Developing a curriculum-wide assessment strategy

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ABSTRACT

This paper presents a future-oriented vision for legal education, with a focus on what assessment practices can and should be. It aims to stimulate dialogue by proposing a curriculum-wide strategy anchored in three key principles. The first principle involves harnessing the potential of generative AI to transform teaching and assessment methodologies by teaching students to use it responsibly and integrating it into assessment strategies. The second principle advocates an increase in the opportunities for, and scope of, oral assessments. Oral assessments, read broadly, can support our students in becoming confident communicators and advocates, developing practical lawyering skills while assessing them in ways that represent a range of real-world scenarios. The third principle offers students curated choices in assessments across the curriculum. This approach empowers students to take ownership of their learning and development, while supporting their diverse needs and preferences. These three principles are designed to be a realistic and achievable means of taking forward assessment in legal education in the new higher education environment, creating an integrated framework that supports staff experience as educators and equips students with the skills and confidence to excel in a rapidly evolving landscape.

1. Introduction

Law schools in the UK are facing an identity crisis. In the aftermath of a pandemic, we are attempting to reconcile: the economic pressures of the increase in cost of living;[1] flat tuition fees and maintenance loans;[2] changing

[1]See eg "Cost of Living Rise Sees 96% of Students Cutting Back" (NUS 2024).

[2]Eg Richard Adams, "More Than Half of UK Students Working Long Hours in Paid Jobs" *The Guardian* (London, 13 June 2024) <https://www.theguardian.com/education/article/2024/jun/13/more-than-half-of-uk-students-working-long-hours-in-paid-jobs> and Jim Dickinson, "Should the Government Get on and Raise Fees?" (*WonkHE*, 19 September 2024) <https://wonkhe.com/wonk-corner/should-the-government-get-on-and-raise-fees/>. The 2024 UK General Election saw a new Labour government form. At the time of writing, it remains to be seen what, if anything, will happen regarding HE funding.

government higher education (HE) policies;[3] the introduction of the Solicitors Qualifying Examination (SQE) and resulting removal of the "qualifying law degree" (QLD);[4] and the rapid development of generative AI (genAI).[5] A lot has changed, and a lot is changing. What does a law school look like in a post-Covid, post-genAI, post-QLD world – and how should we respond? This paper argues for a future-oriented vision of legal education, focusing on what assessment practices can and should be. Its purpose is not to challenge the underlying sector-wide and institutional concerns and priorities outlined herein, though there is no doubt certainly scope to do so. Instead, the paper purposefully seeks to advance the conversation regarding assessment by offering a pragmatic, curriculum-wide strategy centred on three key principles: embracing the use of genAI, increasing opportunities for oral assessment, and providing students with greater choice in assessments. These principles are designed to be a realistic and achievable means for shaping assessment in legal education in the new HE environment, creating an integrated framework that supports staff experience as educators and equips students with the skills and confidence to excel in a rapidly evolving landscape.

First, the integration of genAI into legal education has the potential to revolutionise how we teach and assess our students, offering new ways to evaluate their understanding and application of legal principles, knowledge and concepts. However, this rapidly developing innovation comes with real concerns about the authenticity and originality of student work. In exploring these implications, I nonetheless suggest we should not only be teaching students how to use genAI appropriately, but embrace it as a tool in our assessment strategies. Second, I propose a considered increase in the scope and frequency of oral assessments. We need to support our students in becoming confident communicators, developing practical lawyering skills while assessing them in ways that represent real-world scenarios. By oral assessments I want to encourage us to think beyond the standard presentation format and embrace the dynamic methods we have available to us to support students in demonstrating their knowledge, critical thinking and communication skills in real time, such as interviewing, mooting, mock trial, debate, video, simulation and so on. Of course, the use of genAI and oral

[3]Eg in 2022 the Office for Students (OfS) introduced new conditions of registration and ongoing registration for universities. The "B conditions" set out expectations for courses and student experience, and must be demonstrated should universities want to enter the Teaching Excellence Framework (TEF) which, in turn, could influence a student's choice of university. "Registration with the OfS" (OfS 2022) <https://www.officeforstudents.org.uk/for-providers/registering-with-the-ofs/registration-with-the-ofs-a-guide/conditions-of-registration/>; "How Can Students Use the TEF Ratings?" (OfS, 20 January 2022); "A Guide to the Teaching Excellence Framework" (UCAS 2024).

[4]Since September 2021 qualifying as a solicitor no longer requires a QLD. Instead, prospective solicitors are now required to have an undergraduate degree in any subject, and to pass the SQE Parts 1 and 2. "Solicitors Qualifying Examination (SQE) Route" (SRA, August 2025) <https://www.sra.org.uk/become-solicitor/sqe/>.

[5]See Sections 2 and 3.1.

assessments go hand in hand, with the latter capable of disarming worries that staff have regarding authenticity in the genAI era, particularly if they include a form of "question and response" in relation to the presented material. These methods complement each other, enabling us to leverage technological advancements while upholding academic standards. However, the ambition here is much wider, seeking to foster our students' confidence in their abilities beyond the written form. It is with this broader ambition that the third principle is advanced. Providing students with limited and curated choices in assessments at module level[6] empowers them to take ownership of their learning journey and skills development. This flexibility acknowledges the diverse needs of our students, with the ambition to enhance engagement and motivation, by allowing them to showcase and develop their abilities in ways that best suit their individual strengths and goals.

This is not intended to be an exhaustive account of what individual assessments would look like. Rather the argument offered here is a call for us – both staff and students – to think beyond a siloed and modular curriculum, to carefully consider how our assessment practices fit together as a whole. By deploying the three principles curriculum-wide, I suggest that we can build a more inclusive and diverse educational experience, creating a platform whereby all students have the opportunity to shine and succeed.[7] Before moving to a discussion of each principle in Section 3, we turn first to Section 2, to briefly outline the context for legal education, and UK HE in particular, which this paper seeks to respond to.

2. Context: the post-Covid, post-genAI, post-QLD law school

In 1999, Glasner, in exploring the challenges of moving beyond traditional means of assessment concluded that factors such as the massification of HE, availability of resources, and preventing plagiarism were inhibiting innovation in assessment practices.[8] In some ways the sector has moved on from this point over the past 25 years. However, with the flat undergraduate home tuition fee putting pressure on institutions to increase student numbers (and the concerns around scalability of assessment types that go with this),[9] compounded by

[6]The term "module" here is used to refer to a subject or unit of study component of the wider programme, sometimes referred to as a course.

[7]It should be noted that at the time of writing, my home institution is undertaking an institution-wide course and curriculum review. While I am currently Director of Education at Kent Law School (KLS), this paper is not an exploration of this review, or any consequent changes made at KLS or Kent more broadly. Rather it is written, in part, informed by a reflection on my experience of being involved in a curriculum review at a large law school and the opportunity for "blue skies" thinking this afforded. It is this "blank sheet of paper" approach that I offer here, and not a comment on what has or has not been adopted at Kent.

[8]Gerard van de Watering and others, "Students' Assessment Preferences, Perceptions of Assessment and Their Relationships to Study Results" (2008) 56 Higher Education 645, 646.

[9]Jedidajah Otte, "'I See Little Point': UK University Students on Why Attendance Has Plummeted" *The Guardian* (London, 28 May 2024) <https://www.theguardian.com/education/article/2024/may/28/i-see-little-point-uk-university-students-on-why-attendance-has-plummeted>.

growing concerns about the impact of genAI on assessment practices, we are at a point where it is all too easy to lean into tried and tested forms of assessment, including in-person exams. However, it can just as easily be claimed that while all the factors referred to regrettably persist, and indeed with new ones added for good measure, this is all the more reason for requiring innovation in our practices. We must do something different if we are to succeed in delivering excellent education and experience for our students. Many interlinking contextual factors inform the curriculum-wide assessment approach advocated in this paper, and space precludes an exhaustive account. I will therefore focus on the following changes as particularly influential in informing the approach advanced here: requirements for solicitor training, technological advances, understanding of mental health and disability, attitudes of students to in-person teaching events, and the economic climate.

First, a significant change that law schools in the UK continue to grapple with is the introduction of the SQE, and the resulting new solicitor training requirements. The removal of a law degree as a requirement for solicitor training may have an impact on the value students place on it, because while knowledge and understanding of the "Foundations of Legal Knowledge" (FoLK) subjects are tested in the SQE, it is no longer a requirement to evidence this in a formal qualification.[10] While the Bar continues to require the coverage of the FoLK subjects, the removal of the QLD marked a significant change for law schools to address, no less so as law schools explore what their role, if any, is in the training of solicitors.[11] Some have responded by integrating "SQE prep" into the three-year degree, others are offering Master's or integrated Master's as an optional fourth year of study, while others still are outsourcing or creating partnerships with external providers. How such changes influence assessment practices and the drive to support students in becoming "SQE ready" is a matter that continues to evolve.

While the notion of genAI is not new, recent advancements in machine learning capabilities have led to the creation of several tools which can at vast speed generate text, audio, imagery, and more. Where in recent years attention was placed on the threat of "essay mills", sights are now firmly set on the implications of genAI for academic misconduct and the integrity of take-home assessments.[12] The conversation around the use (and indeed misuse)

[10] "FoLK" being contract, criminal, equity and trusts, EU, land, public and tort law.

[11] The scale here is significant – in April 2022, there were 17,252 barristers in the UK, yet some 154,985 solicitors. "Diversity of the Judiciary: Legal Professions, New Appointments, and Current Post-Holders – 2022 Statistics" (Ministry of Justice, updated 13 July 2023) at section 4.1 "Legal professions".

[12] Jonna Lee, "Effective Assessment Practices for a ChatGPT-Enabled World" *THE* (8 May 2023) <https://www.timeshighereducation.com/campus/effective-assessment-practices-chatgptenabled-world>. Views continue to evolve, as genAI does. Eg Daniel Sokol, a barrister and former lecturer who specialises in academic misconduct, suggested early on that all important assessments should take place in person. This was in part a response to the prevalence of online exams at the time (a result of the pandemic "lockdowns") and concerns regarding cheating. Daniel Sokol, "Our Universities Have a Cheating Problem – It's Time to Bin Online Exams" *Independent* (London, 31 December 2022) <https://

of genAI in learning and assessment is incredibly fast paced, with understanding, views and policy developing weekly at this point in often very conflicting ways. Some are of the view that genAI should be avoided at all costs, noting its use to be nothing short of cheating,[13] where others are actively encouraging its use across teaching and assessment.[14] Discussions are taking place against a backdrop of increasing focus on graduate outcomes and employability, and supporting "SQE readiness".[15] Indeed, in that respect it should be noted that genAI is not just an "assessment issue". While legal services still grapple with how to react to genAI, the increasing reality is that our students will enter a legal service (or indeed a workplace more broadly) which utilises genAI in some way,[16] and this ought to be a consideration for our learning and teaching practices if we are to support our graduates in their future careers.

The student population, and our understanding of our students, is also rapidly evolving. There is increased awareness of mental health – a growing concern that we are in a "crisis" situation, with ongoing debate regarding the duty of care owed to students by universities. For example, in 2022 a case reached the courts regarding the role of a university in the suicide of a student with a disability (chronic social anxiety disorder), Natasha Abrahart, who was due to give an oral presentation as a core assessment in an undergraduate course. Here the County Court was asked to consider whether the university owed Natasha, and students more broadly, a duty of care. Given the role of oral assessments in the strategy I advance here, I shall return to this, and the subsequent High Court findings, in Section 3.2.

Student perceptions of HE are also changing. Attention has long been focused on the perceived emphasis students place on the "mark" over education.[17] However, and somewhat counterintuitively, we also, post-Covid, are working with a cohort of students who are not attending. While views vary as to why

www.independent.co.uk/voices/universities-online-exams-covid-cheating-b2254027.html#comments-area>. At the same time, we were being urged to teach students how to use genAI. Emily Hinkley, "Teach Aspiring Lawyers to Use ChatGPT, Says Top Law Prof" (*LegalCheek*, 18 January 2023) <https://www.legalcheek.com/2023/01/teach-aspiring-lawyers-to-use-chatgpt-says-top-law-prof/>.

[13] See eg Sally Weale, "Lecturers Urged to Review Assessments in UK Amid Concerns over New AI Tool" *The Guardian* (London, 13 January 2023) <https://www.theguardian.com/technology/2023/jan/13/end-of-the-essay-uk-lecturers-assessments-chatgpt-concerns-ai>.

[14] James Bagshaw, "ChatGPT, Assessment and Cheating – Have We Tried Trusting Students?" (*WonkHE*, 20 February 2023) <https://wonkhe.com/blogs/chatgpt-assessment-and-cheating-have-we-tried-trusting-students/>.

[15] Eg Maria Romero-Gonzalez, "Evidencing the Impact of Authentic Assessment in Graduate Employability" (*Advance HE*, 21 February 2024) <https://www.advance-he.ac.uk/news-and-views/evidencing-impact-authentic-assessment-graduate-employability#:~:text=Authentic%20assessment%20offers%20an%20opportunity,a%20meaningful%20and%20integrated%20way>.

[16] Václav Janecek, Rebecca Williams and Ewart Keep, "Education for the Provision of Technologically Enhanced Legal Services" (2021) 40 Computer Law & Security Review, Article 105519.

[17] A lot of work has been done regarding students' engagement with assessment feedback – what students understand as feedback, how they interpret feedback, how they go on to use it, etc. See eg Edd Pitt and Lin Norton, "'Now That's the Feedback I Want!' Students' Reactions to Feedback on Graded Work and What They Do with It" (2017) 42 Assessment & Evaluation in Higher Education 499.

attendance for in-person events are often at record lows, generally it is seen as the result of a combination of changing attitudes to the requirement to attend, the need to prioritise paid employment in the challenging financial environment, and the ability to "catch up" on lecture recordings.[18]

Finally, there are also tangible and sobering impacts from the financial and policy environment more broadly – institutions are struggling. In many instances colleagues are being required to teach more students with the same or, in many cases, fewer resources. Any assessment strategy advanced must be mindful of cohort sizes, and be able to accommodate the numbers in question.[19] We want innovative assessments, but are concerned they are not scalable.[20] We want to deliver varied assessments, but are unsure how we will cope with resulting marking loads. We want to decrease assessment burdens, while also providing constructive feedback to support progress within and across modules.[21] As Boud and Molloy note, "fewer tasks overall and fewer regular tasks mean students get less practice and less systematic knowledge of their performance".[22] These time, scale and burden concerns are significant in the overall context of developing and delivering assessment strategies that work for both staff and students as we move beyond the immediate post-Covid era of HE.

It is in this context that I offer three areas of focus for the development of a curriculum-wide assessment strategy – embrace the use of genAI, increase opportunities for oral assessment, and harness opportunities for choices in assessment patterns – with the ambition to encourage attendance and engagement in the classroom, facilitate varied skills-focused means of assessment that do not come with increased marking burdens, and support our staff and students in an increasingly pressured and competitive environment.

3. Developing the curriculum-wide assessment strategy

3.1. Embrace AI

At present, it is commonplace to set one or two written summative assessments, such as essay or problem questions, with sometimes limited

[18] Jack Grove, "Lectures in Question as Paid Work Pushes Attendance Even Lower" *THE* (14 March 2024) <https://www.timeshighereducation.com/news/lectures-question-paid-work-pushes-attendance-even-lower>. In fact, this is not a UK-specific phenomenon, and similar effects have been seen in the USA and Australia. Paul Basken, "Class Attendance in US Universities 'at Record Low'" *THE* (6 December 2023) <https://www.timeshighereducation.com/news/class-attendance-us-universities-record-low>.

[19] Jaclyn Broadbent, Ernesto Panadero and David Boud, "Implementing Summative Assessment with a Formative Flavour: A Case Study in a Large Class" (2018) 43 Assessment & Evaluation in Higher Education 307.

[20] Angelika Kerr, "Teaching and Learning in Large Classes at Ontario Universities: An Exploratory Study" (Higher Education Quality Council of Ontario 2011) 12.

[21] David Boud and Elizabeth Molloy, "Rethinking Models of Feedback for Learning: The Challenge of Design" (2013) 38 Assessment & Evaluation in Higher Education 698, 699–700.

[22] ibid.

opportunities for formative assessment or formal feedback prior to a submission. The desire to assess less, so as to not overburden both students and staff, often has the unintended consequence of putting more pressure on students, with each assessment becoming more "high stakes", while still leaving colleagues with a high marking burden. Such practices are unrewarding and ineffective for both students and staff. It is in this context that in November 2022 ChatGPT came into the world. To date, much focus has been placed on ChatGPT, though there are many other models, all swiftly developing and offering a range of capabilities. This is important to note in the framing of the AI debate, because we need to be clear regarding the tools and capabilities we have in mind for what students, and teachers, can and cannot use, and in which contexts. For example, AI is already used by many students (and academics) in the form of AI editing tools such as Grammarly, which claims to be an "AI writing partner that makes it easy to raise your grades and meet your goals with real-time writing feedback for school and beyond".[23] Initially designed to support students in the development of their writing, Grammarly now offers additional genAI functionality such as a "brainstorming" feature to "help students conquer their fear of the blank page by providing assistance with brainstorming, researching, and outlining".[24] Microsoft Word now has a "predictive text" feature which anticipates what you will write next as you type, offering suggestions that you can accept or reject as you go along. Its "Editor" feature provides suggestions which range from spelling and grammar to inclusiveness, clarity and formality, with an overall score provided throughout the writing process. Such features are switched on by default, meaning that unless we actively change our settings, in using this word processor we receive advice and assistance as we go. Turning to our law students more specifically, we have also seen the development of new genAI tools in legal databases, such as vlex's "Vincent" which offers features such as case analysis and the provision of relevant materials based on the content of an uploaded document.[25] What this means is that a range of AI and genAI functionality is now built into standard applications and processes that we and our students use to create and mark work. An important part of the conversation, then, is which forms of AI and genAI are we happy for students to be using and, significantly, in which ways?[26]

[23] "Grammarly for Students" (*Grammarly*, 2024).
[24] "Grammarly for Education" (*Grammarly*, 2024).
[25] "Vincent AI" (*vlex*, 2024).
[26] While much of the conversation is firmly focused on this question, there is an important underlying debate regarding the integrity and ethical use of genAI tools. Doubts have been raised regarding the datasets used to train tools, including regarding "Western" bias and copyright infringement. Edward Helmore and Kari Paul, "New York Times Sues OpenAI and Microsoft for Copyright Infringement" *The Guardian* (London, 28 December 2023) <https://www.theguardian.com/media/2023/dec/27/new-york-times-openai-microsoft-lawsuit>.

Not precluding the need to design "ChatGPT-proof" assessments, as noted in Section 2 above, I suggest we embrace the existence of genAI; supporting, and co-producing with, our students in appropriate and effective use. Both staff and students have often vastly different experiences and skills in using genAI tools, with some being proficient and endeavouring to keep up with the pace of the evolving technology, where others are reluctant or indeed unwilling to engage with them. To embrace genAI, therefore, we need to support both colleagues and students in understanding it – how it works, its limitations, what it means to use it ethically, and how we can ascertain the quality of outputs. Some of this baseline work may be done at university level, some at subject/school level, and can certainly be driven forward with students as partners; the latter increasingly having a reputation of being more proficient than we (the teachers) are.[27] Importantly, embracing genAI in the way advocated here means utilising it both in the learning process and as a tool for assessment. There are a number of ways in which we could do this. For example, a common means of engaging students in the assessment process is to provide them with example responses to an assessment, for them to "mark" and discuss in class. These activities help students to meaningfully engage with assessment criteria, identifying errors, good practice, evaluating form/structure and so on. In place of examples from previous student work or exemplars, we could ask students to mark AI (or partially AI) generated responses instead. Importantly, this actively requires a sound grasp of module materials, because for students to effectively critique what they are reading they need to have a baseline level of knowledge and understanding. This encourages students to approach what they are reading with criticality, not merely accepting what they are reading as correct, which is a significant challenge students face when engaging with perceived "authorities" on a matter. This approach enables authentic discussion of the use and limits of genAI – facilitating conversations regarding appropriate prompts, reliability, fact and source checking. Using genAI in this way therefore supports students to engage rigorously with module content, reflect on means by which genAI can be used effectively (or not), build confidence in their own capabilities of judging merit, as well as fostering wider engagement with assessment processes more broadly. Not insignificantly, it is also time-efficient for the teacher, who is using genAI to at least partially generate content as a teaching and assessment tool.

[27] Eg Mollie Dollinger and Jason Lodge, "Student-Staff Co-Creation in Higher Education: An Evidence-Informed Model to Support Future Design and Implementation" (2020) 42 Journal of Higher Education Policy and Management 532. Space limits the depth of discussion on this point. It is worth noting, however, that irrespective of either party's competence with the tech, value of co-production lies in part in the buy-in one fosters through a two-way dialogue with students.

Employed as a teaching tool, genAI can also be used to facilitate group, peer and self-assessment.[28] For example, we can build on the ways in which students engage with assessment questions (I have in mind those such as problem questions, case notes or advice notes, though this could be employed beyond this). First students can work in groups to discuss a provided answer – assessing it against provided criteria. We can then build on these foundations they have worked on collectively by creating individual feedback for a new response, which in turn can also be assessed by their peers. This could be developed further still whereby students can next be required to reflect on the quality of the feedback they provided to one another.[29] In addition to utilising and educating on potential use of genAI, assessment is made a more active, formative process, with students regularly and critically engaging with the application of module learning. The example provided here has an added benefit of further embedding understanding of marking criteria, which students can use throughout their studies to assess and develop their work. By employing such considered use of genAI in our teaching practices we can embed simple and effective formative assessment for learning throughout the term, as well as summative assessment of learning.[30] In the context of non-attendance and concerns about engagement in classes, such an approach can be a powerful tool in supporting the recognition of value in attendance among students, with the work actively happening in the classroom by means of ongoing engagement with their peers.[31] Marrying learning processes and assessment in a classroom setting in this way can also create more opportunities to mark work "in-situ", so as to support the potential alleviation of marking burden timeframes we experience as markers.

[28]Eg Hui-Teng Hoo, Christopher Deneen and David Boud, "Developing Student Feedback Literacy through Self and Peer Assessment Interventions" (2022) 47 Assessment & Evaluation in Higher Education 444; Sean Kearney, Timothy Perkins and Shannon Kennedy-Clark, "Using Self- and Peer-Assessments for Summative Purposes: Analysing the Relative Validity of the AASL (Authentic Assessment for Sustainable Learning) Model" (2016) 41 Assessment & Evaluation in Higher Education 840.

[29]Ngar-Fun Liu and David Carless, "Peer Feedback: The Learning Element of Peer Assessment" (2006) 11 Teaching in Higher Education 279; Christopher Culver, "Learning as a Peer Assessor: Evaluative Peer-Assessment Strategies" (2023) 48 Assessment & Evaluation in Higher Education 581.

[30]Geraldine O'Neil, *Curriculum Design in Higher Education: Theory to Practice* (UCD Teaching & Learning 2015) 75. While Swaffield raises concerns about confusing formative assessment with assessment for learning, it is sufficient for present purposes to simply mark the distinction between learning and teaching throughout the course and what we do "for marks". Sue Swaffield, "Getting to the Heart of Authentic Assessment for Learning" (2011) 18 Assessment in Education: Principles, Policy and Practice 433.

[31]There may of course be times when students are not able to attend classes, be this for mitigating circumstances or reasonable adjustments. In such cases accommodations can be made by building in multiple and/or additional in-year opportunities to undertake assessments. See also the discussion concerning adjustments in Sections 3.2 and 3.3 regarding the position advocated here.

3.2. Emphasise oral assessment

In thinking beyond genAI and traditional written assessments, we need to support students to become confident communicators, assessing them in ways that reflect real-world scenarios, highlighting the transferrable value of the skills developed. In focusing on practical lawyering skills and enabling students to develop a range of approaches in communicating information and arguments, I would increase the opportunity for oral assessment, and increase the diversity of such assessment, be that through presentation, debate, mock trial, video, viva, moot, negotiation, interview, etc. Quite often such assessments are "one off", or indeed extracurricular. This in turn means that students feel acutely nervous and reluctant to engage with such activities, and lack the time and space to build competency and skills.[32]

In developing oral assessments, consideration must be given to the specific skills we intend students to develop. For example, one study has suggested that students perform better when the focus is on argument and dialogue, rather than presentation skills – in terms of both how well students prepare and how they feel about oral assessments.[33] Having, say, a moot as a criminal law assessment over an advice note, or a client interview in contract law over a problem question, would be effective means of testing module learning as well as opportunities to develop these key employability skills. By focusing on argument and dialogue over presentation skills specifically, we also go towards alleviating concerns regarding the perceived increased potential for marker bias in oral assessments. In fact, some studies have suggested that oral assessments, while nerve-inducing, can be preferred means of assessment by students, particularly where they are deemed to support them in the development of their professional identities.[34] Of course, no marking of assessment is free from bias. Some address concerns of bias by implementing anonymous marking. This cannot be easily achieved with oral assessments, and so colleagues might be concerned regarding a call to increase the scope and scale of oral assessments course-wide. However, anonymity does not entirely alleviate bias. We all have preferences regarding writing style, formatting, structuring, and so on, which influence, subconsciously or otherwise, our perceptions of merit. Moreover, there is evidence to suggest that students do not necessarily think anonymous marking is a "fairer" approach to take, but that it could in fact undermine the value of feedback, and the relationship built between staff and students in

[32]Chloe Wallace, "Using Oral Assessment in Law: Opportunities and Challenges" (2010) 44 The Law Teacher 365.
[33]ibid.
[34]Mark Huxham, Fiona Campbell and Jenny Westwood, "Oral Versus Written Assessments: A Test of Student Performance and Attitudes" (2012) 37 Assessment & Evaluation in Higher Education 125.

fostering ongoing dialogic feedback.[35] There are unquestionably matters which we need to be cognisant of and address in the administration of such assessments, such as unconscious bias and halo bias. Such matters can be addressed and limited across all assessment types by being alive to such biases and building robust assessment criteria and marking rubrics, along with staff training which support inclusive assessment practices, and which focus on the content, strength of arguments, knowledge and understanding and so on, over the delivery.[36] In fact, this is true for both oral and written assessments.

While I am confident we can address concerns regarding bias in the marking of oral assessments, a further reason why we are often reluctant to assess students orally is because of their perceived (and quite often genuine) reluctance to be assessed in this way. We have tended to respond to their reticence and nervousness by requiring fewer instances of oral assessment, and often have "the" oral assessment (quite often a group presentation) in the core curriculum to ensure the box is ticked somewhere. I argue, though, that a significant aspect of this reluctance on the student's part stems from inexperience and a general lack of confidence in their ability to "present" in the traditional sense. In addition to setting clear expectations from the outset, this can be addressed by embedding a diversity of progressive opportunities throughout the curriculum, to support students in building confidence and proficiency in oral skills. We could, for example, start with a non-assessed in-class presentation, followed by one which is teacher-assessed, followed by one which is peer-assessed (peer assessment here having the added benefit of engaging all participating students throughout the process, as well as reducing the marking burden for staff).[37] Utilising feedback from these activities we could undertake a mock trial in another module, followed by moot, followed by client interview, or similar. Such means of assessment would be spread throughout the three-year curriculum so that students have a variety of opportunities to build these skills and, importantly, confidence in them, without a single module being too "high stakes".

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[35] Edd Pitt and Naomi Winstone, "The Impact of Anonymous Marking on Students' Perceptions of Fairness, Feedback and Relationships with Lecturers" (2018) 43 Assessment & Evaluation in Higher Education 1183.

[36] Eg Donna Hurford and Andrew Read, *Bias-Aware Teaching, Learning and Assessment* (Critical Publishing 2022); John M Malouff and others, "Preventing Halo Bias in Grading the Work of University Students" (2014) 1(1) Cogent Psychology, Article 988937; Michael Gerlt and others, "Reducing the Impact of Bias in Oral Assessments" (2023) 12 Le Pedagogiska Inspirationskonferens <https://www.lth.se/fileadmin/cee/genombrottet/konferens2023/D5b_Gerlt_etal.pdf>.

[37] While not a prominent feature of the present discussion, the role of peers in assessment, and preparation for assessment shouldn't be underestimated in a curriculum-wide strategy. Eg Knight and others note that pre-viva peer-mentoring is effective in reducing anxiety for students preparing to undertake viva voces. Rachael-Anne Knight, Lucy Dipper and Madeline Cruice, "Viva Survivors – the Effect of Peer-Mentoring on Pre-Viva Anxiety in Early-Years Students" (2018) 43 Studies in Higher Education 190. https://www.lth.se/fileadmin/cee/genombrottet/konferens2023/D5b_Gerlt_etal.pdf.

It would be inappropriate to advocate the use, and proposed increased use, of oral assessments without addressing concerns regarding the accommodation of, or impact on, students with disabilities and mental health concerns. This has been made all the more acute and sobering with the untimely death of Natasha Abrahart in the lead up to an oral assessment at university. In Abrahart v University of Bristol it was argued on behalf of Natasha's estate that universities owed students a duty of care "to take reasonable care for the wellbeing, health and safety of its students. In particular . . . to take reasonable steps to avoid and not cause injury, including psychiatric injury, and harm".[38] While the County Court ruled that the university did not owe such a duty, the High Court did not offer a final view on this matter.[39] Ultimately, the university in this case was found to have discriminated against Natasha, in breach of its responsibilities under the Equality Act 2010, having not made reasonable adjustments to the means of assessment in light of her disability. While the matter of a wider duty of care has yet to be determined, this case brings into stark relief the importance of understanding and meeting the needs of our students in devising and delivering assessment strategies, spotlighting universities' roles and responsibilities in appropriately supporting the wellbeing and welfare of all students. There are two significant points I would highlight in ensuring oral assessments meet the needs of our students. The first concerns the emphasis placed here on the diverse means by which we can assess orally in the first place. Often, we hear "oral assessment" and think of a traditional presentation (individual or perhaps group). However, as advocated here, our understanding and application of such means of assessment should be much wider. We can, for example, within oral assessments provide different means of assessing students. Through role-play scenarios, such as police interview simulations, we can accommodate students who want to work in groups, or pairs, or by themselves, among several in the room, or on a one-to one basis.[40] We can explore video form, both pre-recorded and live, which not only enables students to present in a way that supports their needs, but also lets them harness their creativity. While such diversity in options will go some way to support student needs, there will no doubt be situations in which the oral assessment(s) devised are not appropriate for certain students. The second means by which we can ensure student needs are met is therefore by offering alternative means of assessment, a point which is related to, and developed, in the final principle advocated here – the use of choice in assessments.

[38] *Abrahart v University of Bristol* [2022] CC (Bristol) G10YX983 [143].
[39] *The University of Bristol v Abrahart* [2024] EWHC 299 (KB) [270].
[40] With thanks to my colleague Dr Allison Holmes who shared this example with me, and who is developing such a dynamic opportunity for her students.

3.3. Empower through choice

While curriculum structures vary across the sector, a standard three-year Law LLB will typically involve a range of "core" modules that students must do (traditionally focused on the FoLK) as well as a range of optional modules to choose from.[41] In selecting optional modules, we know that students put great weight on methods of assessment, sometimes even forgoing preference of content in favour of assessment type. The third principle advocated is greater choice of assessments throughout the curriculum, enabling students to take ownership of their education, reflect on their abilities and interests, and choose not just what to study, but how to study.[42] That is, in addition to targeted choice in the "core" curriculum, I would also see choice as a powerful tool for optional modules as it means that students need not be deterred from exploring a subject based on the adopted assessment method. For example, embedded at certain points across the curriculum, students could choose between, say, moot/problem question; exam/viva; essay/presentation, etc., ensuring that learning outcomes are met through such means.[43] Indeed, the choice can be broader still. Students are often given the opportunity to select their own questions, and increasingly given the opportunity to offer suggestions for the means by which they are assessed. For example, an assessment might require a "visual representation", and it is for the student to determine whether they want to produce a poster, presentation, video, piece of art, and so on. Choice in assessment is not new. What is, I suggest, is the concerted effort to offer limited and strategic choice across the core and optional curriculum in a way that considers the curriculum as an integrated whole, supporting students to reflect on their own skills, abilities and interests – what they want to develop and progress with. While this is possible with fixed assessment patterns across optional modules – students can select modules based on the means of assessment if they so choose – the offer of choice within modules means that students do not have to forgo interest in a subject matter due to their concerns over the assessment entailed.

There are two clear, understandable concerns about such an offer of choice – that consistency in standards and the assessment of learning outcomes will be difficult to manage across types, and that students could be

[41] Practice is varied across the sector, though typically "core" modules will be spread across two to three stages of the degree.

[42] Eg Joanne Garside and others, "Repositioning Assessment: Giving Students the 'Choice' of Assessment Methods" (2009) 9 Nurse Education in Practice 141; Geraldine O'Neill, "Student Choice of Assessment Methods" in Rola Ajjawi and others (eds), *Assessment for Inclusion in Higher Education* (Routledge 2022).

[43] Geraldine O'Neill, "It's Not Fair! Students and Staff Views on the Equity of the Procedures and Outcomes of Students' Choice of Assessment Methods" (2017) 36 Irish Educational Studies 221. Eg in a Level 6 module I convene students can choose between a presentation or an essay as their final mode of assessment. Assessment criteria are designed to ensure the assessments are comparable in their rigour and in meeting module learning outcomes.

paralysed by the choice offered. I will address each concern briefly in turn. First, while it is easy to understand concerns around consistency, they can be mitigated at least in part through the development and communication of robust assessment criteria and rubrics – detailing clearly to students and markers how each form of assessment meets learning outcomes. Yet, more than this, I would also urge us to think beyond the need to ensure consistency in this narrow way. As O'Neill notes on the idea of fairness:

> Institutional policies in higher education attempt to develop quality assurance procedures that support the concept of equity, however, despite these attempts to be fair, these efforts do not always produce just or equal outcomes. Stowell (2004) describes this, not so much as equity but as the concept of "justice" which is more concerned with outcomes and opportunities. Students' choice of assessment methods aims to enhance the chances of a wider group of students' potential to achieve similar outcomes.[44]

Such considerations should be at the fore when we devise assessment strategies, reflecting on who our students are and what we want them to be able to achieve and demonstrate. Indeed, in thinking about the role of fairness here, it is also important to note that we need to include in this any implications for marking and teaching workloads in devising assessment options that are realistic and achievable for both students and staff.[45]

Turning to the concern that students could be overwhelmed by the choice offered, it is important to emphasise that in order for such a strategy to be most effective the choice built into the curriculum would need to be planned and considered across the core and optional module offering. Students' experience of different learning and assessment methods is shown to support their confidence in having a choice and making this choice.[46] Opportunities to choose should therefore be progressive as students move through their degree programme, scaffolding support so that choices evolve from question, to output, to assessment type, and so on, both across the stage and across the stages. While students would be responsible for making these decisions, personal and peer reflection can be built into module learning to ensure that students select the most appropriate assessment patterns (and any choices therein) for them.[47] Limited and strategic choice in this way means students will be exposed to a variety of assessment methods, building

[44]ibid 223. Studies have also suggested that colleagues are concerned by perceptions of grade inflation resulting from diversity in assessment patterns. O'Neill and Padden point out that such inflation (if it exists) could well be down to the diversity offered allowing more students to perform well. Geraldine O'Neil and Lisa Padden, "Diversifying Assessment Methods: Barriers, Benefits and Enablers" (2022) 59 Innovations in Education and Teaching International 398, 402.

[45]Liu and Carless (n 30); Geraldine O'Neil (ed), "A Practitioner's Guide to Choice of Assessment Methods within a Module: Case Studies from University College Dublin" (UCD Teaching and Learning 2011).

[46]O'Neil (2011) (n 46).

[47]Liu and Carless (n 30).

key skills in the areas we identify, yet also be able to develop their own interests.

Finally, choice in assessment is a tool we can deploy to not only address concerns regarding student inclusivity but, significantly, alleviate such concerns from the outset. As noted, there is increased focus on and exploration of the purpose of assessments in HE and how they can or should be adapted for students with different educational needs or disabilities.[48] Building in choice and diversity of assessment methods supports inclusivity, by ensuring that flexibility of assessment method is available to all and not as a special measures or adaptation for students with identified specific learning differences.[49] This means that we would increasingly not need to offer alternative means of assessment for students with specific needs, because such flexibility would already be built into the offering. As alluded to in the discussion of oral assessments, and again here, part of this can be achieved by offering choice within the assessment components themselves, but also more broadly with the offer of varying assessment types. While we would need to do this in a way that we can be confident that learning outcomes of the module, and course, are met, Abrahart is a powerful reminder that there are many ways in which students can develop and demonstrate their competency in a skill.[50]

4. Conclusion

In developing assessment methods by drawing on the three principles advocated here in a whole-curriculum approach, I suggest we can strengthen what we currently do, while effectively responding to new challenges and realities, for the benefit of both students and staff. The first principle (use of genAI) focused on the content and tools deployed within assessments. The second (increasing oral assessment opportunities) focused on the type of assessments. And finally, the third (offering choice) was a call to think across assessment types. All three were advocated in their own right, but also as part of a wider integrative approach – encouraging both staff and students to see the course as a whole and singular offering, rather than a collection of siloed components, while also reflecting on how and why we assess in the post-Covid, post-genAI and post-QLD law school.

[48] Juuso Henrik Nieminen, "A Spanner in the Works: The Portrayal of Disabled Students in Assessment Adjustment Research" (2023) 32 International Studies in Sociology of Education 30; Juuso Henrik Nieminen, "Unveiling Ableism and Disablism in Assessment: A Critical Analysis of Disabled Students' Experiences of Assessment and Assessment Accommodations" (2023) 85 Higher Education 613.

[49] See Judith Waterfield and Bob West, "Inclusive Assessment in Higher Education: A Resource for Change" (University of Plymouth 2006).

[50] Deborah Johnston and Harriet Cannon, "It's Time to Get Certain around Competence" (*WonkHE*, 19 February 2024) <https://wonkhe.com/blogs/its-time-to-get-certain-around-competence/>.

The ambition and questions prompted are much wider still. With the introduction of the OfS "B conditions", universities, and colleagues, are being steered in a direction of continual curriculum review. This, in our changing context, means that we need to reflect seriously, and often, on who our students are, what their needs are (academic, employment, wellbeing and more), and how our course offerings and assessments therein can meet them. In this new and changing environment, I advance the three principles here as potential transformation points by which we can ensure that we effectively, yet simply, reflect on what we deliver and how we deliver it. This is, of course, only a part of the wider conversation we need to have concerning how we answer the question of who we are in this new environment – one which I hope the present paper fosters.

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