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On borrowed time – why long hours are damaging lawyers' health



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Busy lawyers. Ask them over for dinner on a Saturday night and expect an urgent call to interrupt their conversation. Stand next to them on a Sunday morning touchline and watch their iPhones competing for attention with their progeny. Go on holiday with them and experience their regular client updates.

These are more than vignettes. This is the round-the-clock working culture in operation, with no boundary set between work and home as technology and globalisation make modern lawyers continuously accessible.

Such impressions are solidified by a new *Legal Week* survey: from a sample of 267 partners and senior lawyers with more than 10 years' experience in UK commercial law firms, 95% work at weekends while 22% work every weekend.

Working patterns like this have previously been characterised by overburdened young associates in their twenties burning the midnight oil: a torturous rite of passage generating lucrative billable hours and inculcating firm loyalty in equal measure.

Law firms' universal aspiration might be to hire the brightest, but the survey shows that the daily practice of Big Law (and not so Big Law) may be more nakedly Darwinian: survival of the fittest.

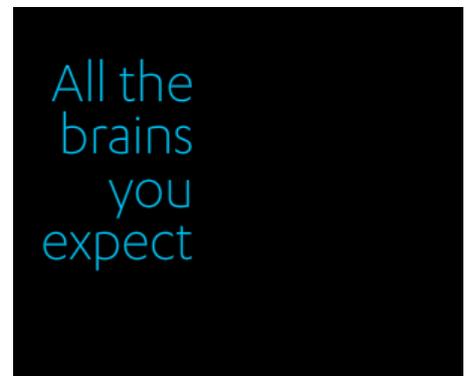
Long hours are guaranteed not just as a trainee or associate, but right through the fruitful years as a partner. "If you want to be a successful lawyer you will need to work long hours," comments one senior lawyer. Amid a clutch of highly charged survey responses, this statement summarises the simple truth of working life in a commercial law firm.

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Few may challenge the premise of this neutral critique yet many question the wisdom, from external experts to lawyers themselves.

In response to the central issue – whether they think their health is being damaged by the stress of long hours – 41% of respondents acknowledge a serious problem, believing they suffer harm 'a great deal' (11%) or 'quite a lot' (30%).

"I'm surprised it's as low as 41%," says psychologist Sir Cary Cooper (pictured, right) of Lancaster University, a key adviser to several prominent institutions. "Those who answered otherwise just don't, or refuse to, recognise the problem."



Indeed, a further 41% accept that their health is being damaged 'a little', with only 16% reporting that long hours have no adverse impact on their health at all and 2% saying that they thrive on them.

The average total weekly hours worked by respondents is 54, six hours more than the maximum stated in the EU Working Time Directive (EWTD) – law firms' derogation from which is analysed by Anthony Fincham, head of employment at CMS Cameron McKenna (see box below).

In itself the 54-hour figure is not so earth-shattering. As a comparator, in a recent survey of teachers by the Association of Teachers & Lecturers, 67% said they work more than 48 hours a week during term time. But recent research also reveals that almost four out of 10 teachers quit within a year of qualifying even though the holidays are long.

Moreover, according to the *Legal Week* survey, respondents' average number of working hours is reduced by those lawyers who work fewer than 40 hours (9%) – some of whom are part-timers. But, at the other end of the spectrum, it will come as no surprise that a similar number (11%) clock up 70 hours or more, while 34% of all respondents work more than 60 hours a week. Every week. And, unlike teaching, holidays are short.

Cynics used to point to casualties as inevitably falling by the wayside – churned over, burned out or turned off – while they carried on regardless. To suggest that some lawyers suffer from undue stress or depression might once have encouraged others to carp: melodramatic tosh or headline-chasing hyperbole.

Not any more. Although the long hours remain, attitudes have changed. That truth is self-evident when talking to law firms: their language is more caring, their thinking more progressive, their HR better developed and their monitoring more acute. Yet when asked about adequate response levels, only 21.5% of survey respondents think that their firm is taking sufficient active steps to help lawyers deal with the impact of long hours, while 57% report that their firm is taking no active steps at all.

So what is being done?

Tackling mental health in the workplace has been a key objective for the big players for several years. For example, Clifford Chance (CC) has implemented a performance optimisation programme to improve resilience and introduced a resilience and wellbeing series of events and initiatives.

The firm also sponsors SANE, a mental health charity, supporting its Black Dog Campaign to reduce the stigma associated with mental ill health. A black dog statue (pictured, below),

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located by the firm's fifth floor restaurant, is used to show CC's support for SANE's campaign.

The right to request flexible working came into force last June with the passing of the Children and Families Act. Since this change in the law, many firms have been working closely with clients to implement an effective, flexible-working policy. Some firms had begun the process earlier: Linklaters formalised its flexible-working policy in 2011 while Slaughter and May began piloting home-working and flexi-working last year.

But despite the public offering of a more enlightened attitude, the inflexible working day and embedded long-hours culture still predominate in many firms.

Things can only get... worse?

Accordingly, survey respondents do not expect their daily reality to change any time soon: 61% anticipate that working hours will remain the same over the next 12 months, 31% expect working hours to increase and only 8% believe they will decrease.

That sustained long working hours are damaging to health is beyond question – as confirmed by an abundance of international research over the last 30 years. "The medical evidence shows very clearly that working long hours is bad for a person's health, from higher rates of depression and anxiety all the way through to coronary heart disease and obesity," explains Clare Bambra, professor of public health geography at Durham University.

One man who regularly sees the effects is Dr Paul Keedwell, consultant psychiatrist at the Nightingale Hospital in central London. "There is a macho culture in commercial law firms – a denial of problems," he argues. "It's a situation that used to be faced by junior doctors: long, unsocial hours; high levels of stress. The biggest danger is depression. The longer that you experience stress, the more likely it is to result in a collapse."



"The long-hours culture is not conducive to help-seeking, and therefore people end up persisting in a state of chronic stress for longer than others might. Those conditions are high risk for depression or burnout."

"If you work long hours, you are more likely to have failed relationships, more likely to divorce, more likely to have an alcohol or a drug problem. All these feed into your suicide risk."

Lawyers are people like everyone else. As the prevalence of mental health disorders is increasingly recognised, nearly a quarter of all British adults experience a diagnosable mental health problem at any given time, according to the Royal College of Psychiatrists. But Keedwell says law firms are "behind the curve" in dealing with the issue compared to the medical profession and even to investment banks.

The argument is developed by Cooper, who highlights lawyers' response to the 48-hour weekly work limit, as defined by the EWTG: "They routinely opt out. They know that if they don't it would totally damage their career."

This too is reflected in the survey: 90% of respondents believe that career development within their firm is affected by a need to be seen to be willing to work long hours 'very much' (34%), 'quite a lot' (35%) or 'a little' (21%).

But this career development comes at a price. "If you consistently work long hours, you will get ill," says Cooper. "It will damage your health. If you work consistently over 48 hours you are likely to get ill – it definitely damages you. It damages your social life, your relationships.

"The hours are penal in commercial law firms. Firms continue to do this because clients demand it: there is a notion that your clients expect you to be there 24/7 because they pay the big bucks."

Presenteeism is everywhere, he adds. "[The requirement to] be prepared to be there early and stay late is integral to the culture. The American corporate law firms are even worse than the English ones. City law firms have been Americanised; American culture has been brought in. We should be rowing back and away from that.

"What law firms do is say: work until eight at night, we will give you a meal. Work until 10 or 11, a chauffeur-driven car will take you home. That just reinforces a long-hours culture. It looks like a nice, friendly thing to do, but it isn't.

"I got a call from a law firm HR director who asked: 'Tell me what you think of nap rooms – a place where they can sleep so they can work late?' He thought that was a benefit. It didn't click that this was not a good idea.

"It's not just long hours, it's unsocial hours, ie weekends. It is damaging in all sorts of ways. Rates of stress, depression and burn-out are very high."

Right to work/life balance

"As a public health researcher, I feel very concerned about this pressure and long-hours culture," says Bamba. "All employees – even young professionals – have a right to a work/life balance and a right to health. I advise law firms to think carefully about burning out their staff and the effects that this has not just on employee health but also on their productivity."

Cooper suggests that problems are often "hidden because people are frightened of letting partners and colleagues know that they are not coping. The senior and managing partners don't understand that their work is being affected by this."

Outside law firms, help is at hand. LawCare, the only organisation of its kind specific to the legal profession, offers a telephone helpline. Its chief executive, Elizabeth Rimmer, explains that most lawyers who call the helpline are stressed by work-related issues and the relentless pressure to perform.

Far more women than men contact LawCare.

"Women exhibit help-seeking behaviour way more than men do," says Rimmer. "Admitting any problem is seen as a sign of weakness. Lawyers find it difficult to take criticism: they have a fear of failure, they have very high expectations of themselves. They get a skew on reality and focus on negatives. The macho culture of long hours is always there."

She believes that LawCare "doesn't have an easy message to sell to commercial firms – that people should have more of a work/life balance – because there's an expectation from clients that they're getting a 24/7 legal service: that's what they're paying for."



She identifies a large commercial law firm with an in-house counselling line where there is little take-up. "Although it's provided by an external provider, their reckoning is that there's an anxiety among the staff that it's not entirely confidential – that the fact they called the line might somehow get reported back to HR."

Concerned about the detrimental effects of long working hours, some firms are taking active steps. "Given the demands placed on people carving out a career in law, we treat this subject very seriously," says David Patient, managing partner at Travers Smith. "The well-being of our people is of paramount importance to us and we are committed to ensuring that work/life balance is actively encouraged and implemented."

In terms of the EWTD, he explains: "As part of our induction programme, our fee earners and support staff are asked to opt-out of the maximum working week regulations, as is standard practice across firms like Travers Smith. However, we do regularly review working hours to ensure that they are sustainable and we provide compulsory rest periods for staff where appropriate."

Like its competitors, Travers offers flexible-working arrangements to staff, which encompass a combination of fixed hours, job sharing and part-time and remote working. The firm has recently set up a listener group to support staff who may be experiencing negative aspects of working under pressure or who have issues in their personal lives.

"Achieving a balance between your work life and personal life is, I believe, key to being both happy and healthy," says Kevin Gold, managing partner of Mishcon de Reya. "Our firm does not actively encourage long working hours. We do not believe that the number of hours spent in the office are a measure of success."

In October 2014 Mishcons launched an agile working programme as part of Mishcon Works, a series of initiatives that seek to support staff throughout their careers. "We are proud to lead the charge in this area and to actively help our people achieve a balance between their work lives and personal lives," Gold continues.

"While the nature of our business does sometimes require our lawyers to work unsociable hours, we are not a workplace that espouses a 'jackets on chairs' culture or encourages long working hours. We also accommodate requests for agile working and facilitate our people to work remotely."

HR directors are often at the forefront of implementing change in working practices. John Lucy, HR director at Berwin Leighton Paisner (BLP), explains: "We monitor working hours very closely and are aware of the associated health risks linked to working long hours. In instances where individuals are working long hours, we provide the support and guidance required to mitigate against any potential damage to health."

At BLP 15% of fee earners are on formal flexible-working arrangements, supplemented by informal flexible-working arrangements (eg working from home one day per week). They are looking to roll this out across the firm.

"We have an opt-out form (relating to the EWTD) as part of our induction," adds Lucy. "In practice few, if any, fee earners come close to triggering the (48 hours a week) number."

For all the noble intentions, fine words and policy initiatives, interviews with busy lawyers still routinely point to a different reality in practice: long working hours are most often determined by client expectations. The point is neatly expressed by a survey respondent: "Clients demand round-the-clock commitment, availability and responsiveness, and if this is not provided the client will go to another firm. It is a factor of a competitive marketplace and firms have limited ability to do anything about it."

As one magic circle partner explains: "My phone is never switched off, and yes I do take calls at three or four in the morning – clients expect you to be available."

Unless and until client expectations are managed differently, long working hours seem set to last. Lawyers will remain very busy.

[Click here to view the results of Legal Week's survey](#)

Lawyers and the 48-hour working week

The findings of the *Legal Week* survey that on average partners in commercial law firms work 54 hours a week come as no surprise. The pressure on chargeable hours in City firms, and most notably US firms, makes it practically impossible for any lawyer to achieve what is asked of him or her without working well in excess of 48 hours every week. For that reason, lawyers will commonly be presented with an opt-out agreement when offered employment. Although anybody who subsequently withdraws from the opt-out has legal protection, such a move would be foolhardy and an ill-advised means of progressing any legal career.



The relevant legislation has a chequered history. The 48-hour week is the corner stone of the European Working Time Directive of 1993, which was introduced against UK opposition by a qualified majority voting on the basis that it was a health and safety measure. The UK, together with Spain and Belgium, brought an unsuccessful challenge arguing that it had nothing to do with health and safety and required unanimity. Workers can choose to opt out of the 48-hour limit for either a fixed term or indefinitely, and they retain an ability to cancel the opt-out on notice without jeopardy to their employment. They enjoy protection from suffering detriment as a consequence, but, in practice, career prospects would not be enhanced.

The current reality is that the Working Time Regulations are a dead letter in many, perhaps most, law firms. For that to change either the law will need to be amended or the work/life balance in the larger commercial firms will need to shift. So far as the former goes, the European Commission is currently reviewing the Working Time Directive and the use of the opt-out, but it is possible that it could go the other way and that a permanent opt-out will be introduced – ie employees having initially opted out would lose the ability to change their minds and thereafter stick to 48 hours. It may be more likely that a change would be brought about through a shift in the work/life balance on which young people entering the profession appear to be increasingly focused. Take a look at Roll on Friday and the ratings of the different firms, which I am told are pored over by those seeking training contracts.

How about partners (and members of LLPs)? The regulations apply to workers, which may mean that, following the recent Supreme Court decision in which a member of Clyde & Co was held to be a worker and therefore able to bring a whistleblowing claim, partners and members are also encompassed.

One curiosity is that clients and prospective clients invariably focus on hourly rates (of course) but rarely on billable hours targets. The latter are surely relevant to the quality of advice and to the approach to the logging of time, which directly impacts on what the client pays.

Anthony Fincham, head of employment, CMS Cameron McKenna

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