

The future of the legal services

Emerging thinking

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Foreword

The Legal Services Board was created by the Legal Services Act 2007 as an independent regulator with oversight responsibility for the regulation of the legal services sector. Implementation of the Act signals a major change in the scope, style and ambition of the regulation of legal services. Our role is clear: to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justices across England and Wales. We will continue to press for the removal of barriers to new business models to ensure that market innovations deliver services and access to justice in ways that are innovative and offer best value for money to all. We are not alone in delivering this agenda: many of those whom we have met and have spoken to embrace the new opportunities that lie ahead and will be playing their part in reforming the delivery of legal services. However, we must ensure that the changes that we and our partner approved regulators introduce deliver tangible benefits for the public as consumers and citizens.

We are committed to evidence and soundly argued policy justification as the foundation for all changes we seek to introduce in legal services and to strengthening the links between academia, legal practice and activity in the market place to help develop that evidence base. To help us understand the variety of challenges facing legal services, we asked a series of practitioners, academics and commentators to write about different aspect of change in the provision of legal services. This publication brings together these articles highlighting the wide range of opportunities and challenges facing those providing or looking to provide legal services. We are publishing these papers as we want to encourage frank and open debate about the future of legal services.

Much of the external focus on the work of the LSB has been on our role in championing outcomes (or risk) based regulation and introducing Alternative Business Structures (ABS). The first two articles in this collection bring together the views of Julia Black from London School of Economics who analyses some of the benefits and risks of risk based regulation and Tony Williams from Jomati Consultants LLP looking at how law firms might be able to access capital following the introduction of ABS. These are two significant changes in the regulation of legal

services, but we should not ignore the ever present business challenges that legal firms face regardless of regulatory change.

External pressures on law firms are significant and will change legal firms regardless, whether through globalisation (considered by Mari Sako from Said Business School); changes to the provision of legal aid (Carolyn Regan) or moves to outsource legal services (Orijit Das of Genpact). These, and others, are the challenges that legal firms are already grappling with. Their responses and the responses of the universities and colleges training the lawyers of the future will determine whether England and Wales continue to be global leaders in the provision of legal services. Firms are already emerging with new business models changing the structure and deliver of legal services (Lucy Scott-Moncrieff talks about the model adopted at her firm); other firms are looking at the skills and training that they look for from employees (Anne Chittenden gives a perspective from Eversheds) while others are considering how training for future lawyers may change (Stephen Mayson from the Legal Services Institute).

The success of firms offering legal services will, in the end, depend on their ability to offer services that meet consumers' needs. What types of need are they looking to address? How do they propose to deliver the service? How much and how are they looking to charge? We have included new research from Pascoe Pleasence and Nigel Balmer on how people characterise their problems and the use of lawyers. Jon Trigg previously of A4e has written on how they, at A4e, are using experience from outside legal services to help meet consumers' needs for legal services.

These articles provide a fascinating insight into a variety of issues for legal services. The articles are all linked with a theme of change and the challenge to deliver effective and affordable legal services to consumers. It is a testing time for legal services and we remain committed to full, frank and open dialogue on how we can play our part in facilitating change and helping more consumers access the legal services they need. We hope you enjoy reading these articles.

Chris Kenny

Chief Executive

14 June 2010

Risk-based regulation

Risk based regulation

A short introduction for the Legal Services Board

Professor Julia Black

London School of Economics and Political Science

Introduction

Risk-based regulation is increasingly becoming seen as a necessary attribute of 'better regulation'. In its idealised form, risk based regulation offers a systematic, evidence-based and politically defensible means of targeting resources at the issues and firms that pose the highest risks to the regulator's objectives. In the UK, most regulators are under a statutory duty to develop and use risk based frameworks for organising all aspects of their regulatory activities, including data collection, inspection, advice and support programmes and enforcement and sanctions (Statutory Code of Practice for Regulators 2007: section 4). The UK is not alone in this move. Regulators have been developing risk-based frameworks of supervision in a wide range of countries, particularly in the areas of environment, food safety, occupational health and safety, financial services and pensions regulation.

Why have risk based regulation?

There are good reasons to adopt a risk based framework. Regulators usually find that they have more to do, and more issues to respond to, than time or resources allow. In practice, they prioritise their attention on issues and firms which they think deserve the most attention. These decisions are being made every day, regardless of whether the regulator has formally adopted a 'risk based' approach. The difference for 'risk based' regulators is that these decisions are made at the top of the organisation as a key issue of regulatory strategy, are systematic, and are transparent to all those within the organisation and to the firms that they regulate. Risk based frameworks can thus provide a clear, well-articulated set of priorities which the regulator can also use to explain and defend its strategies against criticisms of either over-intrusion or neglect. But there are risks to risk based regulation, as set out below.

What are the key elements of risk based frameworks?

Risk-based frameworks appear technical and mundane, but they contain real choices about what matters to the regulator and what, in relative terms, does not. Each risk based framework is unique to each regulator, despite quite heavy 'borrowing' from each other. Further, even if they seem similar in form they are often quite different in their operation. Nevertheless there are six core elements which are common across frameworks:

- ***Determining risk tolerance***

The fundamental question in any risk-based regulatory regime is what types and levels of risk is the regulator prepared to tolerate? Regulators do not often articulate what their risk appetite is in public, or even private. Setting that risk tolerance can be an extremely challenging task for a regulator. In making that decision, all regulators face political risk, the risk that what they consider to be an acceptable level of risk will be higher than that tolerated by politicians, the media and the public, discussed below.

- ***Common starting point: risks not rules***

Risk-based frameworks require regulators to begin by identifying the risks that they are seeking to manage, not the rules they have to enforce. Regulators are usually over-burdened by rules. They cannot enforce every one of these rules in every firm at every point in time. Selections have to be made. These selections have always been made, but risk-based frameworks both render the fact of selection explicit and provide a framework of analysis in which to make them.

- ***Risk = probability x impact***

Risk based frameworks use some form of the metric: risk = probability x impact. In practice, some risk based frameworks are impact driven, others are probability driven. For example, the Financial Services Authority segments its population of regulated firms into four groups based on their impacts on consumers and the markets. It then performs probability assessments on the higher impact categories and uses thematic reviews and other techniques to monitor lower impact firms.

Two broad categories of risk are usually identified:

- the *inherent risks* arising from the nature of the business's activities and in environmental regulation, its location; and
- *management and control risks*, which can include the firm's compliance record and degree of cooperation with the regulator.

The assessments of impact, probability and overall risk may be highly quantitative (as in environmental regulation) or mainly qualitative (as in food safety regulation in the UK, or financial supervision more generally). Quantitative assessments involve less individual judgement and may be performed by the firm themselves. Qualitative assessments allow for more flexibility and judgement, but critically rely on the skill and experience of regulatory officials who are making the subjective judgements.

- ***Assigning scores to firms / activities***

Regulators use the risk assessments to assign scores and/or ranks to firms or activities. These scores may be broadly framed into three categories or traffic lights ('high', 'medium' or 'low') or there may be a more granular scoring system, with five or more categories. For the most part, assessors do not indicate whether they think the risk score is likely to increase or decrease over time. One notable exception is the Canadian banking regulator, Office of the Superintendent of Financial Institutions, which requires its supervisors to indicate the 'direction of travel' of the risk, and the time period over which they think this will occur.

- ***Linking resources to risks***

Risk-based frameworks provide a means of allocation of resources to the risk scores assigned to individual firms or to system-wide issues. In practice, resources do not always follow the risks in the way that the framework would suggest, but resource allocation remains a key rationale for their development.

- ***Responding to risks***

This is often an under-developed aspect of risk based frameworks. The Australian Prudential Regulation Authority has a framework which specifically links risk scores to the action that supervisors should take. Only those regulators which have adopted its model have such a close linking. In many other frameworks there is no specific association between risk score and supervisory action to be taken to reduce the risk, as opposed to resources to be applied.

What are the risks of risk based regulation?

There are three main risks of risk based regulation (leaving aside legal risk).

Model risk

The first risk is that the risk based framework may not capture all existing risks or newly emerging risks. Risk based frameworks are meant to look forward, to risks that may occur. In practice, it is hard to move beyond 'point in time' assessments.

Further, a key lesson of the financial crisis is that risk based frameworks also can tend to focus on the risks posed by the individual firm and not on systemic risks that may either affect the firm or which may be created by them. Models are rarely right first time, and many regulators find that they have to adapt their frameworks quite extensively over time.

Further, although the terminology of risk is used throughout, in practice, regulators are operating in quite differing conditions of uncertainty. It is only really appropriate to talk in terms of 'risk' assessments where regulators are managing routine risks and where there are high numbers of incidents from which data on their probabilities of occurrence in different situations can be assessed. A good example is health and safety, where there are sufficient numbers of accidents, such as slips, trips and falls, to create patterns of incidents on which regulators can draw. However regulators can be operating in situations of uncertainty, however: there is no backlog of data from which probabilities can be drawn. Here risk assessment should more accurately be described as uncertainty analysis and risk management as uncertainty management. The conflation of risk and uncertainty both in the language of risk based regulation and the assessments can lead to unrealistic expectations of those frameworks by regulators, at least at board level, by politicians and others.

Implementation risk

Introducing a risk based system often requires significant changes to the culture of the regulatory organisation, particularly if it has been used to a 'compliance-led' approach to monitoring and enforcement. It often also requires significant changes to systems and processes, particularly if it involves a great deal of subjective assessments as these need to be internally challenged and validated to ensure consistency. Many organisations that have adopted risk based frameworks have found that changing cultures can be a far bigger challenge than they anticipated.

Political risk

Risk based regulation requires regulators to take risks. The up-side of risk based regulation is that it requires regulators to focus on what matters. But the flip side is that regulators have to identify which risks or levels of risk they are *not* prepared to devote the bulk of their resources to preventing.

In doing so they are bound to make an error. Regulators, and their political supervisors, have choice. Should they err on the side of assuming a firm does pose a risk when it does not (in statistical terms, a Type II error), or err on the side of assuming that a firm does not pose a risk when in fact it does (a Type I error). These choices have always been made implicitly within regulatory bodies. In risk-based systems, they are rendered explicit. The consequences are significant. If regulators err on the side of assuming firms are risky when they are safe, they run the risk of being accused of over-regulation, and of stifling business and innovation. If they err on the side of assuming firms are safe when they are risky, they run the risk of failure. That failure, as the financial crisis demonstrates, can be far reaching.

In practice, a regulator's risk tolerance is ultimately driven by the political context: what level of risk or failure the regulator is prepared to accept - or at least thinks it can withstand. The higher the political salience of a sector or risk, the less will be the regulators' tolerance of failure in that particular area. The political context is often fickle, however, and issues that were not salient suddenly become so, and vice versa. Regulators can find that it is hard to keep to their risk based frameworks in the face of changing political demands. Risk-based frameworks can provide a framework for the systematic assessment of political choices, but they can never remove them.

Alternative Business Structures

Accessing funding following Alternative Business Structures (ABS)

Tony Williams

Jomati Consultants LLP

The severity of the recent downturn has inevitably distracted firms from the looming introduction of the ABS regime in mid 2011. However, if firms want to consider outside investment when this new structure becomes available they need to be thinking now how to attract outside investment, what they will do with any money raised and what they need to change to make themselves appealing to new investors.

It is important to appreciate that outside investors are professionals. They are constantly presented with a wide range of investment opportunities. They reject most of them. They are looking for well-managed businesses with a clear and credible strategy, who are capable of using any investment to generate significant profits for themselves and the investors. Such investors are likely to fall into two main groups. The short to medium term investors, primarily private equity houses, looking to achieve an exit within three to five years at an acceptable level of return. The exit may be achieved by a stock market flotation, a second round of private equity investment or their being bought out by the existing owners. Other investors may be looking for longer-term returns in a growth business capable of generating returns significantly greater than those available through holding, say, corporate bonds or commercial property. These investors may be focused on a high rate of return over a sustained period of, say, 10 years.

In either case it is likely that any outside investors will demand a higher return than that usually demanded by bank lenders. Indeed, it is the increasing scarcity of medium term bank finance that is causing many firms to consider outside capital.

It follows that a firm will need a clear and credible plan for the use of such capital. A “business as usual” approach is unlikely to produce a sufficiently high level of future return to satisfy outside investors. Furthermore, any disposal of part of the business for cash which cannot fund the coupon required is effectively a forward sale of the present and future partners income stream which creates a complex range of intergenerational issues that are likely to be extremely problematic.

Capital can be used in part to reorganise a firm, possibly by easing the route to retirement of baby boomer partners and thereby releasing future profits for younger partners and the investors (indeed with Capital Gains Tax at between 10% and 18% as against a top income tax rate of 50% this may be very attractive). It can also be used to develop a firm's profile and reputation whether by the smarter use of client facing technology, a war chest to fund mergers, team hires or lateral hires and geographic and practice group expansion.

Any use of outside capital needs to be the subject of detailed analysis of the cost and level of return and the timelines required. Outside investors will be intolerant of woolly thinking, inadequate analysis and over optimistic forecasting. Clarity and rigour will be required.

Linked to any investment, a firm will need to consider the extent it will use the discipline of outside investment as an opportunity to change its internal management. Investors will expect professional and accountable management, not only at board level but also in the head of the business functions such as finance, HR, operations, IT and business development/marketing. Many law firms, which for so long have enjoyed healthy profit margins operate in a way which would astound and deter many investors. The leaders of law firms and their boards will need a clarity of decision making processes and a focus on the likely returns on any investments that they will make. They will need, on a continuous basis, to re-examine the market they operate in, the processes they use, their pricing models and their cash flow and profitability forecasts. Such an approach is common in many businesses but relatively rare within law firms who up to now have generated relatively high financial returns often in spite of themselves. Linked to this is the whole concept of accountability across the organisation, including partners. Clear job descriptions, operational targets and metrics will need to be established with consequences for both success and failure. In very few organisations will a lockstep partner remuneration system survive such scrutiny. Investors will often expect non-executive representation on the board of the law firm. If this non-executive talent is used well it will help the firm's business model evolve and provide a useful catalyst for change.

This may sound very daunting. At one level it is. However the disciplines required and the capital available could produce providers of legal services that are able to grow and prosper in the more competitive legal landscape that we are likely to face.

Indeed this more focused, professional and businesslike approach may produce substantial returns to the partners even after the relatively high cost of outside capital. These changes will take time to achieve and partners will need to be persuaded of the need for change. Many of these changes will be necessary to succeed in a more competitive legal market whether or not outside capital is required. Firms would be advised to start this process now as some firms are clearly starting to address these issues.

If this level of change does not appeal, and it will not be appealing to many law firms, it is still necessary to consider the implications of such a change by a major competitor. If such a well-run and well-financed competitor aggressively approached your 10 best partners what would be the result if just five of them left you? This is not fanciful. In February 2010, Allen & Overy took 15 partners out of the leading Australian firm Clayton Utz to establish its new Australian office. Such moves both domestically and internationally could become the norm if well run firms have investment war chests available.

In a changing market outside capital will play a role. Ignore it at your peril!

Innovation and the future of law firms

Solutions to legal provision emerging from outside of legal services

Jon Trigg,

Formerly of A4e

The legal services market in England and Wales is going through a revolution that will drastically alter its 800 years of tradition, and could set the course for decades to come. Leading this revolution is the Legal Services Act (LSA) 2007, which places the needs of consumers at the heart of the regulatory framework. It has attracted the label 'Tesco Law' to reflect the potentially dramatic solutions and services likely to emerge from a new breed of legal services providers.

The needs of consumers have evolved and the market faces unprecedented challenges which include the need to;

- Improve access to high quality legal aid services against a backdrop of reductions in eligibility, fee rates and resources because of the current deficit.
- Look to technologies such as telephone and web to drive costs down. Government spend on legal aid has grown considerably over the past 10 years and reductions to the annual budget of £2bn will be made.
- Develop universal and affordable legal services for an increasing population who are too rich for legal aid and too poor for mainstream services (e.g. In 1998 52 per cent of the population were entitled to legal aid however a drop in eligibility levels over the last 10 years now means that only 29 per cent of the population are eligible¹).
- Re-connect with consumers (including a new i-pod generation) – the majority of whom know at best a little about legal services and how they can help.

¹ <http://www.lag.org.uk/Templates/Internal.asp?NodeID=93200>

Solutions to these challenges will require a step change in the thinking and approach of the profession beyond the 9-5 approach. So what solutions are likely to emerge to meet consumer needs in the changing legal services market? The following solutions are likely:

- technology will increase access to legal services- allowing advice to be given over the telephone, through web based services and video calling facilities. This will allow the cost of quality assured legal advice to be significantly reduced. A large shift in funding from face to face to telephone provision would benefit both consumers and government
- large retail brands could seek a licence to offer legal services and connect their consumers with complementary products and services
- a new breed of legal companies could also be set up to offer integrated one stop services
- law firms will be able to list on the stock exchange bringing outside investment and capabilities to enhance products and services to consumers.

A4e's perspective as a new entrant to the market

Taking our experience over 20 years, our successes and failures, our learning across front line public services, offer valuable lessons to help shape the design of legal services and create a vibrant new offer in the way legal services are delivered.

1. Consumer driven markets need to evolve and are only successful if they are in touch with their consumers

On 2 January 2008, the Government announced exciting new plans for transforming Britain's labour market and this resulted in the introduction of Flexible New Deal (FND) to replace the previous New Deal programmes.

A4e were the largest provider of the Government's New Deal Programme and it was the most successful innovation in the history of the UK labour market. The programmes have helped more than 1.8 million people into work. However New

Deals are now 10 years old and so providers have had to evolve and adapt to meet consumer needs.

Naturally the market was anxious about change but FND has rejuvenated the welfare to work market through innovative partnerships between public, private and third sector organisations working together to support more people into employment.

2. New entrants to the market means more quality, capacity and consumer choice

New entrants to a market can have a positive impact. They bring new ideas and insight into the advice seeking behaviour of consumers. They enhance service provision by offering more quality, capacity and choice to consumers. In the legal profession this is already being demonstrated by consumers choosing brands like Which? DAS, Co-Op and Halifax for legal advice. Since 2006, our legal services have had a significant positive impact on the lives of our clients. In this time we have:

- Provided legal advice to over 70,000 clients through innovative delivery methods such as telephone based advice.
- Provided over 15,000 clients with face to face advice in debt, housing, employment, immigration, welfare benefits and family law.
- Received extremely positive customer satisfaction ratings with 94% rating the service as excellent or very good.

3. Significant reductions in overall cost can be driven through telephone based services and integration of services

The concept of a consumer being able to buy legal services alongside their weekly grocery shopping is a distinct possibility under the Legal Services Act. The premise of such a solution is to offer integrated and accessible one stop legal services – which will ultimately drive down costs for consumers and government.

A4e is acutely aware of the advantages of integrating services because our experiences have informed us that people have clusters of problems which require a joining up of services. For example:

- The CLA telephone advice service has demonstrated that high quality advice can be provided across social welfare law (including emotive areas such as family law) through a £50 hourly rate.
- In Leicester and Hull we are delivering Community Legal Advice Centres where for the first time communities and individuals can access a broad range of legal services under one roof. This saves time and money but more importantly enhances the customer experience through a one stop shop approach.

Conclusion

As with any major change there will be opportunities and threats. Consumer driven markets have always required providers to adapt and evolve. The legal profession exists for its consumers - if it is to continue to exist then it too needs to evolve and embrace the opportunities created by the Legal Services Act. The emerging solutions represent a victory for consumers and the profession as they are underpinned by a desire to increase choice, innovation, flexibility and competition.

Possible futures for international law firms

Professor Mari Sako,

Saïd Business School, University of Oxford

Over the past two decades lawyers and law firms have boomed as never before. But legal services, faced with the challenges of globalization, regulatory changes and the financial crisis, are at a crossroads. Economic downturns create opportunities for innovation, which is all about discontinuous, unexpected change. Business history is littered with examples of leading firms being swept aside by new entrants in waves of 'creative destruction'. Take the computer industry as an illustration of the dynamics involved in successfully surfing the waves of discontinuity.

In its initial era of dominance, IBM was a classic vertically integrated company. But faced with competition from Apple Computers in the PC market IBM decided it could not keep up on all fronts and outsourced its operating system to Microsoft and its microprocessors to Intel. This was the beginning of the end of IBM as a hardware computer company. With IBM's outsourcing decisions, new players came to occupy horizontal industry segments - Microsoft in operating systems and applications software, Intel in chips, and many IBM-compatible assemblers.

Was this horizontally disintegrated structure stable? No. Companies sought opportunities to capture profits, not only by specializing in specific technologies but also by bundling products and services. Thus, IBM struck out for new territory in business services. This back-and-forth between vertical and horizontal industry structures might be seen as a figure of eight or a spiral double helix (like the structure of DNA).

Innovation in legal services is also all about discontinuous changes. What the economist Joseph Schumpeter wrote a century ago is still relevant today: discontinuous change happens as a result of five things: the introduction of a new product or process, the opening of a new market or source of supply of intermediate goods, or a new organization design. For law firms discontinuous change is happening as a result of his last two factors - new sources of supply and new organizational design.

The value chain for law firms is disintegrating. This possibility had existed for some time, with new ICT technology. Much of legal knowledge can be standardized, systematized, and packaged for delivery using self-service and smart systems. Moreover, the billable hour, which developed as a common way of charging clients, has come under severe attack, as the notion of professional autonomy and self-regulation came into conflict with the notion of business efficiency and consumer interest. Combined with the availability of new locations as sources of supply of talent, ICT has pushed global corporations in the direction of offshoring.

Global corporations currently have a choice of four possible offshoring strategies. A company can set up a captive offshore operation, as GE Plastics has done in India. It can engage a law firm, which in turn sets up a captive offshore operation, as Clifford Chance has done in India. Or it can use a law firm that sources from an independent offshore legal process outsourcing (LPO) provider. Finally, a corporate client can bypass a law firm altogether, and outsource and offshore using a legal services firm, as Rio Tinto has done with CPA Global.

The global legal services revenue earned by law firms was \$458.2 billion in 2007, compared to the LPO revenue of \$440 million, a mere 0.1% of the total market size. This is now; but what of the future? Will the LPO market grow significantly relative to the law firm revenue? One way to understand the possibilities is by articulating the consequences for law firms of competitive strategies pursued by LPO providers in places like India, the Philippines and South Africa. They could:

- *Compete in scale and process.* LPO providers like Integreon and CPA Global are already building strong positions in routine areas like contract review and document discovery. The end-result could be the 'horizontalization' of the legal industry, with law firms ending up like the old IBM, outsourcing low-end work and concentrating on making advanced machines in-house.
- *Compete by climbing up the value chain* (resulting in 'vertical stacking'). Regulatory restrictions apart, LPO suppliers could accumulate the same capability and start to threaten their law firm clients. Offshore LPO providers like Bhodi Global and Quislex are planning to move into higher-end work such as drawing up deposition summaries.

- *Compete by broadening the boundaries of the industry*, bundling services together, just as Microsoft has done. Whether incumbent law firms or new entrants end up leading in such bundling remains uncertain. Providers like Evalueserve are already beginning to pull together legal, accounting and business research under one roof.

So, depending on their actions, law firms may end up an intermediary with a thick pipeline of business or be bypassed – dis-intermediated. Longer-term, the double helix model illustrates a further possible direction for legal services industry structure, as it oscillates between vertically integrated to horizontally disintegrated structures.

Innovative companies have the power to reshape the boundaries of the industries in which they operate. The transformation of Apple Computers to Apple Inc., bundling the iPod, iTunes and iPhone, is a dramatic example of a company that was able to transform itself and take advantage of the discontinuous changes brought about by telecom and internet developments.

Will the most innovative legal services firm that emerges – the legal equivalent of Apple – be an incumbent firm or a new entrant? The answer to this - the most interesting question - remains uncertain. Several futures are possible, and the eventual outcome depends largely on the decisions taken by the legal profession. But remember the old adage: 'Run with the gazelles but eat with the lions'. That combination of the abilities to move fast and at the same time to identify where the value chain will be protein-richest will be key. Law firms, take note.

Legal Process Outsourcing: transforming the legal landscape

Orijit Das

European General Counsel

Genpact

Necessity has always been the mother of invention. The recent credit crunch which saw budgetary cuts throughout global corporations has prompted many corporations and law firms to resort to Legal Process Outsourcing (“LPO”) as a mechanism for rendering cost effective legal services. This innovation has strangely pushed the legal industry past the tipping point where LPO is no longer just a fascinating subject to be discussed amongst City lawyers at cocktail parties and networking events, but a necessary tool in the way legal services are rendered.

It is not as if the legal community was unaware of offshoring of services, nor is it that they were oblivious to companies leveraging technology and low cost resources in other jurisdictions to provide services. In fact, many law firms pride themselves on being specialists in this area of law and commerce, and have traditionally facilitated such deals in their role as deal / transaction lawyers. Yet offshoring of legal processes has only been on the cards for law firms or in-house legal departments over the last 24 months. So what has changed over the last few months that has prompted this new trend?

With the credit crunch, most budgets were slashed and this was no different for law firms. The new mantra is simple: doing more, with less. An increasing number of General Counsels and Managing Partners of law firms are being forced to consider LPO.

A few relevant concepts

A few years ago Googling the word ‘LPO’ often threw up articles on the musical prowess of the London Philharmonic Orchestra. However, in the post-recession world, the word ‘LPO’ has become synonymous with cost-effective rendering of legal services. LPO now refers to the practice of a law firm or multi-national corporation obtaining legal support services from either its own captive law department or an external law firm or legal support services company.

Where did it all begin? Whilst it may not have been tracked accurately, arguably the world's very first LPO was started in 2001, when General Electric added a legal division to GECIS in India to handle legal compliance and research for two of its divisions, GE Plastics and GE Consumer Finance. This was in addition to many other functions which were outsourced. GECIS was spun off in 2005 as a separate company and today operates as Genpact.

When such an entity providing business services (either captive or third party) is based in another country (which is typically a lower cost jurisdiction) the practice is often called **Offshoring**. Offshoring of legal services is used for leveraging lower costs and higher skills of lawyers who are able to perform some of the more routine functions. In many companies this is referred to as "out-tasking"². These services are typically:

- Creating and maintaining the Intellectual Property portfolio.
- Patent search and drafting of applications.
- Legal and market research and opinion pre-work.
- Document review and analysis.
- Contracting drafting, review and negotiations (both buy and sell side).
- Responding to RFPS, which are time intensive and repetitive.
- Market research and analysis.
- Litigation document review – e.g., discovery or disclosure procedures.
- Document process outsourcing.
- Due diligence documents.
- Contracts management.
- Other low end services – paralegal services, legal transcription, preparation of contract summary, legal coding, data entry etc.

² In-House interview – James Ormrod, Legal Affairs Director, Law Society Gazette, Thursday 09 July 2009 by Rupert White

Legal Outsourcing has gained tremendous ground in the past few years, mainly in the United States and UK. LPO service providers operate primarily in India, South Africa and the Philippines, and have had success by providing cost effective and efficient legal services.

In-house lawyers v. law firms

When it comes to managing the affairs of a legal department, the biggest spend for an in-house lawyer is engaging external lawyers whose charge-out rate in the City can vary from £200 - £800 (even at the lower end of the spectrum one's money does not buy one much).

The community of general counsels has for the longest time been asking law firms to rationalise these rates. However, other than some discounts to legal bills or fixed fees arrangement, law firms in general have not been able to give much in terms of addressing the concerns of spiralling legal costs. This is mainly because law firms have had to invest in prime property in some of the largest cities in the world for their offices and in order to be able to attract talent they have been promising and paying lawyers massive salaries. These factors have all driven up the cost base for law firms.

However, in-house lawyers traditionally see the world very differently to law firms. As in-house lawyers are what is termed "cost-centres" and often regarded as parasites on the rest of the organisation, they have to embrace the innovative processes the rest of the organisation adopts. An in-house department does not think twice about outsourcing, and questions why lawyers should be any different.

Recent trends in law firms resorting to LPO

It is not just the in-house legal department who are resorting to LPO Services. Law firms whose business model is based around providing legal services have been historically conservative about LPO services as they are reluctant to sub-contract any of the low end work to an LPO or set up a captive LPO of their own, however this trend is reversing as many law firms are considering offshoring due to;

(a) dwindling partnership profits; and

(b) budgetary constraints faced by In-house legal departments.

Increasingly, client pressure over fees is prompting law firms to consider the potential of offshoring not just routine, commoditised, limited-complexity work but also more sophisticated services such as discovery and due diligence.

A fear that often surfaces in board room discussions in law firms is “could lawyers end up outsourcing themselves out of a job?”

Outsourcing business processes, such as IT, is increasingly commonplace among law firms, but they remain cautious about going down a similar route with legal work. The big push is coming from US and UK corporates whose in-house legal teams are under pressure to cut costs and many of whom are operating with less than 50% budget compared to previous years; these companies are putting pressure on their external law firms which are, in turn, starting to dip their toes in the LPO pond.

Recent deals in the LPO space

Over the last year the Legal press has reported a few publicised deals. These instances are a mere tip of the iceberg as typically law firms do not publicise such deals and hence there is more to it than meets the eye. Recent deals include:

- Lovells apparently outsourced the review of more than a million documents to India, as part of a major case. It is reported that this measure helped the firm save more than £3m.
- Clifford Chance set up its own captive centre in Gurgaon, India where it allegedly plans to have paralegals for undertaking unprofitable, low-end work such as research and analysis, document discovery and collating bound volumes.
- Eversheds, on the other hand, is reported to have more than one arrangement in place: (a) it intends to leverage its recent acquisition of Routledge Modise in South Africa for rendering LPO services to its clients; and (b) has allegedly set up an arrangement with a third-party provider in India, so it can offer clients two options – either the firm will manage the

workflow and relationship between the client and the provider, or it will act merely as the middleman in introducing the two.

- Simmons & Simmons has recently voted on a three year plan to outsource work to India.

In a competitive global market, sophisticated law firms have no option but to embrace innovative ways of reducing costs to clients or increasing margins, as there is a fear in the legal community that if they fail to do so they will increasingly get uncompetitive and go under. Also with the recent introduction of the Legal Services Act in the United Kingdom which permits non-lawyers to get involved in the provision of legal services, thereby revolutionizing the legal industry, no one should think for a second that big players will continue to do routine, commoditised legal work in a high cost jurisdiction.

Risks to watch out for in Legal Process Outsourcing

There have probably been about a 150 odd new entrants into the market over the last three years in anticipation of the next “wave”. However, a vast majority are extremely small enterprises who are not financially stable and or have limited physical operating infrastructure. One of the General Counsels in the City gave some sound advice in this regard when he said, ‘Make sure you do your homework before getting into bed with anyone. I receive countless emails and telephone calls every month from domestic Indian law firms and small-time entrepreneurs keen to enter the provider market’.

Many such “*Fred-in-a-shed*” operations are basing their potential business model on acquiring new clients and then kicking off operations before returning to the market for their first or subsequent round of external funding. The last few years in the LPO market have shown that many of these operations will not have the wherewithal to survive for long. Typically, the provider of such services would need to be a commercially and organizationally solid entity that is able to (a) provide adequate physical and organizational infrastructure to ensure data protection, (b) organizational sophistry to ensure enterprise wide commitment to quality and processes; (c) is able to invest in resources and “best in class” technology to help stay ahead of the curve.

A key concern for any potential consumer of LPO services is to ensure that they do not end up becoming the proverbial “lab rat” in the process, but are dealing with service providers who have a proven track record not just in rendering legal services, but are known for process excellence and the ability to maintain data security and confidentiality.

Contrary to the belief of many such entrepreneurs who are keen to flip their investments in a 3 – 5 year investment window, setting up an LPO and running it successfully such that it is able to achieve process excellence is not a question of “plug and play”. The offshoring of any services requires a significant commitment demonstrated through sustainable investments over a period of numerous years. Creating process excellence and demonstrable capability is akin to maturing a bottle of Bordeaux. Unfortunately, there are no short cuts, and the lack of sustainable investment and patience could turn the wine to vinegar.

Top tips for ensuring safe Legal Process Outsourcing

Some of the practical measures that can be adopted by companies before they commence Legal Process Outsourcing are:

- Investigate the background of the lawyers, non-lawyers and service provider, and conduct reference checks;
- Interview the principal lawyers involved in your matters and assess their educational background;
- Ascertain the LPO’s hiring practices and educational & background checks mechanism to evaluate the quality and character of the employees likely to have access to client information;
- Investigate the security of the provider’s premises and computer network, and sign the model contractual clauses where relevant;
- Conduct a site visit;
- Assess the country to which services are being outsourced for its legal training, judicial system, legal landscape, disciplinary system and core ethical principles;

- Disclose the outsourcing relationship to the client and obtain informed consent.

Confidentiality: the double-edged sword

Legal work needs to be shrouded in confidentiality and law firms and in-house legal departments are rightly obsessed with client confidentiality and security issues. Hence any LPO arrangement requires that the service provider is able to demonstrate the highest level of security and confidentiality.

Most sophisticated providers of offshore services assure their clients of a very high state of assurance with regards to confidentiality. Detailed technical, technological and organizational steps are put in place to ensure that client and personal data is kept secure. Some of these measures include getting BS 7799 certified, operating a clean desk policy, disabling technologies, firewalls, data transmission through dedicated lines, data storage in secure sites, having dedicated compliance officers et al. Over the years these measures have become fairly routine in the offshoring of services industry as many providers realize that a single instance of breach of security can end up meaning the end of their business.

But the real security concerns might be closer to home. A General Counsel once narrated his concern by comparing a law firm with an LPO. He said that when he was involved in the site selection for an LPO service provider, his security team found that all people entering the premises were thoroughly checked: the LPO didn't keep paper on site; all staff entering and exiting the premises were body-searched; the USB drivers were disabled; and there was no access to external email addresses. However, when he went to see the law firm which was going to orchestrate the relationship with the LPO he found that the team could walk in without being checked and could have walked out with any of the files piled high on the desks.

Outsource the function – not the responsibility.

You can outsource the function, but not the responsibility – like any outsourcing arrangements, be it the Finance and Accounting function of a company, or the Information Technology / content development function, Procurement or human resources, the reality of commerce is that even if a certain function is outsourced, the responsibility still vests with the lawyers who were initially tasked with discharging the responsibility in the first place. In such instances of outsourcing the law firms and in-

house legal departments would still need to maintain a strict control over the work which has been outsourced to an offshore service provider. Like any other area of outsourcing / offshoring this can be well maintained through a few practical measures:

- **Service Level Agreements:** these are detailed functional agreements between the client (which could either be the law firm or the in-house legal departments that outsources the function / task) and the service provider. These SLAs would detail the manner in which the work is performed and to what accuracy. Typical measures are Turn-Around-Time (also known as “TAT”), accuracy, adherence to positions laid down in the “playbook” etc. Traditionally when work was given to law firms or in-house legal departments such SLAs were not put in place. However, with the services industry having gained greater sophistication over the last decade Service Levels are increasingly being used to objectively measure the level of services being provide.
- **Governance:** the client and the service provider should undertake joint performance reviews. The intent of any such governance mechanism is to identify process problems through a rigorous review of potential problems and the agreement of a joint solution in a collaborative manner. Governance usually involves creating “dashboards” that detail the performance of the service provider and jointly reviewing them. Governance meetings take place:
 - remotely using conference calls and video conference and
 - face-to-face meetings, where parties get a chance to use personal relationships to positively influence the relationship and any problems that may arise.
- **Effective training and transition:** the key to any effective outsourcing arrangement is being able to transition the work properly. Transition of work in any effective outsourcing arrangement is a well-documented process where parties agree upon a transition methodology before the commencement of the relationship to ensure how the work gets effectively offshored to a service provider. Any such arrangement should contain a detailed training programme. Since such services are performed by lawyers who are already qualified and trained (in most instances these lawyers are

more qualified than the principal lawyer performing the function), training is an effective way of ensuring that the lawyers rendering the services are skilled and guided in performing the function with minimum errors.

Outsourcing back-office or 'mechanical' work may be sensible because, ultimately, the Solicitors / Advocates / Attorneys are (a) freeing up much of their time to focus on more strategic work and leaving the grunt work to an outsourced service provider; (b) getting a chance to create greater business impact by rendering effective legal services at reduced costs; and (c) still taking responsibility for the overall service provided.

Future trends – The question that is on the minds of many in the legal community is whether LPOs are a mere passing fad or whether they are here to stay, thereby changing the legal landscape forever. One of the propositions that the legal community will have to consider is how far legal outsourcing will go up the value chain, and would lawyers in the western world risk offshoring ourselves out of existence. According to some General Counsels, the top end of the market will be fine because offshore providers aren't looking to replicate the work that we do. This is mainly because lawyering to a very large extent will always involve connection between the lawyer and the client. Moreover, lawyers will be required to be trained under local laws, and be familiar with customs, commercial trends and soft skills which can be very difficult to replicate remotely in a different country. Many now regard LPO's positively, as outsourcing mundane and repetitive tasks will enable Solicitors and Attorneys to focus on work that genuinely requires their expertise. Medium-sized firms, for instance, could call on a huge bank of junior paralegal staff based in India so they could compete with much bigger firms in litigation cases, and the law firm's investment would have to be a new set of management skills and an entrepreneurial approach.

However, not every thing about an LPO practice can be viewed positively as any firm that makes a significant amount from relatively routine commoditised work will come under extreme pressure for LPO service providers.

Many are asking whether asking LPOs to provide services will eventually end up with lawyers making themselves redundant. Whilst none of us have a crystal ball to look into the future, the threat posed by Legal Process Outsourcing / Offshoring is a recent trend in offshoring arrangements. It would be useful to see what has happened in other areas of the economy e.g., IT, Finance & Accounting. In these functions it is not as if the IT or the Finance & Accounting departments of these

companies have been made redundant. It is just that these departments whose repetitive functions have been outsourced now play a vital role in providing thought leadership to the rest of the organisation.

It is also anticipated that the offshore LPO industry will consolidate over the next two to three years as a result of the organic growth of some companies, attrition and acquisition of others, and the inevitable continuing entry into the market of some of the world's leading BPO, IT outsourcing and legal technology companies. Many of the large offshore business services providers have either already commenced operations in the LPO space or have declared their intent to enter the market.

Let us take an instance in the world of banking. NatWest made it a selling point that they would never send their call centres abroad. A lot of law firms believe their clients wouldn't want them to do it. But a lot of high-end equity research is already being done in India and there is no sense of shame in that. There may currently be a problem with perception, but this is the way the market is going and it will have a significant impact on the way legal services are delivered in this part of the world.

Future for law firms - It is often said that there is a tendency among those who run law firms to assume that, 'if they keep their eyes closed, they will have retired by the time this hits them'. For captain of leading law firms I personally would not advice them to do "an ostrich". The legal landscape is changing fast due to (a) the global recession; (b) new regulations permitting low cost providers to enter the market; and (c) globalization. If firms fail to spot this trend and act upon it, there is every chance that they will end up being uncompetitive and dwindle. Cost is going to be the main driver, but as important will be the ability to use the flexibility offered by having the additional capacity offered by LPO. As much as anything, the real challenge is that this new paradigm requires a new set of management skills and a new entrepreneurial approach to the provision of legal services.

Modern law firms and the skills required from the new employee

What are the types of skills and training that forward thinking law firms are looking for from their employees?

Anne Chittenden

Eversheds

Over recent years, a number of factors have influenced and shaped the skills and attributes required from the modern lawyer in the modern law firm. We live in a world, where the 'baby boomers' are retiring, organisations are led by 'generation X' and we have the aspirations of 'generation Y' to meet. The needs and expectations of our clients drive the way in which we do business across the globe, and the economic turmoil of the last 18 months has brought unprecedented levels of change to many law firms.

Against this backdrop, modern law firms need a different set of skills to successfully navigate their business through this changing world and to create strong, flexible and resilient practices for the next decade. So, what are the key skills needed for employees to be able to lead and manage themselves and others to successful performance in the new world?

At Eversheds we undertook a major piece of research to help us answer this very question. Our aim was to identify the key attributes that differentiated our top performers at all levels - what was it that enabled certain individuals to deliver outstanding performance? The knowledge, skills and attitudes that were recognised as making a key difference at each job level, were collated into a 'skills compass' for each role. We found that whilst the depth and breadth of knowledge changed as lawyers developed and became more senior, some strong themes emerged in terms of the personal qualities and attitudes that were critical factors in determining who would achieve the highest levels of performance. Clearly, excellent technical knowledge and a commercial interpretation and understanding (of areas such as their personal specialism, clients, sectors etc) crucially underpin everything that the lawyer undertakes, but it was the broader personal skills that differentiated our star performers.

Change is the new constant of business life. Those individuals who can not only adapt to change, but positively welcome new challenges and respond to them effectively, are the individuals most likely to cope successfully with the demands of their clients, team and organisational changes and other new and often complex situations. Flexibility and resilience have long been associated with those who are able to maintain high levels of consistent performance in testing times, and today is no different. Couple this with passion, personal desire and a strong drive for achievement and results, and you are beginning to build a picture of the key attributes for success in the modern law firm.

Self awareness is another key performance enhancer - those who know themselves well, who take steps to reduce their blind spots and who have good insight into others, they are more likely to succeed. These individuals are not just receptive to feedback; they actively seek it out and put obvious personal effort into overcoming any weaknesses. They are self-reliant, recognising and using their strengths, knowing what they are good at, and using this to build their personal style of leading and team-working. They are empathetic and understand 'what makes people tick', adapting their responses and behaviour accordingly to achieve win-win outcomes. Often these individuals are very much their 'own person', with a clearly held set of values and beliefs which they are open in sharing with their colleagues - powerful factors in bringing people along with change, new ideas and initiatives. They work collaboratively and openly, leading through influence rather than positional power.

A very strong recurring theme in our research can best be summarised as having a '**can do**' approach, with those who are personally motivated to stretch themselves and deliver to the very best of their ability at all times, whilst remaining optimistic and resilient were individuals who really did 'stand out from the crowd'. They were recognised as the people who got things done and who had major influence and impact across their business areas, with their skills recognised as being a key factor in leadership (even in junior roles) and in maintaining motivation levels when things were tough. If these individuals also have a keen **appetite to learn** and view many of their daily experiences and interactions as learning opportunities, then their rate of progress increases. They are commercially curious, creative and innovative, eager to stretch themselves and share knowledge, whilst remaining quick to learn from both successes and failures.

Intellectual agility and the **ability to apply sound judgement** were also evident in our top performers. The skills of critical thinking and problem-solving help individuals to deal with complex problems and make links that others might miss. This is not the same as intellectual ability, but more about flexibility in the way information is processed, analysed and assimilated. These individuals know that the world is not a simple place, that 'one size doesn't fit all' and can adapt their approach depending on circumstances, displaying leadership qualities that make people want to go with them.

The challenge for modern law firms is to grow these skills amongst their people and build a broad programme of development that not only meets the extensive knowledge requirements of the 21st century lawyer, but integrates the right skills at the right time in a lawyer's career. Lawyer development needs to be flexible and responsive to the needs of the individual, their clients and the wider organisation. Gone are the days when all training could be planned months in advance, taking place in classrooms where tutors told learners what to do and learners dutifully and passively listened (although the extent to which they actually put it into practice in the real world is debatable!). Learning in today's world must be timely, flexible and relevant - giving the right level and depth of information at the right time. And this is where new technologies are changing the shape of legal learning, allowing us to create 'bite-sized' chunks of learning which can be delivered to a geographically dispersed and time-poor audience; e-learning, podcasts and webinars; learning on mobile devices; online discussion groups, wikis and virtual networks.

The successful 21st century lawyer must think as the client thinks and demonstrate the skills of a modern business leader. They will continue to grow and develop in our ever-changing world and they will remember that every situation and interaction can be a learning opportunity, as long as they make it one!

Consumers, lawyers and law firms; meeting consumer needs

Horses for courses?

People's characterisation of justiciable problems and the use of lawyers

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Introduction

We live our lives and conduct our business – whether we are aware of it or not – within an increasingly complex framework of legal rights and obligations. The law reaches deep into our family and work lives. It defines our entitlements to public services and benefits. It regulates our relationships as producers and consumers, landlords and tenants, and lenders and borrowers. It governs the education of our children. It even shapes the way in which we move about in the space around us. After half a century of legal expansionism, we live in a ‘law-thick’ (Hadfield 2009) world.

Yet, the most recent English and Welsh Civil and Social Justice Survey indicates that although people seek formal advice about almost 60% of difficult to solve ‘justiciable’³ problems,⁴ advice is sought from solicitors’ firms in only 13% of instances (Pleasence et al 2010).⁵ Aside from solicitors’ firms, people seek advice from a broad range of sources – including Citizens Advice Bureaux, local authorities, trade unions, social workers, the police, politicians and clerics (Genn 1999, Pleasence 2006). A matter of some interest, therefore, is what leads people to seek advice from a firm of solicitors in some instances, but not in others.

³ Most notably defined by Genn (1999, p.12) as a matter that raises legal issues, whether or not these are recognised as being legal and whether or not any action taken to deal with the matter involves the use of any part of the civil justice system.

⁴ Across a range of 18 categories: (in decreasing order of incidence) consumer, neighbours, money/debt, employment, personal injury, rented housing, owned housing, divorce, discrimination, benefits, clinical negligence, relationship break-up, children, homelessness, unfair police treatment, domestic violence, immigration and mental health.

⁵ The figure is 14 per cent if Law Centres and ‘other lawyers’ are included.

There is substantial variation in the extent to which people seek advice from solicitors' firms by the type of problem faced (Pleasence and Balmer 2009). So, whereas 43% of people seek advice from solicitors' firms in respect of justiciable problems concerning the break-up of families, personal injury and home ownership,⁶ the figure is just 7% for other problems types. This variation has been observed through a range of 'legal needs' surveys, conducted in a range of jurisdictions (e.g. Kritzer 2008). In fact, there is a remarkable degree of consistency in findings from around the world about which problem types are most likely to involve lawyers (Pleasence and Balmer 2009).

Unfortunately, to date, the findings of 'legal needs' surveys have moved us little further than the observation that, when it comes to the use of lawyers, "problem type tends to swamp other considerations" (Genn 1999, p.141). But variation by problem type is not an explanation of advice seeking behaviour. That people who have suffered personal injuries through negligence more often go to lawyers is not *explained* by the fact that they have experienced personal injuries. There must be something lying beneath; something about the people who suffer personal injuries, the nature of personal injuries, people's understanding of lawyers or the law in relation to personal injuries, or the type or range of services that solicitors offer.

For example, it may be that the financial cost of instructing solicitors – as compared to, say, free at the point of delivery advice organisations – means that help from solicitors is sought more often in relation to more serious problem types or by those with more financial resources. We know, in general, that people are more likely to seek help about more serious problems (Pleasence 2006), so the cost of instructing solicitors may simply be just another consideration in people's cost-benefit calculations when determining how to deal with the problems they face. Genn (1999, p.141) has observed that most of the problem types associated with solicitors "have in common ... the likely importance of the matters to the parties and the relative intractability of the issues that might be involved." The cost of consulting a lawyer will therefore be relatively low when set against the amount of money at stake or potential consequence of a failure to properly resolve such problems. Various surveys have also pointed to solicitors being used more frequently by those on higher incomes (e.g. Sales et al 1993, Maxwell et al 1999, Pleasence and Balmer 2009),⁷ though other surveys have not (Kritzer 2008). The picture is far from clear, and

⁶ 61%, 32% and 32% respectively.

⁷ Various studies have also identified cost as a key reason provided for the decision not to instruct a lawyer (e.g. Genn and Paterson 2001, Sato et al 2007, Legal Services Board 2009)

muddled by the availability of alternative funding options, such as conditional fees and legal aid, in some jurisdictions and in respect of some problem types. Indeed, there is evidence that in some jurisdictions – perhaps reflecting the availability of legal aid – it is those on middle incomes who are least likely, in general, to seek help from lawyers (van Velthoven and ter Voert 2005, Pleasence and Balmer 2009).

The range of services that solicitors offer may also limit the problems they are instructed about. It is notable, for example, that the great broadening of the scope of law over recent years is not fully reflected in the work undertaken by solicitors. For example, while 25% of all English and Welsh solicitors' non-corporate income (and more than 20% of smaller firm solicitors' income) relates to negligent accidents,⁸ 9% relates to employment problems and less than 1% relates to problems concerning welfare benefits (Law Society 2003). This is despite incidence of problems being similar for all three problem types, all three problem types having a potentially serious impact on people's lives and all potentially involving complex legal issues. This pattern of service delivery is also reflected by people's understanding of what solicitors do. For example, a recent Legal Services Board (2009) survey indicated that just 26% of people think that solicitors are "trained to help with" problems with benefits, compared to 88% in the case of divorce, another area of disproportionately high solicitor activity.

Of course, the services offered by solicitors may be a simple reflection of the profitability of different types of work – which takes us back to the matter of cost.

Personal capacity and experience may also influence whether or not people seek help from lawyers. For example, age and previous use of lawyers have both been linked to the use of lawyers (e.g. Sales et al 1993, Pleasence 2006).

And what of people's characterisation of justiciable problems?

New findings

Using new data obtained through a United Kingdom internet survey of 1,031 people aged between 16 and 66 years old, we have been able to examine the extent to which problem characterisation influences choice of adviser.

As part of the survey, each respondent was presented with a series of up to 10 justiciable problem descriptions, randomly selected from a pool of 88 problem

⁸ Including clinical negligence

descriptions.⁹ The problem descriptions covered 18 broad problem categories, as indicated in Table 1. Respondents were asked how they would characterise each problem¹⁰ and, then, where they would go to get help to deal with each problem.¹¹

Table 1. Source of help by problem characterisation for a range of problem types.

Problem type	Whether characterised as a legal problem											
	No						Yes					
	Where would you go for advice?						Where would you go for advice?					
	Lawyer		Other		Advice sector		Lawyer		Other		Advice sector	
N	%	N	%	N	%	N	%	N	%	N	%	
Discrimination	27	16.2%	84	50.3%	56	33.5%	173	52.4%	61	18.5%	96	29.1%
Faulty goods/services	11	3.0%	247	67.9%	106	29.1%	90	20.8%	184	42.5%	159	36.7%
Employment	19	6.6%	130	45.5%	137	47.9%	169	34.6%	88	18.0%	232	47.4%
Neighbours	8	2.5%	302	95.3%	7	2.2%	33	17.2%	148	77.1%	11	5.7%
Owned housing	20	11.2%	109	60.9%	50	27.9%	213	54.5%	105	26.9%	73	18.7%
Rented housing	23	11.6%	95	47.7%	81	40.7%	185	42.4%	88	20.2%	163	37.4%
Renting out housing	6	10.5%	47	82.5%	4	7.0%	16	61.5%	7	26.9%	3	11.5%
Debt/money	29	14.1%	92	44.9%	84	41.0%	138	39.7%	76	21.8%	134	38.5%
Financial services	15	7.7%	121	62.1%	59	30.3%	71	22.1%	96	29.9%	154	48.0%
Benefits/grants/pensions	7	2.6%	174	65.2%	86	32.2%	49	17.3%	109	38.4%	126	44.4%
Divorce	35	57.4%	23	37.7%	3	4.9%	180	92.8%	4	2.1%	10	5.2%
Relationship breakdown	63	33.3%	81	42.9%	45	23.8%	282	68.1%	86	20.8%	46	11.1%
Children's education	8	3.4%	207	89.2%	17	7.3%	23	21.5%	70	65.4%	14	13.1%
Child protection	20	25.3%	53	67.1%	6	7.6%	42	47.2%	38	42.7%	9	10.1%
PI/Clinical negligence	23	29.9%	49	63.6%	5	6.5%	147	68.1%	51	23.6%	18	8.3%
Nationality	6	18.2%	21	63.6%	6	18.2%	69	57.5%	35	29.2%	16	13.3%
Assault by the police	15	37.5%	18	45.0%	7	17.5%	40	59.7%	20	29.9%	7	10.4%
Homelessness	2	1.7%	68	57.1%	49	41.2%	16	28.6%	16	28.6%	24	42.9%

⁹ 95 problem descriptions were included in the survey, with 7 describing being a victim of a criminal offence or suffering a detrimental change in health status. These 7 descriptions were excluded from our analysis.

¹⁰ The precise phrasing of the question was, "How would you characterise this problem?" The options were "moral", "legal", "bad luck", "private", "social" and "criminal". Respondents were free to indicate as many of the options as they wished.

¹¹ The precise phrasing of the question was, "Where would you go to get help to deal with this problem?" Respondents were free to answer in any way they wished.

Overall, whereas respondents said they would seek help from a lawyer in relation to 44% of problems characterised as 'legal', the same was true of only 11% of problems not characterised as such. As can be seen from Table 1, this disparity also persisted within all 18 problem categories. With the exception of a handful of problem types (notably divorce), the percentage of respondents suggesting that they would seek legal advice where the problem was not characterised as legal (and variation in percentages) was modest. In contrast, where problems were characterised as legal, a very large increase was observed in the mention of lawyers as sources of help, regardless of problem type. For example, when problems concerning home ownership were not characterised as legal, just 11% of respondents suggested lawyers as a source of help. This rose to 55% when problems were characterised as legal.

Table 1 also suggests that much of the association between advice seeking behaviour and problem type may be a simple function of problem characterisation. Those problem types most associated with lawyers, such as divorce and personal injury, were also most commonly characterised as legal.¹²

Interestingly, the percentage of respondents who said they would seek help from the broader advice sector was similar, overall, whether problems were characterised as legal or not (28% and 25% respectively). Also, differences observed at the problem category level (Table 1) were far less pronounced for the broader advice sector than for lawyers. It would seem that the characterisation of problems is less influential in the decision to access the broader advice sector.

Multinomial logistic regression was used to model when respondents stated they would seek help from a lawyer or an advice service (such as Citizens Advice, an independent advice agency or a trade union), rather than some other source.¹³ As expected, problem type was found to influence stated source of help, but to a lesser extent than problem characterisation. Evidence was also found of significant

¹² So, for example, 76% of people characterised divorce related problems as legal and 74% characterised personal injury problems as legal. This compares to figures of 32%, 51% and 54% for benefits, consumer and children's education related problems respectively.

¹³ A multilevel model was used since each survey respondent was asked about multiple problems. Moreover, use of a multilevel model allows assessment of whether opinions on source of advice tended to 'cluster' by respondent. For example, some respondents may be far more likely to specify a particular source of help repeatedly, regardless of problem (for example, because of familiarity with that source).

'clustering' of sources of help by respondent, with some respondents tending to stick with particular sources of help across problem types.

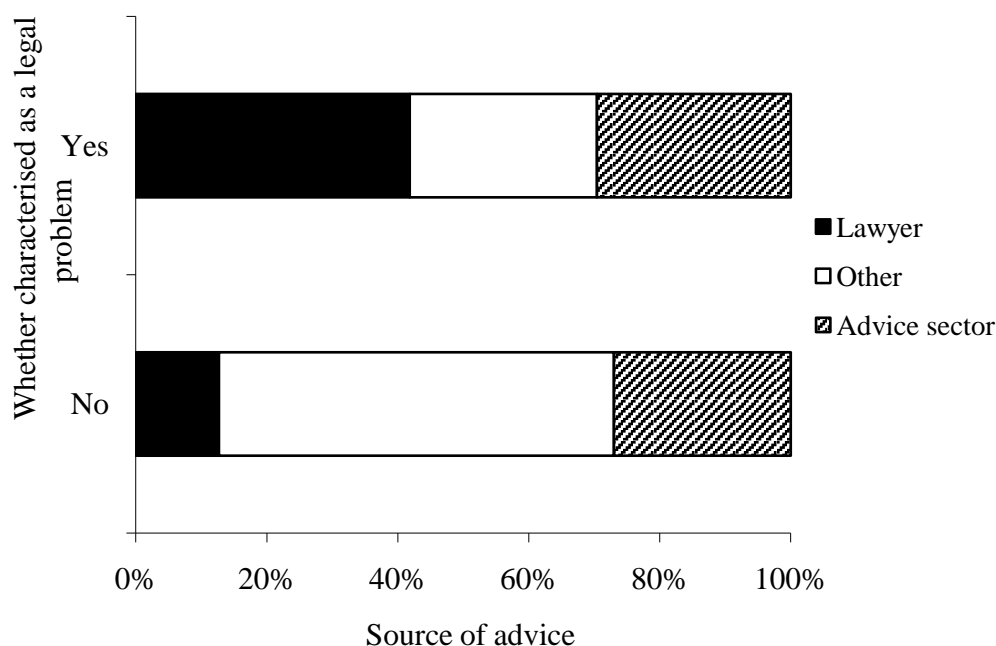


Figure 1. Percentage of respondents suggesting that they would obtain help from a lawyer, the broader advice sector or another source by whether or not they characterised their problem as legal or not.

Figure 1 shows the simulated likelihood (based on the regression model) of respondents mentioning sources of help by whether or not problems were characterised as legal. Problem type is accounted for in the figure by simulating an identical distribution of problem types to both problems characterised as legal and problems characterised as non-legal. Categorisation of problems as 'legal' resulted in lawyers being mentioned as sources of help on far more occasions (42% vs. 13%). Again, little difference was observed in relation to the broader advice sector.

Closing remarks

To date, legal needs surveys have indicated that the use of lawyers is largely driven by justiciable problem type. However, our findings indicate that use of lawyers may be more fundamentally driven by whether or not people characterise problems as being 'legal'. Although we live in a law-thick world, we may not necessarily perceive the world in this way, and this impacts upon patterns of access to legal services.

Why people characterise some problems as legal, but not others, is therefore a matter of considerable interest, with important policy implications. To the extent

characterisation is linked to people's understanding of the law, it raises questions around public legal education. To the extent it is linked to problem severity, or the stage that problems have reached, it raises questions around the accuracy of people's cost-benefit assessments and the appropriateness of characterisations. To the extent it is linked to the supply of traditional legal services, it raises questions around the functioning of the legal services market.

Our findings also demonstrate the importance of the broad advice sector to the accessibility of legal services and, ultimately, justice. As people's recourse to the broader advice sector is relatively uninfluenced by whether or not problems are characterised as legal, it facilitates access to legal services for those who do not see the legal dimensions of the justiciable problems they encounter. This is on top of the evident benefit of having more diverse and affordable elements of the legal services market; a point made recently by Hadfield (2009) in noting that "the extreme approach to the unauthorized practice of law in the United States drastically curtails the potential for ordinary folks to obtain assistance with their law-related needs and problems."

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Training the lawyer of the future

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Over the last 20 years, changes to lawyers' training have been driven by a need for greater emphasis on the practical skills required in practice, and to provide the flexibility necessary to reflect an increasingly diverse range of types of legal practice. More recently, there has been an added concern to widen access to the professions, and to find new ways of gaining practical experience, in order to overcome the issues created by the number of available training contracts or pupillages being lower than the numbers of potential practitioners graduating from law schools.

The emerging debate about an outcomes-driven approach to regulation also suggests a need to allow a diversity of routes to qualification, some of which might give credit for work experience gained outside mainstream legal practice.

Ensuring that those lawyers (a term whose meaning should be interpreted widely since the Legal Services Act 2007) who provide legal services are competent to do so, and widening routes to qualification, are necessary objectives in training lawyers of, and for, the future. But at the heart of the qualification process should be the needs of clients. Their decisions to buy legal services are the demand that drives the nature and volume of those services, and how and by whom they should be provided.

As the marketplace for legal services matures, it becomes ever clearer that many types of legal work are now 'commoditised', and are being marketed more as a product than as a personal, professional service. This has been true for some time of much residential conveyancing, and it is certainly true of the bulk handling of personal injury claims. Cost pressures mean that much of this commoditised work is done under the supervision of lawyers, rather than by them directly.

Even in commercial practice, undertaken more by the larger law firms, work is often organised so that tasks that do not require the skills of a solicitor are handled by less

qualified individuals. There are many functions – often transactional in nature, or in support of transactions – that are undertaken by individuals with law degrees, but no higher qualification, and who are trained only in the area of work in which they specialise. Some of this work (for example, in compliance) may be highly responsible and well paid, but does not require the full range of knowledge and skills of a qualified lawyer.

These developments in legal practice highlight a distinction that is core to the Legal Services Act 2007 and the new approach to regulation. This is the distinction between reserved legal activities (which have to be provided or supervised by those who are legally qualified) and non-reserved activities (which do not). Parliament no longer believes that the public interest requires that these activities should be carried out only by lawyers whose training would enable clients' issues to be considered in a wider legal context.

This ability to separate certain reserved legal activities from a wider legal professional qualification raises the question of whether competence in those activities should continue to be a requirement of the professional title of solicitors, or whether it would be adequate for such competence to be separately certified for them, as well as for their new competitors. There is a genuine and important debate to be had about what it should mean to be a 'solicitor' or 'barrister'. What are the core (and range of) knowledge and skills that should be demonstrated by those who carry the full professional title? Equally important, what are the expectations of clients when they are dealing with lawyers who have these titles?

A related change brought about by the Legal Services Act 2007 also moves the regulatory focus to the entity delivering legal services as well as to the individual. Not only does this permit 'alternative business structures' (ABSs), it recognises the reality that the organisations that provide legal services are no longer made up only or mainly of individuals holding the full professional qualification of solicitor or barrister. The need for ABSs to have an approved and accountable lawyer as its Head of Legal Practice introduces a further dimension to the regulation of the management of the entities providing legal services.

It is therefore an opportune moment to consider change – possibly even radical change – to the training of lawyers and all those who will in the future work in the entities (both familiar and new) that will deliver legal services. We need to answer the questions, 'What do we mean by 'a lawyer'?' and 'What is it that clients need their

lawyers to do, in terms of legal skills, client and case handling skills, and management of their businesses?'.

In many senses, these are not new questions. What is and will be different is the regulatory and competitive environment within which those people and their skills must be used. The distinction between reserved and non-reserved legal activities must be recognised and, to achieve the Act's regulatory objectives, the levels of skills and service for both must remain high (and arguably even be improved). The ability of lawyers to be comfortable with both specialisation and commoditisation adds further challenge to the training agenda. The need for lawyers to supervise a larger number of part-qualified lawyers or paralegals, as well as more staff who have no legal qualifications but make a significant contribution to efficiency, management and regulatory compliance, brings renewed impetus to a drive towards broader training.

The future training for lawyers is not simply a question of what those who currently hold a protected professional title and the entitlement to practise reserved legal activities would prefer to see as the requirements for entry to their ranks. There must be a thorough and open-minded review, driven by the Act's regulatory objectives. The way forward must take account of the views of all those with a legitimate interest in the outcome, including regulators, representative bodies, law schools, and bodies that represent the public and consumer interests. If it is to be fit for purpose, training for lawyers of the future must be targeted, relevant, and useful in practice to both lawyers and clients.

The rewards of virtual

Lucy Scott-Moncrieff,

Scott-Moncrieff Harbour & Sinclair

It is a commonplace to say that the secret of success in our line of work is to attract and retain high quality staff, and that the way to do this is to offer good pay, conditions or prospects. In some sectors high pay and brilliant prospects make up for having to work exceptionally hard, whereas other sectors offer less money but better quality of life, or, at any rate, the prospect of a satisfactory work/life balance in due course.

Nowadays, however, there are many firms which can offer neither good pay and conditions nor good prospects: squeezed on all sides by recession, cheaper competition, increased overheads and the rising expectations of clients, they find having to cut costs, which means cutting pay and conditions, which risks lowering standards and morale, which creates the need for more supervision, which means higher overheads, which means more cuts elsewhere....which is why both the reality, and the prospect, of partnership have lost much of their allure in many firms.

However, there are ways through this, and my firm has found one of them: we attract and retain high quality people who do interesting and challenging work in their chosen fields with stimulating and like-minded colleagues. They are well paid for the sector, even though most of our income is derived from legal aid contract work, and have good working conditions. We are expanding, both in numbers and in areas of work, and I do not lie awake at night worrying about cash flow, billing, or overdrafts.

There is no magic to it; we have an aim, a system, and a tool:

- The aim is to be better than the competition
- The system is that of self-employment
- The tool is information technology

To have any chance of achieving our aim, we have to recruit and retain good people. We recruit by having stringent entry requirements, offering our fee-earners 70% of the fees they generate, and promising them autonomy, flexibility, and good quality supervision in a friendly and supportive environment.

We retain staff by delivering on our promises.

As we pay our fee-earners 70% of fees, 30% has to cover all overheads and partners' profits. We achieve this through our fee-earners, other than trainees and newly qualified solicitors, being self employed. As a consequence:

- Our fee-earners are free to organise their working lives as they choose, so long as they comply with our standards when doing our work
- We don't have start-up costs for new people
- Our employment costs are low
- Cash-flow isn't much of a problem as our consultants are paid when they bill their cases
- We don't spend time and effort monitoring productivity as consultants only get paid for what they do
- We are non-hierarchical, so there are no office politics

It would be impossible for us to work like this without I.T., which we use as an alternative to a big office, rather than as part of the set-up in a big office. This means:

- Consultants can work near where they live, providing a local service with the back-up of a national firm

- We can take people on regardless of where they live (and now cover much of the country)
- We can run a firm of over 60 people from an office less than 3 metres by 4 which we rent by the month
- We hire rooms for unit meetings and to see clients away from the office, often from other firms who are happy to get some money from their redundant space
- All case papers are stored electronically, including incoming post, so consultants have the whole case available on-line, supervisors can supervise at a distance, and files can be archived electronically
- Fee-earners and supervisors can work from any computer linked to the net as all our I.T. is web-based. We use cloud computing, we don't have to worry about buying, maintaining and upgrading IT software, hardware and services, and as we only pay for what we use, there is no waste as well as no hassle

I strongly believe that in the future solicitors who, like us, wish to provide a traditional service to traditional clients will find themselves moving in this direction. The demand for legal services is going to grow as people's lives become more complicated, and as this system makes it possible to offer a service in locations that could not support a traditional practice, the profession can increase its reach both in scope and location.

Some of the new demand can be met by those who believe in Bridget Prentice's ambition that: "*consumers should be able to get legal services as easily as they can buy a tin of beans*", but there will always be those who need to be treated as clients rather than consumers or customers, and for those people the main barrier between them and us will be cost.

My firm adopted this way of working to survive in the legal aid regime of reducing fees and increasing overheads, but it works equally well for our non-legal aid work. For those who charge private rates, this way of working would allow you to become

highly competitive on price, whilst maintaining high standards. Who knows, you might even be cheaper than Tesco's.

There is also great scope to use I.T. to link clients with solicitors remotely. Many people now have webcams on their computers, and might be happy to have appointments that way if it would be cheaper (having first sent in copies of relevant documents).

For those who need local support, the contact could be at a local advice centre or social services centre, and in areas where there are few advice centres, I am pretty sure that GP's surgeries provide a potential setting for high quality, economical, face-to-face or remote access to advice.

I.T. dissolves distance and difficulty and should allow someone living on an oil rig in the North Sea, or housebound in a small village, direct access to excellent and affordable advice.

We have always worked like this, so we have not had to re-invent ourselves. However it would be perfectly possible to reverse-engineer some of what we have done and introduce it into traditional firms: there is no need for a big bang, and plenty of opportunities to make incremental change:

- There are probably many solicitors who would be happy to move from employment to self employment if the terms were right
- There is scope to share office space as it is freed up, particularly with legal aid firms which will be looking for shared premises under the new contract
- Mergers become more feasible

What I have described is not a blueprint, or a formula, or even a recipe, simply an approach that may suit our changing times. At its heart is a belief in the talent, commitment and integrity of solicitors, and in the benefits of liberating them from some of the limitations of conventional ways of practice.

Legal aid: Alternative Business Structures and competition

Carolyn Regan

Former Chief Executive

Legal Services Commission

The new world of separate legal regulation and representation, alternative business structures and Legal Disciplinary Partnerships (LDPs) is often seen as irrelevant to legal aid clients. This view rests on two false assumptions. Firstly, that new forms of business will not find legal aid attractive, because of the lower profits to be made from it as compared to private work. Secondly, that legal aid clients are, in any event, too vulnerable for their cases to be trusted to new forms of business, operating, it is claimed, without traditional professional ethics.

The Legal Services Commission's (LSC) position is that both legal aid clients and the taxpayer should be able to benefit from the opening up of the market to competition. This competition can only be increased by new entrants to the market. The legal market is changing, but slowly. So far, only a limited number of businesses have applied for LDP status and most of these are not radically different from previous structures. Yet, there are signs of change – in October, the Bar Council voted to allow barristers to enter into partnership with each other for the first time, a move that helps open up the opportunity to bid for legal aid contracts. And the development of Civil Legal Aid Centres has shown that organisations new to the legal aid market are interested in working with traditional lawyers to bid for legal aid work.

Nevertheless, as the market opens up, many of the 'new' players will, in fact, be traditional lawyers working together in new ways. Rather than 'Tesco law', it is likely we will see barristers and solicitors working together to bid for one legal aid contract. In social welfare law, we have already seen the voluntary and for profit organisations come together to offer a seamless service. High Street legal firms will also continue to be part of the innovative phone service provided as part of Community Legal Advice (CLA).

Competition does not necessarily always mean 'red in tooth and claw'. The fact that legal aid is, and always has been, largely a publicly funded service provided largely

by private businesses is often overlooked. Over 95% of legal aid expenditure currently goes to the private sector. In a climate of ever tighter controls on public spending, competition to provide services at the best price is inevitable. Price competition operates already in almost all legal services and in most parts of the public sector. However, competition must also drive improvements to services for clients: to encourage innovation - providing services in new ways – and ensure greater efficiency –with providers deciding where experienced lawyers can add most value. Fixed fees are a fact of life in more and more areas of law, not just in legal aid. The days are gone when clients and purchasers were prepared to sign a blank cheque for the number of hours the lawyer as ‘expert’ felt it appropriate to spend on a case.

The interests of legal aid clients must be paramount in any changes. The real gains made in the quality of legal aid services provided by firms and agencies up and down the land – with the dabblers (and worse) having been excluded - should not be thrown away. The professional regulators need to enforce their own standards with open and consistent assessments. There must be an end to ‘regulation by disaster’ with the assumption that apart from a ‘few bad apples’ no professional ever needs to be subject to checks again once they have qualified. Professional standards should apply equally to new business structures; this is the view taken by the regulators and one that the LSC wholeheartedly endorses. There is no tension between quality, client protection and new ways of doing business. Quite the opposite – they must be a given and a condition of legal aid contracts.

The tightening of public budgets over the next few years present an even stronger reason to accelerate innovation rather slowing down. Limited funding will require ever greater energy and imagination to maintain access to justice. So, what should the legal aid services of the future look like?

Moving in the same direction as other services for the public, they must be more flexible, provided in a different ways, with many more partnerships across different professions. People expect to have a range of easily-accessible information about their options which does not rely exclusively on face-to-face advice. They are interested less in how this achieved, than the quality and convenience of the service they receive. Clients and their advisors need to be able to ring helplines and go to websites for clear and accessible information about rights, responsibilities and solutions, including mediation, a legal problem diagnostic service, online tools, for example, in drafting legal documents, incorporating the necessary support for those

less able to use these tools themselves. In family law, for example, there could be the facility to make appointments directly with family counsellors and mediators via the same website that gives you access to legal services. These facilities must anticipate and provide the necessary links with other providers (public, private and not for profit), such as those that help find accommodation, advise on benefits etc. Feedback from clients on the services and their access to them is, self-evidently, crucial to the way in which these are developed.

Virtual networks of providers would ensure clients receive the right service for their individual circumstances, so that those with multiple problems are given support across the board, rather than having to go from pillar to post. In crime, increased emphasis on helping clients transform their lives to prevent future offending will entail much better links between criminal defence services and legal advice in civil matters, as well as non-legal services to address their clients' situation for example helping them get re-housed and their health problems treated.

And yes, there will still be legal aid lawyers doing what they have always done, face-to-face or in court, using their specialist skills to help clients through some of the most difficult times of their lives.

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