

A systematic review of commercial awareness in the context of the employability of law students in England and Wales

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Abstract

Commercial awareness is identified by employers as an important and desirable graduate skill. The recruitment literature employed by many law firms in England and Wales indicates commercial awareness is required by law students to gain access to the legal profession. However, commercial awareness is a skill that many law students struggle to conceptualise and to demonstrate during the graduate recruitment process. This article presents the results of the first systematic review of the available literature on commercial awareness. The systematic review was driven by the growing importance of commercial awareness to law students, employers and universities. Although this article focuses on the position of law students based in England and Wales, it is anticipated that its findings will resonate with legal educators across Europe and beyond. This article considers the following key questions: What is commercial awareness? How important is it and why? How do students develop commercial awareness and can it be taught during their legal education? How can students demonstrate commercial awareness during the graduate recruitment process? This article highlights the key themes the review results presented, providing a suggested definition of commercial awareness and considering its growing importance to employers, students and law schools and the issues this creates. This article makes recommendations for legal educators as to how to support the development of commercial awareness in law school curricula and makes suggestions for further research.

Keywords: commercial awareness; employability; law schools; legal education; graduate skills.

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Introduction

Competition for graduate employment in the legal sector in England and Wales grows each year.¹ A number of stakeholders, including the government, the higher education sector, the legal profession and students themselves expect law students to develop a range of skills whilst at university.² To access employment as a legal professional, students must demonstrate a variety of skills³ at an early stage of their career journey when engaging with complex graduate recruitment processes⁴ that become more challenging each year.⁵ Employers expect universities to deliver candidates who can transform into

¹ The number of graduating law students has increased by 22.8% since 2009 (16,499 graduating in 2019 compared to 13,499 graduating in 2009) whilst the number of training contracts has increased by 9.2% (6344 available in 2018/19 and 5809 in 2008/09). Trends in the solicitors' profession, Annual Statistics Report 2019, The Law Society, October 2020 <www.lawsociety.org.uk/topics/research/annual-statistics-report-2019> accessed February 2021. The number starting pupillage increased from 437 in 2014/15 to 568 in 2018/19. <www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar/pupillage.html> accessed March 2021. More students will be competing for training contracts and pupillages than the law degree figures suggest as both professions are open to non-law graduates on completion of postgraduate conversion courses. Many law graduates start work as paralegals or other legal associate professionals following graduation but the number doing so each year is unclear. Research suggests the number of legal associate professionals is increasing by 1% each year. It is predicted that the number of legal associate professionals will increase by 2% per year and that 2800 will be needed per year – see Matthew Williams and others, 'Research to inform workforce planning and career development in legal services, Employment trends, workforce projections and solicitor firm perspectives Final Report' (Institute for Employment Studies 2019) paras 7.1 and 7.3. <www.employment-studies.co.uk/resource/research-inform-workforce-planning-and-career-development-legal-services> accessed March 2021.

² QAA 'Subject Benchmark Statement for Law' (2019) para 2.4 <www./docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16> accessed February 2021. David Edmonds, 'Training the Lawyers of the Future – a Regulator's view' (2011) 45 *Law Tchr* 4, 10. David Rigg, 'Embedding employability in assessment: searching for the balance between academic learning and skills development in law? A case study' (2013) 47 *Law Tchr* 404.

³ For example, see Macfarlanes' requirements for trainee solicitors, <<https://macfarlanes.com/media/3555/macfarlanes-graduate-brochure-2020.pdf>> accessed February 2021 and <www.eversheds-sutherland.com/global/en/where/europe/uk/overview/careers/graduates/what-we-look-for.page?> accessed February 2021 for Eversheds Sutherland.

⁴ See, for example, the recruitment process at Pinsent Masons <<https://www.pinsentmasons.com/careers/graduate/training-contracts/england.com/careers/graduate/training-contracts/england>> accessed February 2021.

⁵ Institute of Student Employers 'The ISE 2017 Annual Survey, Trends, benchmarks and insights' (2017) 57-64 (ISE).

'ready-made' legal professionals.⁶ The increasing importance of employability across the higher education sector is well documented.⁷ Though universities may take different approaches, none can ignore the impact the employability agenda is having at an institutional and departmental level.⁸ Further evidence of this is demonstrated by the importance of employability to the Teaching Excellence Framework and university league table rankings, which drive student interest and demand for courses, placing further pressure on universities.⁹

Law firms set the agenda for the skills, competencies and attributes required from those they seek to recruit.¹⁰ Whilst some of these requirements are obvious to employer, student and educator, for example, teamwork and communication skills, other skills can be more difficult to understand, develop and demonstrate. Some students may lack certain skills or feel less able to develop and demonstrate skills than others, due to issues with personal, social or institutional capital, inhibiting access to the profession.¹¹ Commercial

⁶ Egle Dagilyte and Peter Coe, 'Professionalism in higher education: important not only for lawyers' (2014) 40 *Law Tchr* 33, 34. Andrew Godwin, 'Teaching Transactional Law – A Case Study from Australia with Reference to the US Experience' (2015) 16 *Transactions: Tenn J Bus L* 343, 345-347.

⁷ Michael Tomlinson, 'Graduate Employability: a Review of Conceptual and Empirical Themes' (2012) 25 *Higher Education Policy* 407. Lorraine Dacre Pool & Peter Sewell, 'The key to employability: developing a practical model of graduate employability' (2007) 49 *Education + Training*. Michael Yorke & Peter Knight, 'Embedding employability into the curriculum and Employability in higher education: what it is – what it is not' *Learning & Employability Series One* (The Higher Education Academy 2006).

⁸ David Rae, 'Connecting enterprise and graduate employability, Challenges to the higher education culture and curriculum' (2007) 49 *Education + Training* 605, 610. Tomlinson (n 7) 411.

⁹ One of the six main metrics used to rate universities for the Teaching Excellence Framework is employment or further study six months after graduation. See also The Guardian Best Universities League Table, The Complete University Guide and The Times Good University Guide.

¹⁰ Andrew Francis, 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' (2015) 42 *JL & SOC'Y* 173, 182-185.

¹¹ *ibid* 183-184, 196. Louise Ashley and Laura Empson, 'Differentiation and discrimination: Understanding social class and social exclusion in leading law firms' (2013) 66 *human relations* 219, 221, 231. Penny Childs and Nigel Firth and Hugo de Rijke 'The gap between law student career aspirations and employment opportunities' (2014) 48 *Law Tchr* 51, 62-64. Heather Rolfe and Tracy Anderson 'A firm choice: Law firms' preferences in the recruitment of trainee solicitors' (2003) 10 *International Journal of the Legal Profession* 315, 330.

awareness is identified by graduate employers as an important graduate skill.¹² However, many students lack commercial awareness,¹³ fail to appreciate its importance¹⁴ and/or struggle to understand and demonstrate it. Wilkinson and Aspinall stated that commercial awareness is ‘an amorphous term with no clear definition in the research or practitioner-based literature,’¹⁵ that employers and students interpret the term differently and that employers believe universities can assist students with its development.¹⁶ There is dissatisfaction across the graduate employer spectrum with the commercial awareness of applicants.¹⁷ Like other graduate employers, law firms prize commercial awareness.¹⁸ The recruitment literature employed by law firms indicates just how important commercial awareness is, particularly to commercial and corporate firms.¹⁹ Its importance appears to relate to a number of aspects of being a lawyer, namely winning, understanding, advising and ultimately retaining clients, all of which must be done within the parameters of running a successful business. Lawyers are also required to understand the external factors (social, economic or otherwise) that impact on clients and how this influences legal advice. Whilst in the past commercial awareness was a skill that was required to work in-house²⁰ or to acquire promotion and/or partnership, it is increasingly now

¹² Institute of Student Employers, ‘Student development survey 2020 Supporting the learning and development of entry-level hires’ 17.

¹³ *ibid* 18, 20. Institute of Student Employers, ‘Student development survey 2021, Managing development in a crisis’ (ISE 2021) 23. Geoff Mason, ‘Graduate utilisation in British Industry: The Initial Impact of Mass Higher Education’ (1996) National Institute Economic Review 93, 97 and 99.

¹⁴ Kerry Jarred, ‘Making an impression’ (2005) 155 NLJ 1541.

¹⁵ David Wilkinson and Samantha Aspinall, ‘An exploration of the term ‘Commercial awareness’: What it means to employers and students’ (National Council for Graduate Entrepreneurship 2007) 5.

¹⁶ *ibid* 10. See also Bob Gilworth and Nalayini Thambar, ‘Commercial Awareness – The employer and student perspectives’ (University of Leeds 2006).

¹⁷ ISE 2020 (n 12) 18. CBI/Pearson, ‘Helping the UK Thrive, CBI/Pearson Education and Skills Survey’ (CBI 2017) 93 - 40% of respondent employers dissatisfied. CBI/Pearson, ‘Changing the pace, CBI/Pearson Education and Skills Survey’ (CBI 2013) 57 - 48% of respondent employers dissatisfied. Caroline Tuckwell, ‘Law Firm Legal Research – what trainees need to know’ (2010) 10 LIM 108.

¹⁸ <<https://careers.linklaters.com/en/early-careers/commercial-awareness>> accessed September 2021. See focus on commerciality in firm information (n 3 and 4). James Marson and Adam Wilson and Mark Van Hoorebeek, ‘The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective’ (2005) 7 *Int’l J Clinical Legal Educ* 29, 30, 39. Jarred (n 14). Monidipa Fouzder, ‘How to...Get a training contract’ (2014) *LS Gaz* 18.

¹⁹ Firm information (n 3, 4 and 18). Tim Bellis, ‘Simply the second best’ (2013) 163 *NLJ* 19. Catherine Baksi, ‘Training: Adding Value’ (2009) 12 *LS Gaz*.

²⁰ Kamlesh Bahl, ‘The solicitor in commerce and industry today’ (1989) 86 *LS Gaz*.

tabled as an expectation at the start of the journey to a legal career.²¹ Many law students apply for training contracts during their second year at university and are required to demonstrate commercial awareness in applications, at interviews and during vacation schemes. Even first year students will be expected to understand the concept when interacting with firms at careers fairs, taster days and on first year work experience programmes.²² There has been no systematic review of the existing literature on commercial awareness in either a legal education or wider higher education setting, leaving a gap in understanding of this key graduate skill. This systematic review was driven by the growing importance of commercial awareness to law students, employers and universities and seeks to answer the following research questions:

1. What is commercial awareness?
2. How important is it as a graduate skill and why?
3. How do students develop commercial awareness and can it be taught during their legal education?
4. How can students demonstrate commercial awareness during the graduate recruitment process?

The aims of this research were threefold. Firstly, it aimed to provide a comprehensive understanding of commercial awareness in the context of the research questions. Secondly, this research sought to synthesise the review results to provide a detailed analysis of the available literature, identifying gaps and suggesting areas for further research. Finally, this research aimed to make recommendations that legal educators, and perhaps educators in other disciplines, may wish to consider when preparing students for graduate employment. Whilst the focus of this research was on law students and legal education in England and Wales, as the methodology will demonstrate, the review was not confined to those areas, geographic or otherwise, as it actively sought to engage with a multi-disciplinary approach by including research from other disciplines and jurisdictions to further inform understanding of the research area. Whilst this article ultimately concentrates on the position of law students in England and Wales, the discussion and findings will be of benefit to legal educators across Europe and beyond. It is anticipated that, irrespective

²¹ Firm information (n 3, 4 and 18). See also Hogan Lovells, <<https://graduates.hoganlovells.com/opportunities/first-year-programmes>> accessed February 2021.

²² Laurence Etherington, 'Public professions and private practices: access to the solicitors' profession in the twenty-first century' (2016) 19 *Legal Ethics* 5, 12 noting the graduate recruitment process is becoming a more important aspect of the first year law student experience.

of jurisdiction, many law schools and law students encounter the issues that this article highlights given that commercial awareness is a skill relevant to all graduates because it is required by many graduate employers. It is hoped that others may seek to carry out comparative research in their own jurisdiction to contrast and/or complement the findings here. It should also be noted that many law firms with bases in England and Wales are operating in a multinational setting, recruiting students from across Europe and the world, subjecting potential recruits to the same requirements to those recruited in England and Wales.²³

This article begins with a brief commentary on commercial awareness and its importance to graduate employers. It then describes the methodology for the systematic review and documents the results. This article then highlights the key themes the results presented, before making recommendations and suggestions for further research.

Background

Employers require commercially aware graduates, but employer surveys demonstrate dissatisfaction with graduate competence in commercial awareness. A recent Institute of Student Employers (ISE) survey found that 53 per cent of employers thought students lacked commercial awareness.²⁴ The ISE has also noted a ‘skills gap’ in relation to commercial awareness.²⁵ This dissatisfaction is not a recent phenomenon. In 2008 commercial awareness was ranked the 13th most important skill to employers but 33rd in terms of employer satisfaction, giving the largest gap of all in the skills’ importance to satisfaction rankings.²⁶ The future importance of commercial awareness is clear. A recent ISE survey considered the impact of COVID-19 and the skills that will become

²³ For example, Eversheds Sutherland, Clifford Chance, Linklaters and Norton Rose Fulbright.

²⁴ ISE 2020 (n 12) 18. See also CBI 2017 and CBI 2013 (n 17).

²⁵ ISE 2017 (n 5) 23 - 79% of employers were training hires on commercial awareness; 15% of graduate intakes had commercial awareness – the second largest skills gap. See also ISE 2020 (n 12) 20. Globally, the position may be more nuanced, see QS/ISE, ‘The Global Skills Gap in the 21st Century’ (QS/ISE 2018) 8-16 where commercial awareness was the least important skill for employers and achieved the highest satisfaction to importance score. However, there was variation across region, firm size and seniority of respondent. The survey noted the results could suggest commercial awareness is being developed at university or is not prioritised by employers (contrary to other surveys) and employers expect development in the workplace.

²⁶ Will Archer and Jess Davison, ‘Graduate Employability: What do employers think and want?’ (The Council for Industry and Higher Education 2008) 10 - a skills gap of -20.

more important to businesses over the next five years.²⁷ Commercial awareness ranked 7th out of 26 skills with 44 per cent of employer respondents identifying its future importance, ahead of problem-solving, teamwork and inter-personal skills,²⁸ skills that are generally a focus of universities and law schools. These surveys will have included responses from legal professionals but do not provide detailed views from the legal sector.²⁹ However, law firm graduate recruitment literature demonstrates the importance of commercial awareness at the gateway to the profession.³⁰

Over time, commercial awareness has become a more explicit feature of the skills required of legal professionals, but it was only in 2013 that the term was reviewed in detail in a legal education setting in England and Wales by the Legal Education and Training Review (LETR).³¹ The LETR's consideration of commercial awareness seemingly reflected changes in the focus of the legal profession and other graduate professions as evidenced by the employer surveys noted earlier. The LETR concluded that commercial awareness was a 'composite concept'³² including a broad range of knowledge, skills and attributes.³³ 68.9 per cent of practitioners viewed knowledge of the business context of law as important/very important in their work ranking it above some areas of 'core' legal knowledge.³⁴ The LETR identified a knowledge and skills gap in relation to commercial awareness.³⁵ However, the report acknowledged that support for a specific educational focus on commercial awareness was inconsistent within the profession, with opposition from respondents from the

²⁷ ISE, 'Student recruitment survey 2020 Challenge and resilience in the year of Covid-19' (2020) 47.

²⁸ *ibid*

²⁹ In ISE 2017 (n 5) 70 the largest proportion of respondents (16%) was from the legal sector. In ISE 2020 (n 12) 3 16% of respondents were from the legal sector.

³⁰ Firm information (n 3, 4 and 21). Bellis (n 19).

³¹ Legal Education and Training Review, 'Setting Standards - The Future of Legal Services Education and Training Regulation in England and Wales' (2013). Commercial awareness was not mentioned in previous reports such as The Ormrod Report (Report of the Committee on Legal Education (Cmnd 4595, 1971)), The Benson Report (*Report of the Royal Commission on Legal Services*, (Cmnd 7648, 1979)) and The Marre Report (The Committee on the Future of the Legal Profession (The Marre Committee), *A Time for Change* (1988).)

³² LETR (n 31) para 2.75.

³³ *ibid*

³⁴ *ibid* para 2.74.

³⁵ *ibid* para 2.173. Note as early as 2001 practitioner literature called for business awareness to be part of legal education, see Nigel Savage, 'Breaking the mould' (2001) LS Gaz.

Bar, public sector and those working more with individual clients.³⁶ As commercial awareness was not seen as a priority by all, the report concluded it should not be a formal requirement of the academic stage, recommending it be a more explicit aspect³⁷ of the Legal Practice Course (LPC),³⁸ particularly for individuals seeking work in commercial/corporate law.

The LETR approach raises three issues that this research considered. Firstly, whether leaving commercial awareness until the vocational stage of training is too late. The recruitment demands of a significant part of the legal profession in England and Wales require applicants to demonstrate commercial awareness during their second year at university when applying for vacation schemes and/or training contracts.³⁹ Secondly, the viewpoint that commercial awareness is key only for those seeking work in commercial/corporate law – surely any law firm of any size or discipline would seek to employ commercially aware employees. Thirdly, many law graduates will not work in the legal sector and will seek employment elsewhere.⁴⁰ As the employer surveys demonstrate, many professions demand commercial awareness – omitting it at the academic stage has implications for the broader employability prospects of law students.

Internationally, other jurisdictions have identified the importance of commercial awareness and the implications for legal education and training. A focus on commercial awareness during postgraduate study was recommended in Hong Kong⁴¹ and New Zealand.⁴² In New South Wales, the FLIP report identified that business skills will be critical for graduates in the legal practice

³⁶ LETR (n 31) para 2.74.

³⁷ *ibid* para 4.69 and recommendation 12 289.

³⁸ The LPC is a one year postgraduate course taken after an undergraduate law degree or postgraduate one year Graduate Diploma in Law.

³⁹ The QAA Benchmark (n 2) does not include commercial awareness or any specific aspects of the definition, so there is still no clear push for law schools to focus on this skill.

⁴⁰ Williams and others (n 1) para 2.4 finding that between 2011 and 2016 around 35% of law graduates went into the legal profession either as trainees or paralegals each year.

⁴¹ Standing Committee on Legal Education and Training, ‘Comprehensive Review of Legal Education and Training in Hong Kong, Final Report of the Consultants’ (2018) recommendation 5.6 <www.scler.gov.hk/eng/pdf/final2018.pdf> accessed February 2021.

⁴² Andrew Tipping ‘Review of the Professional Legal Studies Course, Report to the New Zealand Council of Legal Education’ (2013) recommendation 6.1. Although ‘commercial awareness’ is not mentioned, the review suggested widening traditional skills to include focus on business concepts and running a practice in a business-like manner <<https://nzcle.org.nz/Docs/Review%20of%20the%20PLSC%20Report%20.pdf>> accessed February 2021.

of the future.⁴³ The American Bar Association recommended law schools enable lawyers to study entrepreneurship and the business of running a legal practice.⁴⁴ In Canada, practitioners called for future lawyers to have business and legal practice management skills.⁴⁵ Globally, ongoing ‘disruption’ to the legal profession caused by the impact of legal technology is affecting the number of lawyers required to do legal work and how that work is done.⁴⁶ Skills like commercial awareness will become ever more critical so that lawyers can add value both to their employers and their clients.⁴⁷

Methodology

Why a systematic review?

A systematic literature review was selected for a variety of reasons. Firstly, as the discussion below illustrates, it provided a clear and methodical framework for exploring the research area – a framework that could be used in the future by other researchers to update the results or to carry out research in their own jurisdictions.⁴⁸ A systematic review was beneficial in finding what was ‘out there’ on commercial awareness in both the empirical and conceptual literature in a logical and manageable way.⁴⁹ It presented an opportunity to see both the consistencies and discrepancies between the articles, allowing for development of an understanding of where research focus may be better utilised. Whilst conceptual literature can set the scene for views from the field, it is useful to

⁴³ The Law Society of New South Wales, ‘flip The Future of Law and Innovation in the Profession’ (2017) 77-78 <<https://lawsociety.cld.bz/online-flip-report/112>> accessed February 2021.

⁴⁴ American Bar Association, ‘Report on the Future of Legal Services in the United States, Commission on the Future of Legal Services’ (2016) recommendation 7.2. <www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20-Report-Web.pdf> accessed February 2021.

⁴⁵ Canadian Bar Association, ‘Futures: Transforming the Delivery of Legal Services in Canada, CBA Legal Futures Initiative’ (2014) para 7.5. <https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf> accessed February 2021.

⁴⁶ Williams and others (n 1) para 5. Richard Susskind, *Tomorrow’s Lawyers An Introduction to Your Future* (Oxford University Press 2003).

⁴⁷ Williams and others (n 1) paras 6.3.1, 7.2, p 7, 11.

⁴⁸ Olaf Zawacki-Richter and others (eds), *Systematic Reviews in Educational Research Methodology, Perspectives and Application* (Springer VS 2020)

<<https://link.springer.com/book/10.1007%2F978-3-658-27602-7>> vi accessed March 2021. Although as detailed below, the searches were not restricted by jurisdiction.

⁴⁹ Mark Newman and David Gough, ‘Systematic Reviews in Educational Research Methodology, Perspectives and Application’ 16 in Zawacki-Richter and others (n 48).

explore the empirical literature to highlight the research that has been done and also the work that still needs to be done to explore the field in more depth. Further, a systematic review arguably helped to minimise the risk of researcher bias in article selection inherent in traditional literature reviews.⁵⁰ Admittedly, there are recognised challenges in undertaking a mixed-methods systematic review, particularly in relation to qualitative work in terms of research rigour and the subsequent appraisal and synthesis of results.⁵¹ In order to counter these challenges, each empirical article was appraised using the same set of quality criteria before a selection decision was made.⁵² In addition, the results of the studies were analysed and compared to identify emerging themes and to provide more context to themes arising from the conceptual articles.⁵³ The latter were also appraised using set quality criteria providing further consistency, ensuring that a robust and rigorous review was carried out.⁵⁴

Search strategy

The scope of the research questions helped formulate the search strategy for the review. The key words ‘law’, ‘education’, ‘clinical legal education’, ‘legal education’, ‘university’, ‘employability’ and ‘student’ were used in combination with ‘commercial awareness’ using the Boolean operator ‘AND’. The same search terms were used for ‘business awareness’ and ‘industry awareness’ as initial reading indicated these terms could be used interchangeably, although to a more limited extent. The initial searches used the legal databases HeinOnline, WestLaw, Lawtel and LexisNexis. As the searches progressed, a significant number of duplicates was produced, suggesting that the search strategy was both thorough and effective. The library database of the author’s institution was then searched to widen the scope of the

⁵⁰ Zawacki-Richter and others (n 48) vi. See also Tribe Mkwebu, ‘A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship’ (2015) 22 *Int’l Journal Clinical Educ* 238, 240.

⁵¹ Martin Hammersley, ‘Reflections on the Methodological Approach of Systematic Reviews’ 31 in Zawacki-Richter and others (n 48). See also Mary Dixon-Woods and Ray Fitzpatrick, ‘Qualitative research in systematic reviews Has established a place for itself’ (2001) 323 *BMJ* 765 acknowledging the growing acceptance of qualitative work in systematic reviews and outlining the difficulties.

⁵² Hammersley (n 51) 30. If required, please contact the author for the quality criteria used to appraise the empirical articles.

⁵³ Mary Dixon-Woods and others, ‘Synthesising qualitative and quantitative evidence: a review of possible methods’ (2005) 10 *Journal of Health Services Research & Policy* 45.

⁵⁴ The conceptual quality criteria differed to those used for the empirical articles – please contact the author for the criteria if required.

search and this produced articles from Web of Science, Directory of Open Access Journals, RePEc, Political Science Database, Politics Collection, Literature Online Core (LION Core) legacy and Psych Articles.⁵⁵ This second search produced a substantial number of duplicates but also additional relevant articles.

Selection, Recording & Appraisal

The inclusion criteria were broad and English language, peer-reviewed articles from any date, geographical area and field of study that considered commercial awareness in the context of the research questions were included. Many articles were excluded by title or by abstract and a detailed record of the numbers of articles included/excluded was recorded in Excel. Where it was unclear from the title or abstract whether an article was relevant, the full article was extracted and reviewed. The searches identified 20,301 potentially relevant results. From the results 20,132 were excluded as duplicates or for not meeting the inclusion criteria. 169 full-text articles were assessed for eligibility. 51 articles were then excluded because they were from practitioner journals and had not been subject to peer-review.⁵⁶ Some of this practitioner literature has been used to complement or contrast findings from the extracted articles because it provides views from the legal profession and those who practise in it. 45 articles were included in the final review.⁵⁷ As noted, each article was subjected to a detailed appraisal to consider its quality, relevance and reliability.

Results

Graph 1 demonstrates the number of articles by type of study – there were more empirical than conceptual articles indicating that there is an identified empirical research interest in relation to commercial awareness and that from an empirical perspective it has been explored using a variety of research methods in different fields. 27 articles were law-based and 18 were non-law based.

⁵⁵ The review was carried out between April-June 2020 and updated using database notifications.

⁵⁶ Although the databases suggested these articles as peer-reviewed it was apparent that the articles had not been subject to academic peer-review (by experts in the field) and were from practitioner journals.

⁵⁷ A full list of references is provided at the end of this article.

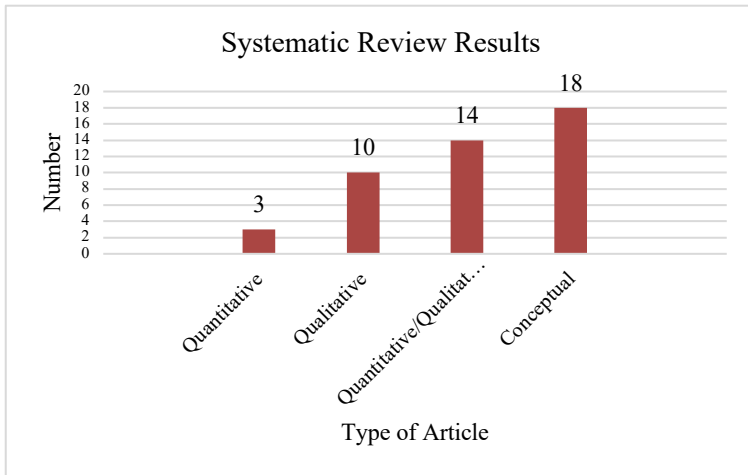


Figure 1: Graph 1 - Systematic Review Results - Number and Type of Article

Graph 2 demonstrates a fairly even split between the number of law-based empirical and conceptual articles. The low number of empirical articles suggests there is a need for further research into commercial awareness. Further empirical work would help in understanding whether the perceptions set out in the conceptual articles are correct or whether the views would be contradicted by empirical data.

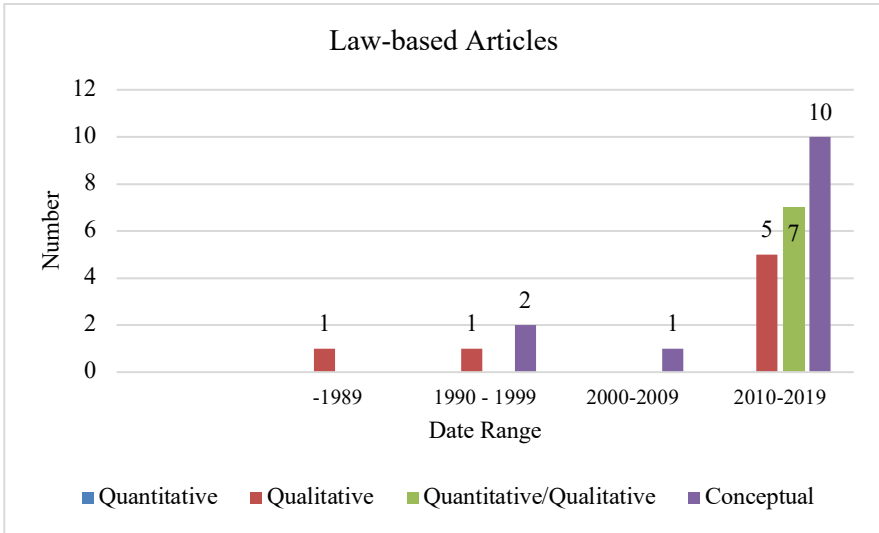


Figure 2: Graph 2 - Timeline of Number and Type of Articles - Law

Graph 2 indicates that, in a legal context, commercial awareness is a topic that has become of more interest over time, particularly over the last ten years. The growing interest in commercial awareness mirrors that observed in the employer surveys, legal education reports and practitioner literature. The practitioner literature also indicates that the need for commercial awareness has been recognised by the profession for nearly 40 years,⁵⁸ and the results suggest that academia has perhaps been slow in identifying its importance to the profession and the implications this has for legal education. It is also interesting to note the impact of the LETR. Of the 22 articles dating between 2010-19, 15 were published after the LETR was published in 2013, suggesting that the LETR may have led to a much greater focus on commercial awareness within academia.

⁵⁸ Christopher R Brown and Tim McGirk, 'The Leading Euromarket Law Firm' (1982) 1 Int'l Fin L Rev 4. Blackhurst and Stokes, 'Clients Rank London's Law Firms (1985) 4 Int'l Fin L Rev 15. Clive H Zietman, 'The legal services revolution' (1995) 61 Arbitration 274. Louisa Povey, 'What does it take to be the best of the best?' (2000) Int'l Fin L Rev 9. Marialuisa Taddia, 'How to Change specialisms' (2013) LS Gaz 24. Fouzder (n 18). Tuckwell (n 17). Robert Verkaik, 'Hot property – demand for pensions lawyers far outstrips supply' (1996) LS Gaz 93.

The non-law-based studies (Graph 3) present a similar picture, although here there has been more empirical than conceptual work.

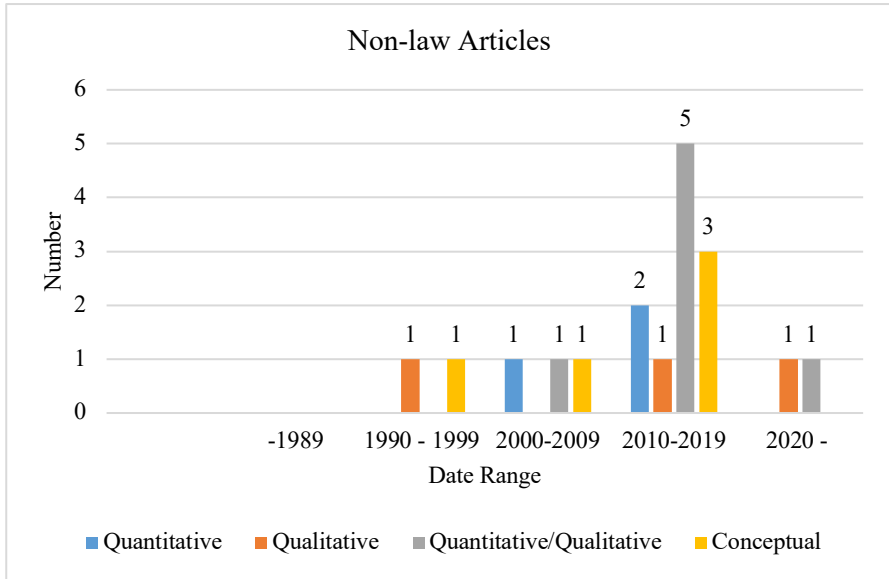


Figure 3: Graph 3 - Timeline of Number and Type of Articles - Non-law

Appendix II presents the main findings of the empirical articles and Diagram 1 provides the findings from the conceptual articles.

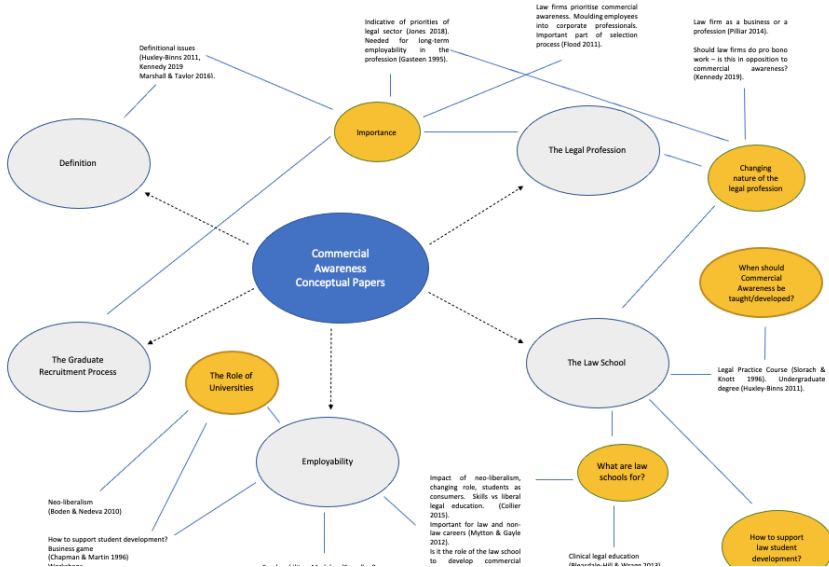


Diagram 1: Synthesis of Findings into 5 Key Themes

The findings are synthesised into five key themes: definition, employability (implications for the university and the individual), the legal profession, the graduate recruitment process and the role of the law school.

Findings

Theme 1 – definition

Most articles did not seek to define commercial awareness, simply using the term without clarifying what it meant. Diagram 2 summarises the definitions that were provided.

	Law	Non-law
Empirical	<p>Outcome-focused, business aptitude.</p> <p>Law as a business. Understanding law in a business, not academic context.</p> <p>Client views differ from purely academic views.⁵⁹</p> <p>Law firm as a business, operating in a commercial environment.</p> <p>Understanding of clients’ needs and issues.⁶⁰</p> <p>Changing legal market, changing areas of law.⁶¹</p>	<p>Understanding local, national & global economic conditions and influence on business sector.</p> <p>Subset of environmental awareness.⁶²</p> <p>Understanding economics of business, client needs and how they work, client objectives, culture and language. Bigger picture in which businesses operate. Staying updated on events. Viewing situations from a commercial perspective.</p> <p>Understanding what makes a business successful. Interest in business and business environment.⁶³</p>

⁵⁹ Caroline Strevens and Christine Welch and Roger Welch, ‘On-Line Legal Services and the Changing Legal Market: Preparing Law Undergraduates for the Future’ (2011) 45 Law Tchr 328, 340 - see appendix II.

⁶⁰ Etherington (n 22) 6 - Etherington suggested a definition but did not seek to define it using his research.

⁶¹ Juliet Turner and Alison Bone and Jeanette Ashton, ‘Reasons why law students should have access to learning law through a skills-based approach’ (2018) 52 Law Tchr 1, 13 – a student’s view. See appendix II.

⁶² Denise Jackson and Elaine Chapman, ‘Non-technical skill gaps in Australian business graduates’ (2012) 37 Education + Training 95, 103 - see appendix II.

⁶³ Joanna Poon, ‘Commercial awareness in real estate course’ (2014) 32 Property Management 48, 51 – see appendix II.

<p>Conceptual</p>	<p>Business context of legal services sector, profit and loss, client relations, strategy and mission.⁶⁴</p> <p>Law firm as a business.⁶⁵</p> <p>Forming view on events that impact on client or sector.⁶⁶</p>	
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Diagram 2 – summary of definitions

A commonality amongst the definitions used in the law-based articles was an understanding of the law firm as a business, a viewpoint also reflected in the practitioner literature.⁶⁷ Only Strevens et al’s study provided views on what commercial awareness meant to law firms.⁶⁸ This enabled the authors to define commercial awareness as:

understanding that law firms function in much the same way as...businesses in general and that there is a wider picture than the black letter law applied to a given set of facts...The meaning of commercial awareness might change in the face of the changing legal services markets. Virtual law firms and LPO organisations might have their own perspectives on what commercial awareness involves, and this might look rather different from the cultural capital sought by either the high street or the city.⁶⁹

This approach allows for some fluidity in the definition, recognising the differing needs of different types of firms. It also has implications and, undoubtedly, challenges for legal education in terms of how law schools seek to teach and develop commercial awareness. None of the law-based studies considered law school academics’ views of the definition of commercial

⁶⁴ Rebecca Huxley-Binns, ‘What is the Q for?’ (2011) 45 Law Tchr 294, 304.

⁶⁵ Vinny Kennedy, ‘Pro Bono Legal Work: The disconnect between saying you’ll do it and doing it’ (2019) 26 Int’l J Clinical Legal Educ 25, 35.

⁶⁶ Helen Marshall and Kelly Taylor, ‘Up the Value Chain: Transition from Law Librarian to Research Analyst’ (2016) 16 LIM 207, 209.

⁶⁷ Fouzder (n 18).

⁶⁸ Strevens (n 59).

⁶⁹ *ibid* 341 – ‘LPO’ - legal process outsourcing firms.

awareness and only one article provided a student viewpoint,⁷⁰ leaving a gap in the literature.

Poon et al identified real estate academics⁷¹ and students⁷² had differing views of commercial awareness when provided with different definitions. Poon⁷³ developed a taxonomy (containing strategic, process and financial components)⁷⁴ - again, both academics⁷⁵ and students⁷⁶ had differing views of the importance of the components. Such a taxonomy may not apply practically across disciplines. For example, the strategic component contained a knowledge of legislation⁷⁷ whereas in legal education this would be deemed core subject knowledge, rather than commercial awareness.⁷⁸ Poon also considered the skills and attributes required for developing commercial awareness such as communication and problem-solving.⁷⁹ Both academics and students ranked all the skills and attributes highly for developing commercial awareness but again there were differing views.⁸⁰ Commercial awareness appeared as a 'banner' competency, encapsulating a range of skills and attributes, reflecting to some extent the position taken in the LETR.⁸¹ However overall, the articles took a simplistic approach, seeing commercial awareness as a standalone skill. These studies suggest commercial awareness can mean different things to those teaching and learning in a discipline and that better signposting for students may be needed. This should be explored further in a law school setting.⁸²

⁷⁰ Turner and others (n 63).

⁷¹ Poon (n 61) 58.

⁷² Joanna Poon and Michael Brownlow 'Students' views on the incorporation of commercial awareness in real estate education' (2014) 32 *Property Management* 326, 333-334 and 346-349 – see appendix II.

⁷³ Poon (n 61).

⁷⁴ *ibid* 53.

⁷⁵ *ibid* 58-62.

⁷⁶ Poon and Brownlow (n 72) 334-335 and 339-342.

⁷⁷ Poon (n 61) 54.

⁷⁸ QAA (n 2) 5.

⁷⁹ Poon (n 61) 55.

⁸⁰ *ibid* 61-62. Poon and Brownlow (n 72) 335-338 and 342-346.

⁸¹ LETR (n 31) para 2.75.

⁸² A small-scale survey of students at Northumbria University carried out in autumn 2019 indicated that students wanted further guidance on commercial awareness.

Theme 2 – commercial awareness and employability; implications for the university and the individual

The literature demonstrated that there has been an increasing focus on the importance of commercial awareness in the broader context of employability.⁸³ Sewell and Dacre Pool updated their Career EDGE employability model to include commercial awareness, a skill ‘employers have consistently named as important in graduate recruits.’⁸⁴ However, there may be differing views on the importance of commercial awareness according to sector.

Different stakeholders – different views

Some empirical work outside law has focused on stakeholder views on the importance of commercial awareness and graduate competence in it in different sectors.⁸⁵ The results suggest that the importance of commercial awareness and employer expectations as to graduate competence could be linked to both degree type and employer/sector – some disciplines prioritise it more than others. This suggests that there is no one-size-fits-all approach. Some articles⁸⁶ indicated students thought they had not developed competence in commercial awareness as much as in other skills; there are no similar studies involving law students, leaving a gap in the literature.

The role of the university

Boden & Nedeva noted the impact of neo-liberalism on universities and how an identified lack of commercial awareness in science and engineering

⁸³ Ronald McQuaid and Colin Lindsay, ‘The Concept of Employability’ (2005) 42 *Urban Studies* 197.

⁸⁴ Peter Sewell and Lorraine Dacre Pool, ‘Moving from conceptual ambiguity to operational clarity Employability, enterprise and entrepreneurship in higher education’ (2010) 52 *Education + Training* 89, 92.

⁸⁵ Jackson & Chapman (n 60). Joanna Poon and Mike Hoxley and Willow Fuchs, ‘Real estate education: an investigation of multiple stakeholders’ (2011) 29 *Property Management* 468. Venetia Saunders and Katherine Zuzel, ‘Evaluating Employability Skills: Employer and Student Perceptions’ (2010) 15 *bioscience education* 1. Mohamed Branine, ‘Graduate recruitment and selection in the UK A study of the recent changes in methods and expectations’ (2008) 13 *Career Development International* 497. See appendix II for details of all studies.

⁸⁶ Poon, Hoxley and Fuchs (n 85) 478. Saunders and Zuzel (n 85) 9-10.

graduates⁸⁷ led to government intervention to identify required employer skills. Elite universities like Oxford resisted neoliberal reforms and entrenched employability agendas, instead relying on reputational capital, as well as the cultural capital of its students (the majority being from a middle-class, privately educated background), to ensure graduates gained employment.⁸⁸ In contrast, post-92 universities focused on employability and skills to create ‘job-ready’ graduates.⁸⁹ This ‘Third Mission’ (to serve a wider stakeholder community, namely business) required universities to satisfy employer demands when developing programmes.⁹⁰ Ultimately, frontloading skills training on to universities saves employers time and money. Universities are charged with equipping graduates with specific skill sets that become more elaborate over time. This growing tendency for employers to curate what universities teach is acknowledged in the conceptual articles.⁹¹ The question arises as to what extent universities actually enable students to develop commercial awareness and the results produced limited evidence.

Studies by Sarkar et al and Sleaf and Reed found little emphasis on the development and assessment of commercial awareness in science and sport science degrees respectively.⁹² Poon, Hoxley and Fuchs found graduates developed commercial awareness but not to the extent employers required and it was less developed than other skills.⁹³ Sarkar et al noted the lack of emphasis on commercial awareness contrasted with its importance to employers, concluding this disadvantaged students who would graduate with a limited understanding of its importance, impacting on their employability.⁹⁴ These

⁸⁷ Rebecca Boden and Maria Nedeva, ‘Employing discourse: universities and graduate “employability”’ (2010) 25 *Journal of Education Policy* 37, 44 citing the Roberts Report (2002).

⁸⁸ Although Oxford University now has a clear employability agenda – see <[www.careers.ox.ac.uk/develop-your-employability-skills#/> accessed April 2021](http://www.careers.ox.ac.uk/develop-your-employability-skills#/) – business awareness identified as a key graduate skill.

⁸⁹ Boden and Nedeva (n 87) 48-49. ‘Post-92’ university is a term used for universities in the United Kingdom that were formerly polytechnics.

⁹⁰ *ibid* 41. See also Jackson and Chapman (n 60) 108, arguing commercial awareness must be considered further by universities.

⁹¹ Boden and Nedev (n 87).

⁹² Mahbub Sarkar and others, ‘Academics’ perspectives of the teaching and development of generic employability skills in science curricula’ (2020) 39 *Higher Education Research & Development* 346, 356. Mike Sleaf and Helen Reed, ‘Views of sport science graduates regarding work skills developed at university’ (2006) 11 *Teaching in Higher Education* 47, 53-55. See appendix II.

⁹³ Poon, Hoxley and Fuchs (n 85) 478.

⁹⁴ Sarkar and others (n 92) 356.

studies suggest that the issue noted above (different stakeholders - different views), may feed down to degree programmes. However, the broader picture, demonstrated by the employer surveys, provides more consistent evidence of the importance of commercial awareness to employers, suggesting universities should pay more attention to commercial awareness. If it is accepted that higher education should assume responsibility for developing commercial awareness (given student and employer expectations, abrogating responsibility now seems unacceptable) more practical questions emerge such as how effectively can higher education develop commercial awareness and do academics feel able to provide appropriate support.

The results presented limited evidence of the methods used to develop commercial awareness in non-law degrees. Poon and Brownlow provided the only empirical evidence.⁹⁵ Academics advocated 'real world' experience - curriculum simulations of real-life practice using real estate software, guest lectures, mentoring and placement opportunities.⁹⁶ Students favoured work experience.⁹⁷

The role of the individual

Extra-curricular activities are posited as an excellent way of developing a variety of skills, enhancing employability.⁹⁸ Clark et al found commercial awareness was developed in extra-curricular activities and degree studies to a similar extent,⁹⁹ but paid employment developed commercial awareness significantly.¹⁰⁰ Gebreiter used Foucault's theory of technologies of self to argue that accountancy students deliberately sought to transform themselves into the recruits accountancy firms required.¹⁰¹ Graduate recruitment practices

⁹⁵ Poon (n 61). Poon and Brownlow (n 72).

⁹⁶ Poon (n 61) 62-63.

⁹⁷ Poon and Brownlow (n 72) 338-339, 348.

⁹⁸ Luisa H Pinto and Diogo C Ramalheira, 'Perceived employability of business graduates: The effect of academic performance and extracurricular activities' (2017) 99 *Journal of Vocational Behaviour* 165, 169 & 173-4. Nicolas Roulin and Adrian Bangerter, 'Students' use of extra-curricular activities for positional advantages in competitive job markets' (2013) 26 *Journal of Education and Work* 21.

⁹⁹ Gordon Clark and others, "'It's everything else you do...': Alumni views on extracurricular activities and employability' (2015) 16 *Active Learning in Higher Education* 133, 138. See appendix II.

¹⁰⁰ *ibid* 139.

¹⁰¹ Florian Gebreiter, 'Making up ideal recruits Graduate recruitment, professional socialization and subjectivity at Big Four accountancy firms' (2020) 33 *Accounting, Auditing and Accountability Journal* 233, 234. See appendix II.

worked to construct and select ideal candidates, acting as an anticipatory socialisation mechanism compelling students to look, sound and behave like accountancy professionals months, if not years, before joining the profession. Several interviewees thought they lacked commercial awareness and tried to improve by following developments in accounting.¹⁰² These studies suggest students understand the importance of developing commercial awareness and may take on a dynamic role in doing so. However, some may need further support, particularly in articulating its development during the graduate recruitment process.¹⁰³

Theme 3 – commercial awareness and the legal profession

Importance

The importance of commercial awareness to the profession is recognised across the literature. However, the articles focused on the views of solicitors¹⁰⁴ and none considered its importance to the Bar,¹⁰⁵ indicating more research is needed on the impact of commercial awareness on that part of the profession.

The LETR positioned commercial awareness in the context of commercial law firms.¹⁰⁶ The results provided some empirical evidence that it is relevant to all types of firm although this evidence is limited, leaving a gap in the research.¹⁰⁷ Strevens et al found commercial awareness a ‘universal employability trait’ sought by both business and private client firms.¹⁰⁸ The practitioner literature reflected this view.¹⁰⁹ Alexander & Boothby found that employers required

¹⁰² *ibid* 244-5.

¹⁰³ See Carl Evans and Mark Richardson, ‘Enhancing graduate prospects by recording and reflecting on part-time work: A challenge to students and universities’ (2017) 3 *Industry and Higher Education* 283.

¹⁰⁴ See Table 1.

¹⁰⁵ See Atalanta Goulandris, ‘Reshaping professionalism: branding, marketing and the new entrepreneurial barrister’ (2015) 272 – recognised the developing commercial awareness and marketing orientation of the Bar but did not examine the concept in detail. See also Catherine Baksi, ‘“Arrogant” barristers’ (2005) LS Gaz 4 for law firm views of the commercial awareness of barristers.

¹⁰⁶ LETR (n 31) para 4.69.

¹⁰⁷ Alan Paterson and others, ‘Competition and the Market for Legal Services’ (1988) 15 *JL & Soc’y* 361. See appendix II.

¹⁰⁸ Strevens (n 59) 341.

¹⁰⁹ Erik Salomensen, ‘Taking Articles with a Provincial Firm’ (1989) 21 *B L J* 88, recommending training at a progressive, commercially aware provincial firm.

‘commercial’ graduates who can work effectively with an awareness of costs¹¹⁰ although it was unclear what types of law firms participated in this study. Pilliar saw a connection between the ethical commitment of lawyers to improving access to justice and their business awareness to enable them to do so, by innovating to deliver more affordable legal services.¹¹¹ Seeing commercial awareness in the context of improving access to justice is a position that seems far removed from the motivations of large commercial law firms providing legal services to some of the wealthiest in society, suggesting that commercial awareness may be critical for lawyers working in non-commercial disciplines involving the vulnerable – a direct contrast to some views expressed in the LETR.¹¹²

Client power

Sommerlad’s study on the commercialisation of law firms assists in understanding why commercial awareness is important to law firms.¹¹³ Sommerlad noted the push to produce entrepreneurial practitioners who possess excellent academics and prioritise commerciality and customer service.¹¹⁴ One employer stated commercial awareness was part of the ‘full package’ required.¹¹⁵ The push for commerciality must be driven by business needs and therefore client demands.¹¹⁶ Sommerlad noted the increasing displacement of a professional identity for an entrepreneurial identity¹¹⁷ and

¹¹⁰ Jill Alexander and Carol Boothby, ‘Stakeholder Perceptions of Clinical Legal Education within an Employability Context’ (2018) 25 *Int’l J Clinical Legal Educ* 53, 67. See appendix II.

¹¹¹ Andrew Pilliar, ‘Law and the Business of Justice: Access to Justice and the Profession/Business Divide’ (2014) 11 *JL & Equal* 5, 32. See also American Bar Association Report 2016 (n 44) recommendation 7.2.

¹¹² LETR (n 31) para 2.74.

¹¹³ Hilary Sommerlad, ‘The Commercialisation of Law and the Enterprising Legal Practitioner: Continuity and Change’ (2011) 18 *Int’l J Legal Prof* 73 - there were no comments from law students on commercial awareness. See appendix II.

¹¹⁴ *ibid* 86-87. See also John Flood, ‘The re-landscaping of the legal profession: Large law firms and professional re-regulation’ (2011) 59 *Current Sociology* 507 and the role of law firms in the production of employee professional identity, requiring particular mind-sets and skill-sets like commercial awareness in recruits.

¹¹⁵ Sommerlad (n 113) 79.

¹¹⁶ For a discussion of the changing nature of the client, as observed in 1997, see Gerard Hanlon, ‘A Profession in Transition? – Lawyers, The Market and Significant Others’ (1997) 60 *Mod L Rev* 798, 801-804.

¹¹⁷ Sommerlad (n 113) 87. See also Daniel Muzio and Stephen Ackroyd, ‘On the Consequences of Defensive Professionalism: Recent Changes in the Legal Labour Process’ (2005) 32 *JL & Soc’y* 615.

the change in the lawyer-client relationship.¹¹⁸ One participant lawyer concluded that lawyers had been on a pedestal but were now in a service industry that required more understanding about what clients think and do; commerciality was key.¹¹⁹

There was little empirical research on client views of the need for lawyers to be commercially aware – although there is evidence of this from the practitioner literature. Surveys carried out in the 1980s¹²⁰ noted the importance of commercial awareness to banking and other corporate clients. In the early 1990s, Stratton noted that one of the biggest problems clients had with law firms was their lawyers lacked commercial awareness.¹²¹ In-house lawyers looked for business-orientated lawyers with commercially aware advice.¹²² The only client-based study the review produced found that alongside reliability, efficiency and expertise, clients required commercially aware lawyers – otherwise they would go elsewhere.¹²³ Clients demand commercial awareness, so employers demand it from their current and future employees.¹²⁴

The changing legal profession

A common theme across the literature is the changing nature of the legal profession, as it transitions from a ‘traditional’ profession to a more business-focused model.¹²⁵ In the late 1980s Paterson et al anticipated that the commercial awareness of a firm was likely to impact on its response to competition in the conveyancing market.¹²⁶ ‘Strategist’ respondents included those who perceived themselves as running a business, taking a competitive

¹¹⁸ Sommerlad (n 113) 86. See also Hanlon (n 116) 813-815.

¹¹⁹ Sommerlad (n 113) 86. See also Hanlon (n 116) 810.

¹²⁰ Brown and McGirk, Blackhurst and Stokes (n 58).

¹²¹ Jeremy Stratton, ‘Quality Street’ (1992) 142 *NLJ* 1444 commenting on a survey of 100 clients conducted by Competitive Marketing.

¹²² Diana Bentley, ‘Managing relationships with external lawyers’ (2001) 11 *Euro Law* 35. Povey (n 58).

¹²³ Hanlon and Jackson, ‘Last Orders at the Bar? Competition, Choice and Justice for All – The Impact of Solicitor-Advocacy’ (1999) 19 *Oxford Journal of Legal Studies* 555, 563. See appendix II.

¹²⁴ For a discussion of the changes in client power and the impact on large law firms and the concept of commercialised professionalism see Gerard Hanlon, *Lawyers, the state and the market: professionalism revisited* (Macmillan 1999).

¹²⁵ See Nigel Savage and Gary Watt, ‘A House of Intellect for the Profession’ in Peter Birks (ed), *What are law schools for?* (Oxford University Press 1996) 46 recognising the identity crisis in the profession due to the opposing demands of commercialism and professionalism.

¹²⁶ Paterson (n 107).

view of professionalism. One stated he enjoyed running a business as well as being a lawyer; another was ‘a businessman trying to make a living.’¹²⁷ In contrast, Paterson et al described an ‘ostrich’ respondent as more focused on client loyalty than profit, stating he wanted to be a professional, not a shopkeeper.¹²⁸ Ostrich firms were non-responsive, employed a traditional approach to work, did not advertise and were unwilling to compete for business. Strategist firms were the most commercially aware and, although in a minority, the authors contended their approach indicated how the profession and the concept of professionalism was changing.¹²⁹ This early insight into how law firms positioned themselves also supports the argument that as firms are primarily businesses, commercial awareness should be important to all firms, not just commercial/corporate firms. The perception of the law firm as a business is echoed in Etherington’s study.¹³⁰ One participant noted they were ‘Businessmen running a legal practice, not the other way round’ - the ‘old approach’ to the legal profession had disappeared for their firm.¹³¹ Etherington voiced concern that a focus on commerciality might signify a decline in ‘ethical consciousness and identity among future professionals,’¹³² reminiscent of concerns in the LETR and elsewhere.¹³³ Early practitioner literature provides further insight. Zietman observed the impact of the boom and bust economy of the 1980s and 90s and its impact on the lawyer-client relationship, noting many firms ‘foster the illusion that law was not a business but rather “a profession” immune to changes in the economic climate.’¹³⁴ This transition in the profession has implications for law schools in terms of how they seek to prepare students for employment.

¹²⁷ *ibid* 369.

¹²⁸ *ibid* 368, 60% of respondents could be categorised into 3 groups – ostriches (18%), tacticians (32% - responding to competition but in a limited way) and strategists (10%).

¹²⁹ *ibid* 369.

¹³⁰ Etherington (n 22).

¹³¹ *ibid* 20.

¹³² *ibid* 29.

¹³³ LETR (n 31) para 2.71. See also John Spencer, ‘My Legal Life: A different calling’ (2013) LS Gaz discussing ‘the demise of professional standards and the rise in commercial awareness. The first far outweighs the second’. Paterson (n 107) 368. See also Emma Jane Jones, ‘Affective or defective? Exploring the LETR’s characterisation of affect and its translation into practice’ (2018) 52 Law Tchr 478, 487 observing the importance of business awareness in CILEX’s response to the LETR, noting the ‘somewhat telling indication of priorities within the legal sector.’

¹³⁴ Zietman (n 58). See also Pilliar (n 111) 21 arguing a false dichotomy could exist - lawyers need to make money so law can be both a profession and a business.

Theme 4 – commercial awareness and the graduate recruitment process

Etherington's study explored the importance of commercial awareness, professionalism and ethics to law firms and how firms evaluate those competencies when recruiting.¹³⁵ All except one employer confirmed, without prompting, that they assessed commercial awareness. The study noted that a variety of detailed information was provided by employers on why and how commercial awareness was assessed (although it is unclear what that detail was) and recognised it could be hard to assess. One employer stated that 50 per cent of the interview was about commercial awareness; another noted it was prioritised at interview. Many student respondents stated commercial awareness was a required skill. In contrast, professionalism and ethics were not mentioned by employers or students as required qualities. 89 per cent of students thought commercial awareness had been assessed during recruitment (no detail was provided on how); just under 40 per cent thought ethical awareness had been assessed. Although there are accepted limitations with the student responses, this study indicated a clear difference in the importance of commercial awareness compared to professionalism and ethics for students and employers, indicating that at the recruitment stage, commercial awareness appeared to take precedence.¹³⁶ The LETR placed a focus on both¹³⁷ but, unlike commercial awareness, professionalism and ethics were not confined to the vocational stage of education.¹³⁸ Sommerlad also found commercial awareness critical; employers tested it in application forms, telephone interviews and at assessment centres.¹³⁹ Sommerlad concluded these firms focused on creating legal entrepreneurs; legal knowledge was secondary to commercial sense.¹⁴⁰ These findings suggest law schools should further consider where they align their teaching so as to give students the greatest chance of succeeding in the graduate recruitment process.

¹³⁵ Etherington (n 22) – see appendix II.

¹³⁶ *ibid* 28.

¹³⁷ LETR (n 31) para 2.101.

¹³⁸ *ibid* recommendation 6 – recommending a broad approach to the teaching of professionalism and ethics although there was no recommendation professional conduct be a foundation subject; the academic stage could be used to develop awareness, para 4.104.

¹³⁹ Sommerlad (n 113) 87. Although see Andrew Francis & Hilary Sommerlad 'Access to legal work experience and its role in the (re)production of legal professional identity' (2009) 16 *International Journal of the Legal Profession* 63, 78 where a student stated in a 2008 recruitment brochure for Slaughter & May that there were no expectations of commercial awareness at interview – the student was an Oxford graduate.

¹⁴⁰ Sommerlad (n 113) 96.

Francis's study provides an understanding of the difficulties students encounter in the recruitment process in relation to commercial awareness.¹⁴¹ Francis argued that social class and educational background impacted on graduate perceptions of their employability and ability to meet firms' expectations. Although commercial awareness was presented as a neutral expectation all candidates could satisfy, candidates were in fact not 'equally positioned in terms of their ability' to do so.¹⁴² Francis's results showed that employers were open to hearing the 'story' about how different activities, such as part-time work in a shop, could demonstrate commercial awareness but this was not what they were expecting.¹⁴³ Francis argued that many students from non-traditional backgrounds, namely first generation, post-92 students, would probably not know they *can* tell the story or *how* to do so.¹⁴⁴

Theme 5 – the role of the law school

The above discussion outlines the importance of commercial awareness to employers and therefore to students but what is the impact on law schools? Collier explored neo-liberalism in law schools, noting the revised role of universities as stakeholders in a wider global knowledge economy.¹⁴⁵ The introduction of commercial awareness into curricula and the 'embedding of corporate cultures within law schools' were aspects of this process.¹⁴⁶ Collier recognised the reality that many law students will not find work in the legal profession, acknowledging the increasing tension between the growth of higher education and the lack of legal sector jobs.¹⁴⁷ These issues lead to questions about the role and purpose of law schools, in particular as to whether it is the responsibility of law schools to develop skills like commercial awareness.

¹⁴¹ Francis (n 10). See appendix II.

¹⁴² *ibid* 182.

¹⁴³ *ibid* 184.

¹⁴⁴ *ibid* 185. See also Fouzder (n 18) where a partner noted that waitressing or working at Waitrose could be used to show business acumen.

¹⁴⁵ Richard Collier "'Love Law, Love Life": Neoliberalism, Wellbeing and Gender in the Legal Profession – The Case of Law School' (2014) 17 *Legal Ethics* 202. See also Nicholas Saunders, 'From Cramming to Skills – The Development of Solicitors' Education and Training since Ormrod' (1996) 30 *Law Tchr* 168, 184-186 noting law schools were under pressure to identify graduate outcomes and emerging issues like improving trainees' commercial awareness; law schools 'increasingly are not their own masters'.

¹⁴⁶ Collier (n 145) 213. For further discussion of the impact of neoliberalism on legal education see Margaret Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2001) 8 *Int'l J Legal Prof* 37.

¹⁴⁷ Collier (n 145) 224.

Arguments in favour of such an approach would undoubtedly focus on the broader higher education challenges of increasing student numbers (creating competition for employment), the introduction of fees (and the subsequent consumerisation of higher education) and the TEF. Some argue for a renewed focus by universities on knowledge and intellectual identity in supporting students to achieve their career goals.¹⁴⁸ Others call for an emphasis on supporting students in a process of self-transformation¹⁴⁹ or the creation of learning ecologies where knowledge and competencies are interconnected.¹⁵⁰ Law schools have significant choice in the approaches they may seek to adopt. However, regardless of which approach is taken, it is clear that the marketisation of higher education and the ongoing importance of the employability agenda means that law schools must focus on how they prepare students for the graduate recruitment process and that focus should include a consideration of commercial awareness.

Skills vs liberal legal education

The debate around skills vs liberal legal education has been explored in many articles outside this review¹⁵¹ but it has found some recognition in the results.¹⁵² Strevens et al found both positions complementary; graduates with academic knowledge and employability skills like commercial awareness would be the most attractive to employers.¹⁵³ Mytton and Gale noted that students are expected to gain business awareness.¹⁵⁴ However, whilst City firms push for such skills they may recruit from a narrow range of universities, less focused on employability.¹⁵⁵ Like Boden & Nedeva, Mytton and Gale recognised the employability push at post-92 universities in contrast to the more traditional

¹⁴⁸ Sue Clegg, 'Cultural capital and agency: connecting critique and curriculum in higher education' (2010) 32 *British Journal of Sociology of Education* 93.

¹⁴⁹ Michael Hall, 'Towards a parrhesiastic engagement with graduate employability' (2020) 12 *Power and Education* 110.

¹⁵⁰ Deborah J Cantrell, 'Are Clinics a Magic Bullet' (2014) *Alta L Rev* 831, 838-844.

¹⁵¹ Jessica Guth and Chris Ashford, 'The Legal Education and Training Review: regulating socio-legal and liberal legal education?' (2014) 48 *Law Tchr* 5. Rigg (n 2).

¹⁵² Strevens (n 59) 342. Turner (n 63).

¹⁵³ Strevens (n 59) 342. See also John Bell, 'Key Skills in the Law Curriculum and Self-Assessment' (2000) 34 *Law Tchr* 175, 178, 191.

¹⁵⁴ Elizabeth Mytton and Chris Gale, 'Prevailing issues in legal education within management and business environments' (2012) 54 *Int J.L.M* 311, 312.

¹⁵⁵ *ibid* 313. See also Ashley and Empson (n 11). Although more City firms are seeking to diversify their intakes – see <www.aspiringsolicitors.co.uk/about-as/our-supporters/> accessed April 2021 for firms supporting Aspiring Solicitors, an organisation that promotes student recruitment from non-Russell Group universities.

universities' concentration on academic skills. The authors also recognised the importance of business awareness if law graduates did not want or could not obtain a career in the legal profession,¹⁵⁶ underlining its importance as a transferable skill relevant to many graduate professions. If one accepts that a key role of the law school is to prepare students for the recruitment process, it is necessary to consider how law schools currently use the curriculum to develop commercial awareness.

The curriculum: clinical legal education, pro bono work and beyond

Diagram 1 identifies the conceptual articles that considered the development of commercial awareness in law school curricula¹⁵⁷ but few articles provided detail on how this development takes place – it is often simply assumed but not measured.

The development of commercial awareness in the context of pro bono and clinical legal education featured in some empirical articles. Cantatore found that students thought pro-bono work enhanced their industry awareness but the overall percentage improvement was not broken down by skill making it difficult to assess by how much.¹⁵⁸ The qualitative results indicated some students felt they developed industry awareness although it is unclear how many thought this, what they did and the type of clinic these students experienced. Blandy examined the impact of pro bono work on student employability, finding that although commercial awareness was a skill sought by commercial law firms, it was one of only two skills not mentioned in student responses.¹⁵⁹ Blandy found this understandable because students in the commercial law clinic did not participate,¹⁶⁰ reiterating the perception that commercial awareness is only required by commercial law firms and only acquired by those who have experienced commercial work. However, this

¹⁵⁶ Mytton and Gale (n 154) 313 around 40% of law graduates would go into practice.

¹⁵⁷ Lydia Bleasdale-Hill and Paul Wragg, 'Models of Clinic and Their Values to Universities, Students and the Community in the Post-2012 Fees Era' (2013) 19 *Int'l J Clinical Legal Educ* 257. C J Newbery-Jones, 'Screencasting ethics and values: teaching contemporary legal issues and collective legal values through live screencasting' (2016) 50 *Law Tchr* 242.

¹⁵⁸ Francina Cantatore, 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' (2018) 25 *Int'l J Clinical Legal Educ* 147.

¹⁵⁹ Sarah Blandy, 'Enhancing Employability through Student Engagement in Pro Bono Projects' (2019) 26 *Int'l J Clinical Legal Educ* 7. See appendix II.

¹⁶⁰ *ibid* 32

position contrasts with employer and student views.¹⁶¹ Thanaraj's students thought they had developed business and commercial acumen working in a virtual law clinic.¹⁶² In contrast, Alexander and Boothby found some participants thought clinic had not really developed their business awareness and more focus was needed on client aims and understanding how businesses work.¹⁶³ Their study concluded that clinic provided 'limited exposure to aspects of commerciality',¹⁶⁴ and called for clinic to provide students with more experience of the commercial realities of legal practice. The employer participants in Strevens et al's study thought commercial awareness had to be learned in the 'real world' and could not be taught in university.¹⁶⁵ The authors disagreed, arguing that simulated clinical legal work could play a role by developing a practical and academic understanding of the law,¹⁶⁶ for example, considering the financial implications of a civil claim.¹⁶⁷ However, there were no student views on whether and how simulated activities developed commercial awareness.

Overall, these studies are helpful in providing evidence of student views of the impact of clinic and pro bono activities on developing commercial awareness. However, there are some limitations to the conclusions that can be drawn given that some studies had a relatively small number of respondents and some included limited qualitative evidence of how commercial awareness is actually developed. More research is needed on whether, how and to what extent clinic and more generally the curriculum is used to develop commercial awareness.

When?

Over time, the expectation as to when a lawyer must develop and demonstrate commercial awareness has been pushed back. Early practitioner literature suggested commercial awareness was needed to work as an established lawyer or for promotion.¹⁶⁸ Later, its development was positioned on the Professional

¹⁶¹ Etherington (n 22).

¹⁶² Ann Thanaraj, 'The Proficient Lawyer: Identifying Students' Perspectives on Learning Gained from Working in a Virtual Law Clinic' (2017) 14 US-China L Rev 137 – see appendix II.

¹⁶³ Alexander and Boothby (n 110) 67.

¹⁶⁴ *ibid* 70.

¹⁶⁵ Strevens (n 59) 340.

¹⁶⁶ *ibid* 340, 344.

¹⁶⁷ *ibid* 346.

¹⁶⁸ Bahl (n 20), Povey (n 58), Stratton (n 121) and early client surveys (n 58).

Skills Course¹⁶⁹ and the LPC,¹⁷⁰ reflecting the LETR recommendation. These potential development points do not recognise current law firm requirements. Etherington recognised that students are expected to display commercial aptitude at a very early stage of their career journey (in second year), noting that this expectation is moving backwards to first year and even prior to joining university.¹⁷¹ Huxley-Binns argued that because many students would begin paralegal work without undertaking an LPC, commercial awareness should be an important feature of the qualifying law degree. It would be inappropriate to study it for the first-time on the LPC as some students never take it.¹⁷² She concluded that commercial awareness belonged in undergraduate study to satisfy student requirements and expectations.¹⁷³ This position was acknowledged, but not recommended by the LETR.¹⁷⁴ If there is agreement that commercial awareness should be taught in an undergraduate law degree, one key issue for law schools is the willingness¹⁷⁵ and ability of academics to teach it in an already crowded curriculum.¹⁷⁶ As the list of required skills grows, so does the expectation that academics will be willing and able to teach those skills.¹⁷⁷

The Solicitors Qualifying Examination (SQE)

The introduction of the new SQE route to qualification as a solicitor in England and Wales is designed to widen access to the solicitors' profession and to provide flexibility in gaining qualification as a solicitor. An individual will be able to qualify as a solicitor after gaining a degree (or its equivalent), sitting

¹⁶⁹ Nigel Duncan, 'Gatekeepers Training Hurdles: The Training and Accreditation of Lawyers in England and Wales' (2004) 20 Ga St U L Rev 911. Nigel Savage, 'The System in England and Wales' (2002) 43 S Tex L Rev 597. This course is taken after a training contract has started.

¹⁷⁰ Scott Slorach and Philip Knott, 'The Development of Skills Teaching and Assessment on the English Legal Practice Course – A Nottingham Law School Perspective' (1996) 14 J Prof Legal Educ 189.

¹⁷¹ Etherington (n 22) 11-12.

¹⁷² This is likely to be more of an issue going forward given the LPC will end and be replaced by the Solicitors' Qualifying Examinations.

¹⁷³ Huxley-Binns (n 64) 304.

¹⁷⁴ LETR (n 31) para 4.69.

¹⁷⁵ See also Bell (n 153) 182.

¹⁷⁶ Dagilyte and Coe (n 6) 48 recognising the LETR's recommendations and calling for better quality pedagogy training for academics to deliver employment-ready graduates.

¹⁷⁷ For a pre-LETR view from the profession and the issue of 'Ivory Tower' researchers and academics with little understanding of the legal profession, see Grania Langdon-Down, 'Educating and Training Review: On the Right Track?' (2012) LS Gaz 14.

two centralised examinations¹⁷⁸ and undertaking 2 years of qualifying work experience.¹⁷⁹ There will be no requirement to do the LPC¹⁸⁰ and no ‘training contract barrier’ in terms of numbers of solicitors, potentially enabling paralegals to qualify as solicitors.¹⁸¹ It remains to be seen how law schools will respond to the SQE in detail – some may develop undergraduate programmes that include SQE preparation, or at least provide students with the option to include this, whilst others may leave the task to postgraduate courses.¹⁸² None of the papers considered the impact of the SQE on the issue of commercial awareness. Arguably, the SQE itself adds no clarity to the issue. Despite the discussion of commercial awareness in the LETR and its ongoing importance to the profession, the SQE assessment specifications do not mention commercial awareness.¹⁸³ The assessments seek to test the Solicitors Regulation Authority Statement of Solicitor Competence. This arguably includes some aspects of commercial awareness, namely, application of the law to the facts to produce the solution best suited to client needs and circumstances, understanding client needs, objectives and priorities and understanding the commercial, organisational and financial context in which solicitors work and their role in it.¹⁸⁴ However, it is left to the SQE student and educator to make that commercial awareness connection. In addition, the issue of when to teach commercial awareness, observed in the earlier discussion of

¹⁷⁸ SQE1 consists of multiple-choice questions and focuses on functioning legal knowledge. It will be taken after a law degree or other appropriate legal education. SQE2 examines practical legal skills and knowledge. It can only be taken after SQE1 has been passed.

¹⁷⁹ Character and suitability requirements must also be met –

<<https://www.sra.org.uk/become-solicitor/sqe/sqe-visuals>> accessed August 2021.

¹⁸⁰ Although the LPC will still continue to operate in its current form for some time for individuals seeking to qualify under the qualifying law degree route.

¹⁸¹ Although outside the remit of this paper, other barriers may exist, for example the financial costs of SQE1 and 2 preparation courses – £5,500 for each course at The University of Law – see <<https://www.law.ac.uk/study/postgraduate/sqe/courses/>> As at September 2021, the total cost to sit both examinations is £3,980 (SQE1 costing £1,558 and SQE2 costing £2,422). There are also unresolved issues about whether employers will want to re-employ paralegals as solicitors after qualification and uncertainty about salary expectations.

¹⁸² A range of providers are already advertising SQE preparation and revision courses, for example, The University of Law, QLTSchool and BPP.

¹⁸³ For SQE1 assessment specification see <<https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe1-assessment-specification>> accessed August 2021. For SQE2 assessment specification see <<https://sqe.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification>> accessed August 2021.

¹⁸⁴ See <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>> at A4b, B3a and D3a.

the LETR and the LPC,¹⁸⁵ is not resolved. Most taking SQE1¹⁸⁶ will do so following a degree or SQE preparation/revision course. It is likely that the key points of recruitment to the profession will remain the same, with many law firms expecting students to demonstrate commercial awareness during their second year of undergraduate study¹⁸⁷ or on graduation when seeking work as a legal professional. Whilst law schools will potentially have more freedom in terms of what they teach¹⁸⁸ and certainly opportunity to take different approaches,¹⁸⁹ the push for teaching commercial awareness still clearly comes from the solicitors' profession and not its regulatory body. Law schools are likely to use the advent of the SQE as an opportunity to refresh and reframe their programmes in order to provide the best possible launchpad for their students when seeking graduate employment.¹⁹⁰

Conclusions

What is commercial awareness?

The results provided no clear and agreed definition of commercial awareness; this research produced a limited range of definitions with some commonalities.¹⁹¹ Complex definitions and taxonomies may serve more to confuse than to aid understanding, particularly for students unfamiliar with the graduate recruitment process, and for academics tasked with developing commercial awareness. Fluidity in the definition causes similar problems; as commercial awareness changes over time, students and academics must keep pace with these changes. In law, a streamlined yet flexible definition, is needed. A suggested definition of commercial awareness is understanding: (1) law firms, their clients and the sectors in which they operate; (2) how external influences (political, social, economic and technological) impact on law firms, clients and their respective sectors and the advice law firms provide; (3) that

¹⁸⁵ Huxley-Binns (n 64).

¹⁸⁶ n 178.

¹⁸⁷ The largest law firms take on the most trainees, see The Law Society Report (n 1) 45-6, and typically recruit in the second year of undergraduate study.

¹⁸⁸ Although students will no longer need a qualifying law degree to become a solicitor it is required for those seeking to become a barrister.

¹⁸⁹ Alex Nicholson, 'The value of a law degree' (2020) 54 Law Tchr 194.

¹⁹⁰ Many larger law firms provide financial assistance to students selected in their second year, such as payment of LPC fees and/or maintenance grants. For a discussion of potential ways of adding 'value' to a degree see Alex Nicholson, 'The value of a law degree – part 2: a perspective from UK providers' (2021) 55 Law Tchr 241.

¹⁹¹ See Diagram 2.

the legal rights and remedies of clients may not always best suit their objectives; and (4) that a law firm is a business - lawyers need to make money to stay in business.¹⁹²

The picture is further complicated because the literature suggests that different stakeholders (students, employers and academics) have different perspectives. Law firm views on the definition of commercial awareness have been considered in a fairly limited way but certainly in more depth than those of law students and academics. Further research is needed to ascertain their views, especially whether these stakeholders include the 'law firm as a business' within the definition.

How important is commercial awareness as a graduate skill and why?

The results confirmed that commercial awareness is an important skill for graduate employers. Whilst there may be variations in its importance according to sector, overall the results supported the employer survey evidence that it is required in many graduate professions. The increase in the number of articles the review produced that consider commercial awareness suggests a growing academic acknowledgement of its importance over the last 10 years. However, commercial awareness is not a 'new' skill and graduate deficiencies in commercial awareness have been a concern for many years.¹⁹³

For law firms, the growing importance of commercial awareness, especially over the last 20 years, is clear and the results allow for some conclusions to be drawn. The phrase 'commercial awareness' became more commonplace in the 1980s at a time of some critical changes to the legal profession in terms of regulation, competition and marketing. Its importance grew as firms adapted to these changes throughout the 1980s and 1990s. The 'old' professionalism was not enough – firms had to and continue to have to adapt to succeed and survive. The requirement for commercial awareness has been inspired and driven by client demand, particularly in commercial law firms – if a firm and its lawyers are not commercially aware, clients will go elsewhere. Although initially commercial awareness appeared to be linked to promotion to partnership,

¹⁹² This definition could be adapted for other graduate professions replacing 'law firms' with 'employer organisations' and 'lawyers' with 'employers' and adapting (3) as necessary.

¹⁹³ Employer surveys (n 5, 12, 17) and Mason (n 13) 97, 99.

moving firms,¹⁹⁴ specialisms and/or in-house roles,¹⁹⁵ over time its importance has filtered down the profession; commercial awareness, or at least an understanding of it, is now expected from trainees and students.¹⁹⁶ In summary, commercial awareness has played a key role in the ongoing transition of the legal profession from a traditional profession to one where the law firm as a business takes centre stage. Naturally, this transition has implications for those the profession seeks to recruit in terms of what it requires from candidates and how those candidates then seek to position themselves to become 'ideal' candidates. There is evidence that some view commercial awareness as required only of those seeking employment in commercial and corporate law firms, a position acknowledged in the LETR, but the results suggest commercial awareness is needed in other types of firm and will benefit non-commercial clients. Research involving law firms is needed to consider these points. More research is also needed on how law students view the importance of commercial awareness as a graduate skill, how competent they feel in that skill and whether they think the type of firm they apply to impacts on its importance. The importance of commercial awareness to the Bar and whether it has impacted on that profession in the same way as it has on law firms over the last 40 years should also be explored.

How do students develop commercial awareness and can it be taught during their legal education?

The results indicated that there is a clear role for universities in developing students' commercial awareness and suggested methods of development. However, the results lacked detail and evidence on how this development takes place and what academic support is needed. Honeycombing commercial awareness throughout the curriculum in different ways is a sensible approach. However, students need explicit signposting so that they can make a definite link between the activity and their development of commercial awareness.¹⁹⁷

¹⁹⁴ Yvonne Smyth, 'Heading for Recovery' (2010) 160 NLJ 505.

¹⁹⁵ Bahl (n 20). Mary Mullally, 'Moving away from the Legal Mindset' (2006) 2 In-House Persp 5 – lawyers who 'just lawyer' don't last long – business aptitude is needed. Povey (n 58).

¹⁹⁶ The author recently advised a student preparing for an interview as a legal secretary. The job specification required the secretary to have commercial awareness.

¹⁹⁷ Poon (n 61) 62 most academics explicitly mentioned 'commercial awareness' when teaching and explained its meaning. Poon and Brownlow (n 72) 349 suggested rewriting learning outcomes. See also Bell (n 153) 191 noting academics need to be more explicit about the skills development to allow students to better articulate skills when applying for

Further, a detailed consideration is needed of the inter-play between curricular, extra-curricular and co-curricular activities in developing commercial awareness and the varying roles of the university, the law school and the individual student in achieving competence. The impact of technologies of self and the roles law students take in developing their commercial awareness should also be explored. This would provide educators with an authentic understanding of how those tasked with accessing the legal profession go about becoming the candidates prescribed by law firms and how much support they feel they have and indeed want from academics. Further, this would provide law schools with an understanding of how they can help prepare students for the graduate recruitment process, particularly those who may not have the cultural, social or personal capital necessary to access employment.¹⁹⁸ Equally, many students who possess such capital may need explicit signposting as to the how they too can develop and demonstrate commercial awareness. It should not be assumed that those students are automatically commercially aware. Further research is also needed on the impact of gender on a student's ability to develop and demonstrate commercial awareness.¹⁹⁹

The results indicated that academics in some disciplines recognise the importance of commercial awareness but their views may differ from students' views. Further research is required on the views of law school academics, particularly on the importance of commercial awareness and whether they feel it is their responsibility to teach it. As there is ambiguity over what commercial awareness means, many academics, particularly those from a non-practice background, may struggle to conceptualise commercial awareness and its importance, and/or to teach it. More research is needed on how law students feel they develop commercial awareness when participating in clinical legal education²⁰⁰ and pro bono work as these experiences become ever more popular ways for students to evidence their employability skills. There may be limitations on how far clinic can provide the 'law as a business' experience. As

jobs. See Trina Jorre de St Jorre and Beverley Oliver, 'Want students to engage? Contextualise graduate learning outcomes and assess for employability' (2018) 37 Higher Education Research & Development 44, 55 for a more general discussion of the need for explicit signposting of employability skills.

¹⁹⁸ Phillip Brown and Anthony Hesketh and Sara Williams, 'Employability in a Knowledge-driven Economy' (2003) 16 *Journal of Education and Work* 107.

¹⁹⁹ Jonathan P Black and Malgorzata Turner, 'Why are fewer women than men from top UK universities still not securing Graduate Level Jobs?' (2016) 42 *Oxford Review of Education*, 42. See appendix II.

²⁰⁰ Marson and others (n 18) 30 noting the ongoing need for research into clinical legal education to see if it develops skills and insight into practice.

with law school academics, clinic supervisor views on commercial awareness should be explored. Supervisors from different practice/academic backgrounds, with differing interests and experience, may place a different emphasis on commercial awareness. If academics and supervisors do not appreciate the importance of commercial awareness, they may be less likely to provide explicit focus on it when teaching. This may impact on student ability to understand and demonstrate commercial awareness during the graduate recruitment process.

The results showed that the importance of commercial awareness has been pushed back in the career journey over time. However, academia has perhaps been slow to acknowledge its importance with commercial awareness becoming more of a focus only in the last few years, particularly after the publication of the LETR. For students, it is much too late to learn about commercial awareness after graduation, particularly when many firms recruit during the second year of a law degree and where many students do not take the LPC or enter the legal profession. The impact of the SQE on the profession is yet to be fully understood more broadly, but it seems unlikely that it will alter the desire within the legal profession for commercially aware graduates.

How can students demonstrate commercial awareness during the graduate recruitment process?

Many studies provided evidence that commercial awareness was assessed during the graduate recruitment process. However, none were explicit on what employers actually did and how students demonstrated commercial awareness. More empirical research is needed on law students' experience of how commercial awareness is assessed and what issues students encounter when trying to demonstrate it during their recruitment journey. This will help academics to understand more about how to prepare students.

Commercial awareness is and will continue to be a key graduate skill for law students in England and Wales. It is anticipated that legal educators in other jurisdictions will find the issues raised by this article pertinent. Commercial awareness will be relevant to law students irrespective of career choice and required to ensure ongoing development and success in careers that will evolve over time in an increasingly globalised workplace. For law schools, a failure to build commercial awareness into the curriculum, provide guidance on how it is developed and support on how to articulate it to employers, may be a failure

of its students, particularly given the latest research on employer requirements following COVID-19.²⁰¹ The author is carrying out empirical research involving students and academics at the author's institution focusing on some of the research gaps outlined in this article. It is hoped that the findings will provide more guidance for law schools on how best to support students. It is also hoped that the findings will provide employers with more insight into the challenges many students face, particularly those in post-92 institutions in England and Wales. All law schools, not just those within post-92 institutions, need to ensure that students understand commercial awareness and its importance so that at that crucial point in their career journey – the application form, the interview, the assessment centre - they know *what* their commercial awareness story is and *how* to tell it.

²⁰¹ ISE 2020 (n 27).

Appendix I: Systematic Review Results

Empirical

1. Jill Alexander and Carol Boothby, 'Stakeholder Perceptions of Clinical Legal Education within an Employability Context' (2018) 25 *Int'l J Clinical Legal Educ* 53.
2. Sarah Blandy, 'Enhancing Employability through Student Engagement in Pro Bono Projects' (2019) 26 *Int'l J Clinical Legal Educ* 7.
3. Duncan Bentley and Joan Squelch, 'Employer Perspectives on Essential Knowledge, Skills and Attributes for Law Graduates to Work in a Global Context' (2014) *Legal Educ Rev* 95.
4. Jonathan P Black and Malgorzata Turner, 'Why are fewer women than men from top UK universities still not securing Graduate Level Jobs?' (2016) 42 *Oxford Review of Education* 42.
5. Mohamed Branine, 'Graduate recruitment and selection in the UK A study of the recent changes in methods and expectations' (2008) 13 *Career Development International* 497.
6. Francina Cantatore, 'The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students' (2018) 25 *Int'l J Clinical Legal Educ* 147.
7. Gordon Clark and others, "'It's everything else you do...": Alumni views on extracurricular activities and employability' (2015) 16 *Active Learning in Higher Education* 133.
8. Laurence Etherington, 'Public professions and private practices: access to the solicitors' profession in the twenty-first century' (2016) 19 *Legal Ethics* 5.
9. Andrew Francis, 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' (2015) 42 *JL & SOC'Y* 173.
10. Florian Gebreiter, 'Making up ideal recruits Graduate recruitment, professional socialization and subjectivity at Big Four accountancy firms' (2020) 33 *Accounting, Auditing and Accountability Journal* 233.
11. Jacqui Gush, 'Assessing the role of higher education in meeting the needs of the retail sector' (1996) 38 *Education + Training* 5.

12. Hanlon and Jackson, 'Last Orders at the Bar? Competition, Choice and Justice for All – The Impact of Solicitor-Advocacy' (1999) 19 *Oxford Journal of Legal Studies* 95.
13. Denise Jackson and Elaine Chapman, 'Non-technical skill gaps in Australian business graduates' (2012) 37 *Education + Training* 541.
14. Steve Mishkin, 'How Can Law Librarians Most Effectively Provide Legal Research Training?' (2017) 17 *L.I.M.* 34.
15. Alan Paterson and others, 'Competition and the Market for Legal Services' (1988) 15 *JL & Soc'y* 361.
16. Joanna Poon, 'Real estate graduates' employability skills. The perspective of human resource managers of surveying firms' (2012) 30 *Property Management* 416.
17. Joanna Poon, 'Commercial awareness in real estate course' (2014) 32 *Property Management* 48.
18. Joanna Poon and Michael Brownlow 'Students' views on the incorporation of commercial awareness in real estate education' (2014) 32 *Property Management* 326.
19. Joanna Poon and Mike Hoxley and Willow Fuchs, 'Real estate education: an investigation of multiple stakeholders' (2011) 29 *Property Management* 468.
20. Mahbub Sarkar and others, 'Academics' perspectives of the teaching and development of generic employability skills in science curricula' (2020) 39 *Higher Education Research & Development* 346.
21. Venetia Saunders and Katherine Zuzel, 'Evaluating Employability Skills: Employer and Student Perceptions' (2010) 15 *bioscience education* 1.
22. Sarah Saunders, 'The application of practical legal research in the solicitor's office' (2004) 4 *L.I.M.* 44.
23. Mike Sleaf and Helen Reed, 'Views of sport science graduates regarding work skills developed at university' (2006) 11 *Teaching in Higher Education* 47.
24. Hilary Sommerlad, 'The Commercialisation of Law and the Enterprising Legal Practitioner: Continuity and Change' (2011) 18 *Int'l J Legal Prof* 73.
25. Caroline Strevens and Christine Welch and Roger Welch, 'On-Line Legal Services and the Changing Legal Market: Preparing Law Undergraduates for the Future' (2011) 45 *Law Tchr* 328.

26. Ann Thanaraj, 'The Proficient Lawyer: Identifying Students' Perspectives on Learning Gained from Working in a Virtual Law Clinic' (2017) 14 US-China L Rev 137.
27. Juliet Turner and Alison Bone and Jeanette Ashton, 'Reasons why law students should have access to learning law through a skills-based approach' (2018) 52 Law Tchr 1.

Conceptual

1. John Bell, 'Key Skills in the Law Curriculum and Self-Assessment' (2000) 34 Law Tchr 175.
2. Lydia Bleasdale-Hill and Paul Wragg, 'Models of Clinic and Their Values to Universities, Students and the Community in the Post-2012 Fees Era' (2013) 19 Int'l J Clinical Legal Educ 257.
3. Rebecca Boden and Maria Nedeva, 'Employing discourse: universities and graduate "employability"' (2010) 25 Journal of Education Policy 37.
4. Graham Chapman and John Martin, 'Developing Business Awareness and Team Skills: The Use of a Computerised Business Game' (1996) Journal of Engineering Education 103.
5. Richard Collier "'Love Law, Love Life": Neoliberalism, Wellbeing and Gender in the Legal Profession – The Case of Law School' (2014) 17 Legal Ethics 202.
6. John Flood, 'The re-landscaping of the legal profession: Large law firms and professional re-regulation' (2011) 59 Current Sociology 507.
7. Rebecca Huxley-Binns, 'What is the Q for?' (2011) 45 Law Tchr 294.
8. Emma Jane Jones, 'Affective or defective? Exploring the LETR's characterisation of affect and its translation into practice' (2018) 52 Law Tchr 478.
9. Gayle Gasteen, 'National Competency Standards: Are They the Answer for Legal Education and Training' (1995) 13 J Prof Legal Educ 1.
10. Vinny Kennedy, 'Pro Bono Legal Work: The disconnect between saying you'll do it and doing it' (2019) 26 Int'l J Clinical Legal Educ 25.
11. Helen Marshall and Kelly Taylor, 'Up the Value Chain: Transition from Law Librarian to Research Analyst' (2016) 16 LIM 207.

Appendix II: Findings from Empirical Research

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Alexander & Boothby	2018	Impact of clinical legal education on employability.	9 north east law firms, 6 students, 8 alumni and 10 staff.	Focus groups.	Employers want commercial graduates. Participants felt clinic did not develop their commercial awareness.	Importance. Role of clinical legal education.
Bentley & Squelch	2014	Impact of internalisation on what Australian legal employers want and what law graduates need from legal education.	70 participants from private practice, professional associations, government legal human resources, companies and academia.	Focus groups.	Business awareness needed to communicate in an international setting.	Changing legal profession.
Blandy	2019	Impact of pro bono work on student employability.	23 students and 29 graduates (22% and 21% response rate respectively) - civil and miscarriages of justice clinics.	Survey.	Commercial awareness not mentioned in responses although online advice shows it is required.	Role of pro bono work.
Black & Turner	2016	Why female Oxford undergraduates are less likely to obtain graduate roles than male counterparts.	853 – 28% response rate.	Survey.	Women lack confidence in commercial awareness during graduate recruitment process. Commercial awareness could be practised and learnt – unclear how.	Gender.

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Branine	2008	Ranking graduate skills and identifying deficiencies in skills.	326 employers from a range of sectors. 50% response rate.	Questionnaire.	24% of respondents failed to fill graduate vacancies - most identified lack of business awareness as a reason. Commercial awareness ranked as least important skill.	Stakeholder views.
Cantatore	2018	Impact of clinic on student employability.	33 students in four pro bono clinics (including commercial law) Control group of 34 students with no clinical experience. Response rate unclear.	Survey.	Graduate skills enhanced by 13% in clinic group – unclear how much industry awareness increased.	Role of pro bono work.
Clark, Marsden, Whyatt, Thompson & Walker	2015	Impact of extra-curricular activities on employability.	620 Lancaster University graduates. 4.4% response rate.	Questionnaire and interviews.	44.4% saw commercial awareness required for first job. 22.6% perceived development from extra-curricular activities; 22.7% from degree. Paid employment only extra-curricular activity that developed commercial awareness a lot.	Role of the university and the individual.

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Etherington	2016	Trainee solicitor recruitment process. Importance of commercial awareness, professionalism and ethics to law firms.	6 law firms - international, regional firms and small specialist regional. 28 student responses (5 universities). Low response rate, mainly experience with medium-large firms – some with other types of firm but unclear.	Interviews. Surveys.	All except 1 assessed commercial awareness. Focus on commercial awareness contrasted with focus on professionalism and ethics.	Changing legal profession. Graduate recruitment process.
Francis	2015	Employability, social mobility and curriculum design in law schools.	50 law firms surveyed, 16 interviewed. Students at 2 universities. Variable response rates (between 21% and 67.5%).	Questionnaire, focus groups, interviews.	Candidates aren't equally positioned in demonstrating commercial awareness.	Graduate recruitment process.
Gebreiter	2020	Impact of graduate recruitment practices of Big 4 accountancy firms on students.	37 students and 2 careers advisers at 1 university.	Interviews.	Constructive role of graduate recruitment practices. Importance of commercial awareness during recruitment.	Role of individual.
Gush	1996	Role of higher education in meeting needs of retail sector.	6 retailers.	Interviews.	Commercial awareness more important, than technical skills.	Stakeholder views.
Hanlon & Jackson	1999	Views of law firm clients.	25 individuals representing clients based in Scotland.	Interviews.	Clients prize commercial awareness.	Client power.

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Jackson & Chapman	2012	Views of academics and employers on skills and workplace behaviours of Australian business graduates.	211 individuals from 143 employers. 156 academics from 34 universities.	Survey.	31.2% of employers rated graduate commercial awareness as weak in contrast to 23.3% of academics. Commercial awareness needed further consideration by universities - curricula realigning more with employer needs.	Graduate competence. Stakeholder views. Role of universities.
Mishkin	2017	How law librarians can provide adequate legal training to library users.	62 law firms.	Questionnaire and interviews.	Universities provide basic research skills but not complementary commercial awareness needed to work in law firms.	Role of law schools.
Paterson, Farmer, Stephen & Love	1988	Impact of competition and advertising on the conveyancing market.	675 conveyancing firms in England and Wales. 84.8% response rate.	Survey.	Commercial awareness linked to firms market conscious of pricing and using advertising.	Changing legal profession.

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Poon	2014	Views of real estate academics on commercial awareness.	28 completed questionnaires, could limit general applicability of results. 9 interviews.	Questionnaire and interviews.	<p>Most important definition = ability to understand economics of a business; least important = understanding wider environment in which businesses operate.</p> <p>Taxonomy – strategic, most important.</p> <p>Ranked all skills highly for development of commercial awareness - problem solving and updating knowledge most important.</p> <p>Embed real world experience into curriculum – presentations, seminars, placements, internships.</p>	<p>Definition.</p> <p>Stakeholder views.</p> <p>Role of universities.</p>

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Poon & Brownlow	2014	Repeated above study with students.	250 completed questionnaires. 17 email discussions. Discrepancy in sample sizes.	Questionnaire and email discussions.	Most important definition same as for the academics; least important = understanding and identifying clients through culture and language. Taxonomy – financial most important. Ranked all skills highly - critical thinking and updating knowledge most important. Students saw development through lectures, mentoring, simulated activities and work experience.	As above.
Poon, Hoxley & Fuchs	2011	Development of graduate skills on real estate courses.	Graduates and employers – mixed response rate of 18% and 6.5% respectively. 5 academics. 4 HR managers.	Questionnaire & interviews.	Statistically significant difference between employer importance and graduate competence. Academics and employers unsurprised by gap.	Stakeholder views.
Poon	2012	Views of HR managers on development of graduate skills.	8 HR managers.	Interviews.	Commercial awareness a top 3 selection criteria. No difference between graduates and undergraduates.	Stakeholder views.

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Sarkar, Overton, Thompson & Rayner	2020	Teaching and development of employability skills in Australian and UK universities.	Unclear on number of academics responding - respondents responsible for 189 units of study. 17 interviews.	Survey and interviews.	Commercial awareness developed in 20% of units and assessed in 8%; much lower than other skills. Lack of emphasis on commercial awareness disadvantages students.	Role of universities
Saunders	2004	Effectiveness of legal research education.	6 Cardiff law firms responsible for 35 trainee and newly qualified solicitors, 65% response rate.	Questionnaire & interviews.	Lack of commercial awareness in a research context.	Role of law schools.
Saunders & Zuzel	2010	Views of bioscience students and graduates. Views of employers on importance of graduate skills.	17 students – 77% response rate, 16 graduates – 31% response rate. 29 employers – 49% response rate.	Questionnaire.	Students and graduates felt deficient in commercial awareness. Employers saw commercial awareness as the least important graduate skill. Commercial awareness more likely to be developed in workplace than university.	Graduate competence. Stakeholder views. Role of universities
Sleap & Read	2007	Views of sport science students on workplace skills developed at university.	57 – 41.3% response rate.	Questionnaire.	70% thought commercial awareness needed in employment but 23% thought developed a lot at university; 53% a little; 24% not at all.	Role of universities.

Authors	Year	Paper Considers...	Sample	Method	Main Outcomes	Themes
Sommerlad	2011	Law firm recruitment practices.	LPC students (Russell Group and Post-92 institution – response rate unclear), partners and HR personnel in law firms.	Questionnaire, focus groups (students) and interviews (firms).	Commercial ability required more and more. Entrepreneurial identity displacing professional identity. Commercial awareness key part of application process.	Client power. Graduate recruitment process.
Strevens, Welch & Welch	2011	How graduate employability developed through a law degree.	9 high street and regional law firms - south coast of England.	Interviews.	Commercial awareness desirable.	Definition.
Thanaraj	2017	Skills developed in a virtual law clinic.	10 students.	Interviews.	Commercial awareness developed.	Role of clinical legal education.
Turner, Bone & Ashton	2018	How optional courses enhance student employability.	64 pre-course survey. 20 post-course survey. Low response rate noted as limitation. 6 focus group participants.	Surveys. Focus group.	Pre – expected to develop commercial awareness. Post – not mentioned. Identified in focus groups.	Role of law schools.