

# The role and impact of emotions within everyday legal practice

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## I. Introduction

In just over twenty years, the field of law and emotions has developed exponentially as a site of scholarship and research (Bandes 1999; Maroney 2006). Within this field, there has also been an emerging interest in the varying ways in which emotions intersect with the work of legal professionals. For example, Pierce's (1995) ethnography of life in two US law firms, Silver's (2004) work on the role of affect and 'emotional competence' in the roles of US lawyers and Bergman Blix and Wettergren's (2019) exploration of the role of emotion in the Swedish courtroom. With the early exception of Pierce (1995), the work situated within this law and emotions paradigm has tended to focus on those areas of legal practice which are most explicitly emotive in content, involving potentially traumatising emotional experiences, such as criminal and asylum work. For example, in the UK context, Westaby (2020, 2014, 2010) has produced a body of work on the emotional labour involved in working in the criminal justice system and advising

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clients' seeking asylum (see also Graffin 2019; Baillet et al 2013). However, there is still relatively little work examining the role of emotions within day-to-day legal practice, especially within areas of work that may be seen as more 'commercial' or 'corporate' (and thus less overtly emotive) in nature.

An additional, relatively discrete, body of work has also evolved focusing on the psychological wellbeing of legal professionals (Krieger & Sheldon 2015; Kelk et al 2009). A common theme within this work is that legal professionals experience higher levels of stress, anxiety and depression and lower levels of wellbeing than the general population (Jones et al, 2020). The focus of discussions in this area has tended to be on a meta-level review of broad factors impacting on psychological wellbeing, such as the notion of 'thinking like a lawyer' (James, 2005) rather than the detailed micro-level of daily practice. Although there are some studies focused on the more 'commercial' or 'corporate' areas of practice, following the general trend of this corpus, these have tended to highlight the broader structural and cultural elements influences on wellbeing, such as the billable hour model of legal practice (Bergin and Jimmieson, 2014) or to focus on specific populations, such as entry-level lawyers (Holmes et al, 2012). Although many of the factors implicated in poor levels of wellbeing often implicitly have emotional aspects, such as the common emphasis on the emotional impact of interactions with clients and colleagues (Jones et al 2020), there is surprisingly little explicit discussion of the intersections between emotions and wellbeing within this literature.

Both of these bodies of work (and this study itself) are situated against the wider backdrop of general scholarship on the role and purpose of emotions. There is a strong tradition of emotions being perceived as forms of animalistic instinctual responses or evolutionary throwbacks that are largely irrational and require control through the application of cognition and reason (Darwin, 1872; Tomkins & McCartur, 1964; Ekman, 1992). In keeping with this characterisation, law and emotions scholars have commonly observed that the law in general often attempts to suppress or ignore emotions, viewing them as antithetical to the forms of reason and rationality which are often seen as the hallmark of both legal scholarship and legal practice (Maroney, 2006; Abrams & Keren, 2010; Grossi, 2015). However, recent work on emotions generally clearly demonstrates a more complex relationship between cognition and emotions, with emotions viewed as intertwined with, or even a part of, cognition and thus forming an integral part of reasoning (Nussbaum, 2001; Damasio, 2006; Feldman-Barrett, 2018). The implications of this shift in understanding are summarised well by Bandes and Blumenthal who state that emotions:

[I]nfluence the way we screen, categorize, and interpret information; influence our evaluations of the intentions or credibility of others; and help us decide what is important or valuable. Perhaps most important, they drive us to care about the outcome of our decision making and motivate us to take action, or refrain from taking action, on the situations we evaluate. (Bandes & Blumenthal, 2012: 163-4)

Given the ways in which emotions influence so many processes of motivation, judgement and decision-making, it is perhaps unsurprising that their role within a range of workplaces has increasingly been explored (Fineman, 2003; Fosslien and West Duffy, 2019). However, as noted above, in relation to legal practice this exploration has remained largely focused on overtly emotive areas of practice or on meta-level factors impacting psychological wellbeing. This can be attributed, at least in part, to the traditional resistance of law and legal practice to the acknowledgment and acceptance of emotions (Maroney, 2006; Grossi, 2015). In relation to the legal profession, such resistance appears to have generated an unstated assumption that only certain populations of the legal profession are vulnerable to the experience of, or impacted by, emotions.

This paper therefore provides a unique contribution to the existing body of research on emotions in legal practice by challenging this unstated assumption and providing original empirical data exploring the intersections between emotions and the day-to-day work and wellbeing of legal professionals within a broad range of areas of private practice, including those with a 'corporate' or 'commercial' focus. Drawing on the findings of interviews conducted with twenty solicitors practising in England it provides an insight into the complex and nuanced ways in which emotions pervade all areas of legal practice and life in the law. In doing so, its exploration of emotions encompasses the ways in which individual legal professionals experience, regulate, manage, suppress and display emotions, as well the ways in which they identify and manage emotions in others, notably clients and colleagues. Exploring the fine-grained emotional experiences of individual legal practitioners reveals the significance and value of emotions and emotional competencies within the legal workplace, together with the impact of legal practice on the emotional wellbeing of individuals. The findings also highlight the problematic ways in which the affective domain (emotions, feelings and moods) is still conceptualised, in particular, the tensions between legal professionals' use of emotions and their understanding of workplace professionalism.

Overall, this paper will argue that legal professionals need to pay greater attention to the varied and rich ways in which emotions interact with the routine legal practices undertaken within individual areas of practice. Such attention would allow individuals to question and

challenge when emotional experiences negatively drift into harm (for example, via increased emotional labour or inappropriate expectations in the workplace) and empower them to challenge assumptions of professionalism which disregard the use of emotions. Such a detailed scrutiny has the potential to challenge individual practitioners' absorption and perpetuation of deeply embedded cultural norms within legal practice and encourage emotionally and psychologically healthier ways of working within law.

## **2. Methodology**

Definitions of the legal profession in England and Wales are evolving due to imperatives such as the incursion of lawtech and digital lawyering and increased de-regulation through the Legal Services Act 2007 (Ching et al, 2018). Nevertheless, the two dominant branches remain those of barristers and solicitors (Legal Education and Training Review ('LETR'), 2013, Chapter 3). Solicitors form the largest branch, with 183,286 individuals listed on the Law Society of England and Wales' 'Find a Solicitor' database (2020) at the time of writing. They are commonly the first point of contact for a client with a legal issue and will frequently work with their client through to resolution of their issue, instructing barristers and other third parties when required (Prospects, 2020). The significant role of solicitors within the justice system of England and Wales, and their typically close and sustained contact with clients, influenced their selection as the population for this study. Given the size of this overall population, the sample selection was limited to solicitors working in private practice either within a firm (of any size) or as a sole practitioner.

A stratified purposive sampling technique was used, based on data freely available from the Law Society of England and Wales's 'Find a Solicitor' service, including basic contact details (supplemented by searches of firms' websites where required). Excluding solicitors working in the public sector, in-house or in consultancy roles resulted in the identification of 100,072 individuals working in private practice as a solicitor. Using the searchable categories available on the service, approximately 20 solicitors from each of the following categories were selected – 'consumer and civil rights', 'family and relationships', 'accident and injury', 'company and commercial' and 'dispute resolution (business)'. This was to ensure that a broad range of practice areas were covered, including both contentious and non-contentious work whilst the potential number of interviewees still remained manageable in terms of workload for the project. Where possible, within these categories, individuals were selected to represent a wide range of post-qualification

experience ('PQE') and different sizes of practices (from sole practitioners to large city firms). They were also selected to represent different geographic locations, including major cities (London, Manchester and Sheffield), a large town (Oxford) and provincial areas in the vicinity of these locations. In addition, one trainee was included after being personally suggested by one of the other interviewees, introducing an element of 'snowball' technique to the methodology (Atkinson & Flint, 2001).

Each solicitor in the sample was sent an invitation email and a project information sheet which introduced the author and her research assistant, set out the aim of the research, why the individual had been selected, what the research involved and addressed issues of confidentiality. They were informed that the study's purpose was to 'understand whether solicitors in a range of differently sized firms and a variety of practice areas perceive emotion as being relevant to their work and what (if any) emotions practising law can involve'. The information sheet also referred to the study as focusing on 'whether various emotional competencies (sometimes collectively known as "emotional intelligence") are relevant to solicitors in private practice'.

Where no response was received from a solicitor, follow-up telephone calls were undertaken, reiterating key points from the project information sheet. Following these emails and calls, twenty participants agreed to be interviewed, including fifteen males and five females with PQE's ranging from 1 year to 36 years PQE (plus the aforementioned trainee). Several participants had also worked in the legal profession in different roles, prior to qualifying as a solicitor, including one former barrister and several former paralegals. Practice areas included Commercial Contracts, Commercial Property, Consumer Protection, Corporate Law, Family Law, Employment Residential Property and Tax. Nine participants specialised in litigation, however, the types of litigation varied from general Commercial and Private Litigation through to specialisms in Media Law, Insurance Law and Trusts and Probate. For the purposes of this paper, each participants' quotations are identified by a pseudonym, job title, years of PQE and primary practice area(s).

The interviews were conducted by a research assistant in June and July 2017 either face-to-face or via telephone. They ranged in length from around 20 minutes to around 62 minutes, with an approximate average of 36 minutes. They were semi-structured in nature with the following 9 core questions being used as a framework:

1. Please can you briefly explain how you ended up as a solicitor?
2. Please can you describe your main area of practice and the type of work you do.

3. Do you see there as being any emotion involved in the above work?
4. Have you dealt with any clients that you would describe as “vulnerable”? If so, did you receive any specific training or support in dealing with these clients?
5. Do you think there are any advantages or benefits to using emotional skills and competencies in legal practice?
6. Do you think there are any disadvantages or potential difficulties with using emotional skills and competencies in legal practice?
7. The Legal Education and Training Review in 2013 suggested that “emotional intelligence” could be a key competency for solicitors. Do you agree?
8. The Legal Education and Training Review and the Bar Standards Board have also both referred to empathy as important within legal practice. Do you agree?
9. This research project is designed as the pilot for a larger project on the role of emotion in the solicitors’ profession. Do you think there are any specific topics relating to this that need investigating further?

Although notes were made of potential follow-up questions, the research assistant was briefed to encourage naturally-flowing dialogue and discussion, based on the answers of participants.

The recordings of the interviews were transcribed by a professional service, resulting in approximately 325 pages of transcription (around 129,409 words). The transcripts were subjected to an inductive thematic analysis by the author (Braun and Clarke, 2006), using NVIVO software. This involved reading each transcript closely several times before undertaking a systematic coding exercise on them all. The codes were then examined to search for potential themes and the themes reviewed before clear definitions and names were affixed to them (Braun & Clarke, 2006, p.87; Clarke et al, 2015, p.230). Unfortunately, one recording was corrupted, meaning only the first twenty minutes of the interview could be analysed. The overall analysis resulted in six themes: attitudes towards emotions and empathy; factors influencing the role of emotions in legal practice; solicitors’ characteristics and skills; the role of emotions in client care; interactions with colleagues, employers and third parties; and training needs and gaps. It was felt an ‘inductive thematic’ saturation point had been reached at an analytic level - in terms of the development of codes and themes in response to the aim of the research project (Saunders et al, 2018, p.1897). However, the breadth of participants involved and areas of practice covered mean that there are a myriad of potential additional research topics for future exploration.

For the quotations in this paper, the articulations such as ‘um’ or ‘er’ contained in the verbatim transcripts have been removed, as have repetitions of words. A bracketed ellipsis ‘[...]’ is used to replace incidental phrases such as ‘you know’ or ‘I mean’. Where larger edits have been made, non-bracketed ellipsis ‘...’ have been used. Quotations of five words or under have not been attributed to a specific participant, unless necessary for context.

The relatively small number of participants can be viewed as a limitation of this study. The aim of achieving a broad range of PQE’s in diverse areas of private practice was achieved, but it is arguable that this also meant that discussion of a particular area of practice was limited to the views of one or two individuals. In addition, the gender divide between participants was unequal, leading to the voices of female participants potentially being under represented. This was an unexpected outcome, given previous findings that indicate emotions are often perceived as gendered within legal practice, commonly associated with areas of practice perceived as more ‘feminine’ in nature, such as family law (Webley and Duff, 2007; Pierce, 1995). The self-selecting nature of participants also suggest that they may, at least in some cases, have a pre-existing interest in the topic of emotions (with one participant referring to various literature on emotions they had previously read). However, in other instances it appeared that the invitation to interview itself had provoked an initial interest in the topic:

Before you sent me that email [...] I knew in the back of my mind that there is, there are emotions, we get involved emotionally and we do need help sometimes. But I never thought that there can be a structure for this or there can be... this can be addressed some way. (Jin, Solicitor, 2 years PQE, Commercial and Residential Property).

Overall, the findings provide a valuable initial picture of a range of areas of legal private practice where the role of emotions is under-explored. This could be developed further by subsequent research targeted at specific target areas of practice and key themes which have been identified.

### **3. Attitudes towards emotions and empathy**

One of the paradoxes when speaking, or writing, about the emotions and affect is that terms such as ‘emotions’, ‘emotional intelligence’ and ‘empathy’ are frequently used throughout the public domain, often with an accompanying assumption that there is a shared understanding of the term. In contrast, these (and other) terms are contested and potentially

problematic within academic literature. The Introduction to this paper touched upon the different perceptions over the relationship between cognition and emotions, but more generally emotions have been characterised in myriad ways, from socially constructed experiences to individual appraisals of external events through to basic programmed responses (Oakley et al, 2006). Vocabulary such as this can be termed as 'suitcase words' (Cambria et al, 2012, p.144) because of the way each term contains a myriad of meanings.

In this study participants were asked questions relating to the role of emotions generally. They were also asked specifically about both 'emotional intelligence' and 'empathy'. These concepts were chosen because of their inclusion in a list of affective and moral competencies required by legal professionals devised by a recent and influential review of legal education and training in England and Wales (LETR, 2013, Table 4.3). Participants were not provided with a specific definition of any of these three terms. Although most of the participants appeared to assume a shared understanding of these terms, some of the discussion around them indicated particular forms of characterisation of the concepts.

There was a tendency among some participants to view emotional intelligence and empathy as fixed personality traits, rather than abilities that could be fostered and developed over time:

You've either got it or you haven't (Jamil, Partner, 36 years PQE, Family and Employment)

You can't teach somebody emotional intelligence... (David, Solicitor, 1 year PQE, Commercial Litigation)

Two participants also queried whether it would be possible to assess emotional intelligence accurately or appropriately if it was introduced as a key competency.

Participants also tended to see emotional intelligence and empathy as things that would be 'just picked up over the years' (Harry, Solicitor, 1 year PQE, Commercial Property), sometimes contradicting their own characterisation of these as fixed personality traits. A similar approach could be discerned in relation to competencies with emotional components, such as communication skills, with one Partner suggesting in relation to these:

[I]t's something that's an ongoing part of growing up and learning [...]. You get better at it the older you get. When you get to my age you get better at it than you are when you're in your 20s. (Donald, Partner, 23 years PQE, Insurance Litigation)

At the same time, another participant suggested that the older generation of solicitors was less likely to display emotional intelligence,

indicating ‘...they work in a certain way and they’re from a different generation and they don’t understand the emotional drivers that the generation we are faces today’ (Ali, Solicitor, 2 years PQE, Commercial Contracts).

These individual characterisations of emotional intelligence and emotional competencies in many ways run contrary to an increasing emphasis within occupational psychology on the use and application of emotions within the workplace as a set of teachable, mouldable skills or competencies (Goleman 1998; Gendron 2004). When asked explicitly about the use of ‘emotional skills and competencies’ participants commonly referred to ‘interpersonal’ and ‘listening’ skills, rather than using more explicitly emotional and value-laden terminology such as ‘caring’ or ‘compassion’ (terms more frequently referred to within healthcare settings - Powell et al 2015). Whilst this can be interpreted as acknowledging the emotional component within these skills, the identification of skills commonly acknowledged as key for lawyers (LETR 2013) often readjusted the focus of the discussion onto skills which can (and frequently are) constructed as cognitive and value-neutral in nature within legal practice (Westaby and Jones 2017). This emphasis on the cognitive and value-free appeared to frame the everyday legal skills that solicitors most prized and sought to develop, with participants in general discussion referring to the importance of problem-solving and commercial awareness too.

When considering the role of emotions within their work, participants indicated, on occasion, a reluctance to accept their presence in everyday working life:

[W]hat I’ve been trained to believe is that you keep emotions to one side, keep them parked and focused on commercial objectives. (Ali, Solicitor, 2 years PQE, Commercial Contracts)

[I]t’s just a job. I don’t get emotionally involved with the work. (Imran, Solicitor, 4 years PQE, Residential Property)

I’m at the fairly rational side of practice... (Angus, Partner, 9 years PQE, Private and Commercial Litigation)

This view appeared to be linked to notions of professionalism within law, implying that emotions are commonly viewed as irrational or unprofessional within legal settings:

You can say emotional are irrational whereas, with law, legal solutions are very prescriptive (Ali, Solicitor, 2 years PQE, Commercial Contracts)

I’ve always found that if you show any emotion in the workplace you’re kind of written off as a human being, which is very sad, but

has been in my experience true, (Rosie, Senior Solicitor, 8 years PQE, Employment)

Such initial statements diminishing or denying the role of emotions were often qualified as the interviews progressed, with participants typically going on to recall times when they had experienced particularly strong emotions within the legal workplace. Such emotions were usually connected to a specific case or client, for example, Imran, the solicitor who referred to their role as 'just a job' went on to indicate that they were personally impacted by the emotions of clients - 'So if someone's shouting at me that obviously makes me quite upset'. However, the initial rejection of, or caution over, the role of emotions emphasises some participants' lack of acceptance of emotions as a valid part of professional legal practice. There is a sense of emotions being, at best, irrelevant and, at worst, antithetical to legal practice, despite the evidence that emotions pervade all aspects of life and the workplace (Fineman, 2003; Bandes & Blumenthal, 2012).

A small number of participants approached emotions in a notably different way, explicitly acknowledging they had a relevance, even importance, within their everyday work. For Laila, the trainee solicitor who participated, this was about channelling their emotions, particularly compassion, into their work:

It makes me want to do my job more, and it makes me want to help people more, especially when I hear [...] client X has had mould in her house for how many years and it's damaged their carpets and [...] they haven't got any money to pay for it, and it, your heart just, your heart bleeds and you want to help that person more by hearing that story.

For several of the other participants, the relevance of emotions lay in being able to regulate their own emotions and manage those of others, to enable them to provide appropriate client care and display appropriate responses and reactions within different situations:

I think you need to be able to manage [...] sort of things such as frustration, stress, pressure. Those types of emotions which can play on the way you deliver your advice, your sort of demeanour in a room with a client for example I think is [...] you need to be able to manage that in a way that keeps it professional at all times. (Ali, Solicitor, 2 years PQE, Commercial Contracts)

I mean, there's two aspects of emotion, isn't there, there's my emotion and then there's the client's emotion. So from my perspective I have to try and not to, I mean, one has to be sympathetic or, to a certain extent empathetic where appropriate, but I think the role of an advisor is to be as neutral as possible... I

mean, you have to be, [...] smiley and [...] as nice as possible but, you know, try to remain fairly neutral and a listener. (Chandra, Partner, 32 years PQE, Tax)

These quotations explicitly acknowledge the role of emotions within professional practice, but at the same time emphasise the need for a legal professional to remain ‘professional’ and ‘neutral’ (arguably a core professional value for lawyers (Boon, 2005)). As a result, emotions experienced internally cannot be openly displayed, instead there is a need to regulate and control emotional responses to enable the solicitor to portray what is perceived as an appropriate demeanour. In other words, there is a division between the individual’s internal emotional experience and the external persona displayed to the client. That is not to say that the external persona presented would necessarily be emotionless, it could involve demonstrating a friendly, approachable and ‘sympathetic’ demeanour to build rapport. However, the quotations suggest that any such emotional display would be carefully regulated to ensure that the solicitor preserves an appearance of detachment and professionalism.

Maintaining this form of division can be characterised as a type of emotional labour (Hochschild, 2012; Westaby et al, 2020). Hochschild (2012) describes emotional labour as ‘the management of feeling to create a publically observable facial and bodily display’ (2012, p.7), such as when an air steward projects a calm and friendly exterior throughout a flight, regardless of their personal feelings or challenges. She categorises this either as ‘surface acting’, where a person deliberately and knowingly will ‘deceive others about what we really feel’ and ‘deep acting’, where a person also ‘deceives oneself’ by altering their actual feelings (Hochschild, 2012, p.34). Hochschild views both these forms of acting as having potentially negative consequences in estranging people from their true feelings and requiring them to relinquish their ‘healthy sense of wholeness’ (2012, p.183). She argues this could lead them either to separate their sense of self from their job role in a way which leads them to view their role as inauthentic or to burnout, suffering extreme emotional exhaustion (Hochschild, 2012, p.187).

Yet another characterisation of emotion was discussed by one Senior Solicitor who suggested that it was the ability to manipulate the emotions of others which was a common characteristic of highly successful solicitors:

I definitely think there are huge benefits of using emotional skill. I think some of the best lawyers out there use emotion [...] as a key driver to their success and, but [...], as I said, I think it’s more that they play on clients’ emotions and others, well, maybe on junior associates or Senior Solicitors if it’s partners, so people more junior

to them, they will play on their emotions to get them to do more work. (Rosie, Senior Solicitor, 8 years PQE, Employment)

The same participant made reference to the need to make ‘make your clients happy, make them sort of feel like you love them and care for them’. Whilst this acknowledges the importance of emotions, the underlying assumption seems to be that some solicitors’ are able to utilise their cognitive skills to manipulate those whose reliance on emotions made them more malleable or vulnerable, whilst the solicitor’s emotions remain highly regulated and controlled.

Interestingly, despite the mixed attitudes towards emotions, there was less ambivalence amongst participants over the role of empathy within legal practice. Virtually every participant acknowledged it as important, even vital, within their everyday work. For some, an empathetic response appeared to be an instinctive reaction to the situation in front of them:

You can't keep yourself completely divorced from what's going on and it is natural for you to identify with your client and to want to achieve the best for your client (Ivan, Partner, 26 years PQE, Media and Commercial Litigation)

Whereas, for a larger number, empathy appeared to be employed as a deliberate strategy or tool, either for dealing with clients, or in negotiations with others:

[I]nwardly I'm a bit of a cold fish, but not to the client. (Senior Partner, 36 years PQE, 13)

[Y]ou have to understand what that client's needs are constantly otherwise you will lose that client and if you lose a client you lose revenue and you might lose your reputation as well, so it's always very important to, try to understand the client. (Jamil, Partner, 32 years PQE, Family and Employment)

Very often you gain their cooperation and at least you get to talk to them and if you get to talk to them things can happen. If you don't get there they're not going to happen so empathy for me, is a key tool and I probably use it subconsciously now (Angus, Partner, 9 years PQE, Private and Commercial Litigation, discussing the use of empathy in negotiations)

The closest that participants came to acknowledging the affective domain as part of an adaptive skillset was arguably within such discussions of empathy. This is perhaps unsurprising given that empathy is often characterised as having cognitive as well as emotional elements (Smith 2006). Indeed, there is evidence that the notion of empathy within the legal profession is one that focuses heavily on mental

‘perspective taking’ (cognitive empathy) rather than the ‘affective empathy’ that incorporates emotional connection (Westaby & Jones 2017). This is echoed in the discussion of empathy as a ‘key tool’, a form of cognitive tactic employed deliberately to enhance the solicitor-client relationship.

Whilst acknowledging the value of displaying empathy, several participants suggested that to over-empathise could lead to you being viewed unprofessional and result in blurred or non-existent boundaries with clients. A significant number of participants indicated that the use of empathy was part of a complex ‘balancing act’ they had to navigate with their clients:

[T]he difficulty being a lawyer is you can’t turn around and say well, ah, I’m really sorry you feel that way. Don’t worry it won’t matter anymore. We don’t need to deal with this issue. Unfortunately, the issue still has to be dealt with in many occasions. (Angus, Partner, 9 years PQE, Private and Commercial Litigation)

There’s a balance to be struck between not necessarily pandering to but taking into account and being considerate of a client’s feelings and what their motivations are for the actions that they want me to take, and on the other hand being quite matter of fact about certain things and being clear as to what my opinion on, on the law and the prospects of success are. (Hugh, Solicitor, 7 years PQE, Private Litigation)

It’s a mixture, really, because you, you do need to give them that best advice and, kind of, often take the heat out of a situation for them, but at the same time, you know, it’s important to be able to empathise with your clients, and to an extent, put yourself in their shoes, because in that way, you know, you can understand where they’re coming from, why they feel so strongly, (Ivan, Partner, 27 years PQE, Media and Commercial Litigation)

These quotations give the sense of solicitors using empathy and emotions in careful controlled ways, designed to build the solicitor-client relationship and assist them in understanding the client’s needs. However, it also suggests that solicitors perceive a need for their internal reasoning and problem-solving processes to remain unemotional and ‘matter of fact’. This requires significant emotional labour in effectively balancing two different aspects of legal practice – the realities of the presence of, and need for, emotions and the perception of emotions as potentially undermining the detached legal reasoning and adherence to professional norms which enables the effective provision of legal services.

Concerns about over-empathising and this focus on a balancing act may, at least in part, have been influenced by participants' characterisation of the term 'empathy'. There was a notable tendency to use the term 'empathy' as one which was synonymous with 'sympathy' in general discussion, with both words sometimes being used interchangeably within one sentence. This is in contrast to the wider literature, which tends to frame 'sympathy' as a 'heightened awareness' of someone else's distress, prompting a desire to alleviate it, in contrast to empathy's attempt to 'understand the subjective experiences of another' (Wispe 1986). Only one participant impliedly drew a distinction between the two stating:

If empathy means trying to understand the other person's perspective then I think that's important, if it means sharing that other person's perspective then, you know, being sad when they are sad then [...] I don't think that's going to do you any good at all.  
(Chandra, Partner, 32 years PQE, Tax)

This appears to be a re-wording of the form of 'balancing act' participants often alluded to. Overall, the discussion of the 'balancing act' required between empathy and the need to avoid over-identifying with clients demonstrates solicitors struggling to reconcile a form of dualism or dissonance between an internalised notion of legal professionalism as synonymous with unemotional, rational objectivity and the realities of legal practice as involving emotional experiences and requiring the use, regulation and management of their own and others emotions.

#### **4. Factors influencing the role of emotions in legal practice**

Throughout the interviews, a number of factors were raised by participants as influencing the extent to which emotions played a part in the everyday work of solicitors, sometimes referring to themselves personally, sometimes to the legal profession more broadly. There is a significant body of work suggesting that workplaces, including legal workplaces, are inherently emotional places (Pierce 1995; Fineman 2003; Silver 2004). However, perhaps mirroring the ambivalence displayed in attitudes towards emotions, a number of the participants' comments suggested that they perceived emotions as more (or even only) relevant in specific contexts within legal practice.

The most commonly raised factor influencing the presence of emotions was that of different practice areas. Family, employment, private client, personal injury, defamation, fraud and legal aid work were all highlighted as particularly emotive areas of work with corporate

and commercial work frequently given as an example of a less emotive specialism. Indeed, one participant indicated they had chosen to specialise in commercial property work, rather than family law, because it was 'less emotionally taxing I think' (Harry, Solicitor, 1 year PQE, Commercial Property). Whilst legally aided work and family law have commonly been identified as particularly emotive areas of practice (Westaby 2010; Melville & Lang 2007), the other areas identified have not. A possible common denominator is the involvement of individuals rather than corporate clients (the solicitor who referred to fraud spoke about particularly about the worries and fears of individuals who had either been accused of fraud or been defrauded).

However, some of the realities described by participants actually working in areas seemingly perceived as less emotive indicated that it would be erroneous attempt to draw any general distinctions between emotional and unemotional areas of practice. For example, one solicitor working within general litigation speculated '...if there's a more corporate based environment there's going to be no emotion whatsoever...' (Wendy, Solicitor, 1 year PQE, Civil Litigation). However, a partner undertaking litigation work for corporate clients suggested '...even [...] when I'm dealing with business clients, they still want a person there, you know, they still want to see that you're concerned' (Jerry, Partner, 7 years PQE, Civil Litigation). Perhaps the most striking example of this was a Partner discussing acting in mortgage proceedings and commercial litigation who spoke movingly about the difficulties they faced when acting for mortgage companies in residential repossessions against families:

Some cases you think, well that's just the way it is but others when you see a genuine plight there, you struggle with it. (Angus, Partner, 9 years PQE, Private and Commercial Litigation).

Several participants characterised the differences in areas of practice slightly differently, focusing on the differing emotional needs generated within individual specialisms:

I think that if someone is a corporate solicitor, his needs in terms of emotional support would be different than someone who is working in a legal aid firm and is dealing with a housing client who has three kids, one of them is vulnerable or one of them has special medical needs and they're going, they have got the warrant of eviction and they're looking for a house. (Jin, Solicitor, 2 years PQE, Commercial and Residential Property)

In wider discussion, this solicitor referred to both different emotional 'needs' and also the requirement for different emotional 'support'. Whilst this contains an implicit acknowledgment that emotions are present across legal practice, it echoes the contributions of other

participants in highlighting the need for a nuanced approach to be taken when considering the role of emotions in legal practice, taking into account the differing needs and demands of individual specialisms.

Another factor identified as influencing the presence of emotions was gender. This is perhaps unsurprising given evidence demonstrating the legal profession remains highly gendered. In 2010, Sommerlad et al (in a report for the Legal Services Board, the regulator with oversight of legal services in England and Wales) observed that ‘white female lawyers tended either to work in areas which are gendered female, such as residential property, personal injury, family or education law or on the “softer side” of more atypically “male” specialisms’ (p.25; see also Sommerlad 2016; Sterling & Reichmann 2016). Two (male) participants speculated on whether being a younger female could generate specific problems, including a lack of respect or the potential for actions to be misinterpreted by older male clients. One female participant also indicated that she felt men were less willing to display emotions in the workplace than women:

Well, in my experience women in the workplace can go two ways. Either they [...], they harness that emotion and proceed that way [...] and learn to cope with their emotions, perhaps if they had someone to lean on at work to talk about it, or perhaps they bottle it up and deal with it at home [...], or conversely they might just completely go to jelly [...] and find that they have to find another career, or, on the other side, they try to basically behave like men, which I find very strange because I don't really know how to cope with that. (Rosie, Senior Solicitor, 8 years PQE, Employment).

The underlying assumption that men and women experience (or at least display) emotions differently was echoed by a (male) Partner who, when discussing empathy, indicated ‘some men perhaps aren't that way’ (Jamil, 36 years PQE, Family and Employment). Such comments suggest a perception of emotions that is gendered and which (for the Senior Solicitor) is clearly linked to career progression – it is the male who has chosen to ‘bottle up’ or ‘harness’ their emotions who can progress within law, it is the more emotional female who will ‘go to jelly’ and leave. The implication, seems, once again, to be that openly showing emotions is a form of unprofessional conduct. An alternative interpretation could be that a lack of skill in regulating emotions can be detrimental to emotional wellbeing, leading individuals to feel unable to cope in the workplace.

## 5. Solicitor characteristics and skills

Participants' discussion highlighted individual characteristics and skills they viewed as necessary, or important, to succeed within the legal workplace. It was previously noted that, when asked if they perceived there to be 'any advantages or benefits to using emotional skills and competencies in legal practice', interpersonal and listening skills were raised by a majority of participants. The emphasis in these discussions was on being able to ask the right questions, obtain relevant information and understand the client's position in a patient and courteous manner:

The most important thing you can do as a lawyer is be a good and active listener and I think that's a baseline which I can apply to any situation (Ali, Solicitor, 2 years PQE, Commercial Contracts).

But I think you need to know how to deal with situations and how to, not necessarily make people do what you want, but influence them. (Harry, Solicitor, 1 year PQE, Commercial Property)

A number of participants closely linked these skills with the use of empathy, again emphasising its purposeful use in legal work. However, two participants in particular indicated that they did not view this as being a natural part of a lawyer's personality (highlighting once more its characterisation as a form of fixed personality trait). Several participants compared working as a solicitor to working as a doctor, referring to the need to set aside emotions when treating a patient, but also display an appropriate 'bedside manner'. Overall, it was the cognitively-focused skills that were once again emphasised, and prized, in this discussion – the ability to extract and interpret information and 'influence' people. It therefore echoed, in perhaps a more acceptable manner, Rosie, the Senior Solicitor's, suggestion that solicitors have to manipulate their clients' emotions.

The comparisons to the medical profession were in contrast to the way participants characterised lay persons' perceptions of lawyers. This included suggestions that they may be viewed as 'money-crazed' (Laila, Trainee Solicitor, Various), 'floating in and out and having rather a nice life' (Rosie, Senior Solicitor, 8 years PQE, Employment) or, particularly in the case of clients, as 'a bit of a barrier to what they want to do', for example, by requiring specific legal procedures and protocols to be followed (Harry, Solicitor, 1 year PQE, Commercial Property). The common denominator appeared to be a sense that solicitors were misunderstood or their work undervalued, perhaps explaining participants' emphasis on the need to use their skills and competencies to 'influence' clients and obtain the information required, rather than characterising it as a more reciprocal mutual exchange. This could also

be linked to notions of professionalism, where the solicitor's status as a professional depends, at least in part, upon their possession of specialist knowledge (Rhode & Hazard, 2007, p.1). In contrast to the altruistic motivations commonly attributed to doctors, it may also demonstrate the lack of altruistic stereotypes within many specialisms in law (particularly those which are more 'corporate' or 'commercial' in nature) (Jones et al, 2020; Salzmann & Dunwoody, 2005).

Although individual participants referred to the importance of traits such as commercial sense, resilience, flexibility, a sense of humour and confidence, several mentioned self-doubt as a pervasive part of legal practice:

You are concerned about [...], what's going to happen next in the case, whether you've given the right advice, whether [...] something's going to happen that you hadn't foreseen [...] whether you're complying with all your professional requirements at the same time (Ivan, Partner, 27 years PQE, Media and Commercial Litigation)

You question yourself, should I try to change this or should I try to keep it the same? (Sami, Solicitor, 6 years PQE, Personal Injury)

[A]dverse moments do come to your mind quickly as opposed to the successful ones. (Philip, Solicitor, 6 years PQE, Consumer Protection)

Only one participant referred to perfectionism expressly:

There is a huge level of perfectionism and sometimes you do have to rein that in, because, you know, whether it's by budget or time constraints and you have to say no [...], this is good enough, it's not perfect, but it will do, and it's very hard learning to do that (Rosie, Senior Solicitor, 8 years PQE)

However, the more frequent discussion of self-doubt could be viewed as a manifestation of this form of perfectionism, a desire to always perform at your best and a concern that you had failed to do so by overlooking or failing to foresee an issue. It is possible that the regulatory framework, with the potential for client complaints, disciplinary proceedings for errors and the spectre of professional negligence claims, exacerbate this tendency (Boon 2017). In terms of emotional wellbeing, such a trait can be concerning, as perfectionism has been linked to poor levels of wellbeing and mental health (Flett et al 2014; Blatt 1995).

## 6. The role of emotions in client care

The ways in which emotions and client care are intertwined were discussed by all the participants in this study. The strong emotions experienced by clients were frequently referred to, with descriptions used including clients' dealing with 'high levels of emotions', 'massive, massive amounts of emotions', experiencing a 'rollercoaster', being in a 'terrible state' and finding the situation 'incredibly difficult'. Echoing the discussion on different practice areas above, certain types of legal practice, such as litigation, were highlighted as particularly emotive. However, the consensus appeared to be that most clients would have at least some level of emotional involvement in a claim, even those that were commercial in nature:

I have found that clients engaged in commercial litigation also tend to get very... are deeply involved in it on a personal level, that they don't just see it as something that, [...] their company is doing and they can stand back from. (Ivan, Partner, 27 years PQE, Media and Commercial Litigation)

The emotions run high, particularly when issues arise which involving quite substantial sums of money... (Angus, Partner, 9 years PQE, Private and Commercial Litigation)

In terms of dealing with the emotions of clients, several participants emphasised the need to preserve a certain level of detachment to enable them to effectively resolve their client's issues, with one explaining that the focus was 'acting in their best interests' which 'doesn't actually require any emotion'. At the same time, that participant indicated that 'good client care' required 'an emotional awareness, an emotional sensitivity' (Jerry, Partner, 7 years PQE, Civil Litigation). This echoes the discussion above, in relation to the characterisation of emotions and empathy, where solicitors are attempting to balance a need to be emotionally aware and attentive when communicating with clients, while at the same time retaining their sense of detachment and neutrality, viewed as necessary to act professionally and legal problem-solve effectively.

A number of participants indicated that their role involved proactively managing, or even absorbing, high levels of client emotions. For several, this was about working to diffuse the client's emotions and 'take the emotion out of that situation' (Ali, Solicitor, 2 years PQE, Commercial Contracts) or taking on the client's stress and removing from them 'the burden of dealing with the matter' (David, Solicitor, 1 year PQE, Commercial Litigation). One participant, Toby, who specialises in contentious wills and probate, also referred to acting 'as a

sort of filter or a shock absorber' allowing clients to off-load the details and context leading to a claim (Solicitor, 7 years PQE). These forms of emotion management seemed to be a response to the expectations of particular clients. While for some participants their clients simply required them to solve a particular legal problem, for several others it was about providing their clients with reassurance, in some instances verging on the participant acting as a counsellor.

A number of participants explicitly referred to the use of emotions, but most particularly empathy, as an important part of providing appropriate client care, for example, in terms of factoring a client's emotional needs into the strategy taken in a claim and to assist in gaining the client's trust:

I'm constantly having to respond to, try and feed into [...] their emotional needs, which feeds in very often to the kind of strategy that you take in a particular case. (Sami, Senior Solicitor, 6 years PQE, Personal Injury)

You have to break down the wall with that lay person, get their trust and work harder to do that than with a professional. (Angus, Partner, 9 years PQE, Private and Commercial Litigation)

The most unguarded expression of this was given by Laila, the trainee solicitor, who suggested:

I have to remember that I'm working for, you know, for a firm, so if I'm empathetic to the client and, you know, it's good feedback, they'll feel safe and they'll feel like they'll be able to trust the firm as well, so it's sort of like a wider implication as well.

This extends the idea of professionalism beyond the individual solicitor to their employer, as here Laila is protecting the professionalism of her firm. It also touches on the commercial imperatives which are an important part of everyday private practice in law. Firms are profit-making entities and therefore need to seek to both maximise their client retention and market themselves to potential new clients, at least in part through the development of their reputation (Sommerlad et al 2015; Wallace and Kay 2008). At the same time, a couple of participants referred to the need not to give clients' 'false hope' and the need to be 'blunt' to ensure client expectations were realistic.

Participants' shared sense of a solicitor acting as some form of emotional 'shock absorber', buffer or bulwark resonates strongly with legal professionals own documented perception of the need to present a form of strong and controlled persona to clients (Jones et al 2020). In other words, to wear a 'professional mask' (Elkins, 1978, p.735) which covers their authentic emotional reactions and responses. At the same time, it indicates that, underneath their outward façade, individual

practitioners will be actively monitoring, responding to and managing their clients' emotions. In addition, they will also be regulating their own emotions to enable them to build rapport with the client and to assist them in retaining their sense of professionalism. All of this once again indicates that solicitors are expending significant amounts of emotional labour when dealing with clients' emotions.

A number of participants referred to the particular issue of dealing with rude, angry or upset clients, indicating a range of different approaches. Several emphasised the need to remain calm and detached:

You might like clients, or we might not like clients, and it doesn't really matter, it's not our job to like them or dislike them.... they're your client and you just have to do your best for them, so [...] you have to work alongside that client, you have to understand what that client's needs are constantly otherwise you will lose that client and if you lose a client you lose revenue and you might lose your reputation as well, so it's always very important to try to understand the client (Chandra, Partner, 32 years PQE, Tax)

However, other participants indicated that such situations did have an emotional impact upon them, although they sought to regulate it:

I think frustration is a very difficult emotion at times and that can lead you to make snap decisions which if a client's annoyed you for example or the other side have annoyed you, they've said something which is aggressive or a bit passive aggressive or a bit counterproductive you can kind of be unhelpful back and that can, um, damage your own professional reputation. (Ali, Solicitor, 2 years PQE, Commercial Contracts)

This suggests yet another form of emotional labour for solicitors in seeking to regulate their responses appropriately. Here, this is explicitly linked to the need to preserve a 'professional' reputation, once again emphasising the importance of professionalism as a determining factor in how solicitors choose to respond to emotions.

There was no single clear indication of to what extent the participants' use of emotions and empathy within client care involved a genuine affective involvement, or was instead a more calculated cognitive response based on commercial considerations. It appeared that, for some participants, there was an authentic emotional involvement in at least some files:

[Y]ou become kind of desensitised to it in many respects because obviously you've got a job to do so you're just kind of focussing on that [...] but [...] there are moments sometimes where you do build a particular rapport with a client or the story is particularly touching or poignant, where, you know, you do find yourself kind

of having to hold back the tears sometimes [...] in these things.  
(Sami, Senior Solicitor, 6 years PQE, Personal Injury)

A striking example was given by another Senior Solicitor, Rosie (8 years PQE, Employment), who referred to a reciprocal sense of caring for her clients, leading to several contacting her to wish her luck when she left for maternity leave and one reminding her to 'take some big pants with you to the hospital'. However, at the same time, the same participant was aware of the constraints of being in a professional, fee-paying relationship with their clients, as illustrated when discussing written communications with clients:

I find that if you sound too formal you can sound archaic and in my experience the more archaic you sound the less you actually know and you're just hiding behind language. If you're able to put things into normal modern day language so that people understand it, it means you really understand what you're talking about, but you still have to have that balance so that you don't stray into being too familiar with them, because if you do that then they don't feel that they're actually getting legal advice, they feel like they're just having a chat with you and they just don't feel they should pay for it.

Interestingly, this was the same participant who also highlighted the elements of manipulation involved in having to 'play on the emotions of your clients to reel the work in'.

A final area that emerged when discussing the role of emotions in client care was the emotions generated by receiving positive client feedback. Several participants appeared to attribute this to their emotional competency, with one suggesting that:

I think that's me, probably [...] the way I am, I like to express my emotions and I make sure the client knows that look, not only am I looking at this from a solicitor's point of view [...] but it's more sort of [...] you want that success for the client and that's the way I've always approached my cases. (Toby, Solicitor, 6 years PQE, Contentious Trusts and Probate)

The same sense of both personal and commercial motivations which appeared to underlie the role of emotions in the solicitor-client relationship generally was evident in participants' discussion of feedback. Several referring to a sense of personal validation from it, of 'job satisfaction' and of it being a 'nice' experience. However, there was also reference to its importance in terms of developing and preserving your professional reputation and attracting more clients.

## 7. Interactions with colleagues, employers and third parties

Several participants referred to their colleagues as having an emotional impact upon their day-to-day working life.

I think it's mainly got to do with colleagues in the workplace. They are the people that need to learn to be more empathetic to, and understanding of how their behaviour affects people who work with them... (Wendy, Solicitor, 1 year PQE, Civil Litigation)

So even if I'm kind in the workplace, or I've been really sympathetic to a colleague, it's often been thrown back in my face or it's often been, it's not been reciprocated at all. (Laila, Trainee Solicitor, Various)

It is notable that these issues with civility were particularly emphasised by more junior participants, as a specific issue raised by several participants was that of the managerial or leadership style of more senior staff (commonly partners) within law firms. This was highlighted from the perspective of a junior staff member:

A lot of the time they're just totally clueless. I've worked with quite a few corporate psychopaths in my time and people that the law firms generally keep [...] on because they bring lots of money through the door. They don't care how they treat other people, you know. (Wendy, Solicitor, 1 year PQE, Civil Litigation)

However, it was also raised from the perspective of more senior staff, who acknowledged the part that managing the wellbeing of others should, or could, play within their busy role, but who did not appear to have been equipped or supported to undertake this aspect of their work:

I think one of the difficult things in law is that, in terms of management, management kind of comes with seniority rather than with skill [...] it is assumed that you become better as you get more senior, but it's also assumed that you take on more of a management sort of role, but you don't necessarily have those skills... (Rosie, Senior Solicitor, 8 years PQE)

So we don't know how to manage people, so a lot of things just get ignored because people don't know how to deal with them. (Imran, Solicitor, 4 years PQE, Residential Property)

This reflects the fact that managers and leaders within the legal profession are commonly drawn from within its ranks. Whilst such senior personnel are likely to have significant experience in legal practice, it does not necessarily follow that they will have received

training and support in managing or leading others. The Solicitors Regulation Authority ('SRA'), the regulatory body for solicitors in England and Wales, removed the previous requirement for solicitors to undertake a Management Course Stage 1 in 2015. There remains a requirement for continuing professional development in the form of an annual declaration, but the focus now is on solicitors being able to 'reflect on their practice and undertake regular learning and development', leaving the type of training undertaken to the individual solicitor's discretion (SRA 2020).

A couple of participants referred more generally to the importance of emotional competencies within management and dealing with people, with one partner referring to empathy as a 'key tool' to gain the cooperation of staff. A couple of participants also emphasised the importance of modelling appropriate behaviour when working with others. One partner, Donald (23 years PQE, Insurance Litigation), discussing communication skills, commented:

I have had and have now junior people who will pick up these skills and will learn these skills from me as I learned them from people who were far more senior than I was when I was in my 20s and 30s.

However, a more junior solicitor (David, Solicitor, 1 year PQE, Commercial Litigation) also raised this as a potential issue, suggesting that colleagues were learning their approach to practice by observing partners who had not been taught (and therefore could not model) appropriate behaviour and skills.

The generally perceived lack of support for developing such emotional competencies was attributed by one participant to the commercial orientation of law firms:

Lawyers work in numbers, and their profit, they are a profit making organisation, of course they are, and so a lot of them if they can't put a value on it they may not see the worth of it. (Ali, Solicitor, 2 years PQE, Commercial Contracts)

This suggests there is an argument for making such emotional competencies more explicit within the competency frameworks which are commonly applied to entry into, and continued legal practice within, the legal profession in England, such as the SRA's 'Statement of Solicitor Competence' (2019). This could potentially encourage more value and importance to be placed on such competencies, which are currently often implicit within such frameworks (Jones, 2018).

Levels of engagement with third parties varied amongst participants, but some were involved in networking events with contacts or had longstanding relationships with individuals. However, several also recounted encounters with opposing solicitors where the participant had

found the other solicitor to be ‘unreasonable’, ‘unethical’ (prolonging an issue for to obtain greater costs) and ‘a nightmare’. A number of participants contrasted the high level of emotions involved in client care with the shared expectations and understanding ‘of what’s involved’ they had with other professionals. Examples included counsel and expert witnesses, where it was possible to speak ‘off-the-record’ and there was a mutual ‘professional touch’ involved with ‘less volatile’ emotions. This discussion of interactions with other professionals once again emphasised the sense of professionalism (this time as displayed by others) being equated with an approach to work where emotions were either perceived as absent or were highly regulated and controlled.

Participants seemed unsure whether such third parties would have any emotional involvement with their cases, but overall seemed to feel there may be some emotional connection, and a sense of wanting the best outcome for the client, but that there would not be the same level of emotional involvement as a solicitor. As one participant expressed it (discussing the role of counsel):

They will just dip in and out of a case, they don’t have the constant contact that you have as a solicitor, and [...] they wouldn’t build up a rapport in the same way and get that kind of closeness with a client that you would get. (Sami, Senior Solicitor, 6 years PQE, Personal Injury)

This echoes some of the discussion of emotions within client care above and hints at a genuine emotional connection or involvement in the solicitor-client relationship

## **8. The emotional wellbeing of solicitors**

Studies globally have indicated that legal professionals may experience higher levels of stress, anxiety and depression than the general population (Krieger & Sheldon 2015; Kelk et al 2009). Therefore, it is perhaps unsurprising that a significant number of challenges to emotional wellbeing were discussed by participants in this study, including the feelings of self-doubt referred to previously. Echoing the discussion of the commercial orientation of private practice in relation to client care, financial pressures were raised as a particular source of worry, ranging from the cost of training to be a solicitor to the pressures experienced specifically by smaller firms. The mergers and consolidations of such firms were referred to, demonstrating the impact of wider market pressures. This form of pressure also appeared to exacerbate the stress felt by those participants in managerial and leadership roles.

Perhaps unsurprisingly, given participants' emphasis on the presence of client emotions, having to deal with heightened emotions displayed by clients' (for example, grief when dealing with wills and probate) was referred to as having an impact on solicitors' emotional wellbeing. High levels of client expectations also seemed to be implicated in wellbeing issues. This appeared to be a result of a combination of factors, including the frequent use of email requiring (or assuming) 'instantaneous' responses, a lack of clients' understanding around the complexity of issues they perceived as 'straightforward', frustration with legal 'processes', unhappiness with the cost involved and clients' emotional investment in their legal issue:

So, what they really want is you to wave a magic wand (Jerry, Partner, 7 years PQE, Civil Litigation)

[S]ome people get very demanding when they're emotionally charged and that can be hard work. (Rebecca, Partner, 17 years PQE, Family)

The need to meet such expectations to generate positive feedback and repeat instructions and build an individual's professional reputation was referred to in relation to the discussion of client care above. At the same time, it can be surmised that the financial pressures participants identified also reinforce the pressure to meet client demands.

There was also a sense from some participants of their emotional wellbeing being closely linked to their workplace performance, in particular with the outcomes of client issues:

If it all goes well then it's good for your wellbeing and if it goes badly then it can be rather less good. (Donald, Partner, 23 years PQE, Insurance Litigation)

This may in part relate to the need to meet client expectations, possibly stemming from a notion of professionalism within legal practice which, it has been suggested, 'prizes unquestioned pursuit of client interest' (Kuhn, 2009, p.685). It may also reflect a desire to ameliorate the sense of self-doubt some participants referred to in relation to solicitors' characteristics.

Several participants also discussed time pressures and the 'intensity' of the role, referring to the need to work over weekends and feeling as if they were on 'a bit of a treadmill' (although one participant indicated they enjoyed working under pressure). The difficulties of having to deal with unexpected issues or issues which participants had no control over was also raised, for example, not being able to obtain a court order because the court was closed for the weekend. There was also the pressure generated by individuals' desire to progress within their career:

There's quite a lot of people trying to be very stoic and just getting on with things and, you know, you don't want to be one of the people that can't cope and keep up with what's going on. (David, Solicitor, 1 year PQE, Commercial Litigation)

This gives a sense of solicitors' needing to project a strong and controlled persona, not only for clients, but also to succeed in the legal workplace more generally.

Outside of these workplace-focused issues, a number of participants also referred to the difficulties generated when personal issues collided with work issues and referring to the problems of maintaining a 'work-life balance'. Several participants referred to the need to separate work and family life, and the difficulties of doing so:

If I've had a bad morning with the kids and, like, it's taken me ages to get them in the car and get them to nursery and then I get to work and I've got a client shouting at me, it really annoys me. (Solicitor, 4 years PQE, 3)

This implies the presence and influence within the legal workplace of 'incidental' emotions. In other words, emotions generated by issues unrelated to work which may then impact upon individuals' emotions reactions and responses within the workplace (Bachkirov, 2015, p.862). As such, it adds another layer of complexity to the emotional labour solicitors undertake in dealing with and regulating emotions.

A number of participants characterised the impact of the above factors on their emotional wellbeing in terms of the levels of stress involved

I think stress is [...] a problem that's just endemic across the entire profession. (David, Solicitor, 1 year PQE, Commercial Litigation)

Doing law generally is quite stressful, because I think you are worried about getting it wrong the whole time. (Partner, 27 years PQE, 11)

The same Partner characterised this stress as 'part of being a professional', linking it to the weight of their professional responsibilities. Several participants also talked about the difficulties they experienced in stepping away from work, indicating a potentially unhealthy level of rumination.

Some participants referred to coping mechanisms used to deal with the levels of stress involved. For one participant, concerned about the outcomes for individuals involved in litigation, this was about rationalisation:

You have to realise, I think, that there's a reason for all of this and there's safety nets for people and you rationalise all of the time... Rationalise, rationalise otherwise I think you'd go mad, wouldn't you? (Angus, Partner, 9 years PQE, Private and Commercial Litigation)

Another talked about the need to detach and compartmentalise – 'you just have to put a lid on it at some point frankly' (Jerry, Partner, 7 years PQE, Civil Litigation), whilst a third spoke about the importance of undertaking regular exercise and several emphasised the importance of provision within the workplace to support emotional wellbeing.

Applying forms of dissociation such as rationalising and compartmentalising issues may have some benefits in terms of dealing with distressing emotional states, including potentially preventing incidental emotions from intruding in work settings (Bowins, 2012). They certainly appear congruent with the notion of legal professionalism as requiring a neutral detached persona and highly regulated and controlled emotional approach. However, an over-reliance on these coping mechanisms could also be unhealthy if the effect was perpetuate notions of professionalism and forms of legal thinking which suppress emotions and prevent reflection upon, and learning from, emotional responses that have occurred (Swan & Bailey, 2004; James, 2005).

## 9. Training needs and gaps

Within this final theme, the key focus was on the gaps in existing training, in particular the lack of emphasis on emotional competencies within legal education and training. In this context, a couple of participants referred to client care training on the Professional Skills Course (undertaken by trainee solicitors during their period of work prior to qualification), but a significant number of participants indicated that training in emotional competencies was not usually provided:

Not in relation to the emotional side... Which is a major shortfall in maybe law school, and probably the Law Society and the firm I trained at because it's an enormous part of the client interface. (Ali, Solicitor, 2 years PQE, Commercial Contracts)

One participant suggested that the absence of such training could result in a 'steep learning curve' for trainee solicitors, with a sense of them simply being 'let loose' on clients. Although that participant was referring to the necessity of using emotional competencies to build a rapport with clients, a further participant viewed training as necessary to teach solicitors to '[t]o take away the emotion and look at the

commercial elements of it' (Angus, Partner, 9 years PQE, Private and Commercial Litigation). This reflects the distinction referred to above between those participants who explicitly acknowledged the role of emotional competencies within their work and those who emphasised the perceived need to remove emotions, to preserve detachment and neutrality.

## **10. Discussion**

An analysis of the themes found in this study highlights several key points. First, it reiterates the findings of previous studies that legal practice is inherently emotive (Silver, 2004; Westaby, 2010; Graffin, 2019; Bergman Blix and Wettergren, 2019). It also further develops these findings by indicating that this is the case across practice areas, including those considered to be 'corporate' or 'commercial' in nature. This finding suggests that there is a need for further exploration into the role, and impacts, of emotions within a wider range of practice areas than those that have to date been the focus of most research and discussion. The role of emotions was most clearly identified across participants within discussions of client care. Discussions emphasised the strong emotions which clients experience in relation to legal issues. They also highlighted the solicitor's role as a form of 'shock absorber', buffer or bulwark as they seek to manage their clients' emotions, regulate their own responses and portray a professional demeanour or mask. Interactions with colleagues were also identified as an area where emotions could arise, with workplace incivility and poor management practices both referred to as problematic. The role of emotions also manifested itself within discussions of emotional wellbeing. Participants in this study highlighted a wide range of challenges to their wellbeing, including (amongst others) financial and time pressures, client expectations, the sense of a lack of control of some aspects of their work and the influence of wider life events. A sense of self-doubt was also referred to by some. The impacts of these challenges were commonly characterised as forms of stress and seemed almost to be accepted as an inescapable 'part of being a professional'. All of these aspects suggest important avenues for future research and dialogue.

Second, this study indicates that there is a significant incongruence or disjuncture between the presence of emotions within everyday legal practice and the ways in which emotions are conceptualised and acknowledged by solicitors. The participants' sense of emotional intelligence as being a form of individual trait characterises it as fixed and innate. The notion of it as something that can only be developed through time and experience is perhaps more fluid, but still eschews the

notion of working with and using emotions as teachable competencies that can be developed through self-awareness and reflection. Given that both conceptualisations situate emotional intelligence outside the individuals' locus of control, it is perhaps understandable that there was a tendency amongst some participants to view emotions as irrational and potentially threatening to individuals' sense of professionalism and neutrality. The tendency to shift discussion of emotional competencies towards the forms of cognitive skills generally prized amongst legal practitioners also suggests that emotional competencies were perceived as less valuable than cognitive skills for most participants. It was clear that participants did experience, and respond to, emotions within the legal workplace. However, only a relatively small number explicitly acknowledged the emotional regulation and management involved within their work. The focus on the cognitive also appeared to be reflected in the greater acknowledgement and acceptance by participants of empathy (rather than emotion) as a 'key tool' within their practice. While for some it appeared more instinctive, for others it was clearly being used as a deliberate strategy, positioning it as a cognitive skill to be employed within client care. Similarly, the coping strategies discussed by individuals when exploring challenges to emotional wellbeing focused largely on the cognitive – rationalisation and compartmentalisation – rather than explicitly acknowledging or exploring emotional aspects of wellbeing. These findings suggest that there is a need to increase the emotional vocabulary of legal professionals and develop an evidence-based understanding of the role and impacts of emotions and empathy. This could be begun by adopting the term 'emotional competencies' as opposed to 'emotional intelligence', to highlight the ways in which relevant legal skills can be developed and trained. Greater emphasis on such emotional competencies within legal education and training and within the workplace setting, including the modelling of appropriate behaviours by more senior staff, could also assist in challenging the current focus on a particular form of heavily cognitive skill set (Jones, 2018).

Third, this study indicates the problematic intersections between the use of emotions within everyday legal practice and solicitors' notions of professionalism. In particular, the perceived clash between emotions and particularly highly prized professional values such as neutrality and detachment. For example, comparisons with the medical profession emphasised the detachment required (alongside the requisite appropriate 'bedside' manner). Similarly, when participants referred to dealing with rude or aggressive clients being able to respond in an emotionless professional manner was highlighted as key. A number of participants explicitly sought to diminish or deny the role of emotions within legal practice as antithetical to professionalism, despite then going on to identify a range of ways in which their presence manifested

itself. A smaller number of participants explicitly acknowledged their presence and suggested a range of ways in which the use and display of emotions and empathy, particularly in client care, were a valuable tool within their practice. The discussion of the common form of balancing act solicitors perform, between building rapport with clients and over-empathising with them, illustrates the emotional labour solicitors commonly experience as they seek to apply (what is perceived as) emotionless and objective legal reasoning whilst having to regulate and manage their own and their client's emotions. There was also a potentially gendered element to this, with one participant implying that the more emotional female practitioner could be transgressing professional norms and therefore fail to progress in her career. Whether this notion of professionalism results from the above conceptualisation of emotions, or whether that conceptualisation is the driving force for the problematic relationship between emotions and professionalism is unclear. However, as indicated in the Introduction, law and emotions scholars have previously identified the tendency of law to prize what it perceives as reason and rationality and ignore or dismiss emotions as irrational and potentially misleading or dangerous (Maroney, 2006; Grossi, 2015). These findings suggest that, on a practical level, legal professionals require need detailed and relatable examples of how they can be compassionate and responsive to emotions whilst remaining professional, detached and neutral. At a theoretical level, it also indicates that the role and impacts of emotions should be included as part of wider discussions around the core values involved in practising law and how these relate to everyday practice (for one example, see, Rand & Crowley Jack, 1989, pp.144-149).

Fourth, the commercial orientation of private practice appears to influence the lack of acknowledgment of, and emphasis upon, emotional competencies within everyday legal practice. Participants' discussions highlighted a lack of support for staff in developing emotional competencies, because where it may not be possible to 'put a value' on such training, leading to it being ignored. This was particularly problematic in relation to managerial practices where those in senior positions may not receive the training and support required to model good practice in terms of such competencies and interpersonal skills. This emphasis on the commercial also manifested itself within participants' perception of the need to build rapport with their clients and their appreciation of positive feedback. In both situations there appeared to be at least in part a genuine emotional response, but at the same time this was informed by an awareness of the commercial and reputational advantages involved. Some individual participants made reference to the use of emotions and empathy to effectively protect their firm, as well as their own reputation. However, there was little to suggest that employers' recognised upskilling individuals to raise their

awareness of the role of emotions and the importance of emotional competencies could have wider economic benefits, as well as assisting the solicitors in question (Reich, forthcoming). This finding suggests that there is need for increased awareness of these benefits on the part of employers (and possibly regulators), to emphasise that training in emotional competencies can help legal professionals effectively 'protect' their firm and maintain the right level of professionalism.

Overall, the key implication for everyday legal practice is the need for a greater awareness and understanding of the complex emotional balancing acts which solicitors are performing within their working lives. This is particularly the case in relation to client care, where solicitors are actively managing the emotions of their clients and regulating their own emotional responses. However, it appears that the need to combine such emotion work with the projection of a particular form of professional persona is not solely confined to this. Instead, it seems to pervade the legal workplace more generally, influencing interactions with colleagues and managerial practices. The high levels of emotional labour involved and the potential impacts upon emotional wellbeing therefore require further exploration and discussion.

Such an exploration is likely to entail further targeted empirical research into the specific emotional dynamics involved in different practice areas and environments and amongst different demographics of solicitors. However, it will also entail shifts within the legal profession itself. Ways in which to facilitate such awareness and discussions are likely to include the inclusion of appropriate emotional competencies within legal education and training, both within Law Schools and as a part of the Continuing Professional Development undertaken by solicitors (potentially differentiating between different practice areas). The potential to explicitly incorporate emotional competencies into the competency framework for solicitors should also be explored with the SRA and other key legal stakeholders. Such suggestions imply a challenge to existing notions of professionalism, repositioning emotions as an integral and important part of everyday legal practice in a way which can potentially be incorporated within a redefined or refocused idea of what it means to be a legal professional. This form of challenge is unlikely to be fast, or easy, but there is an urgent need to begin a nuanced and evidence-based dialogue in this area.

## **11. Conclusion**

This study provides a unique insight into the role of emotions in the everyday legal practice of solicitors. In doing so it exposes the presence of emotions in those areas of law often perceived as un-emotive as nature

and reveals the challenging and delicate emotional balancing acts which solicitors habitually perform, most notably within client care and interactions with colleagues. In doing so, it highlights the disjunctures between the everyday realities of practice and the ways in which both emotions and professionalism are conceptualised by individuals. It suggests a shift is required towards explicitly acknowledging emotional competencies, and providing appropriate training and support in these, to facilitate further awareness and understanding of the nuanced interplay of emotions with all aspects of professional life.

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