

Lawyer health and wellbeing: How the legal profession is tackling stress and creating resiliency



EDITED BY ALEX DAVIES

Introduction

By Richard Martin, director, byrne-dean

The last few years have seen an explosion of interest in mental health generally, but specifically in the legal profession. My own involvement in the subject began abruptly in May 2011. At that point I was 40 years old, a father of three young children, a partner in a London law firm, running a large employment law team, and sitting on the firm's management committee. It seemed like I was your archetypal success story.

I went away for a week with my family. On the way back from the holiday, driving around the Boulevard Périphérique south of Paris, I experienced what I now know was a panic attack and never went back to my law firm. I descended rapidly into an increasingly anxious and depressed shadow of my former self until I was admitted to psychiatric hospital for a month, followed by the best part of another two years getting back to a state of mind that allowed me to contemplate slowly, and oh so carefully, re-engaging with the world of work.

To me, and most of the people around me at the time, it seemed to happen almost overnight. Of course, it wasn't really like that. It was simply that I did not have the self-awareness or understanding to notice what was happening to me. Like far too many people before and after me, I ignored the few symptoms I was dimly aware of, and carried blindly on, assuming that, somehow, this would all sort itself out in the end if I could just get through the next day, the next week, the next year. That blindness was only heading in one direction, particularly if I carried on behaving as I was. I was fortunate that my legal career afforded me access to some fantastic support to pick up the pieces.

It is this experience, its impact upon my family and me, and what I have learned about myself and mental health as a result, that informs my passion for the subject and is why I am so honored to be asked to introduce this vital and timely book.

This is a book about lawyers. Some of what it says is unique to lawyers. Just as, however, not all lawyers or law firms are the same and we should

be careful not to over-generalize, it also true that many of the issues that lawyers face apply equally to other professions – it is not just lawyers and those that work and live with them that would benefit from reading this book with an open and enquiring mind.

Lawyers often get a bad press. How many jokes are told about lawyers? How many stereotypes are cast? Sadly, in my experience, too many of these jokes and stereotypes are put about by lawyers themselves. One of the things that frustrates me about lawyers is that they do not think they matter, they do not think they are important, they do not think they are worth looking after, or that if they are, they should come at the end of a very long list of other priorities. And when they reach that point in their to-do list, they lack the self-awareness, energy, and time to do anything about it.

On the one hand, particularly when focusing on an individual lawyer, this can seem like naïve self-sacrifice, something to be pitied perhaps – these lawyers are, after all, just trying to do their best. When viewed at a macro level, however, when there seems to be an awareness across an entire profession that things are fundamentally flawed, but where the profession appears to profess an inability or unwillingness to do anything about it, it can begin to seem negligent.

Lawyers matter. And when I say lawyers, I do not mean the law as a concept or a profession, or even law firms or in-house teams. I mean individual lawyers.

It is lawyers that uphold and enforce the rule of law and hold government to account. Lawyers are the people who help protect the environment, society, and each of us from powerful businesses and individuals. It is lawyers that help to enable commerce, whether on a global level, negotiating vast mergers and acquisitions, or navigating the complexities of the financial markets, or when I want to sell my house. Lawyers help us when we have to deal with the practicalities of the death of a family member, or the trauma of family breakdown. Lawyers are the people who deal with (often harrowing) criminal cases, whether prosecuting or defending those accused. It is lawyers that help us when we are injured in accidents or abused in our workplaces. The law, and the rule of law, is fundamental to so many aspects of our lives and it is lawyers who help us navigate that, often at the most difficult and challenging times of our lives.

Beyond the narrow confines of their legal work, lawyers will often be looked to for leadership and guidance on broader ethical and moral issues – both in-house lawyers and those in private practice will often find themselves acting as a moral compass for the organizations they advise.

At the same time, lawyers are people. They are mothers and fathers, sons and daughters, sisters and brothers. They have friends and colleagues, bosses, and people reporting to them. They matter to all these people too and they in their turn have emotions and needs.

The first thing too many lawyers need is the self-respect and courage to say that they and their wellbeing matter. And now more than ever we need, as a profession, to be taking our mental health and wellbeing seriously. There is a mental health crisis across society. The last few years have highlighted that the legal profession is no exception to that. In our first chapter, Bree Buchanan discusses the research done by the ABA in the US. The worrying picture that emerges there is mirrored in the Law Society of England and Wales Junior Lawyers Division's (JLD) research referenced in chapters seven and eight by Kayleigh Leonie and Richard Collier. That this is not a new phenomenon is clear from the decades of work done by LawCare in the UK, to which its CEO, Elizabeth Rimmer, refers in chapter four.

It is clear that lawyers are experiencing mental health problems at an alarming rate, far above the already worrying levels across society as a whole. This demands attention and action on a human, moral level. Lives are being destroyed, those of the lawyers that suffer and also, too often, those of their loved ones. At the extreme is suicide, very often the result of someone getting to such a point of mental anguish and/or despair that they do not feel able, or willing, to carry on living. Mental illness does not have to reach that point, however, for its impact to be profound.

This crisis also demands attention and action because of the demands of legal practice itself. The provision of legal advice is often (although admittedly not always) complex and challenging. The issues at stake and the arguments involved may make it so, as does the context for the clients involved, and often the clients themselves. We turn to lawyers when issues really matter to us, often at a deeply emotional level, and we ask those lawyers to help us navigate those fraught and choppy waters with clarity and the highest degrees of cognitive functioning, level-headedness, and ethics.

And at the same time as a lawyer is dealing with our issue, s/he is also dealing with many other, no doubt equally demanding, issues and clients, juggling priorities, moving seamlessly during the day from dealing with one matter to another. And when your matter is closed and you have moved on from the urgency and intensity of whatever your lawyer was helping you navigate, hopefully to a calmer place, s/he has moved on to the next issue, the next client, the next crisis.

Lawyers generally work under a degree of pressure and many will need a certain level of pressure to operate at their best. We will all have our Goldilocks zone, where the pressure is enough but not too much, neither too hot nor too cold, but it may not take much to drift beyond that to a point where things are getting too much, when we begin to feel stressed. Lawyers can also experience stress when there isn't enough pressure, when there isn't enough work to do and they start worrying about what that means for them, their career and whatever else. Tim Cantopher in his landmark book *Depressive Illness – the curse of the strong* describes stress or anxiety-induced depression as one of the most common causes of depression for professionals generally – when persistent stress eventually causes even the strongest of minds to crack.

Stress is a problem because when the pressure gets to that point our flight/fight response can be so triggered that vital oxygen- and energy-rich blood is diverted away from our brains to the muscles in our arms and legs, enabling us to run away or fight more effectively. That is a helpful mechanism when the anxiety is being triggered by a physical predator. It is less helpful when the very thing that is causing us anxiety – the legal work we have to get done for example – requires our brains to be operating at their best.

If lawyers are stressed and anxious, they will find it more difficult to do the thinking their work requires, which is likely to impact the quality and/or effectiveness of their work. Equally, some of the common symptoms around depression, a very common mental illness, include indecision, inability to focus, memory problems, confusion and loss of judgement – none of which are going to help with the provision of complex legal advice.

So we need lawyers, but critically we need lawyers who are mentally healthy. Understanding mental health, knowing what good mental health is, being sufficiently emotionally literate to recognize a deterioration in our mental health, and having the language and culture to be able to talk about it, are critical for lawyers to be able to take better care of themselves and those around them. In chapter two, Emma Jones looks at the importance of emotional literacy in the context of the provision of legal services and also how this emotional literacy must be applied to lawyers themselves. In chapter five, Lubna Gem Arielle looks at how we can have better conversations around mental health.

One of the more effective ways of creating conversation around any sensitive issue, and of breaking down stigma, is through the power of storytelling. I am privileged to co-chair the steering committee for the Lord Mayor of London's This is Me campaign, which harnesses that

power to break down the stigma around mental illness. Ordinary people telling their stories, through film or written word, create the space for conversation. They engage people on a human, emotional level, they give permission for people to talk and they help others realize that what they are experiencing is not unique, that they are not alone, that it is OK. Many businesses, including many law firms, have seen huge changes in the culture around mental health through this simple, and age old, art.

When I published my memoir of my experience of mental illness and recovery, *This Too Will Pass – Anxiety in a professional world*, I was asked, pre-publication, how I felt about my experience becoming so public. My reply was that I felt naked. The wise person who asked me that question said she understood that feeling but perhaps I could think of it that, by writing my book, I was giving other people clothes.

Raising awareness of the issue and having conversations is important but we can go much further – after all, much of what lawyers do is concerned with the assessment, management, and apportionment of risk. What is it about lawyers and the law that is causing these alarming rates of mental illness? I have alluded already to the high pressured environment in which many lawyers operate. Lawyers, like other professionals, are trained to put the interests of others before their own and they are often consumed by perfectionism and the fear of making a mistake.

In the training we do at byrne-dean we will often look at the unconscious thinking patterns that can lie at the heart of common mental disorders – catastrophizing, black and white thinking, personalization and more. When we look at what things cause us angst, and why, we will often find a number of these unhelpful and limiting beliefs at play. While many people experience these thinking patterns to some extent, for many lawyers they are their daily bread and butter. And we know that the human brain likes habits – the more we do something, or the more we think in a particular way, the more likely it is we will do that same thing, think that same way, again. If these negative thinking patterns are part of being a lawyer, unless we are careful and unless we have sufficient self-awareness, the more we do law the more we are at risk of thinking in these ways in all aspects of our lives, greatly increasing our chances of developing mental health problems. It is, after all, the way we think about something, rather than the thing itself, that causes us to feel anxiety or stress, even if that thinking is unconscious.

The JLD research to which I have referred shows that over the few years of that study the situation has been getting worse. I am sure that some of that will be down to greater awareness within society generally, as well as a greater willingness to talk about it – those are welcome

trends of course. My belief is that other factors are also at play. When I look back to the start of my legal career, which was not that long ago, I did not have a computer on my desk. I am not sure we had what we would now call a computer in the office at all. Communications came to me in the post, once, or sometimes twice, a day. We did have faxes but they were cumbersome and labor intensive (you had to have fax operators) and so tended to be used only for really urgent letters. I had a telephone (which of course required me to be at my desk to use), but only my secretary had the number for it. I had an office, with a door I could close. These all contributed to a working environment that was more controlled, more predictable and in which I had the autonomy to create the space and time to think – to do the clever stuff that lawyers need to do. And when I left the office at the end of the day, whenever that was, I left. I might take something home with me to read or mark-up but I was not still connected, on call.

That way of working would seem alien to the lawyers now entering the profession, with communication dominated by 24/7 email which they can, and often are expected to (whether by themselves or others), access 24/7. Clients and colleagues have their direct lines and mobile phone numbers. Clients communicate by text and WhatsApp messages, colleagues through chat tools, as well as email. If an email does not get responded to immediately then it is followed by a phone call or a text. How conducive is that environment to the cognitive reflection required of a lawyer? The job of lawyering has not changed that much (and nor has the design of the brains that do it), but the environment in which it is done has changed completely.

I like metaphors. I recently visited someone who kept a horse in a paddock out the back of their house. Having admired the horse, my attention turned to the high quality timber fencing that divided the paddock up into lots of smaller spaces. Why have you gone to such great expense, I asked, to divide the paddock up in this way? Apparently, if you put a horse in a field of lush long green grass, it may carry on eating that grass until it makes itself ill, often through laminitis. So we create smaller spaces to protect them. That made me think about lawyers – if you put an average lawyer in a field of lush long green work, s/he will often carry on working until s/he makes her or himself ill. We used to have lots of fences in place to protect lawyers – the office, 9 to 5 and other such restrictions. The last few decades, through the ubiquity of IT, have resulted in all those fences being taken down.

I am no Luddite. IT brings amazing benefits but, like all things, it has a flip side when not used carefully. No one ever stopped to ask whether

it would be a good thing for lawyers to be on call 24/7, answering emails when they are disturbed in the night, interrupting their family time to speak to clients and more, but that is where too many of the profession have drifted. It feels like perhaps we need to give people back the autonomy and courage to re-erect some fences, to re-establish some boundaries.

There is much that can be done about the culture of law firms themselves. In chapter six, my colleague and the co-founder of byrne-dean, Matt Dean, discusses the idea of psychological safety and how we can create workplace cultures that provide this. If we accept that the business of doing law creates its own inherent risks, then surely we should be making the environment in which we practice as safe as possible – health and safety is not just about physical issues. That will also, of course, enable lawyers to be as effective in their thinking as possible. Healthy lawyers work more effectively.

And for as long as I have been a lawyer there has been a constant refrain around the end of the billable hour, although its demise still seems some way off. It has always seemed to me to be a fairly blunt, inaccurate, and counter-intuitive way to assess the value of a lawyer's contribution. At the same time, the ever increasing targets set for chargeable (and non-chargeable) hours require individual lawyers to be accounting for their every working minute, which must place considerable stress on them – certainly, time recording is often cited as a cause of workplace stress by lawyers. And those five or six minute units all feed into an accounting machine that values the firm's success solely in terms of its profits per equity partner, without reference to the real purpose of the underlying work. Reconnecting lawyers with their purpose and measuring success in those terms would, I am sure, make for better wellbeing.

I have mentioned the research that shows the scale of the crisis affecting the profession as a whole. One of the things law firms and legal teams could do better is measure what is happening across their organizations. Engagement surveys, pulse surveys, absence records, insurance claims, use of employee helplines and many more sources could be used to measure levels of mental health and wellbeing, or problems around mental illness, allowing targeted action to be taken to address issues that arise, as well as measuring the impact of interventions taken to improve things.

It is worth mentioning some other areas of internal activity that many law firms are looking at. One of the consequences of the lack of awareness and the stigma around mental illness is the fear of any issue being medicalized. Creating a network of colleagues across an organization

who are clearly signposted as ambassadors, champions or mental health first aiders – people like us that we can go and talk to without having to take the step of approaching a professional, or even human resources or our boss – can make it far easier for someone to access help and support at an early stage.

At the same time, many organizations provide in-house counselling or psychological support – having access to that support within my building, without having to externalize something, call an insurer or phone my doctor, seems to make it more likely that we will access effective help at an early stage – and all the evidence suggests that the earlier issues are addressed, the less likely they are to develop into a serious problem and the more quickly they will be resolved.

Finally, alongside awareness raising, and training around quality conversations, there is a lot of focus on what is loosely called resilience. This is not about building superhuman lawyers, and it is not about putting the responsibility for mental health and wellbeing solely on the individual. What these programs do focus on, however, are ways in which we can all in different ways prepare ourselves as well as possible for the demands our work and lives place upon us – or, put more positively, enable us to thrive. Diet, exercise, and sleep are all relevant factors, as is emotional literacy to which I have referred, as well as understanding the way we think, to catch unhelpful thinking patterns, and adopting a more mindful way of being.

These supports are worthy and important interventions, but it is crucial that they are not perceived by the organization or the individual lawyer as making that individual solely responsible for their mental wellbeing. It does not excuse the imposition of excessive pressure and demands, nor bullying or other toxic behavior. Mental health problems must not be seen to be the result of an individual not being sufficiently resilient. As one lawyer remarked to me in a training session, “Don’t talk to me about the mindfulness class being run in the boardroom at lunchtime when I haven’t been home in three days and am wondering if I have time to go to the bathroom”.

On that note, although it is not something covered in this book, it would be remiss not to make at least passing reference to the legal responsibilities employers in the UK have in relation to mental illness. Employers have obligations to create safe working environments and they have a duty of care in respect of their employees which may give rise to liability for mental illness, particularly if the employer is aware or should be aware of the vulnerability of an individual employee. Employers also have responsibilities under the UK’s Equality Act not

to discriminate against people with various protected characteristics, including disabilities. Many mental illnesses will constitute a disability for these purposes and there is also a positive duty to make reasonable adjustments to accommodate employees with a disability within the workplace. These duties require responsible people in the business to have a working knowledge of mental health and the willingness to engage in appropriate and supportive conversations about it.

Much of the valuable work being done around the mental health and wellbeing of lawyers, and more broadly, is internally focused – internal to the organization and also internal to the individual. In 2018, a number of banks and leading law firms in the UK came together to create the Mindful Business Charter. This initiative, discussed in chapter three by Kate Dodd of Pinsent Masons, one of the three original architects of the Charter, encourages discussion and collaboration between organizations. It seeks to create a framework and culture in which supplier and client can openly, and without fear, collaborate and learn from each other to remove the unnecessary sources of stress in the ways in which we work. Focused around four basic, and common sense, pillars, the Charter has ambitions to create healthier, as well as more productive, working arrangements. It is an initiative that is growing both within the UK and internationally, in the legal profession and beyond, and is something we at byrne.dean are proud to be leading.

This book therefore comes at a critical time for the legal profession – a time when the demands on the profession and the toll those demands make are greater than ever, but also a time when our awareness is finally awakening. And with that awareness is coming responsible thought and action. There is a long way to go. We are very much in a crisis still. The profession needs to look critically at itself and what it is doing to its members, and urgent action is required. It feels, however, that this may at least be beginning to happen.