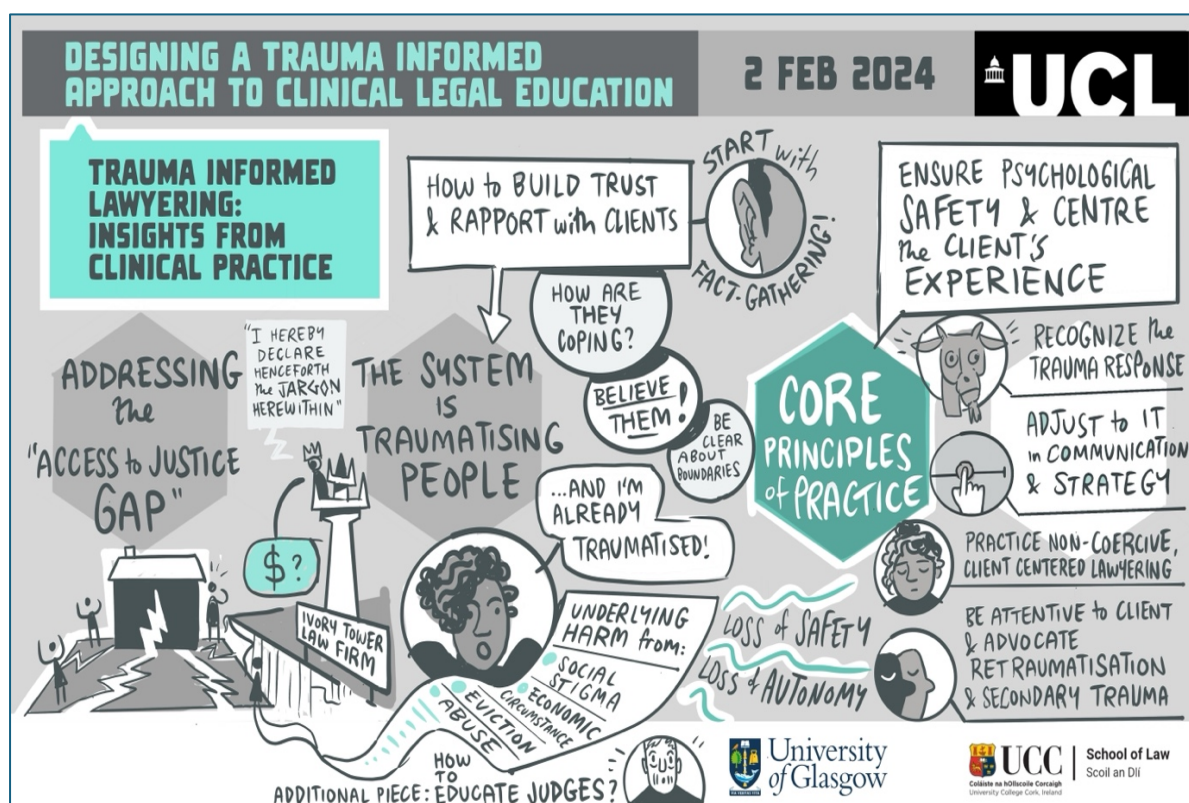


DESIGNING A TRAUMA-INFORMED APPROACH TO CLINICAL LEGAL EDUCATION

WORKSHOP REPORT
FEBRUARY 2024



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We are excited by the opportunities for connection and exchange presented by the TiCLE network. We hope that this report might help lay the foundations for better understanding the questions we should ask to better equip ourselves, and our students, for trauma-informed clinical legal education both now and in future.

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Co-Convenors, Trauma-Informed Clinical Legal Education Network

Executive Summary

This report summarises the presentations and discussion at a workshop entitled *Designing a Trauma-Informed Approach to Clinical Legal Education*, which took place on 2nd February 2024, at University College London. The TiCLE Network is a collaborative initiative between the UCL Centre for Access to Justice at UCL Faculty of Laws, the School of Law at University College Cork, and the Glasgow Open Justice Centre at the University of Glasgow. The inaugural workshop of the network convened experts to support the development of a framework for implementing a trauma-informed methodology in clinical legal education. To this end, the agenda included five main sessions focused on the specified objective, complemented by four breakout sessions addressing key thematic areas.

This report aims to offer a general overview of the discussions at the workshop. Participants included representatives from legal practice and the not-for-profit sector across discrete areas (children's rights; equality and discrimination; sexual and domestic violence; immigration and asylum) as well as clinical legal educators from institutions in the UK, Ireland and the US. Observations and perspectives from discussions following each of the presentations are reported following Chatham House Rule. Any errors or omissions are those of the authors.

Below we summarise the key lessons and insights from the workshop:

Trauma is an ill-defined term and is experienced differently depending on wide ranging factors: trauma refers to an emotional response to circumstances, an event or set of events which can be deemed harmful or life threatening. It is critically important to recognise the subjective nature of trauma, as well as the contested nature of trauma in some scientific domains. Importantly, the same experience might affect individuals differently depending on, for example, low levels of social or emotional support, previous experiences of childhood trauma or pre-existing mental health conditions.

Clients in law school clinics may have experienced high levels of trauma and stress from repeated failed attempts to access justice: it is important to recognise that the legal system itself can create trauma. This impacts on the way in which clients engage with lawyers and can make it more difficult to establish trust.

Law school clinics present a highly unique environment and clinical legal educators should be properly trained in trauma informed lawyering approaches: clinical legal educators need to manage their own trauma and / or vicarious trauma (and that of their team), as well as being mindful and supportive of students. Most law students are young or just entering adulthood and there has been a significant increase in mental health issues faced by young people in recent years. A certain level of competence and training is needed for supervising lawyers to work in this environment; and be able to in turn train law students to identify and respond to the impacts of trauma.

To become trauma-informed takes time and collective effort in institutions such as law schools: being trauma-informed is a staged process, which requires commitment and investment from relevant leadership. Research shows that organisations need to typically work through four levels of being trauma aware, trauma sensitive, trauma responsive and finally trauma informed. As part of this process, it is critical to learn to identify when specialist psychological interventions and expertise might be needed.

A trauma-informed lawyer-client relationship should aim to uphold core principles of trauma informed practice: the six principles of trauma-informed practice (safety, trustworthiness, choice, collaboration, empowerment and cultural consideration) should underpin the lawyer-client relationship. For example, this includes recognising the trauma response of the client; advice and representation strategies; adopting non-coercive and client-centred lawyering practices; and being attentive to the risk of re-traumatisation and secondary trauma. It is also the primary responsibility of the lawyer to be flexible, foster client empowerment and create as much trust as possible within the lawyer-client relationship.

It is important to recognise the collective impacts of cultural, systemic and historical trauma: these impacts can be disproportionately experienced by groups of people, for example, related to race, ethnicity and culture. Lawyers should think carefully about their approach to collective trauma and adjust their communication style to be sensitive to the needs of different communities.

In applying the principles of trauma-informed practice, clinical legal educators and law students should recognise the importance of adjusting their communication style: taking a flexible approach that anticipates the diversity of trauma responses is key. Against this background, it is important to be clear, empathetic, not over promise and set boundaries in relation to advice and representation.

Clinical legal educators must give thought to how to build resilience, minimise vicarious trauma and burnout in students: students should be trained to recognise and respond to trauma. It is critical to take an individualised approach, which recognises the experiences of students themselves which might relate to traumatic elements of casework. Having one-to-one reflective conversations, regular check ins, available counselling and opportunities to collectively share perspectives on clinical experience (e.g. through storytelling or reflective writing) can limit vicarious trauma. Creating safe spaces and opportunities for self-care will help to minimise burnout.

Trauma-informed lawyering must take account of the wider context in which advice and legal representation is provided: this includes addressing practical issues such as the way in which trauma might affect client punctuality and demeanour. Attention should also be given to physical environment to ensure it is welcoming and any sense of threat is minimised. For example, carefully considering the position of furniture, available exits, open/closed doors, signage and the general accessibility of the waiting room.

Some law school clinics may need to design and implement specific approaches due to the discrete needs of different client groups: the workshop identified the bespoke needs of those clinics working in areas including children and young people; immigration and asylum; equality and discrimination; and sexual and domestic violence.

Law schools should encourage clinical legal educators to foster opportunities for reflection and sharing of best trauma-informed practice at all levels and with the support of appropriate experts: even in resource constrained times it is critical that institutions provide support for the development of trauma-informed approaches given the nature of the work of law school clinics. This includes opportunities to share learning and develop strategies for best practice across different areas of law. Working across disciplines with colleagues in psychology, public health, social work and education will help to better equip clinical legal educators and students with appropriate skills needed for effective trauma-informed practice.

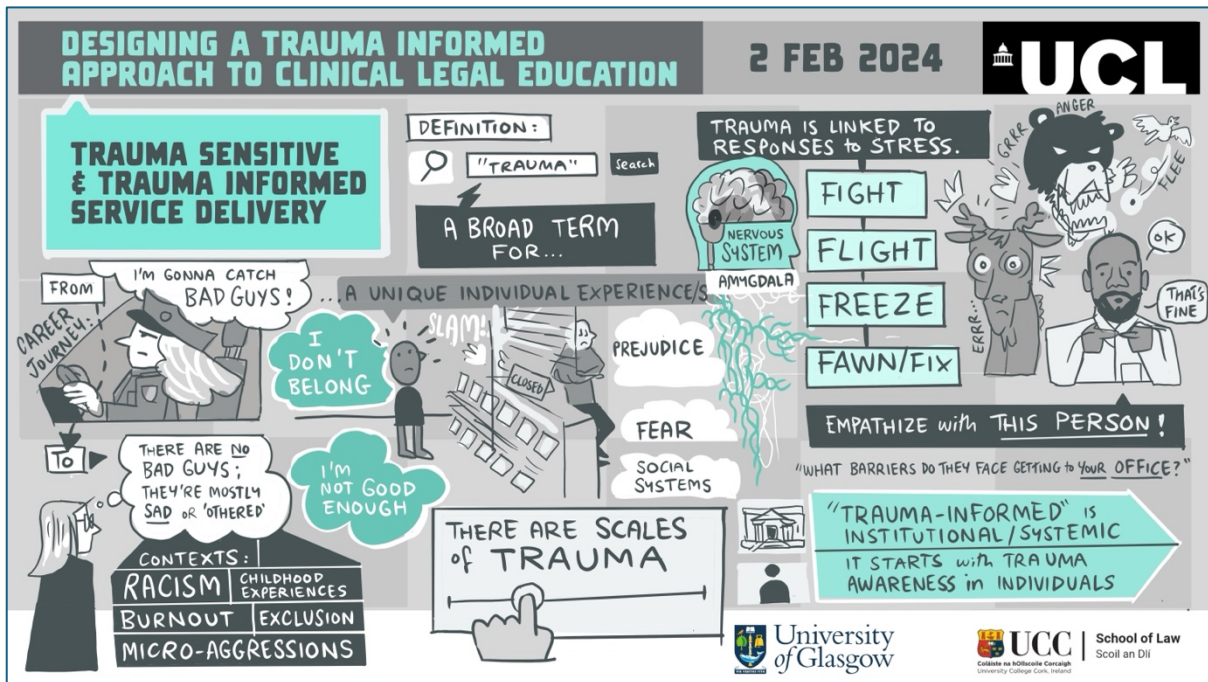
Next Steps

We propose the following next steps for consideration:

- Developing a database of clinical legal educators who wish to become members of the TiCLE Network.
- Scoping together with members the terms of reference, priorities and activities for the Network to maximise opportunities for learning and reflection.
- Appointing an expert consultant in psychological trauma to provide training, supervision and action learning support to members of the Network.
- Relying on the expertise of the consultant, refine a best practice framework for trauma-informed clinical legal education in the UK and Ireland.
- Considering opportunities for funding to provide administrative, research and consultative support to the development of the network in future.

Trauma Sensitive and Trauma Informed Service Delivery

Presented by Dr Sharon Lambert



Introduction

Lambert pointed out that during her career, young people were prevented from receiving entitlements, or accessing services, and were therefore deemed not to have fulfilled their potential. However, the blame for the struggle with engagement and use of services frequently fell upon the young people themselves and not on the failure of service-providers. Even in the case where services are available, they fail to understand the neurobiological impacts of stress and trauma, how it impacts thinking and behaviour, and other factors in developmental psychology such as adolescent brain development, particularly around understanding consequences and risk. These impacts can vary across social class, gender and ethnicity. Stereotypes on certain ethnicities still played a part in delivering services and as much as it has an impact on the child, it will create a fear of rejection in the adults too. Lambert suggested that in working with children and young people, even the smallest of changes in service provision has the capacity to make significant improvements in their lives.

Psychological Trauma

Psychological trauma does not have any universally agreed definition. **Perspectives on what psychological trauma are subjective to a person and their context**

and based on unique, individual experiences. While there are well accepted examples, such as the experience of abuse or war, other traumas in life, such as poverty, racism and discrimination, can often be ignored.

For example, let us consider the case of a Traveller child who is in a waiting room and is shunned by another child who refuses to play with them. At that point in time, the Traveller child would not know what resulted in said behaviour of the other child or whether they have done anything wrong. They will go on to experiencing similar circumstances at school or work. This incident, or the accumulation of such incidents, maybe experienced as a toxic stressor and has the potential to continue to impact them throughout their life. When it comes to the point where they need to access services, the services available are frequently not very welcoming or supportive. As a result, this child may grow into an adult with repeated experience of rejection which may impact upon emotional regulation.

Definition of Trauma

The most frequently referenced trauma scale contains a ten-item scale, this assesses exposure to trauma during childhood.¹ In Lambert's view, the problem with these forms of scales is that often they attribute all adversity to the family home. There is often a failure to consider that government policies keep people in poverty or poor housing conditions, lack of mental health services, and therefore overlook the reasons why people struggle in their own homes.

Lambert highlighted that there are currently about twenty-seven different trauma scales, yet none can capture all forms of trauma since trauma, as elaborated earlier, is inherently an individual and subjective matter. Take, for example, Covid-19 lockdowns— may be a new type of trauma that affects some people positively and others negatively. Thus, no single scale can represent it all.

Race-Based Traumatic Stress

Race-based traumatic stress (RBTS) refers to the traumatic nature of racism and discrimination and can be experienced even if a person is not a direct target. symptoms of RBTS like those of post-traumatic stress disorder.

By way of example, Lambert discussed the recent acid attack in London. In these attacks, the offenders were known to the victims. Despite this, the media heavily

¹ See e.g. P Schnurr et al, 'Trauma in the Lives of Older Men: Findings from the Normative Aging Study' (2002) 8 *Journal of Clinical Geropsychology*, 175-187.

reported on the ethnicity of the victims and their asylum application history. It was only at the end of the media reporting that it was divulged that the offenders were known to the victims, thus clouding the pertinent issue of gender-based violence. Another common example is how experiences of microaggression are minimised, so those who experience race-based trauma are left unheard.

A person who experiences trauma will go into a “fight, flight, freeze, fawn/fix” response. Due to the diversity in reactions and their basis in stress, it is important not to frame reactions to services negatively. For instance, **it should not be framed as "Person X does not want our services," but rather "Person X is struggling to access our services; what can we do to change this?"**. People who go through the fawn or fix response may have experienced coercive control and, because of this, when advice is given, they tend to accept it outright, as they may struggle to advocate for themselves.

Impact of Trauma

Lambert referred to a comparison of studies conducted on young people in the criminal justice system in Ireland.² The data show that young people have the same trauma profile as an adult in homelessness. As many as 74% of the group have lost a parent, 52% showed emotional neglect, 34% indicated physical neglect and 63% have undergone four or more instances of adverse childhood experiences. The trauma profiles of the young people were significantly higher than those in the general public. The research suggests that the higher the number of adverse childhood experiences, the greater the number of adverse effects. Higher adverse experiences may result in chronic illnesses, homelessness, domestic violence, depression, suicide attempts and substance dependence.³

A different set of data shows that women who are in contact with probation services are 3.6 times more likely to have grown up in households with domestic violence, three times more likely to have grown up in a household that had someone with a mental health illness, and 2.5-6 times more likely to have experienced childhood sexual abuse.⁴

These individuals are more likely to report thoughts about suicide, report being incarcerated, and having a range of psychological diagnoses. In this discussion, Lambert also discussed how some of the systems designed to help, may in fact cause

² A Dermody, *et al.*, ‘An Exploration of Early Life Trauma and its Implications for Garda Youth Diversion Services’ (Quality Matters, 2020) 36.

³ *ibid* 12.

⁴ *Supra* n.2

harm. For example, some psychological diagnosis create social exclusion rather than inclusion. An example provided was borderline personality disorder, a stigmatised diagnosis, where the prevalence of trauma is very high, a trauma diagnosis is less stigmatising. Lambert observes that children have not been given proper access to the services that are necessary to make them feel well sometimes because of diagnosis such as oppositional defiant disorder.

With people who have experienced high levels of trauma there can be challenges with accessing and trusting services. **The higher the level of trauma, the more time needed for treatment.**

Potential Impact on Lawyers

Trauma can similarly affect lawyers who deal with related matters, and this can occur at different stages. **Compassion fatigue is real: it can happen on different days and in various ways. However, if it occurs every single day, it could lead to burnout and secondary traumatic stress.** Unfortunately, lawyers frequently struggle to address this stress and this can have adverse impacts both on them as individuals and within the systems and institutions in which they work.

[A Trauma-Informed System](#)

In a trauma-informed system, the entire system must be trauma-informed. It does not refer to one person being trauma-informed but to the entire entity or organisation. However, it is not an easy task for an entire organisation to become trauma-informed; this process will take a minimum of three to five years. Organisations can consider this as a staged process, conduct an organisational self-assessment, identify needs and develop a timeline to implement, record and report on developments.

In creating a trauma-informed system, a specific pattern of progress must be followed. **Firstly, the system must become trauma-aware, secondly trauma-sensitive and thirdly, trauma-responsive.** According to Lambert, this is not an end point, systems must regularly evaluate and adapt to any emerging needs, paying attention to reports made in complaint processes, as an example, can help to identify gaps in the service.

Responding to Trauma

Lambert suggested a few key aspects that need to be considered if a comprehensive response is to be given to an individual impacted by trauma. At the minimum, it is necessary for every service to be trauma-aware. It is important to start by assuming that you know nothing. **Collaboration with impact groups and engaging in reflective practices are essential. It is also vital that the people seeking services are treated with respect and empowered by the end of the experience.**

If a system is truly trauma-informed, both the people who seek the services and those who provide the services will have a different experience. A major part of it also depends on how service providers behave, interact with others, and even the physical structure of the building itself. In simpler terms, this covers the disciplinary culture of an organization. For example, factors such as the space given for people to sit, the number of people they encounter before actually reaching the service provider, the nature of the security and how they treat people, and the actual journey to the organization matter.

Open Discussion

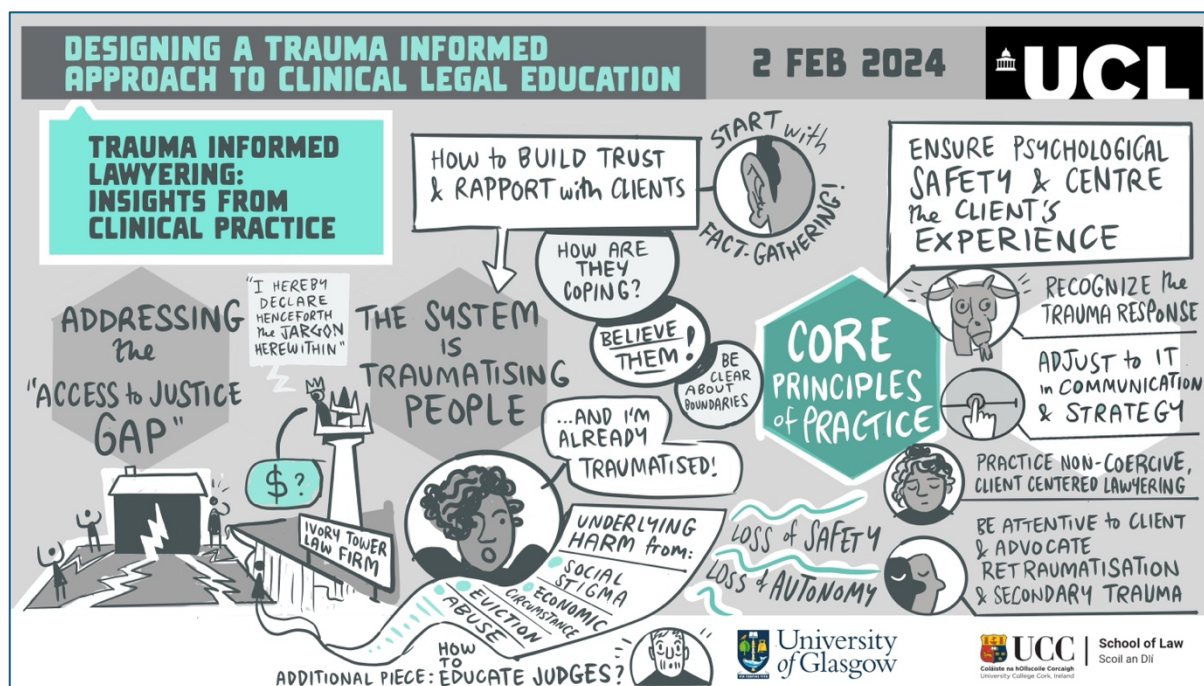
During this part of the workshop, Lambert responded to a few questions and ideas raised by the participants. The first question was how might students in a clinic be safeguarded against distressed clients? Lambert said that ideally, there should be no closed doors because closed doors can trigger a stress response. **Students should not be left on their own and reflective practice is key.** Students will have a variety of individual experiences, including some trauma experiences, not all students will be impacted the same. Thus, it might help to encourage students to attend counselling, and the students should only attend to services that are within their level of competency.

The second question posed inquired whether it might be helpful to sometimes refer to an experience as a “difficult experience” rather than referring to all difficult experiences as trauma. It was also questioned whether one can be too quick to say that something is racist and not a trauma. Lambert began her response by stating that racism is indeed a trauma and that **it is important to bear in mind that trauma is unique, its effects can be cumulative, and it can be triggered by a minor event.** For those who have experienced trauma or stress, things can seem more dangerous than they might to another person. This indicates that while it is an individual experience, it is nonetheless relevant to what has happened before.

The importance of considering the application of the well accepted six principles of trauma-informed practice was also noted (safety, trustworthiness, choice, collaboration, empowerment, and cultural consideration).⁵ It was accepted that further work is needed in the UK context to understand how the principles apply to different aspects of clinical legal education (i.e. with educators, students, clients).

Trauma Informed Lawyering: Insights from Clinical Practice

Presented by Julia Devanthery



Introduction

The Harvard Legal Services Centre was established in 1979. It is community-based and easily accessible to those who need its services. It provides enhanced legal services for low-income groups in Boston while, on the other hand, improving the skills of legal judgement, litigation skills and developing professional identity of students. The centre aims to address the access-to-justice gap between those who need legal services and the legal profession, which is usually available only to those with means.

The building consists of six different clinics related to housing, family law, consumer rights, tax, veterans' rights, and LGBTQ+ rights. The main aim of the clinic is to disrupt unfair practices of dispossessing people because of the cost of housing in

⁵ UK Government, Working Definition of Trauma-Informed Practice: Key Principles of Trauma-Informed Practice (UK Government Office for Health Improvement and Disparities, November 2022).

Boston and the inadequacy of housing provision. Devanathéry highlighted that through this work, female clients were seen to face dispossession due to gender-based violence. As a result, the ‘Housing Justice for Survivors Project’ was established.

The Impact of Trauma on the Lawyer-Client Relationship

Establishing the Lawyer-Client Relationship

Trust is a difficult element to establish because many clients have relationships that have led to issues concerning their safety and care. For example, an individual who has been subjected to domestic violence may have difficulty trusting a new person. **Clients may have experienced alienation from different parts of the legal system and social services. This means that individuals enter a lawyer-client relationship with stress from previous experiences.**

The legal system may not necessarily remedy the underlying harm and, in some cases, may result in more harm. As legal professionals, it is important to acknowledge this reality. While legal professionals can perform to the best of their ability to secure a win for their client, **a win does not necessarily mean that the underlying harm has been addressed; vindication in the form of a win does not necessarily negate the trauma.**

Trauma alone is an individual experience, and one cannot presume how another would feel under traumatic circumstances. Many outcomes depend on the situation. **It is important to be flexible and understand that if a traumatic history is present, building a lawyer-client relationship may not follow a linear path.** Clients with trauma can experience memory challenges, triggers, avoidance, shame, and fear, employ different coping mechanisms, or have varying physical and psychological needs. Consequently, the trauma may be present in a generalised fashion or it could appear when it is triggered by something within the lawyer-client relationship, such as during a consultation or while revisiting documents in front of strangers. Hence, **it becomes the primary responsibility of the lawyer to be flexible and attempt to create as much trust as possible within the lawyer-client relationship.**

Core Principles of a Trauma-Informed Practice⁶

There are some core values that can be followed to support a trauma-informed lawyer-client relationship. The foundation is to ensure that **psychological and**

⁶ JHerman, *Trauma and Recovery: The Aftermath of Violence – From Domestic Abuse to Political Terror* (Basic Books, 2022).

physical safety restores the sense of power and autonomy to the client. It implies that the relationship is centred around the client's empowerment and ensures the client's self-determination. As a result, the client becomes the person who makes decisions within this relationship, and the lawyer should not at any point substitute the client's decisions with their professional judgment. The core principles that stem from this position are as follows:⁷

1. Recognising the Trauma Response of the Client

Recognising the trauma response of the client is important so that lawyers are familiar with trauma related behaviours and would not presume that the client is being oppositional to the relationship or does not care about the lawyer or the lawyer's opinions. For example, behaviours such as missed appointments, not returning calls, or not caring for the case can be interpreted negatively. To ensure this does not happen, lawyers need to shift the way they think about those behaviours and consider them to be part of a trauma response.

2. Adjusting to the Trauma Response in both Communication and Litigation Strategy

Due to the varying trauma experiences of different clients, a one-size-fits-all mechanism towards litigation and communication would not be successful. For example, if the client's story is likely to be fragmented for the judge, the lawyer needs to rethink ways to work around the client's trauma response. The lawyer therefore needs to be flexible about case strategies adopted.

3. Practicing Non-Coercive, Client-Centred Lawyering

The relationship should be one where the client is in control, even if this means that the work will take longer. Restoring self-determination and autonomy within the relationship comes as an important part of unwinding traumatic experiences.

4. Being Attentive to Potential for Client and Lawyer Re-Traumatisation and Secondary Trauma

It is vital to bear in mind that every party dealing with traumatic incidents or clients with traumatic experiences has the potential of being re-traumatised. As such, it is important for lawyers to take care of themselves and the client. For this purpose,

⁷ S Katz, D Haldar, 'The Pedagogy of Trauma-Informed Lawyering' (2016) 22 Clinical Law Review 359.

thinking patterns should be shifted to the topic of self-care. Discussing self-care, and approaching it, is part and parcel of the lawyer's professional responsibility to ensure that the client receives the best service from the lawyer. Access to support and activities outside of the court is often an important part of client care.

Implementation Techniques⁸

1. Building Trust

The starting point is to initiate any lawyer-client relationship from a place of believing the client, solely because the client is likely to have encountered scepticism in the past. Another important aspect is to make the client aware of clear boundaries related to confidentiality. **The relationship must be a safe space for the client, and what is considered safe may depend on the background the client comes from.** In the United States, for instance, social services are mandated to report abuse, which means that the client enters the lawyer-client relationship with a background of fear that the lawyer may disclose information. Hence, it is crucial to start by setting out clear boundaries on confidentiality.

Another part of building trust is the use of accessible language. Lawyers should, to the best of their ability, try to avoid legal jargon. Translation services are a great alternative when necessary. Devanthery highlighted that lawyers do not always have to be dispassionate advocates, who are only concerned with the law. Being emotive and expressing words of empathy and solidarity can be helpful and can encourage the client to open up.

The final yet, most important, aspect of trust is that lawyers should most certainly not promise more than they can deliver. It is useful to set appropriate expectations about many things within the relationship, ranging from communication and meeting times to what can be expected through the representation. Thus, a lawyer should be able to ensure that he or she delivers what they promised.

2. Trauma-Informed Interviewing

Interviewing is part and parcel of a lawyer-client relationship. Before an interview, the lawyer should think about how much should be asked of the client about the traumatic experience. **If knowing about the traumatic experience, or parts of it, is not essential for the issue at hand, it is better to avoid discussion of**

⁸ LF Flores, K Phelps, "Trauma Informed Interviewing Techniques" (Tahirih Justice Centre). Available at https://lccrsf.org/wp-content/uploads/D2-Session-2_Trauma-Informed-Interviewing-Techniques.pdf

traumatic details. The conversation can then focus exclusively on topics that do not delve into the details of the trauma. To facilitate this process, it is a good approach to set, ahead of time, the content that will be discussed in a particular meeting.

When discussing difficult topics, it helps to **start off in an open-ended manner.** The continuation of the story can then be handed over to the client so that the client can tell their own story. If the lawyer requires additional clarification on a fact, especially about any inconsistency, it is better to inquire about it in a transparent way by explaining why the follow-up question, or a question in general, is being asked.

Breaks should be incorporated within the interview. It might even be necessary to take a complete break from the interview and return to it at a later date. If notes are being taken, it is better to inform the client of this and ensure that the client is comfortable with it. The lawyer should maintain open body language and continue to take cues from the body language of the client. If at any point the client seems overwhelmed or uncomfortable, the lawyer should call for a break and suggest some coping techniques to the client. Throughout the course of the interview, the lawyer should acknowledge that the client's memory will require time to be drawn out due to the impact of trauma on memory and that the client will take some time to become comfortable in the relationship.

3. Set Clear Boundaries

Setting clear boundaries is an essential part of building trust. The client should be made to understand that their lawyer is not present to support them through everything. In explaining this, a legal professional should be kind and clear. Empathy is most important in situations where bad news may have to be delivered and clarity must be maintained even when the lawyer expects the client to anticipate difficult situations.

4. Staying Client-Centred

It should always be borne in mind that restoring autonomy and empowering the client is fundamental. Remaining client-centred can be a tedious task if the lawyer and client often disagree. Devanthery recommends a set of phrases that can be used, such as: "I believe you," "I am not judging you," "This is not your fault," "Nobody deserves for this to happen to them," "Thank you for sharing with me," and "I am grateful that you trust me with your story."

Open Discussion

A raised a question about Traveller victims who often encounter memory challenges, and because of this, it becomes difficult for professionals to make clear legal arguments. It similarly has an impact on how the judge views the case. The participant thus inquired as to how professionals can perform better at locking down facts with more clarity. Devanbéry responded to this question in two parts. She first pointed out that **there is a lack of understanding among judges about trauma, since education on it is scarce.** There is a baseline credibility which is rigid and it requires clients with traumatic experiences to provide certain information, which may be obviously impossible due to the impact of trauma on memory. This generates a significant challenge by not allowing judges to see the client or hear the client in the way that they should. Therefore, it is critical to educate decision-makers.

Secondly, **inconsistencies due to memory challenges are common.** Trauma makes it difficult for a client to tell his or her story in a linear and consistent fashion. As legal professionals, it is useful to think carefully about what necessarily needs to go on the record, for example, affidavits, and other documents for the client's testimony, which will be subjected to cross-examination at a later point. It is helpful to remove any detail that is not relevant to meeting the legal standard. There can also be certain safety implications relating to what is disclosed in a public court environment. Hence, **the balance between saying enough and meeting privacy needs must be found.** Consistency in the timeline is key to a case and with this regard, preparation is a must. Confirming and reconfirming details over the course of many conversations can ensure that the client is comfortable with the timeline before it goes on the record.

Re-Traumatising Through Language

Presented by Davie Donaldson

Introduction

This session began by stressing the importance of cultural exchange and cultural awareness. **Exploring trauma through language can help professionals become more trauma-sensitive when working with clients.** It is important to see that certain terms do not become synonymous and homogeneous. Donaldson delved into this theme, drawing from the context of Travellers.

Segregation and Exclusion

The term 'Travellers' encompasses groups such as Roma, Gypsy, Irish, and Scottish Travellers. The terms Gypsy, Roma, and Traveller are often grouped together, but it is crucial to bear in mind that there are differences between these groups. Among these groups, some of the main terms used to describe Scottish Travellers are, for example, Tinklers, Cearddenan Dubh, Ceards, Tinkers, and Travellers. The use of certain terms can have a triggering effect on Travellers and this should be avoided. While 'Travellers' is a more recent term, terms such as 'Tinklers' and 'Tinkers' can trigger harmful memories for Travellers. Scottish Travellers have self-defined themselves by the term 'Nawken', yet, there is no policy recognition for this in Scotland.

The state and authorities have played a role in the discrimination towards and persecution of Travellers. This discrimination has its foundations in the forced removal of children. Traveller children were sent away to Canada, and this legacy of intolerance towards nomadic children continued up until the Second World War. Segregation also shaped these attitudes and was widespread throughout schools and forced reservations.

Cultural Trauma

Victims of segregation and exclusion are calling for an apology from the Scottish Government. The importance of such an apology is embedded within the subject of cultural trauma. **Cultural trauma is a potential result of historical trauma, which have been caused by historical events that continue to impact societies even today.** Historical traumas can result in a collective memory of traumatic events which later lead to cultural or historical trauma having an impact on larger communities.

As a result, these communities experience adverse impacts such as health inequalities, higher depression rates, high rates of substance abuse, higher suicide rates, higher infant mortality, and lower life expectancy. This has the capacity to instil a deep sense of distrust within these communities towards justice and administrative systems.

The Relation to Language

Language plays a key role in cultural trauma. The first element is transgenerational reproduction. This means that stories of trauma can affect communities and different stereotypes can be visible in linguistics. **The use of discriminatory terms as insults has a way of propagating cultural trauma and deep-rooted inequalities.** The second element is the sense of identity, which refers to language matters and the place of language in mainstream discourse, reflecting on someone's sense of belonging. Thirdly, linguistics are important for resilience. The revitalisation of language helps one look past the cultural trauma of the past and mitigate feelings of not belonging.

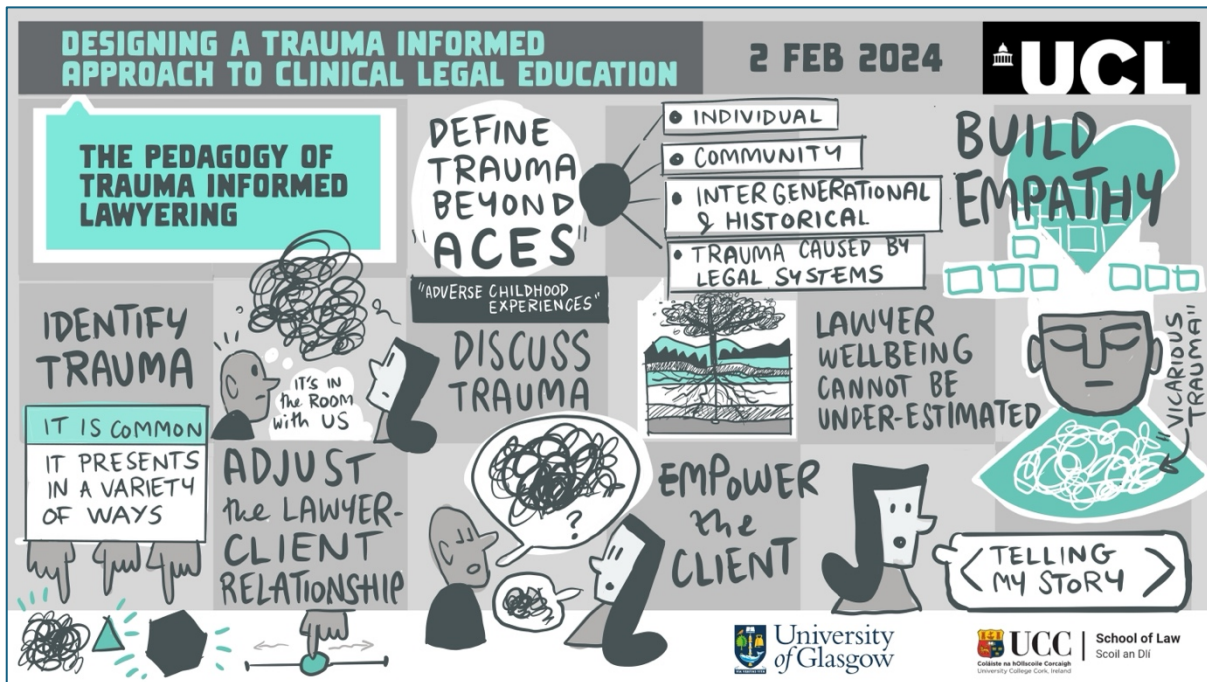
The Shared Social Contract and Building Informed Approaches

Donaldson drew attention to the fact that as professionals, one has an unspoken social contract with the client. The first step of this social contract is to build a

“partnership”. **There could be deep mistrust within the clients due to continued cultural trauma and deep mistrust towards moving away from the status quo and the professional should not at any time overpromise.** The inability to promise and deliver can have ramifications for future relations with the community. It is similarly important to move away from disempowering terms such as “minority” and avoid forcing the client into using any terms that they are not comfortable with. The second, yet a primary concern, is “safety”. This involves reflecting on the words that are being used, places where meetings are held, and accessibility. Thirdly, it is necessary to remember that the aspect of “resolution” should always be in the hands of the client, provided as an opportunity for healing. Resolution should be interpreted as an opportunity to heal and must appear as a resolution to the client, not just to the professional.

The Pedagogy of Trauma Informed Lawyering

Presented by Professor Sarah Katz



Introduction

Trauma can be present in various forms such as individual trauma, community trauma, intergenerational trauma, and trauma caused by legal systems. Clients can reach out to lawyers with different types of trauma, and each of these will have a different impact. There is **a definite possibility that trauma can be caused by legal systems**, especially given that judges can impact clients in varying capacities. To this end, it is vital to build empathy within law students towards clients and develop the skills of lawyers under rules of client care.

Trauma-informed lawyering is not only a way of promoting lawyer wellbeing but should be embedded into the core values of lawyering taught to law students. Since trauma affects memories, even those of law students, serious consideration has to be given as to how this is taught at a basic level in law school. The **relatively young age, inexperience, and other vulnerabilities such as race, gender, and disability of law students have the potential of making them susceptible to vicarious trauma.**

Hallmarks of Trauma-Informed Lawyering

Identifying Trauma

Being able to identify trauma is an important trait for law students and it is imperative that they are trained to identify trauma. A lawyer's own trauma, or lack thereof, can

have an impact on their ability to engage with clients. There is a possibility that a lawyer might find it difficult to cope with the information shared and it can go to the extent where the lawyer's ability to be an effective advocate is jeopardised. In events where clients are reluctant to disclose their traumatic history, the lawyer should have the capacity to delve deeper into the details using appropriate questions. Since trauma can appear in diverse ways, law schools have a duty to train their students for varying situations.

Adjusting Lawyer-Client Privilege

Two components of the lawyer-client relationship are **physical and psychological safety**. Clients need to feel that they are safe for them to trust their lawyers and confidently disclose information that enables the lawyer to properly represent them. **Making a client feel safe is not a one-time thing – it must be developed over time and then sustained.** As such, empathy has to be at the centre of the relationship, and engaging with the clients' feelings is essential. Lawyers should be transparent about their role and the process; it is better if constant reminders and reassurances of shared goals are involved.

In fortifying lawyer-client privilege, lawyers should also give thought to the structure of interviews, their length, and breaks. The client should always be empowered to communicate what they need. As part of their training, **encourage law students to explicitly discuss the effects of trauma with the client and any ways in which it may affect the relationship.** Students have proven to come up with good ways to encourage clients to share information, such as by scheduling calls in advance for a client who struggles with receiving information about their case unexpectedly. On the flip side, if a student finds it difficult to navigate through traumatic experiences, Katz suggested that the student can create a web form like a Google Doc (instead of using a phone call) so that the client can share his or her story online and the student will have ample time to respond to it.

Adapting Representation Strategy

There is a possibility that litigation itself can be perceived as traumatic by a client. For this reason, a lawyer has to be flexible enough to adapt the representation strategy for each client. For example, a client's trauma could be triggered by seeing an abuser in the courtroom. All these factors should ideally be taken into account when thinking about how the case should be resolved and the way forward. As part of training law students, this can be done by **teaching law students to discuss the**

future course of action of a case with the client. This involves factors such as whether they would be going into the hearing and what type of strategy will be adopted. Preparing the client for the case is an important step within the representation strategy. If the client is struggling with the hearing, it may be of interest to build that difficulty into the record. For instance, this can be done by explaining to the court why it might be difficult for a client to testify, so that the trauma reactions are incorporated into the record.

Preventing Vicarious Trauma

Vicarious trauma is a very real type of trauma and is experienced as a result of proximity to people with traumatic experiences. There are, however, ways in which it can be prevented or minimised. While education and awareness should be considered, **supervision and self-care have to be improved.** It can also help to improve systemic advocacy to work so the systems that cause harm can be changed.

[Trauma-Informed Law Clinic Teaching](#)

During this part of the session, Katz shared information on how a trauma-informed practice is established at her clinic from day one. Firstly, principles of a trauma-informed practice should be introduced. **Students can be met individually in order to get to know them, what skills they already have and where growth is necessary.** It is always better to know whether they have lived through experiences which make their tasks more cumbersome.

Secondly, **a safe space for sharing emotional reactions should be established.** It gives the impression that students should not shy away from their feelings and that they are welcome to speak about things openly. There have to be proper lines of communication where the students are able to speak with the senior members if they are going through a difficult time. By introducing this in the first meeting itself, there will be a safe space to share emotional reactions to the work that is being done.

Thirdly, **learning and talking about trauma within the classroom can go a long way.** Acknowledging that the work within the clinic is hard and that student reactions are normal is a good starting point. The clinic will be different from their other classes in terms of discussing trauma. Katz shared that she starts the class by having students share a high point and low point from the week, which fosters a safe space to share emotions. She also stated that **storytelling exercises and asking them to explain how it felt for someone else to tell their story can also be**

utilised. The second part of the said exercise highlights to the students how much factors such as gender, race, and class impact how they hear or tell a story. Many things depend on the tone that is being set, and learning to be open enough to talk about trauma within the classroom can thereby be strengthened. As part of learning about trauma, teaching its effects and trauma-informed skills are useful.

Finally, organisational self-care has to be a part of the curriculum. **Students should be encouraged to create a self-care plan for themselves, through which they will consider their challenges, boundaries, rewards, and self-care commitments.** The students should be aware of the challenges of maintaining a routine. As trainers, it is always crucial to be mindful of the case load size and be aware of the importance of variation for students since not every student can take a high trauma road. While staff provide training and ongoing support, being open and transparent towards the students about your own reactions or a hard time fosters a healthy environment.

Open Discussion

The first question raised was as to how one can get people on-site to contribute additional resources into trauma-informed care. Katz admitted that this is certainly easier on a smaller scale. There will obviously be some pushback, and to overcome this, the correct tone should be set where the **commitment to trauma-informed care is clearly communicated and built into the culture.** It is possible to build into how one evaluates people's work and incorporate trauma-informed lawyering into their skills. The same can be applied in the employment world. The support should ideally come from the top of the organisation or institution. Alternatively, students and staff within the clinic can be asked to have their own self-care plan and later encouraged to make a plan using collective input.

The second question was in relation to the trauma-informed practice relating to managing a bereaved family that was at the centre of an inquest process. Katz explained that **effective participation and humanity are important at a base level and everything else can be built up from that point.** In engaging with such a family, it is important to raise the question as to why empathy is important at that point – this is a good angle to follow when discussing this with people who are new to the concept and initially resist it. Empathy is also the most effective way to connect with the family. In a case like this, winning is not the most important aspect since handling the grief itself is more complicated than that. The complexity of the

matter should be understood, and the client should be given the space to tell their own story.

Break Out Session: Children

How does trauma affect your client group?

- ↳ In the field of immigration and asylum, access to justice is a primary issue faced by clients. The system is not one that is made for children.
- ↳ Parties have severe mistrust in the system and authorities since they are unlikely to get what they anticipate from the system.
- ↳ Trauma can lead clients to make unreasonable demands and the law itself may not be able to help.
- ↳ Clients often lack the capacity to communicate and litigate, and a litigation friend frequently takes the power away.

What tools have you used in the past to support clients?

- ↳ An important aspect of supporting the clients is communication. This begins by inquiring what the client wants, even if unachievable. A positive tone has to be set for all communications. **Adopting a mechanism which the client finds easy to communicate through** (such as WhatsApp) can also be helpful. In any event, if the client is ignoring your calls and will not meet you at your office, the ideal action might be to meet them at a place where they are comfortable.

How can the above measures be embedded into teaching?

- ↳ Incorporating principles of trauma-informed lawyering is time-consuming but necessary. **Key performance indicators** can be utilised to set relevant goals and measure impact.
- ↳ Trauma should be a **core module** in curricula; the new generation is often criticised for their inability to communicate in a humane manner.
- ↳ It may be helpful to give students the opportunity to watch lawyers work and extract information. This will give them an impression of the tone that has to be used and what a good lawyer looks like. However, with the culture of remote working there can be challenges in facilitating this.

What measures can be put in place to support students?

- ↳ **Modelling or role-playing lawyers** will help students get experience of real-life situations.
- ↳ As support mechanisms, trainers can share their thoughts and experiences. They should also encourage students to reflect on their thoughts and actions and keep learning.

What principles do you think should guide trauma-informed clinical legal education?

- ↳ **Setting boundaries** is critically important.
- ↳ Being open to sharing the vulnerabilities of their client can be useful in trauma-informed clinical legal education.
- ↳ Students should be encouraged to connect with the client while giving them ample time and choices. **Simple instructions on conduct**, such as the proper ways to sit or stand, appropriate dress, and maintaining eye contact, can also go a long way.

General Comments

- ↳ Trauma is a subjective experience, and it cannot be predicted as to how one will be impacted by it.
- ↳ 60% of individuals have undergone trauma.
- ↳ Children are inherently vulnerable to post-traumatic stress disorder (PTSD). There are 16-25% of young people suffering from PTSD.⁹ Trauma can be depicted by many symptoms just below the PTSD threshold. The courts take a binary approach towards PTSD, hence the system itself can be traumatising. The better approach is to explain the symptoms to the jury. Individuals suffering from PTSD have a tendency of self-blaming, has a risk of conducting themselves in a disorderly way and their memories do not necessarily bear a clear account.

⁹ Children and Young People's Mental Health Coalition, 'Facts and Figures,' <<https://cypmhc.org.uk/resources/facts-and-figures/>> [Last accessed 28th August 2024]. See also, Children's Commissioner (2024) 'Children's mental health services 2022-23'. Available from: <https://www.childrenscommissioner.gov.uk/resource/childrens-mental-health-services-2022-23/> [Accessed 28th August 2024]

Break Out Session: Discrimination

How does trauma affect your client group?

- ↳ In a matter one of the speakers was involved in, discrimination against Travellers was unfounded because the European Court of Human Rights declared that Traveller identity is not a protected characteristic. The law in relation to this aspect is weak. Even firms are not inclined to take on such cases.
- ↳ In another instance, two young Traveller girls were assaulted by ten non-Traveller girls while they were returning from school. Once the mother of the Traveller girls informed the police, she received anonymous calls harassing them and threatening to take the girls away. The CCTV footage was lost, and the girls were excluded from school. The mother eventually stopped proceeding with the action. There is a lot of background to incidents such as this; it is not necessarily placed at one point in time but stems from a cultural history.
- ↳ Another example was drawn from an instance where the local authority blocked lands with ditches and rocks, which carried ancestral memory. This was deeply traumatising. Due to situations like this, many Travellers simply move out of land and residences right when they are threatened with eviction.
- ↳ In many instances, the trust within the community has been broken. An example would be the Windrush Clinic. Once broken, it is difficult to reinstate that trust within the community.

What tools have you used in the past to support clients?

- ↳ In instances such as the above, **although the law is a tool to support the clients, it does not necessarily provide answers.**
- ↳ Lawyers need to have the capacity to know when they should step back and let the clients make their decisions.
- ↳ Adopting alternative means of communication and consultation to meet clients 'where they are at' e.g. Whatsapp and site visits, where resources allow.
- ↳ The Windrush Clinic and its partner group the Claudia Jones Organisation offer voluntary support to clients going through action. They usually use several meetings to set the case facts straight since authorities require evidence on every aspect. But this is not always possible – many clients often struggle

with their daily lives, which means that they will not retain certain pieces of evidence that are required.

How can the above measures be embedded into teaching?

- ↳ Students should engage in training in relation to groups that frequently experience discrimination.
- ↳ Cultural awareness training should be essential for students engaging with groups with specific cultural needs.
- ↳ Perspectives on intersectionality should be introduced to the students.

What measures can be put in place to support students?

- ↳ There is the possibility that some students get angry at the injustices faced by their clients. Trainers need to intervene here and make sure the students take a step back.

What principles do you think should guide trauma-informed clinical legal education?

- ↳ Students should be made aware that the client's case is paramount.
- ↳ Students should be able to consider issues, trauma, and client sensitivities.
- ↳ **Discrimination should be recognised as something that is not limited to a single attack.**
- ↳ Barriers in litigation and law are unavoidable. **Training students should be guided by the fact that they have to be realistic about the weaknesses of the legal system and its tendency to change.**

General Comments

- ↳ Only a few law school clinics focus on discrimination.
- ↳ Diversity in all occupations should be improved. This includes groups such as judges and lawyers. The intention of this is to bring in more humane practices.

Break Out Session: Domestic Violence

How does trauma affect your client group?

- ↳ Trauma can affect the client group in a multitude of ways, including within the judicial process itself. Victims are put under oath and cross-examined, which can be traumatising. Engaging with different aspects of the system, such as the prosecution and the police, can also induce trauma.
- ↳ There is concern about maintaining evidential credibility while addressing trauma in the judicial processes, such as jury trials. This involves **integrating a trauma-informed structure into legal procedures while ensuring evidential credibility.**

What tools have you used in the past to support clients?

- ↳ The importance of **validating the experiences of victims** was emphasised. When people are overwhelmed by trauma, it is crucial to understand that trauma. In this context, the impactful role of lawyers in preparing people for these experiences and believing them was highlighted. Hearing 'I believe you' is significant to the victim. This process of validation is about doing justice to someone's experience and can be more important than the verdict for the victims.
- ↳ **The concept of 'story stewardship' is a useful tool when engaging with clients, which involves managing clients' narratives with utmost care, believing their stories, and interacting with both kindness and understanding.**
- ↳ Techniques to keep conversations about trauma contained and less harmful, such as giving advance notice when discussing traumatic topics and maintaining a calm demeanour during the discussions.
- ↳ As the client's expected outcome from the case might differ from the lawyer's, lawyers should avoid making assumptions about the outcome and constantly check with the client regarding what outcome they expect from the case.
- ↳ The legislative progress made in Scotland was highlighted, where a new bill proposes the establishment of trauma-informed practices across judicial authorities. This includes the introduction of specialised sexual offences courts, juryless trials, and plans to build the capacity of judicial agents on trauma-informed practices.

How can the above measures be embedded into teaching?

- ↳ **It is not enough to have one-hour training sessions on trauma; they need to be more consistent.** One option is to set up a 'breakfast club' type of meeting - sessions with 5 to 7 students each that run throughout a semester. In these sessions, domestic violence cases and related professional ethics are discussed. The staff can then hear how the students interpret cases. The initial meetings can also be used to build rapport with students and to determine which students are suitable for specific cases.
- ↳ **A safe space should be created to share difficult things by building relationships with the students.**
- ↳ Obtaining students' opinions on what they expect out of the learning experience can be useful in tailoring the teaching to meet these expectations.
- ↳ It is important to have a conversation about trauma that the students themselves may have faced.
- ↳ Icebreakers are a useful tool to help students become comfortable with the environment in which they are working.

What measures can be put in place to support students?

- ↳ Students should be informed about vicarious trauma and the possibility of re-traumatising students who have already dealt with personal trauma. In some instances, **it is important to get the assistance of a counsellor or a mental health professional when assisting students to ensure that boundaries are maintained.**
- ↳ Self-care is a crucial aspect when dealing with trauma to ensure that things do not become too overwhelming. Students should be asked about the things or people that help them feel grounded early on in the clinic.
- ↳ Students should be asked whether they are worried about the clinic work or whether they anticipate challenges while working in the clinic. When questioning students about their clinic work, care should be taken not to use trigger words. Instead, accessible language such as "Is there anything particularly difficult about the clinic work?" should be used.
- ↳ Individual meetings should be held at the beginning of each week to check on the students. At the end of the week, there will be group supervision to

discuss the cases. Supervision may be needed when someone is dealing with a trauma response as a result of their personal trauma as opposed to experiencing trauma through someone else at the clinic.

- ↳ **Assistance should be given in a way that does not make students feel judged.** An ‘open-door atmosphere’ where teachers do not consider the students to be failures for not being able to do the task should be created. For example, when dealing with victims of GBV, one way to implement this is by giving them a safe word that can be used when the work becomes overwhelming, instead of saying it out loud. **Safe words are a useful tool when working with students who have experienced trauma.**
- ↳ There is a possibility that clinic work may be unsuitable for students dealing with existing trauma. In some cases, students pursue mental health studies because they have experienced these issues. In such cases, there are boards to assess compatibility to practice before disallowing the students. Honest conversations are necessary in situations like this to raise these concerns without making the students feel like they have something to prove. However, unless working in the clinic would immediately harm the student, it is good to allow students to give it a try and create trust that support is available when needed.
- ↳ The educator plays a role in helping the student overcome their experiences. The educator would, however, always ask the question why they chose to do it. If students can hold tight on the 'why' considerations, it becomes easier to help students overcome their trauma as well.

What principles do you think should guide trauma-informed clinical legal education?

- ↳ Students should be informed about setting boundaries.
- ↳ Emphasising the importance of giving clients agency in their legal process and respecting their views on what constitutes a successful outcome.
- ↳ When dealing with clients who have faced traumatic experiences, a balance should be struck between the professional detachment required of a lawyer and empathy.
- ↳ It is important to provide a safe space for both trauma victims and students who are involved in trauma-informed legal education to be able to speak freely without feeling judged.

Break Out Session: Immigration and Asylum

How does trauma affect your client group?

- ↳ Receiving feedback can be a challenge with this client group. One way to overcome this challenge could be to speak with the client's support network (family or friends) and see whether any feedback they provide can be reliable. There is also the possibility of obtaining feedback from other services the client has interacted with, such as GPs.

What tools have you used in the past to support clients?

- ↳ If the clients lack capacity, engaging with them on a non-immigration related issue may help get them talking. This means that you **engage with a different topic first which allows the client to open up** and discuss the immigration issue later through the discussion. It might be helpful to obtain the services and coordinate with other organisations as people tend to interact differently with different people.
- ↳ In dealing with clients who lack trust, direct discussion of confidentiality may reassure them. The lack of trust can also be because the client has no idea what a particular organisation is. Clients should ideally be sent a monthly update on the status of their case.
- ↳ To complete the witness statement of a client, holding many appointments can provide more time for both parties. This helps the client understand the case better.

How can the above measures be embedded into teaching?

- ↳ Discipline around **structure is important**. However, considering the staff, the lack of a hierarchical structure can make supervision difficult.
- ↳ Different types of student supervision meetings can be held.
- ↳ **Communication is key**. Letting the students know about the experiences they might face and the possible impacts they might have is important.

What measures can be put in place to support students?

- ↳ A lack of office space can result in reduced collaborative efforts between students and staff. If no proper interactions are made, it can impact the level

of trust among one another. **Creative solutions** can be used to avert these negative effects.

- ↳ During the Justice First Fellowship (JFF) programme, there were annual residential conferences that were convened. These conferences provide the students time to socialise and build networks with students in their year and the rest. **Mentorship and engaging with people at different points in their careers can be valuable.** Networking can also be done via virtual sessions.
- ↳ JFF also has mandatory monthly sessions with Claiming Space where an opportunity is given to meet peers. The sessions are conducted in a different space from the work environment.
- ↳ It is useful to think about ways in which you can carve out time to have catch-ups away from the office. The important element here is that the team has to move away from their workspace.

What principles do you think should guide trauma-informed clinical legal education?

- ↳ Students should be instructed to set their own boundaries. This means that they have the potential to identify difficulties that they encounter personally.

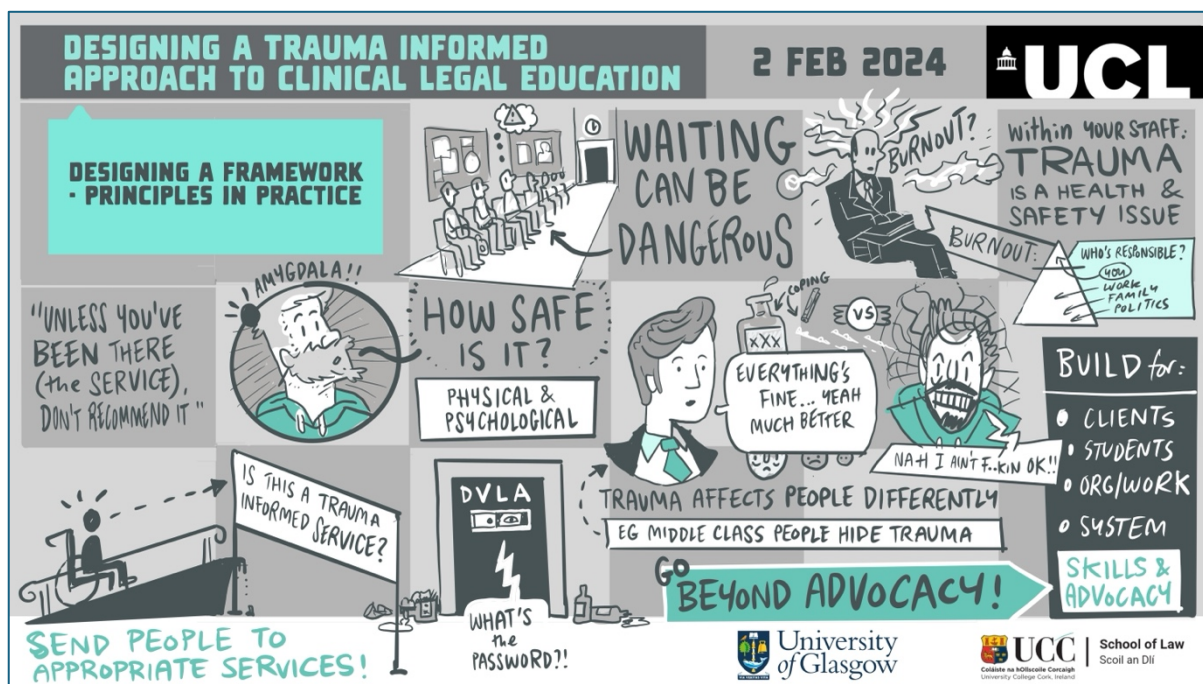
General Comments

- ↳ **Setting boundaries with immigration clients is a complex task.**
- ↳ There are different approaches in the ways different practitioners treat their clients. While immigration practitioners are more focused on practical outcomes, they are less focused on capacity issues.
- ↳ Organisational difficulties can hinder the creation of a trauma-informed environment. Organisations can create a rota to ensure that appointments have a private space where necessary and build relationships with long-term clients.
- ↳ It may also be **important to engage with people outside of the legal field to see what other creative solutions are available.** For example, an architect might be able to guide you on better use of space.
- ↳ The legal profession does not sufficiently reach out to other sectors.

- ↳ Allocating structured time to review the organisation is needed. Specific exercises that will help determine where your organisation stands, which approaches are successful and which are not, and impacts of recent research can be employed for this purpose. While feedback from students and clients is important, it is necessary to acknowledge that it might not always be easier to receive feedback.
- ↳ It is always better to check with the client on what they need and how they feel about things. Some groups are protective; hence this can help address those issues of protectiveness.

Designing a Framework: Principles in Practice

Dr. Sharon Lambert



Minimum Skills for Being Trauma Aware

- ↳ *Understanding the difference between trauma-informed and trauma specific services:* Clients should not, at any point, be referred to services which professionals have not had a personal interaction with. Care must be exercised in referring culturally diverse groups and individuals of the LGBTQ+ community to services. As professionals, this should be done with kindness. **It is always better to maintain direct links to trauma-specific services.**
- ↳ *Understanding different types of abuse and trauma:* Trauma comes in various forms and even facts like poverty and discrimination can result in trauma.
- ↳ *Understanding the impact of trauma physically:* **Knowing the health impact of trauma is essential.** The link between substance abuse and mental health issues should be considered.
- ↳ *The importance of the safety of the participants:* **A service should be designed in a way that its location, building and environment is safe.** Attention to

signage, where the door is located and the nature of the waiting room, etc. Since everyone has their own patterns of trauma, some people have trauma cues that can be caused by seemingly insignificant things. Some individuals similarly lack the capacity to wait – and often, if they leave or become aggressive, chances are that the service blames them. In practice, their brain actually scanned the room to notice certain components which have triggered them.

- ↳ *The usefulness of confronting negative behaviour.* It may be useful to confront certain negative behaviours such as slamming doors and shouting, which are invariably used by participants in coping with trauma.

- ↳ *Understanding that trauma and stress affects people differently.* As discussed multiple times, **trauma has different impacts on people, which result in different issues at different times.** Understanding that factors like the client's socio-economic background can have an impact on trauma is therefore vital.

- ↳ *Knowing that there are culturally different responses to trauma.* Some communities are more likely to attend their appointments in groups and the professionals needs to ensure that they make adjustments to accommodate this and consider in advance how to deal with issues such as confidentiality and privilege.

Next Steps

The inaugural workshop demonstrated the value of dialogue and exchange across jurisdictions to develop a more cohesive approach to trauma-informed clinical legal education in the UK and Ireland. The TiCLE Network convenors propose the following next steps for consideration:

- Developing a database of clinical legal educators who wish to become members of the TiCLE Network.
- Scoping together with members the terms of reference, priorities and activities for the Network.
- Appointing an expert consultant in psychological trauma to provide training, supervision and clinical support to members of the Network.
- Relying on consultant expertise, refine a best practice framework for trauma-informed clinical legal education in the UK and Ireland.
- Considering opportunities for funding to provide administrative, research and consultative support to the development of the network in future.