

NAVIGATING VICARIOUS TRAUMA: THE IMPORTANCE OF PLANNING, TEACHING, AND DELIVERING VICARIOUS TRAUMA TRAINING TO SUPPORT LAW STUDENTS AND THE LEGAL PROFESSION

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Abstract

The significant effects of Vicarious Trauma (VT) are now being recognised in various professions, including law where the requirement for trauma informed practice¹ is now starting to be recognised. VT can be defined as: “a process of change resulting from empathetic engagement with trauma survivors. Anyone who engages empathetically with survivors of traumatic incidents, torture, and material relating to their trauma, is potentially affected”². Trauma- informed practice then focusses on how to work with those who have been impacted by their traumatic experience as a result of exposure to reading, writing, and hearing details of cases that they deal with. This may lead to a one-off feeling of despair or may be the result of the cumulative effect from working constantly with complicated, sensitive, and emotional materials and people. The legal professional may take on the emotions of a client and experience

¹ Victims, Witnesses, and Justice Reform (Scotland) Bill as introduced references the introduction and definition of trauma -informed practice. <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/victims-witnesses-and-justice-reform-scotland-bill/introduced/https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/victims-witnesses-and-justice-reform-scotland-bill/introduced/bill-as-introduced.pbill-as-introduced.pdf> (accessed 12th January 2024).

² BMA (2022) ‘Vicarious Trauma: signs and strategies for coping’ available at <https://www.bma.org.uk/advice-and-support/your-wellbeing/vicarious-trauma/vicarious-trauma-signs-and-strategies-for-coping> accessed 12th January 2024.

trauma that puts them in the place of the individual that they are trying to assist. Certain areas of the profession may be more prone to such experiences, for example criminal lawyers dealing with such cases as murder, manslaughter, and serious sexual offences. These feelings can be overwhelming, even for the most experienced practitioner. VT too, may also be experienced by students participating in Clinical Legal Education (CLE) undertaken in universities, again impacting on those involved in criminal case work where students have their first exposure to complicated and sensitive cases.

This article considers the experience of members of the Criminal Justice Clinic (CJC), within the Open University (OU) and looks at the scope and impact of the VT training that is being delivered and its importance in preserving students' mental well-being. Added is the factor of this being an online only clinic where isolation can also be an issue. There is a need to provide VT training to support the mental welfare of students, and staff alike. This training is paramount to the success of the CJC and is pivotal to any CLE provision and should be expanded to the law curriculum and onto legal practice.

This article argues that the experience in the CJC demonstrates that there is a need for professional legal education to recognise and address the incidence of VT and to provide skills to those who may be affected. Consideration is given to measures that should be adopted in the delivery of CLE to support students participating in pro bono projects. This should carry on beyond university into their future careers. A brief

mention will be made of the provisional results of a small-scale research project in this area. Another article is planned to discuss those results fully in the future.

1 Context

VT affects the legal profession as they handle the inevitable emotions of their client and have to deal appropriately with the sensitive nature of cases. The legal professional may experience the trauma which puts them in the place of the individual they are trying to assist or advise. Often that experience will result in the legal professional involved having a “cognitive or schematic shift, sometimes leading to a change in a world view”³. Iverson (2021)⁴ notes the need to acquire the relevant skills to handle and recognise the impact of such trauma which is significant.

Whilst consideration is being given in this article to VT, the terms VT, Post Traumatic Stress Disorder (PTSD), Burn Out, Secondary Traumatic Stress (STS) and Indirect Trauma tend all to be used in an interchangeable way.

This article considers whether there is a need to provide training and support in VT to students participating in pro bono criminal legal work through CLE at University. It will consider what VT is, before discussing the background to the decision to provide VT training and support to students undertaking the CJC at the OU. It will go on to detail the experience of running training, and support before discussing the need

³ James C (2020) ‘Towards Trauma-Informed Legal Practice: A Review’. *Psychiatry, Psychology and Law*. 11;27(2):275 – 299.

⁴ Iverson, S & Robertson, N (2021) ‘Prevalence and predictors of secondary trauma in the legal profession: a systematic review’ *Psychiatry, Psychology and Law*, 28:6.

for such training being provided in a wider context in higher education and thereafter, the legal profession.

Navigating Vicarious Trauma: The Importance of Planning, Teaching, and Delivering Vicarious Trauma Training and support to law students and the legal profession is a concept that was developed when designing the CJC within the OJC of the OU.

How could the students be protected in an online pro bono law clinic when dealing with serious criminal casework? Research was undertaken in the area of VT and despite there being an understanding of VT in medical roles, there appeared little within the legal profession, higher education in law, and CLE. The research into VT and legal professionals mainly found literature from the US, where the VT term was acknowledged some time ago. It was surprising to find little research specific to VT in the United Kingdom (UK), confirming that the concept of VT has only relatively recently gained traction within the UK legal profession, legal higher education in the UK, and CLE. Therefore, a solution needed to be found within the OU in order to protect students from VT whilst they were working within the CJC and beyond into their professional lives.

Iversen (2021)⁵ compared literature on secondary trauma within the legal profession. Nine out of ten articles, published between 2003 and 2019, reported incidence of elevated secondary trauma in the legal profession. Comparative studies reported

⁵ Iversen, S & Robertson, N (2021) 'Prevalence and predictors of secondary trauma in the legal profession: a systematic review' *Psychiatry, Psychology and Law*, 28:6.

higher scores of secondary trauma in the legal profession than any other profession, including psychologists and social workers (Levin and Greisberg, 2003)⁶. It is probably no surprise that criminal lawyers have significantly higher secondary trauma than non-criminal lawyers, (Vrklevski, Franklin (2008)⁷), The amount of the caseload that a lawyer has, contributes to the risk of the incidence of secondary trauma (and the more likely they are to suffer PTSD symptoms (Leclerc(2020)⁸).

These points regarding the incidence of secondary trauma are echoed in James (2020)⁹ who details the need for providing support lawyers to deal with this risk through the provision of training and to maintain “supportive connections”. One hypothesis that may be drawn from the articles of James (2020)¹⁰ and Iverson (2021¹¹) is that training and support provided for psychologists and social workers makes the risks of secondary trauma lower for them than the legal profession, where little, and often no such training and support has historically been provided. These studies demonstrate that there is a need then for VT training and support to be given to legal practitioners

⁶ Levin, A, Greisberg, S (2003) ‘Vicarious Trauma in Attorneys’ *Pace Law Review* 24, (11), 245-2)

⁷ Vrlevski, I, P, Franklin, I (2008) ‘Vicarious Trauma: The Impact on solicitors of exposure to traumatic material.’ *Traumatology*, 14(1), 106-118.

⁸ Marie-Eve Leclerc, Jo-Anne Wemmers & Alain Brunet (2020) ‘The unseen cost of justice: post-traumatic stress symptoms in Canadian lawyers’, *Psychology, Crime & Law*, 26:1, 1-21, DOI: 10.1080/1068316X.2019.1611830.

⁹ James C. ‘Towards ‘Trauma-informed legal practice: a review.’ *Psychiatry Psychology Law*. 2020 Feb 11;27(2):275-299.

¹⁰ James C. ‘Towards ‘Trauma-Informed Legal Practice: A Review.’ *Psychiatry, Psychology and Law*. 2020 Feb 11;27(2):275 – 299.

¹¹ Iversen, S & Robertson, N (2021) ‘Prevalence and predictors of secondary trauma in the legal profession: a systematic review’ *Psychiatry, Psychology and Law*, 28:6

(James (2020)).¹² it follows on that this should also include those students participating in CLE as that mimic legal practice work.

2 Background

The background of the OU is unique and pivotal to the development of the VT training and support given in the CJC.

The Open University (OU)

The OU has a mission to be: “open to people, places, methods and ideas.”¹³ The OU has social justice at its core. In essence, this means that students can attend with no prior educational qualifications. The cohort of students is diverse, with 208,308¹⁴ students so that the OU is the leading provider of distance learning education with a reach wider than the UK alone with many international students enrolling as well. It is an important factor to consider given the consequential variety of custom and language that makes for a vibrant community. The OU’s vision is to reach more students with life-changing learning that meets their needs and then enriches society.

¹² James C. Towards trauma-informed legal practice: a review. *Psychiatry Psychology Law*. 2020 Feb 11;27(2):275-299.

¹³ <https://www.open.ac.uk/about/main/policies-and-reports/mission#:~:text=The%20Open%20University's%20mission%20is,ambitions%20and%20fulfil%20their%20potentia>

¹⁴ <https://about.open.ac.uk/strategy-and-policies/facts-and-figures> accessed 12th January 2024

This ethos underpins curriculum development at every level and is disseminated within every faculty of the OU but most importantly is central to the core of the Law School.

Most of the students study part time, albeit there has been a recent increase in students studying at full time intensity. 71%¹⁵ of the students are employed. A number of students declare that they have caring responsibilities. In addition, in 2020/21 around 37,078¹⁶ students declared a disability. This diverse cohort of students strengthens the OU's reach and ability to introduce students to CLE that have experience of life providing them with a rounded view of their studies. That life experience can benefit the online clients as students empathise and identify with them. It can, on occasion too, mean students themselves are survivors of traumatic experiences and may suffer flashbacks from their own experience when seeking to handle criminal cases. This can be particularly problematic with an online clinic such as the CJC, as it can take longer for students to have the confidence to ask for help.

The Open Justice Centre (OJC)

VT training takes place in the OJC. The OJC sits within the OU Law School (OULS) LS and is a pro bono centre dealing with CLE for the benefit of students and society at large. Indeed, the public interest of society is a taught principle, along with direct practice in understanding the core values of the legal profession such as legal ethics

¹⁵ <https://about.open.ac.uk/strategy-and-policies/facts-and-figures> accessed 12th January 2024.

¹⁶ <https://about.open.ac.uk/strategy-and-policies/facts-and-figures> accessed 12th January 2024.

and professional identity. These professional skills are vital to the role of the future lawyer and assists them going forward to employment.

The OJC provides free legal advice and guidance to those who may otherwise struggle to access legal support. It operates primarily online and has various clinics and projects in which students opt to participate. These include a law clinic dealing with civil law matters, digital justice, policy clinic, an international law clinic and the CJC.

Students are either supervised by a solicitor or academic, depending on the project on which they are working. Before undertaking any project, the OJC provides custom designed training to support the student's work, including the use of technology platforms. This ensures an understanding of the necessity of maintaining confidentiality.

The Criminal Justice Clinic (CJC)

The CJC sits within the OJC and is part of the module 'Justice in Action.' This elective module is at the final level of the law degree and student numbers are capped. In 2022/23, the CJC had 54 students out of a total of 202 students for the module. The CJC is the largest clinic and project on the module and a first choice for most students. It is always oversubscribed and has a wait list every year. In 2023, the CJC was shortlisted for a Best New Pro Bono Activity LawWorks and Attorney General Student Pro Bono award.

The CJC is a pro bono project where students research and advise on live criminal cases where the client is in prison maintaining their innocence or protesting that their sentence is manifestly excessive. The students work under the direct supervision of a solicitor. The CJC is part of CLE and experiential in nature as students undertake the equivalent of professional practice in the safety of a university setting. Students are placed into small groups of six or seven and carry out research and apply legal principles to determine whether there may be valid grounds for an appeal. The cases tend to involve the most serious criminal offences such as murder, manslaughter, serious assault, and drugs cases.

The CJC may be the last chance that the client has of having their case reviewed in such detail, having exhausted all other options, and with social justice at its core, it assists those that cannot help themselves (Curryer, E (2020)¹⁷).

The CJC work is greatly sought after by students who are keen to participate as many seek to be called to the bar or be admitted as a solicitor after graduating with their degree.

In essence, it benefits the students in acquisition of skills such as analytical thinking, case management and application of legal principles to communication and how to explain in plain English how the law applies to the case at the conclusion of their work.

¹⁷ Curryer, E (2022) Pro bono left to pick up the slack Law Society Gazette available at <https://www.lawgazette.co.uk/commentary-and-opinion/pro-bono-left-to-pick-up-the-slack/5112947.article> accessed 12th January 2024.

These are essential employability skills needed to become a lawyer and promote involvement in wider society in the representation of those who have been convicted and may be innocent. They also allow students to experience group working which many, given the nature of their background to study within the OU have not experienced. It also provides valued practice helping to improve applications for future study as well as underpinning practical examples for competence-based interviews.

In the main, legal higher education requires a focus on academic teaching of core law modules which cover formal legal knowledge. The equipping of students in the softer or 'lawyering' skills required in their future legal practice tends to be part of the post graduate approach in the UK. Some universities provide students with opportunities to undertake pro bono project work, usually but not always non mandatory which helps provide that real life practical experience. Within higher education, CLE is a university's attempt to provide students with an opportunity to acquire legal professional skills in a university environment as part of a law degree or legal studies. If students do not have these opportunities given the difference between the academic study of law and practice, they may go on to find that this is not work which they wish to undertake. Conversely it consolidates that desire to go into the profession to help.

Franz (2023)¹⁸ notes that in CLE, students are taught legal skills and argues that pro bono university clinics are part of legal education but in Germany are still seen as “social service projects”¹⁹. This is important, especially now in England and Wales with the introduction of a new pathway to qualification as a lawyer where students no longer have to complete a legal practice course as well as a degree but can qualify through practical experience. Students should also acquire the necessary skills for legal professional practice whilst studying. As Hardie et al (2020)²⁰ note, students can benefit from legal education based on professional practice.

Within the CJC, legal professional practice is brought inhouse and is part of the delivery of the law curriculum in a university setting. It acknowledges the wider context in which higher education sits and it allows for mentoring and development of students and caseworkers looking toward a career in professional practice where they would not otherwise have such an opportunity to work closely with legal academics and practitioners. The CJC aims to level the playing field for students from diverse backgrounds so that all individuals can demonstrate their ability for legal

¹⁸ Franz, H (2023) ‘Clinical Legal Education as an Instrument to Adress Access to Justice’, International Journal of Clinical Legal Education (2023) vol 30, no 3 available at <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/1279> accessed 20th December 2023.

¹⁹ Franz, H (2023) ‘Clinical Legal Education as an Instrument to Adress Access to Justice’, International Journal of Clinical Legal Education (2023) vol 30, no 3 available at <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/1279> accessed 20th December 2023.

²⁰ McFaul, H, Hardie, L, Ryan, F, Bright, K And Graffin, ‘TAKING CLINICAL LEGAL EDUCATION ONLINE: SONGS OF INNOCENCE AND EXPERIENCE’ available at <https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/1052> accessed 12th January 2024.

practice and to help with interview competences when seeking to work in professional practice.

All work and meetings are undertaken online. Students never meet their peers, caseworkers, or supervising solicitors in person. This is key to the OU ethos and aims of supporting students to achieve in education where they might otherwise struggle due to their personal circumstances and responsibilities.

Initially, the CJC was run as an extra-curricular pilot project, open to students undertaking level 3, the equivalent to the last year of a degree course. It was set up in 2021 to provide students with the opportunity to experience the intricacies of criminal practice, to work on a case management system and to understand and further social justice. Before the CJC could commence, various permissions were sought from committees and personnel at the OU because ethics is key to such work prior to commencement.

In 2022, the CJC was incorporated into the Justice in Action level 3 module that students can elect to take as part of their assessed law degree. Students are allocated to teams at random and are unknown to each other prior to their work in the CJC.

In the CJC, students research and advise on live criminal cases under the direct supervision of a solicitor. It is reflective of professional practice, and it does not shy away from allocating them serious matters. Students have therefore worked on murders, serious sexual offences, drugs, and conspiracy cases.

The students consider all manner of evidence from material available at the original hearing. This could include the indictment, witness statements and exhibits, record of police interviews, CCTV, 999 call transcripts, tape recorded statements, video recordings, mobile phone evidence including phone records and cell site analysis, photographs (locus and others), forensic reports, post-mortems, psychiatric and psychologist reports. They may have access to unused material if that has been supplied.

Students read and absorb the extensive case papers before identifying and carrying out research and applying legal principles to determine whether there are any grounds for referral to the Criminal Cases Review Commission (CCRC) or for an appeal to be made. This is often a student's first experience of working on such voluminous, sensitive, and difficult cases and the quantity and quality of such evidence can be a shock. However, it does provide a realistic first insight into what the actual work as a criminal lawyer is going to be like and will be for them if they choose this career path. Organisation is an early acquired skill, otherwise students can become overwhelmed and discouraged at the start. VT training has its role, therefore, even before this stage as seen in the discussion below.

Before attending the CJC, students must undertake mandatory training. This includes:

- a refresher on criminal law and evidence,
- criminal practice,

- the case management system,
- history and process of appeals including the role and significance of the CCRC and
- VT training.

Much of this online training is interactive, requiring the students' input and collaboration. For evaluation purposes, the content of all the training is assessed by students at the conclusion of their CJC work and each year, the VT training, together with other training, is refined. The training has therefore evolved over the three years that the training has been running.

Given the CJC is normally the student's first experience of working in a criminal practitioner setting, emotional wellbeing must be a major consideration and included within the training provision. Students are diverse with a variety of backgrounds and are at different stages of their lives from late teens to retired. It is important with this type of an emotive online project that care is taken to provide a safe space for them to develop, learn and collaborate that provides them with experience which they can use initially for the project and thereafter going forward into practice or otherwise. For many, it may be the first real opportunity to work in collaboration which brings its own challenges.

Over the last few years, the legal profession has started at a basic level, to realise that the nature of the work that they undertake may often have a mental and emotional

impact on solicitors²¹ or barristers²². The nature of their role does not provide immunity from the stresses of handling challenging cases. Though focused on criminal law, it needs to be recognised that this kind of stress can apply to all types of law, though is more evident in relation to criminal²³, family, and immigration law²⁴. The content of criminal law itself inevitably involves distressing and harrowing levels of violence and human misery. Therefore, it follows that consideration of a student's welfare must be to the forefront when they are working on these kinds of cases.

Before going any further, it is important to acknowledge that in the CJC, the feedback to students from the supervising solicitor centres around their professional skills and writing and mentors students to achieve the best outcome for the client. Students write reflective pieces in their assessments for the module, regarding their acquisition of legal professional skills, how collaboration is going and generally, how their teamwork is developing and how the student feels they are improving. However, the actual quality of the advice work provided within the CJC is not itself graded. Feedback is mostly given verbally at supervision meetings to the group during conversations rather than just formally in a written style. As Yeatman and Hewitt

²¹ <https://www.lawcare.org.uk/get-information/podcasts/the-legal-mind-podcast-vicarious-trauma/>

²² The Bar Council (2021) Barristers Working Lives Survey, The Bar Council available at <https://www.barcouncil.org.uk/static/55b160bc-35c7-48a6-b105e68526019ca5/8a57305c-4c3e-46c9-af444c221354e2b7/Working-Lives-2021-wellbeing-analysis.pdf> accessed 20th December 2023.

²³ Burton, K and Paton, A (2021) *Vicarious Trauma: Strategies for legal practice and law schools* Alternative Law Journal vol 46(2) 94-99.

²⁴ James, C (2020) 'Towards trauma-informed legal practice: a review' *Psychiatry, Psychology and Law*, 27:2,) 'Practicing What We teach 275-299, DOI: 10.1080/13218719.2020.1719377.

(2021)²⁵ note a series of conversations together with peer review is best practice in CLE. They reflect that good communication is key to students being able to be self-directed learners, a skill much needed where research is completed remotely and in isolation from other group members. This method of feedback has proved pivotal in the success of the CJC.

Students are required to attend weekly supervision meetings with their supervising solicitor. In addition, students organise their own meetings to provide support to each other, allocate roles, discuss the case, and discuss their research. Collaboration quickly becomes their norm, albeit extra support in this area is sometimes needed where an experienced supervising solicitor and case worker assists. As students write in a blog; “after some excellent training, within a couple of weeks, we were working remotely but collaboratively to establish the knowledge and intent of a defendant convicted under the doctrine of joint enterprise.” Der Gregorian, Klosek, Waghorn (2022)²⁶

The aim is to promote participation, confidence, confidentiality, and collaboration. The weekly supervision meetings were designed to provide necessary opportunities to share and expand legal knowledge and development of skills in a protected environment.

²⁵ Yeatman, L and Hewitt, L (2021) *Feedback: a reflection on the use of Nicol and MacFarlane-Dicks feedback principles to engage learners*, *The Law Teacher*, 55.2, 227 to 240.

²⁶ Der Gregorian, K, Klosek A and Waghorn, J *The Criminal Justice clinic is an opportunity not to be missed*, available at <https://www5.open.ac.uk/open-justice/blog/criminal-justice-clinic-opportunity-not-be-missed> accessed 12th January 2024.

To maintain confidentiality in an online environment and check on students' wellbeing, all students are required to attend supervision meetings on camera and talk on a microphone. This was initially outside the comfort zone of most students who were used to tutorials in the OU being optional and where they did attend tutorials, were not required to use cameras. This is an area where the OU's teaching practice varies from face-to-face delivery of legal education,

However, as this is the required practice from the start, it works well by encouraging a safe, supportive, and inclusive environment. Success is clear as one student commented on their CJC experience: "There aren't enough superlatives to describe this experience: from the first-class training and support to the overall learning experience, I can only highly recommend the Criminal' Justice Experience as being a highly worthwhile enterprise."²⁷

There needs to be recognition that this is not always the experience for all students as some may not engage well for a number of reasons, or indeed experience personal team challenges common to many workplace circumstances. Most students do recognise that even where they experience challenges their experience has brought forward significant learning, even if criminal law is not now a field in which they wish to work. Others have been converted the other way. Some students feel that they are not able to represent a defendant or act in the best interests of a client and they have

²⁷ <https://www5.open.ac.uk/open-justice/public-understanding-law/criminal-justice-clinic?nocache=6508537219281> accessed 12th January 2024.

often been misled by preconceptions inspired by the frequent fictional court dramas on TV. Understanding and experiencing reality at undergraduate level is appreciated as it helps students understand the reality of criminal work and assists in decision making for their future career path.

Feedback from alumni has been published in a series of blogs, as Field, Armstrong, Butler, and Wells (2021) note: “The Criminal Justice Clinic has enabled our team of new age explorers to experience law from a position of safety, not quite fully saddled with the responsibility of managing a case, but in the relative comfort of our own reality. Our journey into this unknown realm was enhanced by our courageous leader and cohorts, to whom we owe a great deal of thanks for their support and guidance.”²⁸

3 *Literature Review: What is Vicarious Trauma?*

A review of the literature in respect of VT in CLE, law students and the legal profession in England and Wales must commence with health professionals where the term was first used. This is because health care professionals, such as counsellors, can often have an experience that is reflected in legal professionals’ experience.

Actual research on VT in legal practice and law students is more limited and not as well understood.

²⁸ Field, E, Armstrong, P Butler, D and Wells, K, *Journey into the Unknown* available at <https://www5.open.ac.uk/open-justice/blog/journey-unknown> accessed 12th January 2024.

Back in 1990, McCann and Pearlman appear to be the first to refer to the term “vicarious traumatization”²⁹. They were discussing individual mental health professionals who provide therapy to, or study individuals, who were themselves victimised. They described and discussed three individuals that appear to be showing signs of trauma such as being hypervigilant with strange noises, have feelings of impending danger, have intrusive images, and suffer nightmares. However, the mental health professionals have not suffered that direct trauma but were taking on the trauma experienced by their client’s traumatic memories; “Persons who work with victims may experience profound psychological effects, effects that can be disruptive and painful for the helper and persist for months or years after work with traumatized persons. They termed this process as “vicarious traumatization””³⁰. In addition to the definition, McCann and Pearlman were aware that there could be a short-term reaction or a long-term alteration in “the therapist’s own cognitive schemas, or beliefs, expectations, and assumptions about self and others³¹.” They also acknowledged that both short term and long-term exposure to such victims can be traumatic.

In 2002, this idea of VT in therapists was re-visited by Jenkins and Beard³² who discussed both Secondary Traumatic Stress (STS), often referred to as compassion

²⁹ McCann, I & Pearlman, L (1990) Vicarious traumatization: A framework for understanding the psychological effects of working with victims: journal of Traumatic Stress 3(1) 131 -149.

³⁰ McCann, I & Pearlman, L (1990) Vicarious traumatization: A framework for understanding the psychological effects of working with victims: journal of Traumatic Stress 3(1) 133.

³¹ McCann, I & Pearlman, L (1990) Vicarious traumatization: A framework for understanding the psychological effects of working with victims: journal of Traumatic Stress 3(1) 132.

³² Jenkins, SR, Barid, S, (2002) ‘Secondary Traumatic Stress and Vicarious Trauma: A Valuatinal Study’ Journal of Traumatic Stress, 15 (5).

fatigue, and VT. They identify only subtle differences between the two but accept the existence of both in therapists.

Carello and Butler (2015)³³, in the United States, use anecdotal evidence to argue that social workers should practice what they teach and provide trauma-informed care to education. They took trauma informed principles into education and previewed material that might disturb the student and eliminated the content. In the main, they appear to have taken an avoidance approach to dealing with VT but, interestingly, in addition they used a discursive approach with students and checked in with their emotional state on a regular basis. In addition to other actions, they also brought in the concept of self-care for students. Feedback from students appears to have been positive.

More latterly, this idea of VT has now been extended to legal professionals. In 2020, James³⁴ discussed the effect of vicarious trauma on lawyers in Australia, and argued that at some level all lawyers are affected by vicarious trauma so there is a need for a “trauma-informed” approach to “safely and effectively work with cases involving trauma”³⁵ Like others before him, he is concerned the typical approach of lawyers is to “grow a thick skin” and avoid the issue rather than confront it head on. He argues

³³ Carello, J & Butler, L, D (2015) ‘*Practicing What we Teach: trauma Informed Educational Practice*’, Journal of teaching in Social Work, 35:3, 262 - 278.

³⁴ James, C (2020) ‘*Towards trauma-informed legal practice: a review*’ Psychiatry, Psychology and Law, 27:2, 275-299, DOI: 10.1080/13218719.2020.1719377.

³⁵ James, C (2020) ‘*Towards trauma-informed legal practice: a review*’ Psychiatry, Psychology and Law, 27:2, 275, DOI: 10.1080/13218719.2020.1719377.

that law firms have a responsibility to provide safe systems, trauma informed policies and encourage self-care practices.

In Australia, Burton, and Paton³⁶ discuss the effect of vicarious trauma in the Australian legal profession and argue that all stakeholders should address the issues surrounding VT and there “must be a co-ordinated and ongoing investment in VT initiatives, such as training and support services” and these should be the norm³⁷.

Whilst there is other literature around lawyers and VT, there is very little concerning its role within academia, its teaching or effect on students. In 2019, Nikischer³⁸ discussed the well-being of professors and academics in higher education in the United States by highlighting her personal story from interviewing survivors of sexual abuse. She discusses her isolation, a sense of helplessness and lack of support when researching, recommending embedding protections for researchers in the academic research structure to help with VT.

Other than general articles on the mental wellbeing of students, the only other article on VT in law students that the authors found was Bahshi, J, Wesley, MS and Reddy, J (2021).³⁹ It details the role of gender, personality, and social support in VT in law students in India. The researchers took a sample of 120 law students and noted that

³⁶ Burton, K and Paton, A (2021) ‘Vicarious trauma: Strategies for legal practice and law schools’ *Alternative Law Journal*, 46(2) 94-99.

³⁷ Burton, K and Paton, A (2021) ‘Vicarious trauma: Strategies for legal practice and law schools’ *Alternative Law Journal*, 46(2) 99.

³⁸ Nikischer, A (2019) ‘Vicarious Trauma inside the academe: understanding the impact of teaching, researching and writing violence’ *Higher Education* (2019) 77:905 -916.

³⁹ Bahshi, J, Wesley, MS and Reddy, J (2021) ‘Vicarious Trauma in Law Students: Role of Gender, Personality and Social Support’ *International Journal of Criminal Justice Sciences* 16(1), 34-50.

there was VT in law students and trainees who had been exposed to traumatic cases. It was higher in females and students with less experience.

4 *What is Vicarious Trauma and why is it important to consider in higher education?*

The nature of the work that students consider, and the reading of case papers is no different from a legal practitioner and therefore a concern was raised regarding the possibility of students suffering from VT as a result of their working in the CJC.

Recent literature argues that the legal profession has long turned a blind eye to trauma caused to members of the profession by being exposed to serious case work from what they read, saw, and heard, Leclerc (2020)⁴⁰

More recently, this has been described as vicarious trauma.⁴¹ Pearlman & Saakvitne (1995) state that VT describes the profound shift in world view that occurs in helping professionals when they work with individuals who have experienced trauma: helpers notice that their fundamental beliefs about the world are altered and possibly damaged by being repeatedly exposed to traumatic material.⁴²

5 *What is Vicarious Trauma Training?*

⁴⁰ Marie-Eve Leclerc, Jo-Anne Wemmers & Alain Brunet (2020) The unseen cost of justice: post-traumatic stress symptoms in Canadian lawyers, *Psychology, Crime & Law*, 26:1, 1-21, DOI: 10.1080/1068316X.2019.1611830.

⁴¹ Fleck, J and Francis, R (2021) *Vicarious Trauma in the Legal Profession a practical guide to trauma, burnout and collective care*, Totton, LAG Education and Service Trust Limited.

⁴² Pearlman, L. A., & Saakvitne, K. W. (1995). Treating therapists with vicarious traumatization and secondary traumatic stress disorders. In C. R. Figley (Ed.), *Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized* (pp. 150–177). Brunner/Mazel.

Students take part in an interactive session (lasting around 90 minutes) that considers what VT is. The training is run by two experienced lecturers who are also practitioners, one of whom is a Mental Health First Aider. All members of the CJC take part in the session, including the case workers who have taken the VT training. It starts by seeking to establish the base from which students' own knowledge and experience is set. Then with providing a definition, an understanding of the concept of VT can begin. Many students have not heard of the term VT, though some have familiarity with post-traumatic stress disorder and flashbacks.

It then goes on to consider why lawyers are not unique to being affected, considers the day-to-day role of a lawyer in what they do and their societal and professional role and responsibilities. Then consideration is given to VT's possible symptoms, then how and why it affects lawyers. It is not delivered in conjunction at this stage with other specialist such as counselling services as there is not the resource at present, but the importance lies in signposting to such services. In order to be able to seek assistance students must first recognise that the effects of VT are being experienced.

The purpose of the training is to allow students to plan for the present, and the future, and crucially it outlines where to go for support. Students are introduced to concepts such as: "Lawyering culture, more than any other, epitomizes a lack of comfort with – and distaste for – emotional vulnerability."⁴³

⁴³ Danielle Cover, "Good Grief" (2015) 22 Clinical Law Review 55, 55–56.

Students are encouraged to think about why VT impacts and to discuss how the legal profession has historically viewed vulnerability and how it is dealt with now.

As part of the training, students are encouraged to start considering what the professional identity of a lawyer looks like and developing how this applies to them.

They are encouraged to think about what a typical day as a lawyer might look like.

This recognises that lawyers are problem-solvers and supposed to be able to absorb anything that comes their way. They need to consider the stresses involved in supporting a client and the nature of the role played by lawyers' day in day out in all pre-court and the subsequent court processes, such as advising in police stations.

Much of a criminal solicitor's work is conducted during anti-social hours when they are on their own. They need to deal at times with the automatic revulsion of the effects of serious crime frequently played out with the time pressures and in the throes of a media storm. They grapple with the clash of the presumed innocence of a client against the need for dangerous people to be dealt with in the Criminal Justice System (CJS) and the inevitable faults that are inherent within the CJS itself.

Initial analysis of the VT research that took place in 2022 to 2023 shows that there is no doubt that VT training and support this has an impact on students. It is important that that context is clearly considered before thinking about how VT training is created. The problems of criminal law practice are not going to disappear so the desired outcome is to ensure that students are aware and can identify, and plan ahead, rather than avoid difficult cases or situations.

As outlined, the symptoms of VT are discussed. These include both physical and emotional symptoms such as intrusive thoughts, panic attacks, sleep disturbance, feelings of guilt, avoidance techniques, and withdrawal. Students work on the ability to identify the symptoms in themselves in case they develop them, and equally importantly, for the CJC work and in the future being able to detect these within their co-workers. Developing a plan to cope in the future is then discussed.

The training centres around delivering a toolkit for students from which students help themselves, now and in the future, heading towards legal practice or other employment. What has also been identified is that students who have gone onto work within legal practices have the VT training and support given in the CJC and recommended it to practitioners, expanding therefore its scope to others in a professional capacity. It is important to acknowledge that anyone within legal practice can be affected, including the administrative personnel and clerks who handle distressing evidence, in addition to the lawyers themselves. No one is immune from VT.

Why provide vicarious trauma training and support to students?

Burton and Paton (2021) argue that VT training should be available from the start of a law degree and continue into legal professional practice⁴⁴. However, research has

⁴⁴ Burton, K and Paton, A (2021) *Vicarious Trauma: Strategies for legal practice and law schools* Alternative Law Journal vol 46(2) 94-99.

shown that there was little in the literature on the incidence of, or training of, VT in higher education students in the UK.

As a result of the absence of previous recorded experience from other practitioners and academics, a need was identified, and a decision was made to deliver VT training and discuss VT at the weekly supervision meetings. VT training must be delivered as mandatory training before students commence work in the CJC. The CJC is an online only clinic with no physical attendance or meetings, so everything is completed online, and meetings take place in online rooms. This may make the provision of VT training and support even more important to students who might otherwise feel isolated at a time when they are reading sensitive case papers, and the risk of VT is higher. Importantly the CJC provides that vital open virtual door policy in addition to the provision of training and these weekly support meetings. This shows continuing responsibility for the students and effective monitoring over the duration of the CJC project and work undertaken on the OU module.

Consideration of the Implications of the Wider Experience of VT training

The legal professionals involved in the CJC have used their legal practice experience together with their CJC experience to present at conference workshops as there is a strong feeling that there is a need to promote the discussion around VT training. That can only start the process.

It is essential for there to be cross faculty discussion on why the development of VT training is so important when teaching students in legal higher education and a carry

through of why VT is relevant to other areas of study such as social work, the health care profession, and the police. Delivery of VT training by way of interactive workshops allows interest and awareness to be developed and supported in an interdisciplinary way by including other professions that may experience VT such as social workers, psychologists, and teachers.

However, the primary purpose in providing VT training to the students is so that the students can identify VT in themselves and in others. As a legal professional, as well as handling cases, they may be required to manage other lawyers and staff. As part of their social and corporate responsibility, they will be able to look after, and promote, the wellbeing of others. The best place to start such awareness is within the law curriculum in a higher education environment where that initial training is given in a supportive and safe environment.

Students' Perceptions of Vicarious Trauma support and training

Students' perspective of the need for VT training in the law curriculum should be considered. Students are frequently unaware of what is required or needed going forward. Knowledge, especially of VT, is not acquired by merely reading through articles, although a reading list is provided as part of the training. Most students, with few exceptions are disappointed when they find out that the VT training is mandatory and must be completed prior to commencement in the CJC.

However, the training has now been provided to over 200 students and without exception, at least some students from each group will state that they do not need the

training, do not care about such issues, and they feel making them do the training is unfair. The CJC insist that the training is mandatory to promote the view that it is everyone's responsibility to look after their own, and to a certain extent, other's well-being. Fast forward to the end of their time in the CJC and that attitude has often changed. Most students fully appreciate then why the training was given, why the supervision sessions also supported awareness of VT, providing a sense check of how students are feeling about the case with which they are dealing. It clearly demonstrates too, a continued responsibility for the OU as to student welfare.

Further reflection on students' comments have led to the development of a small VT research project sponsored by the OU's Scholarship Centre for Innovation in Online Legal and Business Education (SCiLAB). It aims to identify whether students perceive vicarious training assists them during their time in the CJC as they graduate and go on to professional practice.

The research went through all approvals, including ethics. It involved both quantitative and qualitative research through the use of questionnaires and student interviews. The analysis of these results will be published in a later article. Initial analysis demonstrates that the students do gain much in skills development from such training and the provision of support during the CJC. At delivery of the initial training for the CJC, 50% of students said they had never heard of the term VT. Given that the OU has a high proportion of working students, it was a surprise that the figure would be so high. Of the students that were aware of the term, 33% had heard of it through

work and around 7% through their law studies and the remainder through other various sources.

Interestingly after the training, 88% of students thought that VT training should be a part of all law programmes and 78% of students felt it should be mandatory for all law professionals regardless of their area of practice. Although the sample group was small with around 16 participants, initial results provided evidence to continue to consider how VT training should be embedded in CLE and the law curriculum. These have been discussed at conferences in wider academia, Consideration as to partnership working needs to be discussed and undertaken with regulatory and support organisations. Though the evidence supports the need and indeed the benefit, the progress has been slow, with resistance or lack of concern perhaps that there is a societal need for lawyers to be protected. By initiating discussions, understanding and knowledge of the concept can develop. It is essential that the legal profession can support their own in their delivery of legal services to clients. The better prepared the lawyer, the better the handling of the client which then comes full circle to the attainment of social justice and the consequential benefit of society.

Picking up the point about the wider need for higher education and the profession to pick up the need to deliver VT training, there would be a need to assess their own training needs and delivery. It needs to be delivered by those within the profession who understand the stresses and strains of being a lawyer. That does not exclude the inclusion of other specialists such as psychologists but at the outset they may not be

required though they can bring a potentially valuable insight. Cost is an important consideration for the profession – so delivering basic VT training at the outset is a start- and thereafter there can be more sophisticated incremental and ongoing training provided where the responsibility lies not solely within higher education but with the profession and employers more generally.

The danger is that higher education parks the concept because they do not see the need, or feel it is included within their role. Costs and resources being seen as barriers in the way.

VT training for lawyers has evolved over the years and it must undergo a similar process within higher education before it is recognised and ingrained within legal training prior to degree acquisition. The risks in not providing such VT training and support, from the research experience outweigh the effort required to commence such VT training.

Conclusion

This paper has discussed the background to the OU and its development of VT training. It has sought to outline the current position and the status of its ongoing research and the work that is being taken forward. It recognises that this is an ongoing work where current data is minimal, but the evidence has consolidated the anecdotal finding that VT training was necessary and appreciated from the students' feedback.

Trying to develop a new generation of lawyers adequately supported to handle cases and deal with the implication of VT is a challenge as many in the profession seem to accept a status quo and resist the need for change. Law is ever changing to respond to developing societal demands. So, accordingly, is the need to recognise that change is required to provide effective support to the profession to ensure that they can better represent their clients.

By analogy, years ago, the impact of post traumatic stress was unknown. However, consider cases such Hillsborough⁴⁵ which raised the spectrum of liability and risk over exposure by the public to traumatic incidents. That related to relatives witnessing the terror of the crush involving their relatives on TV.

That case law, it can be argued, provides a similar path for the development of VT training within the profession. Similarly, it equates to policy development with the need for VT to be identified, and so that an assessment can be made on how to address the need for VT awareness, training, and support. Much wider research needs to be undertaken and information gathered, thereafter there is a need for evaluation and review.

Evidence too has demonstrated that there is a concerning attitude, perhaps focused on money and the inevitable commercial challenges, that the current cohort of future

⁴⁵ *Alcock & ors v Chief Constable of South Yorkshire* [1992] AC 310 House of Lords

lawyers are identified as “snowflakes”⁴⁶. That is of course too an endorsement that there is a need for change and further, in ensuring that VT training is developed and delivered to all to enhance practitioners’ mental well-being and provision of excellent legal representation to the client.

Thereafter, there is a call to encourage others responsible within other higher education institutions to think about its inclusion within the undergraduate programme as a mandatory part of the background to future students taking up legal roles.

For those now graduated in law, there is a role for those delivering post graduate degrees and qualifications where it is more about the acquisition of skills and not just pure law, to consider where VT training is best placed.

For the regulators of professional bodies, they need to seek out opportunities to encourage the profession to embrace such training for themselves as well as for all their staff.

It is crucial to ensure that VT training is developed and delivered so that there is a trauma- informed workforce well able to handle the challenges of the 21st century, whether it is terrorist attacks, historic sexual abuse, murder of babies, catastrophic fire, or sporting disasters.

⁴⁶ Merriam-Webster 92020) ‘What does the term snowflake mean and why is it used? available at <https://www.independent.co.uk/life-style/snowflake-meaning-definition-gammon-piers-morgan-trump-b737499.html>. accessed 12th January 2023

Lawyers lie to the forefront of the outcome of such incidents in court through prosecutions, defence, and public inquiries. For those who experience VT as a result of their work, it matters that they are not deemed to be considered weak or vulnerable, incompetent, or inadequate because of their experience in the legal profession. The experiences are not necessarily documented but there are numbers of professionals that speak anecdotally— recognised in part it is argued now by the need for trauma-informed practice to be developed as outlined currently in draft legislation in Scotland aimed at dealing with rape victims⁴⁷.

All aspire, and indeed require, as part of their professional requirements to ensure that they deliver advice to their clients of the highest quality. Experience of VT training demonstrates that it can be provided easily. It is a duty owed to society. If the lawyer has taken steps to care for themselves by proactively engaging with VT awareness, it then follows that the benefit ultimately is to a better informed and able legal workforce.

Please do contact the authors if you would like to discuss the article, VT training or future research.

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