

**CLINICAL LEGAL EDUCATION AS AN EFFECTIVE TOOL FOR IMPROVING  
THE ACCESSIBILITY OF PROTECTIVE INJUNCTIONS FOR VICTIMS OF  
DOMESTIC ABUSE: A CASE STUDY EXAMPLE OF THE MODELS OF SUPPORT  
AVAILABLE AT NORTHUMBRIA UNIVERSITY**

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**ABSTRACT**

Protective injunctions are at the forefront of the family justice system's response to protecting victims of domestic abuse. The accessibility of orders, however, has been compromised by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which has reduced the availability of public funding for victims of domestic abuse and led to an increase in victims representing themselves in such proceedings. Research indicates that without legal support, a victim's prospects of securing protection can be adversely affected, demonstrating a need for pro bono assistance for those who cannot afford to pay privately for legal services. Whilst the provision of pro bono support in areas of unmet need is a principal aim of clinical legal education, research shows that few clinical programs in England and Wales offer specialist services for victims of domestic abuse. This paper therefore considers the role that clinical legal education can play in improving the accessibility of protective injunctions. Part one sets out a review of recent reforms within the family justice system and analyses how they have created an increased demand for pro bono legal

support for victims of domestic abuse. Part two examines the clinical landscape and the potential benefits to students of providing support to victims. By drawing on the case study of the Student Law Office at Northumbria University, part three sets out the various models of clinical legal education that may be utilised to support victims of domestic abuse. The benefits and limitations of each option for students and victims will also be considered. The paper is a helpful point of reference for clinicians and family law practitioners working in partnership with law school clinics who are considering offering support in this area.

## **INTRODUCTION**

Since the 1970s protective injunctions have been at the forefront of the family justice system's response to protecting victims of domestic abuse. The demand for protective injunctions can be attributed, in part, to the low rates at which domestic abuse offences are prosecuted<sup>1</sup> and to victims prioritising their protection and that of any relevant children above the punishment of the perpetrator.<sup>2</sup> Over the last decade, however, reforms have taken place within the family justice system which have compromised

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<sup>1</sup> Over the last five years, there has been a decrease in the number of successful domestic abuse prosecutions year on year – from 70,853 in 2017, to 45,532 in 2020. This represents a fraction of the 758,941 domestic abuse offences which were recorded to the police in England and Wales in 2020. See Office of National Statistics, *Domestic abuse in England and Wales: year ending March 2017* (ONS: 2017); Office of National Statistics, *Domestic abuse in England and Wales overview: November 2020* (ONS: 2020).

<sup>2</sup> C. McGlynn, J. Downes, J and N Westmarland, 'Seeking Justice for Survivors of Sexual Violence: Recognition, Voice and Consequences' in E. Zinsstag and M Keenan eds *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions* (2017) Routledge Frontiers of Criminal Justice, 179–191; J Herman, 'Justice from the Victim's Perspective' (2005) 11:5 *Journal of Violence Against Women*, 571-602.

the accessibility of protective orders. The most notable change has been the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which has reduced the availability of public funding for victims of domestic abuse.<sup>3</sup> Research indicates that LASPO has led to an increase in both the number of victims who do not take any action to secure protection through the family courts and the number of victims appearing as litigants in person in applications for protective injunctions.<sup>4</sup> Many litigants in person experience difficulties navigating the court process<sup>5</sup> and this is exacerbated for victims of domestic abuse whose ability to effectively participate in proceedings may be compromised by having to face their abuser in court.<sup>6</sup> Research indicates that without legal support, a victim's prospects of securing protection can also be adversely affected, demonstrating a need for pro bono assistance for those who cannot afford to pay privately for legal services.<sup>7</sup> Whilst the provision of pro bono support in areas of unmet need is a principal aim of clinical legal education, research shows that

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<sup>3</sup> D. Hirsch, *Priced out of Justice: Means Testing Legal Aid and Making Ends Meet* (Loughborough University Centre for Research in Social Policy, 2018).

<sup>4</sup> Rights of Women, *Evidencing Domestic Violence: Nearly Three Years on* (London: Rights of Women, 2015); Ministry of Justice and National Statistics, *Family Court Statistics Quarterly: October to December 2020* (Ministry of Justice and National Statistics, 25 March 2021).

<sup>5</sup> L. Trinder, R. Hunter, E. Hitchings, J. Miles, R. Moorhead, L. Smith, M. Sefton, V. Hinchly, K. Bader, and J. Pearce, *Litigants in Person in Private Family Law Cases* (Ministry of Justice, 2014).

<sup>6</sup> J. Birchall and S. Choudhry, *What About my Right not to be Abused? Domestic Abuse, Human Rights and the Family Courts* (Women's Aid, 2018); M. Coy, K. Perks, E. Scott and R. Tweedale, *Picking up the Pieces: Domestic Violence and Child Contact* (Rights of Women, 2012); M. Coy, E. Scott, R. Tweedale and K. Perks, 'It's Like Going Through the Abuse Again: Domestic Violence and Women and Children's (Un)safety in Private Law Contact Proceedings' (2015) 37:1 *Journal of Social Welfare and Family Law*, 53-69.

<sup>7</sup> A. Speed and K. Richardson, 'Should I Stay or Should I Go Now? If I Go There will be Trouble and If I Stay there will be Double: An Examination into the Present and Future of Orders Regulating the Family Home in Domestic Abuse Cases in England and Wales, Unpublished Paper; A. Durfee, 'Victim Narratives, Legal Representation, and Domestic Violence Civil Protection Orders' (2009) 4(1) *Feminist Criminology*, 7-31.

few clinical programs in England and Wales offer specialist services to support victims of domestic abuse.

Against this backdrop, this paper considers the role that clinical legal education can play in improving the accessibility of protective injunctions. Accessibility is interpreted broadly and within the paper is used to refer to the ease with which victims can access the family court to pursue an application and thereafter navigate the court process. Further, it refers to the rates at which orders are granted compared to the rates at which they are applied for, since this is indicative of a victims' prospects of securing protection. Part one sets out a review of recent reforms within the family justice system and analyses how they have created an increased demand for pro bono legal support for victims of domestic abuse. Part two then examines the clinical landscape and the potential benefits to students of providing such support. By drawing on the case study of the Student Law Office (SLO) at Northumbria University, part three sets out the various models of clinical legal education that may be utilised to support victims of domestic abuse. The benefits and limitations of each option for students and victims will also be considered. The paper is a helpful point of reference for clinicians and family law practitioners working in partnership with law school clinics who are considering offering support in this area.

## **PART ONE: A REVIEW OF THE CONTEXT AND EXISTING LITERATURE**

### ***Injunctive protection for victims of domestic abuse***

In England and Wales, victims of domestic abuse can apply for injunctive protections in the civil courts or at the conclusion of a criminal trial (post-conviction or acquittal) under the Protection from Harassment Act 1997. More commonly, however, injunctive relief will be sought through the family courts because of the wider range of orders available and because 'the issues surrounding an abusive relationship can rarely simply be dealt with by way of an injunctive order alone and other interrelated family proceedings may be required'.<sup>8</sup> The two main forms of injunctive protection available through the family courts are non-molestation orders and occupation orders (although more specialised forms of protection exist in forced marriage protection orders<sup>9</sup> and female genital mutilation protection orders<sup>10</sup>). Non-molestation orders aim to 'prevent domestic abuse, stalking and harassment by prohibiting the offender from contacting the victim and/or attending certain places'.<sup>11</sup> In contrast, occupation orders regulate the family home. They can be used to declare existing rights in the

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<sup>8</sup> K. Richardson and A. Speed, 'Two Worlds Apart: A Comparative Analysis of the Effectiveness of Domestic Abuse Law and Policy in England and Wales and the Russian Federation' (2019) 83(45) *The Journal of Criminal Law*, 324.

<sup>9</sup> The Forced Marriage (Civil Protection) Act 2007 introduced provisions into section 63A(1) of the Family Law Act 1996 to protect a person being forced into a marriage, from any attempt at being forced into a marriage and by providing protection and assistance for those already forced into a marriage.

<sup>10</sup> Section 73 of the Serious Crime Act 2015 inserted a new section 5A and Schedule 2 into the FGMA 2003 making provision for FGM protection orders.

<sup>11</sup> L. Bates and M. Hester, 'No Longer a Civil Matter? The Design and Use of Protection Orders for Domestic Violence in England and Wales' (2020) 42(2) *Journal of Social Welfare and Family Law*, 135.

property, determine who should or should not live in the property and can potentially exclude one of the parties from living in or attending a specified area around the home.<sup>12</sup> The remedies available to protect victims of domestic abuse are set to undergo reform shortly with the introduction of Domestic Abuse Protection Orders (DAPOs) through the Domestic Abuse Act 2021. The Home Office has stated that DAPOs will 'bring together the strongest elements of existing protective orders into a single comprehensive, flexible order which will provide more effective and longer-term protection to victims of domestic abuse and their children'<sup>13</sup>. Whilst there is no intention at this point to repeal non-molestation orders and occupation orders, the Home Office has acknowledged, 'it is our intention that DAPOs will become the 'go to' protective order in cases of domestic abuse'.<sup>14</sup> DAPOs are likely to be more accessible than non-molestation orders and occupation orders as it is anticipated that third parties (i.e. the police, domestic abuse support services, and friends and family of the victim who have leave of the court) will be able to pursue an application on the victims' behalf. Nonetheless, it is still envisaged that victims will be the main category of applicant given that protection orders are praised for empowering victims to decide when and how to access protection.<sup>15</sup> At this point, however, there is no set date for the introduction of DAPOs, as the Home Office have announced their intention for regional pilots prior to a full nationwide rollout.

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<sup>12</sup> Family Law Act 1996, ss 33-38.

<sup>13</sup> Home Office, *Policy Paper: Domestic Abuse Protection Notices/Orders Factsheet* (Home Office, 2020).

<sup>14</sup> *Ibid.*

<sup>15</sup> Bates and Hester (n 11).

Research indicates that for many victims, protective injunctions are an effective means of reducing post-separation violence and abuse. Cordier's systematic review, for example, found that across 25 studies, protective orders reduced the quantitative occurrence of abuse.<sup>16</sup> This aligns with the findings of Humphreys and Kaye's study that the presence of a protective order made some women feel better protected.<sup>17</sup>

Proceedings for non-molestation orders and occupation orders are started by completing the relevant application form<sup>18</sup> and preparing a witness statement which addresses the circumstances leading to the application. It is anticipated that the same procedural requirements will apply for DAPOs in most cases.<sup>19</sup> There is currently no court fee to apply. The court may grant an injunction without notice to the respondent where it considers it 'just and convenient to do so'<sup>20</sup>, having regard to the circumstances set out in the legislation.<sup>21</sup> If the application is made without notice, the reasons why notice has not been given must clearly be stated in the witness statement.<sup>22</sup> Where an order is made following a without notice hearing, the court must afford the respondent an opportunity to make representations relating to the order as soon as is just and convenient at a full hearing.<sup>23</sup> At the 'return' hearing,

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<sup>16</sup> R. Cordier, D Chung, S. Wilkes-Gillan and R. Speyer, 'The Effectiveness of Protection Orders in Reducing Recidivism in Domestic Violence: A Systematic Review and Meta-Analysis' (2019) *Trauma, Violence and Abuse*, 1-25.

<sup>17</sup> C. Humphreys and R. Thiara, 'Neither Justice nor Protection: Women's Experiences of Post-Separation Violence' (2003) 25:3, *Journal of Social Welfare and Family Law*, 195-214.

<sup>18</sup> Form FL401 applies to both forms of protection.

<sup>19</sup> Domestic Abuse Act 2021, ss 27-49.

<sup>20</sup> Family Law Act 1996, s 45(1).

<sup>21</sup> Family Law Act 1996, s 45(2).

<sup>22</sup> Family Procedure Rules 2010, rule 10.2(4).

<sup>23</sup> Family Law Act 1996, s 45(3).

negotiations will take place to determine whether the respondent is in agreement to the order continuing, or whether a contested hearing to determine the truth of the allegations is required. Proceedings which are not contested may therefore be concluded relatively quickly (i.e., within one month of the application) whilst those which are contested are likely to take up to six months to reach a disposal.

*Barriers for victims of domestic abuse to access the family courts and secure protection*

*Reduced accessibility of legal advice and representation*

The family justice system has undergone significant reform over the last decade, driven by the introduction of LASPO which came into effect in April 2013. LASPO removed legal aid from the scope of most private family law cases, except where strict criteria are met regarding domestic abuse (including forced marriage and female genital mutilation), child abduction or child abuse.<sup>24</sup> Victims applying for a protective injunction do not need to provide evidence that they have been a victim of domestic abuse to secure funding (as they would if they were starting divorce or child arrangements proceedings), however they must still satisfy the means and merits tests, which research indicates is prohibitive for many victims.<sup>25</sup> LASPO introduced changes in respect of means testing for legal aid including freezing the financial

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<sup>24</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, sch 1.

<sup>25</sup> Hirsch (n 8).

thresholds, requiring all applicants to have capital under the assessed threshold and increasing the financial contributions which applicants may be required to make towards their legal costs. Despite the government's objective that victims of domestic abuse should continue to be eligible for legal aid, research suggests that in 2017, over 40% of victims were no longer able to access public funding.<sup>26</sup> More recently, there have been judicial developments which should positively impact the availability of legal aid in applications for protective injunctions, such as the Judgment in *R (GR) v Director of Legal Aid Casework*<sup>27</sup>. Following the Judgment, the government announced plans to allow the full value of a person's mortgage to be deducted when considering the value of a property for the purpose of the means test. Further, the Judgment will allow the Legal Aid Agency to afford a 'nil' value to capital that victims cannot access ('trapped capital') in cases where they would otherwise pass the means assessment. Nonetheless, even with these deductions some victims will still have capital over the threshold. Other victims will not satisfy the means test based on having an income that exceeds the prescribed limits. As such, this development will not result in all victims of domestic abuse being eligible for funding.<sup>28</sup>

Research indicates that the availability of funding directly impacts a victim's decision to seek protection. A survey of 239 women in the UK found that over half took no action in respect of their family law problem because they were not eligible for

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<sup>26</sup> Legal Aid Practitioners Group (LAPG) *Manifesto for Legal Aid* (Second Edition, 2017).

<sup>27</sup> *R (GR) v Director of Legal Aid Casework* [2020] EWHC 3140 (Admin)

<sup>28</sup> Speed and Richardson (n 7).

funding.<sup>29</sup> Similar findings were reported by Speed who noted that more than half (54%) of the domestic abuse specialists in her study felt that barriers to funding led to an increase in service users not pursuing legal claims where they may have done so previously.<sup>30</sup> Alternatively, victims who do not qualify for funding but who cannot afford to instruct a solicitor on a privately paying basis may, through limited alternatives, choose to represent themselves should they pursue proceedings.<sup>31</sup> Statistics on representation group all 'domestic violence' family court cases together. However, they demonstrate a yearly increase in the number of unrepresented applicants since LASPO was introduced in April 2013, with 23.9% of applicants self-representing in applications for injunctive protection in 2013, compared to 31% in 2014 and 51.6% in 2019.<sup>32</sup>

Difficulties securing legal advice and representation have been compounded by austerity measures which have de-funded support services and charitable organisations who otherwise may have been well placed to guide victims through the court process on a pro bono basis.<sup>33</sup> As a result, it is now common for third sector organisations to provide one-off 'general' information about the court process (often by unqualified volunteers) rather than tailored advice or full casework due to high

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<sup>29</sup> Rights of Women (n 4).

<sup>30</sup> A. Speed, 'An Exploration into Provision by Specialist Domestic Abuse Support Services for Victims/Survivors in Family Court Proceedings in England and Wales, Unpublished Paper.

<sup>31</sup> Trinder et al (n 5).

<sup>32</sup> Ministry of Justice and National Statistics (n 4).

<sup>33</sup> J. Organ and J. Sigafos, *The Impact of LASPO on Routes to Justice. Research Report 118* (Equality and Human Rights Commission, England; 2018).

levels of demand.<sup>34</sup> Whilst domestic abuse support services are likely to be an exception to this, with research showing that many organisations have stepped up to offer some casework in family court proceedings, often these services are limited in the amount of time they can work with victims.<sup>35</sup> Further, support workers who are not qualified as Independent Domestic Violence Advisors (IDVAs) receive very little (if any) legal training. Research suggests that as a result, some professionals misunderstand the law or fail to appropriately manage victims' expectations about the legal process.<sup>36</sup> This has also been recognised by the Transparency Project who noted that 'parents are often given (well meaning) information or advice by support agencies (*domestic abuse services... etc*) that may include a mixture of what those services *think* the law *is* or *should* be, but which isn't really what is likely to happen at all'.<sup>37</sup>

Research demonstrates that, at least in the early days of the pandemic, Covid-19 exacerbated pre-existing barriers to accessing advice and support for many victims. The respondents to Speed et al's study highlighted the existence of physical barriers to seeking support where victims remained in the same home as their perpetrator.<sup>38</sup> In addition, they considered that as most victims are women, they were

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<sup>34</sup> Ibid.

<sup>35</sup> Speed (n 30).

<sup>36</sup> Ibid.

<sup>37</sup> The Transparency Project, *How do The Family Courts Deal with Cases about Children Where There Might be Domestic Abuse? A Guidance Note for Parents & Professionals* (The Transparency Project; 2018), 9-10.

<sup>38</sup> A. Speed, K. Richardson and C. Thompson, 'Stay Home, Stay Safe, Save Lives: An Analysis of the Impact of Covid-19 on the Ability of Victims of Gender-based Violence to Access Justice' (2020) 84:6, *The Journal of Criminal Law*, 539-572.

disproportionately more likely to take on physical and psychological burdens as caregivers, resulting in time barriers to accessing support. Ivendic et al found that whilst many support services had experienced a greater demand for their services, this was all driven by third party reporting/referrals, suggesting that under-reporting of domestic abuse was still present, particularly during periods of lockdown.<sup>39</sup> The impact of reduced support was exacerbated by an increase in the rates at which non-molestation orders and occupation orders were sought over the first year of the pandemic.<sup>40</sup> Although there has now been some return to 'normality' following the vaccine rollout, it is likely that some services will have not survived the pandemic whilst others will still be operating at a reduced capacity. Statistics from January to March 2021 suggest that rates of applications for injunctive protection have not yet slowed and are 12% higher than the same period in 2020.<sup>41</sup>

### *Navigating the family court as a victim litigant in person*

It is well documented that without a professional advocate, many litigants experience difficulties understanding the law and legal process. Moorhead and Sefton found, for example, that litigants struggle to 'translate their dispute into legal form, i.e.

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<sup>39</sup> R. Ivandic, T. Kirchmaier and B. Linton, *Changing Patterns of Domestic Abuse During Covid-19 Lockdown: Discussion Paper*. (Centre for Economic Performance, 2020).

<sup>40</sup> A. Speed, K. Richardson, C. Thomson and L. Coapes, 'Covid-19 and the Family Courts: Key Practitioner Findings in Applications for Domestic Violence Remedy Orders' (2021) 33:3 *Child and Family Law Quarterly*, 215-236.

<sup>41</sup> Ministry of Justice and National Statistics, *Family Court Statistics Quarterly: January to March 2021* (Ministry of Justice and National Statistics; 2021).

understanding the purpose of litigation, confusing law with social and moral notions of 'justice' and identifying which legally relevant matters are in dispute'.<sup>42</sup> Unrepresented litigants are also more likely to experience difficulties in securing and funding evidence to help prove their case.<sup>43</sup> These issues are exacerbated for victims of abuse whose effective participation may be compromised by facing their perpetrator in the courtroom, notwithstanding that improvements to the current law around special measures and prohibitions on victims being cross examined by their perpetrator are set to be introduced by the Domestic Abuse Act 2021.<sup>44</sup>

Studies indicate that without legal representation victims' prospects of securing injunctive protection may be compromised. Durfee, for example, noted that 'even with 'victim-friendly' procedures and forms, individuals without legal representation are significantly less likely to have their requests for protection orders granted'.<sup>45</sup> Her study found that 'in cases where the abuse was severe and/or externally documented, the use of legal assistance by the respondent did not appear to affect hearing outcomes... in contested cases, however, where respondents retained a lawyer and/or filed affidavits disputing the petitioner's claims of abuse, there was no external documentation of the abuse, or it was unclear whether the incidents described met the

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<sup>42</sup> R. Moorhead and M. Sefton, *Litigants in Person: Unrepresented Litigants in First Instance Proceedings* (London: Department for Constitutional Affairs; 2005), 256.

<sup>43</sup> K. Richardson and A. Speed, 'Restrictions on Legal Aid in Family Law Cases in England and Wales: Creating a Necessary Barrier to Public Funding or Simply Increasing the Burden on the Family Courts?' (2019) 41(1) *Journal of Social Welfare and Family Law*, 135-152.

<sup>44</sup> Family Procedure Rules 2010 rule 3A and Practice Direction 3AA; Domestic Abuse Act 2021, ss 63 and 65.

<sup>45</sup> Durfee (n 7), 7.

legal criteria for a protection order; variations in the form, content and structure of the narrative had important implications for case outcomes'.<sup>46</sup> Factors which seemingly made a difference to the outcome in these cases included that statements of case prepared by legal representatives were more focussed on satisfying the threshold criteria, contained very specific descriptions of events and were more likely to include supplemental supporting evidence. In contrast, applications filed by litigants in person were often short, contained incomplete information or focussed on general details about the relationship rather than specific incidents. Applications containing information about specific incidents were successful in 74% of cases compared to 39% for those which did not. Whilst Durfee's study was conducted in the USA, similar findings have been reached in relation to applications for injunctive protection in England and Wales. Speed and Richardson's study into the accessibility of occupation orders, for example, found evidence of applications being refused for containing substantive deficits (i.e., insufficient information about the abuse) and minor procedural deficits (i.e., applications for occupation orders and non-molestation orders being filed as two separate application forms rather than on the same form), whilst a separate study also suggested that this issue continued once hearings were moved online because of Covid-19, as part of the Remote Access Family Court.<sup>47</sup>

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<sup>46</sup> *Ibid*, 24.

<sup>47</sup> Speed and Richardson (n 7), Speed et al (n 40).

## **PART TWO: CLINICAL LEGAL EDUCATION AND SUPPORT FOR VICTIMS OF DOMESTIC ABUSE**

The literature examined in the preceding section demonstrates that there is a clear need for pro bono legal advice and representation for victims of domestic abuse in applications for injunctive relief. Given that some of the central goals of clinical legal education are to render services to those who are unable to afford legal services, challenge injustice and imbue students with a social and professional responsibility to pursue social justice in society'<sup>48</sup> supporting victims of domestic abuse in applications for injunctive protection would appear to be a worthwhile endeavour for clinical programmes, capable of promoting and upholding these ambitions. This has been recognised by the American academics Breger and Hughes, who identify four main benefits – for victims and the students who support them – of incorporating teaching about domestic abuse into the clinical curriculum.<sup>49</sup> Firstly, they argue that it promotes access to justice for families in need. This argument draws on the idea considered above that 'the legal system is currently confronted with increasing numbers of victims of family violence, primarily children and women, who are in dire need of legal representation and facing a system that simply cannot accommodate them... the unfortunate reality is that but for student clinic representation, many litigants would

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<sup>48</sup> I. Byron, *The Relationship Between Social Justice and Clinical Legal Education: A Case Study of The Women's Law Clinic, Faculty of Law, University of Ibadan, Nigeria* (2012) Paper presented at the 11th International Journal of Clinical Legal Education Conference, Entering the Mainstream: Clinic for All.

<sup>49</sup> M. Breger and T. Hughes, 'Advancing the Future of Family Violence Law Pedagogy: The Founding of a Law School Clinic' (2007) 41 *University of Michigan Journal of Law Reform*, 167-188.

have no representation at all'.<sup>50</sup> Secondly, they argue that clinical teaching in the context of domestic abuse can provide an important foundational tool for teaching lawyering skills. Whilst this is arguably true of most practice areas, they note that cases involving domestic abuse typically possess characteristics that make them 'particularly appropriate for clinical study' including that applications for injunctive protection return to court regularly over a short period of time.<sup>51</sup> Thirdly, Breger and Hughes recognise that domestic abuse is an evolving area of law and practice which intersects with many other legal topics which are typically taught in an undergraduate legal curriculum including personal injury/trespass to the person within tort law and offences against the person under criminal law. Finally, they argue that enabling students to engage with domestic abuse law in clinic can be a vehicle to inspire law graduates to practice family violence law and to educate the future bar and bench. Whilst inevitably not all students will go on to become family practitioners, law students are 'future judges, policy specialists, prosecutors and criminal defence attorneys' who need to be 'well-informed and sensitive to the issues they will encounter in practice'.<sup>52</sup> Although Breger and Hughes were writing in the context of the American legal system, similar issues have been identified in England and Wales where despite there being extensive practice guidance, some professionals (including

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<sup>50</sup> Ibid, 174.

<sup>51</sup> Ibid, 176.

<sup>52</sup> Ibid, 179.

legal practitioners, the police and the judiciary) demonstrate a poor understanding of the dynamics of domestic abuse.<sup>53</sup>

The above argument highlights a need for greater understanding of the impact of trauma and vulnerability in family court proceedings. Canadian clinicians Smythe et al recognise that practising areas such as domestic abuse law in clinic can address this gap by enabling students to become 'trauma informed' practitioners, capable of understanding 'how trauma occurs and its consequences, as well as being educated about the political context in which it has arisen'.<sup>54</sup> In turn, this enables clinical students to 'communicate, interpret narrative, and build trust – all of which are foundational to the lawyer-client relationship'.<sup>55</sup> Smythe et al acknowledge there are particular advantages of such work taking place in a clinical setting. Whilst recognising that trauma is a universal human experience, they also argue that it is 'experienced more often, and often with greater impact, by people who are marginalised within dominant power structures'.<sup>56</sup> This makes understanding trauma particularly relevant for lawyers in student clinics given that many clients who seek their support experience multiple intersecting forms of marginalisation.<sup>57</sup>

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<sup>53</sup> R Hunter, A Barnett and F Kaganas, 'Introduction: Contact and Domestic Abuse' (2018) 40:4 *Journal of Social Welfare and Family Law*, 401-425; Ministry of Justice, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report* (Ministry of Justice: 2020), 1-216; M. Burton, 'Civil Law Remedies for Domestic Violence: Why are Applications for Non-Molestation Orders Declining?' (2009) 31(2), *Journal of Social Welfare & Family Law*, 110-20.

<sup>54</sup> G. Smyth, D. Johnstone and J. Rogin, 'Trauma-Informed Lawyering in the Student Legal Clinic Setting: Increasing Competence in Trauma Informed Practice' (2021) 28:1 *International Journal of Clinical Legal Education*, 161.

<sup>55</sup> *Ibid*, 149.

<sup>56</sup> *Ibid*, 150.

<sup>57</sup> *Ibid*.

Building on the idea that teaching clinical students to litigate on behalf of women subjected to abuse exposes them to different approaches to lawyering, Goodmark argues that clinics can develop students' understanding and experience of 'client-centered lawyering', which prioritises the empowerment of victims through assisting women to 'make their own choices and then working with them to realise those choices'.<sup>58</sup> She also argues, however, that with their focus on challenging injustice, clinics also encourage students to think beyond advocating for a particular individual and consider the ways that 'systems work to benefit or harm their clients and what they can do to improve or change those systems'.<sup>59</sup> In turn, they can contribute to the development of domestic abuse law and policy. She notes that in comparison to campaigners, practitioners and law makers, students can be 'less dogmatic about the appropriate responses to domestic violence, less tied to the current law and policy and more open to thinking about a range of experiences and opportunities, enabling them to be more creative in their thinking'.<sup>60</sup> They are also more willing to acknowledge the limitations of the law in addressing domestic abuse and think about 'ways to find justice beyond the justice system'.<sup>61</sup> This could include engaging clients in restorative justice, mediation and community-based justice. As this paper will go on to consider in part three, such forms of alternative dispute resolution continue to be largely

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<sup>58</sup> L. Goodmark, 'The Role of Clinical Legal Education in the Future of the Battered Women's Women' (2013) 22 *Buffalo Journal of Gender, Law and Social Policy*, 32.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*, 44.

<sup>61</sup> *Ibid.*, 35.

discounted as a means of achieving a resolution for victims of domestic abuse, both within and outside a clinical setting in England and Wales.

In one of the only studies to discuss domestic abuse and clinical legal education in the context of England and Wales, Speed and Richardson evaluated student participation in the 16 Days of Activism against Gender-Based Violence campaign, part of which involved students providing one-off advice to victims of domestic abuse as part of an outreach clinic.<sup>62</sup> Supporting Smythe et al, Speed and Richardson found that students who participated in the project demonstrated increased competency in understanding the breadth and scope of abusive conduct and recognising triggers that may indicate a client had been subject to abuse. In turn, this allowed the students to ask more effective fact-find questions, produce higher quality research and offer more tailored support. Their data also suggests that law students are often drawn to legal issues which allow them to support individuals through a time of crisis. The students described finding value in the work, with feedback including 'working in this project has helped me learn and grow and I think become a more well-rounded individual never mind practitioner' and 'working in communities and with women where they seemingly have no other access to legal advice made it more satisfying that I was able to be a part of it'.<sup>63</sup> Supporting Breger and Hughes, following their participation in the

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<sup>62</sup> A. Speed and K. Richardson, 'Promoting Gender Justice Within the Clinical Curriculum: Evaluating Student Participation in the 16 Days of Activism against Gender-Based Violence Campaign' (2019) 26:1 *International Journal of Clinical Legal Education*, 87-131.

<sup>63</sup> *Ibid*, 115.

campaign several of the students decided to pursue a career working with victims of domestic abuse, albeit not in the legal sector.

Reflecting that many clinics with an offering for victims of domestic abuse are based in the USA and Canada, most of the literature considered above is based on the experiences of North American clinicians. It is estimated, for example, that in 2010, there were 40 clinics in the USA dedicated primarily to domestic violence and a further 39 clinics primarily practising family law which were also likely to deal with domestic abuse cases.<sup>64</sup> Goodmark attributes this, in part, to the availability of funding through The Legal Assistance for Victims Grant Program which many legal clinics have been able to access. She notes that the funding was a 'tremendous boon for domestic violence clinics, because it made money available to provide civil legal services and train future generations of lawyers to provide civil legal assistance to women subjected to abuse'.<sup>65</sup> Accordingly, she recognises that clinical legal education and the Violence against Women and Girls (VAWG) movement have had 'parallel and intersecting paths' with both movements developing alongside each other.<sup>66</sup> In contrast, the clinical legal education movement in England and Wales developed much later than in the USA.<sup>67</sup> Further, in England and Wales very few law school clinics hold legal aid contracts, and most are funded entirely by their institution,

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<sup>64</sup> Goodmark (n 58), 30.

<sup>65</sup> *Ibid*, 31.

<sup>66</sup> *Ibid*, 27.

<sup>67</sup> O. Drummond and G. McKeever, *Access to Justice through University Law Clinics* (Ulster University and the Legal Education Foundation, 2015).

leading to restrictions both on the areas of practice and the extent of work that can be carried out for clients.<sup>68</sup>

Whilst 70% of the 78 law school clinics in the United Kingdom who responded to the 2020 LawWorks survey reported providing family law services, less than 30% offered services in relation to domestic abuse.<sup>69</sup> This is an increase, however, on the position in 2014 when only 10 clinics offered family law services, one clinic specialised in supporting victims of domestic abuse and four clinics reported sending students on externships with a partner organisation which specialised in domestic abuse.<sup>70</sup> In terms of services offered, half of the respondents to the 2020 survey reported that their clinic provided generalist advice only, half provided quasi-legal services such as form filing and McKenzie Friend services, 36% provided specialist advice and around 20% offered representation in court proceedings for clients.<sup>71</sup> Either alongside or instead of client services, 30% of clinics engaged in law reform projects and nearly 70% offered students an opportunity to undertake public legal education. The conclusions that can be drawn from this data are that whilst domestic abuse is a growing area of practice in clinics, it is still relatively uncommon for students to engage in this area within their clinical curriculum. Further, for those that do, it is often in relation to discrete aspects

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<sup>68</sup> One exception to the basic position that law clinics in England do not offer legally aided services is the University College London who were awarded a contract for housing and community care law in 2018.

<sup>69</sup> J. Sandbach and R. Grimes, *Law School Pro Bono and Clinic Report 2020* (LawWorks and CLEO; 2020).

<sup>70</sup> D. Carney, F. Dignan, R. Grimes, G. Kelly and R. Parker, *The LawWorks School Pro Bono and Clinic Report 2014* (LawWorks 2014).

<sup>71</sup> Sandbach and Grimes (n 69).

of a case (i.e., akin to an unbundled service) or through providing non case work related services.

### **PART THREE: METHODS OF INCORPORATING SUPPORT FOR VICTIMS OF DOMESTIC ABUSE INTO THE CLINICAL CURRICULUM – THE CASE STUDY OF THE STUDENT LAW OFFICE**

All Northumbria University students enrolled on the four-year M Law Exempting law degree (a programme which combines the undergraduate law degree with the requirements of the Legal Practice Course (LPC) or Bar Practitioner Training Course (BPTC)) undertake a year-long assessed clinical module in the SLO in the penultimate year of the degree programme. This option is also available to students on the LLB programme, and for LPC and BPTC students as an elective module in the second semester. Students provide pro bono advice and potentially representation to members of the public under the supervision of a qualified solicitor, barrister, or caseworker. Alongside their client work, students may also engage in public legal education work which aim to educate members of the public about their legal rights and responsibilities. More recently, with the development of a policy clinic within the SLO<sup>72</sup> students have also been able to work in partnership with an external

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<sup>72</sup> R. Dunn, L. Bengtsson and S. McConnell, 'The Policy Clinic at Northumbria University: Influencing Policy/Law Reform as an Effective Educational Tool for Students' (2020) 27:2 *International Journal of Clinical Legal Education*, 68-102.

organisation to research, critique and make proposals for reforming the existing law.

Around 200 students undertake work in the clinic each academic year.<sup>73</sup>

Two of the clinicians (Kayliegh Richardson and the author) are family solicitors specialising in supporting victims of domestic abuse. Between them, they supervise around 24 clinical students each year. The development of initiatives to support victims of domestic abuse was the result of these two practitioners joining the SLO team in 2015 and 2016 respectively, together with an increase in requests for support within the clinic from victims of domestic abuse often in desperate need for protection and with no other prospects of assistance. It should be noted that this increase in requests is anecdotal given that the SLO does not maintain a record of the number of enquiries specifically from victims seeking injunctive protection and indeed, any such records would likely be unhelpful given that it is often only after receiving advice that some victims become aware that they require protection. Whilst advice and representation services are available every academic year, some of the other models of support operate on a more discrete basis, for example, where a partner organisation approaches the SLO to engage in a collaborative venture. The different initiatives, together with the benefits and limitations associated with each model, are considered in detail below.

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<sup>73</sup> Information about the Student Law Office can be accessed at: <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/>.

*(a) Providing initial advice*

In line with the adage that knowledge is a route to empowerment, the provision of early advice is recognised as a cornerstone of access to justice.<sup>74</sup> Trinder et al note that ‘without some form of informed guidance at the initial stages, litigants face great difficulties in attempting to understand and act upon the substantive law’ and may resort to unofficial sources which contain inaccurate or incomplete information.<sup>75</sup> The provision of initial advice in the SLO therefore aims to increase victims’ knowledge about their legal options so they can make an informed decision about whether it is in their interests to seek protection. In this sense, the SLO embraces client-centered lawyering, as discussed by Goodmark, by recognising that ‘the client is best suited to assess her tolerance for risk and to determine the possible non-legal consequences of legal intervention’.<sup>76</sup>

As with any client who comes to the SLO, the students take the lead on conducting the initial factfind appointment, researching the merits of the case, conducting an advice appointment, and confirming the advice in writing. However, the nature of domestic abuse cases means there are some additional considerations. Firstly, students must quickly become familiar with the legal aid criteria to enable them to carry out a preliminary assessment of the client’s eligibility. In cases where it appears that a client is eligible, a referral will be made to a legal aid firm and the SLO will have

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<sup>74</sup> Organ and Sigafos (n 33).

<sup>75</sup> Trinder et al (n 5), 37.

<sup>76</sup> Goodmark (n 58), 31.

no further involvement given that this is a preferable funding option. Supporting Goodmark, who argued that clinics encourage students to think beyond advocating for a particular individual, this provides students with an important introduction to the different options for funding cases and often sparks a conversation about the fairness of the decision-making criteria and the recent legal aid reforms.

Secondly, in contrast to other cases, advising a victim of domestic abuse requires the students to think about what other needs – such as for housing, welfare benefits and therapeutic counselling – a client may have. Whilst the students are not expected to act upon this, discussions should take place with the client about whether referrals to appropriate services should be made. The need for a holistic approach to advising clients suggests that there is also value in clinical models where students work in partnership with external organisations, meaning a range of services can be provided under one roof. An example of such a project is the Future Living Hertford Family Law Clinic where students provide initial legal advice to victims at the facilities of a specialist provider of counselling and therapeutic support.<sup>77</sup>

Thirdly, although true of all practice areas, but particularly evident in domestic abuse cases, safeguarding student wellbeing must be prioritised during the conduct of a case. At the start of the module, students are asked to confirm whether they feel comfortable working on cases involving domestic abuse and other sensitive issues.

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<sup>77</sup> See <https://www.herts.ac.uk/study/schools-of-study/law/pro-bono-activities/future-living-hertford-family-law-clinic>.

However, even where students have agreed to this, they may still experience vicarious trauma through their clients or else relive their own trauma.<sup>78</sup> As identified by Smythe et al, it is therefore vital that they 'employ modes of self-care' to counterbalance these effects.<sup>79</sup> Within the clinic, students are encouraged to prepare reflections on their experiences which can remain private or be shared with their supervisor. Regular debriefings also take place during weekly firm meetings. Whilst the author is not aware of any circumstances where this has been needed because of a students' participation in domestic abuse work, free on-site counselling services also exist for Northumbria University students.

The final consideration which distinguishes domestic abuse from other practice areas is the speed at which advice often needs to be provided. In many cases, the students will be aware that the case relates to domestic abuse protection, and this allows them to consider what additional information they require, conduct research, and begin formulating some basic advice in advance of the appointment. Invariably, however, there are some clients who will come to the SLO seeking advice about a separate matter (usually divorce or child arrangements) and it is only during the factfind appointment that it becomes apparent the client is experiencing domestic abuse and requires urgent protection. This may be identified as part of basic screening questions that the students have asked or because the students have picked up on subtle disclosures made by the client, which have been identified because of training the

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<sup>78</sup> Smythe et al (n 54).

<sup>79</sup> Ibid, 161.

students receive at the start of the module. From a supervisory perspective, the need to identify disclosures is crucial in reducing the risk of a negligence claim where we fail to advise clients about any claims which may arise out of the abuse.<sup>80</sup> However, it also protects the client because otherwise requiring them to recount their experience on multiple occasions risks retraumatising them.<sup>81</sup> Where domestic abuse is identified at an initial appointment, it is not acceptable for the usual process of researching and advising the client (which may take some weeks) to take place. Instead, the supervisor will need to work with the students to consider the extent of the retainer and, where this is limited to initial advice only, conduct some basic research about the process of applying for protection and the merits of the client's application, so that the client receives some oral advice on the same or the following day. The supervisor may also join the advice appointment so that any of the client's questions can be addressed fully. More detailed research can then be carried out by the students before the advice is confirmed in writing. Consideration will also be given to whether there are any other local pro bono organisations who may be able to support the client through proceedings or whether a referral through CourtNav should be made.<sup>82</sup>

On the one hand, the speed at which advice is provided in these cases is more reflective of legal practice (thereby upholding the clinical aim of giving students a

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<sup>80</sup> M. Drew, 'Lawyer Malpractice and Domestic Violence: Are We Revictimising our Clients?' (2005) 39:1 *Family Law Quarterly*, 7-25.

<sup>81</sup> *Ibid.*

<sup>82</sup> CourtNav is a digital tool provided by RCJ Citizens Advice which can support a victim to prepare an application for injunctive protection. More information is available at: <https://injunction.courtnav.org.uk> accessed 14 October 2021.

realistic experience) where emergency applications are often issued on the same day that initial instructions are taken. On the other hand, however, the supervisor will likely need to provide higher levels of direction than in non-urgent cases. Whilst it is correct that this is somewhat counterintuitive to clinical objectives, it is the author's position that student autonomy cannot come at the cost of client safety. Further, the limitations of this are offset by the fact that alongside general clinical skills (i.e., research skills and written communication) working on a domestic abuse case also allows students to develop enhanced or specialised skills compared to other areas of law. Breger and Hughes argue, for example, that whilst the statutes which govern applications for protection orders (in the English context, the Family Law Act 1996 and the Domestic Abuse Act 2021) are relatively straightforward instruments, meaning students are quickly able to develop a working understanding of the law and legal process, factually, cases are often 'complex and nuanced... enhancing law students' mastery of fact investigation, interviewing and client counselling'.<sup>83</sup> Further, in the author's experience, working with victims of domestic abuse challenges many of the students' initial misconceptions and judgements, such as a belief that physical abuse is more harmful than emotional abuse, that some forms of abusive conduct do not constitute domestic abuse (i.e., financial abuse) and failing to understand why many victims remain in abusive relationships. This suggests that working in clinic can improve students' understanding of the dynamics of domestic abuse, whilst also

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<sup>83</sup> Breger and Hughes (n 49), 176.

resulting in them becoming more sensitive, trauma informed practitioners who are capable of understanding how trauma occurs and its consequences.<sup>84</sup>

From a client perspective, receiving tailored advice through the clinic empowers victims to make informed decisions about whether and when to seek protection. In contrast to online sources, where the relevance and quality of information is often difficult for victims to determine<sup>85</sup> advice received through the clinic has been tailored to an individual client's circumstances and approved by a qualified practitioner. Through facilitating referrals to other support services, clinics can also help clients gain access to non-legal forms of support, including refuge accommodation and resettlement services, therapeutic support and community-based services.<sup>86</sup> A limitation of this model, however, is that support does not extend to preparing the initial application form or witness statement. Research consistently demonstrates that this is where assistance is particularly valuable, given that 'errors and omissions in the preparatory work done by litigants in person impact on court staff workloads and on the conduct of the hearing itself'<sup>87</sup> and that applications prepared by victims without any assistance may in some circumstances be more likely to result in an application being refused.<sup>88</sup> For those clinics already offering initial advice in these cases, consideration should therefore be given to whether there is the capacity and expertise

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<sup>84</sup> Smythe et al (n 54).

<sup>85</sup> Trinder et al (n 5).

<sup>86</sup> L. Kelly, *Combating Violence against Women: Minimum Standards for Support Services* (Directorate General of Human Rights and Legal Affairs, Council of Europe; Strasbourg, 2008).

<sup>87</sup> *Ibid.*

<sup>88</sup> Speed and Richardson (n 7); Durfee (n 7).

to extend support to the application stage. Where resourcing is an issue, clinics could follow the partnership model, such as between City University London law school and the National Centre for Domestic Violence, where the students conduct a telephone appointment and thereafter prepare the witness statement for court.<sup>89</sup> Without such support, clinics may improve accessibility of protective orders by empowering victims to pursue an order, but fail to arm clients with the skills to increase the prospects of their application being granted.

***(b) Casework/representation***

In appropriate cases, such as where the victim has no other form of support and the supervising solicitor has capacity and sufficiently enthusiastic students, the SLO will conduct casework and representation on behalf of victims in injunction proceedings. Whilst it is the supervising solicitor who will go on the court record as the representative, the students remain the point of contact with the client, conducting research and preparing advice as required, complying with court directions, and assisting the client to collect evidence. It has been recognised that injunction proceedings are well suited to being practised within a clinical setting because proceedings are usually concluded in between one and six months, meaning students can 'typically draft at least one pleading, interview several witnesses, negotiate,

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<sup>89</sup> V. Lachkovic, *McKenzie Friends for Victims of Domestic Violence: Training Law Students to Assist the Court and the Victim* (Paper delivered at the 8<sup>th</sup> Worldwide GAJE Conference, Eskisehir, Turkey, July 2015).

appear in court and potentially conduct a trial all within a single academic period'.<sup>90</sup>

Whilst the workload is likely to be relatively high throughout this period, the students are rewarded by gaining a holistic understanding of the law and the legal process. In turn, they gain more opportunities to develop their case management skills, ability to strategise and experience managing a client relationship than when services are restricted to initial advice.

Injunction proceedings also differ from other types of cases in that they are often started on an ex-parte (i.e., without notice) basis. This provides students an opportunity to exercise their advocacy skills in an uncontested and therefore potentially less challenging environment. Following the ex-parte hearing, research suggests that less than 14% of respondents in injunction proceedings secure representation (based on figures from 2019 and 2020)<sup>91</sup>, meaning that even at the return hearing stage, students are likely to have more understanding of the legal and factual issues in dispute than their opponent. As recognised by Speed et al, injunction applications (at least until they become contested) are usually conducted by junior fee earners and it is in such proceedings that paralegals and trainee solicitors cut their teeth in the courtroom.<sup>92</sup> Accordingly, for those students seeking a career in family law, the opportunity to develop their advocacy skills at such an early stage is useful experience for what is to come. Proceedings for injunctive protection are typically

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<sup>90</sup> Breger and Hughes (n 49), 177.

<sup>91</sup> National Statistics and Family Court Statistics, *Family Court Statistics Quarterly Jan – March 2021* (National Statistics and Family Court Statistics, 2021).

<sup>92</sup> Speed et al (n 40).

heard in judge's chambers within the family court or in the magistrate's court.<sup>93</sup> Whilst prima facie clinical students do not have rights of audience, the Legal Services Act 2007 provides that a person is an exempt person for the purpose of exercising a rights of audience before a court if they are conducting litigation under the supervision of an authorised person (i.e. a qualified solicitor).<sup>94</sup> These rights have subsequently been extended to apply in the family court under the Crime and Courts Act 2013.<sup>95</sup> The provisions do not, however, apply to cases heard in the magistrates court and therefore a students' ability to conduct advocacy will depend on which court the hearing is allocated to. In the author's experience, when faced with the opportunity to conduct advocacy, most students opt to clerk the hearing (i.e., by observing the proceedings and keeping an attendance note of the matters discussed). This is potentially reflective of student demographics in the SLO where most students are prospective solicitors in the third year of their undergraduate studies. The position may, therefore, be different for clinicians supervising prospective barristers or those who undertake a clinical programme as part of a postgraduate programme, who may have more confidence and incentive to develop advocacy skills from this early stage. It is recognised that starting a full representation model is not viable in all clinics, principally due to limitations on resourcing. In contrast to the USA, where full representation domestic abuse clinics are popular, many law school clinics in the UK

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<sup>93</sup> Kelly (n 86).

<sup>94</sup> The Legal Services Act 2007, sch 3 para 1(7).

<sup>95</sup> The Crime and Courts Act 2013, sch 10 part 2 para 98(1).

are poorly resourced.<sup>96</sup> Academics have acknowledged that law is a particularly underfunded subject area due to a misconception that it is a solely classroom-based subject, meaning it attracts the lowest level of per student funding.<sup>97</sup> Funding issues have been exacerbated by cuts to state funding for higher education which have led to increased scrutiny of the resources allocated to clinical activity<sup>98</sup> and more recently, by Covid-19 which has impacted income streams at many institutions, at least in the short term. Resourcing can impact a law school's capacity to conduct injunction proceedings because clinics need to be staffed by solicitors and barristers, whose practising certificates must be renewed each year. Further, staffing resources affect the amount of time that can be dedicated to clinical activities. The LawWorks study identified that 70% of clinical supervision in the UK is provided by members of law school's academic staff.<sup>99</sup> Academic staff typically teach across multiple modules and increasingly have administration and research commitments which may reduce their capacity to develop and lead new clinical offerings. In the author's experience, supervising injunction proceedings can be particularly onerous at the outset where cases are made on an urgent basis, given that cases are usually taken on at the start of the academic year when the students have the least experience. Moreover, only 65% of clinics in the UK currently operate outside of term time.<sup>100</sup> This would preclude the

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<sup>96</sup> Drummond and McKeever (n 67).

<sup>97</sup> J. Marson, A. Wilson and M. Van Hoorebeek, 'The Necessity of Clinical Legal Education in University Law Schools: a UK Perspective' (2005) 7 *International Journal of Clinical Legal Education*, 29-43.

<sup>98</sup> Drummond and McKeever (n 67).

<sup>99</sup> Sandbach and Grimes (n 69).

<sup>100</sup> *Ibid.*

remaining 35% from providing a full representation service, given that cases may operate all year round. From an institutional perspective, however, there are merits in supporting clinicians to deliver ambitious projects, both because students report considering the availability of clinical programmes in deciding where to apply to/attend university and because of the availability of awards which can enhance a university's reputation. Supporting this, Northumbria Law School was awarded the 'Best New Pro Bono Activity' at the LawWorks and Attorney General Student Pro Bono Awards 2018 in recognition of the SLO's work supporting victims of abuse.

From a client perspective, there are clear benefits to providing casework assistance. As Trinder et al recognise, 'much of the work in a family case is conducted before and between hearings rather than in the courtroom itself'.<sup>101</sup> Offering casework can therefore alleviate this pressure on victims at a time when they may be uprooting their lives following the end of an abusive relationship. The important role of casework, however, does not detract from the need for full representation services given that 'the court process is predicated upon a full representation model, and this becomes even more apparent when litigants in person reach the courtroom'.<sup>102</sup> Litigants in person are more likely to participate in hearings at a 'lower intensity' yet make more mistakes.<sup>103</sup> In the context of domestic abuse, representation also has value in preventing victims from being required to present their case in the presence of her

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<sup>101</sup> Trinder et al (n 5), 35.

<sup>102</sup> Ibid, 53.

<sup>103</sup> Moorhead and Sefton (n 42), 255.

perpetrator, which is likely to be distressing notwithstanding the availability of special measures.

Regardless of the scope of support offered by law school clinics, there will always be limitations on such services. The number of victims who can be supported by the SLO, for example, is correlated to the level of support offered, meaning that the two SLO family practitioners who specialise in domestic abuse only have capacity to take on a handful of cases on a full representation basis each year (the exact number will depend on the number of cases which are resolved after the return hearing and the number which are contested). In addition, some cases will be taken on with a more limited retainer. Supervisors may also take on non-domestic abuse cases. If support was provided on an advice-only basis, however, higher numbers could receive *some* assistance. Family court statistics show that there are between 4,500 and 5,500 applications for occupation orders each year (and more than 20,000 applications for non-molestation orders) with between a third and half of applications in any given year being made by litigants in person.<sup>104</sup> As such, the number of victims supported through the clinic is a drop in the ocean compared to the number of victims seeking support, albeit it is anticipated that with the introduction of DAPOs some of these applications may be pursued by VAWG stakeholders (i.e. the police and domestic abuse support services) once DAPOs are introduced. A further limitation concerns

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<sup>104</sup> Figures directly obtained from Ministry of Justice and National Statistics, *Family Court Statistics* (Ministry of Justice) <<https://www.gov.uk/government/collections/family-court-statistics-quarterly>> accessed 23 September 2021.

inter-related proceedings. As highlighted elsewhere by the author, injunction proceedings usually precede other family applications, including divorce and child arrangements.<sup>105</sup> Due to the limitations on capacity, it would be unusual if support could also be provided in interrelated proceedings. As such, victims may find that whilst they benefit from legal representation from the clinic in one set of proceedings, they face no choice but to act as a litigant in person in the other proceedings.

*(c) Policy work*

Covid-19 posed challenges for victims of domestic abuse, with reports that in the first lockdown the frequency and severity of abuse worsened for many victims who remained in a relationship with their abuser.<sup>106</sup> Covid also posed challenges for law school clinics, with clinicians identifying that supervisors had to think creatively and act fast to keep clinical programmes running.<sup>107</sup> Given that there was a marked reduction in the availability of pro bono support for victims in family court proceedings at the early stages of the pandemic<sup>108</sup> the most effective way to support victims seeking protection during this time would arguably have been to continue offering client services remotely. Whilst some clinics have reported setting up remote

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<sup>105</sup> Richardson and Speed (n 8).

<sup>106</sup> Ivandic et al (n 39); Women's Aid, *A Perfect Storm: The Impact of The Covid-19 Pandemic on Domestic Abuse Survivors and the Services Supporting Them* (Women's Aid, August 2020).

<sup>107</sup> A. Thurston and D. Kirsch, 'Clinics in Time of Crisis: Responding to the Covid-19 Outbreak' (2020) 27:4 *The International Journal of Clinical Legal Education*, 179-195.

<sup>108</sup> Speed et al (n 38).

advice-only clinics serving victims of abuse during this period<sup>109</sup> the SLO ultimately did not operate a live-client model during the 2020/21 academic year because of concerns around protecting client data and maintaining confidentiality where students were not able to attend the clinic due to university closures. As a result, Covid-19 presented an opportunity for the SLO family law practitioners to find innovative solutions to supporting victims seeking protection, whilst also meeting the educational aims of the module. In response, a decision was made to undertake a policy project which clinicians may otherwise not have had capacity to supervise due to the amount of time ordinarily dedicated to providing a full representation service. Whilst it is well-documented that in the USA clinics are involved in 'domestic abuse task forces and coordinating councils; engage in legislative reform to address deficiencies in the legal system and in the law; and study the operation of police and courts, making suggestions for improvement' the author is only aware of one other policy project (which was supervised by the author's colleagues Kayliegh Richardson and Rachel Dunn in 2019 and which is not discussed further in this paper) conducted in a clinic in relation to domestic abuse. The author has not been able to find any published case studies from similar projects taking place in the UK, suggesting that policy work in the context of domestic abuse is relatively uncommon.<sup>110</sup>

The project saw 15 clinical students conducting research on behalf of the national charity Surviving Economic Abuse (SEA). The research explored trends in the rates at

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<sup>109</sup> Thurston and Kirsch (n 107).

<sup>110</sup> Goodmark (n 58), 33.

which occupation orders were sought and granted and aimed to identify any barriers victims face to securing protection. SEA was motivated to commission the project because of a perception that their service users' applications for occupation orders were frequently unsuccessful. The clinicians considered that the project could uphold the social justice aims of clinical education due to its focus on the importance of maintaining a robust legal response to domestic abuse and because the project was underpinned by a shared recognition between the clinicians and SEA that 'women who want to invoke the power of the civil and criminal laws should have access to a system that provides a timely, effective and victim-centered response'.<sup>111</sup> Data was collected through an analysis of family court statistics, a questionnaire of professionals who represented or otherwise supported victims through proceedings for injunctive protection and in-depth interviews with victims who had applied for an occupation order. Whilst this project involved a new partnership with an external organisation, it would also be possible for students to undertake legal research in 'an area of concern raised by a client case'.<sup>112</sup> However, working for an external organisation was beneficial in that it appeared to give the students a sense of ownership of the project and accountability in terms of managing tight timescales.

Supporting Dunn et al's findings the project upheld the pedagogic aims of clinical education by allowing the students to undertake a wide range of activities on behalf of their client including 'conducting a literature review of the relevant area of law to

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<sup>111</sup> Ibid.

<sup>112</sup> Dunn et al (n 72), 72.

explore the background and to appreciate the importance of the research', 'analysing the data collected to gain the experience of working with raw data and deciding how to code that data in order to report on their findings' and 'writing up their research findings in an evaluation report for their client which includes recommendations for law and/or policy reform'.<sup>113</sup> In common with the advice and representation models considered above, engaging in policy work allowed the students to develop the skills assessed in most clinical modules, including teamwork, research skills, written communication, critical analysis, the ability to strategise, knowledge and understanding of the law and reflection skills. The project also facilitated the students to develop skills that they otherwise might not have. In contrast to live client work, for example, which only requires students to consider how the present legal position impacts a client, the policy project required the students to examine the law in its context and analyse the impact of past and forthcoming changes to the legal landscape including LASPO, Covid-19 and the Domestic Abuse Act 2021. Moreover, participating in the project gave the students an opportunity to develop 'first-hand experience of the crucial role a lawyer can play in recommending and influencing law reform for the greater public good'.<sup>114</sup> This supports the idea that policy work in the field of domestic abuse can bring together scholarship and activism, when these worlds may ordinarily be quite separate.<sup>115</sup> The data analysed by the students

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<sup>113</sup> Ibid, 73.

<sup>114</sup> Ibid, 77.

<sup>115</sup> E. Schneider, 'Violence against Women and Legal Education: An Essay for Mary Joe Frug' (1992) 26 *New England Law Review*, 843-875.

highlighted clear deficiencies in the law including that the strict threshold criteria is difficult for victims to satisfy, that the courts are hesitant to grant victims extensive protection over the family home and that barriers to securing orders particularly impact litigants in person. These findings make a significant and original contribution to the existing knowledge in this area, suggesting that policy work conducted in clinics can be 'an essential part of the dedicated working on behalf of women subjected to abuse'.<sup>116</sup>

A limitation of the project from a student perspective, however, was that due to the participants involving potentially vulnerable subjects, ethical approval was refused for the students to conduct interviews with the victims. As such, this restricted their involvement in some parts of the project and placed an increased workload on the supervising solicitors. This decision is somewhat at odds with the fact in the ordinary course of the module, the students would have been able to conduct fact-find and advice appointments with victims as part of a live client case. A further limitation was that as the students were not also running a live client case in conjunction with their policy work, there were some gaps in the students' practical experience of the law, meaning they were not always able to appreciate the 'symbiosis between individual representation and policy work'.<sup>117</sup> This suggests that there would be value in engaging in hybrid policy/live client model, as discussed by Dunn et al.<sup>118</sup>

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<sup>116</sup> Dunn et al (n 72).

<sup>117</sup> Goodmark (n 58), 33.

<sup>118</sup> Dunn et al (n 72).

In terms of the benefit to victims of domestic abuse, policy work has the potential to make a difference to greater numbers than live client work. In contrast to advice services, the policy work undertaken for this project could not lead to a reduction the numbers of unrepresented litigants. However, insofar as the recommendations made within the report are taken on board, it could contribute to improvements in the court process. As such, it offers a qualitatively different form of support for victims. Effecting change through policy research is not, however, a guaranteed outcome and whether the recommendations are reviewed by the appropriate bodies and thereafter acted upon will ultimately depend on the channels through which the work is disseminated, the connections between the clinic and/or underlying client and law reformers and the quality of the research. This is something which clinicians involved in policy work must consider at the outset of a project to maximise the prospects of the work achieving its goals. Given that our policy work for SEA only concluded in May 2021, it is potentially too soon to see what, if any, impact the work will have. A further benefit to victims may result from engaging in policy research as a research participant. Many of the victims who were interviewed as part of the study with SEA volunteered that their rationale for participating was to improve the family court process and the effectiveness of remedies for other victims, often because of their own difficult experience. Studies also suggest that participating in research around

domestic abuse and ‘sharing their story’ is a key component of ‘thrivership’ for victims – the transition from surviving to thriving after domestic abuse.<sup>119</sup>

***(d) Public legal education: developing the capacity of others to assist victims***

It is well documented that specialist domestic abuse organisations offer advocacy services to support victims throughout legal proceedings.<sup>120</sup> Research suggests that in contrast to other pro bono organisations, support services often engage in more extensive levels of casework, including assisting women to identify their legal needs, prepare and file court paperwork, comply with court directions, and attending hearings in a supportive capacity.<sup>121</sup> Whilst it is promising that such support is available to victims, it is nonetheless concerning that research has identified that some support workers lack a sufficient working understanding of the law and this compromises the quality of information provided to service users.<sup>122</sup> This is particularly worrying in light of the introduction of DAPOs which may permit support workers to make applications for protection on behalf of victims.<sup>123</sup> The data

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<sup>119</sup> I. Heywood, D. Sammut and C. Bradbury-Jones, ‘A Qualitative Exploration of ‘Thrivership’ Among Women who have Experienced Domestic Violence and Abuse: Development of a New Model’ (2019) 19:106 *BMC Women’s Health*, 1-15.

<sup>120</sup> Speed (n 30); Kelly (n 86).

<sup>121</sup> Speed (n 30).

<sup>122</sup> *Ibid.*

<sup>123</sup> The Domestic Abuse Bill Delegated Powers Memorandum suggests that the third parties who might be specified by the Secretary of State as capable of applying for DAPOs without prior permission of the court include ‘local authorities, probation service providers, *specialist domestic abuse advisers* and specialist non-statutory support services (for example, *refuge support staff*). See Home Office, Ministry of Justice and Ministry of Housing, Communities and Local Government, *Domestic Abuse Bill: Delegated Powers Memorandum* (Home Office, 2021), para 24.

therefore identifies a need for better training for IDVAs and support workers to improve the quality of support for victims in family court proceedings. Alongside this, there is a recognised need for legally accurate, accessible, and up-to-date materials for litigants in person themselves.<sup>124</sup>

Drawing on these findings, the family clinicians in the SLO held discussions with a local women's organisation to identify their (and their service users') legal needs and consider how these could be met. Three needs were identified (1) training for IDVAs/support workers about the options available for victims of domestic abuse to pursue a civil claim for compensation against their perpetrator (2) training for IDVAs/support workers about preparing an effective application for protective injunctions and (3) written factsheets for victims of domestic abuse about the process of applying for a non-molestation order or occupation order which could be distributed to service users from the women's organisation. Whilst in this case there was an existing relationship between the clinicians and the support service, given that research supports a need for training within these organisations and the fact that third sector organisations often do not have the budget to pay for such training, there would be merit in developing new relationships to achieve this purpose. Alternatively, given that only 38% of the participants to the Civil and Social Justice Panel Survey claimed to understand their rights in the case of domestic abuse, there would also be value in

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<sup>124</sup> Trinder et al (n 5).

clinical students offering training directly to women's groups about their legal options.<sup>125</sup>

This project is currently ongoing and therefore the benefits and limitations of this model are still being experienced. To date, the students have prepared and delivered a training session on civil claims for compensation and the factsheets are being finalised. It is anticipated that training on preparing effective applications for protective injunctions will take place in the next academic year, which will likely coincide with the introduction of DAPOs. Given that this work does not attract strict deadlines, the benefit of public legal education activities is that they can be delivered at any point in the academic calendar, either as a standalone project or to bolster other clinical activities. Further, whilst the materials need to be approved by a clinician with a good knowledge and understanding of the law, this does not necessarily need to be a qualified practitioner. From a student perspective, public legal education activities allow students to work on behalf of VAWG stakeholders who operate outside a legal setting. This is particularly valuable for those students who may be interested in pursuing a career in domestic abuse work but who do not wish to qualify as a solicitor. For those who do wish to have a career in law, it is common for junior practitioners to deliver Continuing Professional Development training to external organisation and

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<sup>125</sup> Reported in L. Wintersteiger, *Legal Needs, Legal Capability and the Role of Public Legal Education: A Report by Law for Life, The Foundation for Public Legal Education* (Law for Life and the Legal Education Foundation).

therefore such activities are reflective of work the students may be expected to undertake from an early stage in their career.

The support service has provided feedback that the training which has been delivered to date has improved the knowledge of support workers and increased their capacity and confidence to support women in these claims. Further, following Durfee's findings, it is anticipated that improving support workers' ability to prepare an effective court application may improve victims' prospects of securing protection.<sup>126</sup>

In relation to the factsheets, it is recognised that the provision of informative materials is not an adequate substitute for tailored legal advice and that 'the support needs of litigants in person will not be met solely by relying upon written or online materials'.<sup>127</sup> Further, such materials are unlikely to assist litigants who experience language and/or literacy difficulties. This suggests that the provision of written materials may be most effective when used in conjunction with other models outlined above, such as where clients receive tailored one-off advice about their case and are able to discuss some of the information contained in a factsheet. Whilst invariably such an approach will not be possible in all cases, it would address concerns raised by academics that some litigants in person also need to have the opportunity to have verbal explanations or face-to-face support and that the effective use of written

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<sup>126</sup> Durfee (n 7).

<sup>127</sup> Trinder et al (n 5), 108.

materials is also 'dependent upon a baseline level of legal knowledge and understanding'.<sup>128</sup>

Nonetheless, the use of written resources is not redundant. By providing information about the process of applying for a protective injunction written directly for a litigant in person audience, the factsheets will go some way to help address the 'overwhelming need for more and better information for litigants in person at every stage of the court process'.<sup>129</sup> Further, given many litigants in person take a 'reactive or passive approach to help-seeking'<sup>130</sup> it is hoped that making the resources available at a venue where they may be attending for other therapeutic services (i.e., the women's organisation) will assist their accessibility. Preparing the materials as part of a clinical module can also provide some assurance about the quality of information. This can be achieved by including the university/clinic logo and, if applicable, a statement indicating that the information has been reviewed by a qualified practitioner.

### *A note on models of dispute resolution outside the formal justice system*

Academics have observed that 'from their inception, clinics recognised that there are women for whom the legal system provides no benefit and, in fact, can be harmful'.<sup>131</sup>

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<sup>128</sup> Moorhead and Sefton (n 42), 257; Trinder et al (n 5), 108.

<sup>129</sup> Trinder et al (n 5), 105.

<sup>130</sup> Ibid, 106.

<sup>131</sup> Goodmark (n 58), 33.

Some scholars have therefore queried whether clinics can play a role in supporting victims of domestic abuse to resolve their disputes away from the formal justice system. Goodmark, for example, notes that 'few clinics restrict themselves to litigating within the criminal or civil justice systems; most domestic violence clinics seek other forms of justice for their clients'.<sup>132</sup> She argues that in comparison to practitioners and advocates in the VAWG movement, law students are not 'entrenched in the position that interventions like mediation are unsafe and, therefore, unsuitable for women subjected to abuse' and are better able to think creatively to find innovative solutions for women.<sup>133</sup> Further, she posits that to develop responses to domestic abuse, clinics could 'test and assess' what role models of dispute resolution such as mediation, victim-offender dialogue and restorative justice could play in domestic violence cases 'before attempts are made to implement such schemas more broadly'.<sup>134</sup>

None of the models pursued at Northumbria University involve supporting women to seek protection through routes outside of the formal justice system. Whilst elsewhere the author has weighed up the potential merits of victims of domestic abuse entering into alternative dispute resolution in financial and children matters<sup>135</sup> these approaches are simply untenable for victims seeking protection, where an order of the court is required to obtain legally enforceable protection. Research consistently

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<sup>132</sup> Ibid, 46.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> A. Speed, 'Just-ish? An Analysis of Routes to Justice in Family Law Disputes in England and Wales' (2020) 52:3 *The Journal of Legal Pluralism and Unofficial Law*, 276-307.

demonstrates that the threat of criminal action is a powerful means of securing compliance with an injunction, a finding which has led to breach of non-molestation orders and forthcoming DAPOs becoming a criminal offence.<sup>136</sup> Accordingly, supporting a victim to secure an agreement which has no legal standing through alternative dispute resolution would be a disservice to victims by leaving them with substantially weaker protection than is available through the courts.

In relation to other family law disputes where domestic abuse is or has been prevalent, it remains the case that alternative dispute resolution is still widely discouraged in England and Wales. The Domestic Abuse Guidelines for Prosecutors<sup>137</sup> and the ACPO Guidance on Restorative Justice<sup>138</sup>, for example, provide that police policy does not support the use of restorative justice for domestic abuse in intimate partner cases due to the complex and protracted nature of domestic abuse offences. Likewise, the Family Procedure Rules 2010 seek to remove obstacles to victims accessing the courts, by providing an exemption for victims of domestic abuse (and those needing to issue proceedings urgently) to attend a preliminary Mediation Information and Assessment Meeting (MIAM) prior to starting court proceedings.<sup>139</sup> In relation to victims who do not receive legal aid, court proceedings also remain a more cost-effective means of securing protection given that there is no court fee to apply for a protective injunction

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<sup>136</sup> Bates and Hester (n 11).

<sup>137</sup> Crown Prosecution Service (CPS), *Domestic Abuse Guidelines for Prosecutors* (CPS; 29 September 2021).

<sup>138</sup> Association of Chief Police Officers (ACPO), *Restorative Justice Guidance and Minimum Standards* (2011).

<sup>139</sup> Family Procedure Rules 2010, rule 3.8.

and litigants in person will not incur any costs of representation. This can be contrasted to mediation where the charge (outside a clinical setting) is around £140 per hour.<sup>140</sup> Accordingly, whilst in other practice areas clinicians have recognised the need to reform clinical education to account for the fact that ‘litigation is no longer the default model of resolution of legal disputes’<sup>141</sup> facilitating alternative dispute resolution with victims of domestic abuse in a clinical setting could give students a misleading impression of practice, which is counterintuitive to the educational aims of clinical education. It is recognised that outside a clinical setting, LASPO has resulted in both a decline in the overall number of family law cases being mediated<sup>142</sup> and an increase in cases being mediated which exhibit ‘higher conflict levels and/or more complex problems such as... where there are significant power imbalances between the parties’, because of pressures on mediators not to screen out cases.<sup>143</sup> Barlow notes that by ‘withdrawing legal aid for (prior) legal advice (as well as representation at court) and making mediation the only legally aided out of court dispute resolution option, those who could not pay were effectively given the stark choice of mediating an agreement or representing themselves in court’.<sup>144</sup> She therefore describes that mediation was ‘likely to become a Hobson’s choice for many, a constraint which in

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<sup>140</sup> Family Mediation Council, *Family Mediation Council Survey Results* (FMC; 2019).

<sup>141</sup> K. Tokarz and A. Appell, ‘Introduction: New Directions in ADR and Clinical Legal Education’ (2010) 34 *Washington University Journal of Law and Policy*, 1-9; K. Emery, ‘Assisting Indigent Families in Conflict: A Pro Bono Test Drive for a Family Alternative Dispute Resolution (ADR) Clinic’ (2010) *Washington University Journal of Law and Policy*, 239-259.

<sup>142</sup> A. Barlow, ‘Rising to the Post-LASPSO Challenge: How Should Mediation Respond?’ (2017) 39:2 *Journal of Social Welfare and Family Law*, 203-222.

<sup>143</sup> *Ibid*, 205.

<sup>144</sup> *Ibid*, 204.

itself often militates against a successful mediated outcome'.<sup>145</sup> Accordingly, it is suggested that the use of mediation within the current landscape is not indicative of a progressive or creative approach to supporting victims, but is instead the product of a family justice system at breaking point where desperate attempts are being made to divert cases elsewhere.<sup>146</sup>

## **CONCLUDING THOUGHTS**

By examining the various models through which the SLO supports victims of domestic abuse, this paper has sought to highlight how clinical legal education can be an effective tool for improving the accessibility of protection orders. The analysis demonstrates that whilst the number of law school clinics offering domestic abuse services is still low, such services can be incorporated into most clinical settings, whether through more resource intensive models like case work and policy projects or in less onerous models such as public legal education activities. Further, the analysis suggests that the impact of clinical activities in improving the accessibility of protective orders can be evidenced in various ways, including through a reduction in the numbers of litigants in person in applications for protection (even if not in a way that is statistically significant), in building the capacity of others to support victims in proceedings (and with the introduction of DAPOs, to potentially make applications

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<sup>145</sup> *Ibid*, 205.

<sup>146</sup> Speed (n 135).

on their behalf) and in making evidenced-based proposals to make the legal process for securing protection more victim-focussed. Just as significantly, however, the literature also suggests that by exposing clinical students to domestic abuse work at an early stage in their career, future practitioners will enter practice with a strong understanding about the dynamics of domestic abuse and a commitment to supporting clients in a way that is client-centered and trauma-informed. These findings, it is argued, provide a compelling case for practitioners to consider extending their clinical offering and develop the presence of domestic abuse in clinics in the UK.