

The background of the slide is a photograph of a large crowd of people, mostly men in white shirts, standing in front of a large, classical-style building with many windows and decorative elements. A large white circle is overlaid on the left side of the image.

CENTRE FOR
ETHICS & LAW

A report of the ethical leadership roundtable discussions held in March and April 2016

Part of the Ethical Leadership for In-House Lawyers initiative by the UCL Centre for Ethics and Law

How the roundtable discussions were set-up

- As part of the UCL initiative looking at ethical leadership in the in-house legal sector, in-house lawyers were invited to participate in a series of regional discussions on the subject of ethical leadership.
- The UCL ethical leadership initiative has three elements:
 - A report based on a comprehensive on-line survey of in-house lawyers that was published in June 2016 and which is available via this link: <http://www.ucl.ac.uk/laws/law-ethics/cel-events/ELIHL-survey-report>
 - The roundtable discussions which are described in this report, and
 - A “White Paper” to be published in 2018 setting out recommendations on the theme of ethical leadership.
- The roundtable discussions took place under the Chatham House rule.
- The discussions in each case were facilitated by Paul Gilbert of LBC Wise Counsel. Notes were taken by Paul Gilbert and written up on the same day as the discussion. Professor Richard Moorhead from the Centre attended two of the sessions.
- The participants were all in-house lawyers in senior roles from public, corporate and third sector organisations.
- This report is in two sections. The first is Paul Gilbert’s analysis of the participant’s contributions, the issues they raise and the opportunity for the in-house legal sector to consider ethical leadership with fresh eyes. The second sets out some of the key individual, but unattributed, comments and contributions from each roundtable to give an indication of the tone of vice of each discussion and the specific concerns and observations expressed.
- We acknowledge the generous support of law firms Bevan Brittan and Irwin Mitchell who kindly hosted the meetings.

Where the roundtable meetings were held:

- Sheffield
- Birmingham
- Manchester
- London (x2)
- London
- Leeds
- Bristol
- 59 Lawyers
- 8 events
- 6 cities
- Attended by lawyers from companies, the public sector and charitable sector
- Large teams and small.

Section One:
Key messages and observations
from the roundtable discussions



Section One – 10 key messages and observations

1. Acceptance that this debate on ethical leadership is an important debate, but a reluctance for more regulation.
2. A concern for the well-being of small teams with less resource, especially sole lawyer teams.
3. General acceptance that there is not enough clarity of purpose for in-house lawyers in business environments.
4. Some confusion between ethical conduct in a broad sense and the narrower professional ethics for qualified lawyers.
5. Little or no training undertaken or even discussion on ethical issues.
6. Little or no dialogue with employer businesses on the ethical responsibilities of the lawyer.
7. Some evidence of misunderstanding on the part of the lawyers on the lawyer's professional duties.
8. Some evidence of environments where there is pressure to act in ways that might present ethical dilemmas.
9. An appetite for additional resources around ethical training and leadership that are built for in-house lawyers and contributed to by in-house lawyers.
10. Anecdotal evidence of poor corporate cultures contributing to well-being issues and forcing some lawyers to make different career choices.

1. Acceptance that this debate on ethical leadership is an important debate, but a reluctance for more regulation.

- It is not a surprise that this group of in-house lawyers thought that this debate was important and timely. By its nature this was a self-selecting group, however it is also fair to say that there were dozens more lawyers who expressed an interest in attending the discussions, and in receiving the report.
- No one expressed the view that the issue of ethical leadership for in-house lawyers was overstated or irrelevant; indeed for most participants the issue was a subject that should be debated more.
- There was however no appetite whatsoever for more or different regulation or more regulatory oversight.
- There was a consistent commentary that there was little appetite for imposed solutions from the Law Society and SRA. The evidence for this view might be more “received wisdom” that current reality, but the prevailing view was that in-house lawyers knew the issues best and could work out the appropriate and proportionate solutions needed.
- This did not rule out regulatory style approaches and many participants commented on the need for more clarity, consistency and, above all access to reliable source materials that would guide and provide insight in practical, real and varied situations that the lawyers could relate to in their roles.

2. A concern for the well-being of small teams with less resource, especially sole lawyer teams

- Many in-house lawyers felt that working in a small team, especially as a sole counsel, would be a more vulnerable position to be in than working in a larger team where there would be more resources and peer-to-peer support.
- Some examples were shared of pressure being brought to bear that might compromise ethicality and were from small teams.
- One lawyer described a conversation with a chief executive who suggested that “drivers were not prosecuted for only just exceeding the speed limit” and used this analogy to suggest legal advice was not “commercial” enough. Another lawyer described expressing concern to an executive colleague that something “did not feel right”, to be told that “your feelings do not matter – the question is whether it is illegal or not?”
- However, while it was thought there was more vulnerability working in a small team (especially as a sole counsel) there were also examples of lawyers in larger teams under similar pressure.
- From the anecdotal stories alone it is not possible to draw significant conclusions about the extent and frequency of problems faced by in-house lawyers*; but it is fair to say that many of the lawyers sharing their stories felt undermined in the circumstances they found themselves in.

(*there is some detailed analysis of this issue in the UCL report referenced on slide 2 above)

3. General acceptance that there is not enough clarity of purpose for in-house lawyers in business environments

- This theme emerged in a number of contexts. The role of the in-house lawyer as an accessible and more knowledgeable resource (about the needs of the employer) was very clearly established. Lawyers were also clear about their value as creative problem solvers and innovative solution finders. However some felt that they were a little less adept at describing their role as a check-and-balance within the governance framework for good sustainable business decisions.
- The imperative that they should always be seen to be “commercial” meant there was often a visceral reluctance to even contemplating saying “no” to colleagues.
- It is important to stress that this is a fairly nuanced point, but most felt that it was important for lawyers to articulate a purpose that should be more rounded, better understood and vocalised more.
- Care would always be necessary to ensure the lawyers had not become pedantic blockers, but frankly they were so far from being so that the pendulum could afford to swing a little.
- It was interesting to observe that many in-house lawyers looked for training resources that could help them be more commercial, very few had looked for training on their ethical frameworks.

4. Some confusion between ethical conduct in a broad sense and professional ethics for qualified lawyers

- When lawyers were asked if they could give examples of ethical issues they had faced many typically described transactions or advisory scenarios where they felt they were being asked to find an interpretation of a clause or a rule that was for them too aggressive. Some described a culture that was much faster and looser with interpretation in the face of significant commercial pressures.
- Very few framed their ethical dilemmas in the context of the rules described in the SRA code of conduct.
- When discussing the professional rules of conduct many lawyers felt they knew intuitively what the rules were, but could not then describe them in an detail. It is fair to say that some lawyers were tempted to conflate their own moral judgement with ethical conduct.
- Most lawyers when giving examples of ethical concerns noticeably described how it made them feel. It was clear that when such issues arise they affect people deeply.
- All the discussions were very impressive in terms of the care and professionalism shown by the participants, however it is hard to escape the view that there is not an intimate knowledge of the practical consequences of the SRA code.
- There was an over-reliance on personal judgement calls sometimes carrying a significant personal cost in terms of stress and well-being.

5. Little or no training undertaken or even discussion on ethical issues

- It was very striking that for most in-house lawyers there was no formal training on professional ethical issues after they left their private practice/law firm careers. Although some referenced their work in areas such as a code of conduct for their businesses and specific training mandated by regulation, such as with regard to anti-bribery/corruption legislation.
- However no lawyer could recall any formal training on professional ethical conduct rules in any in-house team they had worked in.
- Only a small number of in-house lawyers felt that ethical issues were discussed even tangentially in team meetings or in personal appraisal/assessment situations. Many felt this could be easily addressed and would take this forward themselves.
- When discussing if the lack of training felt acceptable or appropriate, most lawyers who commented felt that it was something they should address going forward. The need however was for practical, relevant and proportionate resources, not generic or superficial insights

6. Little or no dialogue with employer businesses of the ethical responsibilities of the lawyer

- In-house lawyers expressed the view that there was a self-imposed imperative to fit in and to be seen as part of the business and not separate from it. It was very important for them not to be seen to be in an “ivory tower”. To be successful they should be viewed by colleagues as offering practical, commercial solutions.
- However in doing so there was also an apparent reluctance to discuss their ethical responsibilities or to suggest that there might be duties that extended beyond the contract of employment.
- As further evidence of the down-playing of this part of the role, some lawyers pointed out how their CPD training budgets had been cut and many had come under pressure to give up their practicing certificates.
- There is nothing necessarily untoward in these developments, but it perhaps reveals a certain ambivalence to the requirements of employed qualified and regulated lawyers.
- Where such problems arise it seems appropriate to suggest that more should be done by in-house teams to help employers understand their role and responsibilities with regard to their professional ethical requirements.

7. Some evidence of misunderstanding the lawyer's professional duties

- There was some confusion in the different discussions as to what precisely the code of conduct required and the difference between professional rules and general legal/ethical conduct that might be described in, for example, a businesses code of conduct or staff handbook.
- There was also some commentary that suggested personal misgivings about a product or deal (etc) might be conflated with acting ethically. This was sometimes described as a “smell test”. Intuition is an important factor in exercising ethical judgement, but it perhaps risks an inconsistent approach even within the same team and may be influenced by the biases of the individuals concerned.
- It is of course unfair to draw too much from the point that lawyers do not have much recall of their professional rules of conduct, but given this was a self-selecting group of lawyers predisposed to discuss ethical issues, it seems unlikely that the wider population of in-house lawyers has a much better understanding. Although it is possible that lawyers decided not to attend the discussions because they were entirely confident of their responsibilities.

8. Some evidence of environments where there is pressure to act in ways that might present ethical dilemmas

- It is fair to say that most lawyers felt the need for them to be a champion for ethical conduct in their employer businesses/organisations.
- Some comments suggested some lawyers came under pressure to act in ways that might be seen as uncomfortably close to presenting an ethical issue, or that they had a blind spot to the possibility. For example:
 - A lawyer commented on a chief executive's strong steer not to worry about a regulatory obstacle because the purpose of the proposal was benign and therefore "no-one would challenge"
 - Another lawyer described the daily pressure to help colleagues achieve their trading targets and the attritional impact of those high pressure conversations which tested, often aggressively, the boundaries set by the business.
 - A lawyer described how it was expected that because "no one is prosecuted for only just exceeding the speed limit" there must be commercial advantage in being more commercial about legal boundaries.
 - Finally one lawyer described how they had devised a tax saving scheme, in part to demonstrate their contribution to income generation/cost saving, but had then become the prime advocate for the scheme against resistance from directors who thought it was too risky.
- The examples shared are a few of many comments that noted some testing challenges. What was perhaps more concerning however was not the specific sharp instance of poor business behaviour or a poorly made request, but the attritional impact over time of cost saving and low-priority investment in infrastructure, resources generally (including replacing colleagues who leave) and reduced training budgets etc. All of which places pressure on individuals that may potentially have an adverse impact the ability of lawyers to perform well.

9. An appetite for additional resources that are built for in-house lawyers and contributed to by in-house lawyers

- The consensus emerged quickly that more resources were desirable and needed. Such resources would include authoritative and up to date commentary and training materials.
- The requirements for these additional resources were described variously, but included the following:
 - Relevant thought-leadership
 - Accessible, affordable and not onerous to undertake
 - Designed for in-house teams, not generically for the wider profession
 - Contributed to by in-house lawyers to assure relevance and proportionality
 - Not mandated as a regulatory requirement or auditable
- The need was identified and was expressed to achieve three ambitions
 - Consistency of awareness
 - Key messages to help employers understand the requirements and
 - Support in difficult situations
- No one felt that such resources were available today. If they became available the view from most groups was that they would be welcome and popular.

10. Anecdotal evidence of poor corporate cultures contributing to well-being issues and forcing some lawyers to make different career choices.

- It was felt by many lawyers that they were expected to do “more with less”. There was little new investment in people or infrastructure. Training budgets were under pressure, teams members leaving were not always replaced and sometimes lawyers had to adopt responsibility for new areas of law outside of their expertise without development support.
- While only in a small number of anecdotes did lawyers describe something that was an obvious ethical issue, many felt that the pressure to be “more commercial” in resource strapped environments meant they had less time to do the job they felt was necessary.
- Others described long hours cultures, little or no peer support and a sense of some vulnerability if they were not fitting in with the needs of the business. Examples were given of lawyers leaving roles when the pressure became too intense and where well-being was compromised.
- Many noted for the first time that they now saw this as a potential threat to their ethicality when previously they had only considered it a stress management/career fulfilment issue.
- Many discussions included a commentary that the absence of a forum for discussion contributed to the issue of ethical leadership having a lower profile than was ideal.
- All groups felt it was desirable to have access to more insight, more resources and to be able to understand what other teams did in similar ethical situations.

Section Two: “vox pop” contributions from each roundtable



Vox pop contributions

- The following notes include unattributed verbatim quotes from the different roundtable discussions which illustrate the tone of voice and areas covered in the various conversations.
- We have included these quotes to add colour and detail to the distilled observations set out in Section One of this report.
- The contributions show the variety of opinions and both the breadth and depth of concerns and ideas expressed.
- Above all they help to show how nuanced the issues are and therefore how rushing to simplistic conclusions to apply to all in-house lawyers would be a mistake. Imposed solutions in any event would not be welcomed.
- We would also like to note the spirit of these conversations which were unfailingly generous, thoughtful, thought-provoking , sincere, professional and concerned.
- In all sessions there was no sense of either complacency or thoughtlessness. What was evident however was that the issue of ethical leadership matters to in-house lawyers and they are willing to contribute significantly to the debate on an ongoing basis.

Sheffield 7 March 2016 (5 participants)

What we need is some form of joint employer/employee declaration ...like a Hippocratic oath for in-house lawyers to define ethical roles

The role of the GC is critical to the success of the team in an ethical framework

I called the SRA, it was garbage

Are we shaping values, can we be more joined-up?

The more lawyers in the business the more I worry that the business is broken

We find ourselves increasingly caring about compliance, rather than the stuff we do

My ethical framework comes from my training in a law firm, not from the SRA.

I would like there to be a proper helpline

Demand pressures and overwork can tire my judgement

We have no formal training on ethical issues

I am unclear whether what I am doing is giving my opinion on a question of profession ethics or commercial principles allied to legal responsibilities, or whether I am just working out if I am comfortable, personally, in doing something. I think it might be the latter now I think about it

I think I might sometimes hide behind "independence" rather than confront a situation that I am unhappy about

We need to make time to be more involved in the non-urgent but high priority work. We need to help our businesses see what our role means, not just to see us as people who write contracts...

I can read the SRA principles, but where is the authoritative guidance on what to do?

Birmingham 7 March (4 participants)

We are stripped of taking a strategic view because we are constantly fighting fires

I don't want more formality around my role. I don't want to be put in a box

We do not want to be the ones saying "no" – it is a very powerful driver

Why are we all here?
What is our role?

A regulation that fits all is bound to be anodyne and therefore worthless

We are business partners. It means we cannot say no, but that we find solutions. It sometimes feels like a stick to beat us with...

The in-house sector needs to help itself, to put forward its own ideas.

Our business published a "ding the right thing" guide to help all employees, but the lawyers have nothing of their own in addition

I don't think we frame things to have an ethical challenge. It would feel too confrontational

We should help each other more. More mentoring, more sharing, more networking. No one needs to reinvent, she just need to connect

Words become cosmetic very quickly. Regulation serves the SRA not us

Trying to set out a framework that says we have a different role to play, would be the death of us. We are part of the business, not separate from. I stand firm on ethical issues, we don't need to do more

It is hard to do this job well. However I want maximum freedom to move. I have to be able to react to things and not everything can be anticipated.

Manchester 9 March (3 participants)

In my previous company I was required to just give the legal advice. It was not very rewarding, but at least everyone knew what my role was about!

Sometimes people are so nice and grateful, I wondered if I went too far trying to help them. Perhaps I wasn't firm enough on some boundaries

Personally I would support more guidance and more examples of things to avoid. Case studies, training events etc would be very welcome

Just listening tonight I now see it is critically important to have a well defined role

Not only have I not read the SRA code, I was not aware there was one

I know we have to act with integrity, but part of me wants to know where are the rules on what is and is not integrity

Sometimes you know who is wanting to go too far and you prepare especially well for those meetings. I must be honest though and say it is hard not to be worn down.

I don't expect the SRA to help me, just to point me in the right direction

I believe that in advising on reputational risk I am not acting "ethically". I am simply applying a commercial judgement about what works and doesn't work for the business.

I have been asked whether working in banking meant I felt compromised as a lawyer when our business was shown to have acted badly. Honestly I never felt professionally compromised, but it did jar with my personal values. It is really important therefore to have a space to reflect and think.

I recently advised my business how it could construct a lawful case to avoid paying tax. It was within the rules, but our proposal was designed to show a purpose that was not in fact what the key purpose. It was our board that rejected the proposal. I did not see an ethical issue. I was giving very solid commercial advice

I don't have to take into account protecting little old ladies; if it is lawful and in our commercial interests, ethics is not what I am considering...

London 10 March am (10 participants)

Commerciality is a cop-out for purpose.

What does "ethical" mean. I am not sure I have ever asked the question

I do worry that "shouty" clients can put pressure on junior lawyers. If the culture is to serve, the balance of power may not be right.

I don't think independence is a proxy for not fighting. If it is wrong I say so

We have created a guide to what it means to be an if-house lawyer in XXXX. It isn't rocket science, but we can refer colleagues to it and it offers some support for those tougher conversations

It is just as important to make sure law firms are aligned with the values of the in-house team. I expect law firms to help us and for us to help them

We don't want to let clients down, but then we create helpless clients. If we start making the decisions as a result, we have not just blurred lines, we have crossed them

In the end it is about values. Do you trust the business you work in. The job is nearly impossible if you don't

Big teams and small teams have different issues. I would not want to be a sole in-house lawyer

In larger teams is it possible to designate one colleague to be the go-to ethics expert?

There is not enough focus on personal development in an ethical context. We need more ideas, more resources etc. I would also like a self help group to debate with and refer to. Is that something the review will suggest?

We let it be known that if people have concerns they can speak to me (GC) but we don't say it explicitly. May be we should

When I say "that's a given" I am now doubtful that there is enough clarity of purpose

London 10 March pm (10 participants)

A traditional compliance function has a very clear purpose. It might look bureaucratic or “tick box”, but at least you know what it is doing. Legal has no clear purpose. No one in my business thinks we have an ethical role

Lawyers are not “ethical champions” for the whole business but nor do we think day to day about our professional ethics.

Training should include key behaviours, but made real for us, not Law Firm “lite”

We need three things – training, dialogue and mentoring

This is a very important debate. It is a good time to have it.

If there was a repository of case studies that would be great. Guidance notes are dry – have you seen the SRA code? But practical insight would be helpful.

I have no desire to see more regulation. The principles we have now are enough. It isn't more regulation we need, but more awareness.

If you ask me if I act ethically I would say of course, if you ask me how I would say because I am ethical.

In financial services there are concerns about regulating the he. Already business colleagues are passing the buck to legal. I fear our role will become so much more difficult

I am concerned for sole lawyer teams. We need to support them more.

I have had to resign because of an ethical issue. It was not the business that wanted me to do something I would not do, but my GC. I knew it was wrong, I had no choice. He thought I was not seeing the big picture.

Personally I find the current regulations indigestible. I can read them, I know what they mean as words, I struggle to make them meaningful in terms of actions

London 20 April (9 participants)

Performance management (esp 360) is driving too much commerciality. Are we incentivising the wrong behaviours? Should we not be able to clearly draw a line between understanding the business on the one hand and shaping advice and approaches in ways which compromise independence, on the other...

"We have to be a barometer of common sense"

Some interest in entry expectations for new in-house lawyers or setting up new teams in businesses that have not had a IHL function to be defined if not regulated for

I don't think I would play the "ethics card", but I do refer to reputational risk all the time. Would we really want to damage the reputation of the business for such a short term advantage etc

Colleagues come to us for our judgement rather than for legal advice. They think we weight all things in the balance, more than they can see.

Does LPC content equip lawyers in any way?

There is an absence of interest from audit committee and non-exec directors

As a new recruit I have not found any problem, but I know I have senior colleague around me

Your point about the total lack of induction met an interesting wall of embarrassed silence!

I struggle with this all the time – that I am called up to advise parts of the same organisation, but where their interests conflict.

I would really welcome a 'decision making framework' rather than a set of rules – Rules would not be helpful. Too generic to be useful.

Leeds 21 April (14 participants)

It is a structural weakness if there isn't a lawyer in the boardroom

We all know we have to stand our ground, experience tells you when to act or intervene

There is no material difference between in-house in a company and in-house in a local authority

We have no formal training on ethics

No one wants more vague rules, but clear guiding Principles would be helpful. The Law Society should take more interest, but we need to help ourselves

I really worry for sole lawyers. Should they have something in their contract of employment to offer some protections for them?

The compliance culture is strong in customer facing teams, but internal clients still just tell us what to do and it is harder to resist their demands

We have no formal infrastructure for assessing compliance with ethics

I wonder if we just need one rule – to always act in the client's best interests. Doesn't everything come back to that?

At a certain point when you know the business well it is possible to have a feel for what is right or wrong. The challenge is getting to that point.

The idea we can whistle-blow is fine, but there must be something between disagreeing with colleagues and blowing the whistle on their activity.

I am not against rules. I value professional standards, but unless they work for in-house teams in all their shapes, sizes and sectors, what is the point?

Bristol 26 April (4 participants)

Every time the SRA are notified that a lawyer has been appointed they should write to the board of that company and confirm the ethical responsibilities of the lawyer

Training on professional ethics, as opposed to business ethics, is non-existent, but is that because there isn't a need? We need to be careful to get the balance right

I ask my team routinely if they are coming under unreasonable pressure

Judgement is everything, so I am concerned for younger lawyers, especially on their own

I am about to leave my company. They have decided they can do without me, but the person who will replace me will not know what I know.

We make so many assumptions about what support is available. But is it really available. I think senior in-house lawyers must actively manage ethics

The international nature of many companies, including mine, mean it is impossible to have line of sight across very much. We have to trust the business is doing the right thing

I am now worried I am doing it wrong!

So much depends on culture. We ought to ask more questions at interview

More regulation is not an answer. Clearer or relevant rules would be helpful, but surely we have to write them. What do the SRA know, really?

Every now and then I hear something that worries me. I think about it and I deal with, but I don't think about sharing that experience or wondering about the experience of others.

So, what now?

- This report will be shared with all participants and published more widely as well.
- It is intended to be read as an anecdotal review of conversations that took place. It is therefore a contribution to the debate, not a definitive explanation of need and solutions.
- It should be read along side the far more detailed report published in June 2016 accessible via this link: <http://www.ucl.ac.uk/laws/law-ethics/cel-events/ELIHL-survey-report> which it significantly validates and supports.
- We hope this report of roundtable discussions will present an opportunity for all in-house lawyers to reflect on their roles as ethical leaders and to help them to better position their ethical role within their employer business/organisations.
- In a third report, to be published in 2018, we will make our recommendations in respect of ethical leadership for in-house lawyers which we hope will support the ambition of in-house lawyers to be confident of their obligations and to have access to the proportionate resources and insights that will help them succeed.