
Pioneers, purpose and profit – towards a more sustainable law firm business model

In conversation
with Dan Kayne,
Sara Carnegie and
Alastair Morrison

Framing the discussion

What does ‘purpose’ mean in the context of a law firm? Historically, it has been conceptualised as a sense of perpetuity – the idea of bequeathing the firm to the next generation of partners stronger than it is today. With some notable exceptions, who are leading the way on law firm sustainability, purpose in a law firm is still closely linked to looking after your own.

In the corporate world, things have moved on. Just as culture and digitisation have been high on the corporate boardroom agenda in recent years, so has corporate purpose. With investors ever more focused on environmental, social and governance (ESG) considerations, corporations have been compelled actively to examine and reframe their purpose for a digital age. It used to be accepted that maximising shareholder profit was the main objective of the corporate CEO.¹ In 2019, the CEOs of 184 of the largest US corporations (including Amazon and Apple) made a joint statement as part of the lobbying group the Business Roundtable (BRT), on the purpose of a corporation. The BRT statement set a new standard for corporate responsibility, with a definition of corporate purpose that considers not just the shareholders of the corporation, but all the company’s stakeholders.

What has driven corporations towards this fundamental change? The reasons are complex, tied to a global cultural shift of consciousness on macro issues like climate change and diversity, equity and inclusion (DE&I). As you might expect, it is not only about altruism – corporations have been compelled to look inwards for reasons other than their conscience:

- *The accessibility of information in a digital age.* Information has never been easier to find, and to share, globally and at lightning speed. This makes it harder for corporations to cover up bad behaviours and easier to hold them to account. Social media has given individuals a platform to band together and call out hypocrisy. Digitisation forces corporations to care about wider stakeholders – not because the corporate world has suddenly found its conscience, but because individual stakeholders have much more power than was historically the case.
- *The employment proposition.* There is no doubt that having a developed, authentic and

clearly articulated corporate purpose improves an organisation’s employment proposition. It also helps with retention; according to research undertaken by PWC, millennials who feel strongly connected to the purpose of the organisation in which they work are 5.3 times more likely to stay.²

- *The bottom line.* Having a purpose with which your customers can connect creates brand loyalty and can positively impact financial returns.

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What has been the law firm response to this fundamental shift in client focus? A Google search for ‘ESG legal’ shows that almost all of the large corporate law firms have an ESG offering, advising clients on issues ranging from sustainable finance to environmental liability, business and human rights, climate change, governance and corporate responsibility. Most law firms make reference to their own ESG activities in the context of their offer. Many have statements of purpose on their websites. Recently, we have seen certain law firms take what might be considered a ‘purposeful’ stance, in the context of the Russian invasion of Ukraine and the US Supreme Court’s overturning of the decision in *Roe v Wade*. This is of course encouraging – but it is difficult for clients and other stakeholders to assess how genuinely committed law firms are to complying with their own stated values. Is it simply a PR exercise? How many law firms have invested serious time in considering how the purpose of the law firm might need to be reframed to create a more sustainable business model for the future?

The participants

Three creative and radical thinkers joined Isabel Parker, Editor of *Modern Lawyer*, for a conversation around the question of law firm purpose – what it is, what it could be, why it matters and how law firms should approach it. Dan Kayne, founder of the O Shaped Lawyer; Sara Carnegie, director of legal projects, International Bar Association; and Alastair Morrison, partner and head of client strategy, Pinsent Masons.

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Each of *Modern Lawyer*'s three guests has a different perspective. Dan, formerly the general counsel at Network Rail, is a reformer and something of a maverick. He is best known as the charismatic founder of the O Shaped Lawyer, a purpose-led initiative that focuses on the skills lawyers need to create a more human and customer-focused legal ecosystem. The O Shaped Lawyer, Dan's mission and passion, is now also his full-time job. Sara is a deep strategic thinker and pragmatic problem solver. A criminal barrister by training, Sara has held a number of high-profile roles in the public sector, in government and the judiciary, including as director of strategic policy for the Crown Prosecution Service. As director of legal projects at the IBA, Sara's focus is on the rule of law, human rights and safeguarding the interests of the global legal profession. The third of the trio is Alastair, who joined Pinsent Masons as a partner 24 years ago, and is now a board member and head of client strategy. On paper, Alastair is the very model of an elite law firm partner, ready to reap the rewards of a long career in a traditional law firm partnership. Yet Alastair is a progressive thinker and

change maker. In 2019, he was joint winner of the FT Most Innovative Lawyer in Europe award, and he has been at the centre of Pinsent Mason's work on purpose and values.

Alastair kicked off the conversation by telling us what that work involved.

The discussion

Alastair: The work to define Pinsent Mason's purpose started with a conversation about legacy – as tenants of the firm, how could we, as partners, leave the business in a better condition after we had gone? We soon concluded that we needed to think about this exercise in a different way, and to take an approach similar to that taken by many of our corporate clients. We needed to understand the essence of our existence as a law firm. We embarked on a huge internal exercise, looking at over 2000 data points, drawn from our people right across the firm. We used these datapoints to test our firm values, to be sure that they held up (the values are summed up in three simple adjectives: 'approachable, bold, connected'). From those datapoints we then derived a code – or a firm DNA, if you like – taking the common denominators of what we had heard from our people to distil the essence of the firm. We then built on that to define what our purpose really is. It was a very focused internal exercise. Clients were not directly involved, although we did take soundings from clients about how they were approaching purpose within their own organisations. We also had help from an external adviser, Lisa MacCallum (founder of Inspired Companies, who has advised a number of corporates on purpose). What we needed first, however, before going into detailed client-led discussions, was a very thorough internal exercise to understand the essence of who we are as a firm.

Sara: It's interesting to hear how you approached that exercise, Alastair. The question of ethics and purpose is a challenging one for law firms. We need to ask ourselves whether the profession has lost touch with its ethical foundations. Have we resorted to chasing profit at the expense of ethics? Lawyers have a tendency to hide behind core legal principles (referencing the rule of law, the right to

representation and using statements like “don’t associate us with the activities of our clients”) in order to avoid difficult ethical questions and to exempt them from taking positive action to address the question of purpose. Of course, there are law firms taking positive steps: for example, the war in Ukraine has led some firms to re-evaluate how and where they operate. We have also seen some progress in the context of climate change – Clifford Chance recently announced a policy that will require the firm to assess environmental impact as part of its client mandate acceptance process.³ There are other law firm initiatives underway under the auspices of ESG, but at times they appear to be a knee-jerk reaction to negative PR or potential window-dressing.

The IBA has just launched a project which will consider, among other things, what purpose means within the context of ethical decision making and client mandate selection. We have convened a group of experts from across the legal ecosystem, including some partners from big global law firms, to discuss these issues. We are already seeing a consensus from that group that the profession – law firms in particular – needs to modernise its approach to issues of purpose (in addition to considering how we approach difficult ethical considerations). We have also identified a need to better define the role of lawyers.

The profession needs to find a balance between purpose and profitability. The question is, what is the right lever for this? Does it require enhanced regulation? Or can it be achieved through an evolution, using a ‘nudge theory’ approach? Does it require improved dialogue with civil society and stakeholders, or do we need to craft modernised commentary on the IBA International Principles on Conduct for the Legal Profession? Or a combination of some or all of these?

An interesting parallel can be found in the journey that many corporates have gone on in relation to the UN Guiding Principles on Business and Human Rights.⁴ The principles are a soft law framework, which is gradually morphing into hard law in some jurisdictions, and which will continue to be hardened through the introduction of the EU Directive on Mandatory Human Rights Due Diligence. The core values set out in the principles

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have helped to shift the corporate mindset and to influence the way corporate boards are operating. I wonder whether we could take a similar approach with law firms, gradually influencing the mindset without immediately defaulting to law or regulation. The prospect of increased regulation can induce anxiety in law firms, causing them to push back and resist thinking about important ethical questions. We need to deconstruct the obstacles that are put up by law firms and to change the mindset in the same way that business has been doing, allowing market forces to drive the change. That’s where we come back to clients. Clients are critical to this effort.

Dan: I agree. Law firms urgently need to take action to reframe their purpose. I don’t underestimate how challenging this is for law firms. Many of the leaders I talk to in the corporate world joined an organisation because they believe in what that business is doing and they care about the product that the organisation is delivering. Lawyers that go in-house have the opportunity to choose an organisation with a clear purpose with which that lawyer identifies. When I was recruiting my team at Network Rail, alignment with purpose was a key consideration for me. I would assess whether a candidate was truly motivated to help us deliver against our purpose and vision. This is much more difficult to do in the professional services environment.

We need to get back to the core principles of the profession. When you ask most people why they enter the legal profession, they will tell you that they want to make a difference. Yet if you were to ask 100

GCs what they think the purpose of a law firm is, I imagine most of them would say “to make money”. This is a genuine issue for recruitment and retention – how can we attract people who are focused on more than just financial gain into law firms? Certainly, we are seeing that the younger generation wants something more – they want to be associated with an organisation that is doing good. Often, however, law firms are accepting talented and capable people into the profession who want to make a difference, but not enabling them to accomplish this.

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Corporate statements of purpose are about who the corporation serves. If you type in ‘law firm purpose’ to Google, the search results are all about the firms and what they are good at. That is a massive difference.

Alastair: There is a difference between the mission of a corporation and a law firm. Our mission at Pinsent Masons is about making business work better for people and society. But instead of looking at individual law firm examples, we should consider

this more holistically, taking corporate law as a category of its own. I believe that Big Law should be exploring its purposeful obligations, defining what those obligations look like and what its societal contribution should be. Big Law firms are now very close to a corporate model, not least because of the size of the firms – and this means that they have a heightened responsibility. This has been brought into relief during the Russian invasion of Ukraine. There is grey area work that law firms could do – it is not illegal, or sanctioned – but when that work is looked at through the lens of purpose, they have decided not to do it, for the right reasons. Some law firms have turned down some very lucrative work on that basis.

It’s not just about simply refusing to act for certain clients. The approach can be more nuanced than that. For example, in the context of climate change, we are not going to refuse to act for an oil major only because of the sector they represent. We would, however, look at and consider that client’s energy transition plans. We would also, applying the lens of our purpose, offer to help that client to achieve outcomes that are both good for the client and aligned to our own values.

We do need to consider the relationship between profitability and sustainability. Most law firms report their financial results on the basis of profit per equity partner. This should not be the only measure of sustainability. It drives the wrong behaviours and, frankly, breeds competitive insecurities. There is the opportunity here for what Sara referred to as a ‘nudge’ approach. If law firms were to report not only on their finances but also on other metrics, such as talent retention, progress on climate obligations and mental well-being, this would encourage law firms to come together and work towards a more sustainable business model.

Isabel: There is a link between being a sustainable, purpose-driven business and being a profitable one. Having a purpose with which your customers can connect creates brand loyalty and can positively impact financial returns. For example, in 2019, Unilever announced that its ‘sustainable living’ brands, which it defines as “those that communicate a strong environmental or social purpose, with products that contribute to achieving the company’s

ambition of halving its environmental footprint and increasing its positive social impact” were growing 69% faster than the rest of the business and delivering 75% of the company’s growth. If a law firm is aiming to be a long-term business partner for its clients, it needs to be able to attract the right people, to demonstrate the right values, to show that it is sustainable over the longer term and has made the right decisions about the clients and matters it takes on.

Alastair: For us, greater profitability was not the aim of the purpose work that we undertook, but it was an expected outcome. A component part of sustainability is healthy profitability. Pinsents does not seek to compete only on money; it aims to attract and retain people who want to work in a firm that is purpose driven. This is one way to hard-wire longer-term sustainability into the DNA of the firm and to remain attractive to people coming into the profession.

Sara: In my experience, law firms are certainly making the right noises – but whether that translates into action is a different question. That’s why metrics are so important – they are the only way truly to road test whether law firms are actually doing what they say they are. There needs to be greater transparency around metrics, to enable clients and other stakeholders to test law firm statements of purpose and sustainability. Those transparency requirements should be external, they cannot simply be part of individual law firms’ internal policies.

Another key question is who should validate whether law firm’s assertions about their sustainability are genuinely being complied with, so that any action equivalent to ‘greenwashing’ can be exposed? One option, of course, is to regulate, and for regulators to impose sanctions on firms found to be ‘purpose-washing’. This would certainly bring greater consistency. We are beginning to see the Solicitors Regulation Authority move into new areas of regulation such as mental well-being and issues of law firm culture. Ultimately, I suspect that this kind of regulation will be necessary to drive a consistency of approach and wholesale industry change, but this is not straightforward when looking at global change and impact. Regulation can be fragmented and in itself is not the answer. There needs to be a combination of efforts to drive the right behaviours

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including regulators, clients and bar associations. Bars are critical to the success of what we are trying to achieve, there is no doubt about that.

Dan: Sustainability is about creating a business model that will be successful over the long term. Legal services, and law firms in particular, can be very short-termist. This is partly a function of the partnership model, which gives law firm leaders a very small window to effect lasting change. Often that window is used to drive greater profitability rather than sustainability. One of the things I identified early with the O Shaped Lawyer is that we view the legal industry as a series of islands. Legal education is in one camp, law firms are in another, corporate legal departments are in a third. But legal services is a system, an ecosystem with interconnecting parts. To drive change requires systems thinking and collaboration across that ecosystem. For example, clients play an incredibly important role when it comes to driving change on the ground. There have been positive initiatives such as the Mindful Business Charter – but it doesn’t always translate to values that are lived.

Sustainable business should be all about your people. If you invest in your people, you will create a high-performing environment. A high-performing environment will be valued by clients and ultimately deliver higher revenues. Firms which recognise that sustainability and purpose lead to higher profits will be the ones that win out. But that is a long play – and this is where the short-termism of law firms can be problematic.

Alastair: We should try not to be too negative. If we were to turn the clock back 10 years and compare to where we are now, we would see that significant progress has been made. The conversations we are having as an industry around mental health, DE&I and climate change are of a high quality – and this is an indication that Big Law is following the corporate model and is taking these principles seriously. On the question of short-termism, having a defined purpose certainly helps a firm to make the right decisions for the long term. At Pinsents, we genuinely don't have challenging discussions about the investments we need to make for long-term sustainability and how they will impact short-term profit. Obviously, every firm needs to stay solvent and financially healthy, but having a clear purpose helps to move people out of the short-term mindset

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and into longer-term thinking. Ultimately, the evidence of success comes from clients. We are a long-term, relationship-driven firm, and we have been appointed onto some really big panels, partly because of what we stand for. Firms that are less relationship-driven, that are more transactional in their business models, would perhaps take a different view on the importance of purpose.

Dan: But even some of the transactional firms, the 'deal machines', have statements on their websites about well-being, may even have a sustainability director, and will talk about their approach to DE&I and climate change. The problem is that people just don't believe it. This impacts the relationship-driven firms that are genuinely approaching sustainability

seriously. They may be tarnished by association, and perceived to fall into the same category as those firms that are not genuinely committed, unless they make a clear stand and evidence how they are working differently. And there are very few firms really evidencing that at the moment.

Sara: At the IBA we are initiating genuine collective action in the form of a large Chatham House-style roundtable on the ethics questions. We want to see if there is a way to do more, collectively, without resorting to the 'stick' of regulation. It feels as though everyone is nervous about making the first move and committing to genuine action. I do fear that there is a level of protectiveness that surrounds leaders of large law firms which may be difficult to penetrate. But at the same time, I think it is essential that we try to get to an agreed position and to reach consensus. Alastair, do you think a collective gathering can be meaningful or fruitful?

Alastair: I think we should go back to your 'nudge' comment earlier – what does the 'nudge' look like here? If you look at the legal media, somehow they flushed out PEP as the indicator of law firm health, profitability and vitality. When we put out our financial reports, we also share our other metrics around sustainability, diversity and climate change. Yet they don't get picked up – the legal press is only interested in the financials. Perhaps a 'nudge' could come from the legal media. The media can be a powerful force for change. FT Innovative Lawyers, for example, has definitely driven innovation in the legal profession (perhaps through preying on the competitive insecurity of lawyers and their obsession with league tables!). But it has resulted in positive change. This kind of external driver might take us beyond profit as the sole benchmark, and the associated unhealthy behaviours.

Dan: I agree that external drivers are critical to drive progress. I don't think that we have sufficient time to wait for regulation to catch up. We need collective effort to move things forward, with law firms demonstrating real leadership. With the O Shaped Lawyer, we are looking to form partnerships with firms that truly want to reframe their purpose and become more sustainable, and who are prepared to

try to overcome some of the systemic barriers that we have talked about. We are also pushing to unite the law firm, in-house and legal education communities so that we have all parts of the ecosystem working together. That will take time – but I believe this is the only way. Regulation will be too slow and, frankly, law firms are sophisticated enough to find a way around it. Clients have a role to play – but relying solely on clients to drive the change has its limitations. Some of the client requirements around DE&I, although well intentioned, were unhelpful and resulted in tokenism on the part of law firms. I am confident that we will find a core group that want to effect change and do things differently. There is already a large number on the client side, but we need to identify more law firms that are brave enough to collaborate with others in the industry, viewing each other as worthy rivals rather than as competitors. We need to find the pioneers, like Pinsent Masons, who will inspire others to do something different.

Sara: I agree that we need to identify pioneers in this space. At the IBA, we have been speaking to Jeff Twentyman (head of sustainability at Slaughter & May), who has been bravely and publicly speaking out on issues of ethics and purpose. He has been working with Professor Steven Vaughan (professor of law and professional ethics at UCL). Both are part of the group that is exploring these issues with the IBA. But they are in the minority – and are already converted. The question is, how do we reach the majority of law firm partners who are not there yet? There is an ‘old school’ approach that still persists in certain firms, where sustainability and purpose is looked at as an indulgence and younger lawyers are expected to work in precisely the same way as the partners always have, and not to seek to change the status quo. We also need to engage effectively with bars – without them there is no product or possibility of wider change.

We do need to be careful, however; there is a tendency for the debate to be dominated by a US/UK cultural bias that does not hold true across the globe. If you look at this issue on a global scale (as we do at the IBA), in parts of Africa, the Middle East and Asia, issues such as ethics, purpose, sustainability and mental well-being do not always resonate with

lawyers whose lived experience may differ considerably. Finding that universal approach to these questions is one of the biggest challenges in our project work.

We should also be aware of the hypocrisy of law firms withdrawing from Russia while still operating in other problematic jurisdictions which perpetrate human rights abuses.

Alastair: I agree, the global issue is a challenge. Currently, one-third of the world lives under democracies that actively oppose Russia’s invasion of Ukraine; one-third is neutral; and the remaining third is either covertly or overtly supporting Russia. If you think of all the lawyers in these different countries, it becomes very difficult to tackle the issue on a global basis, meaning that the capacity for collective action is somewhat limited.

Sara: We should also be aware of the hypocrisy of law firms withdrawing from Russia while still operating in other problematic jurisdictions which perpetrate human rights abuses. Where should the line be drawn? This is why we need a more consistent approach to ethics, starting with genuine leadership from the Big Law firms (which others will follow). This could crystallise over time into requirements or regulation tailored for different jurisdictions.

We also have considerable work to do to rebuild the profession’s reputation in the public arena, particularly following the Russian invasion of Ukraine. There is, in some quarters, a perception that the legal system has enabled some of the kleptocracy and corruption that has led to a power imbalance – and helped to fund a war machine. As a profession, we have to be aware of this reputational damage and think collectively about how we can address it.

Isabel: Thank you all for joining us and sharing your thoughts. This was a really rich discussion, and a

compelling call to arms for law firms proactively to show leadership.

Please join the debate: we would love to hear feedback on these issues and welcome your ideas on how to drive effective collective action on ethics, purpose and sustainability. Contact isabel@globelawandbusiness.com.

Questions likely to form part of the IBA's consultation on examining the role of lawyers as ethical gatekeepers include:

- What sort of ethical choices and challenges are lawyers faced with daily?
- Is existing ethical guidance fit for the new challenges facing the profession in the 21st century?
- How can lawyers respond effectively to a changing shift in priority towards broader social concerns and considerations, noting

the extensive work undertaken over the last decade to build on the UN Guiding Principles on Business and Human Rights and the IBA's support of this framework?

- Can a sensible and cohesive position be reached on these issues given the varying political and cultural constraints and influences that exist in different jurisdictions?
- What is going wrong with the present conversation on these issues?
- How can lawyers better engage with outside entities that are in some cases attacking the profession and its principles?
- Can a truly global response even be achieved?⁵



Dan Kayne is founder of the O Shaped Lawyer, an initiative he set up in 2019 with the mission of making the legal profession better for those who are in it, those who use it and those who are entering it. Dan has previously been widely recognised as a forward thinking, progressive general counsel with a focus on putting people at the heart of the profession.



Alastair Morrison is a partner and a long-standing board member at Pinsent Masons. He is the head of client strategy, responsible for clients and markets strategy. Alastair has over 35 years' experience in the legal sector where his work now involves developing innovative solutions and collaborations.



Sara Carnegie is the director of legal projects at the International Bar Association. Sara is an employed barrister with 25 years' experience in government and the justice system in England & Wales.

- 1 As set out by the US economist Milton Friedman in his 1970 *New York Times* essay, "The Social Responsibility of Business is to Increase its Profits". Available at: www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html.
- 2 PWC, "Putting Purpose to Work: A study of purpose in the workplace". Available at: www.pwc.com/us/en/about-us/corporate-responsibility/assets/pwc-putting-purpose-to-work-purpose-survey-report.pdf.

- 3 www.ibanet.org/Climate-crisis-Law-firms-can-have-major-impact-through-client-work.
- 4 www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- 5 www.ibanet.org/IBA-launches-new-project-examining-the-role-of-lawyers-as-ethical-gatekeepers.