

REPORT

LEGAL PROFESSIONS WELLBEING TASKFORCE ROUNDTABLE DISCUSSION: EMOTIONAL COMPETENCY: AN EDUCATIONAL PERSPECTIVE

The issue of “Emotional Competency in the Legal Profession: an educational perspective” was discussed at a special roundtable discussion held by the Legal Professions Wellbeing Taskforce on Thursday 10 May at the University of Law. The event was hosted by James Pereira QC, co author of regular column in The Lawyer, ‘Loving legal life’.

Roundtable participants were:

1. Rachel Spearing, Bar Council and Chair of Wellbeing at the Bar Working Group
2. Kayleigh Leonie, Council member, Law Society
3. Helen Whiteman, CEO CILEx Regulation
4. Julie Brannan, Director of Education and Training, SRA (Solicitor’s Regulation Authority)
5. Dr Vanessa Davies, Director General, BSB (Bar Standards Board)
6. Emma Jones, Lecturer in Law, The Open University Law School, Academic Fellow of the Inner Temple
7. Caroline Strevens, University of Portsmouth, Head of School, Reader in Legal Education
8. Noel Inge, Managing Director, CILEx Law School,
9. Professor Rachael Field, Bond University, Melbourne

PANEL DISCUSSION

What is emotional competency and why does it matter?

EJ: Emotional competency is about how we understand and handle our emotions as well as identifying and interpreting emotional responses around us. It is sometimes know as emotional intelligence or emotional literacy and although it is considered by many to be a ‘soft skill’ there is a huge body of scientific evidence that cognition and emotion are intertwined. Emotions affect your actions, decision-making, reasoning, thought processes

and judgement so it is very relevant to law students and legal professionals. Historically law students have been trained to 'think like a lawyer', suppressing and ignoring their emotions which is not beneficial to wellbeing.

CS: Stress is linked to emotion. What we see in a lot of law students is stress, anxiety, depression which impacts on psychological wellbeing. If you can understand the effects stress has on you, then you can understand your behaviour. Research we've done has found that law students and teachers are very good at analysing other people's emotions but not so good at analysing themselves. The other thing that is very important is personal values. What is important to you? Why do you want to work in law? You need to find a work environment where your personal values are not obstructed by your job or your wellbeing levels will be lower.

RF: Emotional competency is relevant to the future sustainability of the profession. The future of the legal profession is going to look different. We need emotional intelligence to be able to deal with this. The market is also demanding more of the legal profession and it matters more and more how you relate to clients, how you understand what they want and problem-solving. Emotional competence sits under lots of other skills we need to do our job such as communication, collaboration, an ethical disposition, self-management. Law schools have an ethical imperative to prepare graduates for the real world of work.

EJ: Although much of what we mean by emotional competency is implicit in what we do, there is not a huge awareness of it, it is not discussed and lawyers don't have the right vocabulary or tools. This is something we need to deal with right through legal education and training and beyond.

RF: The adversarial nature of the profession is another piece of the puzzle that needs to be addressed. So much of what you can learn from dispute resolution, mediation, negotiation, is relevant to what we're talking about. There's a lot of pieces of the puzzle and we need to bring them together to get that explicit recognition of the importance of this.

The panel agreed that whilst individuals needed to have the tools to manage their own emotions, looking after themselves and 'fitting their oxygen mask first', there also needs to be a cultural shift in the profession. Senior professionals need to take a leadership role on

the issue of wellbeing in order to make structural changes and a cultural shift towards a more positive working culture in the law. It is unreasonable to expect lawyers to separate their personal and professional self. Research needs to be translated into practical toolkits to equip those teaching future lawyers how to be prepared for the realities of practicing law.

What tools can be provided to future practitioners to develop their emotional competency?

NI: The marketisation of education and of legal services means we are living in a very competitive environment which leads to stresses and strains. Emotional competencies and 'soft skills' are not well understood in academia. One aspect of this is employability and we are sending out students ill prepared for legal life; they're not emotional or mentally prepared for rejection. There are not enough resources and tools available: only 6% of teaching staff have any mental health awareness training in colleges of further education, which have fewer resources than higher education. The research on mental health that's been done needs to be translated into very practical toolkits freely available to those who teach and train on workplace culture and emotional competency. This should be integrated as part of a careers service. We mustn't forget that not all law students go to university. We need to make resources available to everyone coming into the profession.

CS: Although we have a lot of tools available to us in terms of counselling, mentoring, personal tutoring, sometimes we are still missing a trick as this all helps once a student has labelled themselves with a mental health problem, rather than preventing it occurring. Students are not asking why they are stressed or depressed to start with, they need a better understanding of their motivation and emotional responses. It may be because they don't want to do law, or they were not prepared for how difficult it was going to be. It can be difficult to try and get students to engage on these issues as law students tend to just want more law!

RF: Use the curriculum to catch everyone, that's where the students are and wellbeing can be introduced in the guise of legal training in existing subjects such as ethics, communication skills and dispute resolution. Law students need to see what they are doing as relevant to being a lawyer. Identifying what type of communication style you have and how to manage the good parts about that and the challenges surrounding it can often be a lightbulb moment in realising things about yourself.

RS: A lot of what we consider to be emotional competency must fit in with curriculum and be backed up by empirical evidence to support it's credibility in delivery. Students have to see the relevance and a practical application. When I was teaching I used the ADR model, discussing world view focused on ethics, understanding conflict in yourself and others and how to practically apply this to the practice of conflict resolution and human behaviour in client care - there are a number of areas you can draw on which are well researched already.

EJ: We are also not talking about personality traits here; we are talking about upskilling the profession. Emotional competence can be taught. There's a real opportunity for the UK to take the lead as legal education is under review, in embedding emotional competency and making it an explicit part of our curriculum so that students go into practice with the right tools.

The panel agreed that more resources need to be made available as part of the curriculum but that these tools also needed to be used by those in practice. Students can develop their emotional competency skills by doing pro bono work in law clinics; this provides an opportunity to learn from practical experience.

How can emotional competency be applied in daily practice?

KL: I think just having a better idea of what it would be like working in a traditional, hierarchical law firm would have better equipped me for life in practice and helped me deal with difficult situations. Most junior lawyers are worried to speak up if they are having difficulties. It helps to have visible high profile people in the organisation who are happy to talk about these things to make them feel comfortable. Law firms need to be more open and transparent.

RS: We need to prepare the right foundation for young practitioners and barristers at an early stage. Before they have finished their training they are likely to be dealing with a range of issues such as anxiety, imposter syndrome, dealing with traumatic material, failure, dealing with a difficult client, grappling with their professional identity and we need to prepare them to deal with these issues. It's competitive from day one, the attrition rate is high, it is costly, young barristers don't have breaks as they are doing work experience in

between terms. Many have unrealistic expectations that if they do everything that is expected of them they will succeed. When they are unable to find pupillage, it is catastrophic for them as they lack the resilience to bounce back from these set backs and challenges. We need to mentor and train them better and I believe wellbeing of staff is absolutely a leadership duty.

KL: I think junior lawyers are definitely worried about showing anything that could be perceived as a weakness as they only want to be an asset to their firm. We are expected to show empathy for clients but to also leave our emotions at the door. We need to be an open profession and make people comfortable about talking about your personal difficulties and it has to start at the top. At my firm we have Mental Health First Aiders, which works as senior recognisable people across the firm who are easy to talk to have taken part. Another thing that has worked is having wellbeing champions, who people could approach if they wanted to talk.

RS: One thing that has been really successful with the Wellbeing at the Bar programme and also the “This is Me” Campaign from the City Mental Health Alliance, is having these leaders, really top people, talking about their experiences. It helps to normalise the language around mental health and make it relevant to the profession, talking about performance and linking to ethics for example. We need to use language on this that they will understand and accept. Two thirds of those who responded to the Bar Council’s research said they thought talking about mental health or revealing difficulties would signify weakness. When you’re working at the sharp end of practice you are likely to experience some problems at some point and we need to normalise that. There is now a Resilient Lawyer programme for new practitioners; Pupil Supervisor Training now has a mandatory wellbeing training element within the curriculum. You need to use the evidence, make the business case, and give them the how-to for understanding the issues and resolving or signposting for problems.

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The panel agreed that leadership and better training play a huge role in changing culture in the workplace, and that some employees may be affected more or differently by some of these issues.

What role does regulation play in this?

JB: A lot of what the panel has talked about is implicit in some of the competencies the SRA already assess and the statement of competency is underpinned by emotional competency. We feel that the Solicitor's Qualifying Exam (SQE) is a foundation on which to build rather than a ceiling, but at the same time you can't change the culture by writing a rule. I think we need to look at how we might be able to better align the competencies we assess for with some of the skills we've talked about today and make them more explicit. There are lots of opportunities to signal emotional competency in the profession - across education and practice.

HW: At CILEx Regulation we have nine core principles in our Code of Conduct which outline what we expect from Chartered Legal Executives and those we regulate. We know that the vast majority of our 20,000 strong regulated community are female and the typical studying member is in their mid 20s. We are developing new Education and Training Standards, which will be out to consultation in due course. Within those Standards we are looking at introduce resilience under self-development. For those already qualified and subject to our CPD scheme there is a requirement to undertake a professionalism activity which could include well-being and resilience. From a corporate standpoint, I think also when we are creating a new policy, procedure or rule we need to consider the inclusion of any emotional impact and how we better understand and assess that.

VD: Looking through our Professional Statement for Barristers at the key skills and attributes barristers are expected to have, there are many underpinned by emotional competencies under communication skills and working with others, for example. I think that you have to understand your audience and get your terminology and language right and also choose your moment wisely in further introducing some of these issues. The question really is should this be a compulsory part of professional legal education and is it a regulator's job to tell academia what to do? How would you test for it for example? There is a real place for this in CPD, legal education goes on forever. There is also a particular challenge with this for the Bar as the majority of barristers are self-employed. In the future there will likely be a shift in how we assess into the real working world environment.

RF: I think regulators, the professional bodies and academia all need to be talking together a lot more about these issues and working together. We need to be on the same page.

Sometimes a way in is about talking about the more positive preventative approach to mental health, and doing what you do well.

EJ: A lot of the regulatory materials could be tweaked slightly to make them more explicit. If regulation takes a stand on this there will be a washback into legal education, as if it is a requirement then they will have to engage.

JB: I think absolutely that assessment can influence curriculum, and there is also an opportunity to go beyond assessment.

VD: There is also room for the professional bodies to work with the profession on these issues, where regulation is the minimum requirement, lawyers can aspire to more and the professional groups can persuade them of this.

RS: We should be cautious in introducing assessment before the skills are established as this may cause problems with the credibility & acceptance of any scheme to regulate.

NI: The Legal Education Foundation and charities could also have a role in providing training in emotional competency. There is such variation in resources across the country from institution to institution and from law firm to law firm.

The panel agreed that greater collaboration between regulators and academics to deliver a curriculum and assessment that had a focus on emotional competencies would be ideal.

Questions from the audience

Q1: Is it just because the profession is too stressful in terms of working practices? People are emotionally competent, but they are under too much stress. Is the culture fit for purpose?

RS: There are everyday normal challenges to our working environment which can be catastrophic for health. We are experiencing uncertainty and disruption to working life.

It's about looking at what are the stresses and what can we do about them – is it dealing with certain materials, length of working day, lack of catering at the court? These all affect quality of life and work/life balance. Having an assessment of our extrinsic and intrinsic pressures will help leadership act and seek to manage the environment.

KL: Our JLD survey named ineffective management, client demands, lack of support and billable hours as primary stresses. So we need to address these.

Q2. How do we engage law firms to get rid of stigma?

VD: The bottom line - when people are under stress mistakes are made. Support mechanisms are not a cost, they are an investment.

CS: An Australian survey showed that an ethical culture resulted in more contented employees so there is a business case for engaging with wellbeing.

Comment: Law can be depressing; many lawyers deal with vulnerable individuals. To better prepare junior lawyers for pro bono work such as managing clients with mental health issues some of this could go on the curriculum, there is a place for it in education.

Q4: Are we a microcosm? Are men in the minority?

VD: is it an obstacle to success in these areas that we don't have a gender balance.

RF: It is very male heavy at the top.

RS: We can't get change in the profession without senior men standing up and talking about it. This is me and the City Mental Health Alliance has been excellent at that.

Q5: Recreating the environment of law is difficult in the classroom and often students don't take mental wellbeing seriously as they don't think it affects them. Suggestions?

KL: Knowing more about personal psychology can help. I've learnt a lot recently about how the brain reacts to stress which has really helped me in my career.

JB: This is where a closer relationship between academia and the profession could help.

RS: At the Inn (Inner Temple) we have included within our pupil and new practitioner programme wellbeing elements - practical sessions on stress and pressure, anxiety, resilience - using our WATB resources to demonstrate science, evidence and the Bar Data with clinical, academic and practitioners collaborating.

EJ: It's also important to teach students that there are different ways of practicing law.

Q6: The training of barristers in pupillage is not very transparent and depends very much on who you are mentored by which can be very stressful – is the Bar Standards Board looking at this?

VD: BSB are about to reveal big changes regarding training and pupillage consistency and transparency.

Comment: Solicitors and barristers could also work better together to support each other and not cause each other undue stress. Conclusions:

- **A need for emotional competency to be embedded in legal education**
- **A closer relationship between regulation, professional bodies and legal education**
- **A need for practical resources on these issues – with an emphasis on getting the language right**
- **A need to upskill lawyers in practice on emotional competency**
- **Leadership on these issues needed in firms and chambers to change culture**

The Legal Professions Wellbeing Taskforce is a cross-profession taskforce set up in 2016 to promote and support good mental health and wellbeing across the legal community. Members of the taskforce include: the Law Society, LawCare, the Bar Council, the SRA, CILEx, CILEx Regulation, CILEx Law School, the Law Society's Equality, Diversity and Inclusion Committee, the Institute of Trade Mark Attorneys, the Institute of Paralegals, the University of Law, BPP, Newcastle University, the Junior Lawyers Division of the Law Society, the Young Barristers Committee, the Judicial Office, and the Bar Standards Board.