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The intrinsic value of formative assessment and feedback as learning tools in the acquisition and improvement of a practical legal skill

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Abstract

Teaching a practical legal skill in a classroom setting can be challenging, it is an attempt to teach the practical in a theoretical way to students who are unlikely to have undertaken this type of practical task previously. The module considered in this research, Practical Legal Drafting, comprises taught sessions that first introduce the ‘rules’ of legal drafting and then allow the development of key skills. The module includes tutor led taught sessions, student in class group and individual activities and ongoing tutor verbal feedback in class, followed by a formative assessment, extensive specific individual written and generic online feedback, and finally face to face feedback on the formative assessment. This combination forms the learning process for the module considered in this study.

The formative assessment is not a compulsory element of the module, the data for three academic years was analysed to determine whether those students who undertook the formative assessment were more successful in the summative assessment than those students who did not and whether it could therefore be said that this was evidence that the formative assessment was beneficial as a teaching tool. The student’s engagement with the feedback available on the VLE was also assessed to determine whether any conclusions could be reached about the impact this may or may not have on improved student performance.

Key words: Legal skill, formative assessment, feedback, learning process

Introduction

The foregoing action research project was undertaken to identify whether students who undertook a formative assessment, as part of a practical legal skill module, outperformed other students on the same module who did not undertake the formative assessment when undertaking the summative assessment of the same practical legal skill at the first opportunity. The data from three consecutive academic years was considered and the change in attainment of all students who attempted the summative assessment at the first opportunity, those who had undertaken the formative assessment and those who had not, was identified. The engagement of the same students in the extensive feedback available on the University’s VLE was also measured to determine if this had any clear impact on the improvement in student performance when undertaking the summative

assessment. The use of formative assessment as a teaching tool allows the students to implement the skills acquired during the learning process when attempting a practical assessment designed for that purpose. The feedback provided allows the students to evaluate the progress of their learning through engaging with the feedback and using it to continue with the learning process. In this way the primary function of the formative assessment and subsequent feedback is as a teaching tool, its secondary purpose is to gauge student progress.

The module examined in this study is Practical Legal Drafting, undertaken by full time and part time post graduate students enrolled on a Legal Practice Course at a UK University. The student numbers vary across the three academic years but the results are broadly consistent. Although the student numbers are considerably higher on an average LLB programme, there is no reason to assume that the usefulness of formative assessment, including appropriate feedback, as a teaching tool and its impact on the outcome of the summative assessment would differ substantially from the results of this study; as evidenced by a study conducted by Carrillo-de-la-Pena et al¹; although the larger student cohorts would bring challenges in terms of staff time and providing a sufficient inducement/persuasion to encourage students to undertake the formative assessment.

Module Delivery

The Practical Legal Drafting module forms part of a wider programme of practical legal skills teaching on the Legal Practice Course and students receive four taught sessions together with a variety of additional drafting practice materials and tutor direction, both of which are available on the University's VLE. In addition to the tutor lead sessions, students are given the opportunity to improve their drafting skills in the compulsory modules of Business Law and Practice, Property Law and Practice and Litigation (Civil and Criminal), taught during Stage 1 of the LPC where they develop these skills in relevant practical scenarios. The first three taught sessions, followed by a formative assessment, take an incremental approach to the skill of Practical Legal Drafting, starting with an examination of key aspects of the skill and concluding with students adapting a precedent to comply with client's detailed instructions. The module is based in the area of practical property law and the activities are designed around the creation of licence documents addressing different property related scenarios with the degree of difficulty increasing as the skill is developed. To become competent in the skill of legal drafting requires practice and the module has been designed to provide students with sufficient exercises of the necessary standard and the opportunity to learn through completing those exercises through the provision of adequate feedback.²

¹ María T Carrillo-de-la-Peña Eva Bailles Generós Ortet-Fabregat Jorge Pérez Formative, 'assessment and academic achievement in pre-graduate students of health sciences' (2009) *Adv in Health Sci Educ* 14: 61, 61–67

² Bernard Charles Cairns, 'Teaching Legal Drafting' (1983) *Journal of Professional Legal Education* vol. 1, no. 2, 51. 49 - 67

The first taught session includes a consideration of the key aspects of drafting including the use of definitions, the importance of clause numbering and the need for clarity of language. Extracts from documents are used to focus on specific areas of a document before students are then set the task of considering a licence document in its entirety. This introduction is built upon in the following three sessions where students begin to amend and draft legal documents. In the second session students are set the task of amending a 'badly' drafted agreement that has not utilised 'definitions' meaning the document lacks clarity and precision. Through identifying options for improving the structure of the document the students begin to appreciate the value of certainty in a legal document. Over the remainder of the second and third sessions the students are provided with the resources and structured teaching to allow a development of the understanding of the principles of good drafting and the ability to edit legal documents in order to meet clients' instructions and expectations, and address all legal, factual and procedural issues. By the conclusion of the taught aspects of the module the students have been given the tools to allow them to consider whether a precedent document is appropriate for the client's needs, identify the issues dealt with in the precedent, and recognise those instructions not dealt with by the precedent. The students have amended existing agreements to meet client's instructions and have drafted a licence using a blank precedent document, again ensuring the client's objectives have been met. The taught sessions include tutor feedback, both during the undertaking of the tasks and at their conclusion. Throughout the process students have the opportunity to develop an ability to explain their own and others' drafting and the implications of their drafting choices for the client.

Module Assessment

The Practical Legal Drafting assessment considered in this research is a written closed book assessment and students are required to achieve a minimum grade of 50% to be considered competent in the skill. The Solicitors Regulation Authority requirements for the skill of Practical Legal Drafting are set out in the Legal Practice Course Outcomes 2011³.

The assessment criteria is largely prescribed by the LPC Outcomes, the purpose of the module is to introduce the student to the key components of the skill, to facilitate the student's understanding of those components and to provide the scaffolding necessary for the acquisition and development of that skill. The sufficient acquisition of the skill must then be demonstrated in order to meet the criteria to be competent in the assessment.

The assessment that forms the focus of this research is an authentic assessment which has been devised to assess competency in the skill of Practical Legal Drafting. The assessment attempts to replicate drafting activities that would be undertaken in legal practice rather than being an

³ Legal Practice Course Outcomes (2011) 22

<https://www.sra.org.uk/globalassets/documents/students/lpc/LPC-Outcomes-Sept2011.pdf?version=4a1ad8>
accessed 9th September 2019

"be able to draft and amend basic documents or provisions that:

1. demonstrate an understanding of the relevant legal, factual and procedural issues
2. meet all formal legal or other requirements
3. demonstrate a considered choice, use and adaptation of templates or precedents
4. are in prescribed or generally accepted form."

assessment that is “from the often artificial constructs of university courses”.⁴ The aim of the assessment is to evaluate student understanding of and competence in a real-world task that, in order to reach the required level of competency, they must be able to demonstrate both the legal knowledge and necessary skills.⁵

The assessment type for both the formative and summative is criterion referenced and assesses the students against a pre-determined set of criteria and required outcomes which are introduced to the students in the first taught session and reinforced during each subsequent taught session. Each student is assessed against those criteria and outcomes meaning that it is possible for the entire student cohort to fail to meet the criteria or for the entire cohort to meet the criteria. Unlike a norm-referenced tests, which would be designed to rank students on a “bell curve” meaning that there would always be a distribution of marks, with a criterion referenced assessment it is also theoretically possible for all students to achieve an identical mark. The formative assessment in this module is undertaken following completion of 75% of the taught sessions allowing time for marking of the assessment and feedback before the final taught session. The opportunity to attempt an assessment at this stage is formative not simply because it allows the student to determine whether they have acquired sufficient skill to be competent in the module but because it also allows identification of areas for improvement. The outcome of the formative assessment provides tutors with the opportunity to structure the remaining taught session to focus on areas of weakness and allows the students to ‘reset’ and consider the learning materials again considering the feedback received.⁶ This approach allows the formative attempt and feedback to be utilised as a learning tool, the data identifies that the approach is effective. The formative assessment replicates the skills and tasks required by the summative assessment but utilises a different scenario and a different precedent document.

A drafting assessment task, similar to the one devised for the Practical Legal Drafting module, has been described as being “more authentic and learner-centred because it provides the students with autonomy to practise lawyering and generic skills in a real world legal scenario.”⁷ The Practical Legal Drafting assessment, at both formative and summative stage, utilises a precedent licence agreement, or similar, which will not include all necessary clauses needed to fully deal with the client’s instructions and will include clauses which are not required based on the client’s instructions. The assessment includes Heads of Terms agreed between the parties to the agreement. The instructions will usually also include a coloured plan identifying various areas over which rights are to be granted or reserved. The document will require amendment in order to make accurate reference to the plan. Students are required to adapt the precedent to ensure consistent use of the defined terms and to identify, adapt and incorporate further clauses, from a separate document of additional clauses provided, in order to draft an agreement that fully meets the client’s

⁴ David Boud and Nancy Falchikov, ‘Rethinking Assessment in Higher Education: Learning for the Longer Term’ (2007) (London, Routledge, 23

⁵ Jon Mueller ‘The Authentic Assessment Toolbox: Enhancing Student Learning Through Online Faculty Development’, (2005) *Journal of Online Learning and Teaching* 2
<http://ifmueller.faculty.noctrl.edu/toolbox/whatisit.htm> accessed 11th April 2019

⁶ Debra J. Dirksen, ‘Hitting the Reset Button Using Formative Assessment to Guide Instruction’ (2011) *Kappanmagazine.org* 26, 26 – 31 accessed 12th November 2019

⁷ Kelley Burton, ‘Skills and Criterion Referenced Assessment: Turning LWB236 REAL PROPERTY A LAW into a subject for the real world’ (2007) *Journal of South Pacific Law* 11(1) 57, 56 - 63

instructions. Inclusion of these new clauses requires the students to demonstrate an understanding of both how to incorporate external material into a document and an understanding of the relevance of the content of the clause by identifying the appropriate place within the document for its insertion. Any changes to the structure of the document, as a result of inclusion or deletion of clauses, must also be accurately undertaken. The module requires the students to develop the necessary skill to consider the effect of clauses, how clauses are impacted by amendments and how the meaning of a clause can be changed by the addition or deletion of words. The task also requires evidence of an appreciation of the relevance of the drafting notes included within the precedent document, the ability to make use of these notes where appropriate and to deal with them correctly to ensure they do not form part of the final document. The assessment task also requires the student to complete a memorandum of advice that explains the reasons for any deletions or additions made to the precedent. The memorandum requires the students to show understanding of the meaning of the process of drafting and the effectiveness of the final document.

Requirements for effective formative assessment include the capability of improving “student learning through familiarising students with the levels of learning required, informing them about gaps in their learning and providing feedback to guide the direction of learning.”⁸ This is certainly true in relation to the teaching and both formative and summative assessment of the skill of Practical Legal Drafting. The formative assessment is designed to improve student performance while also providing a learning opportunity.⁹ This skill is a new one to most of the students and the format of the assessment is also one which the students are unlikely to have experienced at undergraduate level. The taught sessions aim to develop the student’s understanding of the various elements of the skill and the different requirements of the assessment task but the first opportunity for the students to put all the elements together under exam conditions is in the formative assessment. The second component of a concept of learning-oriented assessment is of particular relevance to the aim of the formative assessment in the module considered by this research, “student involvement in assessment so that they develop a better understanding of learning goals and engage more actively with criteria and standards.”¹⁰

Module Feedback

Effective feedback on a formative assessment attempt must serve a dual purpose; the student expects to be able to understand where they went wrong specifically in relation to the assessment question set but, in order to continue to develop their skill of practical legal drafting they must also be given generic feedback on how to improve this skill in a way that can be applied to all future drafting tasks.¹¹ The aim of formative assessment in the Practical Legal Drafting module is to continue the learning process by providing an opportunity for the student to implement the skill and knowledge acquired in the taught sessions without the additional pressure of the consequences of failure in a summative assessment. This allows the students, through the mechanism of feedback, to

⁸ Darrell J. R. Evans, Paul Zeun and Robert A. Stanier, ‘Motivating student learning using a formative assessment journey’ (2014) *Journal of Anatomy* 296, 296–303

⁹ Michael Bennett, ‘Assessment to promote learning’ (2000) *The Law Teacher* 168, 34:2, 167-174

¹⁰ David Carless, ‘Learning-oriented assessment: conceptual bases and practical implications’ (2007) *Innovations in Education and Teaching International* 44:1, 59, 57-66

¹¹ Victor López-Pastor & Alvaro Sicilia-Camacho, ‘Formative and shared assessment in higher education. Lessons learned and challenges for the future’ (2017) *Assessment & Evaluation in Higher Education* 42:1, 82, 77-97

learn from any mistakes they make. A primary function of the formative assessment and feedback, together with taught sessions, is to teach and develop the legal skill of drafting rather than teaching the student how to draft one particular type of document¹².

Students are introduced to the assessment criteria during the first taught session when the module aims and outcomes are explained. The feedback sheet, which the students are also provided with at this early stage, identifies the assessment criteria and how the marks are allocated against the various components of the skill. When receiving feedback on the formative assessment the students are provided with a detailed breakdown of marks allowing them to identify the components they have dealt with most accurately and those that require further work. Using rubrics in a formative way in feedback helps students understand the extent to which their performance already meets the assessment criteria and explains how to improve their subsequent performance.¹³ By incorporating the rubric into the learning process, through inclusion of a discussion of the assessment criteria in the taught sessions and providing formative feedback based on the criteria, it is hoped that the value of feedback as a learning tool will be enhanced.

Providing written feedback on the formative attempt is not enough, on its own, to encourage and support student improvement. Students need to engage with the feedback and reflect on it considering their own formative attempt. The structure of the module is such that reflection on what has been learnt and how it impacts on the acquisition of the skill is integrated into the taught sessions, feedback is an ongoing process. The written feedback on the formative assessment draws on the verbal feedback given in class, providing the students with the skills needed to make the connections between their individual written feedback, the detailed feedback provided on the VLE and their assessment attempt thus allowing them to improve.¹⁴ Formative assessment “has the potential to support and encourage the student, enhance student learning, promote self-evaluation skills, and improve the quality of teaching.”¹⁵ The feedback provided is directly related to the assessment criteria and the essential elements required for competency in the skill of Practical Legal Drafting. This allows for a greater understanding of the learning process and increased development of the elements required to improve competence. Including a formative assessment in the module allows tutors to adapt the feedback given to take account of the common areas of misunderstanding or difficulty which may not be identical for each student cohort. The formative assessment is marked, and the students are provided with extensive individual written feedback on their work. The final taught session, which takes place after the provision of feedback, is specifically tailored for that student cohort.

Although the key purpose of the formative assessment task in the module of Practical Legal Drafting is not evaluation of whether the students have yet reached the required level of competency,¹⁶ it is

¹² Anthony Niedwiecki, ‘Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students through More Effective Formative Assessment Techniques’ (2012) *Capital University Law Review* Vol.40(1), 152, 149-193

¹³ Victor López-Pastor & Alvaro Sicilia-Camacho (n 11) 81

¹⁴ Sarah Quinton and Teresa Smallbone, ‘Feeding forward: using feedback to promote student reflection and learning – a teaching model’ (2010) *Innovations in Education and Teaching International* 127, 125 - 135

¹⁵ Isobel Rolfe and Jean McPherson, ‘Formative assessment: how am I doing?’ (1995) *Lancet* [Volume 345, ISSUE 8953](#) 837, 837-839

¹⁶ [Kulamakan Kulasegaram](#) and [Patangi K. Rangachari](#), ‘Beyond “formative”: assessments to enrich student learning’ (2018) *Journal of the American Physiological Society* 42: 5, 5–14,

recognised that in order for the formative assessment to be valuable to the students and to perform the required function of assisting with the learning process it must be sufficiently detailed and relevant to the skill that is being acquired, it must provide a challenge to the individual student while allowing learning in a way that is both fair and supportive¹⁷. If the formative assessment is sufficiently challenging then, for those students who undertake the assessment, the process of attempting the task in conjunction with the feedback provided allows the student to learn from that interaction. The feedback that is provided is a combination of specific feedback unique to the student on the formative task undertaken and general feedback provided on the VLE on common areas that require improvement and on the key specific requirements of effective drafting. The feedback provided on the VLE includes a recorded lecture discussing the changes required and makes reference to a track changes version of the precedent used in the assessment which is viewed with the recording. This allows the students to compare the work that has been returned to them with the corrected version and consider the explanations for the amendments that should have been made. The feedback also explains the impact on the effectiveness of the final agreement taking account of the common errors made, allowing students to understand how sometimes minor changes can have a significant impact on the outcome. The feedback, both personal to the student and generic via the VLE, explains areas of error specific to the formative assessment but also detailed information which will feedforward allowing the students to learn from the process and to improve their legal drafting skill and consequently improve their performance in the summative assessment. All students, regardless of participation in the formative assessment, are encouraged to engage with the detailed feedback available on the VLE. For those students who do not have the benefit of individual feedback on their attempt, learning from working through this feedback will be more challenging as they are unlikely to have the same understanding of their own level of competence. However, where the student is sufficiently motivated the learning process can be continued through the utilisation of this feedback.

Methods

The performance in both formative and summative assessment of a total of 141 students on the Legal Practice Course at the University of Wolverhampton Law School over academic years 2016/17, 2017/18 and 2018/19 was included in the data analysis.

The data was analysed using quantitative methods in relation to the % of students who failed formative but passed summative and % of students who passed formative but improved at summative and % who DNS formative and failed summative and the average/mean improvement in marks of those who undertook the formative assessment.

The first comparison made was between the mean summative assessment results achieved by those students who had participated in the formative assessment and those who had not.

The second analysis was a comparison between the percentage of students who passed the summative assessment having attempted the formative assessment and those who passed the summative assessment having not attempted the formative assessment.

¹⁷ Sally Brown, 'Assessment for Learning' (2005) *Learning and Teaching in Higher Education*, Issue 1, 85, 81 - 89

The final analysis considered the improvement in performance in the summative assessment of those students who had undertaken the formative assessment and passed it and those who had taken the formative assessment and not passed it.

The comparison of means was conducted utilising Student's *t*-test and the comparison of percentages was conducted utilising χ^2 tests. For all three comparisons the critical value (of *t* or χ^2 respectively) was identified to confirm whether the Null hypothesis could be rejected.

Results

Table 1

Mean and standard deviations (SD) of the summative results (0-10) obtained by the participants and non-participants in formative assessment (FA)

Academic year	FA participants		FA non-participants		<i>t</i> -Test	Critical value of <i>t</i>
	<i>N</i>	Mean (SD)	<i>N</i>	Mean (SD)		
2016/17	49	6.05 (1.0)	8	5.36 (1.1)	1.76454*	1.673
2017/18	32	6.97 (1.1)	8	4.88 (0.9)	4.275**	3.79
2018/19	28	7.85 (0.7)	16	5.61 (1.1)	2.88495***	1.68

Results are all significant at

* $p < 0.05$ ** $p < 0.0001$ *** $p < 0.01$

Alternative hypothesis – students who attempt the FA outperform those who do not in the SA

Null hypothesis – attempting the FA has no impact on student performance in the SA

Conclusion – in all 3 academic years the observed value is greater than the critical value and the null hypothesis can therefore be rejected

Table 2

Number of participants and non-participants in formative assessment (FA) and number of those who passed the summative assessment (SA)

Academic year	FA participants who passed SA (%)	FA non-participant who passed SA (%)	χ^2 test	χ^2 test critical value
2016/17	48/49 (97.9)	4/8 (50.0)	19.76*	19.51
2017/18	33/34 (97.0)	4/8 (50.0)	12.54**	10.82

2018/19	27/28 (96.4)	13/16 (81.2)	2.83 ***	2.7
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* $p < 0.00001$ ** $p < 0.001$ *** $p < 0.10$

Alternative hypothesis – students who attempt the FA outperform those who do not in the SA

Null hypothesis – attempting the FA has no impact on student performance in the SA

Conclusion – in all 3 academic years the observed value is greater than the critical value and the null hypothesis can therefore be rejected

Table 3

Number of successful and unsuccessful students in formative assessment (FA) and the number and % who passed summative assessment (SA)

Academic year	Success FA/ passed SA (%)	Failure FA/failed SA	χ^2 test	χ^2 test critical value
2016/17	22/22 (100)	27/24 (88.8)	0.771	0.773
2017/18	20/20 (100)	14/12 (85.7)	0.972	0.972
2018/19	21/21 (100)	7/6 (85.7)	0.784	0.787

In all cases $p < 0.5$ – a p value that exceeds 0.05 is generally not statistically significant

Alternative hypothesis – only success in the FA can be used as a predictor of success in SA

Null hypothesis – participation in FA, regardless of success, can be used as a predictor of success in SA

Conclusion – in all 3 academic years the observed value is less than the critical value and the null hypothesis must therefore be accepted

Findings

The analysis of the summative results of those students who undertook the formative assessment as compared to those who did not clearly shows that the mean results are higher for those who attempted the formative assessment (Table 1). This supports the assertion that attempting the formative assessment has a positive effect on student performance in the summative assessment. This is further supported by the analysis in Table 2 which identifies the significantly higher pass rate in the summative assessment of those who attempted the formative assessment. Finally, the analysis shown in Table 3 shows that, although there is a higher success rate in the summative assessment where the student passed the formative assessment, that rate is not sufficiently significant to allow a conclusion that only success in the formative assessment is an accurate predictor of success in the summative assessment. These findings reflect those of a previous study

where it was found that “success in formative assessment also predicted success in summative assessment, but interestingly, participation was a better predictor of final outcome than success.”¹⁸ A study considering the benefits of formative assessment as a learning tool for first year undergraduates¹⁹ also found that a voluntary formative assessment resulted in ‘significantly’ higher marks being achieved by those students who engaged with the formative assessment than those who did not. Although the data considered in this study is gathered from post graduate students who have already acquired academic skills, the students are being introduced to practical legal skills for the first time and so are facing similar challenges as new undergraduates in terms of transition to a new level of study.

The analysis of the data suggests that the utilisation of formative assessment as a teaching tool can be seen to be effective when placed at an appropriate stage of the module so as to allow sufficient time for feedback and reflection which, in turn, leads to improved performance in the summative assessment. Whether or not the students utilised the detailed feedback on the VLE, either alongside the completion of the formative assessment or on its own, may also be a factor in student learning and the improvement of student performance. “Supporting the act of production requires the generation of concurrent or intrinsic feedback that students can interact with while engaged in the assessment task”.²⁰ The feedback provided to students in this module, both personalised and generic via the VLE, is iterative in nature in that it seeks to progress the understanding of the students by allowing those who have undertaken the formative assessment to further practice the skill, which leads to the enhancement of student learning.²¹ Those students who did not attempt the formative assessment are able to utilise the generic feedback to reflect on the assessment criteria and improve their understanding of the process of undertaking the skill. The provision of extensive feedback that includes detailed instruction and explanation of both the task undertaken and the requirements of the broader skill fits with the ‘metacognitive’ approach discussed by Pellegrino²², that is that the module encourages students to take responsibility for their own learning through the provision of clearly defined learning outcomes and the tools enabling the students to reflect on their own progress by ‘thinking about thinking’. The VLE records individual student activity and so it is possible to identify which students have engaged with the generic feedback, this information has been analysed to consider the impact, if any, of this engagement on student performance.

Evaluation of the available information relating to student interaction with the feedback provided on the VLE does suggest that those students who undertook the formative assessment and engaged with the feedback showed the highest percentage of improvement in performance in the summative assessment. In academic year 2016/17, 100% of the students that both participated in the formative assessment and engaged with the online feedback improved their performance in the summative

¹⁸ María T Carrillo-de-la-Peña Eva Bailles Generós Ortet-Fabregat Jorge Pérez (n 1) 66

¹⁹ Ron Fisher, Jillian Cavanagh and Angela Bowles, ‘Assisting transition to university: using assessment as a formative learning tool’ (2009) *Assessment and Evaluation in Higher Education* 233, 225 - 237

²⁰ David J. Nicol and Debra Macfarlane-Dick, *Formative assessment and self regulated learning: a model and seven principles of good feedback practice* (2006) *Studies in Higher Education* 213, 199-218

²¹ Martin Barker and Michelle Pinard, *Closing the feedback loop? Iterative feedback between tutor and student in coursework assessments* (2014) *Assessment and Evaluation in Higher Education* 901, 899-915

²² James W. Pellegrino, *Rethinking and Redesigning Curriculum, Instruction and Assessment: What Contemporary Research and Theory Suggests* (2006) (Report commissioned by the National Centre on Education and the Economy) 5, 1-14 <http://ncee.org/wp-content/uploads/2018/04/Pellegrino-Rethinking-and-Redesigning.pdf> accessed 14th January 2020

assessment. 86% of students that undertook the formative assessment but did not engage with the feedback showed improved performance in the summative assessment. Although it is not possible to show improvement in the performance of those students who did not undertake the formative assessment, 7 within that group did engage with the feedback and 43% of those students were successful in the summative assessment. This suggests that utilising the feedback alone may be sufficient to assist some students to pass although it cannot be said whether their performance would have been higher with engagement in the whole process. The statistics are broadly similar for the other academic years considered in this study. In 2017/18, 92% of students who undertook the formative assessment and engaged with the online feedback improved, 80% of those who undertook the formative assessment but did not engage with the feedback improved whereas of those who did not participate in the formative assessment but did engage with the feedback 56% were successful in the summative assessment. In 2018/19, 91% of those who completed the formative assessment and engaged with the feedback improved their performance, 72% of those who undertook the formative assessment but did not engage with the feedback improved and 56% who did not participate in formative assessment but did utilise the feedback were successful in the summative assessment.

The small student cohorts included in the data could result in anomalies due to particularly strong or weak cohorts, outside factors such as work experience, or levels of motivation. However, the broadly consistent findings across the three year groups does evidence that participation in the formative assessment task and engagement with the available feedback are significant contributors in improvement and success in a practical legal drafting context.

Conclusion

Following the approval by the Legal Services Board²³ of the Solicitors' Regulation Authority's plans to change the route to qualification with the introduction of the Solicitors Qualifying Examination (SQE)²⁴, Practical Legal Drafting will be assessed as part of SQE 2, following completion of the required period of work experience rather than at the academic stage of training. Under the current system of qualification as a solicitor in England and Wales an individual must first pass the Legal Practice Course²⁵ and undertake a period of recognised training²⁶. In order to successfully complete the Legal Practice Course a student must become competent in a range of legal skills in addition to the required number of practical law modules; one of these skills is Practical Legal Drafting. Despite the planned changes, and the implications of these changes to the provision of compulsory legal education, the acquisition of legal skills remains necessary to allow a lawyer to "do" law²⁷ and

²³ https://www.legalservicesboard.org.uk/news_publications/LSB_News/PDF/2018/20180327LSB_Approves_SRA_SQE_Application.html LPC Outcomes 2011 – web link – accessed 11th April 2019

<https://www.sra.org.uk/students/lpc.page> - LPC Outcomes 2011 – accessed 11th April 2019

²⁴ SQE is a centralised examination comprising two parts, SQE 1 and SQE 2. It is expected that SQE 1 will be undertaken before the obligatory period of work experience and SQE 2 following the completion of the work experience.

²⁵ Legal Practice Course <https://www.sra.org.uk/students/lpc/> accessed 9th September 2019

²⁶ <https://www.sra.org.uk/solicitors/handbook/introAuthPrac/trainingregs2014/> accessed 16th September 2019

²⁷ Mary-Rose Russell 'Reflections on learning: students' insights on their learning in a legal research skills course in the core curriculum' (2011) *The Law Teacher* 48, 45:1, 45-62

institutions may continue to include practical skills modules at under graduate level or as part of any SQE preparatory course; the introduction of the SQE will not preclude HE from incorporating skills at UG level which are both 'general' in terms of developing skills that are transferrable to employment and 'specific' in terms of being relevant to legal practice. The teaching and assessment of the Practical Legal Drafting module has been designed to result in the development of both. Acquiring the skills necessary to accurately draft a legal document will result in students having the ability to examine small details and the understanding of how those details combine to form a successful whole. The module considered in this study aims to provide the students with the necessary skill and knowledge to not only allow them to draft documents in accordance with client's instructions and legal principles but also to be able to interpret existing documentation that they may encounter, whether as a member of the legal profession²⁸, in an alternative career or in their life in general, as "regardless of where one might work, the ability to precisely draft and analyse documents is a valuable skill that a law graduate could be expected to possess."²⁹The model outlined in this study could be easily adapted to make it relevant to an UG curriculum either as part of a larger module or as a standalone module.

"The assumption underpinning formative assessment is that it has a positive impact on student learning."³⁰ The data examined in this research would seem to confirm this position and that "formative assessment fundamentally emphasises the idea that feedback aims to develop students' self-regulated learning processes."³¹ The process of preparing for, undertaking and evaluating performance in the formative assessment provides students with the opportunity to improve their learning and the extensive and varied feedback following the formative assessment leads to students reflecting on their performance and improving the skill as a result.

Following a previous study it was concluded that, "interestingly, participation in formative assessment was a better predictor of final outcome than success in formative assessment, a result that supports the key role of feedback in formative assessment."³² The same conclusion can be reached from the data used in this study. Not only can it be said that participation in formative assessment was a more accurate predictor of success in summative assessment than success alone in formative assessment but also, across all three cohorts as a whole, more than 90% of students who attempted the formative assessment improved their mark in the summative assessment. These findings support the assertion by the author that undertaking the formative assessment and engaging with the feedback provided are key factors in the learning process and the improvement in performance. The value of formative assessment in the module considered goes beyond the general usefulness of feedback or the improvement in generic academic skills, as the formative assessment is used as a tool to improve learning and understanding in a practical legal skill rather than as a means of determining whether a sufficient level of competence has been reached. The formative

²⁸ Egle Dagilyte et al discuss 'skills' as being a key requirement of 'professionalism' in the context of working as a lawyer. Egle Dagilyte and Peter Coe 'Professionalism in higher education: important not only for lawyers' (2014) *The Law Teacher* 36, 48:1, 33-50

²⁹ Noeleen McNamara 'Authentic assessment in contract law: legal drafting', (2017) *The Law Teacher* 488, 51:4, 486-498

³⁰ Maria Weurlander, Magnus Söderberg, Max Scheja, Håkan Hult & Annika Wernerson, 'Exploring formative assessment as a tool for learning: students' experiences of different methods of formative assessment' (2012) *Assessment & Evaluation in Higher Education* 37:6, 749, 747-760,

³¹ Victor López-Pastor & Alvaro Sicilia-Camacho (n 11) 78

³² María T Carrillo-de-la-Peña Eva Bailles Generós Ortet-Fabregat Jorge Pérez (n 1) 61

assessment in the Practical Legal Drafting module provides the students with the opportunity to directly learn from errors made and, as a result, improve their ability to undertake this specific practical legal skill. It is not possible to discount other factors that may have contributed to the success or improvement in the summative assessment, but what the data shows in relation to the impact of participation in formative assessment and student engagement with the online feedback is that, when utilised as part of the learning process, this participation and engagement does result in an improvement in the ability to perform the skill. The objective of the module, from a pedagogic perspective, is to provide the tools to allow the students to become competent in a practical legal skill. The aim of the students is to pass the module and complete the course. The combination of the formative assessment and the feedback, used as part of the learning process, has resulted in the possibility of the learning outcomes of the module being met and the students achieving their objectives.