Legal Information Literacy Standards: an overview of the developments in the US & the UK

In this paper I plan to cover the following:

1. Why should we, as law librarians, be involved in legal information literacy.
2. The evolution of standards over the past 5 years
3. The review of legal education in the UK and responses to literacy skills from regulators.

I. Why should legal information literacy matter to librarians?

Information literacy matters to librarians for the same reason that I originally came into librarianship from teaching. Our colleagues in academia teach subject content. Our strength is in consistently organising resources in such a way that our users can become life-long self directed learners who know where to find information in any given subject. We have, in the past, taught strategies and shortcuts to finding the right resources which are the basis of all subjects. We know that information needs to be findable so that it can be read, re-interpreted and understood. This is why, in a digital world, it becomes so much more important that we are there leading the charge and not floundering in its wake. We see the so called digital natives and know that they actually do not know much when it comes to comprehending what lies behind a search engine.

Imagine a librarian in the time of Gutenburg explaining the new, democratic object that was the mass-produced printed book, creating an affordable and accessible source of what had been a very restricted resource. We have had 500 years to master that technological innovation and embed it into our teaching, research and learning in a myriad of ways. Books evolved into articles, magazines, loose parts, bound volume accumulations - we were all very comfortable with the sources, and also with the book based reference tools we used - encyclopaedias, gazetteers, dictionaries, atlases, indexes, etc

And now all these traditional tools and objects are turned on their head, into bits and bytes with no visible or tangible structure, and we expect people without our exposure to this understanding to be able do research just because they have grown up using a keyboard and a free-wheeling search engine. This is analogous to saying that because you can read you can produce excellent prose.

It is time to stop assuming that familiarity with the hardware equates with understanding its contents and outputs. There are huge knowledge gaps in the applied legal research of law students and trainees which can only be addressed in formal training and teaching. To quote the general counsel at KIA Motors America, Casey Flaherty: 'It is a myth that young people are digital natives – they know how to consume content but not how to create it'. The concerns have been around for a while, and it is not just the students, but the supervisors

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2 In 2008 Nicholas Carr raised the question: Is Google making us Stupid? and said: 'The Internet, an immeasurably powerful computing system, is subsuming most of our other intellectual technologies. It’s becoming our map and our clock, our printing press and our typewriter, our calculator and our telephone, and our radio and TV.' http://www.theatlantic.com/magazine/archive/2008/07/is-google-making-us-stupid/306868/
who have been identified as needing training\(^3\) in research being undertaken by bodies such as the Research Information Network in 2011, on the role of research supervisors in information literacy.\(^4\)

A recent article by a colleague at Cambridge, Daniel Bates\(^5\), provides an excellent review of the literature, and draws conclusions based on 13 years experience with undergraduates. He states: ‘...although students studying law today have more experience of online services and searching, and a greater use of technology in their everyday lives, they are in many ways less equipped and less capable of handling complex legal research tasks…. While the digital natives can certainly conquer their new landscape, they will need help equipping them to do so.’

In the early stages of the digital revolution, academics and teachers often deferred to the technological prowess demonstrated by pupils and assumed it meant a deeper understanding of the content than really was the case. It was, however, different for librarians. As the internet evolved we were involved, because versions of our resources started to appear on the web. For law, in particular, the Lexis and Westlaw databases were pioneers in e-access even before the internet. Many law librarians in common law countries were teaching legal research in the 1980’s and 1990’s as a normal part of our interaction with our users. We were dealing with complex materials, not only law reports and legislation, but digests, encyclopaedias of law, citators, words and phrases, in addition to monographs and journals. Each type of resource played a part in comprehensive legal research, and knowing what they were and how to navigate them eased the path for law students and trainee lawyers in firms. Law librarians were far more involved in teaching than our colleagues in other libraries, who were usually only involved in library inductions.

And yet, as a group, law librarians have been somewhat slower to come to accepting the role that information literacy needs to play in our teaching. For a while in the 90’s we concentrated on the myriad database resources, and taught users how to use them, the role of Boolean operators, their individual idiosyncrasies. The need for a broader approach that addresses skills in legal information literacy exists not only among students, but also those who teach and supervise researchers, and law librarians are uniquely placed to provide the lead in these developments.

2. The evolution of standards in the past five years.

The movement to identify and define the information literacy skills that students would need grew in the 1990s, and as the literature became more extensive, the national library associations, among others, came up with definitions and requirements.\(^6\)

Four years ago a group of our American law library colleagues got together and started to tease out the competencies that they thought were specific to the requirements of law

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\(^4\) Danner, R. & Winterton, J.: The IALL international handbook of legal information management. Ch. 7 ‘Legal information literacy’ at p.117 for a list of definitions and core skills
students. They referred to the ACRL standards which emphasized the iterative process of research, making it easier to articulate specific performance indicators with respect to the particular elements of research. After extensive consultation, the **AALL Principles and Standards for Legal Research Competency** were officially approved by the AALL Board in July 2013. These were based on the following five principles:

I: A successful legal researcher possesses foundational knowledge of the legal system and legal information sources.

II: A successful legal researcher gathers information through effective and efficient research strategies.

III: A successful legal researcher critically evaluates information.

IV: A successful legal researcher applies information effectively to resolve a specific issue or need.

V: A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

Within each principle there are several standards under which are listed the competencies required to demonstrate the standard has been achieved.

In 2012 BIALL decided that it too should examine the issue of legal information literacy on behalf of its members, following a question raised at the annual meeting the previous year by a member asking what BIALL planned to do in relation to Legal Information Literacy. A working party was established in February 2012, and I was asked to chair it – in part because I had written a chapter on the issue in the 2011 IALL International Handbook of Legal Information. The Working Party comprised librarians from firms, courts, the Inns and academia. We approached the development of our competency standards from a different angle to our US colleagues. We reviewed the legal research standards outlined by the English legal regulatory authorities, the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS). The resultant paper was entitled the **BIALL Legal Information Literacy Statement. July 2012**. We settled on the following 5 Research Skills:

1 - Demonstrate an understanding of the need for the thorough investigation of all relevant factual and legal issues involved in a research task

2 - Demonstrate the ability to undertake systematic and comprehensive legal research

3 - Demonstrate the ability to analyse research findings effectively

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4 - Demonstrate the ability to present the results of research in an appropriate and effective manner

5 – Continuing Professional Development – refreshing the legal research skills required of a modern lawyer

Within each Research Skill were set out Learning Outcomes, accompanied by appropriate Knowledge, Understanding & Skills which provided examples of assessment criteria. Our aim was to produce a working document that could be used by our colleagues in evaluating their own legal research teaching programmes, and to act as a guide to suitable evidence which can demonstrate a given learning outcome.

After discussion and consultation, the Statement was adopted by BIALL Council in October 2012, and distributed to the membership. We were fortunate in the timing of the release, because there was a Legal Education Training Review underway, and we were able to contribute to the evidence gathering stage.

The impetus to achieve a commonality of approach to information literacy has also been adopted by the Education Committee of the International Association of Law Libraries, which held its first ever workshop at the September 2013 annual meeting in Barcelona, on the topic of the skills applicable in Public international Law. There are no established standards yet, but the enthusiasm of FCIL colleagues in the workshop has resulted in a review of the initial framework, for further elaboration during the course of this year.

3. The review of legal education in the UK and responses to literacy skills from regulators.

The Legal Education Training Review (LETR)\(^\text{10}\) was the first comprehensive review of legal education in England and Wales since 1971. A joint project was undertaken examining the provision of legal education in the context of the current economic, technological, market and funding changes shaping the legal services market.

The report is the outcome of research undertaken by the UK Centre for Legal Education between June 2011-May 2013 based on evidence collected from a range of stakeholders such as law students, practising legal professionals, allied professionals including law librarians, and experts in the field of legal education.

A key objective of LETR was to examine solicitors’ skills and whether courses were preparing students with the relevant competencies. Legal research ranked 13\(^\text{th}\) out of 25 'important' skills in a survey of barristers, solicitors and legal executives, and in the LETR findings it was widely recognised that legal research skills were not sufficiently acquired by the end of the academic stage of training. It found that the transition from academic to

vocational courses, followed by the reality of real-world problems, highlighted gaps in legal research competency.

**Digital literacy**

The work of the BIALL Legal Information Literacy group contributed to the LETR report on how legal research skills are taught at the academic stage, and the legal research habits of trainees. The report acknowledges the input of library and research professionals and their contribution to it by providing evidence of what is happening in the real-world environment of the workplace after students have left legal education. It includes the following issues identified in this evidence:

- Trainees appeared to be generally unfamiliar with paper-based resources by comparison with digital resources
- Trainees seemed to depend on one-hit-only searching: in other words they do not check thoroughly and contextually around their findings
- Trainees use Google extensively and their searches tend to be shallow and brief

The report also comments on the growing trend of distance learning courses for law and how the changes occurring in e-learning do not fit with benchmarks which assume norms based on face-to-face learning and the need for physical provisions such as teaching space, library holdings, and specific staff-student ratios.

The report concludes that the BIALL Legal Information Literacy Statement together with the Society of College, National and University Libraries (SCONUL) Digital Literacy Lens\(^{11}\), are key documents for the development of digital legal literacies as they provide a framework for a statement of outcomes, as well as for forms of learning, teaching and assessment in relation to digital literacy.

**Recommendations**

There was a consensus that legal research skills need to be addressed at a number of stages in legal services education training. Although most stages of training make reference to the need to develop appropriate legal research skills, there are concerns that these may not be sufficiently developed as part of the curriculum or tested as part of the specific outcomes at each stage. There were further concerns that research skills were not always well taught. Recommendation 11 of the Reports states that there should be a distinct assessment of legal research, writing and critical thinking skills at level 5 or above in the Qualifying Law Degree and in the Graduate Diploma in Law.

The LETR report is a very comprehensive document on the present state of legal education in England and Wales. Whilst the recommendations are aimed at legal education regulators and providers, it is a valuable piece of research which can inform the teaching practice of law librarians in university law schools and commercial law firms. It provides librarians in the

commercial and academic sector with a great opportunity to demonstrate their expertise through legal research support and training.

Additional opportunities to spread the word

The Solicitors Regulation Authority in England and Wales (SRA) has issued a report entitled ‘Training for Tomorrow. Ensuring the lawyers of today have the skills for tomorrow’\(^{12}\) (Oct 2013), and announced a series of open meetings across the country which will discuss this paper as a response to the LETR Report, investigating ways to adopt and implement its findings. The BIALL Working Group will participate in these discussions being held around the country.

Another educational body that has recently announced its interest in Legal Information Literacy skills is the Higher Education Authority, with a workshop on the topic scheduled for early February in London which includes a member of the BIALL Working Group on the panel.

Conclusion

The momentum is growing to deal with the problems that are starting to become evident in current approaches to skills acquisition in legal education. With a document such as the Legal Information Literacy Standards as a starting point, we are able to provide an agreed and accessible set of standards that can be met across a wide variety of legal education environments – from small tutorial, face to face, to larger group teaching and to distance learning. At Oxford we applied the Standards to our compulsory first year Legal Research and Mooting Skills Programme and we felt this helped us to clarify the outcomes we expected from our tutorials, and to reinforce the suitability of the research methods we use in the courses, most of which are taught by the law librarians.

It is important to step back and to look carefully at what is being done in your legal education structures, and examine whether the need for skills based competencies would help you make your legal research teaching more useful and realistic for your students. Whether you review what is being taught on academic criteria, or the standards set by the profession, or a fusion of both, the experience is worth the effort.

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\(^{12}\) http://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page