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ROUND UP OF THE 2ND COMMERCIAL LAW CLINICS ROUND

TABLE – 9TH MARCH 2018

Victoria Roper, Northumbria University¹

Keywords: business law clinic; commercial law clinic; SQE; transactional law clinic

The second annual Commercial Law Clinics Roundtable took place at the University of Sheffield on 9th March. The event was well attended by a range of clinicians and clinic students as well as start-up and enterprise advisers. Louise Glover, who organised the event, started the day by welcoming delegates before briefly talking about the successful growth experienced by the University of Sheffield's legal clinic.

THE CONTEXT FOR COMMERCIAL CLINICS

The focus of the first part of the day was the start-up and small business ecosystem. Andrew Bunn, a start-up adviser from Business Sheffield, discussed the common areas where advice start-ups need advice. He summarised these as follows:

- Partnership agreements;
- Lease agreements;
- Employment law
- Intellectual property (IP) including trademarks and copyright;
- Infringement of IP;

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From the Field

- Shareholders' agreements;
- Terms and conditions (especially payment terms);
- Technical provenance;
- Contracts and contract negotiations;
- Non-disclosure agreements (NDAs); and
- General Data Protection Regulation (GDPR).

Darren Chouings, a start-up coach from the University of Sheffield, then went on to discuss his experiences. There was significant overlap between the key areas of business need suggested by Darren, and those covered earlier by Andrew:

- Terms and conditions (payment terms, guarantees, warranties, force majeure etc.);
- Privacy policies and online disclaimers;
- Client contracts (including sub-contracting);
- Copyright and IP;
- Partnership agreements;
- GDPR compliance; and
- Liability and protection.

Key points coming out of the presentations and subsequent question and answer discussions were:

1. That business clients often had multi-faceted and complex legal needs – an entrepreneur or business usually approaches an advisor or clinic with multiple different issues.
2. There was a clear unmet need in terms of legal assistance for start-ups and young businesses, usually they need advice but often cannot afford to pay a solicitor.
3. Often clients would only seek advice after a problem had already arisen.

MODELS OF COMMERCIAL LAW CLINIC

The second part of the day was dedicated to exploration of the different models of commercial clinic and then a question and answer session. It was noted that commercial clinics operate under various models and supervisory structures, and that new clinics might want to ‘cherry pick’ those aspects from each example which best suited their own needs.

1. *CommLaw at the University of Sheffield*

CommLaw is a student-led project which prepares and delivers free commercial legal advice to businesses in Sheffield; particularly small businesses, start-ups and entrepreneurs. This presentation was delivered by students of the clinic and focussed on their personal experiences.

The students discussed being supervised internally, although the clinic website does suggest that there is some use of external supervisors from local law firms.² The students did not discuss whether they were assessed. The clinic website states that the student advisers are able to deliver advice on a range of commercial legal issues including:

- Website terms & conditions;
- Business structures;
- Product labelling regulations;
- Disclaimers; and
- Contractual issues.

2. *Sheffield Hallam University*

Sheffield Hallam has an existing law clinic which provides a diverse range of advice. Rebecca Draper from the clinic noted that it is expanding into commercial legal advice and is proposing to apply for an Alternative Business Structure (ABS) licence.³ It was explained the proposed move to ABS status should help the clinic better position itself to respond to the changing qualification landscape for solicitors, allow the clinic to widen the breadth and complexity of work undertaken, and ensure authorisation to

² <https://www.sheffield.ac.uk/law/commlaw> (accessed 15 March 2018).

³ For a detailed discussion of the issues for clinics involved in becoming an ABS, see Elaine Campbell and Carol Boothby, 'University law clinics as alternative business structures: more questions than answers?' (2016) 50(1) *The Law Teacher*, pp.132-137

undertake reserved legal activities.⁴ Whilst the clinic would offer its services free of charge for the first 12 months, careful consideration was being given to the possibility of charging some fees to support the clinic's activities. Whilst the clinic would obtain a separate identity if it were to become an ABS, there would be continued financial and other support from the University. Clinic staff had been hired on non-academic contracts specifically to work in the clinic. Currently clinic students are assessed by way of reflection, although this may change in the future. Students are supervised and will continue to be supervised, internally by qualified solicitors.

3. *Leeds Beckett University*

Rebecca Hopkinson, pro bono/law clinic manager, discussed her work to embed clinic into Leeds Beckett's LLB programme. Following a process of validation, the module (which is still partly in the development stage) will operate as a credit bearing elective. The clinic has been fortunate to be given premises in the centre of Leeds by the University and operates on a two week turnaround for provision of advice. Rebecca explained that the need to source clients for the clinic had led her to utilize the University's current business connections, including links to local rugby and cricket organisations. Through such organisations' networks, Rebecca has been able to identify a significant number of grass roots clubs that needed advice on funding and

⁴ For discussion about the regulatory uncertainty surrounding law clinics see Linden Thomas, 'Law clinics in England and Wales: a regulatory black hole' (2017) 51:4 *The Law Teacher*, 469-485.

structure options, including the possibility of becoming charities. The clinic is still evolving but is likely to employ both internal and external supervision.

4. *The Small Business Unit at the University of Strathclyde*

This was another student-led presentation which discussed the Small Business Unit, a pilot stage project, at the University of Strathclyde. The University of Strathclyde already has a well-established clinic offering advice to individuals on personal matters. The Small Business Unit has been set up with the aim of helping small businesses and charities in and around the Glasgow area who could not otherwise afford legal advice.⁵ The clinic is not currently assessed and works on an external supervision model with the assistance of commercial law firm DLA Piper. The clinic's website states can assist a small number of clients with the following type of work:

- General commercial legal advice;
- Writing letters;
- Reviewing contracts and commercial leases;
- Assisting with drafting of contracts and agreements;
- Help with establishing a business and choosing a legal structure;
- Help with protecting non-contentious IP;
- Information on legal responsibilities across a range of areas of law; and

⁵ Information taken from the clinic's website - <https://www.lawclinic.org.uk/beyond-casework/projects/sblu> (accessed 20 March 2018). The students did suggest though that in fact the external firm of solicitors requires the clients to all be charities or have charitable aims so this may be a further restriction.

From the Field

- Help with completing Companies House forms.⁶

The students discussed the work they had personally carried out which included assisting a charity which required employment law advice.

Key points coming out of the presentations and subsequent question and answer discussions were:

- Despite the unmet need, it was sometimes hard for commercial clinics to obtain enough clients. Helpful advice was for clinicians to explore both internal and external sources of work:
 - External clients – think about links the University has to businesses/organisations in the region;
 - Internal clients – do students in other faculties need business law advice/make links with entrepreneurial programmes.
- Commercial work can be more complex than an initially enquiry might suggest.
- We have to think about how best to deal with any limitations on the work we can do.

⁶ <https://www.lawclinic.org.uk/beyond-casework/projects/sblu> (accessed 20 March 2018).

ASSESSMENT AND PROPOSED SRA REFORMS

After lunch, the focus moved to assessment and, later, the SRA's proposed reforms in relation to the education and training of solicitors. Gill Hutchins, Director of the Freelaw Clinic at the University of Sheffield, discussed the history of free legal advice at the university with particular emphasis on the Freelaw clinic.⁷

Elaine Campbell of Northumbria University, Newcastle

Elaine Campbell of Northumbria University discussed their Student Law Office's current and proposed assessment structure.⁸ At present, every student undertaking the four-year M Law degree at Northumbria University experiences clinic as a full year, 60 credit module in their fourth and final year. Students are assessed on their practical work (70% of their overall mark) and by way of two reflective essays (30% of their overall mark). A student's final mark for their practical work is not just determined by the physical work they produce and evidence in their portfolio but also by the other skills and attributes they have demonstrated including oral communication, time management and teamwork. In future, under Northumbria's revalidated suite of degree programmes, students will have additional opportunities to work in the clinic. Three-year LLB students will be able to choose to do clinic as

⁷ See discussion of the Freelaw clinic in Vicky Kemp, Tine Munk and Suzanne Gower, *Clinical Legal Education and Experiential Learning: Looking to the Future* (2016). Available at (<http://hummedia.manchester.ac.uk/schools/law/main/news/Clinical-Legal-Education-Final-Report28.09.2016.pdf>) (accessed 28 March 2018).

⁸ The Student Law Office is the wider legal clinic within which business and commercial legal advice is provided at Northumbria University.

either a 60 credit assessed yearlong module in the third year, or they can do a smaller, advice only 20 credit module for one semester. M Law students will, in future, undertake their 60 credit yearlong module in third year, and will also have the option to do a clinic based dissertation in their fourth year.

Maxine Carr, Solicitors Regulation Authority (SRA)

Following on from the discussion of assessment, Maxine Carr gave an overview of the SRA's proposed changes to the legal education and training of solicitors. The SRA intends to introduce centrally set examinations to be undertaken at various assessment centres in England and Wales. The examinations will consist of:

- SQE1 - Multiple choice test questions (single best answer questions, extended matching questions and MCQs) which will test a candidate's substantive legal knowledge and 1 practical legal research and writing assessment.
- SQE2 – Which will focus on testing 5 practical legal skills - client interviewing, legal research, legal drafting, advocacy/persuasive oral communication, case and matter analysis (2 x 5 practical legal skills assessments).

In future to qualify as a solicitor an individual will need to:

1. pass SQE1 and SQE 2;
2. hold a degree or qualifications or experience which the SRA is satisfied are equivalent to a degree;

3. have completed qualifying work experience (QWE) equivalent to 2 years full time (this can be obtained with up to four separate firms, educational institutions or other organisations including legal clinics); and
4. be of character and suitability to be a solicitor.

Students will no longer be required to have a qualifying law degree (or GLD) or LPC. The way in which students prepare for the SQE exams will not be prescribed. The SRA envisages that SQE1 will be sat before a student starts their QWE. The SRA will recommend that SQE 2 is sat after the candidate has undertaken their QWE (but will not make this mandatory).

Victoria Roper, Northumbria University, Newcastle

In response to Maxine's presentation, Victoria Roper gave a reply and then led a question and answer session.

Victoria opined that the SRA's proposed changes offered both opportunities and challenges for legal clinics and law schools. It was noted that, as at the date of the conference, we were still waiting for the Legal Services Board to make a decision on the SRA's proposals (approval has subsequently been given⁹) and that a number of things were still unclear. In particular, the cost of the assessments was not yet known and it was uncertain what impact the proposed changes would have on equality and

⁹ See the decision at <http://hummedia.manchester.ac.uk/schools/law/main/news/Clinical-Legal-Education-Final-Report28.09.2016.pdf> (accessed 28 March 2018).

diversity in the profession. Also, Victoria noted that the proposed implementation date of September 2020 was fast approaching and that universities usually needed at least 18 months to prepare for any major changes to the curriculum.

In terms of opportunities though, Victoria noted that the SRA's proposed changes could be beneficial for clinics and might help to further establish clinical legal education as a mainstream part of legal education. For example, Victoria suggested that law schools are likely to be considering how their clinical programmes might help students to develop the competencies required to pass SQE 2. Legal clinics, focused on the practical application of the law to real life legal problems and skill development, appear to be natural SQE 2 preparation environments (whether formally or informally). Victoria noted that corporate and commercial practice was specifically one of five practice contexts that could be tested in SQE 2.

Additionally there is the possibility of clinics deciding to sign off on QWE. The person signing off the work experience does not need to confirm that the individual has the skills required to practice (this will be tested by SQE), but rather that the student has had the opportunity to develop some or all of the prescribed competences. The people who can sign off QWE are:

- A firm's compliance officer (COLP);
- a solicitor working within the organisation; or

- if neither the above are applicable, a solicitor working outside of the organisation who has direct experience of the student's work and who has undertaken a review of the work/received feedback from persons supervising the work in order to satisfy themselves.

The solicitor who signs off the QWE does not necessarily have to have a practising certificate, it is sufficient that they be on the roll. Victoria suggested that clinics therefore needed to give thought as to whether they wanted to sign off QWE (there will not be under an obligation to do so) and, if so, who in practice would do so.

Given that students do not work full time/set hours in law clinics, Victoria raised asked a question about whether any guidance would be issued by the SRA about how clinics should calculate the length of time of a student's QWE spent in clinic.

Key points coming out of the question and answer discussions were that the SRA:

- Is currently of the view that multiple clinical experiences/placements done within one university could be signed off as one 'placement';
- Has not decided to what extent it will undertake quality assurance of QWE e.g. spot checking or requesting samples of student work;
- Does not have any intention at present to provide any rules/guidance about how clinics should calculate the time a student can be signed off as having done in clinic, but welcomes dialogue on this point. Maxine did indicate that the SRA would likely support an approach of average hours per week x no of

weeks and then using this figure to work out how many weeks/months full time work this equated to. However, the SRA did not intend to stipulate that this was how it must be done.

THE STUDENT PERSPECTIVE - WHY DO STUDENTS WANT TO WORK IN A LEGAL CLINIC?

The next part of the day was led by students from the University of Strathclyde and the University of Sheffield and involved them talking about what drove them to work in legal clinics.

Common themes and drivers were:

- Employability;
- Wanting to check if they liked doing legal work in practice, wanting to get a realistic idea of what a solicitor does;
- The desire to combine voluntary work and practical experience (where the clinic was not credit-bearing/compulsory);
- Skills development as well as learning office skills (file management etc.)
- The chance to take on a project and develop it; and
- Helping clients who might not otherwise be able to obtain legal advice/wanting to engage in pro bono – something that the students noted had come up a lot when they had been looking at university prospectuses.

The students had mixed views about whether they preferred assessed or voluntary legal clinic. Some students noted that being curricular and assessed helped to maximize the learning experience and get the best out of a student. A Masters student undertaking clinic as a voluntary extracurricular activity thought there was value in not assessing though as it had allowed her to not worry about assessment and to focus on the experience.

TURNING CLINIC EXPERIENCE INTO RESEARCH AND SCHOLARSHIP

The last session of the day was dedicated to discussion of how we can use our clinical experience as the basis for research and scholarship.

Dr David Hyatt of the University of Sheffield talked about the professional and personal reasons for engaging in scholarship. He discussed an initiative at his university which has utilized scholarship circles/reading groups to stimulate research activity. With the group people had worked in pairs as 'writing buddies', setting themselves the challenge of writing two articles in a year. David suggested that working with someone else makes you accountable and more likely to meet achieve your goals.

Sarah Blandy of the University of Sheffield then went on to talk about clinical legal scholarship lacking evidence. Sarah took us through the life cycle of one of her clinical research projects, prompting us to consider issues such as methodology (qualitative/quantitative/mixed methods), funding, access to participants, and ethics.

Last, but not least, Elaine Campbell of Northumbria University, Newcastle gave some practical advice based on her own research journey. Elaine explained that it took her a while to find her niche, and that her first years as a researcher were characterized by outputs which ranged quite widely in topic. Elaine explained that it is fine to start small, and it is easiest if you begin by writing about something you are really interested in and/or already know about. Elaine's key message was that each researcher must 'find their own voice' and not be afraid to write in a style that feels right to them.

SUMMARY THOUGHTS AND CONCLUSIONS

Patrick Cahill from Queen Mary University of London concluded the day by noting that there are ongoing challenges in running commercial clinics but this is balanced out by the learning and skill development opportunities they afford students. He also spoke about the importance of legal clinics as vehicles for employability. He entreated us all to publish more, and to have a voice in relation to the SRA's proposed changes to legal education and training. Wise words indeed.