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THE RIGHT HON. SIR GEOFFREY VOS

THE LEGAL PROFESSION: ITS THREE MOST PRESSING ISSUES FOR 2022

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Introduction

1. I have entitled this talk “The Legal Profession: its three most pressing issues for 2022”. I should start by making it clear that I am necessarily giving a personal opinion. I cannot deny that others might identify three different most pressing issues without being wrong.
2. In summary, I would identify these issues affecting the legal profession as follows.
3. First, its approach to diversity. I am concerned that, within the legal sector, women and people from different backgrounds are not always made to feel comfortable and included in the working environment.
4. Secondly, I am concerned about a connected issue, namely the legal sector’s ambivalence, or at least somewhat contradictory approach, to the adoption of new technologies. The issues are connected because adopting new technologies can and will improve diversity in the legal sector in ways that are not at the moment adequately understood.
5. The third issue that I believe is most pressing is also connected. It is the need to find ways in which lawyers can add value and, therefore, be properly and appropriately remunerated for work in the brave new world of 2022, without so often following the business practices and methods of the 20th century. This is connected to the issues of diversity and technology, again in ways that are not always fully grasped.

Are women and those from diverse backgrounds made comfortable and included in the legal workplace?

6. For some years, I was Chair of the Social Mobility Foundation, a charity giving talented young people from less privileged backgrounds the opportunity to enter professions. The problem of social mobility, like equality, diversity and inclusion, has proved stubbornly resistant to change across professional life in England and Wales. That is down in some part, if not in large measure, in the legal sector at least, to the problem of inclusion, or perhaps more specifically exclusion.
7. The failure to provide an inclusive working environment is not normally deliberate. Of course, there are rare cases where women or minority ethnic lawyers or lawyers from less privileged backgrounds are deliberately excluded. But a more pervasive problem is, anyway in my opinion, accidental or unthinking exclusion.
8. Lawyers tend to be more upfront than members of some of the other professions; take engineers or chartered accountants as examples. Lawyers tend – and I do not mean to be rude - to like the sound of their own voices. They sometimes, perhaps often, fail to see themselves as others see them. This is problematic for inclusion. It is a characteristic that is particularly prevalent in white men – dare I say it, older white men. Women and people from less privileged backgrounds generally have more caring responsibilities and less time to socialise with colleagues. Minority ethnic communities may face other barriers to socialising amongst colleagues. It is, therefore, all the more important that those otherwise excluded feel included in the social life of their working communities and in incidental conversations whilst they are at their place of work. Making an effort to include everyone should be an active choice for all of us.
9. If white male lawyers are regularly talking about subjects that do not interest women or ethnic minority lawyers and those from less privileged backgrounds, they will inevitably feel excluded. It is difficult to generalise about what topics might make particular groups feel excluded. But women are often less interested than men in sport. Talk about elite schools and universities is likely to make those that did not have the opportunity to attend them uncomfortable.
10. Subtle factors are very important to attracting, and particularly retaining, diverse lawyers in the profession. I know that it is easier to state the problem than to solve it. But I think that explaining this issue to everyone in a peculiarly exclusive profession, like the law, from the top to the bottom, would do a lot towards improving the position. Many simply do not realise that exclusion is going on. There is a similar issue in the judiciary, where judges in regional courts and elsewhere often have lunch and take other breaks together. If the conversation is exclusively about Oxford, cricket and

the latest operatic production at Covent Garden, it will exclude judges from backgrounds where none of those things is of interest.

11. The issue I have described is obviously not the only diversity problem we face – the incidence of bullying, harassment and discrimination is less rare than many in the profession may have thought. But I think that the micro aggressions that are reflective of a lack of inclusive behaviours are something we all need specifically to address. Like so many problems, understanding the problem is the first step towards a solution.
12. One positive observation on this first point: the great development that I have observed recently in local courts round the country is the phenomenon of the younger and more diverse judges starting to set the agenda in judges' common rooms. Hopefully this is a trend that will start to snowball. My plea is for more to be done to train everyone in the legal sector in inclusion, and to work towards eliminating the inconsiderate behaviours of yesteryear.
13. If any of us is going to spend 20, 30 or 40 years in a single profession, we want to feel included and part of the scene. As I say, there is a real role for diversity training here. Only when I received it some 30 years ago did I realise how crucial it was. It is widely available but less widely taken up where it is most needed.

Ambivalence to technology

14. There are probably as many different attitudes and approaches to the use of technology, as there are people within the legal sector.
15. Lawyers very rarely openly dismiss technology. Many quietly hope that they will be able to retire before it affects the way they themselves practice. But, even that cohort would not openly dismiss technology. Proper legal luddites operate only behind firmly closed doors. Instead, they do something, which I regard as more insidious. They find ways to argue that their particular corner of legal practice cannot be improved, streamlined or, heaven forbid, be made more cheaply available to the public or business, by the use of technology. This is, of course, almost always wrong.
16. Secondly, some, perhaps many, even most, lawyers accept that technology can assist with the repetitive tasks undertaken in probate, in transactional business, in commercial litigation, in personal injury cases and in every other kind of legal business. But they do not consider or even contemplate that technology is not just about how lawyers dispense legal advice or undertake legal transactions, technology will affect the very substance of the work they are being called upon to do. Cases will be different in the future; transactions will be different in the future; and lawyers will, therefore, need to think differently and be trained differently in the future.

17. There are easy generic examples of this. Even now cases and transactions are complicated by the volume of data available. That is data that would never have been available in a bygone age. In crime, for example, there are massive volumes of CCTV footage, texts and mobile phone metadata produced in so many cases: likewise, in many family and some personal injury cases. In commercial cases, the volume of material considered for disclosure grows with every innovation or new communication medium.
18. In almost every kind of case, it will prove neither feasible nor desirable simply to continue expanding the volume of data that needs to be considered before legal decisions can be taken without fundamentally reconsidering the process upon which we are engaged.
19. I have spent my entire professional career trying to simplify the issues that are required to be decided within the litigation environment. Unfortunately, however, ever expanding data sources, tend to make those issues more extensive and often less approachable. We must, therefore, use technology to restore the balance. We cannot put the data genie back in the bottle and simply reduce the amount of data that is available.
20. I think every litigation lawyer's primary objectives should be simplicity and intelligibility. They should regard it as their essential duty to simplify the problem so that it can be easily and quickly digested by the client, by the witnesses and ultimately by the court.
21. There are also, of course, lawyers that love technology. There are those that embrace every new gadget, widget or programme. Even they are not, however, always doing their clients any favours. Technology is of no value for technology's sake. It is only of value if it makes the legal problems faced by real people and real businesses easier and cheaper to understand and to resolve.
22. I firmly believe that adoption of new technologies can and will improve equality, diversity and inclusion in the legal sector. This first requires an acceptance that technology is here to stay and that the legal sector is not exempt from its ravages.
23. First, the digital justice system will be accessible from any location at any time and decision-making within the digital justice system will be capable of being asynchronous.
24. Secondly, of course, Covid has accelerated the use of video conferencing technology it already reduces some cost in delivering legal advice and makes many types of court hearings less costly and more easily accessible.

25. Thirdly and more generally, “working from home” became necessarily popular during Covid and is here to stay. Of course, I acknowledge the value, indeed the necessity, of attending the office and of face-to-face court hearings in some types of case or for some of the time, but technology allows lawyers to operate remotely.
26. All three of these examples which diversify how we work will also allow people from all walks of life to remain or become lawyers when they might otherwise be unable to do so. Remote, more flexible and more accessible working patterns allow more women and more ethnic minority lawyers, in fact any and all of those with other demands on their time, to combine this with their professional practice.
27. Lawyers should, therefore, be the very last people to resist the use and adoption of new technologies. They provide the flexibility in working practices that has been lacking in generations past.
28. Perhaps even more importantly, the massive acceleration in the availability and use of data in all parts of our lives and the ubiquitous use of distributed ledger technology will also revolutionise the kind of work that lawyers will be doing.
29. Once every event in every industry is indelibly recorded on-chain, there will be far less room for the kinds of factual dispute that lawyers are accustomed to dealing with. The causes of road traffic accidents could be photographed and recorded on-chain and would not need to be determined by judges. Transactional data relating to both businesses and consumers will be permanently available. It will be the processing of that data that will be important, not determining what actually happened in the first place. It is these changes that give rise to the third pressing problem that I am now going to address.

What should lawyers actually be doing in a technological environment?

30. I do not think it is controversial to say that lawyers tend to be rather conservative about their work. If they have once become specialised in a particular area of law, they are keen to preserve that expertise and the flow of instructions within it. But rapidly advancing technology has the tendency to change what clients actually need from lawyers, and without being indelicate, lawyers are often the last to let go of outdated practices.
31. In my view, at least, the watchwords of all legal services should be that they provide a service that clients need and that that service adds value for the client and is not simply part of a process that technology could quite easily perform without input from trained lawyers.

32. Let us take the example of transactional work undertaken for business clients. Lawyers have for many years now been conducting a love affair with Microsoft Word. But Word is not smart in any meaningful sense. Every time a lawyer starts to create a new transactional document using Word, whether it is a share purchase agreement or a conveyancing document or an employment contract, all they have is a template. It is now perfectly possible to use smart programming to create any kind of transactional documentation electronically by simply filling in the fields that are required leaving the basic form to be created by the machine. These systems have massive added advantages over word processing in that they give the client and the lawyer access to transactional data relating to everything that the client (or indeed the firm) have done at the click of a mouse.
33. The second example relates to probate and conveyancing. I have been struck by how little those processes have changed in 50 years. Both conveyancing and probate could benefit from a massive digitisation programme.
34. My third example relates to personal injury litigation, where the RTA and other portals have had a salutary effect on the process. The argument last week in *Belsner v Cam Legal Services* has shone a spotlight on how technology can assist. Much of the process of making RTA claims through the pre-action online portals could be more streamlined and less costly if the technology were embraced.
35. Digital processes allow for home working, remote working and asynchronous activity, allowing diverse lawyers to remain in the profession, notwithstanding burdensome family and caring commitments. Let's hope that this lesson will soon be learnt.

Conclusions

36. Equality, diversity and inclusion, like social mobility, is sometimes regarded as too big a problem to do anything about. I do not accept that that is so. If we do nothing, nothing will improve.
37. First, we can move towards a digital justice system where much more of the work is done online and can be undertaken from home and at times that better suit the lives of those with other responsibilities.
38. Secondly, we can and must train all lawyers and judges at all levels to understand better the principles of inclusion, of making themselves fully aware of how they are seen by others, and of making people of all kinds and from all backgrounds feel comfortable and on an equal footing in the workplace.
39. There are many more steps we can and should take. But I would sound one word of warning. It is important to take the entire community – in this case of lawyers and

judges – with you on the journey. Like so many problems affecting humanity, the solution is education, not shouting.

40. Thank you