

Modern Lawyer

Ideas for Legal Leaders

Editor: Isabel Parker

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Featured in this issue

*The rise of the ethically
empowered corporate
legal team*

*Purpose and law
firms – a contradiction
in terms or the future
of the profession?*

*What is the real ROI
on legal influencing?*



Sustainability – rethinking the law firm model





Welcome to *Modern Lawyer*.

This issue focuses on law firm ethics and sustainability, and as the war in Ukraine continues to rage and the legal community processes the US Supreme Court's decision in *Dobbs v Jackson*, the subject feels highly relevant. The business world, recognising that a strong ESG proposition can create value, is elevating corporate purpose to board-level priority. No wonder – according to McKinsey research – ESG-related investing is on the increase, with global sustainable investment up 68% since 2014 and tenfold since 2004, www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/five-ways-that-esg-creates-value. As ever, where clients lead, law firms must follow. Indeed, just this month, four law firms, including Simmons & Simmons and Hill Dickinson, announced new ethics and ESG policies, signalling, perhaps, a sea change in law firm attitudes to sustainable delivery. In our lead article, three industry heavyweights (Dan Kayne, founder of the O Shaped Lawyer, Sara Carnegie, director of legal projects at the IBA and Alastair Morrison, head of client strategy at Pinsent Masons) join me for a provocative discussion on law firm purpose, ending with a call to action to contribute to the debate. To understand what law firm sustainability looks like in practice, we hear from the head of purpose and impact at Bates Wells, the UK's first B Corp Law firm, about the firm's journey to a more sustainable model. Then there is the issue of metrics – ESG policies are easy to draft and publish but how can clients be sure that law firms are complying with their sustainability pledges? In their article, Sean West and co-authors show us a future in which clients assess law firms against consistent criteria to ensure that the values of adviser and client are aligned. Staying on theme, Phil Burdon of Donoma Advisors urges law firms to take a values-based approach to lateral partner hiring. A sustainable organisation invests in developing its people, and in this issue we hear from two contributors – Law School 2.0 and the Centre for Legal Leadership – about the critical role of learning in shaping the modern lawyer. We also have our regular column on technology, and contributions from two of the legal industry's most well-known influencers, Electra Japonas, co-founder of OneNDA and Chrissie Wolfe, founder of *Law & Broader*.

Take your time to digest and enjoy this issue as we head into the summer break. As always, your feedback is welcome.

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Background

Bates Wells is a purpose-driven city law firm. Since we were founded in 1970, we have supported clients who want to have a positive impact on the world such as charities, social enterprises and purpose-led businesses. Our lawyers were involved in bringing the B Corp movement to the UK and we were the first UK law firm to achieve B Corp status in 2015 (there are currently still only two B Corp law firms in the UK among a community of more than 800 organisations). B Corps are committed to meeting stringent standards around their governance, how they treat their people, communities and customers and reducing their negative impacts on the environment. To become a B Corp an organisation has to go through an assessment and audit covering each of these areas. This is repeated every three years and the standards are regularly made more stringent.

For Bates Wells, being a B Corp means that we always strive to do the right thing and help our clients to make a positive impact on society. We encourage our people to develop, innovate and participate in activities that promote an equal, diverse and inclusive environment. We support our local community through our *pro bono* work, support charities through the work of the Bates Wells Foundation and other charities that we make donations to. We have worked hard to reduce our impact on the environment and are always looking for ways to do more to ensure a just transition to a more fair and equitable society where comprehensive action has been taken to address social injustice, climate change and biodiversity loss.

When I joined the firm in September 2019, I was responsible, among other things, for our B Corp recertification. This gave me a clear understanding

of all the operational steps that we take to live by our values and to meet the B Corp standards. Since then, I have transitioned into a new role of purpose and impact manager. This enables me to take the operational expertise and knowledge gained through the B Corp certification process and apply it to the legal services that we offer with the support of our lawyers. We truly want to use the law as a force for good, so having this role in place enables us to support our clients to meet their environmental, social and governance goals.

We all want to change the world ...

Many of you will have gone into law thinking that pursuing this career would give you an opportunity to effect change. As lawyers you are in a unique position to have a positive impact directly through your work. You can change the world through laws that you effect and the decisions that you influence. When you also work with others (eg, The Chancery Lane Project, Legal Sustainability Alliance, Net Zero Lawyers Association), you have an opportunity to amplify your efforts.

Many firms are increasingly talking about the need to address social and environmental justice and we can expect clients to increasingly require this of their professional service providers. It can be hard to shift the status quo and to know where to start when addressing systemic change. But there are small and tangible steps that any organisation can take towards operating in more purposeful ways that can effect change where there is the will for that change to happen.

Why purpose, and why now?

There is already a clear and growing concern that more needs to be done to address the problems that we face both socially and environmentally.

In a liberal society like ours, it is clear to many that business has a role to play in levelling the playing field and addressing both social injustice and the environmental challenges that need urgent attention. There is more opportunity to push for action from government if they can see that this is something that business is actively engaged in and no longer on the fringe of. If we want meaningful

action on climate change and a fairer society, the business community needs to show leadership now so that our political leaders can catch up. Organisations like the Institute of Directors and the British Academy are already actively pushing for change through their support of the Better Business Act and the Future of the Corporation project. The Butler Sloss judgment¹ enabling charities to consider environmental and reputational risks (beyond purely financial returns) in their investment decisions shows that civil society is also looking to effect change. The UK is now the fastest-growing B Corp community globally and there are now more than 800 businesses certified here – this means more than 800 businesses have volunteered to be measured and verified against stringent standards.

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The Better Business Act campaign is led by the B Lab UK team (the non-profit organisation that monitors and supports the B Corp community in the UK) as well as key business figures like Douglas Lamond and Mary Portas. The campaign calls for an amendment to Section 172 of the Companies Act that would see a commitment to wider society and the environment built into the DNA of every UK Business. More than 1000 companies have publicly supported the Act and it has cross-party support. In tandem to this we are seeing increasing regulatory requirements on larger corporations to report on sustainability as well as pressure to restrict unsubstantiated claims on sustainability.

The British Academy's Future of the Corporation campaign is based on academic research as well as insights from senior business and policy leaders

carried out over several years. The Academy see the future of business as one that develops solutions to social and environmental issues with a clear shift away from purely financial goals and towards purpose. The campaign has cross-party support and is backed by the Institute of Directors.

A purposeful business should be able to report on their actions, support any claims that they make and show transparency and openness in their decision making.

Added to this, landmark changes in charity law with the Butler-Sloss decision earlier this year show that a range of sectors are actively looking to mitigate the impact of their investments to address social and environmental justice. The judgment clarifies the law on investment powers for the benefit of charities and takes precedence over existing guidance from the Charity Commission. To date, trustees have sought to maximise financial returns through their investment practices. The judgment confirms that maximising financial returns is not mandatory and clarifies that it is also possible to structure charitable constitutions to exclude certain classes of investment which could be considered in direct conflict with charitable objects. We expect this principle to apply in other trusts and fiduciary contexts beyond the charity sector and this could have a widespread impact on financial investments.

But what does it mean?

Purpose means different things to different people. For us at Bates Wells, we would argue that a purposeful business is one that believes in being progressive, moving forward, always striving to be better and taking account of the needs of people and the planet in its actions and decisions. It links

closely to the aspirations of the Better Business Act and the Future of the Corporation campaign as well as B Corp principles. It is important to us to put purpose before profit, and this necessarily has to be led from the top of the firm. Our partners have signed up to the triple bottom line and actively seek to use the law as a force for good. So, while we look to work with other like-minded organisations, we also want to encourage those who might not ordinarily share our values to be brave and get involved in taking the needs of people and planet into account in their decision making.

In practice this means having a positive approach to your people and their working conditions. It also means:

- putting systems and policies in place to address diversity and inclusion issues to try and make your workplace reflect wider society and provide opportunities for those who might otherwise be unrepresented in your industry;
- thinking about your governance structures and whether your leaders reflect your people;
- limiting your environmental impact and acting on climate change; and
- working to embed positive practices throughout your supply chain and operating in a way that supports your local community.

A purposeful business should be able to report on their actions, support any claims that they make and show transparency and openness in their decision making.

How do you put purpose into practice as a law firm?

As noted above, the mood in the UK is changing and law firms can't stand still but have to keep pace with their clients. As a firm built on a strong set of core values, we have been able to keep our focus and avoid mission drift and this has been massively helped through our certification as a B Corp in 2015. Since then, we have increasingly expanded our reach to other purposeful and responsible businesses because our shared values and aspirations make it easy for us to meet the needs of our clients and it makes sense to address our shared values and challenges together.

Some practical steps to embed purpose

What is your purpose and values?

The first step is always the hardest and the biggest challenge is likely to be doing a deep dive into your organisation to identify what you really stand for and to codify what positive actions you take or want to take to create a more just society and cleaner environment. You may already be clear about this, or you may have a bit of work to do to get there. The key is working as a team across the whole organisation to define and articulate your purpose and values. It won't work if this is a directive from on high or something put together by your marketing team. It needs to be a piece of work that resonates with your people and your ethos, it needs to be true to your team and your organisation and you should think about how to translate it into tangible and measurable actions.

Strategy

Once you have worked out what your purpose and values are, you should start to work out how to operationalise these into your day-to-day work. The first step towards this is to make sure that they are reflected in your strategy across both your practice and operations. You should be open with your people about how your values are reflected in your strategy, what the specific measurable actions are that flow from these and when you expect to meet them. Regular updates and review will keep this work real and relevant to shifting times, expectations and priorities.

Governance

Think about what you can do to make sure that your governance structures, processes and procedures are clearly understood by your people and reflect your values and purpose. Once your people are clear about how you operate you might think about how your governance structure reflects the make-up and aspirations of your people. Do you need to put things in place to make sure that diverse voices across your firm are heard? Think about how you can encourage engagement and educate your people on the key issues that affect your firm.

People

Your people are your best asset. Make sure that they

There is already a clear and growing concern that more needs to be done to address the problems that we face both socially and environmentally.

are treated with respect and fairness; remunerated fairly (at least a living wage); given flexibility to work in a way that supports their family life and external responsibilities; and encouraged to get involved in projects that align with their values across your firm. You likely already have all of these points in place so the next step is to really hear from your people and understand the key issues that matter to them and understand where they think you can do better through staff surveys and listening exercises. You should always respond openly to the responses that they give you. Think about incorporating your values into your staff appraisal process to empower your people to demonstrate how their work aligns with your purpose and values and to encourage a sense of wider community and shared vision across the firm.

Diversity and inclusion

Start to measure and track the makeup of your firm. Benchmark against the general population and your locality. If there are gaps think about how you can address these and communicate with your people to get their input into the key issues that need to be addressed. It is the case that law firms are unlikely to represent the population at large for all sorts of reasons but key issues include social mobility and racial injustice. Think about whether there are opportunities for you to work within your community to address some of the existing barriers. You could use coaching and mentoring to support young people from underrepresented groups to break into the profession. The language and tone

that you use in your recruitment may be unintentionally making your organisation appear inaccessible to the candidates you are looking to attract. Can you use targeted recruitment or work with local schools and youth groups to break down barriers? Are you demonstrating throughout the firm that you are an ally to people that might feel marginalised? If not, how can you?

The good news is that as a professional services firm your carbon footprint is likely to be relatively small.

Environment

The good news is that as a professional services firm your carbon footprint is likely to be relatively small. The first step is to work out what you do operationally and what impact that has on the environment. Once you have the data you can start to make changes that have a positive impact. Simple things to consider include reducing printing and encouraging electronic communication wherever possible; reducing business travel and encouraging low carbon impact modes of travel; getting involved in projects local to your office that support biodiversity and the environment. A key consideration is your real estate. Think about where your electricity comes from, how your heating and cooling is set up and what efficiencies you have in place around lighting and water. Look into recycling and reducing as much as you can and consider re-use before buying new equipment. You may be in a leased office and have limited powers to effect change but, in our experience, expressing your concerns to the landlord and other tenants in the building really helps to encourage change. Once you have put your metaphorical house in order, start to talk to your people about steps they can take to

lessen their environmental impact and invite them to suggest more changes that you might be able to affect.

Community

Work in partnership with your local community to support social inclusion, address issues specific to your locality and share some of your expertise more widely. Using local suppliers including small businesses, social enterprises and purposeful businesses will mean that you are using the power of your purse to positive ends and potentially supporting local community development. Building a procurement and supply chain management system that builds on your values (for instance looking to suppliers to address environmental or social issues) will support you in pushing your aspirations down the line and have a positive ripple effect. Think about other ways you can give back such as through *pro bono* support to local projects, your support for charities and taking active ways to support your local environment.

But what about the lawyers?

As members and leaders of firms, lawyers have a key role to play in effecting and driving the operational changes set out above. But they can also look at strategic ways to effect change. As well as partnering with or volunteering for some of those groups already seeking to make society a better place (the Chancery Lane Project; Blueprint for All; Stonewall) lawyers have the expertise to be able to get involved in strategic activities that challenge the current status quo from drafting changes to legislation to pursuing strategic litigation or developing contract clauses that address social injustice and environmental concerns. Think about who you are acting for and how that aligns with your values. If you feel passionate about an issue, what can you do with the skills and experience you have to make a difference?

Conclusion

As part of the professional services sector, law firms are in a unique position to effect change and their actions can have widespread positive repercussions

beyond their own organisation depending on the actions that they take and the lengths that they are prepared to go to. For us, having taken a series of operational steps to address social and environmental justice, we are now looking to expand our reach further by encouraging our clients to join us on this journey. We have done this by looking at our practice areas and the services that we offer and tying these back to our purpose and values. This means that we are developing service lines that meet the needs of a range of clients looking to have a meaningful positive impact and reduce their

environmental footprint by developing practical solutions that address key challenges through the expertise of our lawyers.

In adopting more purposeful business practices, firms can increasingly seek to influence their clients and the market. The ripple effect of this could mean an exponential shift towards a society that has taken meaningful and progressive steps to address social justice and environmental concerns. With everything that is at stake, this feels like the right time to use the influence of the legal sector to really make a difference.



Angela Monaghan is the purpose and impact manager at Bates Wells.

1 *Butler-Sloss & Ors v The Charity Commission for England and Wales & Anor* [2022] EWHC 974 (Ch) (29 April 2022).

This article ‘Purpose and law firms – a contradiction in terms or the future of the profession?’ by Angela Monaghan is from the July 2022 edition of Modern Lawyer, published by Globe Law and Business. www.globelawandbusiness.com/journals/Modern-Lawyer-Journal



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