

Raising the bar: Addressing the state of mental health in the legal sector

The Mindful Business Charter
Charlotte Clegg 2023



Executive summary

Often, we hear how damaging a career in the legal system is to one's mental health, perhaps more so than any other profession. This paper collates a wide base of empirical studies and reviews which provide clear evidence to corroborate what has previously been anecdotally accepted.

To turn a blind eye to such evidence or discount its importance and impact on our organisations would be at best naïve, and at worst, disastrous for the wellbeing of our people, the success of our businesses and the future of the profession as a whole.

How organisations behave, and exhibit their values and purpose is increasingly driving buying decisions – in the talent market, the client market and the supplier market.

Escalating costs incurred by absenteeism, presenteeism, increased chances of mistakes and the attendant increase in costly insurance claims, replacement recruitment and an inability to attract and retain the best new talent is the fate that awaits organisations who fail to take direct, organisational, systematic change in this area.

Luckily, through the Mindful Business Charter, there are simple, effective and affordable ways to reduce unnecessary stress, ensuring that improved performance, and a healthier workplace result, giving your business the competitive advantage in today's increasingly competitive market.

The Mindful Business Charter already has over 130 members, including many of the leading legal firms in the UK and beyond. This paper sets out why this movement is so important, why it is the responsibility of organisations to tackle mental health, and how simple, mindful changes, can revolutionise the workplace into a healthier, and more productive one.

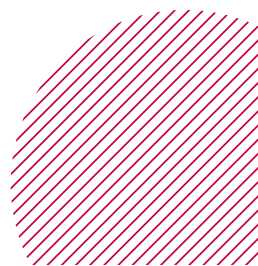
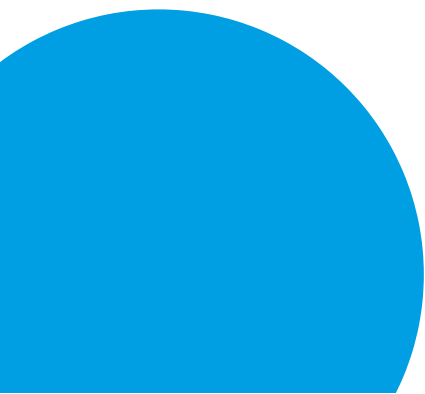


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A note on the text

The referencing style used throughout the paper is APA 7th. In the text, where a source is referenced, the name of the author and publication year will be given in brackets, for example (Collier, 2014), with a full reference list provided in alphabetical order at the end of the document.

This reference list contains over forty papers and articles, including reviews by Soon et al., (2023) and McCreary (2022) which themselves examine hundreds of further research papers and articles spanning multiple decades.

While, as would be expected, there are variances in methodology, academic rigour, and bias found within these sources, having analysed them, we are confident that there is sufficient academic rigour and triangulation of results to ensure this paper is founded on a solid factual basis to account for anomalies of difference and circumstances such as the covid 19 pandemic.

For the sake of brevity, we have not replicated every finding from every paper examined into this report, but we invite you to explore the source materials for further insights and elaboration.

All quotations have been taken verbatim from the source material, retaining any colloquialisms, and peculiarities of grammar or spelling to preserve the voice of the participant.

I would like to thank Richard Martin for his insight and feedback on this paper from its first to last draft. His support, is as ever, deeply appreciated.

Thanks are also due to Richard Foley, Paul Gilbert, Dr Don McCreary, and Dr Lucinda Soon, for their feedback, and all the researchers and organisations whose work has helped inform this paper.

Introduction

The legal arena, characterized by its intellectual rigour, high-stakes scenarios, and results driven culture, can exact a toll on the mental resilience of even the most accomplished minds. Long hours, fierce competition, and the emotional weight of cases can collectively contribute to elevated stress levels, and the adverse outcomes that stem from it (e.g., burnout, depression, anxiety, poor sleep, etc).

While these challenges are not exclusive to the legal profession, the distinctive nature of legal work necessitates a tailored investigation into the unique stressors that practitioners encounter. This white paper embarks on a deliberate journey to examine the multifaceted landscape of mental health within the legal sector, shedding light on the nuanced challenges and proposing strategies to foster a healthier professional environment.

In recent years, the legal sector has made strides in acknowledging the importance of mental health within its ranks. However, to truly tackle the issue, more than mere acknowledgement is required. Instead, systemic change, built on a profound comprehension of the situation is required, with the collaboration of legal organisations, professional bodies, and individual practitioners to ensure its success.

Through a meticulous examination of research, real-world case studies, and expert perspectives, this paper will delve into the strategies that organisations should be adopting. Namely, developing a culture that seeks the prevention of burnout and work-related mental ill-health, with an aim to furnish legal practitioners with practical tools to safeguard their psychological well-being as they navigate the complexities of their roles.

This white paper contributes to an evolving discourse that seeks to harmonize professional dedication with personal wellbeing. It is within this intersection that the legal sector can redefine its commitment to its purpose by championing its greatest assets – its people.

Mental Health in the legal sector :

What the research tells us.

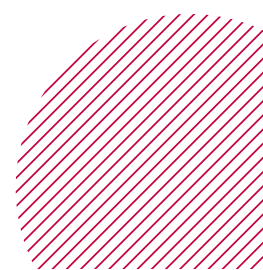
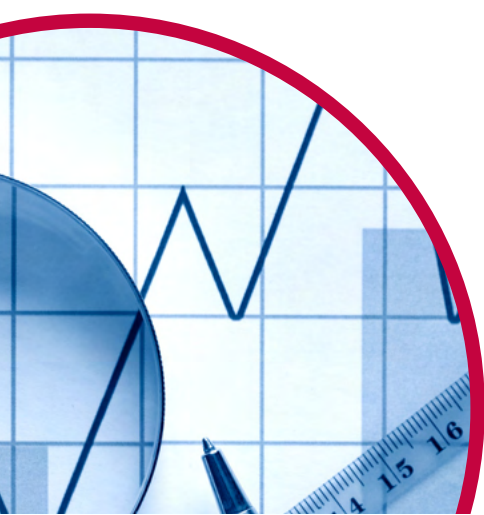
We acknowledge that there will be a wide difference of experience between practice types, sizes, and jurisdictions – and while further investigation and consideration of those differences is no doubt valuable, one common factor exists throughout – mental health in the legal sector needs to be more directly addressed.

The concept of a mental health crisis in the legal sector is not a new one. Research into the psychological effects of working in the legal field on its employees has been increasing exponentially since the 1980's (Soon et al., 2023) with the picture painted being a stark one with frequent and concerning high reports of anxiety, depression, stress, burnout, and resultant substance abuse, suicidal ideation, and self-harm.

These figures provide a shocking picture when compared with the population at large.; According to Business in the Community's Mental Health at Work report (2019) 30% of the general UK workforce has been diagnosed with a mental health condition at some point; while we do not have the details of diagnosis rates, we do know that from a Law Society study (Law Society; Junior Law Division 2019) 61% of the legal professionals surveyed reported mental health problems in their current place of work; and LawCare reported that 69% of its survey participants reported experiencing mental ill-health in the last year alone (LawCare, 2021). In a study of over 3,800 US legal sector employees, 52% had at least one day of absence due to mental health issues in the previous three months (Unmind, 2023).

Concerningly, the International Bar Association (IBA) conducted a survey utilising the World Health Organisation WHO-5 scoring system (assessing subjective psychological wellbeing) whereby those with a score of below 52% would be advised to seek professional screening for mental health issues. The overall average score for legal professionals was 51% (IBA, 2021).

More detailed aspects of the mental health of those working in the legal field are explored in the following pages.



Anxiety

"A state of near-constant anxiety is, I fear, inevitable for a litigator. I'm not sure I have ever come across a successful litigator who, if I know them well enough, has not disclosed that they have suffered from anxiety: the lawyer's phrase that a particular issue has been keeping them awake at night, may sound metaphorical but is normally literally true."

(Anon - LawCare, 2021, p.23.)



Anxiety is reported at a higher level in the legal profession than in the general population (The Law Society, 2023). According to LawCare (2021) 60.7% of its respondents experienced anxiety often to all the time, whereas only 33% of the general population reported high levels of anxiety according to the Office for National Statistics (2023).

Levels of anxiety were keenly felt and had serious ramifications; respondents to the Law Society; Junior Law Division (2019) survey reported some members suffering panic attacks and other anxiety symptoms which led to the need for medication, and even resignations.

Startling figures are not the sole preserve of the UK - in an Australian study while 23% of the general population reported moderate to extremely severe anxiety, this figure rose to 28% for the legal profession (Bergin and Jimmieson, 2015). 41% of the 464 members of the legal profession who took part in Mindful Business Singapore's GAD-7 anxiety screening (2023) would be classified as experiencing clinical anxiety, with half of them scoring so high as to be considered to be suffering from severe anxiety.

Depression

"I have learnt that as a lawyer you need to be mentally okay to be able to attend to your clients ... Depression and many more reduces the productivity of work hours. Organisations need to take care of their employees' wellbeing." In-house counsel, male, Nigeria, African Regional Forum"

(Anonymous - IBA, 2021, p.21)

"We are consistently let down by systemic failure to recognise and address the underlying causes of work-related mental ill-health, in particular where stress, depression and anxiety are triggered or exacerbated by workload, bullying or management style/expectations."

(Anonymous - Law Society Scotland, 2020, p.64)

31% of those taking part in Mindful Business Singapore's study (2023) using the PHQ9 scale were screened as positive for depression with 12.3% classed as moderately severe or severe.

LawCare (2021) reported 48.4% of its survey participants experienced low mood, and 28.9% experienced depression, in the last year.

Depression has been seen to be particularly high for those working in fields where they are exposed to traumatic cases - such as violent criminal cases, those involving child or sexual abuse. (Levin et al., 2012; Westaby, 2010) or where workplace incivility is higher (Joudrey & Wallace, 2009).



Stress

"There are intense periods of stress when a lot of the time we get stuff very last minute. So, I could be getting papers at ten o'clock, 11 o'clock in the evening emailed across to me and I'm expected to turn that around for the next morning."

(Anonymous, Graffin & Jones, 2021 p.462)

"My experience is that stress is endemic in law but that disclosing it can lead to stigmatisation, particularly in private practice, where the incorrect assumption is made that the sufferer is "weak" or "emotional."

(Anonymous, Law Society of Scotland, 2020, p.65)

The amount of stress that legal professionals feel can vary depending on the size of firm they work for. In the report by the Law Society (2019) small firms fare worse, with 28.8% of professionals feeling they are unable to cope, whereas in large firms this number drops to 16.7%. However, for, on average, almost a quarter of the profession to be feeling unable to cope is concerning, not just to the individual, but to firms and their clients.

Important to note is that stress overflows into non-work time, and the level of stress seems to be increasing. When the Law Society (2023) compared its most recent findings to their survey carried out in 2019, it found that the percentage of those who had found it hard to relax at home due to work pressure had increased from 38% to 54%, and over 10% had taken at least one day off due to stress compared to 4% in 2019.

As will be documented throughout this paper, the levels of stress that lawyers experience has a direct detrimental effect on their mental wellbeing with impacts not only for the individual, but also for the organisations that they work for.



Burnout

"I think (there) is a significant problem within the legal profession, leading to burnout of staff. There is a culture that solicitors just need to work long hours and they just have to accept that if they have chosen this career, and work-life balance is an aspiration that people are judged for seeking. I don't know many solicitors who have a manageable workload."

(Anonymous, Law Society of Scotland, 2020, p.64)

Stress and burnout are inextricably linked, with the World Health Organisation describing burnout as "chronic workplace stress that has not been successfully managed" (WHO, 2019).

Using the Oldenburgh Burnout Inventory (Demerouti, et al., 2010) where 34.8 is considered the cut off for high risk of burnout, and the maximum is 64, the average score found by LawCare's survey (2021) was 42.2. Exhaustion seemed to be a major factor; "there are days when I feel tired before starting work" received an average score of 3.36 out of 4. Sleep was also an issue, with 25.1% saying they only got between 5 and 6 hours, and 11.9% had less than 5 hours. (LawCare, 2021)

This sense of exhaustion and poor sleep was echoed by 74% of respondents to the Law Society study (2019) who said that due to mental ill health they had experienced disrupted sleep.



Burnout

Burnout can also be caused by intense emotional labour, (Hochschild, 1983) a situation sometimes experienced by lawyers dealing with traumatic cases.

"If the case is gonna get ultimately dismissed [, and] if someone gets really heavily involved and (pause), quite emotionally attached to a case and then it fails, then you can feel devastated. (Solicitor with 11 years' experience)"
(Anonymous, Westaby, 2010, p.168)

However, traumatic material is not necessary for burnout as demonstrated by Nickum and Desrumaux, (2022) - increasing the workload, increases stress, exhaustion and burnout, especially in situations where lawyers feel they have little "decision latitude" or autonomy.



Alcohol Abuse

As well as the normal social use of alcohol, there have been intimations that lawyers feel the need to drink to help manage the stress of their roles – using it as a form of tension release (Weir et al., 2021).

While a debrief over a drink with a colleague may not necessarily constitute a problem, some studies, such as Krill et al., (2016) have reported that as many as 20.6% of lawyers screened were drinking in a "hazardous, harmful and potentially alcohol dependent" manner (p. 46). Other studies have not replicated these results. For example, the IBA found only 10% of those surveyed identified they were using alcohol to cope. However, it was acknowledged that people may have been giving answers they felt were socially desirable rather than accurate (IBA, 2021).

Interestingly though, a correlation was found by LawCare (2021) between alcohol use and burnout. Those who drank between none and 3 drinks a day had an average score of 42, whereas those who drank 9 or more drinks a day (only 1% of those surveyed) had a burnout score of 47.5. While the cross-sectional design of the study limited the ability to draw conclusions on the causal relationship between alcohol use and burnout, the data suggests that even if the number of people using alcohol to cope is low, the impact on those individuals may be high and should not be discounted.



Suicidal Ideation and Self-harm

"Too often as an Attorney I neglect my own mental wellbeing for the sake of the development of my Firm. Many times I have ignored my mental health until it reaches crisis proportions in terms of me being depressed or having suicidal thoughts. I think there should be greater education and sensitization of attorneys as it relates to the importance of taking care of our mental health."
Advocate, male, Trinidad and Tobago, North American Regional Forum

(Anonymous, IBA, 2021, p.52)

Suicide and self-harm are not in themselves mental health problems – they are instead symptoms and expressions of distress. No wonder then that in a work culture where stress, anxiety and depression are high, lawyers experience them more than the general population (Cadieux et al., 2022).

Importantly, it has been shown that even when accounting for other factors, such as known mental health issues, substance abuse problems and so on, lawyers who took their own life were 91% more likely than those who did not work in the legal sector to have problems at work that contributed to their suicide (Stack and Bowman, 2023).

The Law Society (2019) reported that 13.9% of those who had experienced mental ill health due to work had experienced suicidal thoughts, and LawCare (2021) reported that 6.2% of participants had suicidal thoughts in the 12 months preceding its survey. Research from Krill also suggests that lawyers are twice as likely to experience suicidal thoughts than the general population (Krill, 2023).



Diversity Differences

Disappointingly, but perhaps not surprisingly, women, members of the LGBTQIA+ community, non-white individuals and those who have a disability, all report higher levels of negative impact on their mental health. The Law Society's Survey of 2023 found that women, and those from non-white backgrounds all score consistently worse across all attributes by statistically significant margins – including questions around happiness, whether life is considered worthwhile, and levels of anxiety, sentiments echoed by the New York State Bar Association (2021) who found that discrimination due to disability, race, and gender were all noted by practitioners.

It is vitally important to note that being part of a marginalised group does not in and of itself increase the likelihood of experiencing mental ill-health. It would be naïve and offensive to believe that marginalised communities are in some way innately less able to cope with the rigours of the legal world. Instead, it is the increased experience of hostile treatment, in the form of micro-aggressions, experiencing increased stigma, discrimination, an increased likelihood of bullying and harassment and general ill treatment from others due to having those characteristics that causes increased mental health strain. For example, one study showed 1 in 3 female lawyers reporting sexual harassment, as opposed to one in twenty men (Colmar Brunton, 2018).

In essence the demands and levels of adversity placed on these groups are larger, so it is no wonder that they are more likely to report unfavourable outcomes.



Diversity Differences

Gender inequalities were described as more prominently discussed than disability and age in research carried out by Graffin and Jones (2021) into wellbeing at the Northern Irish Bar – and it is a topic with many contributing factors.

In what has been traditionally considered a male dominated profession, women can find they have to put on a masculine “mask” in order to compete (Polden, 2005).

“That’s the problem with being a barrister. You have to portray a very confident, assertive outlook. You have to act the part. If you drop that mask, or if you seem to be weak or not well, then the concern is that you might lose your practice. You might lose your trusted solicitors and things like that.”

(Anonymous, Graffin & Jones, 2021, p. 467)

There is also evidence that women are “pigeonholed” into specific areas of law, such as family law, (Melville & Stephen, 2011) and that women are patronised and treated as though they cannot handle “tough cases”.

“And very much the attitude, of some of the judges, [is] ‘look at you like you’re a silly wee girl and you know nothing about this, and what are you doing here? ... Could they not have briefed a male barrister?’ And, I think there would be a preference of male solicitors that work in them kind of big criminal defence firms to brief male counsel over female counsel.”

(Anonymous, Graffin & Jones 2021, p. 462)



Diversity Differences

There is also a sense that due to women’s perceived roles in the family, they have greater caring responsibilities. LawCare’s (2021) survey showed that 80.2% of those who were carers were women. As such, the challenge around balance of home and work life is most keenly felt by women.

All of these issues combine to create a rather dour outlook for women in the legal sector – reporting less ability to express themselves at work (72% vs 79% for men; Law Society, 2023), reduced experience of the work environment as fair and equal (70% for women vs 80% for men; Law Society 2023), higher rates of mental ill-health (50.2% of women vs 41.4% of men; Law Society, 2019) and increased rates of mental health problems at their current place of work (64% of women vs 57% of men; Law Society of Scotland, 2020).



The LGBTQIA+ Community also shares some of the same issues surrounding trying to fit into the traditionally straight “masculine” legal world. (There is also evidence that this group is at higher risk of bullying and harassment – which is discussed in more detail in the “Why the Legal Sector has these problems” section.)

Almost two thirds of LGBTQIA+ respondents to The Law Society survey (2019) reported mental ill health – compared to 47% of heterosexual respondents, with 30% of the community reporting feeling unable to cope compared to 17.7% for heterosexuals.



Diversity Differences

The Law Society (2023) also found significant differences in a number of areas between its white and non-white respondents, with fewer reporting support from peers, (63% vs 79% of white respondents) a reduced number reporting that their workplace was fair and equal (64% vs 77% for white respondents) and less ability to express themselves at work, (62% vs 78%) and less likely to feel they are well utilised (69% v 80% white) or that work is fairly distributed (55% v 64% white).

Interestingly LawCare (2021) found that those from non-white backgrounds, had a statistically significant higher chance of burnout, and in line with those who had a disability, this may have been because they experienced lower autonomy and safety – a protective factor against burnout.

The Law Society (2023) also found that disabled solicitors were less likely to feel well utilised, (67% disabled vs 79% non-disabled), that work distribution was fair (49% disabled vs 64% non-disabled) or that they had a realistic chance of positive career progression (38% disabled vs 52% non-disabled).

We would again like to reiterate the point that it is not the fact of being a member of a marginalised community that makes people more susceptible to mental health issues – it is instead the treatment they receive from others for being female, black, gay or disabled etc. that causes the added strain and negative outcomes.



A Matter of Time

A further factor to consider is that of the age of the individual, and, perhaps most importantly, the number of years the individual has dedicated to the legal profession, as examination of this shows some interesting variations.

Those in the 26–35 age bracket reported the highest risk of burnout, with the 56–65 age bracket reporting the lowest (LawCare 2021). This was echoed by research conducted by Mindful Business Singapore where those who had the highest positions of authority had the lowest stress and anxiety levels, and this may be, as found by Chlap and Brown (2022), because those further down the hierarchy had limited organisational support when compared to those higher up the chain.



While the higher chance of burnout may be due to insufficient support, or, as suggested by LawCare (2021), increased by situational factors such as relatively low autonomy and safety, it may also be that a wider view brings insight to this area.

When considering the life stages of those in the 26–35 age bracket, it may be that expectations of starting a family, buying a house and so on all while establishing a successful career are competing in a way that those in the 56–65 bracket, who may be looking forward to a well-earned retirement, generally no longer experience. (Both LawCare (2021) and the Law Society (2019) found that those who were still in training had statistically significant lower stress levels, the suggestion being that the level of responsibility and expectation was not yet at its peak, so this early middle stage of a lawyer’s experience remains the most stressful.)



A Matter of Time

There may be a level of security and stability that comes with being advanced in your career that helps to alleviate the stress and anxiety, with professional allegiances formed, and experience providing you with a secure understanding of how to handle intense situations.

Being new to a role seems to pose a risk to mental well-being, with individuals who had been at their current place of employment for between 6 months and a year reporting the highest rate of mental health problems – a startling 71%, as reported by the Law Society of Scotland (2020).



There have also been intimations that there is something of a “professional identity crisis” once practitioners have been in situ for a decade, with the New York State Bar suggesting that at the ten-year mark people have given so much of themselves to the career that they have become disconnected not just from the legal system, but also from society more generally. Soon et al., (2023) also surmise from their review of the literature on public service and legal aid lawyers that while “emotional detachment” was seen as a vital self protecting safeguarding mechanism to ensure lawyers did not become overwhelmed, it can result in reduced motivation at work and a perceived loss of purpose and fulfilment.

“If there is a tension between my purpose and values and the apparent purpose and values of the organisation for which I work, this will cause stress... a clearer connection with our purpose, an alignment between our individual and collective values on the one hand and how we really managed the firm and the people in it on the other, would have removed a considerable source of tension and stress and made us better lawyers (possibly also more profitable lawyers) and better friends, spouses and parents.”

(Martin, 2023, p. 1).

A Matter of Time



There needs also to be consideration given to the idea of survivor bias – those who have successfully navigated the stressful early years may view that process from their viewpoint alone – that, as they have survived, so can everyone else, and as such these individuals may believe there is no problem to be rectified, as it was not perceived as a problem to them. It may be that this is due to luck, them having experienced more privilege than others, or, perhaps most importantly, not accurately remembering, and seeing things through the rose-coloured glasses of their current success.

However, it may also be that the information we so far have is incomplete due to older generations' greater reluctance to discuss mental health issues. When "prefer not to answer" was an option given by Law Society of Scotland, across all questions in relation to experience of mental health, the highest selector group was the 66–72 age bracket. Further research, perhaps through a longitudinal study into the mental health timeline of lawyers, may provide useful insights, as the importance of support from, and the influence of the most experienced of the profession cannot be ignored.

The Impact

Those who have reported poor mental health because of their work, report a number of symptoms and knock on effects – including, as reported by the Law Society (2019), disrupted sleep (74% of respondents) and relationship issues (51.25% of respondents).

The impacts however are not limited to the individual – they impact the organisations as well – of those suffering with poor mental health as a result of the stress experienced at work, 28.4% reported making a mistake that wouldn't have happened otherwise, 16.2% took time off and 40.9% looked for another job (Law Society, 2019).

Similar results were also reported by the IBA (2021) which found 26% of those who reported poor mental wellbeing had made a mistake. Unmind (2023), estimated that the annual average loss per firm due to mental health related issues was nearly 10% of annual staffing costs.

For organisations that pride themselves on publishing their PEP results the additional, and, we argue, avoidable, additional costs of people having to take time off, recruitment of replacement staff, and recovering from costly mistakes, with all the implications that can have on compensation and increased insurance premiums, should be considered an area of importance as a business priority.

There is also increasing evidence that purpose-led organisations are the ones which are emerging with the competitive advantage. They increase legitimacy, attract and retain talent, foster stronger customer relationships, and increase business performance (Chartered Management Institute, 2018). Lisa McCallum, former Nike Inc Vice President, has written how the new CEO's – "Customers, Employees and Outsiders" – with their increased awareness of organisational practices "decide if a business succeeds or fails, how fast, and by how much." (MacCullum, 2019). As such, listening to the ever-evolving discourse around mental health, and evolving our industry along with it, matters more than we currently appreciate.





Why the legal sector has these problems

As has been shown in the research discussed above, the legal sector has high incidences of mental health issues, higher than the general population, and at levels which indicate the need for swift intervention and professional help.

If we look at the legal sector through the lens of the Job Demands–Resource model, as originated by Bakker & Demerouti (2007), we can start to see why the legal profession has a microclimate seemingly pre-disposed to cause the troubling statistics we have seen so far. In essence, this model shows that roles where there are high demands, but low resources, (resources being protective factors, support both professional and casual, opportunities for rest and so on) produce the highest levels of stress and burnout (Bakker et al., 2005).

For the legal sector demands may include –

- The context and culture of the legal system – including its established ways of working and accompanying levels of expectation.
- Bullying and Harassment – a side effect of the culture which increases an oppressive and stressful atmosphere.
- Stigma – when people do begin to suffer, they feel unable to speak up – it is expected that lawyers will just “get on with it”.

We will explore each of these dynamics in the following pages





The Demands – Culture and Context

The demands of the legal sector include its established ways of working, its output expectations, and the perceived culture – which is often considered as hyper-competitive and hyper masculine (Collier, 2014; Sommerlad, 2016).

The IBA’s Presidential Task Force on Mental Wellbeing in the Legal Profession has identified that while “many individuals have good self-care practices in place...their mental wellbeing is being challenged by the structures and cultures in which they operate” (p15, 2021), showing that the environment itself is a deleterious factor.

Research repeatedly shows that lawyers experience their working life as fast paced, unpredictable and high pressured – in the study by LawCare (2021), 75% agreed or strongly agreed that their workload is unpredictable, 80% agreed or strongly agreed that it is fast paced with tight deadlines, 65% reported needing to check emails outside of work hours, and 28% agreeing they needed to be available 24/7.

“The demands on the profession are still quite high and there's still a culture of people emailing you late at night, early in the morning, expecting you to be ready to respond to that. And the other thing that I find is even when you're on holiday you're expected to be contactable and you're expected to be able to do things for people if they need them done.”

(Anonymous, Graffin & Jones, 2021, p. 459)





The Demands – Culture and Context

When surveyed by the Law Society (2019), respondents stated that the top two causes of workplace stress were workload (63.7%) and client demand (52.5%). This was the same for all demographics, except those who were experiencing extreme stress, where the answer was workload and lack of support – validating the application of the Job Demands–Resource model as relevant to the legal field; those who were becoming overwhelmed by the demands were not experiencing sufficient support (resources) to alleviate the stress.

Similar results were found by the New York State Bar Association (2021) – when asked what they considered to be impacting their wellbeing the top answers were demands on time, client expectations and demands, and financial issues – answers which were consistent across types and size of practice.

“Generally, I feel my organisation prioritises work output over employees' personal life and mental health. I feel I have to give my whole life during the working week (to the detriment of my physical and mental health, personal relationships and overall wellbeing).”

(Anonymous, Law Society of Scotland, 2020, p. 64)

It is also worth noting that one size does not fit all – for example there are obvious differences between jurisdictions. Graffin and Jones (2021) found marked differences in the effects, both positive and negative, in the collegiate set up of the Northern Ireland Bar that would not have been experienced by their English counterparts.



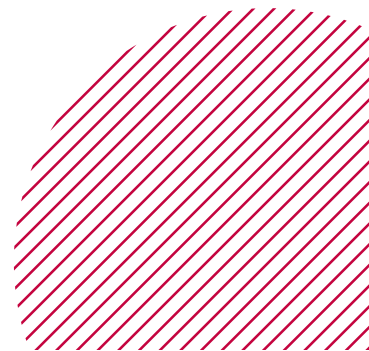
The Demands – Culture and Context

Within jurisdictions there are also enormous differences in work context. A review conducted by Soon et al. (2023). examining research conducted over 50 years contains far more insights than we would attempt to replicate here, but it is worth drawing attention to the differences highlighted therein between the “sub-field and habitus” of the large scale commercial lawyer, exposed to a focus on profits, growth, and the billable hour as the dominant metric for productivity, who may find themselves in a culture of incivility, discrimination and an extreme fear of failure, and that of the legal aid and public service lawyers who may feel additional pressure from funding cuts and high exposure to traumatic work, resulting in them “struggling to retain the purpose and meaningfulness that inspired them to work in this area of legal practice in the first place” (Soon et al., 2023, p. 12).

Regardless of area of legal practice – the demands are exceptionally high throughout. It is also clear that Covid has had a large impact on the culture and context of legal work, which has been outlined in the Bellwether reports (LexisNexis, 2020-2023). At the beginning of the pandemic there was an increased sense of loneliness and isolation, but as time has passed, and remote working has increased, there is a very certain sense that the lines between work and home have been diminished – and while this may sometimes provide greater flexibility and increased family time, more frequently lawyers report ever increasing demands on time, and therefore a reduction in the restorative resource of “downtime”(LawCare, 2021).

“One is now chained to the desk, from before dawn until after dusk. There are no buffers between work and life.”

(Anonymous, LawCare, 2021, p. 67).



Bullying and Harassment

“There is a culture of bullying in the legal profession at all levels, including partner to partner bullying, which contributes to stress, anxiety and poor mental health. I have experienced this in every firm I have worked for.”

(Anonymous, Law Society of Scotland, 2020. p. 65).

Unfortunately, bullying is a disturbingly prevalent facet of the legal world, with 52% of lawyers in a New Zealand study reporting experiencing bullying at some point (Colmar Brunton, 2018) and the IBA’s Us Too report (2018) reporting one in two female lawyers and one in three male lawyers had suffered workplace bullying, with 21.8% of lawyers in England and Wales reporting they had experienced it in the preceding 12 months alone (LawCare, 2021).

This ill treatment takes many forms, including hostile interactions with others, discrimination, territory marking, mind games, being purposefully embarrassed by judges in court, a seeming enjoyment of putting newcomers through their paces etc (Graffin & Jones, 2021) or by assigning increasing work demands to those who are already struggling, to overwhelm them further (LawCare, 2021.) It has been suggested that this is an amplification of the competitive, antagonistic culture of the legal system (Soon et al., 2023) and a reliance on and encouragement of combative, adversarial attitudes (Jones et al., 2020).

Another concerning behaviour that has been reported is sexual harassment. One report found as many as one in five lawyers will be a victim of sexual harassment during their time in the law and, unsurprisingly, the results are more concerning for women with 31% of women reporting sexual harassment compared to 5% of men (Colmar Brunton, 2018.) The IBA reported similar figures – with one in three females reporting sexual harassment in the workplace, compared to one in 14 male respondents (IBA, 2018).

The impact of bullying and harassment on a work environment that is already considered high pressure cannot be underestimated, with studies suggesting that lawyers who suffer such treatment, are at higher risk of depression and mental health problems (Soon et al., 2023).





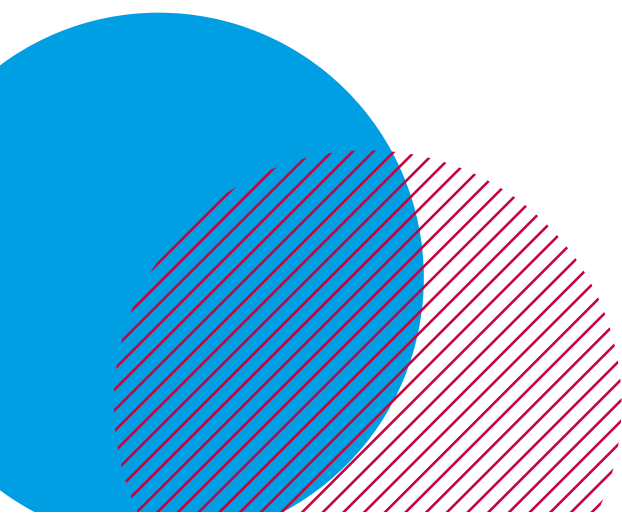
Stigma

“Several colleagues have indicated that they too have mental health worries but are very reluctant to reveal this to line managers as the only thing they can be confident of is that they will be stigmatised as a result.”

(Anonymous, Law Society of Scotland, 2020. p. 66)

There is undoubtedly a problem with stigma around mental health in the legal field. We cannot contend, however, that discussing mental health in the workplaces is a problem only for lawyers – according to the Stevenson Report (2017), half of all employees said they would not discuss their mental health with their manager, while the Teacher Wellbeing Index (Education Support, 2019), reported that 60% of education professionals would not disclose if they were struggling with stress or mental health problems, while 63% of those who had taken time off due to mental health, when surveyed by Construction News (2018, cited in Law Society Scotland, 2020), advised that they would not tell their managers the reason for their absence.

While there does seem to be some movement in recent years in the legal field, with increased awareness through events such as Northern Ireland's Bar Library Wellness Week, and the work of organisations such as IWIL, LawCare, This Is Me, and The Mindful Business Charter, stigma is still having a distinct effect on individuals.





Stigma

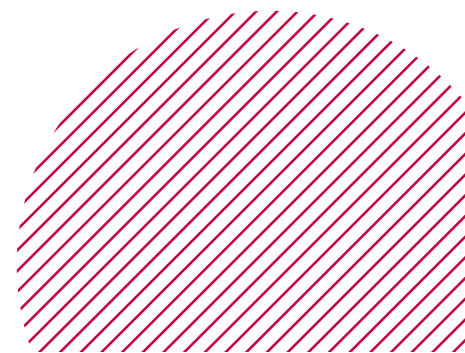
“There is also considerably more stigma attached to mental health problems amongst solicitors than there is in other areas of the organisation and an expectation that solicitors have to be 'stronger' than professionals in other sectors in the same organisation and are expected 'just to get on with it.'”

(Anonymous Law Society of Scotland, 2020, p. 65).

These include concerns that disclosures would cause long lasting reputational damage, (LawCare, 2021) with mental health issues being seen as a weakness (Bagust 2014) and, in relatively small communities, gossip circulates quickly, especially when about rivals and competitors (Graffin & Jones, 2021).

(One fifth of respondents to the Law Society (2019) even stated that there was no wellbeing support in their workplace, and the attitude expressed was that managers did not see that they should, that in essence, this was all part of the experience and lawyers should just “get on with it”.)

This stigma therefore makes it harder for those who need help to reach out, which limits their ability to access the resources which could offset the pressures and demands of the role, creating a perfect storm in which lawyer wellbeing is destined to suffer due to the environment in which it exists.



Resources – what’s not currently working

Law firms, as is the case with all businesses, have to adapt to the cultural changes that are operating in the workplace, and that will continue to increase. A Gallup poll asked those born in 1980 onwards, (46% of the full time US workforce) what they look for in an employer, and the most popular result was one who cares about their wellbeing (Gallup, 2018). Price Waterhouse Cooper and London Business School published a report “Evolving talent strategy to match the new workforce reality” and found the same group prioritise work life balance over financial reward (2013). To ignore this change in priorities, along with the impact in terms of cost for absence and insurance as already mentioned will result in enormous detriment to organisations.



Admittedly, there has certainly been lots of work done in this sphere, as the many wellbeing strategies, benefits packages, and EAP’s will testify. Following on from our previous consideration of the demands–resources model, this increase in resources should, in theory, mitigate the stress of the intense demands of the sector. However that has not been the case.

While there has been some discussion that some of these things are welcomed by employees – especially when coupled with training, and open discussions with supportive managers who listen to employee concerns (The Law Society, 2019) – there is a stronger sense that a lot of the traditional wellbeing initiatives are not authentic.

“My experience is that law firms focus on aesthetics – e.g. making a fuss about mental health awareness days / different coloured lanyards and badges – but do nothing to adapt the culture or policies which would support healthier working lives. I believe these efforts are all for show...”

(Anonymous, Law Society of Scotland, 2020, p. 64)



Resources – what’s not currently working

Besides this lack of authenticity, the research shows that traditional wellbeing initiatives are simply ineffective. This may partly be due to a lack of knowledge. 44% of respondents to the Law Society of Scotland (2020) survey stated they didn’t know if any wellbeing initiatives were in place, and only 43% reported that they agreed with the statement “I know where I can get information and support,” while only 24% felt their managers had sufficient mental health knowledge to support and confidently signpost.

“Solicitors also do not make good managers; they are too busy and have been given no training on this whatsoever. Feeling time is seen as more important than business management.”

(Anonymous, Law Society of Scotland, 2020, p. 66).



However, even if employees do know where to get support, and are in regular contact with knowledgeable managers trained in mental health first aid, equipped with EAP referral details, this will not be sufficient.

LawCare (2021) reported significant differences between what is available and what is actually effective;

- Catchups 71.2% available vs 40.8% useful
- Mental health policies 60.7% available vs 21.2% useful
- Mental Health and wellbeing training 54% available vs 27.7% useful
- Signposting to external support 51.4% available vs 19.6% useful

Furthermore, in his white paper “Important Considerations for the Development of Workplace Mental Ill-Health Prevention and Intervention Programs”, Dr Don McCreary analysed over 280 studies with almost 250,000 participants across multiple sectors (McCreary, 2022). This, in line with other systematic reviews and meta-analyses, showed that individual level mental wellbeing initiatives simply do not work.

Essentially the resources provided are not of a quality or type that are able to overcome the excessive demands of the legal sector. They are merely sticking plasters without assessing or disinfecting the wound, and perhaps most importantly, not considering how the wound was inflicted, so as to be able to safeguard against future injury by removing the danger.

Tackling the issue – not the symptoms – a real world approach

“I honestly don’t have a strategy. My goal is simply to make it to bed every night. And typing this makes me think this is something I should probably address!”

(Anonymous – Wood et al., 2014, p. 26)

Traditional mental ill-health prevention and employee wellbeing programs do not work because they do not address the actual issues and causes of stress. Many causes of stress are organisational – i.e. caused by the way we work (McCreary, 2022). It is only through tackling these organisational factors that we can hope to adequately address mental health in the legal sector.

This idea has recently garnered support from the Solicitors Regulation Authority’s Workplace Culture Thematic review (2023), which clearly sets an expectation for firms to address issues in the work environment for the betterment of their employees’ wellbeing and mental health.

This has been further supported by findings from Soon et al. (2023), who reported that while they “found no organisational-level interventions that were focused on redesigning lawyers’ jobs to alleviate negative well-being outcomes” (p.17, 2023), they felt that now is “an opportune time” for that work to begin, by questioning “the effectiveness of current working practices...aimed at improving not only client service but also the well-being of the people delivering those services” (p.17, 2023).



The Mindful Business Charter

The Mindful Business Charter (MBC) is the framework around which this work can be done – addressing and reducing the causes of unnecessary stress, systematically and at the root of the issues.

Founded in 2018 by leading UK law firms and financial institutions that wanted to change current working practices for the benefit of all involved, there are four pillars which set out new ways of working. While it is fully accepted that some stress is unavoidable, and there will always be a level of pressure experienced in such a high stakes profession, it is felt that by providing a framework and language, and crucially the permission, to address the unnecessary sources of stress, this reduces the demand on the individual, resulting in a healthier and more productive working environment.

The four pillars of the charter are discussed below.



Openness and Respect– Building trust and effective communication

This pillar is the most important – as it provides the permission for people to be honest about their experiences, tackle issues without judgement or stigma, and ensure that there is an enhanced level of understanding in colleague and client relationships.

This pillar includes;

- Treating internal colleagues and external contacts with the appropriate level of respect and courtesy.
- Discussing upfront with my colleagues, clients and contacts their preferred method of communication and clarifying any relevant implications of an individual's working patterns.
- Asking for and providing feedback to others on a regular basis.



Smart meetings and communications

In environments where client demands, expectations on time and workloads are very high, ensuring that time is being used efficiently, without needless stress being added is key to preventing employees feeling overwhelmed, overstretched and at risk of making mistakes.

This pillar covers;

- Being respectful of others' time by planning meetings properly (considering who needs to attend / giving appropriate notice / setting clear agendas and objectives) and avoiding last minute cancellations.
- Unless otherwise necessary, allowing people to join meetings by the method they deem suitable, providing video and call-in details as default on meeting invites to allow everyone to participate regardless of their physical location.
- Running meetings effectively, including
 - (a) allowing contribution from participants regardless of location and
 - (b) giving consideration to how different people process information and make decisions.
- Avoiding over-use of email and instant chat and avoiding copying people into messages that they don't need to receive.
- Where multiple communication media are used, agreeing how each is expected to be used and allowing people to log out for periods to enable focussed attention.
- Making use of subject lines in messages and ensuring these are reflective of the message's content.



Respecting Rest Periods – consideration given to the need to “switch off”

The ability and indeed the need to have a positive work/life balance is a key factor for employee wellbeing, to ensure they are well rested and recharged, and can take advantage of the resources that support their wellbeing.

This pillar includes;

- Where support is required outside of someone’s core working hours, giving them options for when that could be (early morning or evening / weekend).
- When sending emails outside of business hours, being clear in the title whether it needs to be read / actioned promptly or considering sending pre-timed emails (so emails are not received late at night and at weekends).
- Including working hours / availability as part of my email signature, so people are aware of each others’ working patterns.
- Respecting people’s right to take annual leave without the expectation of them checking emails / being on call, and role modelling the same behaviour myself where possible.



Mindful Delegation – implementing a best practice approach to collaboration, instruction and delegation.

To address the issue of excessive workloads, while still meeting client demands takes a fine balance of collaboration and delegation.

This pillar includes;

- Respecting the need to provide sufficient context and information for a piece of work, ideally including the purpose and ultimate recipient.
- When instructing on a task, negotiating rather than imposing a deadline, being transparent where possible on the wider timetable, and promptly communicating timing changes which impact others.
- When being instructed on a task, being confident to flag when a deadline is unrealistic and / or unachievable.



The MBC – How it works

Member organisations are encouraged to implement the pillars within their firms, via group and individual guidance, with resources, talks and events provided by the MBC.

In the most recent member survey, (MBC, 2023) promising results were found – 96% of member organisations reported progress in at least one measure that supported employee wellbeing by reducing unnecessary stress – for example in reducing the overuse of emails and increasingly respecting “down time”. There were also reports of internal pulse surveys reporting increased wellbeing, along with improved recruitment and managers behaving more mindfully as a result of engaging with MBC activity.

To further support the legal community, work has been undertaken in specific practice areas. In March 2023, the MBC launched their Litigation Guidance (MBC, 2023), a collaborative work, created by a taskforce of leading litigators to provide a framework of suggested practices that directly targeted the often deliberately abusive practices seen in litigation. This guidance has been well received and at the time of publishing has been nominated for a British Legal Award. Other taskforces are now being established to look at transactional work, and an in-house counsel network.

MBC began in the United Kingdom but has an increasingly international reach and there are specific initiatives to drive engagement in a number of areas and countries around the world.

The MBC is committed to analysing and evidencing the efficacy of its practices, and in conjunction with the UCL’s Centre for Behaviour Change, will be carrying out research in 2024 on how behavioural change models can be used to integrate the charter into organisations’ work culture, as well as carrying out their own research on direct mental health and wellbeing improvements for member employees.





Conclusion – where do we go from here?

As has been established, the general mental health of the legal profession is poor, with traditional, individualised interventions and wellbeing initiatives being insufficient, and inaccurately aimed; attempting to treat the symptoms rather than the cause. As a result there are several recommendations that we would propose.

Firstly, in the area of further research, there are significant gaps around the changing understanding and experience of lawyers as they move through their careers and age. Due to the hierarchical nature of the profession, with, generally, older and more experienced individuals defining the culture of the work environment, setting the expectations, and having worked their way up the ranks in a time less likely than the modern one to discuss mental health, it may be beneficial to undertake a longitudinal study that explores these nuances, and the impact that has on the workforce generally, or a more short term study which explicitly contrasts the views of differing generations in the legal sector. It cannot be overstated that for significant, sustainable, and effective change to occur, the difference must be seen and enacted from the leaders of organisations – so in better understanding those mindsets, we may better serve the community as a whole.

Also, while the current efforts to reduce stigma through awareness raising, training, and encouraging of managers to engage in wellbeing discussions is not to be discounted, it is clear that underpinning this, there needs to be a reformation of current working practices, which aims to reduce the causes of unnecessary stress by addressing them directly. To this end, we at the Mindful Business Charter invite all law firms, judicial bodies, legal education institutions, and regulatory bodies to engage with the work we are doing to achieve that aim.





Conclusion – where do we go from here?

A thriving, effective and independent legal profession is a fundamental part of any free society. It enables commerce and individual aspiration, resolves dispute, holds power to account and is the conduit through which individuals and organisations enforce their rights. We have described grave concerns around mental health within the profession globally, and the impact of poor mental health on any individual lawyer's effectiveness, and through that the effectiveness of the profession as a whole, is well documented. It is crucial that these concerns are addressed through effective action, for the benefit of the legal profession but also society as a whole. Much of the responsibility for the required change must sit with the legal profession and its leaders, but they will need the support of clients and other stakeholders to have the courage and encouragement to effect the required change.

Together, in bringing the focus of the conversation to the unnecessary causes of our distress, we can work unitedly to eradicate them, making the profession more resilient, capable, well-equipped, and productive.



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