

The times are a changing

There are ways that firms can alter their structures without diminishing their professional standing or their quality of service, says **Susanna Heley**

Much has been made of the challenges posed by the SRA handbook and the introduction of ABSs. There remains a pervasive resistance to the very idea of external investment in firms and, in particular, the commoditisation of legal services. There are many who speak extremely eloquently of the importance of resisting a one size fits all approach to legal services. It cannot be claimed that traditional firms are infallible, or that those qualified as solicitors never seek to take advantage of their clients. Intrinsicly, there is no reason why non-lawyers are unsuited to hold management or ownership positions in law firms.

There are, undoubtedly, challenges arising from the changes to legal regulation following the Legal Services Act. Few predictions agree as to the likely shape of the profession even in five years time; many predict a stormy and rather bleak outlook ahead for traditional firms and some predict an amalgamated legal profession under the auspices of one super-regulator. What is clear is that change is here and its pace is unlikely to slow. Those firms which do not adapt are unlikely to survive.

Of course, there are reasons for the rather bleak predictions beyond regulatory changes, those firms offering legally aided services – arguably one of the keystones of access to justice – are faced with the prospect of providing services at rates

which are not sustainable. The ongoing economic downturn creates yet more uncertainty, with no end in sight.

Another, rather more technical concern, is the move towards entity-based regulation. Leaving aside various difficulties in the operation of the system, entity-based regulation represents another layer of obligations and therefore additional cost to practitioners.

Additionally, there is still the problem of the definition of 'legal services'. Although it is the stated intention of the government and all relevant regulators to level the playing field between traditional firms and ABS, in fact, there is a major flaw at the heart of the comparison which makes that impossible: there is no satisfactory definition of 'legal services'. Therefore, all services provided by a traditional solicitors firm fall within the SRA's remit. The cost of meeting the regulatory burden for firms is an overhead which has to be met. In ABS firms, the SRA's regulatory remit encompasses only its provision of legal services meaning that firms could potentially take steps to minimise those services which fall into the SRA's net, therefore reducing the costs of compliance.

All in all, it is easy to see why few agree on what the profession can expect. To me though, the SRA handbook and, in particular, the introduction of ABS does present the profession with opportunities.

There are ways that solicitors can alter the structures through which they practice without diminishing their professional standing or the quality of services they provide. Some strategies will involve taking advantage of the greater flexibility the SRA handbook provides as to the way services are provided, others will involve conversion to an ABS. Both systems have their advantages.

Shared services

It is difficult for firms, particularly small firms, to bear increasing overheads alone. Entering into agreements to share support services or premises can be a way to cut overheads. There are those who advocate small firms entering into agreements to combine their purchasing power in respect of office supplies, support services, web services and technical support. Such agreements should not offend against the new regime, provided that appropriate safeguards are in place to protect client services and client confidentiality.

The process of agreeing to band together to take advantage of increased purchasing power may not be straightforward, but it may be a suitable way for some firms to reduce overheads.

Legal process outsourcing (LPO) is the topic which has created a great deal of interest in the last few years. Although not specifically spawned from the changes

to regulation, LPO has been one of the methods used to liberalise the market and cut overheads. The idea that certain legal work can be outsourced to external subcontractors who do not need to be regulated – or even in the same country as the services provider – thus reducing costs.

Common areas of outsourcing are research and library services, contract services and document review and management services.

The introduction of the SRA handbook in 2011 was useful to the LPO industry in some ways, as it allowed a greater element of flexibility in the way services are provided. That said, it also emphasised that firms cannot abrogate their responsibility for compliance and requires that firms have in place arrangements which allow the SRA access to oversee LPO where it is appropriate.

External investment

The reaction of the profession to the possibility of seeking external investment has not been as dramatic as was hoped. Some big names are making a splash as ABS firms involved with funders and there is increasing interest now that potential investors have had an opportunity to see how the system has started to work in practice. There is, however, still a great deal of uncertainty as to whether or not law firms make an attractive target for investors, particularly in the current market and with the SRA openly stating that it expects the failure of a number of traditional and unchanging firms over the next few years.

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Just in the last few weeks Quindell – which has made a number of high profile personal injury acquisitions, including law firms and claims managers – announced excellent results but almost immediately suffered a significant drop in its share price. Quindell issued a statement stating that there was no valid reason for the drop shortly thereafter. Time will tell whether external investments into law firms will pay off for both investors and firms, but it is clear that many in the market remain unwilling to commit in the longer term.

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Promotion of key staff

Many see ABSs only as the influx of brands and investment houses in to the legal profession. There are however those ABS which arise out of traditional firms where one or more key members of staff is not a lawyer and the firm is finally able to provide an ownership or management position. Firms wanting to bring in an office manager or accountant as an equity partner, but who were not able to meet the restrictions applied to the half way house of legal disciplinary practices introduced in 2009 have converted to ABS.

Firms are now in a position to offer management and ownership roles to non-lawyer members of staff, which not only provides an incentive for such staff members but also brings them (in theory at least) more effectively within the SRA’s regulatory regime.

Multidisciplinary practices

To my mind (which may, admittedly, be overly focused on regulatory issues), there are both benefits and very real dangers associated with multi-disciplinary practices. Although the ABS regime does provide for members of different professions to get together and provide a combination of professional services as a sort of one stop start to finish process, this facility has not flourished as some predicted it might.

I still have difficulty comprehending how multidisciplinary practices (MDPs) will deal with the interaction of the various regulatory regimes which apply to them and, in particular, how different indemnity insurance requirements will interact. I have

said repeatedly that it is fundamentally important to understand where the lines between legal services and non-legal services fall. Until we have a clear and workable definition of ‘legal services’ this is not possible. The Legal Services Board is continuing its thematic review of legal services which, instead of clarifying what services should or should not be classed as legal services, continues to focus on specific activities. So, by 2015, for example, we should have in place a system whereby the old reserved activities remain unchanged

but they will be joined by additional regulated activities such as the provision of immigration services.

The LSB has not yet even published its consultation paper on the regulation of legal advice generally. However, it has indicated that it is unlikely to recommend that the provision of general legal advice should be a regulated activity.

Amidst this rather scatter-gun approach, it is easy to see how consumers could be confused as to where the lines fall where services are provided by a true MDP. Add to that the potential arguments between indemnity insurers and regulators as to liability and jurisdiction should things go wrong and you end up with a picture which contains enough uncertainty to be rather unpalatable.

Innovation

The idea behind the Legal Services Act, ABS and the SRA handbook is to promote competition in the legal services market for the benefit of consumers. In some ways that is a poor aim in the context of the legal services market. The promotion of competition on its own sounds alarmingly like encouraging lawyers to sacrifice ethics and an excellent service in favour of profit and services which are just about good enough.

Sadly the belief that practising law is simply another commercial service does seem to be pervading. How else does one explain some of the changes which are being proposed to the legal aid system? Why is it that the system is so often prohibitively expensive? And it is not all down to greedy lawyers, there are many lawyers out there working for little more than a pittance because they believe in doing an important job to protect the rights of those who have no one else to fight for them.

The challenge that we as lawyers in the new regime must answer is whether we can maintain our role in the justice system. The ethics and professionalism which solicitors should see as key to their professional identity, while still finding ways of taking advantage of new forms of practice to deliver those excellent and ethical services as efficiently as possible.



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