

OpenLearn Works



Introduction to Fit for Law

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1. Welcome to Fit for Law



This section includes:

- 1 video
- Introductory text
- An information box on “Which legal professionals does this course apply to?”
- 1 activity on “Is the legal profession really Fit for Law?”

You should allow yourself 20 minutes to complete this section.

Audio content is not available in this format.

Welcome to our online educational training designed to up-skill legal practitioners and employers by developing a better, evidenced-based understanding of emotional competence and professional resilience. The overall aim of this course is to help support emotionally and psychologically healthy ways of working within the legal profession.

The term “emotional competence” refers here to the importance of recognising and utilising emotion within legal practice to enhance working practices and improve mental wellbeing. Emotional competence involves a range of skills, including being able to:

- Identify, recognise and understand emotions
- Analyse and reflect on emotions
- Use emotions to enhance thinking
- Manage and regulate emotional responses in a way which assists reasoning and is appropriate in the context
- Learn to cooperatively combine emotional and intellectual thinking to improve decision-making.

(Mayer et al, 2004; Caruso and Salovey, 2004)

The range of skills this involves are not fixed or dispositional. In other words, they can be taught, meaning individuals can develop and improve their emotional competence (Boyatzis, Goleman & Rhee, 2000).

The term “professional resilience” refers to the ability of individuals to not only survive but also thrive in a potentially tough and challenging working environment. Being resilient involves being able to adjust and positively adapt to change and adversity (Luthar,

Cicchetti & Becker, 2000). Resilience is a dynamic process, focusing on how individuals interact with their environment when dealing with challenges and setbacks.

For example, on a daily basis it might be a challenge for you to meet deadlines or billing requirements and it may be a setback for you if you are unable to meet these. In the face of difficulties and challenges, resilience allows individuals to manage, respond and “bounce back”. As with emotional competence, resilience is not a personality trait or fixed, so it can be learnt (Bernard, 2004).

Fostering better emotional competence and professional resilience involves working on skills that can be learnt and developed. However, you may notice that you find it easier to develop some skills than others and that is perfectly normal. Thinking about which skills you have, or need to work on, can help you when you are assessing your professional strengths and weaknesses (for example, to decide whether a particular role or responsibility is right for you).

Is the legal profession really Fit for Law?

You should allow around 5 minutes for this activity.

Consider the statement below and then click on the link (in red) to go to an opinion poll where you can give your view on this anonymously and also see the opinions expressed by other legal professionals who have used this course. Afterwards, return to this page and click on Reveal comment to get an overview on this statement.

“Most legal professionals are psychologically and emotionally healthy”

[Click here to go to the poll.](#)

Comment

Of course, there is no “right” answer to this question, but it is worth taking a moment to reflect on the reasons for your answer. If you are a twitter user, you can also comment using #FitforLaw. It is also worth bearing in mind that it would be unusual for anyone to be emotionally and psychologically healthy all the time. Just like with physical health - everyone gets a cold or flu occasionally - your mental health is not fixed and static.

The concepts of emotional competence and professional resilience do not just relate to the competence and resilience of individual legal practitioners. Although individuals have personal characteristics that can help strengthen their professional resilience (such as belief in their own abilities), there are wider factors which also influence it (such as having supportive personal and professional relationships).

It is not only about individual responses and individual effort. Instead, it is vital that the wider legal working environment and culture of law also acknowledge their importance by recognising both the evidence-base for their inclusion and the practical changes that are necessary. Therefore, this course is divided into three parts:

- [Managing and understanding yourself](#)
- Working with others (under development)
- Employer and stakeholder toolkit (under development).

The parts of this course can be studied at your own pace. Each part can also be worked through as a stand-alone set of materials. We would recommend that you allow a total of between two to four hours for each part. In addition, the course contains an [Additional resources](#) section with further resources and guidance to access in relation to each part.

The course has been developed by a team of authors at The Open University for the charity LawCare. More information about the authors and LawCare can be found [here](#). Throughout the course you will also find a range of quotations from legal professionals which are taken from the recordings of five focus groups held in the United Kingdom (“UK”) and Republic of Ireland in February 2018 to demonstrate a range of experiences and perspectives.

As well as working through this course, you can join in the conversation on Twitter using #FitforLaw or by applying to join our closed Facebook group “Fit for Law”. If you are concerned about confidentiality, you can create a new profile to join this group, providing you answer the three questions sent to you when you apply to join the group honestly.

Which legal professionals does this course apply to?

This course applies to all legal professionals within the UK and the Republic of Ireland, including (but, as in all legal documents, without limitation!)

- Advocates
- Apprentices
- Barristers
- Barrister’s Clerks
- Case workers
- Chartered conveyancers
- Chartered legal executives
- Devils
- In-House Lawyers
- Judges
- Magistrates
- Paralegals
- Patent attorneys
- Pupils
- Sheriffs
- Sole practitioners
- Solicitors
- Support staff
- Trademark Attorneys
- Trainees.

Although the focus is on legal practice in the UK and the Republic of Ireland, much of what is included will also be relevant in other jurisdictions.

2. Meeting the challenges of today's legal profession

This section includes:

- Explanatory text.

You should allow yourself 5 minutes to complete this section.



Media headlines

All sectors of the legal profession in the UK and Republic of Ireland have seen significant changes and challenges in recent decades. This includes increased de-regulation (for example, through the Legal Services Act 2007), fragmentation into a huge diversity of offerings and organisations, and a growth in competition (so-called “Tesco law”). As a result, there has been a growing emphasis on profitability within legal practice.

There are suggestions that traditional notions of professionalism are being eroded by the idea of law as a business. In light of developments such as the proposed online courts, and the increasing use of artificial intelligence to undertake a range of legal tasks, there has also been a large amount of discussion over the possible threat new technologies could pose to existing legal roles.

As the above headlines demonstrate, one of the ways in which many sectors of the legal profession are seeking to differentiate themselves from potential competition and threats is through emphasising their ability to offer personalised, high quality client care. This need for better client care has led to phrases such as “emotional intelligence”, “resilience” and “soft skills” becoming increasingly referred to in the legal press.

Although each of these concepts have some differences in emphasis and interpretation, underlying them are fundamental psychological principles about the importance of emotional competence and the need to acknowledge, explore and apply this appropriately within legal practice.

There is an increasing understanding that traditional forms of legal education and training may not always equip legal practitioners to deal with the evolving legal working environment, and provide the form of client care required, in an effective and psychologically healthy manner. Thinking back to your education and training, do you recall being taught about how to develop emotional competence, “soft skills” or professional resilience to inform and improve your legal work? You may have received very little training in these areas, but the trends of working practices in law indicate that these skills are growing in importance and relevance for legal professionals.

"If I don't understand my emotions and where they come from, then I could be scared of them, and that can have me act out and play out in different ways that impact on my physical and mental wellbeing."

(Solicitor, England)

There is a growing body of evidence that indicates traditional ways of practising law, which often ignore emotion and wellbeing, are having a detrimental impact on the emotional and psychological wellbeing of legal practitioners and impacting on the effectiveness of legal work. Navigating the rapidly changing, unpredictable and demanding legal workplace can add to the demands already placed upon legal professionals. It is important to counteract this by equipping them with an understanding and awareness of the role of emotional competence and professional resilience.

"And you're being thrown into scenarios which training does not provide for and probably couldn't provide for and having to learn to react to them on your feet and all of that. I can remember my first few days in court being some of the most stressful days of my life..."

(Barrister, Northern Ireland)

The aim of these online educational materials is to draw out some of the key, evidence-based principles to provide a proactive approach to developing and enhancing ways of working within law.

2.1 Why are emotional competence and professional resilience needed?

This section includes:

- Explanatory text
- Key reasons why emotional competence and professional resilience are important.

You should allow yourself 10 minutes to complete this section.

Emotional competence and professional resilience are important for a number of reasons.

"I think lots of people would think emotional wellbeing is about coping, but I think it's everything from coping up to thriving."

(Paralegal, England)

"...emotional wellbeing at work is very important. It's important for colleagues, it's important for the clients that you deal with and it is important for yourself as well."

(Solicitor, England)

Here are a number of the key reasons. Click on "Reveal Discussion" for each one to see more detail.

Reason 1

To enable individuals to perform as effectively as possible within the legal workplace, and in working with colleagues, to provide high quality client care.

Discussion

A large amount of research from both the legal and business worlds demonstrates that developing greater levels of emotional competence can have beneficial impacts on workplace performance. For example, emotional competence is linked to how well people perform in their job as well as how they manage stress and conflict and interact with their colleagues (Brackett, Rivers & Salovey, 2011).

Emotional competence is particularly useful when high standards of client care and significant levels of team work are required. Management researchers have identified that emotional competence is an important quality for effective leadership (Wong & Law, 2002). More specifically, self-awareness, self-regulation and self-motivation all underpin effective leadership.

Conversely, there is evidence that impaired professional resilience, leading to poor levels of mental wellbeing, has a detrimental impact on workplace performance. Put simply, individuals become overwhelmed and unable to perform effectively. In some cases, this can lead to burnout and a range of other impacts on both mental and physical health.

During burnout, individuals experience higher levels of emotional exhaustion (for example, stress, irritation, feeling overwhelmed, fatigue, insomnia); depersonalisation (developing a callous cynical attitude towards others, feeling detached and having less empathy for others); and a lack of personal accomplishment at work (feeling demotivated, incompetent, ineffective at work).

"...I practise in family law and you tend to find you're giving a lot to clients emotionally in terms of they're going through difficult times. So you yourself have to be well emotionally to be able to give that emotion to them and get them through the difficult time that they are going through, which can be very, very difficult if you yourself are struggling with personal issues or difficulties."

(Barrister, Northern Ireland)

"... if you're not emotionally well, it doesn't actually matter how good you are at something, you won't be able to perform to the best of your abilities."

(Solicitor, Wales)

Reason 2

To ensure individuals can fulfil the competencies/requirements set out by their professional regulatory body (for example, the Solicitors Regulation Authority, Bar Standards Board or CILEx Regulation).

Discussion

A large number of the competencies/requirements for legal practitioners impliedly require that legal practitioners demonstrate a certain level of emotional competence before they can be met. In particular, these include competencies or requirements relating to client care and working with others.

The Legal Education and Training Review of the legal profession in England and Wales in 2013 specifically identified the affective domain (emotions and feelings) as key to legal practice and recommended that “emotional intelligence” (another way of describing “emotional competence”) be included as a legal competency.

However, while emotional competence is important, it is also vital to understand that a legal professional's ability to meet these requirements is based on a range of factors, some of which may be beyond their control. For example, if a legal professional is burdened with an excessive workload or is having to perform a lot of work which is emotionally draining (such as working with traumatised clients or on traumatic cases) they might find it difficult to be emotionally competent at all times.

It is important, therefore, to understand that managers and professional bodies have a role in helping to support you to enable you to meet these professional requirements.

Reason 3

To ensure sustainability and reward for individuals in the legal profession.

Discussion

You may currently be wholly dedicated to your legal career. However, to be able to continue finding legal work rewarding for the foreseeable future, and to be able to achieve the things you want to achieve by your work in the law (your personal motivation), you need to have a sustainable life in the law. Developing your emotional competence and professional resilience will help you achieve that.

"I regularly walk into the robing room to [a] chorus of why am I doing this, there's got to be an easier way to make a living! That's a mantra..."

(Barrister, Wales)

"I was a complete workaholic. My work was everything to me, and I just got to the stage I just completely burned out and I just thought 'I don't know if I want to do this anymore', you know, I'm exhausted, it's, you know, my job is taking over my life. And I have to say then at that stage I took steps to kind of readdress my work/life balance..."

(Barrister, Northern Ireland)

"When I left the Bar I missed... the buzz of a case finishing, 'oh thank God that's over'. That felt so good because it was so stressful and hard... It's like addictive. And that's kind of a problem as well because maybe the implications of being addicted to that buzz and whatever, you're going to have the consequences, but it might be later on in life instead of right then on that day."

(Barrister, England)

Reason 4

To assist employers (and the self-employed and public sector) in providing appropriate client care and services in a manner which has both reputational and financial benefits for them, increasing levels of client satisfaction and retention.

Discussion

In a competitive and demanding legal market, many employers (and self-employed practitioners) have to seek to differentiate themselves through providing exceptional client care to retain their market share, maximise their profitability and ensure that clients provide repeat instructions. In-house practitioners and the public sector also have to demonstrate they are offering value for money and providing a high level of service.

If the individuals carrying out the work and interacting with clients (and others) have low levels of emotional competence, they will not be able to provide appropriate client care as effectively or may be ineffective leaders. If they do not have sufficient levels of professional resilience this can lead to an impact on their performance, wellbeing and mental and physical health. This in turn may lead to extended periods of absence or even a higher level of staff turnover.

Therefore, promoting emotional competence and professional resilience has important benefits for employers. Providing emotional competence skills training for those involved in managing others will help improve leadership effectiveness. Being managed by someone who is more highly skilled in emotional competence has been linked to the increased job satisfaction of those they manage (Wong and Law, 2002).

"... it has to start at the top. So, in firms of solicitors, it has to start with the partners having a culture where you can feel free to talk about, say, a mental health issue, or it doesn't have to be a mental health issue but whatever it is, you know, without the feeling that you're going to be criticised, that they're going to start seeing it as a weakness."

(Solicitor, England)

"...you cannot give quality advice if you are stressed or tired."

(Solicitor, England)

Reason 5

To maintain and enhance individual and collective emotional and psychological wellbeing at both personal and professional levels

Discussion

To be a good legal professional, you need to be a well legal professional. However, there is evidence of high levels of stress, anxiety and depression within the legal profession internationally.

If work is compromising an individual's wellbeing, this will impact on all areas of their lives. This includes their mental and physical health, their family and personal lives and their professional performance.

If a legal workplace does not have an emotionally and psychologically healthy culture and environment it becomes a place to survive, rather than thrive. This will cause issues with wellbeing and may exacerbate and spread, affecting the workplace as a whole (including its performance).

Being proactive about up-skilling legal practitioners and employers with regard to emotional competence and professional resilience can help prevent some of these issues arising. Taking positive steps to promote a healthy culture and environment prevents the time, expense and potentially damaging personal consequences of trying to heal an already broken workplace.

For detailed evidence on this see the resources listed in the [Additional resources](#) section.

"One of the problems is that if you're in a client facing area of law, particularly court practice ... there's a lot of stress in that. There's also a lot of stress in general business from time to time: meeting deadlines and so forth."

(Solicitor, Scotland)

"It's about running a business, the pressures of running a business, and the reality of, you know, money coming in or delayed fees, and then high overheads and just trying to keep the whole thing going."

(Solicitor, Scotland)

Reason 6

To enable legal workplaces, regulatory bodies and other stakeholders (such as professional bodies) to meet their legal and ethical duties to employees, legal practitioners and clients.

Discussion

All employers have general legal and ethical duties in relation to employees.

However, in addition, most legal workplaces have to conform to specific regulatory frameworks. For example, the Solicitors Regulation Authority in England and Wales

requires employers to “train individuals working in the firm to maintain a level of competence appropriate to their work and level of responsibility”. (Outcome 7.6). Failing to acknowledge issues of emotional competence and/or professional resilience could lead to breaches of such duties due to the impact on both performance and wellbeing. Therefore, they need to be factored into the risk assessment processes of legal workplaces.

For regulatory bodies and other stakeholders, they have broader duties, across a whole sector (or more) of the legal profession. If they fail to consider emotional competence and professional resilience, they are taking a narrow view of the law which can perpetuate emotionally and psychologically unhealthy legal practices and culture.

"If we were operating up scaffolding, scaffolding is inherently dangerous, but we do it because we know that we can put in place a safety measure in there. And everybody is trained on a building site and no building contractor is authorised to operate unless they've got the appropriate safety stuff in place. We know that being lawyers is dangerous... We should not be allowing people to operate firms and chambers that are not putting in these safety measures."

(Solicitor, England)

Reason 7

To foster an emotionally and psychologically healthy culture in law which will ultimately preserve and enhance its status within society.

Discussion

If law and legal practice become associated with unhealthy working practices, poor client care and low levels of wellbeing, this can damage the public perception of law which may lead to suggestions that it is no longer fit for purpose in contemporary society. The popular image of the hard-hearted lawyer (and the accompanying jokes) is an indication of a more fundamental lack of trust in the profession.

For example, a 2017 Ipsos MORI survey indicated that only 66% of people surveyed trusted judges to tell the truth and only 13% trusted lawyers!

Thank you for completing this Introduction to Fit for Law. Now please go to the next part of the course [Managing and Understanding Yourself](#)