
'Associated life': social software, professional relationships and democratic professionalism.

DRAFT¹

Professor Paul Maharg

Law School, University of Strathclyde

Abstract

Democratic professionalism is a form of re-professionalization built around models of active and collaborative democratic change. One of the many problems inherent in democratic professionalism is the part played by professionals in both the creation and maintenance of rights, and in the dialogue concerning the nature of freedom in a democracy. Professionals may engage only in technocratic professionalism; or they may play a role in analysing problems of democratic engagement, authenticity and integrity, thus engaging in democratic professionalism. How can we persuade students to the latter, rather than the former?

This paper argues, first, that Dewey's form of educational praxis is one method by which we can encourage democratic professionalism in education; and that a key element of our approach should be the Deweyan concerns with 'associated life' and 'associated thought', namely the cultural and social forms of professional association, and the forms and patterns of social thinking that professionals undertake in practice. Second, and moving from the early twentieth century to the early twenty-first century, the internet offers us profound opportunities to engage in new forms of social and educational engagement, and particularly in applications known as social software.

Two case studies are offered. The first describes a regulatory initiative to embody Deweyan forms of association to encourage democratic professionalism, and I describe the process and outcomes to date of this initiative. The second, a software initiative called SIMPLE, embodies Dewey's concept of associated thinking. I give some examples of how such software has the capability to enrich learning about professional relationships, and to transform professional education and knowledge production. In particular I shall show how critical is the focus on professional relationships early in a programme of study; how learning about and from such relationships can encourage greater engagement with programme content; and what learners can achieve as a result of such engagement. Finally, I analyse how such software could be used to facilitate forms of democratic professionalism in society.

'Individuals will always be the centre and consummation of experience, but what the individual actually *is* in his life experience depends upon the nature and movement of associated life'.
John Dewey, LW 14, 91.

Introduction

By its nature, professionalism is a contested concept. And as Abel demonstrates so well, democracy and the politics of professionalism is a complex issue for the legal profession (Abel 2003). It is probably fair to say, thought, that in terms of legal education, the relationship between democracy and professionalism is under-developed, not just theoretically but in practice as well. Within the law curricula in these isles it is difficult to discern over-arching theories that take into account both what and how students learn about democracy and professionalism. While mainstream undergraduate courses will

¹ Draft paper. Please do not quote without prior permission from author. Contact: paul.maharg@strath.ac.uk

contain materials on the place of law in democratic societies, in postgraduate vocational courses there is a focus on technical aspects of legal practice. There are of course niche modules on professionalism, on the state of the legal profession and the like. But neither undergraduate nor vocational, for a range of complex reasons, give a broad view of professionalism and democracy.

In the literature of professionalism there is a movement to begin to analyze why this might be the case. Quite apart from foundational studies such as Abel, commentators such as Pellegrino et al (1991), Dzur (2002) and above all Sullivan (2004) have shown how normative assumptions concerning the relationship of ethics and professionalism need to be re-thought, particularly in educational processes. Sullivan identified the importance of integrity, security and democracy to the whole professional project – integrity, in terms of personal fulfilment and public recognition; security, in terms of the ever-evolving pact struck with society as regards remuneration, trust and social good; and democracy, in terms of the interface that can be developed between technical processes in society generally and the political and moral processes that underlie them. Sullivan contrasts technocratic professionalism (concerned with technical self-interested practices and motivations driven by profit only) with civic professionalism, that invests professional practice with moral meaning and with democratic value.

Dzur goes further and in a contrast of de Tocqueville, Dewey, Sullivan and Fischer analyzes what democratic professionalism might consist of. His critique is worth quoting in detail:

If the ideal of democratic professionalism is so beneficial, then why is it losing to the technocratic model? An obvious reply is that the latter fits neatly into the rationalized procedures and needs for predictability and control found in modern economic and political organization. Further, those trained for professions currently have minimal instruction in the democratic consequences of their professional domains. Applied ethics instruction abounds, of course, and more so with every passing year. Yet the explicitly democratic values of lay participation and task-sharing discussed in this paper are rarely part of the ethics seminars required in nearly all professional training curricula.

Dzur talks here of ethics and seminars without reference to the whole stream of educational literature (stemming ironically enough from Dewey) arguing, broadly, that talking about ethics is insufficient and inefficient: much more needs to be done.

Just what needs to be done, and how, is the subject of this draft paper. I would like to examine the issues involved, and how we might approach the transformation of professionalism into democratic professionalism by taking the approach summarised in Figure 1:

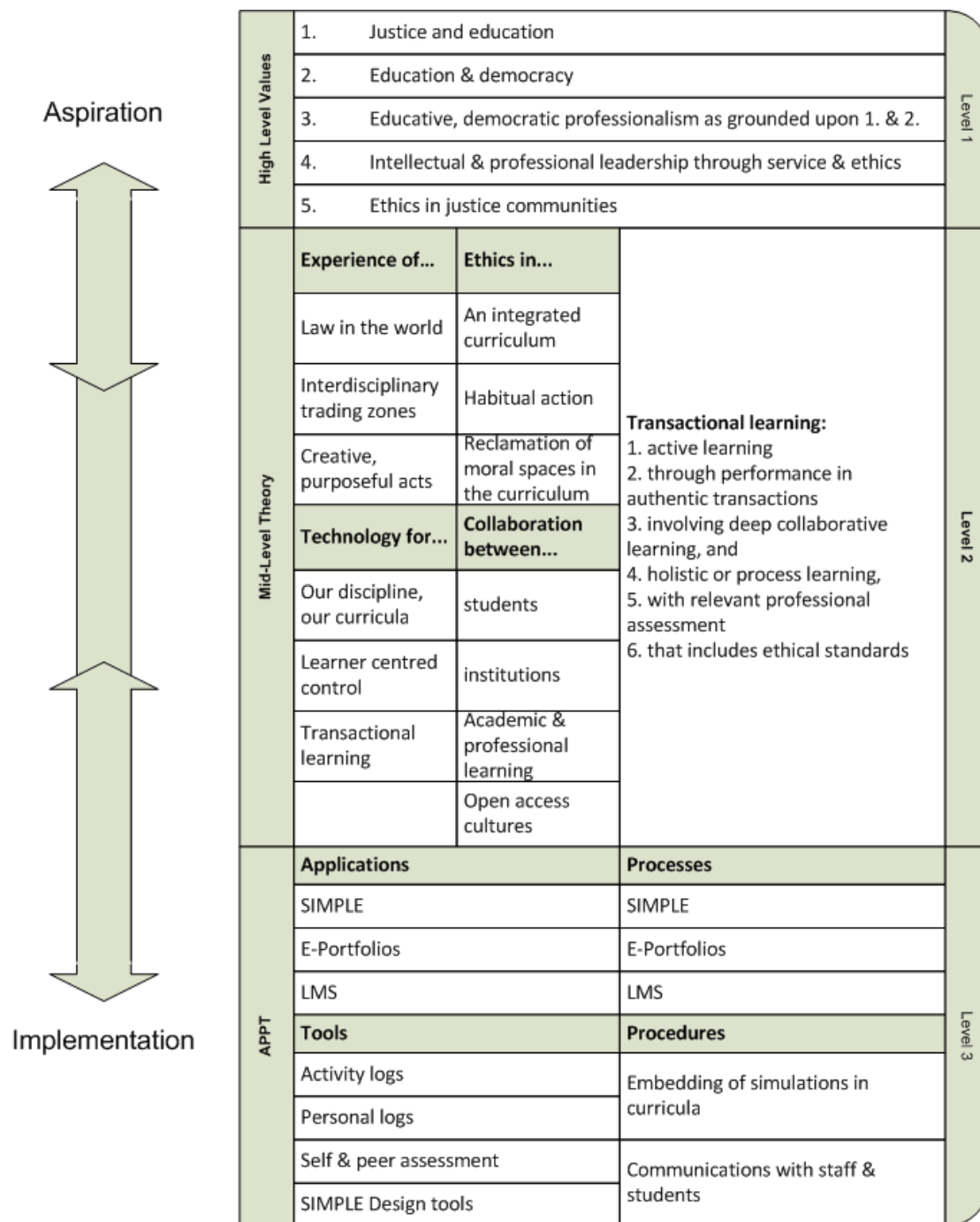


Figure 1: three levels of engagement

We shall start with level one and work our way down. But as I hope to show, the approach is the very opposite of a one-way street. In fact, educational intention is always an in-tension activity, moving constantly between the three levels. Biggs' concept of alignment is one metaphor for this. I prefer the more organic one of ecological balance, which is always in movement of one sort or another, the fragility of which is often dependent not on the survival of what might be regarded as the higher entities, but the survival and evolution of all entities in the ecosphere. Choose the wrong tools or procedures at the lower end of APPT, for instance, and the higher level values begin to be eroded. Ignore the values at the top end, and the tools at the lower end become the perfect instruments of the hired-gun approach to lawyering, critiqued in so much of the literature on lawyering, particularly in the USA.

Deweyan educational praxis

Dewey remains a powerful influence upon our educational practices. He is a remarkable figure. Born in 1859, into ante-bellum American culture and society, he is a watershed for nineteenth century philosophy, moving as he did from the prevailing philosophies of realism and idealism to a position critical of both – a pragmatism that is oriented to social democracy, yet deeply rooted in a critique not just of prevailing philosophy, but of prevailing education, sociology and aesthetics and much else.

What is particularly appealing about Dewey's *oeuvre* is the extent to which he moves from philosophy of education into epistemology and into political and social ameliorism. He has the ability in a single paragraph to move seamlessly from one to the other so that social observations are embedded in educational process which in turn are drawn from philosophical grounds. The breadth and depth of his analysis can be breathtaking: reading Dewey one has the impression at times of firm ground at your feet dropping away vertically as he references the depth of philosophical souterrain.

For Dewey, learning is a social process primarily. As he points out in *Experience and Nature*, the achievement of social ends cannot be reduced to prior rational self-interest alone. Human learning is inevitably drawn to the social sphere where it enacts itself and becomes more sophisticated and at the same time more open to change and improvement:

Experience is the result, the sign, and the reward of that interaction of organism and environment which, when it is carried to the full, is a transformation of interaction into participation and communication. (LW, 10, 28)²

Learning is experience, then; and throughout his career Dewey returned again and again to explore the nexus of learning, experience, participation and communication. Experiential learning (something of a tautology for Dewey) is the foundation for the development both of professionalism and a commitment to democratic behaviour, whether in clinic, simulation or in some other pedagogy. But as Dewey realised, commitment to democracy means embodying that commitment to the educational forms and values we use everyday within education. Ralph Sleeper makes this point well: what mattered for Dewey in all human activity, he observed, was 'the emergence of logical forms from the practice of inquiry' (Sleeper, 1986, 202). Dewey's radical form of Pragmatism possessed a 'ground-map whereby [social] inequities could be identified and diagnosed, as well as a method for resolving them' (202). It is also a map for educational transformation, as radical now as it was over a century ago in the Chicago Laboratory School.

As Laurel Tanner (1997) shows in her fine study of the origins of the Laboratory School, Dewey recognised the importance of collaboration and of mutuality. The teachers played key roles in developing Dewey's curriculum plan: their 'associated life' (see epigraph) stemmed from their 'associated thought' as professionals within an organization; and the relationship was deeply democratic.³ As Dewey put it,

All those who are affected by social institutions must have a share in producing and managing them. The two facts that each one is influenced in what he does and enjoys and in what he becomes by the institutions under which he lives, and that

² All references to Dewey's work are to the standard critical edition, *The Collected Works of John Dewey*, Boydston, J. A., ed. (1969-91), published as *The Early Works*, (EW), *The Middle Works* (MW) and *The Later Works* (LW).

³ Dewey may have borrowed the phrase from Dugald Stewart, who analyzed the effects of 'perceptible objects' on 'associated thoughts and associated feelings' *The Collected Works of Dugald Stewart*, ed William Hamilton, Edinburgh, Constable (1854), vol 2, 256.

therefore he shall have, in a democracy, a voice in shaping them, are the passive and active sides of the same fact. (LW, 11, 217-8)

Linked with the associated life is 'associated thought' (Dewey, LW, 5, 10) – which as Dzur interprets it (16), is collaborative working, particularly the collaborative problem-solving that Dewey especially prized as a heuristic in the Laboratory School (Tanner, 83).

CASE STUDY ONE: Professional legal education and teamwork – one regulatory initiative

If professionalism is becoming an issue of key concern to educators, it is even more so for regulators of professions, and not just because of high-profile cases such as Enron in business and accountancy, or the case of Shipman in medical practice. Research is focusing on what professionalism might be, how it might be taught and learned, and how it might be measured. Papadakis *et al*, for instance, set out to determine if medical students who demonstrated unprofessional conduct in medical school were more likely to be disciplined by their State Board. Their study set out possible correlative factors, including gender, grade point average, Medical College Admission scores, school grades, National Board of Medical Examiner Part 1 scores and negative excerpts from evaluation forms. The study subjects were alumni graduating between 1943 and 1989. They revealed correlations between unprofessional behaviour at medical school, and practitioners who had been disciplined by their profession. As they reported,

We found that UCSF, School of Medicine students who received comments regarding unprofessional behaviour were more than twice as likely to be disciplined by the Medical Board of California when they become practicing physicians than were students without such comments. The more traditional measures of medical school performance, such as grades and passing scores on national standardized tests, did not identify students who later had disciplinary problems as practicing physicians.⁴

The Law Society of Scotland is an example of a regulatory body that is coming to terms with these issues. Its Diploma in Legal Practice is currently undergoing review in a wide consultation on the future of legal education in Scotland. Before we examine this process, it would be helpful to describe the programme as it currently exists.

Before we analyze it in detail, some information about the programme might be helpful, and this is set out below.

Context of the Diploma in Legal Practice

In Scotland there are a number of routes to qualification as a solicitor or advocate. It is possible to sit examinations held by the Law Society of Scotland in what are known as the 'qualifying subjects', a pass in which qualifies the candidate to proceed to a postgraduate course in professional subjects, called the Diploma in Legal Practice. The commonest route to the legal profession, however, is *via* university study. In their undergraduate years, most students study for their LLB degree in one of a variety of routes stretching from 2-4 years, depending on their previous experience & pattern of study. This is followed by the

⁴ Papadakis, M. *et al* (2004) Unprofessional behavior in medical school is associated with subsequent disciplinary action by a state medical board, *Academic Medicine*, 79, 244-79. See also Papadakis, M. *et al* (2004) Early detection and evaluation of professionalism deficiencies in medical students, *Academic Medicine*, 76, 1100-1106

postgraduate Diploma, which lasts for seven months – effectively a full academic year. All students then enter a traineeship of two years in a legal office, during which the Law Society of Scotland requires them to undertake a Professional Competence Course and, during their traineeship, to undertake the Assessment of Professional Competence.

The Diploma consists of eight subjects and one option – in the GGSL we have added another, namely the first in the following list:

1. Foundation Course in Professional Legal Skills
2. Civil Court Practice
3. Criminal Court Practice
4. Financial Services & Accountancy
5. Private Client
6. Professional Ethics
7. Conveyancing
8. Practice Management
9. *Either Company & Commercial or Public Administration*

In the later 1990s the Diploma curriculum underwent revision by the Law Society, with the result that a number of skills were identified as being crucial to legal practice, and which had been, hitherto, not sufficiently been the focus of the curriculum. The Society is keen to see the Diploma develop from what it was before, namely yet another academic course focusing on substantive and procedural law, into a programme of study where attributes, values and knowledge are integrated. The Society now requires providers to focus on a number of professional skills areas, namely:

1. Interviewing
2. Negotiation
3. Advocacy
4. Legal Writing
5. Drafting
6. Research⁵

Early in the process, a Working Party was tasked with drawing up a set of learning outcomes for a new Diploma. The macro-design envisaged a core consisting of professionalism statements that would define the professional standards that lay at the core of the professional legal educative process. Around that were other professional standards: those of Professional Relationships, and of Professional Communications (see Appendix 1 and 2 respectively for draft copies of these outcomes). ‘Professional Relationships’ focused largely on how students and trainees would relate to each other and all others in their programmes and traineeships (effectively one form of Deweyan ‘associated thought’), while ‘Professional Communications’ was sub-divided into areas such as interviewing, negotiation, advocacy, etc.

The outcomes, particularly Professionalism, were drafted with much of the research into professionalism outlined above. It is not sufficient that we outline *what* skills or knowledge components are going to be the focus of PEAT 1, or *how* they will be taught and learned within the programme of study and performance. We also need to consider the moral and ethical context of the programme. Instruction without moral context implicitly teaches our students the ‘hired gun’ model of legal practice referred to above; and many commentators,

⁵ For more information, see Maharg (2004b).

educational as well as legal, have pointed out the dangers of this approach to skills learning.⁶ As Ronald Barnett has pointed out,

A higher education designed around skills is no higher education. It is the substitution of technique for insight; of strategic reason for communicative reason; and of behaviour for wisdom.⁷

We therefore needed to define the value-context within which we want skills to be learned. At the outset, there were a number of key issues to be addressed. We can refine these as the following statements:

1. *Knowledge and skills must be taught within the value system of the profession.* Values such as integrity, industry, service and duty, wisdom, compassion, accountability and responsibility, all of which underpin professional relationships and activities – these values are part of the essential context of knowledge and skills, and must be acknowledged as such. Where there is a dissonance or clash of values, this must be explored honestly – indeed it forms a critically important ‘learning moment’ in the understanding of professional values.
2. *Knowledge and skills are part of professional behaviour,* and professional behaviour can never be taught in classroom activities alone. It requires the presence of practitioners, and often the setting of the office or the court in order to complete the process. Even in office and court, however, the process of learning professional behaviour is not only taught overtly – it is caught in trainees’ observations of practitioners at work, in conversation, and at leisure. Similarly, on the PEAT 1 programme professional behaviour is ‘caught’ in the interstices of the curriculum. It is in this sense that the ‘hidden curriculum’ and the ‘null curriculum’ of the Diploma are useful concepts – that is to say, the unintentional lessons that students learn from a curriculum, and what is unofficially labelled as irrelevant or unimportant by its absence in a curriculum.⁸ Law students learn professional behaviours by observing and imitating peers, tutors, and other role-models, not just in the classroom but in hallways, cafeterias, and elevators. As the literature suggests, the process of learning professional skills can be greatly enhanced by active engagement with professional issues in the classroom and in simulations where models of behaviour can be discussed to bring out the issues involved.
3. There is a substantial *difference between skills teaching and skills learning*. What even the best teacher teaches may not be what a student learns from a teaching event. Any approach to skills education must start from this fundamental point, and staff should be vigilant about their own practice in this regard. Teaching in skills at levels 10 & 11 of the SCQF framework should probably take the form of coaching rather than direct instruction.⁹
4. *Best practice on the PEAT 1 programme will require to be developed and shared among all.* We are not starting a course *de novo*. There will be a considerable body of existing practice at each existing Diploma centre that needs to be taken account

⁶ See for example Toddington, S. (1996) The emperor’s new skills: The academy, the profession and the idea of legal education. In P.B.H. Birks, ed., *What are Law Schools For? Pressing Problems in the Law*, vol 2, Oxford University Press, Oxford. The problem of course is inherent in any professional programme – see Stenhouse, L. (1983) *Authority, Education, Emancipation* Heinemann, London. See also Maharg, P. (2007) *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century*, Ashgate Publishing, particularly chapter four, ‘“By the end of this module...”: the intimate dimensions of ethical education’, pp.99-118.

⁷ Barnett, R. (1994) *The Limits of Competence: Knowledge, Higher Education and Society*, Milton Keynes, Open University Press, 61

⁸ Jackson, P. (1968) *Life in Classrooms*. New York, Holt, Rinehart, and Winston, 353; Eisner, E.W. (1985) *The Educational Imagination: On the Design and Evaluation of School Programs*, New York, Macmillan.

⁹ See for example Wolf, F.M., Turner, E.V. (1989) Congruence between student and instructor perceptions of clinical teaching in paediatrics. *Medical Education*, 23, 2, 161-7

of in the development of skills for the future. The course directors of these centres have a body of design experience and knowledge of their tutor base. The tutors will have experience of teaching and communicating with students; and they will probably have taught with a high degree of autonomy in their classes. The Society needs to enable that shared experience within centres to thrive and develop effectively, but at the same time ensure that models of good practice are carried out by all providers, both new and old, and are applied with reasonable consistency across the range of different providers.

5. *Quality of education: 'good, fast, cheap – choose two'.* So goes the engineering saying, pointing out the common sense relationship between these qualities. The challenge for providers is to become genuinely more innovative in their design of teaching and learning. The challenge for the Law Society as a regulator is to enable ways for this to come about, and to do so bearing in mind the financial costs of high-quality professional education.
6. *Student perceptions of their skills-development.* It is fair to say that many students believe that they are fairly well-skilled when they graduate, and this is true of many (though not all) of them as regards academic skills. However it is also true that the great majority of them will not have undertaken intensive skills training, or used professional resources to help them learn the professional practice of law. They need to develop new perceptions of training and education, of legal skills, and their own changing identities if they are to learn effectively from the PEAT 1. Just as a culture change will be required to be facilitated among teaching staff, so too will it be required among students.

If PEAT 1 really is to be a 'bridge' course, then the foundations of that bridge to professionalism are the core modules, Ethics and Standards, and Professional Communications. These modules should declare to students and others that ethics are regarded as critical to professional practice by the Society, and that effective communication is a critical part of the ethical dimension of professionalism. Other professions recognise this – see for example the work of Hickson and others in medical education and ethics.¹⁰ It also is proof that professionalism is held as a key educational quality by the Society – and again, there is good evidence that other professions have the same perspective.¹¹ As regards communications outcomes, two points should be noted:

¹⁰ See Hickson, G.B. *et al.* (1992) Factors that prompted families to file medical malpractice claims following perinatal injuries, *Journal of the American Medical Association*, 267, 1359-63. The medical educational literature is considerable. See also Frank, V. *et al* (2000) A survey of physician training programmes and communication skills for malpractice prevention, *Journal of Law, Medicine and Ethics*, 3. As Frank *et al* point out, 'patients who feel ignored, deserted, or who suspect that there is a 'cover up' by the medical profession, may be more inclined to sue. Failure to understand the patient and family's perspective and devaluing their point of view have also been identified as common triggers for lawsuits.'

¹¹ See for instance in medical education, Brownell, A.K.W. and Côté, L. (2001) Senior residents' views on the meaning of professionalism, and how they learn about it, *Academic Medicine*, 76(7), pp. 734–7; Bronwell, K.A. (2001) Senior residents' views on the meaning of professionalism and how they learn about it, *Academic Medicine*, 76(7), pp. 734–7; Ginsburg, S., and Stern, D. (2004) The professionalism movement: behaviors are the key to progress, *The American Journal of Bioethics*, 4(2), pp. 14–1; Ginsburg, S., Regehr, G., Hatala, R., McNaughton, N., Frohna, A., Hodges, B., Lingard, L. and Stern, D. (2000) Context, conflict, and resolution: a new conceptual framework for evaluating professionalism, *Academic Medicine*, 75(10 Supplement), pp. S6–11. Papadakis, M.A., Loeser, H. and Healy, K. (2004a) Early detection and evaluation of professionalism deficiencies in medical students, *Academic Medicine*, 76(11), pp. 1100–6; Papadakis, M.A., Hodgson, C.S., Teherani, A.P.D. and Kohatsu, N.D. (2004b) Unprofessional behavior in medical school is associated with subsequent disciplinary action by a state medical board, *Academic Medicine*, 79(3), pp. 244–79. See also Breger, M.L., Calabrese, G.M. and Hughes, T.A. (2004) Teaching professionalism in context: insights from students, clients, adversaries and judges, *South Carolina Law Review*, 55, pp. 303–47.

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1. The list should be treated as a definition of the minimum or threshold experience that students should have on PEAT 1. In other words, students should have the opportunity to practise every minor domain on this list at least once, and preferably twice or more, with feedback. Providers should be encouraged to innovate imaginatively and go beyond the threshold skill set, ideally in the form of a spiral curriculum.
 2. Because there is a difference between skills teaching and skills learning as we have said, the list should not be regarded as prescriptive of the skill set for a capable trainee. Students themselves should be encouraged to develop beyond the skill set. In this regard, providers should use portfolio learning in order to enable students to chart their progress in a variety of skills. This portfolio can link to the undergraduate personal development file, and the forms of work-based assessment that trainees are required to undertake as part of Peat 2. As a result the portfolio should be constructed according to guidelines to be issued separately by the Society; and should really be focused not so much on skills, nor the fundamental values of ethics and communications alone, but also on the student's own developing sense of professionalism.

Approaches to good practice

The development of professionalism in a course of study is never an easy task, and the following general guidelines are in the process of being drafted on the following topics:

- the ways in which the teaching environment and the available resources can be used to structure student activity
- types of teaching and learning, and how the mix of learning styles contributes to knowledge acquisition and professional development
- how tasks and transactions are interleaved and integrated with each other
- the acquisition and development by students of the shared set of terms, external representations that provide a common ground for communication and shared understanding between trainees and training firms, and between client and lawyer

There is extensive literature on this in medical education. In a series of experiments on the role of biomedical knowledge in clinical reasoning, for instance, Boshuizen and Schmidt have shown that experts acquire a robust knowledge base that integrates situated and general knowledge.¹² Knowledge integration is an active process that involves articulating a global framework (the biomedical knowledge), reflecting on situated experiences (individual cases as they are encountered), and actively making connections between situated knowledge and the global framework.

This is also true of the legal domain. A lawyer in private practice will see something in the order of many thousands of cases in a working life. Through the experience of casework, she gains an extensive stock of what might be termed mental schemas and performance knowledge. Solicitors know this implicitly. When presented with a set of facts within their area of practice they are able quite quickly to invoke a schema and can test this initial

¹² Boshuizen, H. P. A. and Schmidt, H. G. (1992) On the Role of Biomedical Knowledge in Clinical Reasoning by Experts, Intermediates and Novices. *Cognitive Science*, 16, 153-184.

schema against the evidence.¹³ Lesgold suggests that, in the process of becoming an expert, a trainee acquires fragments of automatized procedure that gradually become integrated into extended sequences that guide performance. These sequences can be formed quite slowly from practice through the composition of fragments of activity, but the process can be made much more efficient if students are taught the procedures explicitly, as a list of steps towards problem identification and solution, and taught also to begin the process of case pattern recognition. These two forms of learning can bring trainees to a practical knowledge of a transaction much more efficiently if learning is carried out *via* simulation and transaction. In this respect what is true of biomedicine and radiology and many other professional domains is equally true of legal practice.

What are the best ways to achieve this? There is no one royal road, and there is much literature about which methods are effective for which skills and in which teaching environments and stages of learning.¹⁴ Whatever method is used, it ought to be highly experiential and include elements such as role-plays, case studies, simulations, structured interviews, prompted recall, detailed analysis of achievements and performance problems in skill practice and the like.

Great benefit can be derived from intensive coaching sessions at any stage in PEAT 1, where such sessions focus on feedback and review. It is also the case that development in professionalism is greatly enhanced if skills are embedded across the curriculum in realistic transactions. Much of the medical literature on clinical skills emphasises the importance of immediate feedback, of opportunities for practice following review, and of practice within different contexts.¹⁵ Local course providers are therefore best placed to know where to embed skills within their courses, given their knowledge of their tutors, and other conditions pertaining to the course. However there is always a tension between local innovation and standards across the jurisdiction.¹⁶ As stated above, the problem can be resolved if jurisdiction-wide standards exist as threshold or minimum standards, and best practice is shared among providers.

¹³ See for instance the data collected regarding the practice of radiologists, in Lesgold, A., Glaser, R., Rubinson, H., Klopfer, D., Feltovich, P. and Wang, Y. (1989) Expertise in a Complex Skill: Diagnosing X-ray Pictures. In M. Chi, R. Glaser and M. Farr (eds.) *The Nature of Expertise*. Hillsdale, New Jersey: Lawrence Erlbaum.

¹⁴ See for example Taverner, D. *et al*, (2000) Comparison of methods for teaching clinical skills in assessing and managing drug-seeking patients, *Medical Education*, 34, 4, 285-291. See also Eaton, D.M., Cottrell, D. (1999) Structured teaching methods enhance skill acquisition but not problem-solving abilities: an evaluation of the "silent run through", *Medical Education*, 33, 1, 19-23. As they point out, there is 'some evidence to support the hypothesis that different teaching techniques may be more effective for improving different elements of skills learning. In particular, a highly structured technique involving breaking complex tasks down into smaller components and utilizing an internal 'commentary' may be an effective way of teaching the sequential motor components of complex clinical skills.

¹⁵ See for example Kneebone, R. *et al* (2002) An innovative model for teaching and learning clinical procedures, *Medical Education*, 36, 7, 628-34;

¹⁶ In a wider context this is precisely what medical education is setting out to achieve. The work of the Institute for International Medical Education is crucial in this regard (www.iime.org). See for instance Wojtczak A. & Schwarz, M.R. (2001) International standards in medical education: what they are, and do we need them? paper presented at the AMEE Conference, 2-5 September, Berlin, Germany; World Federation For Medical Education Task Force (2000) Defining international standards in basic medical education. Report of a Working Party, Copenhagen 1999, *Medical Education*, 34(8), pp. 665-675; World Health Organization/Education Commission For Foreign Medical Graduates (1995) Towards a global consensus on quality medical education: serving the needs of population and individuals, Proceedings of the 1994 WHO/ECFMG Consultation in Geneva, Switzerland, *Academic Medicine*, 70(7), Suppl.

Associated thought and social software

So far we have been discussing pedagogical approaches only to the development of democratic professionalism. But – and bearing in mind Table 1 above – let us take this down to a further level of granularity – to applications, approaches to learning in detail. How might we achieve some of the high aims discussed above? Can technology play a role in enhancing democratic professionalism? If so, how might it do so?

Recall the link between associated thought and associated life, and how this was, as Tanner observed, essential to Dewey's creative problem-solving method in the Laboratory School. What Dewey created, and for both students and teachers, was what James Paul Gee recently has called 'affinity spaces'. These are informal learning spaces where *inter alia*, common endeavour is primary, where novices and masters share common space, where intensive and extensive knowledge are encouraged, as well as both individual and distributed knowledge. Gee goes on to define this in more detail (Gee, 2004, 83-89) using the examples of video games. Many more studies attest to this quality of game genre – the research of Nick Yee, for example, or Constance Steinkuhler, or the theories of Henry Jenkins. Taylor (2006) in her fine study of the userbase of Sony's EverQuest notes the plethora of sites associated with such games, describing them as 'a kind of "collective intelligence", an idea Henry Jenkins (2002) picks up from Pierre Levy's (1997) work on the reconfigurations occurring in contemporary society around technology and knowledge.' (Taylor, 81).

Video games and social software are examples of such affinity spaces. Facebook can of course be used for purely commercial purposes (and of course video games themselves are hugely commercial undertakings); but like in-world texting, simulations, blogs, tweets, wikis and many other new genres of textual production in the social software revolution they are exemplars of how Deweyan 'associated thought' can be combined with new technologies to bring about a transformation of professional learning. In the next section we shall briefly outline how this might come about.

CASE STUDY 2: Professionalism and SIMPLE – associated thought in action

This case study is a curriculum-wide implementation of simulation activities within a postgraduate, professional legal educational programme, the Diploma in Legal Practice. It involves learning face-to-face using conventional print resources, and also involves online digital resources. While the use of the web to simulate a professional environment is nothing new in itself, our implementation of it and on this scale is fairly unique. In addition, the design and use of the online learning environment has led to the re-design of face-to-face interventions, derived from other disciplines, which are unusual in legal education. Accompanying the implementation is a developing body of theory, called transactional learning (Maharg, 2007b), which aims to describe and analyse forms of learning based upon all professional interactions, and which is relevant to both undergraduate and postgraduate courses.

This year there are 272 students on our Diploma. Many, though not all, of these students have studied law for four years, to Honours level. They are based in the Glasgow Graduate School of Law, in the Lord Hope Building of Strathclyde University. The GGSL is a joint graduate school of the law schools of the universities of Glasgow and Strathclyde, with the resources of the two law schools pooled together to create the joint Diploma programme.

At the inception of the joint Diploma in 1999, there was one full-time member of staff responsible for most aspects of course maintenance and development and a secretary, in addition to a number of part-time Visiting Professors (most of them also practitioners). There are now the equivalent of three full-time staff, and concomitant increase in administrative staff. Almost all of the classes that take place on the Diploma are taught by around 150 part-time tutor-practitioners. This is normal practice in the Scots Law Diplomas. However the greatest area of expansion in the GGSL is probably in the area of ICT (Information and Communications Technology). Here, we have increased our staff from a single network maintenance officer to a Learning Technologies Development Unit (LTDU), which consists of a learning technologies development officer, two applications developers, two multimedia and web designers as well as support staff.

Extensive paper-based materials have always been provided by the Law Society of Scotland for the subjects, which for the most part are composed of styles and explanatory text; but little extra for the teaching of skills was provided by the Law Society. This is especially true of what might be regarded as 'performative' legal skills, *ie* interviewing, negotiation, advocacy (Maharg, 2001). In addition, we required to take into account the forms of professional education at the cutting edge of other disciplines and professions, and adapt them to legal education. To do all this, we developed a simulation engine, called SIMPLE, which would enable forms of Deweyan education to be enacted within a regulatory structure – one where forms of professional learning could also, conceivably, be enacted, via 'associated thought', as forms of democratic professionalism.

SIMulated Professional Learning Environment (SIMPLE)

The simulation environment has two primary software outputs, in the form of the SIMPLE platform and SIMPLE tools, collectively known as the SIMulated Professional Learning Environment, or SIMPLE. Both products are finished to beta user stage. Each of these products is aimed at different areas of the teaching eco-system: the platform is targeted towards students & staff, and is there to provide the day-to-day systems for engaging with and managing simulations. The tools, on the other hand, are targeted towards an academic or professional educator, and allow them to design professional simulations and manage all of the resources that are required to provide an engaging learning experience. Both open-source products are available to the FE and HE communities free at point of use at <http://simplecommunity.org>, with appropriate open-source licence structures in place. The two products are delivered differently as well. In order to allow an academic or professional educator to be effective, without placing constraints such as requiring an internet connection and to avoid conflicts in functionality between different web browsers, the tools have been developed as desktop-based application (currently only for Windows computers at present). This allows the educator to use the software wherever they have the tools, without any external requirements.

The SIMPLE platform is web-based, allowing access from anywhere in the world where staff and students have an internet connection. This allows for flexibility in the student learning environment (they can work from home or work as well as on-campus) as well as flexible options for staff management of student simulations (enabling more efficient multi-tasking in administration and learner support). We have made plans for extensive further development of both tools and platform.

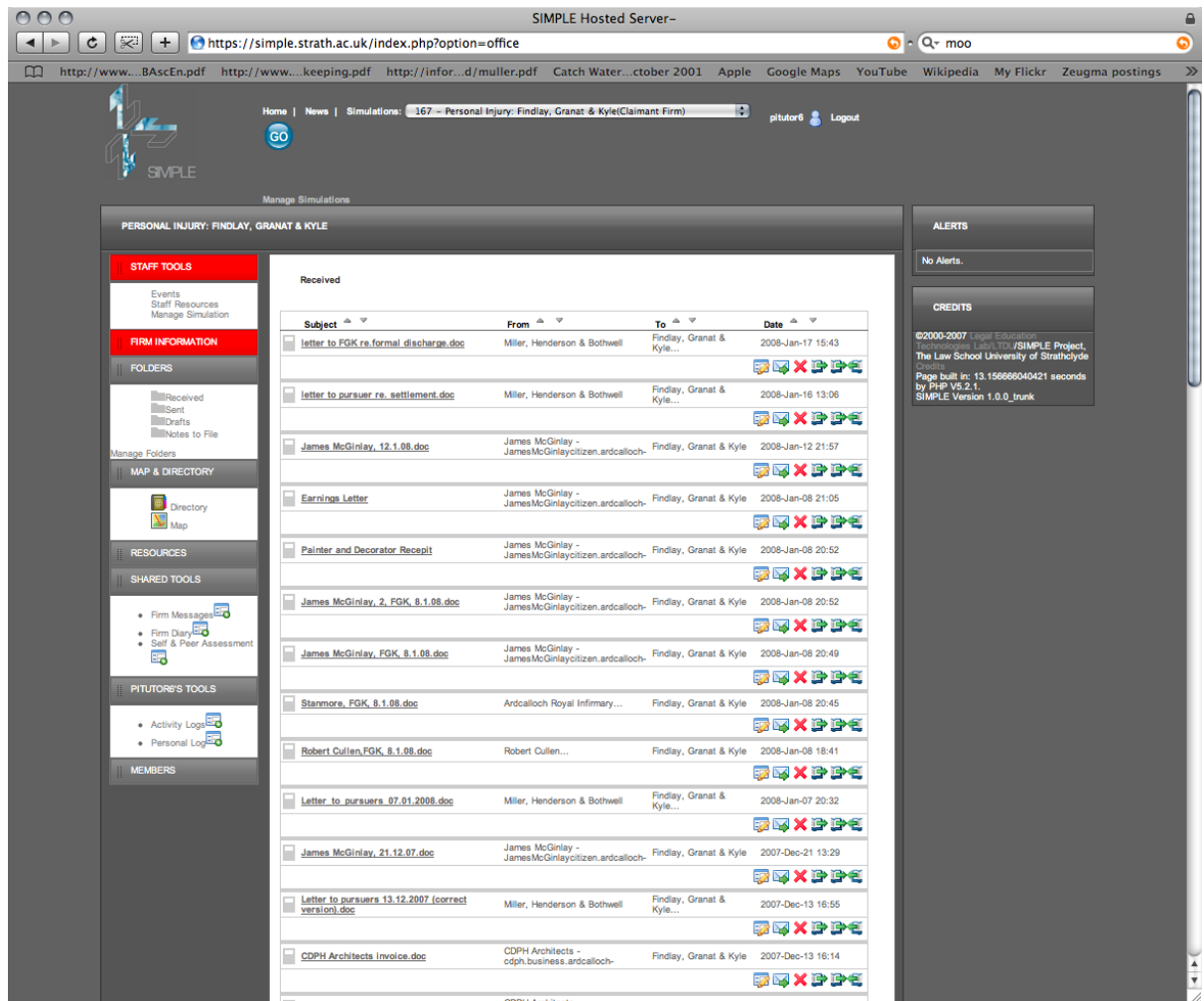


Figure 2: SIMPLE student environment

What do users do with the environment? Figure 2 is an example of the environment, seen from a tutor point of view. Staff see what students see, but with added functionality (staff would click on Staff Tools, in left-hand column to use staff-specific communications tools). Students use the environment as a professional working environment. They can receive, send and store documents, graphics, video and other file formats by uploading them to the environment. They can communicate with real or fictitious persons and institutions, and receive feedback on their work in-role. They have access to any resources that staff may wish to make available to them; they can share tools and resources. They have access to a map of a fictional town (in this case, Ardcalloch – see figure 3 below) and a directory (see figure 4 below). Using the environment, students can build up the correspondence and drafts of an entire transaction, and either use the environment as a single student, or as part of a collaborative grouping.

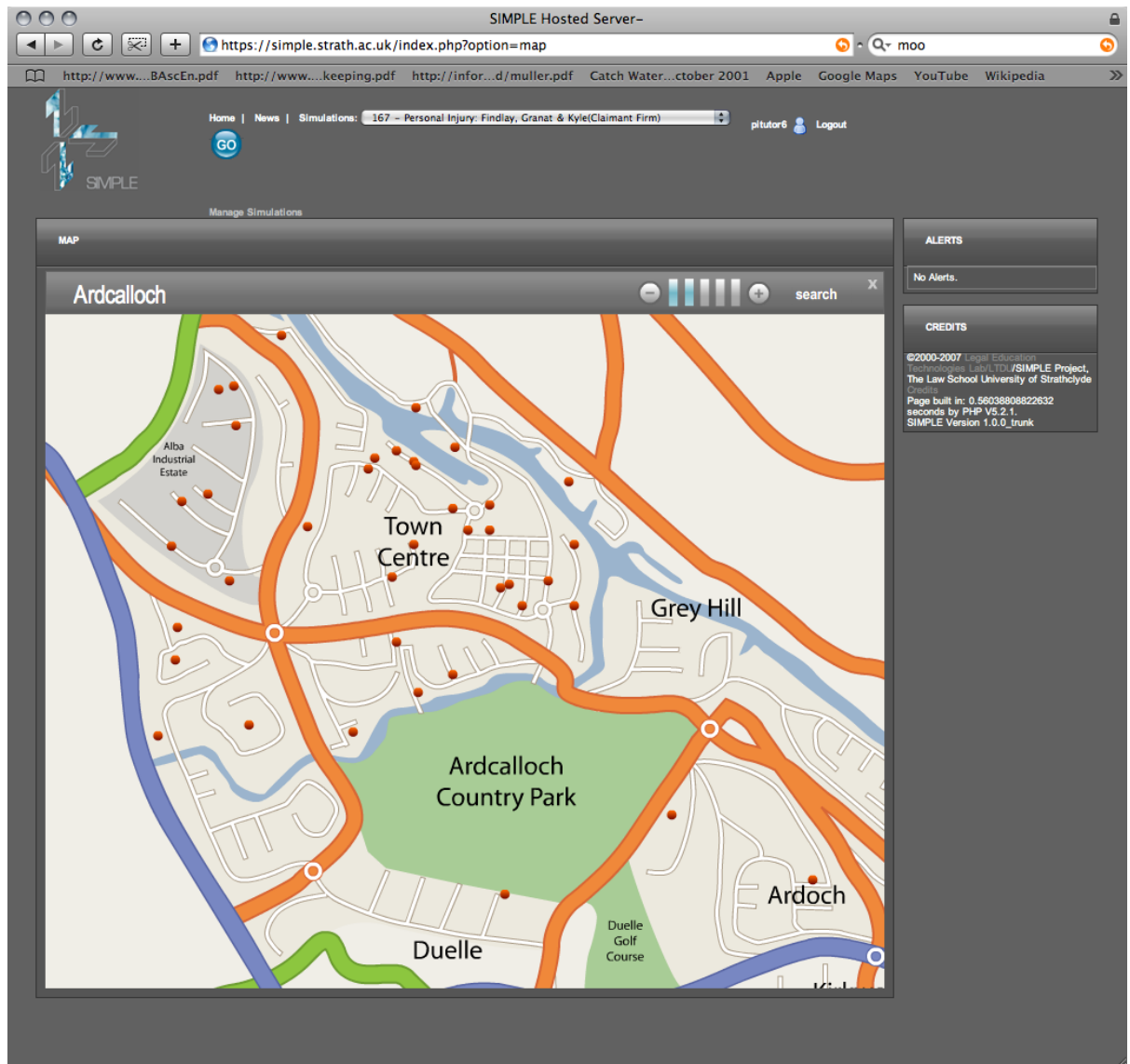


Figure 3: Map of Ardcalloch

Students can increase the level of detail by zooming into the town. Websites, represented at this resolution by red dots, have hover labels which, when clicked, open up a website associated with the organisation or institution.

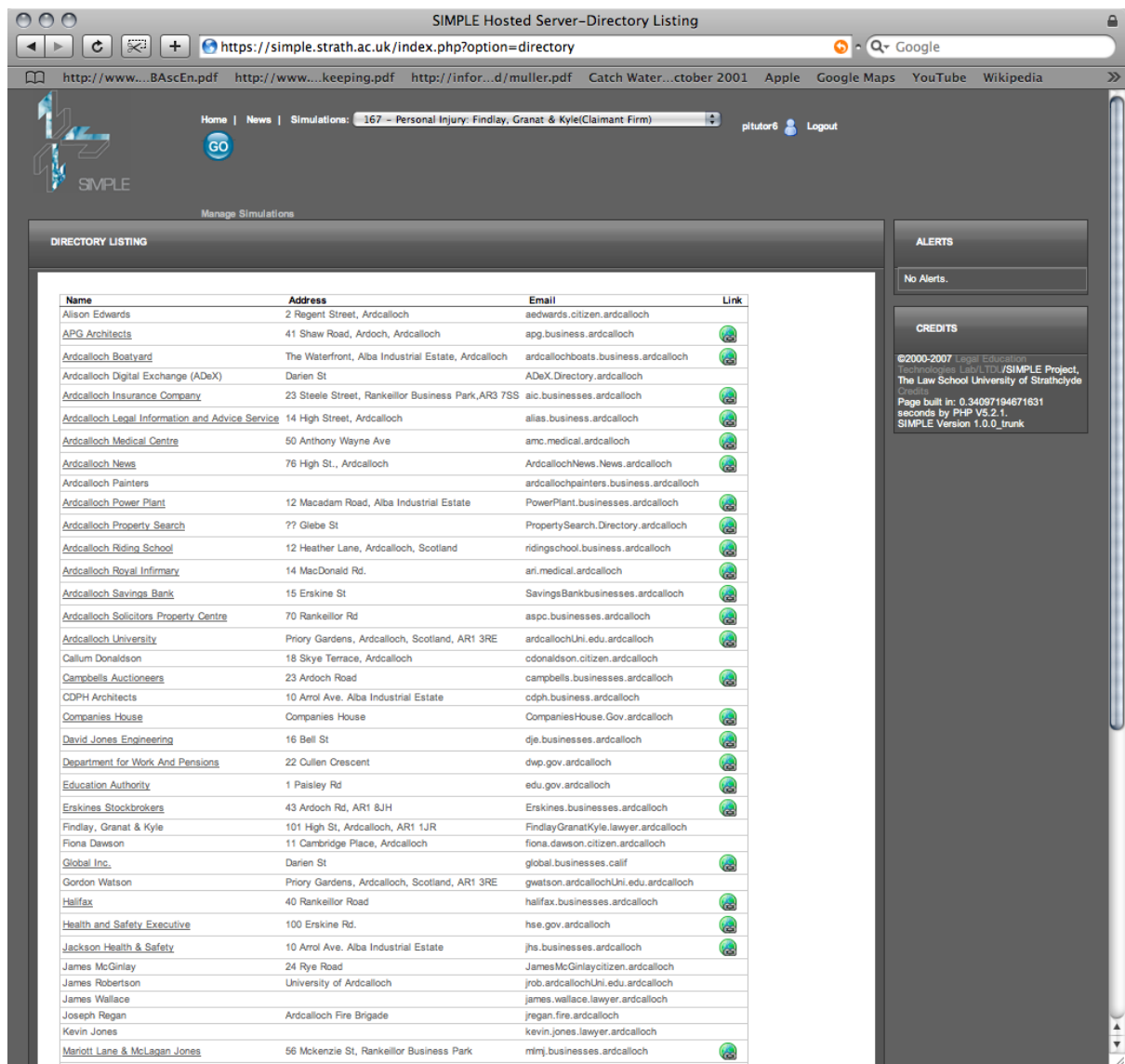


Figure 4: Directory for the Personal Injury Negotiation Transaction

This figure represents the Ardcalloch directory for the Personal Injury Negotiation Transaction, containing all the institutions, organisations and citizens associated with the project. If students were unsure of addresses, they would use the directory. By contrast, the map was rarely used in this project, for students had photographs and sketch maps of the locus of the accident (though it is not difficult to imagine a location-based project where the map would be more central to student activities).

It is difficult to describe briefly the scale of the simulation activities undertaken by students in this programme-wide simulation. For background information and further comment see Maharg (2004a), Maharg (2006), Barton & Westwood (2006), Barton & Maharg (2007), and Maharg (2007a & 2007b). At the start of the year students are formed into groups of four, each one being a simulated law firm. Sited on the south bank of the Clyde, the town acts as a complex simulation of the reality that surrounds actual legal transactions. For example in the Personal Injury Negotiation Transaction (PI), the firms act for clients, either the injured claimant or as the insurance company's solicitors, in a personal injury negotiation that lasts almost a full semester (12 weeks in total). In order to negotiate the case they need to engage in fact-finding by contacting characters and institutions within the virtual community, and pooling the information they obtain. They then need to carry out legal

research on issues such as liability and quantum; set out their negotiation strategy and perform the negotiation, either by email or through a face-to-face meeting. Discussion forums for both sides support students in the complex process of carrying out this legal transaction – one of our Visiting Professors, Charles Hennessy, who is a PI solicitor is on both forums to answer student queries and provide information. Postgraduate students are trained to answer emails in the guise of any one of around 12 different fictional characters, and to give the appropriate information to students. They are supported by an online forum where Maharg and a PI practitioner are present (Charles Hennessy, author of the scenario and many resources). If they wish, students can meet as a firm with either Charles or another negotiation tutor to discuss strategy and performance before they negotiate with the other side. This meeting is in effect a form of small-group, salon learning. It is voluntary: there are no face-to-face interventions at all, apart from an introductory and general feedback lecture (students can also, if they wish, obtain feedback on performance from file assessors at the end of the project)

Project construction is daunting at first. In the PI transaction, we now run 34 different transactions, based on the same underlying narrative. The differences are created by inserting key variables into the document sets (eg names, ages, wages, details of injuries, witnesses, etc), and running these through a document server to create 68 different sets of documentation for our 68 firms. Once the process has been learned, it is easy to replicate in future years; but the initial learning curve for staff (academic and admin) is steep.

This is only one of a number of simulations that use the SIMPLE environment. Students also buy and sell property over the web (Conveyancing); they wind up the estate of a deceased client who has died without leaving a will and they draft a will for the executor (Private Client); they litigate a simple debt action in the Sheriff Court (Civil Court Practice). The subject called Practice Management is now an over-arching subject where students liaise with tutors who are in effect practice managers, and therefore figures who both encourage and discipline the firm. Others are being planned, for example the setting up and winding down of a company. In each transaction students generate the case file that simulates the work that would be carried out in practice, and encounter the forms of ethical and transactional problems that would be there in a real transaction. The criteria of assessment thus vary (from whole-course experience and reflection, to whole case files, to individual files, to individual clauses within a document), as do the forms of assessment. In addition we are planning integration of face-to-face skills assessment of events such as client interviewing and advocacy training, having recently spent the last three years developing what is perhaps a unique experiment in adapting methods of station assessment from medical PBL, such as standardised client assessment (as in our Standardized Client Initiative – see <http://zeugma.typepad.com/sci>).

Nor is this form of learning applicable to legal professional programmes only. It has been used successfully in undergraduate law programmes at Warwick and Glamorgan University Law Schools. It is not jurisdictionally-specific: it is currently being used by the Law Workshop of the Australian National University, one US law school, and is about to be introduced to others under the aegis of CALI (Centre for Computer-Assisted Learning and Instruction, <http://cali.org>) in the USA. It has also been used successfully, in the initial JISC/UKCLE SIMPLE project, in postgraduate Architecture and undergraduate Management Science modules.

Associated thought

What is the point of this form of learning, and what does it do? First of all, it simulates the reality of actual transactions. Note that we aim not for *replication* of reality, which would be an impossibility, but *simulation* of aspects of it. This allows us to focus on the elements that we want students to learn – in the PI transaction, for instance, these included problem-identification and solving, the integration of different bodies of substantive legal knowledge (Delict [including liability and quantum], Tax, Welfare Law), the skills of negotiation formation within the transaction, specific forms of letter-writing, and time management of the transaction, negotiation performance, and client-centred lawyering.

Secondly, it also allowed us to create open-field transactions (such as the PI transaction) which are in effect powerful problem-based learning environments; and bounded-field transactions (such as Conveyancing, where we supply students with template documents, and the transaction is much more linear and bounded by custom and statute) – see Barton & Maharg (2007) for more information on this, and the table below for more detail of the distinction we make.

		Bounded field <i>ie transaction tends to...</i>	Open field <i>ie transaction tends to...</i>
1.	Learning outcomes (LOs) & assessment	Precise learning outcomes, with simulation tasks based closely on outcomes – pre-defined LOs	Bodies of evidence required to be produced to benchmark standards, but less emphasis on pre-specified outcomes
2.	Alignment with traditional learning & teaching methods	Teaching is aligned with tasks and outcomes, often according to an academic structure, eg lecture–seminar; learning is heavily ‘pushed’ by curriculum structure	Teaching is provided where needed according to learners’ needs, often according to a professional, just-in-time learning structure; learning is ‘pulled’ by learners
3.	Operational model	Linear domain procedures, eg predictable document chain – more operationally predictable	More varied, open or diffuse domain procedures, eg transactional guidelines but no specific document chain – less operationally predictable
4.	Student outputs	Specific documents, drafted to specific standards, eg initial writ; fixed or correct versions expected as student output	Procedures that involve a variety of documentation, or documents that cannot be specified easily in advance, eg negotiated agreements; various versions acceptable
5.	Resources	Resources are tied closely to tasks and learning outcomes – highly model driven	Simulation resources are not linked to tasks; learner needs to structure transaction through interactive querying of resources – highly learner driven

Table 1: bounded – open field transactions (Barton & Maharg 2007)

Thirdly, it allows us to create environments that are both zones for learning and assessment, and which fulfil many if not all of the principles set out at <http://www.reap.ac.uk/resourcesPrinciples.html>. In addition, the environments are powerful learning and testing grounds for contested concepts such as professionalism. Such concepts, deriving from research into the culture of professional activity, do not fit easily into the structures of academic assessment (Stern & Papadakis 2006).

Fourthly, in examining the work of professionals it is clear that real professional life is about integration of knowledge into contexts which are changing continuously. That knowledge becomes valuable when it is contextualised in the narratives of professional experience. There is a considerable difference in emphasis in the notion and techniques required for professional development as compared to a technical approach to training. Professional education requires judgement rather than simple answers. This has been well articulated by Bevis & Watson (1990), who compared a technical model against a professional model for clinical nurse education (table below – from Maharg & Owen, 2007, forthcoming, citing Bevis & Watson, 1990).

Technical Model	Professional Model
The only learning worth evaluating can be seen as behavioural changes.	Worthwhile learning is often personal, obscure and private. Only some learning appears as behavioural changes.
Everything that exists, exists in some quantity, and therefore can be counted and measured.	Many things that exist are not externally verifiable.
The teacher-selected goals are the important ones, therefore the evaluated ones. Both teacher and student selected Important, therefore the evaluates ones	Both teacher and student selected goals are important, as is learning attained without goals.
Comparing behaviours to some objectively held criteria or comparing to the progress of other students determines how well something is learned.	Educative learning cannot be rated on a scale. Most learning cannot be compared either to some "objectively" conceived criteria or to the progress of other students.
The teacher-student relationship is hierarchical and the teachers assess students by how well they have met specific objectives.	The teacher-student relationship is egalitarian. Learning requires a process of trusting grades to exploration among expert and novice learners and thrives on constructive criticism.
The quality of rigour of a course can be determined by how well it helps its students meet the discipline requirements as reflected by test scores, attainment of behavioural objectives, and accreditation requirements, since these reflect the agreed-upon discipline content.	The quality of rigour of a course can be determined by how well it helps students collect paradigm experiences, develop insights, see patterns, find meanings in ideas and experiences, explore creative modes of enquiry, examine assumptions, form values and ethics in keeping with the moral ideal of the caring scholar-clinician,

	respond to social needs, live fully and advance the profession.
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Table 2: Technical and professional models (Bevis & Watson, 1990)

Lastly, it enables us to create sim environments that follow many of the best principles of collaborative, holistic, problem-based learning. In assembling transactional projects we have shadowed the sophisticated research literature in medical PBL – for example, the debates on the nature and effectiveness of learning within simulation environments. We see ourselves as a tiny part of the great stream of constructivist projects (interpreting that term in its widest sense), stretching back through theory and practice such as that of Brown & Duguid, Lave & Wenger, the ethnographical cyber/identity revolution of the seventies & eighties (Bateman, Turkle); further upstream, the gathering watershed of Deweyan educational projects, grounded in democratic discourse (and in Dewey's ongoing project to navigate between the massive twentieth century ideologies of realism and idealism *via* pragmatism or instrumentalism); and reaching back, to the springs of Montessori, to Pestalozzi and further back still. And if we turn around and gaze into the future, it flows past us, part of the current multi-user virtual environment (MUVE) revolution, where 2D and 3D will merge; the convergence of hardware platforms, of mobile wireless, social software and f2f learning, and the emergence of new forms of theory and practice in the interface between professional activity and academic activity, and between work and play.

Evaluation

With the exception of the early instantiations of the Conveyancing transactions, feedback has had high levels of approval from students. The aims of the environment are precisely those of the Law Society, the profession, and students themselves, who are about to enter the profession, and who recognize the need to practise in a safe environment the attributes and knowledge that they will be expected to practise for real in the coming years.

Secondly, such simulations enable 'situated learning' (Maharg 2001; Maharg & Paliwala, 2002). It is possible to simulate many of the aspects of real-life practice that students will find in traineeships. Is this important? Most certainly: expert law practice at any stage is not merely a matter of putting academic knowledge into practice. Legal practice changes that knowledge: it has to be re-thought, in order to be put into practice, and often many different types of knowledge and skill have to be juggled more or less simultaneously. Michael Eraut put this well when he said that

... the context of use also affects the learning of theoretical knowledge, and [...] it is misleading to think of knowledge as first being acquired and then later put to use. Not only does an idea get reinterpreted during use, but it may even need to be used before it can acquire any significant meaning for the user. Thus its meaning is likely to have been strongly influenced by previous contexts of use; and the idea will not be transferable to a new context without further intellectual effort. (Eraut, 1994, 51)

Indeed, many commentators would go further, and say that domain-specific knowledge and skills are in themselves insufficient. This has been proven over a wide range of occupations and professions: chess players, physicists and airline counter workers and just some examples (Simon & Gilmartin 1973; Chi *et al* 1982; Stevenson 1996). Expert performance in any profession also requires competence in the norms and cultural practices that sustain and use professional skills and knowledge (eg Cheklin & Lave 1999). Thus, in the PI example above, students learn the skills of legal fact-finding (rarely a skill that is developed in

undergraduate curricula), and practical legal research. They learn the structure of the transaction as it extends over time, and how they need to shape that transaction on behalf of their client. Above all they learn the practice-based ethics of pursuing or defending PI claims: who does what at which stage in the transaction, who ought to get what information from whom, the problems that this gives rise to, technical, ethical, moral, and so on.

But in these forms of situated learning students learn more than merely the mechanics of professional practice. They also learn about their own interpersonal and collaborative skills. The virtual firm in SIMPLE becomes a microcosm, a sandbox for working practices beyond the Diploma. Extended groupwork over the course of a year, which is hardly ever practised in undergraduate courses, is an excellent preparation for professional practice. In Scottish law firms, it is more and more the case that trainees work with other trainees and assistants in their firms, and the ability to do so effectively and professionally is essential. Students tell us in feedback that web-based simulations are an effective method of learning this. Appendix 3 contains an instance of professional conduct. Some extracts from feedback on the PI transaction:

‘I felt that one of the things we could have improved on was the checking of our correspondence before sending. On at least two occasions we had to send letters apologising for previous inaccuracies, or for mistakes to people we had sent letters to. In practice this would suggest a lack of professionalism, and would be unforgivable. It also led to inefficiency in the long run, wasting time on extra letters.’

‘... if we had thought a little harder we could have minimised the number of letters we sent, by requesting all relevant information from a person in one go, rather than having to continually request further details. This was particularly true of our correspondence with Mr Graham, and in real life I suspect that a client would get a bit impatient if he was constantly harassed for more evidence. I did feel that we all lacked a little bit of experience in such matters; knowing what to ask for and from whom, and I am confident that this exercise has helped us in that regard.’

‘The negotiation project certainly helped focus attention on letter writing skills and general IT skills. There were ideas such as the ‘note to file’ and ‘activity log’ that I was not familiar with at the beginning of the project, but now using them is second nature. Furthermore, where most projects/essays in the undergraduate degree have concentrated on testing your legal research skills; the negotiation project was probably the first assignment that I have done that has highlighted the importance of fact gathering. Finally the negotiation project gave you the opportunity to participate in the whole transaction from start to finish and take pride in the final settlement that you helped to achieve.’

Such simulated activity, however, goes beyond mere preparation for practice. The affinity space of SIMPLE is a profound example of the use of technology as a form of education in the cause of democratic professionalism, advocated by Dewey, practised in his Laboratory School, and throughout his work.

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Draft

Appendix 1: Draft of Professionalism Statements (Law Society of Scotland)

Major domain 1. Professionalism				
Minor domain	Throughout the programme a student should demonstrate a commitment to:	Positive indicators	Negative indicators	Appropriate forms of assessment
1.	The interests of justice and democracy in society	Displays an interest in the workings of justice in society; has an ethical awareness of legal practice, and a developing sense of the regulatory framework of professional ethics. Shows awareness of his or her responsibility to improve the capacity of legal institutions and process.	No interest in the role of justice in society; has minimum awareness of ethical legal practice and cannot well apply rules and codes of ethics to practical situations; uninterested in the operation of justice in society at large, or in the operation of democratic principles.	<p>Best assessed longitudinally throughout the programme, by more than one assessor, and in more than one assessment, so that a variety of views are obtained under different conditions. Providers should be under an obligation to inform the Society of students who obtain problematic scores in any of the minor domains.</p> <p>Forms of assessment could include:</p> <ol style="list-style-type: none"> 1. Client-based long case 2. Case file review of simulated client file 3. Portfolio – self-assessment 4. Log book/activity log/confidential file 5. Critical incident review 6. Peer-review 7. Transactional assessment 8. Tutor reports
2.	Effective and competent legal services on behalf of a client	Updates and expands knowledge of the law, knowledge of legal practice, client-centred practice and management of client service. Pays careful attention to standard of detail in legal work; evaluates own client care; appraises new forms of client care and adopts improvements; acts quickly to protect clients and the public from risk.	Undertakes training beyond the minimum on the programme only with reluctance and resentment; is uninterested in client-centred practice; pays little attention to detail of client work undertaken; will not readily improve own practice on the course; is uncaring of the risk to client and public of poor educational performance and lack of professional values and attitudes.	
3.	Continuing professional education and personal development	Is aware of own strengths and weaknesses and forms plans to develop character, values, knowledge and skills throughout the course.	Little or no awareness of strengths and weaknesses; does not link programme to previous training and education or to further training in traineeship; accepts responsibility for own learning where at all only with reluctance and resentment.	
4.	Diversity and public service	Shows an awareness of the importance of equality of access to and participation in legal services regardless of culture, race, religion, gender, disability; assists in the training of new lawyers through peer learning and training of undergraduate students or other groups in society.	Uninterested in equality of access to and participation in legal services; exhibits problematic traits with regard to culture, race, religion, gender or disability. Uninterested in peer learning or feedback given on own performance by students, tutors or others.	
5.	Personal integrity and civility towards colleagues, clients and the courts	Is honest with all others on the course; relates to colleagues on the programme with civility; treats tutors, administrative staff and others with respect.	Exhibits traits of arrogance, intemperate behaviour, mismanagement of own affairs; lies to colleagues or programme personnel; plagiarises work; adopts the work of others as own work; is abusive or contemptuous towards colleagues or programme personnel.	

Appendix 2: Draft of Professional Relationships (Law Society of Scotland)

Major domain	2. Professional Communication			
Minor domain	2 (i) Professional relationships By the end of the programme students should be able to:	Positive indicators	Negative indicators	Appropriate forms of assessment
1.	Adapt personal style to develop professional relationships	Is aware of how personal character, emotion and social relations form professional relations; can adapt character to suit social situations (eg in negotiation); can adopt roles in social situations other than those natural to own character.	Poor awareness of the part character and emotion plays in professional relations, or denies this; makes no attempt to adapt social roles to situations or people.	<p>Best assessed longitudinally throughout the programme, by more than one assessor, and in more than one assessment, so that a variety of views are obtained under different conditions. Assessment should also be embedded where possible within programme modules or projects, rather than in stand-alone assessments. Providers are under an obligation to inform the Society of students who are problematic in any of the minor domains.</p> <p>Forms of assessment applicable would include:</p> <ol style="list-style-type: none"> 1. Client-based long case 2. Case file review of simulated client file 3. Portfolio – self-assessment and peer-assessment 4. Log book/activity log/confidential file 5. Critical incident review 6. Peer-review on collaborative work 7. Collaborative activities that provide the ground for assessment
2.	Listen, give and receive feedback and respond perceptively to others	Looks at speaker; neither asks questions nor makes comments until speaker has finished; can summarise accurately what the speaker has said without embellishment or omission. Can comment positively and with perception on the performance of others in the group; can accept and act upon feedback from others to improve professional practice.	Interrupts other speaker; talks over speaker; easily distracted by own thoughts while other is speaking; cannot summarise well what another speaker has said; gives poor or disparaging feedback to peers; comments on person, not task; does not accept feedback from others, or resents being the focus of feedback; sees no relation between feedback and improvement of professional practice.	
3.	Understand the basic dynamics of groupwork	Understands own personal style and strengths; makes effort to understand others' styles and their contribution to group dynamics; can communicate this understanding and discuss it with others in a group; can understand the collective competences of a professional group.	Little or no understanding of personal style and strengths; uninterested in roles others play in the group and cannot analyse these; uninterested in the role of collective competences in professional work or ignores them in relations with others.	
4.	Act as a group member	Takes personal responsibility for professional tasks; can liaise with others over tasks; can share task information, learning and knowledge; can recognise positive group dynamics and encourage these; is aware of negative group dynamics and can avoid them.	Denies responsibility for tasks; unable to face issues of psychological defensiveness or existential anxiety; can only operate in rigid categories or hierarchies; difficulty in communicating professionally with others; exhibits gender, cultural, race or religious biases; interested only in own development, not that of others.	

5.	Lead a group effectively	Motivates the professional group; organises delegation of tasks; plays to group strengths; is aware of collective competences of the group and maximises these; is aware of risks of groupwork and manages group functions to minimise these.	Antagonises the group; cannot delegate or trust others to carry out tasks; is unaware of group strengths; is dismissive of collective competences; sees leadership as dominance of group; exhibits unprofessional attitude towards others; ignores the risk element of this approach and blames others for task failure.	
6.	Develop techniques for appraising and developing their skill at forming and maintaining professional relationships	Modifies own practice in the context of feedback from tutors and peers; demonstrates improvement in practice throughout the span of the programme.	Poor self-appraisal; does not listen to or act upon advice given by peers or tutors; cannot seem to modify conduct; little or no improvement throughout the span of the programme.	

Appendix 3: Client communications as an ethical issue

The firm was acting for the pursuer. Students reported to the client on the case in a detailed and well-founded letter, estimating the claim to be worth around £10550 – 12750. At the end, in a section headed 'Further action required by you' the firm asked for instruction to negotiate in the following terms:

You have indicated that would prefer to not have this matter proceed to court. Please inform us as soon as reasonably possible of your instructions of the amount we would be able to accept on your behalf in full and final settlement of this claim following negotiation with the defenders.

The client replied as follows in his letter:

As for the total amount of the claim, the wife and I have discussed the matter and we're happy with the sort of amounts you've stated there. As I say, I'm not wanting to go to court, but I do want as much as I can get though I realise you've got to be realistic. I'm not looking for apologies or anything. Do your best and just get as much compensation as you can.

The next letter the client received was a copy of a negotiated agreement, agreeing a sum of £11,000 in full and final settlement of the client's claim. He made two responses. The first was a letter stating he was happy with the amount. The second, however, expressed doubts about his position in the process:

Just one more thing. I notice that the Agreement is signed by you rather than me, which is fair enough I suppose, if you are my solicitor. I don't know about the details of these things. But it just seemed odd to me that you sent me the agreement signed by you, and I had not said if I agreed with the amount. I just wonder what would have happened if I had changed my mind?

The client's point was one of several major issues of course. The case had been settled without client instruction, and the amount had been agreed without precise instruction, and the firm had signed the document on behalf of the client.

There are so many issues that arise out of this exchange. On one level, it is the classic instance of miscommunication between client and lawyer. The lawyer misinterpreted the client's general wish as a specific instruction. This could be a misunderstanding by the student lawyer of the process by which instructions are taken and given, their specificity, when they are taken (is it best to do this by embedding the request in a section of a fairly lengthy report, for instance), and such like. There are issues here of the various uses of letters and reports, how to use language with legal import that is at once clear and precise.

On another level this is a version of the deeper miscommunication that happens between lawyer and client because the nature of the relationship that develops between them is one of instrumentalism [Felstiner & Sarat]. As a result, they talk past each, and the ethics of the situation becomes problematic for the firm. The client is someone for whom something is done. The client is disempowered, as related by the classic disempowerment literature [eg Cunningham, de etc]. The ethics of this lead to an unacceptable conclusion for the client, albeit he was satisfied with the monetary result. Once again, the literature on how clients value process is relevant here to explain the client's puzzled response.

The client's response was of course not the only possible one. What would have happened if the client had refused to accept what was no longer an offer but a binding contract? As

the client and all other fictional roles in the simulation, it was my decision on how to play this. In considering the matter I did what I ask all the PI tutors to do, namely be congruent not just with the trail of previous correspondence but with the client's feelings. Congruence is thus a Rogerian matter of being aware of one's feelings and desires in the context of the legal transaction. In their report the lawyers had indicated that a settlement of between £10550 and £12750, *ex contributory negligence*, was appropriate. The sum settled was within this range. It felt reasonable to settle, and I was a fairly amenable though not compliant client. But had I refused to agree to the settlement there is little doubt but that under the ethical standards governing the behaviour of solicitors in Scotland he would have had a claim for incompetent services.

On a final level, there is the concept of professional services. There is no *service* as such in this incident, for the legal agent is usurping the position of the client, not only in agreeing to a negotiated settlement without client assent but in drawing up and signing the agreement. The professional hierarchy has been inverted. The professional network is also broken – if the client had refused, the other side, the insurer, even the university (its client) would have been inconvenienced. The incident exhibits, in other words, a lack of *judgment*, of professional foresight and contextual awareness of the nature and consequences of decisions. The firm was under pressure of time to complete the negotiation (though they had organised the final stages of the negotiation well enough to obtain client agreement), and this is one reason why they may have settled as they did. At some point, though, they will have come to a decision: how do we finish the negotiation process and the settlement drafting process? There would probably have been reference back to the client's letter following the report (quoted above). However it happened, the dual decision means that there was not an instant, possibly hasty single decision that was made – rather, this was a strategy that deliberately left the client out of the process, and was a failure of judgment as a result.

The development of judgment, of course, leads us into precisely the arena that Barnett raises *vis-à-vis* the nature of competence and which is analysed in chapter four of *Transforming Legal Education*. In other words this is a classic instance where the quality of judgment can be taught, not overtly, but through situated learning. The student lawyers are in a situation that is precisely of their making. As Kant observed, judgment cannot be taught. But it can be learned, a distinction he does not make, but which is explicit in much of the educational literature from Dewey onwards.

What, then, did the students do when they received the client's letter? They replied to him, and the paragraph dealing with the issue is set out below:

In our report to you dated 16th December 2008 we asked for your instructions as to the amount that we could accept on your behalf in full and final settlement of the claim. In your letter of 4th January 2009 you indicated that you were happy with the amounts that we had indicated and that we were to do our best and just get as much compensation as we can for you. We took this to be your instructions for us to settle on your behalf and are sorry if we misinterpreted these and for any confusion involved in the process.

It is an interesting response. There is careful resumption of the correspondence, and a conditional apology ('...if we misinterpreted these...'). No more: no action to be taken for the future, no communication within the firm to the senior partner over the incident. It may be possible for judgment to be learned, and it may be that some learning has taken on the issue for the students involved here, but the evidence is not persuasive.

What was the position of the firm on the other side of all this? This firm was acting for the insurer, Ardcalloch Insurance Company, the insurer for the University of Ardcalloch. The firm sent a report on the case, and in a covering letter they advised the client and requested instructions in the following terms:

We would estimate that a settlement would not exceed the amount of £12,000. If you would like us to negotiate a settlement on your behalf please provide us with instructions to do so. Alternatively if you would prefer to defend the case in court, please note that our usual fees would apply for court proceedings.

Linda Hawkins of AIC responded as follows:

First may I wish you a prosperous New Year – difficult in the circumstances, I know. Thank you for your very detailed and helpful report. It has assisted us substantially to form a view of the case which, as you know, we were in some doubt about several months ago. Your letter confirms our intention not to let this case proceed to court, but to settle in pre-litigation negotiation.

I note the sums requested by the claimant's agent. While we would be willing to pay this amount, we would prefer if the amount could be reduced by negotiation. Your option of emphasising contributory negligence sounds sensible in the circumstances; and you have our instructions to proceed quickly on this matter. Should you require more detailed instructions urgently, send correspondence to AIC marked URGENT and I shall respond as soon as possible.

In response to a simple note from the lawyers stating that they were about to enter negotiations (but not making any further requests for instruction) AIC replied in these terms:

With reference to your correspondence of 6th January, 2009, I would reiterate that £15,000 is our preferred sum. We may go to £18,000, but in these straitened economic times, as I am sure you understand, we wish to keep our compensation payouts to a minimum. We also wish to keep our case costs to a minimum as well, and therefore I would reiterate that court appearance on this case is not an option for us.

The next letter that AIC received informed them of the successful outcome to the negotiation:

With reference to your correspondence of 8th January, 2009, we are happy to inform you that a financial settlement of £11,000 in full and final settlement, with no admission of liability was agreed in connection with [the claim]

Attached is a signed settlement agreement confirming this figure, which guarantees discharge of right to claim and confidentiality in relation to this personal injury claim. A cheque in payment of this sum is to be sent to the pursuer's solicitors no later than 31st January 2009.

We hope this outcome is agreeable to you and thank you for your continued business with [firm name]. We will send an invoice for work done in relation to this claim by the end of the month.

Linda Hawkins responded for AIC as follows:

That you for your recent letter informing me of the successful outcome of the negotiation between your firm and [firm name], acting on behalf of the claimant,

and for the inclusion of the agreement. I note that the agreement is signed on our behalf, however on going through my case file I do not seem to have a copy of a letter sent to you agreeing the sum mentioned in the Agreement or its terms. While I am perfectly happy to accept the sum agreed, and the terms, it may have been wiser to have checked this with me before signing the agreement on AIC's behalf.

That aside, I must say that I am happy with the way you have dealt with this case, and in particular with the monetary outcome which falls below our expectations for the case and the reserve we had set aside for it. My thanks for your efforts in successfully closing the case.

Clearly the issues are the same here as for the pursuer firm, but the client responds more critically, having much more experience than the claimant of the right ordering of such matters. The same matters of miscommunication, of ethical responsibility and professional inversion (leading the legal agent to instruct the client how to make payment, and by which date) appear here too. It may have been that the firms discussed the issue between them as part of their endgame strategy, with each confirming the other in their error.

The defender solicitors, however, responded differently. They met to discuss the issue raised by AIC, and made a note of their meeting as follows:

A note to all lawyers to highlight the discussion we had regarding the letter from AIC, dated 13 Jan.

All acknowledged and understood AIC's concerns with regard to this matter. However, we had felt the letters of 4th and 8th Jan had provided us with the authority necessary to settle. Further to this, our discussion with a 'senior partner' at the negotiation surgery had led us to believe that a signed settlement agreement was both prudent and necessary.

The lawyers felt that his one-off breakdown of communications between the firm and AIC, who are a long-standing client, should be taken on board and that we should put in place a clear process for settlement in future actions.

The point raised regarding the voluntary surgery and discussion with the tutor was something of a red herring; and while the note still presents a defence of their actions as with the claimant firm, there is an honest acknowledgement of AIC's position. The final paragraph is more honest, and reveals the firm not just thinking of future action, but acting responsibly and above all professionally as a firm. This professionalism subsists not merely in risk management, but in an acknowledgment that process as well as individual actions affects professionalism. In debrief the incident should have been the subject of analysis by the firms. Both firms may have learned from the incident (I would be surprised if they had not), but it's clear that the defender firm was more sophisticated in its response.