develop commercial awareness in clinic. As well as providing a unique insight into the role of clinical legal education in developing commercial awareness, the author makes recommendations for clinicians on how best to support students in developing their commercial awareness.

**Key words:** Commercial Awareness, Clinical Legal Education, Graduate Employability; Diamond Ranking, Law Students

## **Introduction**

Commercial awareness is an employability skill that is required by a range of graduate employers.<sup>2</sup> For many law firms, particularly larger commercial firms that recruit a high percentage of trainee solicitors,<sup>3</sup> it is a desirable, important skill and this is reflected in law firms' recruitment literature<sup>4</sup> and in the narrative that such firms employ.<sup>5</sup> Law firms expect students to demonstrate commercial awareness during the

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<sup>2</sup> Institute of Student Employers (ISE), 'Student development survey 2020 Supporting the learning and development of entry-level hires' 17.

<sup>3</sup> Trends in the solicitors' profession, Annual Statistics Report 2019, The Law Society, October 2020 <[www.lawsociety.org.uk/topics/research/annual-statistics-report-2019](http://www.lawsociety.org.uk/topics/research/annual-statistics-report-2019)> accessed June 2022 46 showing almost 50% of training contract vacancies are at firms with 26 + partners (33.5% at firms with 81+ partners.)

<sup>4</sup> Linden Thomas, "'It Puts the Law They've Learnt in Theory into Practice': Exploring Employer Understandings of Clinical Legal Education' in *Reimagining Clinical Legal Education* 139, 141; Tim Bellis, 'Simply the second best' (2013) 163 NLJ 19. See also <<https://careers.linklaters.com/en/early-careers/commercial-awareness>> and <<https://cms.law/en/media/local/cms-cmno/files/publications/other/cr-bbf-resources-commercial-awareness>> accessed June 2022.

<sup>5</sup> James Marson and Adam Wilson and Mark Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective' (2005) 7 Int'l J Clinical Legal Educ 29, 31; Kerry Jarred, 'Making an impression' (2005) 155 NLJ 1541; Catherine Baksi, 'Training: Adding Value' (2009) 12 LS Gaz.

graduate recruitment process.<sup>6</sup> The transition from law student to commercially aware candidate is tacit but relatively unexplored in a law school setting. Clinical legal education (CLE), the domain where students experience the realities of legal practice<sup>7</sup> and develop a range of skills and knowledge,<sup>8</sup> seems like an obvious setting for developing commercial awareness. Given the importance of commercial awareness to law firms, it is critical to understand whether CLE actually supports development. This article seeks to enhance our understanding of the role of CLE in developing commercial awareness by examining the perspectives of those teaching and learning in CLE.

The literature review section of this article will provide additional context for the need for this research. Although several studies, for example those by Alexander and Boothby<sup>9</sup> and Thomas,<sup>10</sup> have considered commercial awareness in the context of CLE, it has not been the main focus of any empirical research involving CLE. Commercial awareness is considered to be an important graduate employability skill by employers but there is very limited research on its importance to law students and supervisors

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<sup>6</sup> Hilary Sommerlad, 'The Commercialisation of Law and the Enterprising Legal Practitioner: Continuity and Change' (2011) 18 *Int'l J Legal Prof* 73, 85-87; Monidipa Fouzder, 'How to...Get a training contract' (2014) *LS Gaz* 18.

<sup>7</sup> Marson and others (n 5) 29, 30, 39; Lydia Bleasdale-Hill and Paul Wragg, 'Models of Clinic and Their Value to Students, Universities and the Community in the post-2012 Fees Era' (2013) 19 *Int'l J Clinical Legal Educ* 257.

<sup>8</sup> Margaret Martin Barry, 'Practice Ready: Are We There Yet' (2012) 32 *BC J L & Soc Just* 247; Tony King, 'Clinical Legal Education: A View from Practice' in Thomas (ed), *Reimagining Clinical Legal Education* (n 4).

<sup>9</sup> Jill Alexander and Carol Boothby, 'Stakeholder Perceptions of Clinical Legal Education within an Employability Context' (2018) 25 *Int'l J Clinical Legal Educ* 53.

<sup>10</sup> Thomas (n 4).

working in CLE. More consideration is needed of the views of these key stakeholders and how their views compare to those of the legal profession. There has been some interesting work examining development from a student perspective, for example in studies by Cantatore and others<sup>11</sup> and Thanaraj,<sup>12</sup> but further evidence is needed on what commercial awareness means to students, how development takes place and what activities students identify as supporting development. There is no empirical data on what supervisors (or indeed anyone involved in teaching law) understand commercial awareness to mean and how, if at all, they seek to develop it, leaving a gap in the literature.

Overall, there is limited empirical evidence of whether and how CLE develops commercial awareness. To address the research gaps noted, this study considered the following research questions:

- (1) How important is commercial awareness as a skill to those teaching and learning in CLE?
- (2) Do students develop commercial awareness in clinic and, if so, what types of CLE teaching and learning activities promote development?

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<sup>11</sup> Francina Cantatore, David McQuoid-Mason, Valeska Geldres-Wiess and Juan Carlos Guajardo-Puga, 'A comparative study into legal education and graduate employability skills in law students through pro bono law clinics' (2021) 55 *Law Tchr* 314.

<sup>12</sup> Ann Thanaraj, "'The Proficient Lawyer': Identifying Students' Perspectives on Learning Gained from Working in a Virtual Law Clinic' (2017) 14 *US-China L Rev* 137.

To answer the research questions, this study used a diamond, a visual data collection tool that provides both qualitative and quantitative data. Supervisors and students teaching and learning in the law clinic (LC) at Northumbria University participated in the data collection process between 2019 and 2021. Full details of the research method, and how the difficulties of undertaking a mixed-methods study during a pandemic were addressed, are provided in the Method section.

Given the gaps in the existing literature, this research makes an original contribution to knowledge by providing the first detailed empirical evidence of the perceived importance of commercial awareness to those teaching and learning in CLE, the teaching activities that supervisors use and that students identify as developing commercial awareness, and the impact of those activities in a graduate recruitment context. This research documents how students and, for the first time, supervisors define commercial awareness, exploring the differences in definition and considering if student understanding developed during their time in clinic.

This article begins with a brief overview of commercial awareness within the framework of law student employability before examining the existing literature on commercial awareness within the field of CLE. The study method is then explored before documenting the results. This research demonstrates that students and supervisors recognise the importance of commercial awareness, ranking it highly in comparison to other skills. The data indicates that some students do develop commercial awareness in clinic but its potential for development is not fully realised.

Whilst supervisors used a range of innovative and authentic activities to enhance commercial awareness, the activities were not always identified by students as developing their commercial awareness. There was little explicit signposting of commercial awareness by supervisors, linking their activities to commercial awareness development. This lack of signposting may negatively impact on student understanding of, and confidence in, their commercial awareness. It may also impact on their ability to articulate it during the recruitment process. This article concludes with suggestions on how clinicians can address these concerns and how, more generally, law schools might develop students' commercial awareness further.

### **What is Commercial Awareness?**

There is no single definition of commercial awareness. Wilkinson and Aspinall observed it was 'an amorphous term with no clear definition in the research or practitioner-based literature.'<sup>13</sup> In a legal setting, commercial awareness appears to encompass winning, understanding, advising and retaining clients whilst running a successful business.<sup>14</sup> Lawyers must also understand the external factors (social, economic, political or technological) impacting on clients and how this impacts on the legal advice provided to clients.<sup>15</sup> The Legal Education and Training Review (LETR)

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<sup>13</sup> David Wilkinson and Samantha Aspinall, 'An exploration of the term 'Commercial awareness': What it means to employers and students' (National Council for Graduate Entrepreneurship 2007) 5.

<sup>14</sup> Siobhan McConnell, 'A systematic review of commercial awareness in the context of the employability of law students in England and Wales' (2022) 3 *Journal of European Legal Education* 127, 130.

<sup>15</sup> *ibid.*

found commercial awareness to be a 'composite concept'<sup>16</sup> including a range of knowledge, skills and attributes, such as knowledge of a client's business and sector, knowledge of business issues, the ability to interpret financial data, marketing and networking.<sup>17</sup> Much of the empirical and conceptual literature focuses on commercial awareness being an understanding that a law firm is a business<sup>18</sup> – law firms do not exist simply as professional service providers, firms need to make money. Huxley-Binns argued that undergraduate students needed to know terms such as 'profit and loss...client relations, strategy, mission' to succeed in the legal profession.<sup>19</sup> Strevens and others noted that commercial awareness was 'understanding that law firms function in much the same way as...businesses in general, and that there is a wider picture than the black letter law applied to a given set of facts.'<sup>20</sup> This viewpoint is reflected in law firm and practitioner literature that emphasises the importance of lawyers understanding business issues.<sup>21</sup> A systematic literature review conducted by the author considered the existing literature on commercial awareness in the context of the employability of law students in England Wales. The review considered the various definitions of commercial awareness found in the literature. The review suggested that, in a legal context, commercial awareness could be defined as

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<sup>16</sup> Legal Education and Training Review, 'Setting Standards - The Future of Legal Services Education and Training Regulation in England and Wales' (2013) para 2.75.

<sup>17</sup> *ibid.*

<sup>18</sup> Caroline Strevens and Christine Welch and Roger Welch, 'On-Line Legal Services and the Changing Legal Market: Preparing Law Undergraduates for the Future' (2011) 45 *Law Tchr* 328, 340; Rebecca Huxley-Binns, 'What is the Q for?' (2011) 45 *Law Tchr* 294, 304.

<sup>19</sup> Huxley-Binns (n 18) 304.

<sup>20</sup> Strevens and others (n 18) 341.

<sup>21</sup> Fouzder (n 6); Jarred and Baksi (n 5).

understanding: (1) law firms, their clients and the sectors in which they operate; (2) how external influences (political, social, economic and technological) impact on law firms, clients and their respective sectors and the advice law firms provide; (3) that the legal rights and remedies of clients may not always best suit their objectives; and (4) that a law firm is a business - lawyers need to make money to stay in business.<sup>22</sup> The Results and Discussion section of this article considers the aspects of this definition that are used by the supervisors and students who participated in this study.

### **Commercial Awareness – Employability and the Impact on Law Schools**

Employer surveys have found that students lack commercial awareness<sup>23</sup> and there is a recognised skills gap.<sup>24</sup> Whilst the surveys indicate that most employers do provide on-the-job training on commercial awareness,<sup>25</sup> commercial awareness is required by many employers during the recruitment process.<sup>26</sup> A 2020 graduate employer survey ranked it 15<sup>th</sup> out of 25 employability skills required.<sup>27</sup> Its importance is increasing – in a recent COVID-19 impact survey assessing the skills that employers thought would become more important over the next five years, it ranked seventh, ahead of teamwork.<sup>28</sup> Wilkinson and Aspinall concluded that students may find understanding

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<sup>22</sup> McConnell (n 14).

<sup>23</sup> ISE (2020) (n 2) 18. ISE, 'Student development survey 2021, Managing development in a crisis' (ISE 2021) 23.

<sup>24</sup> ISE (n 2) 20.

<sup>25</sup> ISE 2021 (n 23) 30, 86% of employers provided training. ISE (2020) (n 2) 81% of employers.

<sup>26</sup> <<https://targetjobs.co.uk/careers-advice/skills-for-getting-a-job/what-commercial-awareness>> accessed June 2022.

<sup>27</sup> ISE (2020) (n 2) 17.

<sup>28</sup> ISE 'Student Recruitment Survey, Challenge and resilience in the year of COVID-19' (2020) 47 – 44% of respondents identified its future importance.

what commercial awareness means challenging, interpreting it differently to employers.<sup>29</sup> Students may fail to realise its importance and struggle to demonstrate it during the graduate recruitment process. Although many employer surveys considering the importance of commercial awareness include law firms,<sup>30</sup> none are specific to the legal profession. However, the increasing importance of commercial awareness to the profession over the last 40 years is well documented.<sup>31</sup> Universities are, increasingly, charged with responsibility for skills development<sup>32</sup> and there is growing recognition of the importance of commercial awareness to law schools.<sup>33</sup> The LETR acknowledged the importance of commercial awareness to the profession but did not suggest integration into the undergraduate law degree, instead recommending it be a more explicit aspect of the Legal Practice Course (LPC), especially for those seeking careers in commercial law.<sup>34</sup> However, many training contract vacancies, requiring an understanding of commercial awareness, are open to applicants in their second year of undergraduate study and, given the definition

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<sup>29</sup> Wilkinson and Aspinall (n 13) 5.

<sup>30</sup> ISE (n 2).

<sup>31</sup> Hanlon and Jackson, 'Last Orders at the Bar? Competition, Choice and Justice for All – The Impact of Solicitor-Advocacy' (1999) 19 *Oxford Journal of Legal Studies* 555; McConnell (n 14); Christopher R Brown and Tim McGirk, 'The Leading Euromarket Law Firm' (1982) 1 *Int'l Fin L Rev* 4; Blackhurst and Stokes, 'Clients Rank London's Law Firms (1985) 4 *Int'l Fin L Rev* 15; Clive H Zietman, 'The legal services revolution' (1995) 61 *Arbitration* 274.

<sup>32</sup> Louise Morley, 'The X factor: employability, elitism and equity in graduate recruitment' (2007) 2 *Journal of the Academy of Social Science* 191, 192; Michael Tomlinson, 'Employers and Universities: Conceptual Dimensions, Research Evidence and Implications' (2021) 34 *Higher Education Policy* 132, 135.

<sup>33</sup> Richard Collier "'Love Law, Love Life": Neoliberalism, Wellbeing and Gender in the Legal Profession – The Case of Law School' (2014) 17 *Legal Ethics* 202, 213. See also Nicholas Saunders, 'From Cramming to Skills – The Development of Solicitors' Education and Training since Ormrod' (1996) 30 *Law Tchr* 168, 184-186.

<sup>34</sup> LETR (n 16) recommendation 12, xv and para 4.69 and 7.20.

suggested above, all law firms require commercially aware employees. Huxley-Binns argued convincingly for commercial awareness to be a more important feature of the law degree, noting how many students begin paralegal work without undertaking the LPC.<sup>35</sup> The introduction of the Solicitors Qualifying Examination (SQE) perhaps provides further need for a focus on commercial awareness in law degrees as new pathways to qualification open and the LPC closes. As there will be no LPC with a remit to teach commercial awareness, commercial awareness must be part of the undergraduate offering, not least because it is likely that firms will continue to recruit second year students. Also, the number of paralegals working in the profession increases each year.<sup>36</sup> The SQE means paralegal work will become a more important route to qualification as a solicitor because such work constitutes qualifying work experience. Law students who seek to become paralegals also need to be commercially aware. Further, it must be acknowledged that many law students go into non-law professions that require commercial awareness such as accountancy and finance, human resources and retail management.<sup>37</sup>

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<sup>35</sup> Huxley-Binns (n 18) 304.

<sup>36</sup> Many law graduates start work as paralegals or other legal associate professionals following graduation but the number doing so each year is unclear. Research suggests the number of legal associate professionals is increasing by 1% each year. It is predicted that the number of legal associate professionals will increase by 2% per year and that 2800 will be needed per year – see Matthew Williams and others, 'Research to inform workforce planning and career development in legal services, Employment trends, workforce projections and solicitor firm perspectives Final Report' (Institute for Employment Studies 2019) paras 7.1 and 7.3. <<https://www.employment-studies.co.uk/resource/research-inform-workforce-planning-and-career-development-legal-services>> accessed June 2022.

<sup>37</sup> *ibid* para 2.4 finding that between 2011 and 2016 around 35% of law graduates went into the legal profession either as trainees or paralegals each year. King (n 8) 125. ISE 2020 (n 2).

The need for more focus on commercial awareness in law schools is reflected in studies that have considered the skills required by law firms. Strevens and others asked nine law firms about the skills required of potential trainees. Commercial awareness was of high importance, a 'universal employability trait' required by both business and high street firms.<sup>38</sup> However, most employers thought it could only be learnt in work; this implied, the authors noted, that university could not teach it.<sup>39</sup> The authors disagreed, contending it could be developed through simulated activities where students connected legal knowledge and rules to real life contexts.<sup>40</sup> Sommerlad considered the ongoing commercialisation of law firms in a study of recruitment practices involving twelve large regional and multi-national law firms and law students.<sup>41</sup> Sommerlad documented the importance of commercial ability to law firms and found commercial awareness to be a key part of the application process, tested on application forms, in interviews and at assessment centres.<sup>42</sup> Etherington found that all but one of the six law firms he interviewed assessed for commercial awareness.<sup>43</sup> 89% of the 28 students whom he surveyed stated it had been assessed.<sup>44</sup> The findings of these studies reflect the narrative of many firms and observations noted in

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<sup>38</sup> Strevens and others (n 18) 340-1.

<sup>39</sup> *ibid* 340.

<sup>40</sup> *ibid* 340, 343, 344. Ben Waters, 'The importance of teaching dispute resolution in a twenty-first century law school' (2017) 51 *Law Tchr* 227, 243 and "'A part to play": the value of role-play simulation in undergraduate legal education' (2016) 50 *Law Tchr* 172, 191. See also Wilkinson and Aspinall (n 13) for a more general discussion of how universities can develop commercial awareness.

<sup>41</sup> Sommerlad (n 6), there were no law student comments on commercial awareness.

<sup>42</sup> *ibid* 87.

<sup>43</sup> Laurence Etherington, 'Public professions and private practices: access to the solicitors' profession in the twenty-first century' (2016) 19 *Legal Ethics* 5, 20.

<sup>44</sup> *ibid* 18.

practitioner literature.<sup>45</sup> Law schools would be unwise to ignore these findings because law firms (and other graduate employers) demand commercially aware candidates – omitting commercial awareness from a law degree will negatively impact on the employability potential of law students. It must also be acknowledged that employability is one of the six main metrics used to rate universities for the Teaching Excellence and Student Outcomes Framework.

### **Literature on Commercial Awareness and CLE**

Law firm views on CLE were examined by Thomas who interviewed professionals from 17 firms - the majority stated commercial awareness was highly desirable, second only to academic ability. His review of 50 top law firm websites found that 30 firms mentioned commercial awareness on their recruitment pages.<sup>46</sup> Interviewees expressed mixed views on whether CLE could develop commercial awareness. Some thought it would enhance commerciality whilst others thought it had limited impact.<sup>47</sup> One interviewee noted how CLE would not provide exposure to costing, billing and contextual advice, a viewpoint that this study will examine. Alexander and Boothby also considered CLE and its role in developing commercial awareness in a study involving nine law firms, six students, eight alumni and ten supervisors at the author's institution.<sup>48</sup> The employers in their study wanted commercial graduates, confirming

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<sup>45</sup> Websites (n 4); Baksi and Jarred (n 5); Fouzder (n 6).

<sup>46</sup> Thomas (n 4) 141.

<sup>47</sup> *ibid* 142-3.

<sup>48</sup> Alexander and Boothby (n 9) 67.

Thomas' findings on the importance of commercial awareness to legal employers.<sup>49</sup> Alexander and Boothby's study also provides a valuable alumni perspective – the participants who were in practice who had experienced CLE as students felt commercial awareness was not developed in clinic.<sup>50</sup> The authors noted how clinic provided 'limited exposure to aspects of commerciality'<sup>51</sup> and the clear challenge in providing experience of the commercial realities of practice,<sup>52</sup> again echoing Thomas's findings. Alexander and Boothby also briefly examined supervisor perspectives, noting their awareness of commercial drivers. However, there was no consideration of how supervisors supported students in developing their commercial awareness, leaving a gap in the literature.

The student perspective was examined in Thanaraj's study involving a virtual law clinic.<sup>53</sup> Thanaraj found students thought that they developed business acumen in their clinic and they identified some developmental activities. However, it was unclear whether students linked the activities specifically to the development of commercial awareness and/or other skills, what they understood commercial awareness to mean and the sample size (10) was relatively small. Dunn's study provides further insight into the student viewpoint of whether CLE develops

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<sup>49</sup> *ibid* 67.

<sup>50</sup> *ibid* 66.

<sup>51</sup> *ibid* 70.

<sup>52</sup> *ibid* 83.

<sup>53</sup> Thanaraj (n 12).

commercial awareness.<sup>54</sup> Dunn argued that CLE made students aware of the importance of commercial awareness but, because clinic could not reflect the realities of practice, it was 'highly unlikely that this perception has been embedded from their experience.'<sup>55</sup> This finding reflects the experiences of the alumni in Alexander and Boothby's study.

In a pro bono setting, Blandy found that even though commercial law firms required commercial awareness, none of the 52 students and alumni surveyed mentioned it as being developed through pro bono work.<sup>56</sup> Blandy stated this was because no commercial law clinic students participated, implying that commercial awareness would only be acquired by students with commercial work experience. In contrast, Cantatore's study in Australia, involving 33 students in four pro bono clinics (including a commercial law clinic) and a control group of 34 non-clinic students, found that pro bono work developed industry awareness.<sup>57</sup> The pro bono students thought that their graduate skills developed by 13% but it was unclear how much industry awareness increased. The qualitative results indicated some students felt that they had developed industry awareness but it was unclear how many thought so, the

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<sup>54</sup> Rachel Dunn, 'The knowledge, skills and attributes considered necessary to start day one training competently and whether live client clinics develop them' (2017) PhD thesis 229 <[https://nrl.northumbria.ac.uk/id/eprint/36261/1/dunn.rachel\\_phd.pdf](https://nrl.northumbria.ac.uk/id/eprint/36261/1/dunn.rachel_phd.pdf)> accessed January 2022. This research uses Dunn's methodology but with differing skills.

<sup>55</sup> *ibid.*

<sup>56</sup> Sarah Blandy, 'Enhancing Employability through Student Engagement in Pro Bono Projects' (2019) 26 *Int'l J Clinical Legal Educ* 7, 32.

<sup>57</sup> Francina Cantatore, 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' (2018) 25 *Int'l J Clinical Legal Educ* 147. The literature uses industry awareness interchangeably with commercial and business awareness.

type of clinic that they experienced and what type of activities aided development. Cantatore and others later examined how industry awareness was enhanced across three pro bono clinics in differing jurisdictions.<sup>58</sup> There was a 44% perceived increase in competency for 10 students in Australia, who gained more understanding of how law firms worked and what practice would be like.<sup>59</sup> Industry awareness was enhanced in clinics in South Africa (by 48%) and Chile (increase unclear).<sup>60</sup> This study provides more qualitative evidence of the student experience but lacks consideration of what students understood industry awareness to mean, its importance to them and why their perceptions changed during their clinic experience. Although this article focuses on how CLE enhances commercial awareness in a clinic situated in England, Cantatore and others' study provides a useful international perspective on this area whilst also highlighting the importance of commercial awareness to law students studying in other jurisdictions.

Students may struggle to define commercial awareness.<sup>61</sup> However, there is very little research on how law students define it. Turner and others provided data on how one law student defined it as an understanding of the changing legal market and areas of law.<sup>62</sup> In Dunn's study involving CLE, students in a criminal firm expressed mixed views on what commercial awareness meant, linking it to experience gained in

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<sup>58</sup> Cantatore and others (n 11).

<sup>59</sup> *ibid* 329.

<sup>60</sup> *ibid* 330-332.

<sup>61</sup> Wilkinson and Aspinall (n 13).

<sup>62</sup> Juliet Turner and Alison Bone and Jeanette Ashton, 'Reasons why law students should have access to learning law through a skills-based approach' (2018) 52 *Law Tchr* 1, 13.

practice.<sup>63</sup> The lack of research on law student definitions means that there is very little insight into whether their understanding of commercial awareness reflects that of the legal profession or any other graduate profession they seek to enter.

Overall, there is limited empirical research that focuses on the role of CLE in developing commercial awareness. This study attempted to address the research gaps noted by engaging directly with students and supervisors in a clinic setting.

## **Method**

This study invited groups of third year (level 6) students and supervisors in the author institution's LC to rank the importance of the skills that they perceived law students to need to access graduate employment using diamond ranking. The ranking exercise was followed by a semi-structured interview with each group of participants. The LC has eight main areas of practice and students are divided into 'firms' of between 8 and 10 students who advise clients on particular areas of law dependent on supervisor expertise. Six firms in the LC participated in the study, representing 24% of all the firms in the LC in the academic year 2019/20 and five (62.5%) of the eight areas of LC practice, providing a cross-section of student experience. Thirteen supervisors participated in the study, representing 72% of supervisors working in the LC in the academic year 2020/21 and 7 (87.5%) of the main areas of practice. All supervisors had worked in the LC in the academic year 2019/20 and two supervisors (of business and

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<sup>63</sup> Dunn (n 54) 230.

civil/employment firms) had tutored the business and civil/employment firms participating in the student data collection. Ethics approval was obtained from the author's institution prior to starting the data collection process and each participant provided informed consent to the study.

### ***What is diamond ranking and why use it?***

Diamond ranking is a visual data collection tool that has been used in research into education.<sup>64</sup> Participants, usually working in groups, use cards containing words, statements or pictures, ranking them according to the descriptor being tested, for example, importance, where the most important cards are placed at the top, the least important at the bottom and cards on the same line are equally important. Diamond ranking was selected for this research study, rather than questionnaires or focus groups, because it provides a simple and quick data collection tool that provides quantitative data, in terms of card placement, and qualitative data through the participant discussions around card placement.<sup>65</sup> Further, it was chosen because it enables participants 'to play an active part in the research' allowing participants to work together as a group, encouraging and stimulating discussion.<sup>66</sup> Completed diamonds can be compared to analyse the similarities and differences in views from the perspective of card placement. The discussions that accompany card placement

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<sup>64</sup> Jill Clark, 'Using diamond ranking as visual cues to engage young people in the research process' (2012) 12 *Qualitative Research Journal* 222.

<sup>65</sup> Rachel Dunn, 'Diamonds are a girl's best friend...and a great data collection tool!' (2020) 27 *Int'l J Clinical Legal Educ* 33.

<sup>66</sup> Clark (n 64) 224.

provide qualitative data that records how the group reached agreement on the ranking, perhaps uncovering issues that the researcher would not have considered in a focus group. When combined with other research tools, here a semi-structured group interview that followed each diamond, diamond ranking provides a rich source of data that can be analysed in a number of ways.

Nine card diamonds have been used in education research.<sup>67</sup> More recently, Dunn used a 16 card diamond (the Diamond16) in clinics inviting participants to rank the importance of the skills and attributes required for legal practice.<sup>68</sup> She used 11 pre-selected cards and provided five blank cards for participants to suggest their own skills, adding more depth to the data collection.<sup>69</sup> This study adopted Dunn's approach, asking students and supervisors in the LC to complete Diamond16s, but using different skills.<sup>70</sup>

### *The Diamond16 & the Data Collection Process*

Diagram 1 shows the layout of the Diamond16 used in this study and the 11 pre-selected skills cards. These skills were chosen because they were representative of skills used in other graduate employment surveys and the LETR.<sup>71</sup>

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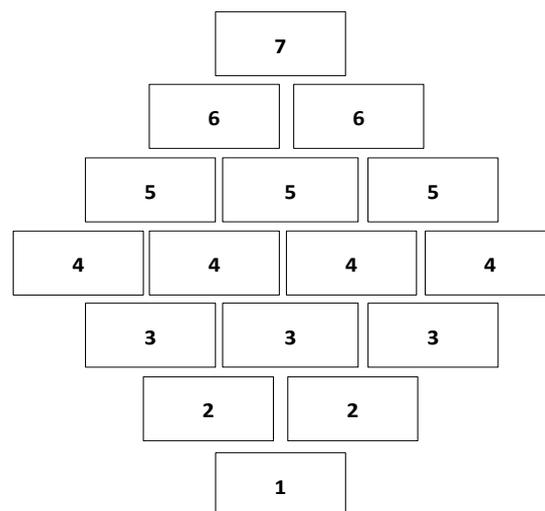
<sup>67</sup> Clark (n 64).

<sup>68</sup> Dunn (n 65) used 16 cards because of the large number of skills required for legal practice.

<sup>69</sup> *ibid* 38-9.

<sup>70</sup> *ibid* 44 for skills used. Apart from written and oral communication, Dunn used different skills to those used in this study. Commercial awareness was not a pre-selected card and from the groups that completed her Diamond16 it was chosen as an extra skill by two out of 17 student groups, one out of six supervisors and both law firms, (n 54) 175.

<sup>71</sup> Surveys (n 2) and (n 23).



<b>Written and oral communication</b>	<b>Commercial awareness</b>
<b>Teamwork</b>	<b>Application of information technology</b>
<b>Self-management</b>	<b>Subject knowledge</b>
<b>Initiative</b>	<b>Numeracy</b>
<b>Enthusiasm</b>	<b>Problem solving</b>
<b>Negotiation</b>	

*Diagram 1 – Diamond Layout and Pre-selected Cards*

Participants were invited to use the Diamond16 to rank the importance of the skills that they perceived law students to need to access graduate employment.<sup>72</sup> Participants completed five other blank cards, ranking these alongside the pre-selected cards. Participants were free to interpret the skills on the cards as they wished. The researcher did not get involved in the discussions other than if asked to clarify the

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<sup>72</sup> Participants were free to interpret this as they wanted – all groups focused on employment in law firms but the discussions considered other careers too.

instructions. The numbers on each line of Diagram 1 were added after data collection to aid analysis of the results by quantifying the relative importance of each card.<sup>73</sup>

Dunn asked her student participants to complete the Diamond16 at three separate data collection points – before, during and after their time in clinic. This study invited student participants to complete the Diamond16 at two points, namely, before and after their clinic experience. This approach was taken because it was determined that taking a ‘before and after’ view would provide a sufficiently robust insight into student perceptions of the importance of the various skills and the role of CLE in developing commercial awareness. This approach also minimised the time that student participants were asked to give to the study and avoided the risk of student participants becoming fatigued by the data collection process. The supervisor participants were invited to do one Diamond16 – here a ‘before and after’ overview was not required. In line with the research questions, the researcher wanted to ascertain supervisor perceptions on the importance of commercial awareness to them as teachers and identify the teaching and learning activities that they used to support development.

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<sup>73</sup> See Carl Towler, Pam Woolner and Kate Wall, ‘Exploring teachers’ and students’ conceptions of learning in two further education colleges’ (2011) 35 *Journal of Further and Higher Education* 501, where a similar approach was taken with a 9 card diamond. There are other options - Dunn (n 54) 158 grouped parts of her Diamond16 together before quantifying each group.

### ***Participant Information***

Table 1 details the firms and the number of student participants that completed each Diamond16. As Table 1 demonstrates, a variety of types of firm were asked to participate, for example, firms with students advising on more commercial matters and firms with students advising individuals on family and criminal law. This ensured that the views of students working in a broad range of different practice areas were obtained. The policy firm (PF) operates within the LC and carries out research for clients on law reform projects rather than providing legal advice. It should be noted that the author was the supervisor of this firm - whilst students knew the author conducted research into employability, they were unaware that the research focused on commercial awareness.

<b>Firm &amp; Key <sup>74</sup></b>	<b>Number of Students – First Diamond16 (Total = 40)</b>	<b>Number of Students – Second Diamond16 (Total = 13)</b>
Business (BF)	7	2
Civil/employment (CEF)	7	6
Family – undergraduate (FF)	8	3
Policy <sup>75</sup> (PF)	6	2
Criminal	8	-
Family - postgraduate (Bar Course)	4	-

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<sup>74</sup> The key is used to attribute student comments. In the LC, students are grouped into firms by practice area.

<sup>75</sup> For a discussion of policy clinics see Lyndsey Bengtsson, Rachel Dunn and Siobhan McConnell, 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) 27 *Int'l J Clinical Legal Educ* 68.

Table 1 – Student Participants

Table 2 details the supervisor participants.

<b>Supervisor Practice Areas &amp; Key<sup>76</sup></b>	<b>Number of Supervisors Completing Diamond16 (Total = 13)</b>
Business Firm Employment Firm (EF)	2
Civil Firm (CF) x 2 Civil/Employment (CEF) x 1 Employment x 1	4
Family Firm (FF) x 3 Crime Firm x 1	4
Housing Firm (HF) x 1 Welfare Firm (WF) x 2	3

Table 2 – Supervisor Participants

As Table 2 demonstrates, supervisors were placed into four different groups to complete the Diamond16. Supervisors were grouped into similar practice areas, allowing for comparison between those areas. For example, supervisors working in more commercial focused practice areas were grouped together as were those practising in more ‘high street’ practice areas such as family, welfare and criminal law.

An example of a completed Diamond16 is provided at Figure 1 below.

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<sup>76</sup> The key is used to attribute supervisor comments.

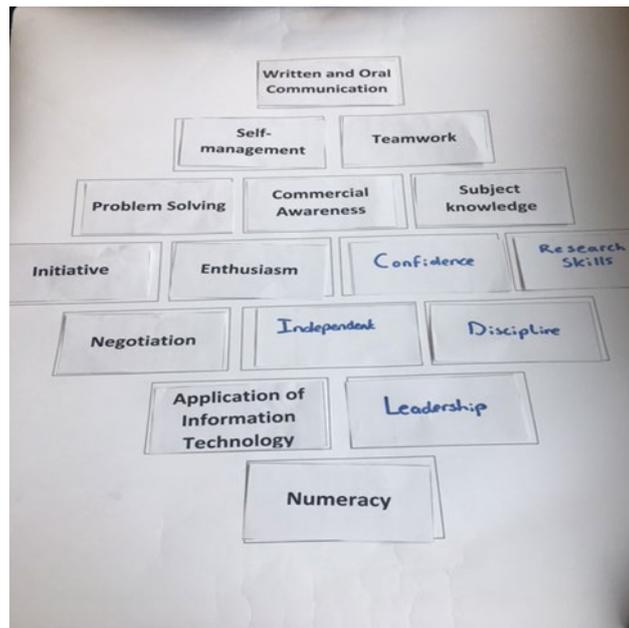


Figure 1 – In-person Diamond16 Completed by Student Participants in a Civil/Employment Firm

Each Diamond16 was followed by a semi-structured group interview. Prompt questions were used to promote consistency across the groups.<sup>77</sup> Each session lasted 15-60 minutes, was video-recorded and then transcribed. The shorter sessions tended to be those involving the student participants although some sessions involving student participants, particularly when completing the second Diamond16, did take longer with more discussion of the various issues.

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<sup>77</sup> See appendix.

***The Data Collection Process – Disruption and Limitations***

As noted, the intention was for each group of student participants to complete Diamond16s at the start and end of their LC year. The first five Diamond16s took place in person using a physical Diamond16 in November/December 2019 with a one semester family firm, comprising predominantly international postgraduate students, completing one in early 2020. The second in person Diamond16, scheduled for the end of the academic year (summer 2020), was thwarted by COVID-19. Given the challenges that students faced and the uncertainty created by the pandemic, the researcher felt unable to ask students to participate in the second Diamond16 in summer 2020, even in an online setting. When the academic year 2020/21 began, and with it the move to online teaching, the author adapted the study, working with colleagues in the university technology support team to create an online Diamond16 for use in Blackboard Collaborate. An example of a completed electronic Diamond16 is provided at Figure 2 below.

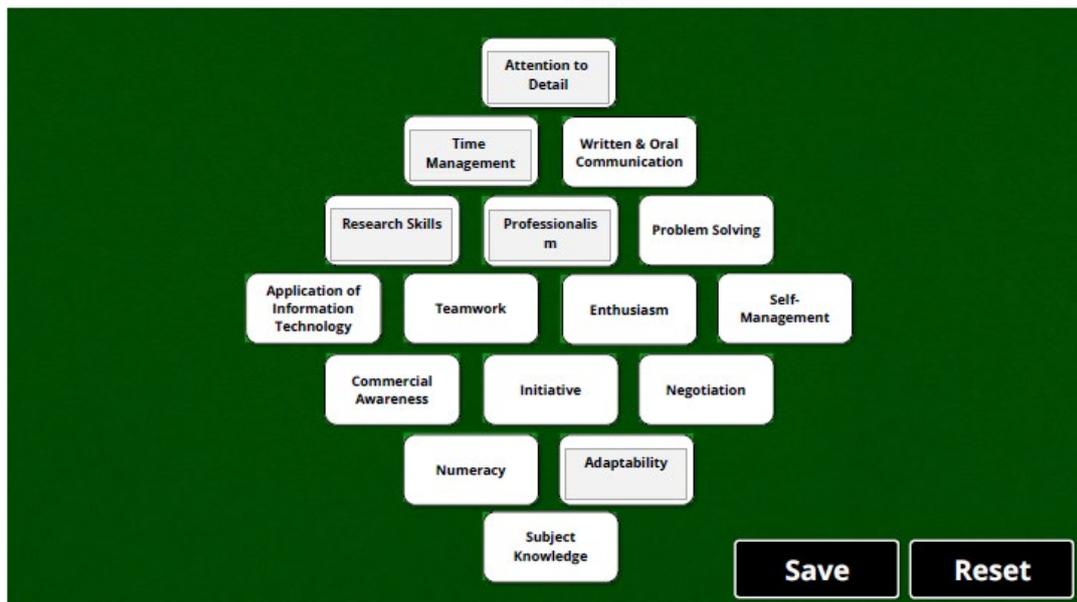


Figure 2 – On-line Diamond16 Completed by Supervisor Participants in the Family and Crime Firms

As indicated in Table 1, not all of the student firms completed both Diamond16s. Even where firms completed the second Diamond16, not all of the student participants returned - some had left university or were too busy. Overall, as Table 1 demonstrates, 40 student participants completed the first Diamond16 and 13 completed both. This could be seen to impact on the reliability of the findings, particularly in relation to the quantitative data. In an attempt to ameliorate this potential difficulty, the results section considers the quantitative data in two ways, firstly by analysing the results by including all of the participating groups and secondly by excluding the groups that did not complete the second Diamond16, (see Graphs 2 and 3 in the Results and Discussion section below). Also, a range of types of firm returned for the second Diamond16, facilitating an analysis of a cross-section of experience. The rich

qualitative data provided by the student participants offers useful insight into their perceptions of the role of commercial awareness during their time in clinic. At the end of the second Diamond16, student participants were shown photographs of both diamonds and encouraged to consider both and discuss to what extent their views had changed. For some key questions, participants were reminded of statements made during the first Diamond16, for example, when being asked to define commercial awareness. Both of these approaches allowed for some participant validation of the data, allowing student participants to consider their previous comments and provide further views after their LC experience.<sup>78</sup>

The intention had been to collect the supervisor data in 2020. Again, COVID-19 made this impractical and data was collected online between April and July 2021. The supervisor Diamond16s allowed for data triangulation by providing another perspective for comparison with student views. This allowed for a 'fuller and more informative picture of what is going on'<sup>79</sup> in the context of the research questions.

Dunn acknowledged the limited drawbacks of using the diamond method, particularly the issue of individual dominance during group discussions, but also noted the rich data that such dialogue can produce.<sup>80</sup> In this study, there was little evidence of individuals dominating discussions. Whilst some student participants

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<sup>78</sup> Dunn (n 65) 65. Harry Torrance, 'Triangulation, Respondent Validation, and Democratic Participation in Mixed Methods Research' (2012) 6 *Journal of Mixed Methods Research* 111,113.

<sup>79</sup> Torrance (n 78) 113.

<sup>80</sup> Dunn (n 65) 66.

could be quiet, the other group members tended to take a collegiate approach. The researcher did not interfere in the process of completing the Diamond16, other than to confirm instructions, as she wanted to be an observer of, rather than a guide to, the discussions. However, the researcher did confirm with the group members that they were satisfied with the completed Diamond16 before asking questions.

Following completion of the data collection, the transcripts were thematically analysed using NVivo software. The transcripts were coded and organised into themes. An inductive approach was taken and only data relevant to commercial awareness in the context of the research questions is considered here. The themes explored in the following section are: (1) importance, (2) changing perceptions, (3) understanding, (4) development activities and (5) impact. The qualitative data is also considered in the context of the quantitative data, providing understanding of 'what is happening behind the numbers.'<sup>81</sup>

## **Results and Discussion**

### **Theme 1 - Importance**

For the purpose of comparing the perceived importance of the skills, each row of the Diamond16 was numbered so that each skill could be quantified – see Diagram 1. The

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<sup>81</sup> Dunn (n 65) 58.

scores for each skill for each group were added together, indicating the perceived importance of commercial awareness to both supervisors and students.

***Supervisors: Important to All but Professional Background is Influential***

As Graph 1 demonstrates, commercial awareness was perceived as the fourth most important skill for supervisors.



*Graph 1 – Total Scores for Diamond16 Skills – Supervisors*

There was a distinction in importance linked to supervisor practice area. The civil/employment and business/employment groups scored commercial awareness at 5 whilst the welfare/housing and crime/family groups scored it at 3. Supervisors working in a more business-orientated context considered commercial awareness to

be more important than supervisors working with individuals on more personal legal matters, for example, family or welfare benefits issues.

The card placement discussions suggested perceptions on the importance of commercial awareness related to professional background and experience. A business firm supervisor with a commercial law background stated:

*I think commercial awareness is, for me, towards a higher ranking one, so you know what business you're entering and how it works. (BF Supervisor)*

A supervisor with a family law background observed:

*Because we're not really in commercial areas I don't know whether we see it as being as important as, say, a corporate lawyer would. (FF Supervisor)*

Many recognised how importance was linked to the narrative employed by law firms. Some were unconvinced about this in reality given their personal experience, for example:

*I'm always a bit funny about commercial awareness 'cos I know it's really important but...I rank commercial awareness quite low because I don't think I've ever really understood it but then I've got this far in my career without it. (FF Supervisor)*

Although at group level there were differences in ranking, most supervisors thought that commercial awareness was needed by all types of firm, not just commercial practices. One stated:

*I don't just associate it with business type work, I mean corporate/commercial.*

*I think it's also to do with who your clients are and linking that in to your business so I suppose that is then across the board a bit isn't it. (EF Supervisor)*

In fact, some supervisors thought that lawyers working in smaller practices needed more commercial awareness. One stated:

*I think there may be this misunderstanding that you need to be commercially aware if you go into a commercial law firm but actually you need to...be even more commercially aware if you go into a high street firm because you're operating within a small business and your role is actually more enhanced...more hands on responsibility for the management...and the income stream of that business. You actually might have less of an impact or control over it if you are in a large commercial firm so I think it's important across all types of firms. (CEF Supervisor)*

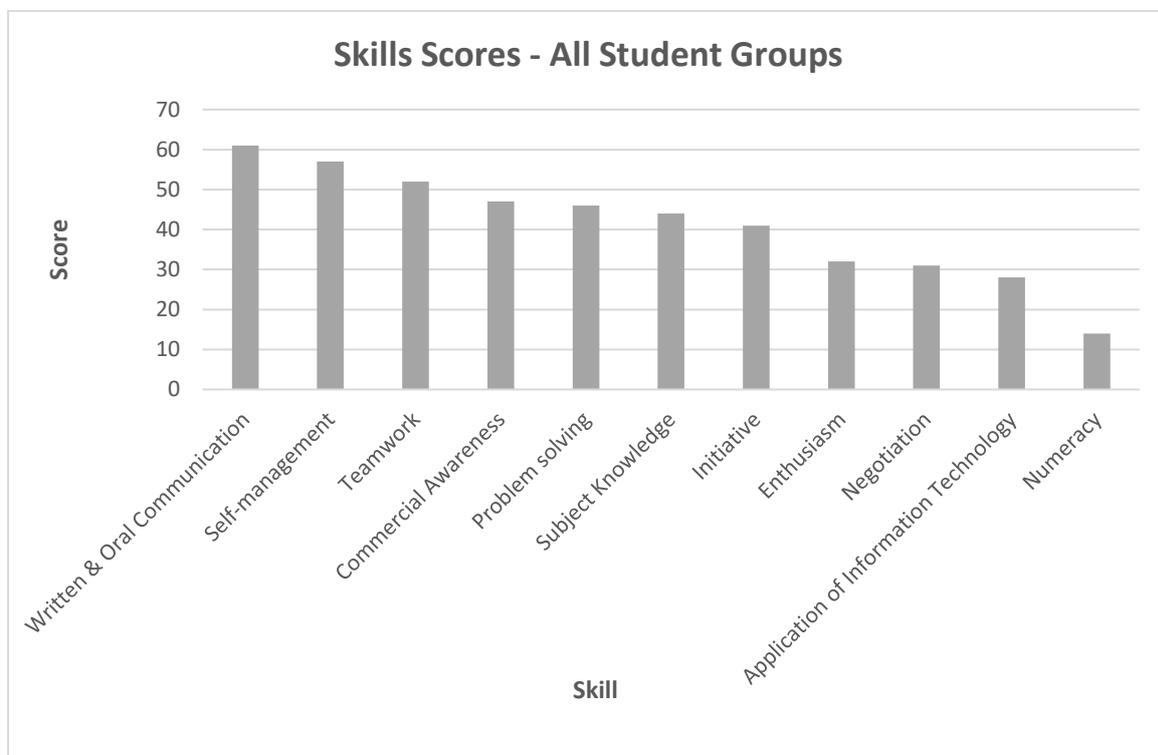
Some supervisors linked commercial awareness to client care, again acknowledging its importance across the profession, for example:

*You can't achieve client care and your obligations as a lawyer under the Code of Conduct...unless you understand what their motivations are, how their business works, how they are impacted by things around them. (EF Supervisor)*

These viewpoints take a different approach to the LETR<sup>82</sup> (that associated commercial awareness more with commercial work) and Blandy (who thought that commercial awareness would be acquired only by those studying commercial law). The narrative of these supervisors supports the findings of its ‘universal’ importance noted by Strevens and others in their study involving law firms.<sup>83</sup>

### ***Students: Legal Profession and Law School Influence***

The student picture was more complicated because whilst six firms completed the first Diamond16 only four completed both. The total scores for all firms (whether completing one or both Diamond16s) are shown in Graph 2. Like the supervisors, commercial awareness was perceived as the fourth most important skill.

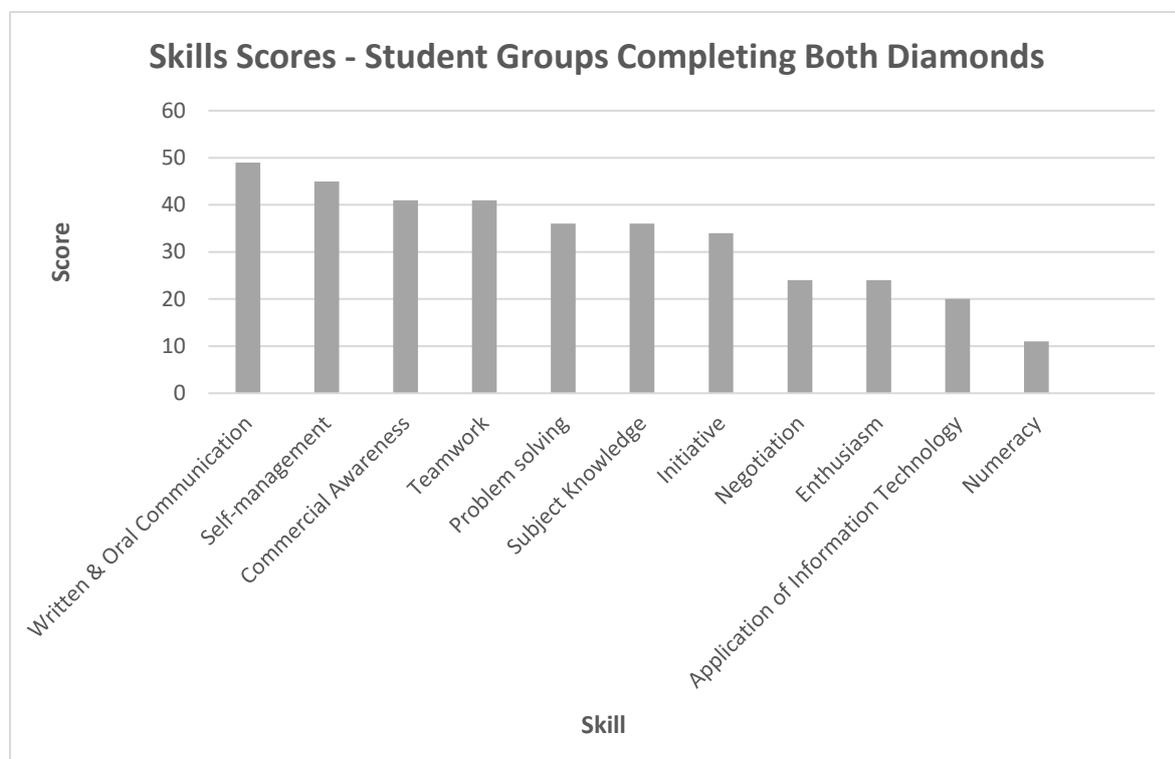


<sup>82</sup> LETR (n 16) para 7.20.

<sup>83</sup> Strevens and others (n 18) and Etherington (n 43).

Graph 2 - Scores for Diamond16 Skills - All Student Groups

As noted in the Method section of this article, the non-completion of the second Diamond16 by two firms may misrepresent the results. Graph 3 shows the scores where these two firms are excluded – commercial awareness becomes the joint top third skill. This reflects the omission of the lower scores (criminal 4, postgraduate family, 2) attributable to the excluded firms.



Graph 3 - Total Scores for Diamond16 Skills - Student Groups Completing Both Diamonds

Like supervisors, students ranked commercial awareness highly. During card placement discussions, many noted it had 'got to be' in the top part, its ranking influenced by the views of law firms and the law school. For example:

*Commercial awareness - we're always getting told commercial awareness is important. (CEF Student)*

And

*But every lecture we've been in, all they've said is "Commercial awareness is key! You need commercial awareness!" So I feel like that has to be...*

*in the top 3 lines,*

*...otherwise they've just wasted their breath. (FF Students)*

The following exchange during card placement exemplifies perceptions of the importance of commercial awareness in the graduate recruitment process:

*Other than an interview setting would you really need to talk about commercial awareness that much?*

*Yes, 'cos supposedly you need commercial awareness to carry out your job.*

*Do you?*

*To know about like the broad areas...*

*To get the job...*

*The whole interview is pretty much based on commercial awareness...so yeah*

*I'd agree you do need it. (FF Students)*

Further statements provided more evidence of law firm influence on student perceptions of the importance of commercial awareness in accessing graduate

employment, for example:

*When I've spoken to firms and they rank what attributes they look for in people that they're recruiting, commercial awareness does always come up. I've not been to one firm where they've not said commercial awareness. (CEF Student)*

And

*I think if you speak to a solicitor outside of the LC...about an interview or the application process, they would just say you need to be commercially aware... 'cos all the questions at their interview will be related to commercial awareness in some way. (FF Student)*

The only firm that placed commercial awareness low (scoring 2) was the postgraduate family firm. Most students thought commercial awareness relevant only to commercial practice, adopting a more 'LETR approach' but most students were new to the UK and so arguably less influenced by UK law firm rhetoric.

Overall, supervisors and students ranked commercial awareness more highly than it is usually ranked by employers in recruitment surveys.<sup>84</sup> As there is little quantitative data showing how law firms rank commercial awareness compared to other skills,<sup>85</sup> it is difficult to know if the participants' views reflected law firm views or whether participants overestimated its importance. The reasons for its high ranking were clear.

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<sup>84</sup> ISE (n 2) – this includes, but is not specific to, law firms.

<sup>85</sup> Dunn's study (n 54) is helpful but involved two firms. The LETR (n 16) does not present a quantitative comparison of commercial awareness with other skills other than to note 68.9% of practitioners ranked knowledge of the business context more highly than core legal knowledge.

Supervisors were influenced by their professional background. Students were influenced by law firm commercial awareness narratives (recognised by Sommerlad, Etherington and Strevens and others in their studies<sup>86</sup>) that are repeated by the law school and other stakeholders that assist students with accessing the profession, for example, *Aspiring Solicitors*.<sup>87</sup> Students were clearly aware of commercial awareness and its importance – whether they actually understood it is something that is examined later in the discussion of Theme 3 - Understanding.

## **Theme 2 - Changing Perceptions of Importance**

The data collection points (at the start of the LC year and post-LC) provide an understanding of whether student views on the importance of commercial awareness changed during that year and also an insight into the reasons for any change. Graph 4 shows how views changed in three of the four firms completing both Diamond16s.

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<sup>86</sup> Sommerlad (n 6); Strevens and others (n 18); Etherington (n 43).

<sup>87</sup> *Aspiring Solicitors* is an organisation aimed increasing diversity within the legal profession, see <https://www.aspiringsolicitors.co.uk/> accessed May 2022.



Graph 4 - change in importance of commercial awareness

The views of each firm are now examined, using qualitative data to provide insight into the results.

#### *Business Firm*

These students ranked commercial awareness highly in the first Diamond16 because it was needed in any industry and because their supervisor had discussed it in detail the week before, suggesting how tutor influence may have had a role.<sup>88</sup> After the LC year, it became the most important skill, with students focusing on the impact of COVID-19 and how it was 'really important' to know about current affairs:

*I think there's so much change happening, if you're not aware of it you're kind of left behind. I feel like it's become so important because there's been so much change, especially with everything that's happening with COVID.*

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<sup>88</sup> Dunn noted tutor influence in relation to commercial awareness in her study (n 54) 256.

### *Reviewed Article*

Another student observed the increasing importance of commercial awareness as they reached the threshold of the graduate job market, noting:

*...part of the reason we've put it as top as well now is because we are in our final year. Our next step is actually going out into the real world so I think maybe that's why it's top now 'cos it's even more forefront. I know we start applying...years in advance for training contracts, but actually now it's not "We've got another 2 years at uni so if we don't get one it doesn't matter," it's "You need to get a job" so...*

This comment perhaps again reflects the pervasive influence of the commercial awareness narrative employed by the legal profession.

### *Civil/employment Firm*

Here, the ranking remained the same. When placing the commercial awareness card in the first Diamond16, students cited law school influence. The post-LC discussion was similar –students stated: 'they're always banging on about it aren't they.' Dunn noted similar comments in her study.<sup>89</sup>

### *Family Firm*

Here, commercial awareness dropped by two places. In the first Diamond16, students linked importance to law school and law firm influence. When discussing its drop in ranking, one explained:

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<sup>89</sup> Dunn (n 54) 199.

*...I feel like the more that you go through the law school the more you just naturally become commercially aware anyway. I think at the start of the LC you didn't really ever come across it so it was more trying to look out for it. But now it just comes naturally to you so I don't think it's as important as something to actually look for.*

And

*I think when it gets to the later years of uni you are thinking more about jobs and when you're researching training contracts obviously commercial awareness is a big thing, so I think you take it upon yourself to read more of the news and keep up to date with things.*

Like the business firm students, these students were conscious that the end of their degree was approaching, but commercial awareness was less important because they felt more aware.

#### *Policy Firm*

Students did not discuss why they placed the card in its allocated space on either Diamond16, although in the second Diamond16 they agreed, 'We did a lot on that didn't we.' Despite this, commercial awareness moved down two places. When questioned, students made comments similar to those in the family firm about feeling more confident in their commercial awareness.

Overall, there were differing reasons why perceptions of the importance of commercial awareness changed or did not. Whilst this data does not clarify the role of

CLE in explaining why the importance of commercial awareness changed (or why not), it provides evidence of some of the external and internal non-clinic factors that have an influence on its importance to students during their time in legal education. It would be useful to conduct further research in a broader legal education setting to understand how the importance of commercial awareness changes for students on their journey to graduate employment.

Whilst students are clearly aware of commercial awareness and its importance for graduate roles, it is critical to ascertain what commercial awareness actually means to students and how confident they are in that understanding. The following section considers how students defined commercial awareness and whether students' understanding changed during their time in clinic.

### **Theme 3 - Understanding Commercial Awareness**

#### *Supervisor and Student Definitions*

As noted earlier, students may have difficulty in defining commercial awareness.<sup>90</sup> There is very limited empirical evidence on what commercial awareness means to law students<sup>91</sup> and none on how supervisors, and more broadly, legal academics define it. When asked to define commercial awareness after the first Diamond16, several student participants hesitated, declined to contribute, asked to 'sit this one out' or

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<sup>90</sup> Wilkinson and Aspinall (n 13).

<sup>91</sup> Turner and others (n 62).

stated it was 'hard to describe.' The definitions that were provided tended to be basic, focusing on current affairs knowledge. One noted:

*You've got to be aware of current events and stuff going on, you can't just like live in a little shell. (BF Student)*

Other students referred to how businesses work and make money but none mentioned 'the law firm as a business' aspect of commercial awareness that is so frequently used by the legal sector. Some students adopted the LETR approach, linking it to commercial law and practice. Although students were aware of commercial awareness, they did not demonstrate a sophisticated understanding of it nor one that mirrored employer and supervisor views. Overall, their views shared little correlation with the author's suggested definition.

In contrast, supervisors gave a broader range of definitions reflecting those used by the legal sector, focusing less than student participants on current affairs knowledge and more on how law firms were businesses, for example:

*It's having that awareness of the business, what sort of business are you working in, what does that mean for you, for your clients, for billing, how you make money, who the clients are, how you get your clients. (EF Supervisor)*

One supervisor noted the change in the legal profession as it moved to a more commercialised basis:

*I think it's very important to the law firms that students understand that they're a business...there's much more move to the changing understanding of what law firms are, that they are a business...and that decisions are made on a commercial basis...sometimes there may be a concern that law students don't see law firms as a business...they don't understand that actually you have to make money for employers, that's your role. (CEF Supervisor)*

Such viewpoints reflect much of the academic and practitioner literature that focus on understanding the business element of running a successful law firm.<sup>92</sup>

### ***Did Student Understanding Change?***

After the LC year, some students demonstrated a slightly deeper understanding. For example:

*I would say it has slightly changed in the sense that I would see it more as the industry as a whole, as in the law working with politics...ethics...environmentally. (FF Student)*

However, only two students (from policy and family firms) now included the law firm as a business in the definition. The words of this student suggest they had experienced some profound development of their understanding of what commercial awareness meant:

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<sup>92</sup> Strevens and others (n 18); Sommerlad (n 6); Etherington (n 43); various (n 21).

*...it's obviously being aware of the things that are happening in the news and legal developments...but it's also, what I think I didn't get in the last three years of uni was, it's also looking how that's going to impact on a firm and how the firm is going to place importance on knowing that as well. It's going that step further. (FF Student)*

Again, it cannot be said that the clinic experience itself was responsible for this deepening understanding; other factors, for example, engagement with the legal profession, will have had an impact. The overall lack of focus on the law firm as a business part of the definition suggests that the more sophisticated supervisor understandings of commercial awareness may not be transferring to students. The following section, outlining development activities, considers why this might be happening.

#### **Theme 4 - Development Activities**

This data is partially limited because only two student firms with supervisors contributing to the study, participated in both Diamond16s. Therefore, it is difficult to fully assess the correlation between activities that supervisors and students identified as developing commercial awareness. However, the data is helpful in showing similarities in supervisor activities and in highlighting the activities students identified as developing their commercial awareness.

***Student Views***

In the second Diamond16 discussions, the activities that students identified as developing commercial awareness in clinic fell into three categories: client work, the LC working environment and current affairs.

*Client work*

Client work was the most common example. Participants who completed the second Diamond16 provided nine different examples of how they perceived client work had developed their commercial awareness. For some it improved understanding of how businesses work. For example:

*My client was starting up a business and they wanted their master agreement drafting...and I think that helped develop my commercial awareness because I had to go so deep into not only the actual legal side but also what were the business aims and how was the business going to make money. (BF Student)*

Some students observed how client work assisted in understanding that the legal solution might not always be the right one for a client, part of the author's suggested definition. One student observed:

*You've got the law but is it actually practical, does it actually work for a client?  
And looking at it that way, I feel like it does make you very commercially aware because we see it from a law student perspective and we're like "ah yeah,*

*everything should work fine if they're following the law" but in reality it's not that black and white. (BF Student)*

Bleasdale-Hill and Wragg recognised such considerations were important and could be linked to developing commercial awareness.<sup>93</sup> Some students stated that considering 'what works' and 'real life concepts' were critical in providing advice. Although students and supervisors did not focus on this point when defining commercial awareness, the discussions suggested that for some students it was an aspect of their developing commercial awareness.

Business firm students described drafting leaflets on business start-up issues for entrepreneurial business students, presenting the leaflets and answering questions, one noting:

*In reality the questions...were like a very, very small and specific part of business rather than...looking at privacy and data protection. They weren't interested in that, they were more interested in copyright and trademarks...I feel like you can research as much as you want on what you think is going to be helpful but when you actually go and talk to someone who is going to be a potential client you get your eyes opened as to what they actually want. I think it really opened my eyes. (BF Student)*

Two policy firm students stated that their client research developed their commercial

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<sup>93</sup> Bleasdale-Hill and Wragg (n 7) 264.

awareness because it made them consider the social justice issues arising in legal areas they had not been exposed to before, for example:

*...it made me more aware of the injustice in...mental health...and I wouldn't have probably done that part of law in our normal modules so I wouldn't have ever probably realised...the levels of injustice in that spectrum. (PF Student)*

Social justice is an unusual but interesting developmental angle because so often commercial awareness is linked to business and business issues. However, such views do fit within the author's suggested definition of commercial awareness.<sup>94</sup>

Civil firm students were less convinced that client work helped, one noting:

*I don't really know whether I would say my commercial awareness did – because we only really dealt with one case and it was more to do with an individual so...I probably don't think mine was that much improved. (CEF Student)*

These students aligned development with the LC working environment.

#### *LC Working Environment*

Although no students mentioned the 'law firm as a business' aspect of commercial awareness as a direct example of development, comments suggested that some may

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<sup>94</sup> McConnell (n 14).

## *Reviewed Article*

have, perhaps unknowingly, developed it through the working environment of the LC, for example:

*...even just the way...the LC was ran it gives you more of an idea of how a solicitors' firm is going to be ran and that...you need to be aware of the environment that you're going to be working in. So that gave us more awareness even of how it would be when we went into practice. (PF Student)*

And

*Yes being in that environment and understanding how the firm works...the counting of minutes when you're doing an interview and it being in six units...the importance of that stuff rather than the wider commercial awareness and current affairs. (CEF Student)*

## *Current Affairs*

Policy firm students linked their development to a weekly activity where students asked questions on legal issues in the news, noting:

*...it made sure you were constantly looking - even if you hadn't looked that week then one of the other members was telling you something that had happened that week - so it was constantly keeping you up to date with what was going on in the general climate of the world.*

The focus on current affairs led to some students making commercial awareness development part of their everyday learning, for example:

*...now I keep up to date with the news...even just having the app on my phone and then notifications for the main stories coming through and things like that, whereas before the LC I didn't have that. (PF Student)<sup>95</sup>*

All firms identified at least one development activity. Unlike other research locating commercial awareness development with commercial law practice,<sup>96</sup> students from all types of firm recognised that they had developed commercial awareness in some way. Activities tended to fall into one of the three categories depending on the firm. For example, business firm students identified development through client work whilst civil firm students attributed development to the LC working environment. In contrast, as the following section demonstrates, supervisors identified many more development activities and promoted development across multiple categories.

### ***Supervisor Approaches***

#### *Law Firms as Businesses*

The most common supervisor activity centred on improving student understanding of the law firm as a business aspect of commercial awareness. Many supervisors asked students to think about their work, the time it took and how this would translate into

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<sup>95</sup> This student also led a firm meeting, giving a presentation on commercial awareness and how to develop it in preparation for the graduate recruitment process.

<sup>96</sup> LETR (n 16) 7.20 and Blandy (n 56).

'real life' legal practice. Supervisors concentrated on time recording and billing, something not traditionally a feature of clinical programmes,<sup>97</sup> for example:

*I usually do a billing exercise with them so I get them to go and look up the county court rates that they would be able to claim, consider which level that they'd be working at...then we actually bill their files. We bill it on the time that they've recorded and then we also bill it against the file, to highlight the difference between what they've time recorded and what they'd actually be able to claim...and that's normally quite significant when they're billing maybe two or three hours' worth of research and you're knocking it down to about 10 minutes because they'd be expected to have a lot of that knowledge. So it's highlighting the difference between the LC and what they would be expected to do in practice. (HF Supervisor)*

And

*We talked a bit about how firms make money, getting them to think about the sort of work that they're doing, how long they've taken to do it, whether or not that would ever translate into an actual bill...that side of the law as a business that I think sometimes is a bit missing from the LC. Because they can take endless time to do anything and they do. (EF Supervisor)*

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<sup>97</sup> Barry (n 8) 275.

### *Reviewed Article*

Other examples included asking students to do a mock pitch to a potential client, a timed advice exercise and limiting client interviewing time to one hour:

*We're telling them that time is money so I think there is a connection there with commercial awareness.* (WF Supervisor)

Thomas advocated time recording, billing and costs discussions as methods of developing students' commercial awareness. He noted that some clinics did such activities but they were not standard practice.<sup>98</sup> This study shows how these activities *are* commonplace in the LC for supervisors but, as only one student mentioned such an activity, they are not necessarily recognised as development activities by students. This leaves a question mark over how explicit supervisors were in explaining that these activities developed students' commercial awareness and this issue will be examined in the section below concerning supervisor attitudes.

### *Current Affairs*

Several supervisors provided news stories to students or asked students to research issues, similar to the activities policy students identified. The more 'high street' firms focused on giving students an understanding of the realities of the legal environment their clients experienced; one supervisor explained:

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<sup>98</sup> Thomas (n 4) 153.

## *Reviewed Article*

*I always do one (session) on legal aid, just so that they've got an understanding, because often at that stage they won't...it's important for them to know why the clients, how they've ended up at the LC, which is often to do with legal aid issues. (Crime Firm Supervisor)*

## *Client Work*

The third most cited activity was client work and demonstrating the wider, often non-legal, factors influencing client advice. One supervisor described this as 'modelling' and supervisors discussed how this demonstration of the realities of legal practice was a way of developing commercial awareness, reflecting some student viewpoints:

*I think part of it is modelling. I think a lot of what we do in the LC around commercial awareness is demonstrating the way in which we approach practice, so the types of things that we consider when we're looking at cases and the types of things that we would prioritise, the importance that we put on certain things, our response to deadlines. I think a lot of that also comes down to commercial awareness. (HF Supervisor)*

This approach again reflects Bleasdale-Hill and Wragg's views on the benefits to students of experiencing real life disputes in gaining insight into the different factors critical in providing legal advice. They noted a link between these types of activities and commercial awareness development.<sup>99</sup>

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<sup>99</sup> Bleasdale-Hill and Wragg (n 7) 264.

### ***Supervisor Attitudes***

Although all supervisors tried to enhance commercial awareness using different activities, there were differing attitudes towards its teaching. These related both to supervisors' professional backgrounds and their confidence in teaching commercial awareness.

Three supervisors had practised commercial law in commercial firms and acknowledged how influential this was, one stating:

*It's at the front of everything I tend to do to be honest with you because it has to be. (CF Supervisor)*

For others, particularly those who had worked predominantly with claimants, there was much less focus, for example:

*I probably haven't done enough of that (commercial awareness) and I think some of that relates to the background that I came from...working under not for profit contracts in the Citizens Advice. (WF Supervisor)*

A minority lacked confidence in understanding commercial awareness and their ability to teach it.

*I hate teaching about it...and I just kind of think "Oh I don't really feel qualified to be teaching about this." (FF Supervisor)*

There are recognised difficulties in integrating employability skills into teaching.<sup>100</sup> It should not be assumed that supervisors with significant legal practice experience are necessarily equipped to teach skills like commercial awareness – further support and training may be needed.<sup>101</sup>

*Signposting commercial awareness*

Very few supervisors were explicit in signposting commercial awareness development to students by explaining that an activity could enhance it. For most it was an ‘unspoken thought.’ This may help to explain the mismatch in both the number and type of development activities identified by students and supervisors. The data indicated that the Diamond16 discussions were perhaps the first time that some supervisors had thought in detail about the link between their activities and commercial awareness development, for example:

*Lots of things you (other participants) mention, I do that as well, but I don't red flag it enough to students that it's a commercial awareness aspect – not always anyway. I think I could do a better job at that. (CEF Supervisor)*

And

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<sup>100</sup> John Bell, ‘Key Skills in the Law Curriculum and Self-Assessment’ (2000) 34 *Law Tchr*; Egle Dagilyte and Peter Coe, ‘Professionalism in higher education: important not only for lawyers’ (2014) 40 *Law Tchr* 33.

<sup>101</sup> Dagilyte and Coe (n 100) 48-9 calling for better quality pedagogy training for academics to deliver employment-ready graduates.

*I possibly don't match it with commercial awareness enough...there probably is stuff that we teach them that I wouldn't necessarily link to commercial awareness and therefore I'm not bringing that enough to their attention perhaps...I do these exercises with them but I don't reach the end of it and go, "By the way this is an example of commercial awareness." (WF Supervisor)*

Others felt they were more explicit but signposting focused on linking commercial awareness to current affairs knowledge, for example:

*...I ask them to pick out something in the news and then relate it...I flag it then. But when we're giving advice and looking at commercial options, I do talk about it's important that they look at practicalities rather than the legalities, but I don't flag it as a commercial awareness issue. (CEF Supervisor)*

Very few supervisors used the term commercial awareness. Some stated that they were more explicit but talked to students of the 'realities of practice,' for example:

*I think I have given examples in the past, "You know what, if you go into a law firm this is what will be expected of you," but without getting deeper into it. I think I've just scratched on the surface. (WF Supervisor)*

Such terminology does not match the commercial awareness label used by law firms.<sup>102</sup> Two supervisors nearly always signposted commercial awareness; these were

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<sup>102</sup> Thomas (n 4) and websites (n 4).

the supervisors from a commercial law practice background for whom commercial awareness was critical.

Overall, students identified far fewer activities than supervisors and there was inconsistency between the activities identified. Supervisors focused more on activities that enhanced an understanding of the law firm as a business. Students identified development mostly through client work. The lack of supervisor signposting perhaps explains this disassociation and also why supervisor definitions of commercial awareness were not adopted by students. Francis argued that the value of experiential learning depends on student ability to identify what they are learning.<sup>103</sup> Bell called for academics to be more explicit about skills development.<sup>104</sup> Clearer signposting is needed if students are to appreciate they are developing commercial awareness.<sup>105</sup>

The data shows a clear role for CLE in developing commercial awareness. This is encouraging. However, to realise the benefit of this development, students must be able to demonstrate skills like commercial awareness during the graduate recruitment process<sup>106</sup> and have confidence they can do so. Thomas examined how clinic boosts student employability but failure 'to equip them to explain how in a job application

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<sup>103</sup> Andrew Francis, 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' (2015) 42 *JL & SOC'Y* 173, 195.

<sup>104</sup> John Bell (n 100) 191.

<sup>105</sup> For examples of commercial awareness development in real estate education see Joanna Poon, 'Commercial awareness in real estate courses' (2014) 32 *Property Management* 48 where most academics explicitly mentioned 'commercial awareness' when teaching and explained its meaning.

<sup>106</sup> Leonard Holmes, 'Reconsidering Graduate Employability: the 'graduate identity' approach' (2001) 7 *Quality in Higher Education* 111, 117-8.

or interview' does students a disservice.<sup>107</sup> As the following section demonstrates, students had mixed feelings about their confidence in their commercial awareness, particularly in a graduate recruitment setting.

### **Theme 5 - Impact**

Students in business, policy and family firms stated that confidence in their commercial awareness - in understanding what it meant and in being more commercially aware - increased in clinic. However, in the civil/employment firm (where students associated development with working in the LC), there were perceptions that confidence had not increased, for example:

*I think commercial awareness is a tricky one. I feel like if someone was to ask us a question, depending on what the type of question was, I don't really know whether the LC helped us develop that in particular. (CEF Student)*

So whilst this firm's views of the importance of commercial awareness were unchanged, students did not feel more confident and that translated into a lack of confidence in how to cope with commercial awareness questions at interview. One family firm student noted her increased confidence but she was concerned about interviews, stating:

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<sup>107</sup> Thomas (n 4) 153-4.

*I'm a lot more confident in it but at the same time it is a concept that at interview it is scary and no matter how confident you are in it as soon as they mention commercial awareness I think it probably will throw you.*

The viewpoints expressed here suggest there is further work to be done in promoting development in CLE. However, supervisors cannot, and should not, be expected to do everything in the context of teaching commercial awareness. The rest of the undergraduate law degree should play a part in its development by integrating commercial awareness into modules. Further employability support is needed from centralised careers advisers working with students in clinic and assisting them with packaging their experience for the graduate recruitment process. Whilst professional careers support is key, those teaching law must engage with students too. O'Leary argued that it is critical to ensure that academic departments remain involved in providing effective employability support to students.<sup>108</sup> In a law school setting, Childs and others found that law students valued input and advice from their tutors alongside the central careers service offering.<sup>109</sup> The conclusion suggests ways in which law schools, clinics and career services can work together to provide support activities.

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<sup>108</sup> Simon O'Leary, 'Graduates' experiences of, and attitudes towards, the inclusion of employability-related support in undergraduate degree programmes; trends and variations by subject discipline and gender' (2017) 30 *Journal of Education and Work* 84.

<sup>109</sup> Penny Childs, Nigel Firth and Hugo de Rijke, 'The gap between law student career aspirations and employment opportunities' (2014) 48 *Law Tchr* 51.

## **Conclusion**

The above findings allow for suggested responses to the research questions and to consider the implications for CLE.

### *How important is commercial awareness as a skill to those teaching and learning in CLE?*

Commercial awareness was very important to supervisors and students in the LC – they ranked it highly in comparison to other skills. Further, both groups ranked commercial awareness more highly than graduate employers did in employer surveys.<sup>110</sup> Such surveys are not law-specific and it would be interesting to undertake research with law firms to establish if the findings here reflect law firm views or whether supervisors and students overestimate its importance. The results also showed differences in view. Supervisors and students working in business, civil and employment firms ranked commercial awareness more highly than those working in family, criminal, housing and welfare firms. For supervisors, professional background was influential. Supervisors from commercial law backgrounds deemed commercial awareness more important than those with high street or mainly claimant experience. However, the discussions suggested a more nuanced reality. Commercial awareness could be more important for lawyers in smaller high street firms because they worked in a small business with more risk and less support. For students, the narrative of the legal profession, repeated by the law school, was influential in determining

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<sup>110</sup> ISE (n 2).

importance.

*Do students develop commercial awareness in clinic and, if so, what types of CLE teaching and learning activities promote development?*

The data shows that some students perceived that they had developed commercial awareness in clinic and that some developed it more than others. There was both practical development and also improved understanding of what commercial awareness meant. Supervisors named many more practical development activities than students. Even allowing for the fact that not all of the supervisor and student groups matched, this suggests that students do not always identify that their supervisors' teaching activities are aimed at developing commercial awareness.

Supervisors used authentic and engaging development activities. Some activities resonated with students, particularly those involving client work where students learnt, possibly for the first time, that the legal solution may not always be the right one, and that other factors, modelled so professionally by their supervisors, were critical in providing advice. Despite supervisor focus on developing the 'law firm as a business' aspect of commercial awareness, using activities such as time recording and valuing client work, there was very limited student discussion of those activities as examples of developing commercial awareness. This was reflected further by the fact that when asked to define commercial awareness, very few students mentioned the 'law firm as a business' aspect of the definition. These disconnects appear to result from supervisors not explicitly signposting their commercial awareness development

activities. Signposting skills development is critical.<sup>111</sup> For some supervisors, it seemed that the Diamond16 exercise was the first time they had really considered how the excellent activities they facilitated were actually exercises in developing commercial awareness and could be branded as such. This was, perhaps, because in providing these activities, their professional identity was so ingrained they did not think to label them as commercial awareness activities. Just as there may be a perception that there is no need to signpost a teamwork activity as developing teamwork, the same may apply to commercial awareness. However, commercial awareness is a skill that students struggle to understand and lack confidence in – it is also, unlike teamwork, a skill with which they are less familiar. The results support the view that the tacit needs to be explicit.<sup>112</sup> This research also supports Thomas' view that, whilst clinic enhances employability 'its value is lost if students are not able to, and do not, recognise this link.'<sup>113</sup>

### ***Implications***

This study reinforces the importance of commercial awareness to those teaching and learning in twenty first century law schools. As one supervisor noted: *'The days of lawyers being able to say, "Oh commercial stuff that's for the clients," I'm afraid, are long*

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<sup>111</sup> Trina Jorre de St Jorre and Beverley Oliver, 'What students to engage? Contextualise graduate learning outcomes and assess for employability' (2018) 37 Higher Education Research & Development 44. Bell (n 100).

<sup>112</sup> Peter Knight and ESECT colleagues, 'Briefings on Employability 3 The contribution of learning, teaching, assessment and other curriculum projects to student employability' (2003) <<https://www.qualityresearchinternational.com/esecttools/esectpubs/knightlearning3.pdf>> accessed June 2022.

<sup>113</sup> Thomas (n 4) 149.

*gone.*' That message, so fully embraced by many law firms, now seems part of the law school narrative. The challenge for CLE is not in recognising that importance but in translating the clinic experience into a convincing commercial awareness narrative that students feel confident in articulating in an application form or at an interview. The findings suggest that supervisors are aware of the critical role commercial awareness plays in obtaining employment in a law firm and in practising as a lawyer. Their professional experience places them in an excellent position from which to teach the future of the profession commercial awareness. A minority of supervisors lacked confidence in their ability to do so or were unconvinced that commercial awareness was necessary at the point of entry to the profession. However, all recognised its importance to students and tried to enhance their students' commercial awareness. This research makes an original contribution to knowledge because it presents the wide range of activities that supervisors use to enhance commercial awareness, the activities students identify as promoting development and the gap between the two stakeholders. The results strengthen the argument for explicit signposting of employability skills. Fortunately, this can be easily remedied. The supervisors here only need provide more direction to their students. This would involve explaining what commercial awareness is, perhaps using the author's suggested definition, and its importance to graduate professions. Supervisors should then highlight how relevant clinical activities promote its development, focusing on which aspect of commercial awareness is being enhanced.

If we conclude that CLE can develop commercial awareness, there are wider law school issues to address relating to student confidence and timing. This study finds that even where students developed commercial awareness in the LC, they still lacked confidence in how to use their experience to demonstrate it during the graduate recruitment process. For some, this was because they could not make the link between their LC experience and commercial awareness. For others, there was a general lack of confidence about demonstrating it at interview. As for timing, it is too late to leave development until clinic. CLE usually occurs towards the end of a degree but commercial awareness should be part of the employability framework much earlier, because many law firms recruit in second year. Further, CLE is not a 'magic bullet' for commercial awareness or any other graduate skill.<sup>114</sup> In line with Cantrell's views on ecologies of learning,<sup>115</sup> CLE should enhance the foundational work that ought to occur earlier in degree programmes, whether through bespoke employability modules or by integrating commercial awareness into modules. Clinic can play a critical role in further developing commercial awareness because it puts the 'real life' practice students encounter into context, providing examples for use in the recruitment process. It also sits at the threshold of the employability journey – near to or at the point of graduation – where many employment opportunities still arise. Since the academic year 2020/21, the Careers Service and LC teaching team at Northumbria University have integrated additional employability activities into LC teaching. These

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<sup>114</sup> Deborah J Cantrell, 'Are Clinics a Magic Bullet' (2014) 51 *Alta L Rev* 831.

<sup>115</sup> *ibid* 840, 843-4.

activities build on a first-year compulsory employability module (that introduces commercial awareness) and other co-curricular careers teaching provided in the years before clinic. The aim of the additional activities is to enable students to learn how to demonstrate the skills they have gained from their LC experience during the graduate recruitment process. The activities include bespoke careers sessions and supervisor-led employability workshops, one focusing on commercial awareness. As a teaching aid, supervisors use video interviews with recent graduates discussing what commercial awareness means to them and how it is used in their professional lives. The LC has introduced an electronic case-management system, enabling clinic to more accurately reflect legal practice. It would be interesting to re-run this study with students to see how these activities impact on commercial awareness development. These innovations, alongside the supervisor activities documented here, should provide support for supervisors and students in understanding commercial awareness in the context of CLE, the legal (or any other) profession and the graduate recruitment process. The role of CLE will increase in importance given that it can constitute qualifying work experience under the SQE path to qualification.<sup>116</sup> The results of this study suggest that there is a real opportunity for CLE to provide an authentic commercial awareness experience that enhances students' graduate employability.

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<sup>116</sup> Thomas (n 4). Rachel Dunn, Victoria Roper and Vinny Kennedy, 'Clinical legal education as qualifying work experience for solicitors' (2018) 52 *Law Tchr* 439.

**Appendix – Examples of Questions Asked During Semi-Structured Interviews  
Following Completion of Diamond16**

**Students**

**At the start of the LC year**

How would you define commercial awareness?

Why is commercial awareness ranked where it is on the Diamond16? (If not clear from discussion whilst completing the Diamond16).

**After the LC year**

How would you define commercial awareness – link back to previous definition – same views, different views now?

Why has the ranking of commercial awareness changed/stayed the same?

Is there anything you did in the LC that you think has helped you to develop your commercial awareness? Link to ranking.

What sort of activities did you do that you think helped to improve your commercial awareness?

Do people feel more confident about what commercial awareness means?

How would you demonstrate commercial awareness during the graduate recruitment process?

If you had to pick one thing from the LC that shows you are commercially aware what would that be?

### **Supervisors**

How would you define commercial awareness?

Why is commercial awareness ranked where it is on the Diamond16? (If not clear from discussion whilst completing the Diamond16).

What sort of activities do you do in the LC that help to improve your students' commercial awareness?

Do you use the words 'commercial awareness' to describe those activities? Are you explicit in explaining that is the skill you are trying to develop?