

# The Big Bang Report



Opportunities and threats in the  
new legal services market

Written by Jon Robins



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# Introduction

The report looks at the impact of the Legal Services Act 2007 on all parts of the legal profession from City to high street as well as its impact on non-lawyer businesses offering legal services.

The research is based on more than 50 in-depth interviews with law firms, barristers' chambers, not-for-profit agencies providing legal advice, representative bodies, prospective new entrants into the legal services market plus regulators of legal services and government agencies.

The interviews took place between August and November 2009. Respondents were sent the *Big Bang* questionnaire, included as appendix 1.

The majority of respondents are listed below, however a number asked for their responses to be in confidence.

We would like to thank those people and organisations who took the time to help us with our inquiries, including:

3 Hare Court	Eversheds	Landlord-Law	Serle Court
39 Essex Street	Faegre & Benson	Legal Assistance Direct	Sykes Lee & Brydson
A4e	Field Fisher Waterhouse	Moorcrofts LLP	Solicitors Regulation
Albert Goodman	FirstAssist Legal	LBC Wise Counsel	Authority
Amelans	Protection Insurance	Legal Services Board	Solicitors Independent
Baker Tilly	Forshaws	Legal Services Commission	Financial Advice
Barlow Lyde Gilbert	Forum Law	Legal Workflow Limited	Stephensons
Barlow Robbins LLP	Fox Lawyers	Littleton Chambers	Switalskis
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Barnetts	Geotropes Consulting	Matthew Arnold &	Taylor Wessing LLP
Citizens Advice	Gough Square	Baldwin LLP	Thompsons
Clifford Chance	Chambers	Maitland Chambers	Thomson Snell &
Co-Op	Guildhall Chambers	Outer Temple Chambers	Passmore
Cloisters	Halifax	Quadrant Chambers	TV Edwards
Cubism Law	Hodge Jones & Allen	Quality solicitors	Underwoods
Dale Langley & Co	Horwich Farrelly	Rickerbys LLP	Which?
DAS Legal Expenses	Hugh James	Russell Jones & Walker	Whitehead Monckton
DLA Piper	Ian Lithman	RWPS	Wragge & Co
Edwards Duthie	Jomati	Scott-Moncrieff Harbour	
Epoq	Kennedy Cater	& Sinclair	

## About the author

Jon Robins is a freelance journalist and author ([www.jonrobins.info](http://www.jonrobins.info)). He has been writing about the law for the national and specialist legal press for over a decade. His latest book *The Justice Gap: Whatever happened to legal aid* (Legal Action Group, May 2009 and written with Steve Hynes) looks at the state of 'access to justice'.

# Foreword

The City experienced its own ‘Big Bang’ back in 1986 with the mass deregulation of the financial services markets and the banking system. So far, the legal profession has proved remarkably resistant to the forces of liberalisation. However the Legal Services Act 2007 promises to be the legal profession’s equivalent ‘Big Bang’.

Competition is intensifying, as this report documents. What that might mean, whether it is good or bad for the profession, and what opportunities and threats the reforms present, is the subject of this report. The study portrays a profession in transition.

Many firms and barristers’ sets are looking at the traditional business model and asking whether it is best suited to serving their clients’ needs and to competing in a different legal landscape. Private equity firms are sizing up medium sized City practices, national players and barristers’ sets. Some firms are actively lobbying the regulators to relax the rules on external ownership ahead of the 2011 deadline.

Waiting in the wings are retail giants such as the Co-Op, high street banks such as the Halifax, membership organisations including the consumer group *Which?*, insurers such as DAS, as well as companies like A4E which hitherto have had little connection with the law. All have been interviewed for this report and are profiled in the following pages.

In an interview conducted for this report, David Edmonds, the first chair of the Legal Services Board was asked how radical might be the changes that are about to be introduced under the Legal Services Act.

The former director-general of Oftel replied by saying that he had been approached ‘at least’ three times over the last 12 months by agitated lawyers saying: ‘Mr Edmonds, you’re not going to change something that has over 800 years of history behind it. To which I reply the Legal Services Act gives me a set of duties and responsibilities which might well mean me changing 800 years of history - and is the fact that there are 800 years of history necessarily a good thing?’

Legal service providers in all types of organisations will find this report illuminating, reflecting as it does the plans of some, the concerns of others and the new challenges for all.

**Tina Williams** Senior Partner  
Fox Williams LLP, November 2009

*“The Legal Services Act gives me a set of duties and responsibilities which might well mean me changing 800 years of history - and is the fact that there are 800 years of history necessarily a good thing?”*

David Edmonds, Legal Services Board

# Executive Summary

The *Big Bang* report is based on interviews with over 50 respondents from all parts of the legal services industry including solicitors' firms, barristers' chambers, representative groups, regulators as well as businesses outside of the profession providing or interested in providing legal advice.

We used questions listed in the *Big Bang* questionnaire as a starting point for discussion. The substantive part of this report is based on qualitative research.

Separately, we conducted a survey of 50 leading players in the legal services market on issues to do with the profile of the profession and how that might change. Those results appear as pie-charts in this report.

There are five in-depth cases studies profiling non-law businesses with ambitions under the Legal Services Act. These appear at the end of the report.

## Chapter 1: The build-up to the Big Bang

- Background to the Legal Services Act 2007. The present reforms flow from the review conducted by Sir David Clementi in 2003. The Act came into force in 2007 and earlier this year there was a first, tentative toe in the waters of liberalisation when non-lawyers were allowed to work in partnership with solicitors through 'legal disciplinary practices'. By 2011, the introduction of alternative business structures is expected which will, as one commentator has put it, 'blow apart the established conventions' of the law.

*Do you believe that the legal profession has a good public profile? 38% of respondents to the Big Bang survey said 'Yes'*

*Does the importance of a good profile increase with the implementation of the new legislation? 62% of respondents to the Big Bang survey said 'Yes'*

## Chapter Two: A false start

- Since March this year firms have been able to adopt the new legal disciplinary practices (LDPs) regime with up to 25% non-lawyer partners created under the Legal Services Act 2007. Half a dozen respondent firms had adopted or intended to adopt LDP status.

## Chapter 3: A legal services revolution

- Alternative business structures, the most revolutionary aspect of the Legal Services Act 2007, will allow lawyers to form multidisciplinary practices offering legal services together with non-legal services. They will also allow non-lawyers, including external investors as well as the likes of Tesco, AA, banks and insurers to have a stake in firms.

*Is the prospect of 'Tesco Law' good for the consumer? 50% of respondents to the Big Bang survey said 'Yes'*

## Chapter 4: The fall-out

- The Legal Services Act created the new Legal Services Board as arch regulator 'with the power to enforce high standards in the legal sector'. It also created the independent Office for Legal Complaints to act as an independent ombudsman service for all consumer complaints about legal services.

*Will firms come under more media scrutiny as a result of the regulatory changes taking place? 68% of respondents to the Big Bang survey said 'Yes'*

# Chapter 1: The build-up to the Big Bang

The present reforms flow from the review conducted by Sir David Clementi in 2003. They have been a long time coming and they aren't quite here yet. The Act came into force in 2007 and earlier this year there was a first, tentative toe in the waters of liberalisation when non-lawyers were allowed to work in partnership with solicitors through 'legal disciplinary practices'.

By 2011, the introduction of alternative business structures is expected which will, as one commentator has put it, 'blow apart the established conventions' of the law.<sup>1</sup> Alternative business structures will enable the external ownership of law firms, they will be able to sell private equity and float on a stock exchange. The profession will be in the grips of a full-blown legal services revolution which will redraw the shape of the market and redefine the way that clients access legal advice.

## Overview

Some would-be participants are straining at the leash. As we report later, private equity firms are sizing up medium sized City firms, national players and barristers' sets and some of those firms are actively lobbying the regulators to start ahead of the 2011 deadline.

The purpose of the first chapter is to provide a timeline for the build up to the 'Big Bang', in other words, a history of liberalisation in the legal profession. It also considers the forces that have so far driven reform. The chapter concludes with a discussion by lawyers as to how the profession is perceived and whether that image will improve as a result of the implementation of the Legal Services Act.

## Building up to the Bang

The legal profession has up until recently proved successful at withstanding the general historical trend towards liberalisation. But it hasn't been totally immune to change and, for example, the Administration of Justice Act 1985 enabled licensed conveyancers to compete with solicitors in the core high street activity of conveyancing.

The solicitor advocate movement has made progress in the courts, formerly the exclusive preserve of the Bar, via the Legal Services Act 1990 which enabled solicitors to acquire rights of audience in the higher courts. However this piecemeal approach to liberalisation has been overshadowed by the scale of the ambitions of the Clementi review which began over six years ago.

The first move towards the Legal Services Act came in the form of a wide-ranging Office of Fair Trading 2001 paper *Competition in Profession*.<sup>2</sup> 'Competition brings consumers lower prices, more choice and new services,' said John Vickers, then Director General of Fair Trading. 'The law to combat restrictions on competition should apply as widely as possible and the scope to exclude professional rules from competition law should be removed.'

His report identified as 'existing restrictions' those professional rules hindering the establishment of multi-disciplinary partnerships (bringing together accountants, lawyers and other professionals such as surveyors and estate agents); limitations on consumer access (for example, clients couldn't see a barrister without a solicitor); the 'dampening of price competition' by fee guidance; as well as reigniting an old debate over the QC rank ('hard to see what benefits it brings to consumers and the public,' according to Vickers).

On July 24th 2003 Sir David Clementi, then chairman of the Prudential, was appointed to undertake a wide-ranging review of regulation of legal services in England and Wales by the Secretary of State for Constitutional Affairs.

<sup>1</sup> *The Times*, May 21 2009 (Big Bang will expose law firms to the full glare of competition)

<sup>2</sup> *Competition in Profession*, Office of Fair Trading, March 2001

The former deputy governor of the Bank of England terms of reference were as follows: 'To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector. To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.'

Clementi was asked to report back by December 2004 and he published a consultation paper in March that year. Three 'particular concerns' lay behind that consultation:

**A concern about the current regulatory framework.** In July 2003, the Department for Constitutional Affairs concluded that the regulatory framework was 'outdated, inflexible, over-complex and insufficiently accountable or transparent'. 'Nothing that I learned during the 18 month period of my review has caused me to doubt that broad validity of the government's conclusion,' Clementi wrote. 'The current system is flawed.'

Clementi argued that those failings were partly down to the 'governance structures of the main front-line professional bodies' and partly because of 'the over-complex and inconsistent system of oversight regulatory arrangements for existing front-line regulatory bodies'.

**A concern about the current complaints system.** There was 'considerable concern' about how consumer complaints were being dealt with. The concern arose on a number of levels - at an 'operating level' about the efficiency with which the systems are run; at 'an oversight level', about the overlapping powers of the oversight bodies; and 'at the level of principle', about whether systems the complaints against lawyers, run by lawyers themselves, 'can achieve consumer confidence'.

**A concern about the restrictive nature of current business structures.** The business structures through which legal services were

delivered had changed little despite business practices changing. Concern was expressed about the inability of those with finance or IT skills to become partners. But the main thrust was directed to opening up the profession. 'There is also concern about whether the restrictive practices of the main legal professional bodies can be justified, in particular those which prevent different types of lawyers working together on an equal footing.'

At the time of writing it is the promise of 'Tesco Law' that dominates much of the press coverage about the LSA. 'Tesco Law' proved a somewhat slippery concept for our respondents with a meaning relative to where they were placed on the legal services spectrum and their relationship to their clients. Despite definitional difficulties it has become shorthand for the ongoing liberalisation encompassing several ideas, mainly:

- the corporatisation of law firms through the external ownership of what were hitherto traditional law firms;
- the commoditisation of volume legal services; and
- the entry of retailers into legal services.

Insofar as the Legal Services Act has percolated through to the pages of the national press, over the last couple of years the main story has been the promise of a better deal for consumers.

To commentators outside of the legal press, 'Tesco Law' is a very good thing. For years, there has been 'a feeling that the legal profession operates a closed shop that deters real competition and provides a cloak of mystification, not least about fees, under which tardiness and obscurity can flourish', according to *The Times* in May 2009.<sup>3</sup>

In June 2007 the *Sunday Telegraph*, in an article headlined 'Tesco takes on "sleepy" solicitors', reported the UK's largest retailer was 'plotting to take on high street solicitors' by launching a conveyancing service. Although as we discuss later, the ambitions of Tesco in this area appear modest compared to the likes of Co-Op. 'The move, which

<sup>3</sup> See footnote 1

could be a prelude to a full-blown estate agency practice, follows the recent liberalisation of the £20bn legal market allowing companies such as supermarkets to offer legal services to the public,' said the paper. 'The Legal Services Bill was - appropriately - dubbed 'Tesco Law'.<sup>4</sup>

In July 2008 *The Observer* asked: 'How much will we be able to rely on supermarkets' own-brand lawyers? So-called 'Tesco Law' - legal services from consumer brand names offering an alternative to the high-street solicitor - is already available through *Which?*, the Halifax and the Co-op, but critics question the quality of advice available.'<sup>5</sup>

But generally the tenor of the coverage has been positive – even in the business press. 'Competition delivers in ways that government bureaucrats cannot anticipate,' reckoned the *Financial Times* in June 2006. 'Consumers can expect more choice, innovative services and lower prices. Familiar brands such as Tesco and the AA have nothing to gain from offering substandard legal services.'<sup>6</sup>

However it was the issue of complaints that was driving change at the beginning of the decade. In September 2000 *The Independent* reported that the then Lord Chancellor, Lord Irvine, had given the Law Society until the end of the year to sort out its complaints handling system. 'If the Society fails to meet government targets of dealing with complaints, Lord Irvine has threatened to remove part of its regulatory power.'<sup>7</sup>

The Law Society's 'less-than-heroic track-record on complaints has dogged the profession for years. In fact, it could well be its undoing,' wrote the *Observer* in October 2004. In the same article *Which?* identified the profession's inability to deal with unhappy clients as 'the greatest threat to self-regulation' as ministers threatened the Law Society with a fine of £1 million if it failed to turn the problem around.<sup>8</sup>

Many in the profession saw Clementi-style change as capable of destruction of the law as 'a profession'. The more strident voices have been from the Bar (as they are now, see Chapter 2). Guy

Mansfield QC, then Bar Council chief, summed this up when he said in December 2004: 'Lawyers belong to a profession but Clementi uses the words "legal services industry". I really don't like the expression -it creates great anxiety in my mind as to whether he has a real sense of what it means to be a lawyer.'<sup>9</sup>

Sir David was ready for the fight. Reform would be resisted by lawyers who were 'comfortable with the system as it is', he said as his report was published that month. 'Changes will require significant political commitment, partly to meet the expected criticism from some lawyers and partly because reform will need primary legislation, which requires scarce parliamentary time.'

A white paper based on the Clementi vision was published in October 2005 (*The Future of Legal Services - Putting Consumers First*). The main Clementi proposals comprised establishing an Office for Legal Complaints to independently investigate complaints; setting up a Legal Services Board to regulate legal services; and enabling different kinds of lawyers and non-lawyers to work together on an equal footing to provide legal and other services.

At the launch, asked whether 'Tesco Law' would mean reducing a professional relationship to the level of buying a tin of beans, the minister Bridget Prentice responded with admirable frankness: 'I don't see why consumers should not be able to get legal services as easily as they can buy a tin of beans.'<sup>10</sup> Lawyers balked at the idea of a future stuck on aisle 15 of their local supermarket selling legal services somewhere between tinned veg and cleaning appliances.

In May 2009 law firms staged an anti-Tesco Law protest outside the Royal Courts of Justice. They launched QualitySolicitors.com, a legal brand bringing together 100 solicitor firms (see interview with founder Craig Holt). Lawyers handed out cans of beans with the message 'Legal services by supermarkets are as ridiculous as lawyers selling beans.'

<sup>4</sup> *Sunday Telegraph*, June 3 2007 (Tesco takes on 'sleepy' solicitors)

<sup>5</sup> *Observer*, July 6 2008 (How much will we be able to rely on supermarkets' own brand lawyers?: So-called 'Tesco Law', Jon Robins)

<sup>6</sup> *Financial Times*, June 6 2006 (The Lawyer doth protest too much)

<sup>7</sup> *Independent*, September 9 2009 (More solicitors than ever accused of misconduct)

<sup>8</sup> *Observer*, October 17 2004 (Flaw Society, Jon Robins)

<sup>9</sup> *The Times*, December 14 2004

<sup>10</sup> *Daily Telegraph*, October 18 2005

The law 'isn't about selling baked beans', David Edmonds, the chairman of the Legal Services Board asserted when interviewed for this report. His desk was adorned with six artfully stacked cans of differently-branded beans. 'But in a baked bean market, as I have demonstrated for myself in recent weeks, there's a heck of a lot of different types of beans,' he reflected. 'I want to see a variety of provision in legal services which goes right from the difficult social welfare case all the way up.'

In October 2005, Lord Falconer, then Secretary of State for Constitutional Affairs and Lord Chancellor, said reform of the legal services market was needed 'to put consumers first'. 'Legal services are crucial to people's ability to access justice for all. Consumers need and deserve legal services which are efficient, effective and economic. Our proposals will help deliver that.'

The Legal Services Bill was introduced to Parliament in November 2006 and received royal assent in October the following year. It promised to:

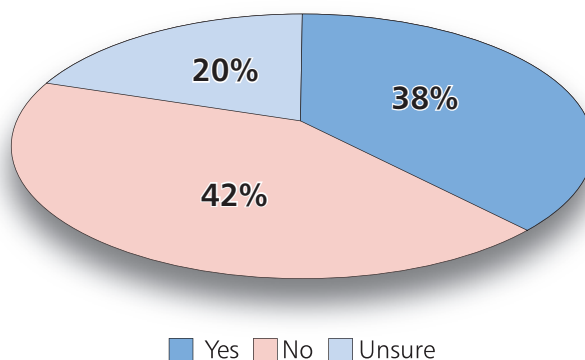
- create a single and fully independent Office for Legal Complaints 'to remove complaints handling from the legal professions and restore consumer confidence';
- introduce alternative business structures that 'will enable consumers to obtain services from one business entity that brings together lawyers and non-lawyers, increasing competitiveness and improving services';
- allow legal services firms to have up to 25% non-lawyer partners and to allow different kinds of lawyers to form firms together in the near future;
- create a new Legal Services Board 'to act as a single, independent and publicly accountable regulator with the power to enforce high standards in the legal sector, replacing the maze of regulators with overlapping powers' chaired by a lay person; and
- deliver a 'clear set of regulatory objectives for the regulation of legal services.

So where are we up to now? The Legal Services Board was set up 15 months ago – see *interview on page 6*. The Office for Legal Complaints replaces the Legal Complaints Service next year. As mentioned earlier, legal disciplinary practices (LDPs) were introduced on March 31st this year (allowing LDPs to be owned by different types of lawyer and / or up to 25% non-lawyers) and the LSB has as its 'objective' that the first alternative business structures licences should be granted 'mid-2011'.

### LSA: opportunity or threat?

The first questions we asked our respondent-practitioners related to self-image. Did they believe that the legal profession had a good public profile? Would liberalisation of the legal services market give the profession a better profile? Did the importance of a good profile increase with the implementation of the new legislation?

#### Do you believe that the legal profession has a good public profile?



Of course, the answer depended on where respondents found themselves in the legal services market. Richard Barnett, senior partner at the national volume conveyancing firm Barnetts, offered a 'three-tier' dissection of the legal profession. 'If you're talking to someone who is banged up on a regular basis and gets access to the duty solicitor scheme, they'd say it is a very good system,' he began. 'If you talk to any major PLC they'd say it is a damned good system but we pay a lot of money for it. If you talk to someone from the middle classes whose contact might be conveyancing they'd say it's a necessary evil.'

There was a general consensus that the profession's reputation with the public had improved since what George Bull, head of professional services at the

accountants Baker Tilly, referred to as an 'all-time low' over the perceived inability to get a grip on complaints-handling. 'The fact that lawyers are less the butt of so many targeted jokes, as opposed to just general jokes now like accountants, suggests that the bad aspects of their profile have been shaken off,' said Bull (an accountant).

No respondent was as complacent as a recent survey suggested that they might be.<sup>11</sup> The research, commissioned by the Solicitors Regulation Authority, arrived at the startling conclusion that conveyancing solicitors, traditionally the source of more complaints than any other sector of the profession, actually achieved 'stratospheric' levels of client satisfaction. 'The public perception of solicitors - I'm not talking about the perception of the press - is extremely good,' reckoned Ian Lithman, a sole practitioner in London and former chair of the Sole Practitioners Group, who referenced the research. The SRA study found that some 93% of clients claimed to be happy with their solicitor's performance (comprising 65% who were 'very satisfied', and 28% who were 'satisfied').

Nick Hanning, a legal executive with the Dorset law firm RWPS, was mindful of regular polls of the public as to their views on the varying degrees of trustworthiness of professionals. 'Generally, lawyers are always close to the bottom of the list,' he said. 'However if you ask the question: is your lawyer trustworthy? I bet people would say "Yes".' Lawyers were 'the butt of all jokes but everyone is always talking about the other side's lawyer it seems to me', he said; adding: 'I don't think journalists score too highly.'

Good profile was relative, argued Ian Dodds, director of Bar Futures, an alternative barristers' chambers providing clerking, marketing and office space for barristers without the overheads of traditional chambers. 'Compared with estate agents and gunrunners', then yes, Dodds (a non-lawyer) argued lawyers had a good profile. 'Compared with doctors and teachers, then they probably don't,' he added.

Quentin Poole, senior partner at Wragge & Co, responded by saying that if he was answering the

question a couple of years ago he would have said it was 'OK' as far as corporate law firms were concerned but 'poor' for traditional high street firms where the service was 'seen as expensive and slow'. 'Now corporate firms have become swept up in the tidal wave of disapproval that has hit the banks and the financial services sector generally,' he said.

So would liberalisation give the profession a better profile? Yes, replied John Durkan of the Yorkshire firm Switalskis. 'Firms will have to change and raise their game,' he said. 'A lot of the public don't understand law firms. The Legal Services Act brings the profession more out into the public arena. They will have a greater understanding of what the law is about.' A number of respondents pointed out, as one lawyer put it, that the big retailers like Tesco were 'a country mile - and then some' ahead of lawyers in understanding customer services. 'Lawyers are going to have to compete at that level. Firms will be dragged up.'

'Most large businesses have very slick complaints handling systems,' commented Paul Gilbert, an in-house lawyer and founder of LBS Wise Counsel consultancy. 'They often see it as an opportunity to address something that has gone slightly awry. A quick intervention creates good PR opportunities and an opportunity to cement relationships which might otherwise go adrift and maybe fracture.' The solicitor argued that 'that discipline will come into the profession in a very significant way'.

George Bull, at Baker Tilly, agreed. Other industries understood complaints handling better and that, in his words, 'a mild answer deflects wrath'.

However there was a strong element in the profession that felt liberalisation would ill-serve the public. Already legal services were 'being commoditised and "dumbed down" and you can only see that increasing', reckoned Nick Hanning. 'The feature of large organisations tends to be reducing work to the lowest common denominator and shunting it through on production lines?', How could the profession's profile improve? asked Ian Lithman.

<sup>11</sup> *Law Society Gazette*, August 20 2009 (Huge vote of confidence for conveyancing solicitors)

# Interview 1: David Edmonds

## David Edmonds is the Legal Services Board's first chairman

The LSB came into being on January 1st 2009 with its 'overriding mandate... to ensure that regulation in the legal services sector is carried out in the public interest, and that the interests of consumers are placed at the heart of the system. It has 42 staff and has running costs of (in Edmonds' words) 'less than 0.0001%' of the sector's turnover. On January 2nd 2010 the LSB finally comes into full effect with powers to approve the rules under which the providers of legal services must live.

### *Has the LSB enough resources to do its job?*

Edmonds says 'at this stage' he was 'confident that the resource we have available to us and the resource that we have set out in the levy consultation document is sufficient for us to do that job'.<sup>12</sup> 'The profession has clearly had a tough year,' he adds. 'I don't want to impose any costs that aren't absolutely necessary.' He describes his organisation as 'non-hierarchical and clever'. 'I have totally turned around the model that I was presented with when I arrived,' he says.

### *What are his ambitions for the LSA?*

'My hope is that the legal services market will, as markets tend to, lead to the evolution of new kinds of services, support and help for the consumer,' replies Edmonds, who spent five years as director general of Oftel. 'If you always focus on what the consumer needs then consumer demand for those services comes through, to use a controversial metaphor, either the value baked beans or the premium baked beans.'

The law isn't 'about selling baked beans', Edmonds says. 'But in a baked bean market, as I have demonstrated for myself in recent weeks, there's a heck of a lot of different types of beans. I want to see a variety of provision in legal services which goes right from the difficult social welfare case all the way up.'

### *How radical will the changes be?*

Edmonds replies by saying that he has been approached at least three times over the 12 months by agitated lawyers saying: 'Mr Edmonds, you're not going to change something that has over 800 years of history behind it. To which I reply the Legal Services Act gives me a set of duties and responsibilities which might well mean me changing 800 years of history - and is the fact that there are 800 years of history necessarily a good thing?'

### *What about their plans for introducing the ABS regime?*

This month (i.e., November 2009) the LSB launches its major consultation on the shape of ABSs which Edmonds describes as 'incredibly exciting'. 'The ABS's structure is all about opening the market up by aligning alternative service providers with other professionals, by using the economies that come through scale and using marketing in a different kind of way.' Edmonds says his board will be listening to all sides (lawyers, new market entrants and potential sources of external capital).

'I didn't come here because I thought there was a wonderful opportunity to create a better framework for independent regulation. That is interesting,' he says. 'The real motivation for me is ABSs. For me regulation is all about the consumer, the citizen and providing for the community.'

<sup>12</sup> *The Levy: funding legal services* - Discussion paper on payment arrangements for the levy on set-up costs, with consultation on composition of statutory instrument, Legal Services Board, September 11 2009

## Chapter 2: A false start

Since March this year firms have been able to adopt the new legal disciplinary practices (LDPs) regime with up to 25% non-lawyer partners created under the Legal Services Act 2007. Commentators in the legal press have treated this first step along the path towards liberalisation as more of a damp squib than 'Big Bang'.

### Overview

We asked firms if they had, or intended, to apply for LDP status. As of November 2009, eight months into the new regime, there were 109 LDPs which between them included 52 other lawyers (mainly legal executives, but with some licensed conveyancers and two patent attorneys) and 75 non-lawyers now making partner grade. So far the appointment of non-lawyer partners appears to have been more about structural tidying up rather than using the LDP vehicle as a stepping stone to alternative business structure status as had been previously envisaged.

Amongst the *Big Bang* respondents, half a dozen had either taken advantage of, or intended to do so, of the new LDP regime. According to the SRA, of the new generation of non-lawyer partners, most were in a finance role (without a particular qualification) who had been with the firm for a long time - about one quarter had some kind of accountancy qualification. Firms were using LDP status 'to retain and reward rather than it being a particular move towards a very different direction', said Alison Crawley, a consultant with the SRA.

However Crawley didn't see the introduction of LDPs as 'the damp squib' it was reported to be in the legal press. When the government first brought in limited liability partnerships the profession 'pressed us to support the legislation' but when the Limited Liability Partnerships Act came into force it took over a year before the first LLP was announced, said Crawley. Once the first firm converted, the movement very slowly gained momentum.

Non-lawyers interviewed for the *Big Bang* report included Nick Hanning, a legal executive at RWPS, Clint Evans, CEO at City firm Barlow Lyde & Gilbert (BLG), and John Durkan, practice director, at Switalskis, a large legal aid firm in Yorkshire.<sup>13</sup> Hanning was the first Institute of Legal Executives (ILEX) member to make a request for a certificate of suitability to become partner. From a personal point of view, Hanning said his new status 'has had no impact at all, other than the fact that my name can sit on the letterhead and I can describe myself as a partner'. Hanning had been with RWPS Law in Poole from the start in January 2000 and said he was always involved as 'a quasi-partner' anyway.

Six months into the new LDP regime and BLG had yet to convert to LDP status. If it was on the to-do list, then it was 'a long way down right now,' said Clint Evans, a chartered accountant by background. He became the City firm's first ever CEO in 2007 having previously been head of branding at Clifford Chance in 2001 (following its merger with US firm Roger & Wells).

Kennedys became the first City firm to become an LDP when it appointed two legal exec partners, Alan Finlay as head of employment and Richard Crockford, head of health and safety; and Olswang has since made one of its patent attorneys partner and promoted chartered accountant Kevin Munslow, the firm's chief executive, to the partnership.

<sup>14</sup> The three non-lawyers were interviewed in an article for the *Law Society Gazette*, 9 April 2009 (Why legal disciplinary practices are off to a slow start, Jon Robins) and then six months later for the *Big Bang* report. Some of their comments were included in an article in *Managing for Success*, the October 2009 issue of the magazine of the Law Management Section

Evans welcomed LDPs as a way for firms like BLG to more closely align themselves with the interests of their clients. His view was the law firm model had moved on 'to the point where there needs to be a close working relationship between lawyers, who know how to deliver legal services to clients, and professional managers who know how to run a firm'. But at the same time there was no rush for him as non-lawyer to become a partner. 'I'm treated as a partner by this firm anyway and compensated as a quasi-partner,' he said. 'So it doesn't make a difference to me personally.'

Evans took the view that LDPs were perhaps the least interesting thing about the Legal Services Act which he described as 'a catalyst for the sector to review itself'. 'The landscape is likely to change which means that there will be competitive opportunities that were not there before. The scope is to change the profile of your traditional law firm.' He added that BLG 'do not have fully formed plans in that area' yet.

John Durkan, another chartered accountant, joined Switalskis in 2001 and had been managing partner 'in all but name' since 2002. He described being appointed partner as 'a relief more than anything else. In my role previously as practice manager I knew that non-lawyers were going to become partners, however the date seemed to get further away.' Durkan added that there was 'no change in terms of our day-to-day practices. It just makes things easier for us.'

### **A solution for which there is no problem?**

We went on to ask firms whether their clients wanted non-lawyers in top management positions then whether lawyers wanted non-lawyers in top management positions and, finally for this section, whether non-lawyer partners diluted the law firm model.

Answers ranged according to client profile. Richard Barnett, senior partner at a national volume conveyancing firm Barnetts expanded on his 'three-tier' analysis of the legal profession (i.e., depending on whether the client was 'banged up on a regular basis', 'someone from the middle classes', or a major PLC). Asked whether clients wanted non-lawyers in top management positions running law firms, Barnett replied: 'The clients locked up in cells don't

care; the middle-class person using conveyancing services couldn't care; but the top firms instructing magic circle people probably would.'

Paul Gilbert, a former in-house lawyer and chief executive of LBC Wise Counsel, offered the warmest response. 'Non-lawyer executive management in law firms would be very welcome indeed,' said Gilbert. His consultancy LBC Wise Counsel had conducted 30 or 40 law firm panel reviews for companies in the past two years. An appointment of a non-lawyer at the head of a law firm could send out a positive message to clients. 'I can see that many in-house lawyers will see that as a very positive development indeed.' Gilbert cited the example of ITV becoming the first big British company to ditch the billable hour. The broadcaster cut down its panel of legal advisers from 50 firms to nine.

It was 'a bit of a cliché' to say that lawyers 'weren't very good at management'. 'There are many lawyers who are very good at it,' Gilbert said. 'However it is also true that most lawyers go into the law to be lawyers. If you can bring in executive management with greater experiences of how to build businesses I think that can only be a good thing. Many law firms will embrace that opportunity because they see it as a way effectively of delegating the day-to-day running of the business but also its strategic decision.' The solicitor took the view that the introduction of the Legal Services Act would hasten more client-friendly reforms. Although the legal profession 'has become more innovative, competitive and developed all sorts of innovations over the last five to 10 years' this was 'the first time there has been a really fundamental challenge to the way that law is regulated in the UK', he argued. Gilbert said that, although he was 'not pathologically optimistic', the reforms 'simply must result in more competition. That can only be good news for both lawyers and the consumers of legal services because it tends to result in more competitive pricing and more innovation.'

Ronnie Fox, principal at the City firm Fox Lawyers, argued strongly that lawyers didn't want non-lawyers in top management positions and that non-lawyer partners' dilution of equity was not to be welcomed. 'At the moment there is a lot of pressure on law firms to keep the equity tightly-

controlled. Once you have given away equity you can never get it back,' he said. 'A solution for which there is no problem' was how he described LDPs. According to Fox, non-lawyers in management positions (and external ownership of a law firm) were anathema to the traditional partnership model. The 'underlying assumption' was wrong, he argued. 'The underlying assumption is that non-lawyers will be able to manage law firms better than lawyers can. The un-stated assumption is that if non-lawyers are running a law firm they will be able to generate not only enough profit to keep the law firm partners going but also they'd be able to reward outside investors adequately.' Fox also pointed to a trend fairly well-documented in the legal press of non-lawyers struggling to retain senior executive roles in law firms.

Quentin Poole, senior partner at Wragge & Co (Wragges), argued that there was 'something philosophically unattractive' about the idea of sharing law firm equity with non-lawyers. 'It is like selling the crown jewels,' he said. Wragges was celebrating their 175th anniversary this year. 'Each generation within that period has handed over a firm to the next generation. You have an almost trustee-like obligation to leave the next generation in at least as good or a better state. So to sell off half the equity is a bit like selling the family silver or the crown jewels.'

Poole noted that he was 'quite conscious' of such arguments 'sounding like old fart-ism'. It wasn't, he insisted. He cited the example of one of their up-and-coming lawyers looking towards partnership. 'Does he want to become a partner in a firm that has sold half of itself out or does he want to become a partner in another firm?' he asked. The 'short answer' was that aspiring young lawyer 'most definitely' would want to become a partner in the other firm. 'That's a serious risk if you fail to attract or even lose some of your best and brightest,' he added.

It was a minority view – and one that certainly polarised opinions. To argue that firms should not share money with anybody who is a non-lawyer was 'frankly an elitist, outdated attitude', reckoned Andrew Garard, ITV's general counsel. 'But I wouldn't want to sit on the fence about that one.'

The lawyer argued that 'absolutely firms should look at taking in senior non-lawyers'. 'Lawyers really ought to get back to lawyering and look at normal business disciplines and they need experts to do that for them. There is a huge benefit in firms recognising that they are no different from other businesses,' he said. 'They need to generate cash and need to plan and create proper business plans. I don't think that they are going to be able to do it by themselves.' Garard argued that 'to some extent' firms have 'slipped into a lazy way of looking at the world'. 'The overwhelming majority of general counsel want to get rid of the chargeable hour. They have to come up with new business planning tools.'

Richard Barnett said that law firm structure was 'based on a partnership model that was 50 years out-of-date in some ways'. 'The more modern firms do recognise certain non-lawyers give a much better perspective on certain management duties,' he added.

*“So lawyers have a good profile? ‘Compared with estate agents and gunrunners’, then yes, reckoned Ian Dodds, Bar Futures. ‘Compared with doctors and teachers, then they probably don’t.’”*

DLA Piper (currently the largest firm in the world) replied that 'dilution of equity was not a problem'. The current regime was there 'due to regulatory constraints rather than because this is the best model for delivering legal service', reflected Michael Pretty, executive risk manager at DLA Piper UK. Equity partnerships were 'complex and bespoke structures', reflected Jonathan Rees, a partner at South Wales firm Hugh James in a response that acknowledged the inherent conservatism of the legal profession. 'Arrangements for how the equity is shared, how decisions are made, what contributions are expected and so on can be difficult to dissect - especially when measuring relative contributions to the business and thus sharing profits,' he reasoned. 'Many lawyers would say the partnership structure is not an ideal business model for the demands of the modern legal world, but equally many in a conservative profession might well say: "It works – don't change it."' He concluded that non-lawyer partners 'might well dilute the law firm model as we know it, but that might serve to bring about new models that are a better fit in the modern legal sector'.

## Bar to progress?

There was considerable frustration from barrister-respondents over the perception their profession's representative bodies were, as one of them put it, 'dragging their heels and leaving us behind over LDPs'. Despite a number of consultations, the Bar Standard's Board (BSB) has yet to make up its mind as to the wisdom of amending the Bar's code of conduct to allow for LDPs. Over the summer of 2009, and two years after the Legal Services Act had been passed, the BSB said that it wouldn't sanction LDPs until there was 'quantified evidence' all forms of ABSs were compatible with the objectives of the Legal Services Act in bringing benefits for consumers.

Christine Kings, commercial director of Outer Temple Chambers in London, recently told the *Law Society's Gazette* most barristers hadn't begun to consider the Act. 'The Bar should have strategy groups and consultants coming in,' she was reported to have said. 'I'm shocked there aren't a load of consultancy firms banging on our doors. Chambers should be asking questions, like: what if our competitors merge with a solicitors' firm as an LDP? What do our solicitors want us to do? Does it matter to them what structure we practise in, and what are their issues in a deregulated market?'<sup>14</sup>

A few weeks later Stephen Hockman, who was chairman of the Bar Council when the legislation was going through Parliament, spoke out in defence of the Bar's position. There was never any plan to create a 'homogenous, uniform and monotonous regulatory regime under which all lawyers in England and Wales would practise', Hockman argued. 'I think Parliament expressly intended to preserve a diversity of different regimes. It intended the Bar – both employed and self-employed – to go on practising under a regime which preserves, rather than dilutes, its essential characteristics.' Legal commentator Joshua Rozenberg, who interviewed the QC, noted that he 'seemed to be fighting a rearguard action, trying to preserve an independent Bar that pessimists might think is already doomed'<sup>15</sup>.

The barristers' sets we spoke to had been doing a lot of thinking about the new regime and were far from happy about the perceived lack of progress from the BSB and the Bar Council. 'The Bar has too often approached the issue as a trade union membership issue,' complained one of our off-the-record respondents. He was head of chambers at one of the larger regional practices. He argued the Bar's opposition to ABSs was 'primarily, overwhelmingly down to concerns about membership'. The notion that 'we as businesses wouldn't be able to absorb and manage solicitors as well as barristers' was 'positively ludicrous', he added.

The problem was 'time critical' because the next round of criminal legal aid contracts was approaching, complained a criminal defence barrister from the North East. What form of practice would they adopt assuming the powers-that-be would sanction it? 'In a perfect world, we'd have a company owned by a group of barristers that would employ about 20 solicitors. It would be a quasi-criminal defence operation insofar as it would specialise in crime but it would also have offshoots such as judicial review and regulatory work and it would be region-wide from Berwick down to Teeside.'

What was the attraction of a legal entity run by barristers? 'Cradle to grave defending', replied the barrister. 'You would have lawyers covering the police stations, Magistrates' Court and Crown Court and all done in-house by the same company.' An approach that he argued was favoured by the Legal Services Commission because of the economies of scale delivered by larger and fewer organisations bidding for work.

The barrister had been practising in crime for 15 years and was concerned that the junior Bar had seen its workload eroded because 'we aren't at the coalface, we are in chambers'. 'The junior Bar has effectively been decimated and one of the reasons why we decided to take this route is that commercially it was the only thing we could do to survive.' Is the Legal Services Act an opportunity for a very troubled profession? 'Yes', he replied.

<sup>14</sup> *The Law Society Gazette*, 24th September 2009 (Barristers and the Legal Services Act: will the Bar modernise in time? Does it even need to?)

<sup>15</sup> *The Law Society Gazette*, 29 October 2009 (Bar to progress?)

On its website BarFutures describes itself as ‘a new and entrepreneurial business designed specifically to meet the challenges and opportunities of the Legal Services Act 2007’. It predicts the reforms would put ‘enormous pressure for change on the legal profession in England and Wales and the way to a secure and prosperous future for the Bar has never been less clear’. With legal aid reforms (namely, ‘one case, one fee’ and best value tendering) ‘the need for creative thinking and flexible working will be even greater’.

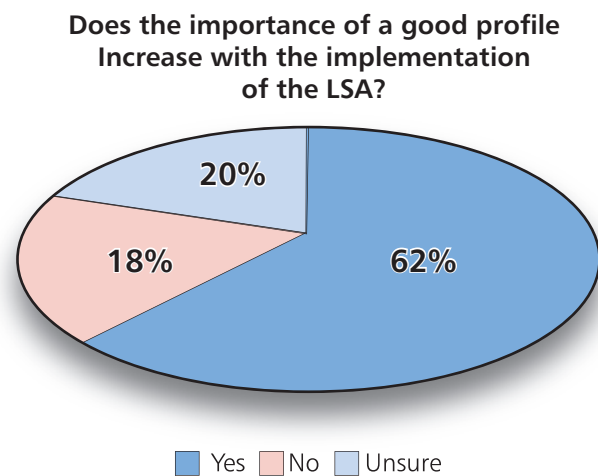
‘We have taken away all the unnecessary and avoidable structure that a barristers’ chambers usually involves and boiled it down to its bare minimum,’ said director Ian Dodds, a professional manager, not a lawyer, with experience managing other professional businesses like chartered surveyors and solicitors as well as barristers’ chambers. Reading the Clementi report back in 2004, Dodds claims to have come to the view it was ‘quite obvious’ that alternative business structures were ‘going to be the way forward’ and Bar Futures would ultimately end up an ABS.

The new business started off as ‘a virtual Chambers’ addressing concerns about the cost of running Chambers particularly in London which Dodds reckoned cost barristers as much as 30% of

their income ‘to run what aren’t in any way streamline business structures and which are cursed with antediluvian hierarchies and management’. ‘So we set up an office in Manchester and an office in London and for 10% barristers become door tenants.’ Barristers have ‘virtual premises’ and with high-quality information technology, remote computer access, BarFutures recruited 20 barristers of their own and took over the management of a small London criminal set.

He described the Bar’s blocking of LDPs as ‘no more than a negative, Luddite backward-looking denial of the truth’. ‘The Bar doesn’t really want anything to do with ABSs. If they have to have them, they will have them run by barristers because their view is non-lawyers cannot be trusted either as managers of a legal services business or to manage possible conflicts of interest.’

What are his ambitions for the post-LSA world? ‘We’re going through a series of revolutionary changes. We have built links with other solicitors, recruitment businesses, medical consultancies and chartered accountants and we have the makings around us of a multidisciplinary partnership,’ Dodd said. The LDP and solicitor-barrister relationship would be ‘the first step’, he added.



*“My own cynical view is that the Legal Services Act has come at a time when the government is denigrating legal aid at pretty much every step and “Tesco Law” might be all about cut-price, commoditised work being done by the least qualified person but it might be the only way that a number of consumers will be able to access legal services.”*

Craig Holt, QualitySolicitors.com

## Interview 2: Carolyn Regan

### **Carolyn Regan is chief executive of the Legal Services Commission.**

Regan joined the Commission in September 2006 after 25 years in the NHS. She was chief executive of three health authorities between 1996 and 2006, finally heading the North East London Strategic Health Authority from 2002.

*Does the Legal Services Act have much to do with legal aid?* 'Absolutely, there is a link between alternative business structures and legal aid,' replies Carolyn Regan. 'There should be real benefits for clients in terms of better choice and greater consumer focus and there should be benefits for us as purchasers. I think people are hesitant around publicly funded opportunities but I think that they are there in droves.'

Competition will improve legal services, Regan argues. She draws an analogy with her career in the NHS. 'Now everybody looks at the website of their local GP to see what its outcomes are. If I am living in a commuter area I want to know if they open at 7am. Equally, [a law firm client] will want to know how does a firm relate to them as an individual?'

However, she warns there is 'a role for regulators to step up to the mark though' in order to make sure that the process of liberalisation isn't

unnecessarily fettered. The rules are 'very prescriptive especially in relation to the independent Bar,' she adds.

*Is there any interest in external sources of capital in publicly-funded law?* Regan says so. 'First of all, there is a steady stream of clients plus with legal aid eligibility rates going up, you have more clients than you had last year and, of course, there are more people unemployed,' she explains.

Regan points to the £2billion budget which she likens to a 'government bond backing legal aid'. 'It is quite a good bet. Even if it was £1.8 billion, it's still a big whack of government guaranteed dosh.' Plus she argues that there is plenty of potential for introducing more modern business practices and realising the kind of economies delivered through the deployment of IT. 'It is an old fashioned market out there. Most practitioners still operate 9-to-5 in high street premises.'

*Where does she stand on the Law Society's idea of taxing ABSs that might cause a detriment in terms of access to justice?* Regan reckons that the proposal 'seemed to be contrary to what the Legal Services Act was designed for'. And, she argues: 'The cost would be passed on to the funder - in other words, us. If the Co-Op had to pay a premium they would want to negotiate that into whatever we were paying them to do civil work. They wouldn't do it for nothing and neither would any other firm coming into the market.'

*“You have an almost trustee-like obligation to leave the next generation in at least as good or a better state. So to sell off half the equity is a bit like selling the family silver or the crown jewels.”*

**Quentin Poole, Wragge & Co**

# Chapter 3: A legal services revolution

The Legal Services Board closed its consultation on alternative business structures on August 14th 2009.<sup>16</sup> Alternative business structures (ABSs), the most revolutionary aspect of the Legal Services Act 2007, will allow lawyers to form multidisciplinary practices offering legal services in conjunction with non-legal services. They will also allow non-lawyers, including external investors as well as the likes of Tesco, AA, banks and insurers to have a stake in firms.

## Overview

So what might ABSs look like? The LSB paper envisages new types of practice such as those with a majority of non-lawyer managers; high street firms offering accountancy services alongside traditional legal services; large corporate firms offering private client advice alongside large-scale volume work capable of commoditisation; or law firms floating on the stock exchange.

Consumer groups, market players, and academics predict a number of market-changing trends such as 'the emergence of "one-stop shop" multidisciplinary practices in the high street; franchising models combining national brands with local management; increased international outsourcing; and online and/or telephone delivery of commoditised basic advisory services by big-name retailers'.

For those lawyers that hope the creation of the regulatory regime around ABSs that follows the recent consultation might provide an opportunity to slow down or halt the progress of liberalisation, the LSB has a clear message. We have 'moved beyond the debate about whether to open up the market to ABSs', that was 'settled' when the legislation was passed, the LSB paper said. The consultation sets out plans for – its emphasis – 'when and how the market will be opened'.

## Supermarket sweep...

We began the questionnaire section on ABSs by asking if 'Tesco Law' would be 'good for the consumer'.

Unsurprisingly, the consumer champion *Which?* was supportive of the legislative intent. 'Anything that increases the ability of the consumer to interact with the law and enforce their rights is an improvement,' replied Steve Coyle, the group's head of legal.

In its response to the LSB consultation on ABSs, *Which?* argued that liberalisation was 'firmly in the interests of the consumer'. 'We would anticipate that ABSs will lead to many opportunities for greater efficiencies by, for example, enabling solicitors to join an accountancy practice or a financial adviser. There may also be business models that involve greater provision of advice by telephone and less reliance on face-to-face meetings in a similar vein to the way the NHS Direct has flourished.'

If the reforms were to be judged a success, *Which?* argued, liberalisation of the market 'must lead to greater transparency and understanding of legal services' which in turn must lead 'to improved access to justice, especially for individuals as opposed to large corporate clients'.

QualitySolicitors.com is a network of more than 100 firms and solicitors which is trying to establish a legal brand in the public consciousness before the advent of ABSs. 'My prediction is that there will be something like 'Halifax' solicitor branches in shopping centres up and down the country,' reckoned chief executive Craig Holt - see *interview page 24*.

<sup>16</sup> *Wider Access, Better Value, Stronger Protection*: Discussion paper on developing a regulatory regime for alternative business structures, Legal Services Board, 2009

He argued that that 'Tesco Law' was 'interpreted very narrowly' by lawyers. 'I speak to firms all the time who take the view that they don't need to worry about the Legal Services Act because "Tesco Law" clients are very different to their clients.' But lawyers were wrong to dismiss the threat as more 'cheap conveyor belt conveyancing services', he contended. 'There will be a whole range of brands, both premium and cheap, both specialist and generalist – and they won't just be the nightmare "Tesco Law" scenario of a legal big factory in a call-centre where nobody sees their lawyers.'

Holt argued that "Tesco Law" was 'bad for the consumer'. Though, he contended that, in a world in which legal aid was 'evaporating on an almost daily basis', the Legal Services Act might 'almost be a necessary evil'. 'My own cynical view is that the Legal Services Act has come at a time when the government is denigrating legal aid at pretty much every step and "Tesco Law" might be all about cut-price, commoditised work being done by the least qualified person but it might be the only way that a number of consumers will be able to access legal services.' Holt was 'confident' that the reforms would 'cause a huge number of classic high street firms to go out of business'. A 'big upside' though was that it would 'cause solicitors to up their game in terms of their approach to consumers'. The 'stereotypical image' of the lawyer as 'aloof and not particularly customer-driven' and 'the almost intimidation' that people felt entering a solicitor's office was 'not without some basis in reality'.

Practitioner responses varied largely according to the nature of lawyers' businesses and their clients. 'If you were the owner of the law firm equivalent of the corner shop, then you might see the prospect of Tesco opening a store as very bad news,' began Paul Gilbert, in-house lawyer and chief executive of LBC Wise Counsel. 'The consumer would probably feel the benefit, the owner-manager not.' That 'dichotomy of view' was likely to grow as the reforms increased pace, he added.

However, Gilbert's principle point about Tesco Law was that he was 'very firmly of the view' that it

would be 'good for lawyers'. 'I think it provides a different career path and a structured career path for many,' he said. Large businesses 'operate very comfortably in the arena of family-friendly policies'. It was 'an attractive model for many lawyers who don't want to climb the greasy partnership pole,' he added.

The only way that 'Tesco Law' was going to be good for the consumer was that legal services were going to be cheaper 'but cheaper doesn't necessarily mean good', argued Ian Lithman, a sole practitioner in London and former chair of the Sole Practitioners Group. He argued that 'the whole concept' of the ABS was 'wrong'. That view was echoed in the Solicitors Sole Practitioners Group's response to the LSB Consultation.<sup>17</sup> The 'almost unanimous view' of sole practitioners was that ABSs were 'wrong in principle'. '[Our] major concern is the fact of the complete and irrevocable change of the legal landscape by the introduction of commercial interest into the provision of legal services thereby creating another dimension which has every prospect of prejudicing the independence of the provision of legal services without any apparent benefit.'

In Ian Lithman's view the decision to exclude sole practitioners from the merged Britannia Building Society/Co-operative Financial Services conveyancing panel amounted to a first blow in a war between the retailer sector and smaller, local legal practices like his own.<sup>18</sup> 'The Co-op has two million members. They have shops in small villages and small towns and they have struck out 3,600 members from their panel which takes out all the sole practitioners,' Lithman explained. 'In effect, they have started the war.' He predicted the Co-op would take their work in-house. 'They will wipe out every activity of solicitors, except for legal aid which is in decline and litigation. It will leave them in a totally controlling position, certainly in the countryside. There will be no access to justice for those that cannot afford to pay for access to justice.'

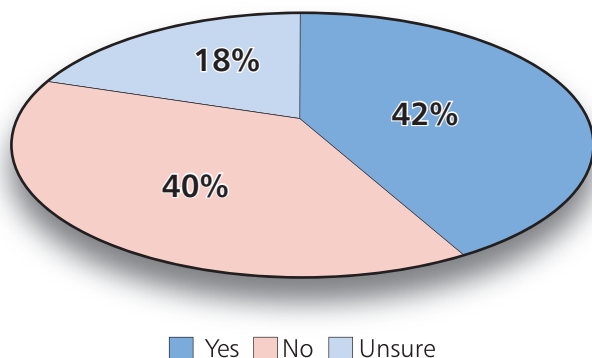
Unsurprisingly, the Co-Op wasn't happy that their rival's name has been adopted for a movement that Tesco has so far demonstrated little enthusiasm

<sup>17</sup> Solicitors Sole Practitioners Group response to the LSB discussion paper on developing a regulatory regime for alternative business structures, Solicitors Sole Practitioners Group, Summer 2009

<sup>18</sup> *The Law Society Gazette*, 8 October 2009 (Sole practitioners removed from Co-Op panel as no deal reached)

for. (One of the Co-Op's press releases on legal services rather hopefully noted the store has long been interested in what 'has already been dubbed "Co-op Law" by some commentators'). 'The provision of legal services is a really good fit with the Co-Op's principles and ethos,' explained Eddie Ryan, managing director of the Co-Operative Legal Services (see case study). 'Our members certainly feel a warmth and allegiance to the brand.' There are currently more than three million Co-Op members and Ryan reckoned 'about 15 million people walk through the stores every week'. 'They can join the Co-Op very quickly and avail themselves of those services.'

**Are you concerned about the marketing budgets that big brand entrants have at their disposal?**



### No exit?

We asked law firm respondents if they were interested in external sources of investment to fund the growth of their firms. Whilst many in the profession took the view that if ABSs were never to happen that would be too soon, some City firms appeared reluctant to wait the 18 months or so for new style ABSs to come into force and the possibility of a new source of capital. Such firms have been lobbying, through the City of London Law Society and the Solicitors Regulation Authority to bring the new regime in ahead of its likely 2011 start date.

So how active were law firm advisers? The accountancy firm Baker Tilly has around 360 law firm clients. George Bull, head of its professional practices group, said: 'For retail services we foresee a real revolution in the marketplace - whether a firm wants to take on board external equity, become part of an ABS or find itself consolidated. The market will change and so even non-participants at the high-end firms are going to find the market changing.'

However for those struggling firms who might see external investment as a lifeline, Bull feared 'too many firms think that they will be attractive recipients of external equity. Many will be disappointed.' Private equity would be looking for 'an exit within five years', he reckoned. 'They won't be looking at a good return on their capital in terms of dividend every year. They will be looking for a capital gain on exit. The period during which private equity is in a business is going to be very bracing for the management of the firm.'

Bull claimed to have had 'more meetings with private equity' in the two months up to the publication of this report 'than in any comparable period since David Clementi was first mentioned'. That said, he predicted no more than five law firms listing in the five years post-2011, principally consolidations - in other words, listed companies acquiring small practices and homogenising the offering. 'You could perhaps see them hoovering up 20 to 30 high street firms,' he added.

Bull reckoned firms with turnover of less than £25m might 'fall below private equity's radar' and predicted, perhaps, between ten and 20 firms being recipients of private equity in the first phase. He also predicted a third category of angel investors, private investors backing start up firms, depending on how the 'fitness to own test' was formulated in the final rules.

There was 'big suspicion about private equity', commented Tina Williams, senior partner at Fox Williams and adviser to many law firms on a range of issues including ABSs. 'Private equity houses aren't charities and they generally look for a very significant rate of return,' she said. 'Often it is the case that bank finance will be cheaper in the long run.'

Tina Williams reckoned that a downturn in the economy was encouraging firms to consider external investors. 'The sort of practices that might be interested in private equity money are those that have decided that they want to expand rapidly by acquiring teams or firms, or extending geographical reach,' explained Williams. But she also saw firms eyeing external investment partly for other reasons, such as a mechanism to 'enable partners to retire and take some capital out'. She believed there was no possibility of external

investors agreeing to fund partners' retirement save as a very ancillary part of an attractive investment in a firm with a good business strategy and strong team going forward.

### **In the City**

Much of the legal trade press coverage of the Legal Services Act has been around mid-ranking City firms using ABSs as a means to fund a jump a few rungs up the legal directory ladders, build a practice area, launch a foreign office or to help them weather the present economic hard times.

Taylor Wessing LLP was one of a small number of larger firms to be openly receptive to outside investment. It had established a five-partner 'change group' looking at the LSA. There were 'two juggernauts heading towards the profession - one is competition arising from the upcoming LSA and the other one is opportunity', commented managing partner Tim Eyles.<sup>19</sup>

Eyles reported strong interest from private equity houses although only 'a very limited number are examining the opportunity for direct investment'. There was also interest in backing outsourcing of non-legal services such as IT or infrastructure. As to the precise nature of opportunities for a firm like Taylor Wessing, Eyles was fairly guarded – understandably, given the long lead in time for the new ABS regime. He said that 'the visibility [was] fairly grey at the moment' because of 'the nature of the economy and the precise degree of change in the profession'. 'I don't doubt we're in a revolution in the way that legal services are provided though,' he said. 'I do not think that the profession has fully understood that.'

Clint Evans, CEO at the defendant insurer firm Barlow Lyde & Gilbert, described his firm as being 'interested in talking to see what is available'. 'It is always useful to know what's on offer, at what price and at what risk.' He took the view that 'the more interesting areas of the market are those that have steady returns and a fairly predictable cycle of business. Low value transactions with reasonable volumes and a diverse client base so as there aren't too many eggs in one basket'. Most City law firms did 'not fit that profile because their transaction

values [were] higher proportionally to those outside of the City'.

The top rung of City firms have ruled ABSs out on the grounds they are multi-jurisdictional. Michael Pretty, executive risk manager of DLA, said that he didn't 'believe any firm worth its salt' would 'dismiss out of hand the opportunities offered by the ABS regime, the question is whether it can take advantage of those opportunities?' As he pointed out, the regulatory regimes in many other countries prohibited members from practising through LDP/ABS structures. 'Few international firms, with memberships made up of a large number of different professions doing business in a large number of different jurisdictions and subject to the local regulatory regimes, will be able to take full advantage.'

As Chris Perrin, Clifford Chance's general counsel, put it: 'They don't really interest us much. But we are in favour of them as a concept.' Pretty argued that the regulatory regime for ABSs had not been developed which created 'uncertainty for firms considering LDP'. 'A firm converting to an LDP will either have to become an ABS in 2010/11 subject to this currently unknown regime, or risk having to disenfranchise the non-lawyer members it has admitted.'

### **On the production line**

We spoke to a number of volume practitioners of the model said to be most attractive to external investors looking for a safe return. Southport-based Barnett's is a volume conveyancer with a national client base. 'We're an attractive proposition for entrants into the market wanting to cover off conveyancing and looking to using bulk suppliers rather than setting up in-house,' reckoned senior partner Richard Barnett. His firm was in the top five best customers of the Land Registry in 2008.

'Banks and building societies want to offer a conveyancing service directly to the public - they either go in-house or they use us,' reckoned Barnett; citing as a model Countrywide Property Lawyers, the licensed conveyancers subsidiary which was formed by the estate agent giant

<sup>19</sup> *City AM*, 2 September 2009 (Private Equity eyes up City law firms, Jon Robins)

Countrywide back in 1997. The solicitor also saw the potential in legal expenses insurers. 'It wouldn't be a great leap for them to offer conveyancing services,' he added.

Barnett argued that state of the art conveyancing practices were now technology-driven businesses. His firm has just launched its own iPhone application available free on iTunes and allowing clients to get an instant quote and follow the progress of their case via their phone. 'In some ways you need access to capital to do that,' he reckoned.

Are the stakes high? Does a firm like Barnetts win massively or simply get left behind? Barnett, also chairman of the Law Society's conveyancing and land law committee, argued that 'there is not going to be a big bang but a gradual build-up of noise'.

Amelans is a volume personal injury firm based in Manchester. Partner Martin Cockx reported that they have had no approaches from potential external investors so far. 'But it's not difficult to see that an insurance company or a bank might be interested in our business model,' he said; adding that that PI work lent itself to commoditisation. 'Something comes in at one end and in 12 months time it comes out at the other. In the meantime, the profit levels are fairly decent.' However, Cockx also made the point that pursuing accident claims might not be an attractive proposition to prospective partners. 'To an organisation where brand is everything, do they really want to be concerned with our type of market?' he asked; drawing a distinction with 'more cuddly legal services' such as conveyancing or Will-making.

Cockx argued that personal injury firms have already gone through their own 'Big Bang' style shake up at the start of the decade when claims management companies stormed the accident claims market fuelled by the opportunity to make money from the introduction of new style conditional fee agreements introduced by the Access to Justice Act 1999.

The echoes of the new environment being created by the Legal Services Act and that of the Access to Justice Act were detected by a number of personal injury lawyer respondents. Claims Direct and The

Accident Group (TAG) became market leaders in a short space of time at the beginning of the decade on the back of saturation daytime television campaigns and employing armies of reps in shopping centres. At its peak the old Claims Direct represented a litigation tidal wave signing up 5,000 new clients a month and TAG claimed to be one of the UK fastest growing companies in 2002 claiming to have conquered 25% of the market in two years.<sup>20</sup>

Both companies were widely attacked by consumer groups and the press for bringing a huge number unmeritorious 'slip and trip' claims as well as leaving genuine accident victims penniless. Both companies went bust.

It is now commonplace for PI firms to pay referral fees to non-lawyer claims companies for sourcing claims and paying as much as £700 a claim – ironically, much larger than the fees that were paid to Claims Direct and TAG. Amelans was the driving force behind the solicitor-led Injury Lawyers 4U marketing network established as a direct response to claims farmers. It is currently down to 80 members having previously had 220 members. Cockx saw the possibility of an injection of outside capital as a means of enabling lawyers to access the kind of marketing budgets to wrest control back from the non-lawyer claims companies.

Are ABSs an opportunity or a threat? 'I think we're well placed,' says Cockx who describes himself 'as a bit of a half glass full man'. 'A company like ours would be of interest to any number of potential buyers. From that point of view, I see it as an opportunity rather than a threat.'

Did Cockx fear that ABSs might drive down quality in the kinds of services offered to accident victims? He rejected that line of argument. 'At the end of the day we are all running businesses and anybody who runs a law firm today like they were run 50 years ago just isn't going to be around for much longer.' He quoted the director of the Legal Services Policy Institute, Professor Stephen Mayson's estimate that as many as 3,000 firms could go bust as a result of the Legal Services Act. 'I think that he's spot on. Personal injury firms have had a turbulent 10 years and I predict that the next years will be just as turbulent.'

<sup>20</sup> *Justice Gap: Whatever happened to legal aid?*, Legal Action Group, 2009, Steve Hynes and Jon Robins

Underwoods solicitors in Hemel Hempstead specialises in employment and personal injury. Senior partner Kerry Underwood argued that high volume, low value services in the UK were ultimately 'doomed'. He has been pioneering the outsourcing of legal work to South Africa taking advantage of cheaper labour costs (about one third of UK costs). His plan for his firm was to 'build the practice so that it will survive happily as a law firm if needs be but that will also be attractive to an investor either as a vehicle or to buy'. He flagged up reports that Lloyds Development Capital, a private equity firm, has expressed interest in buying CPA Global Limited, a legal outsourcing company for £400 million.<sup>21</sup>

Underwood set up Law Abroad in November 2009 with his co-partner Robert Males as public limited company. The solicitor described its PLC status as 'a major step forward as it means that we can sell shares to the public – except that at the moment we can't because of our need to obtain recognised body status from the SRA'.

Underwood predicted that 'the vast majority of the work' from his firm would be done through that company 'with the idea being that it is a ready-made ABS which can come into effect on the day that the Legal Services Act is implemented'. 'My firm view - of course I may be wrong - is that it is already all over for many firms of solicitors,' he said. 'Virtually all of Law Abroad's work will be done abroad.'

Underwood predicted 'a split market'. Most 'routine work such as conveyancing, legal aid advice, road traffic work' would move abroad however niche firms would thrive in the UK 'doing advocacy and quite specialist work' handled 'by people who are at the top of their game commanding high fees and delivering good profits'. 'The model that is absolutely doomed is paralegals with no particular qualifications earning three times what a qualified lawyer would do any in a firm in South Africa.'

Russell Jones & Walker (RJW) was recently described in the legal press as taking 'a step closer

to realising its post-Legal Services Act ambitions' when it launched two new services 4ExpertProtect and 4ExecProtect and offering 24-hour access to specialist advice on niche areas such as white-collar crime.<sup>22</sup> Those new operations are underwritten by insurer Hiscox to offer 'a Claims Direct-style service to a more specialised market'. It was reported that the announcement was 'expected to kick-start a shift towards law firms commoditising their commercial offerings in a bid to target new clients'.

Neil Kinsella, RJW chief executive, said it represented 'a repositioning of the firm whereby there will be two separate offerings, RJW and 4Legal, so we're perceived in a new way – the latter being more of a business-to-business brand. Routes to market are extremely competitive and that's going to get more intense after the [LSA] comes in. This vehicle is one way of generating a new route to market.'

RJW bought the Claims Direct name as well as its contact centre technology. New Claims Direct was relaunched in 2007 with a £5m advertising campaign. RJW also has 4 Legal, which is its commoditised legal services business. What was the idea behind the new product lines? 'We looked at our practice to recognise which are the top-end, complex parts of our work offering customised made-to-measure solutions and we recognised other elements which are much more capable of being commoditised,' explained Kinsella.

How important was 'Claims Direct' as a brand? 'I do not believe any brands exist in the law other than Claims Direct,' Kinsella said; adding that it had secured its own place in popular culture having been name-checked in the lyrics of a pop song and frequently lampooned by comedians.<sup>23</sup> Was he concerned about the negative connotations of associations with the old Claims Direct? Kinsella said that the association might not necessarily make him popular at 'middle class dinner parties'. 'But, jokes aside, for people who are intimidated by solicitors there are very few negative connotations. Claims Direct does what it says on the can. We have done everything that we can to make sure that it operates ethically.'

<sup>21</sup> *Financial Times*, October 27 2009

<sup>22</sup> *The Lawyer*, November 2 2009 (Speaking volumes)

<sup>23</sup> Goldie Looking Chain, Bad Boy Limp, and, for example, Armstrong and Miller's Reconstruction Claims Direct spoof.

The Lawyer claimed the new RJW products were 'being talked about as potential post-Legal Services Act investment vehicles'. How exciting was the LSA? 'It ought to put us on the same footing as other businesses,' replied Kinsella. 'Access to capital can be important so that you can develop a business but it's only important if you have a damned good business anyway.' Most legal work was 'already unreserved and most of it could already be put into an organisation outside of the law firm', he argued. 'It would be wrong for those organisations not to be as "regulated" as law firms.'

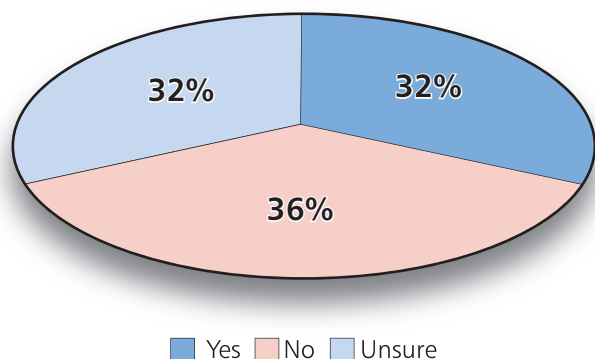
Hugh James describes itself as 'the largest independent Welsh practice' and specialises in personal injury and group litigation. Partner Jonathan Rees argued that increased competition meant that firms would be looking to fund the growth of their practices. He said that the 'commercial reality' of practicing law with 'relentless downward pressure on cost and time demands that lawyers invest in all manner of areas of their practices'. Those factors would 'only multiply when lawyers find themselves competing with new entrants' to the sector once barriers to entry were removed. Rees wasn't enamoured of the forces he saw 'Tesco Law' representing. 'At best it might be good for most, most of the time but the danger is that it is at the same time worse for some, quite a lot of the time. The legal profession's foundations are to a large extent built on acting in a client's best interests and accessing justice. Many lawyers fear that commoditisation of the law and the potential conflict in interests or obligations where share values and financial issues are much more to the fore may erode the foundations on which their profession is built. That erosion would outweigh the 'good' that might otherwise be experienced by reform.'

Thompsons is the largest trade union firm in the country and provides legal advice for trade unions ranging from Unite and GMB to the Society of Chiropractors and Podiatrists. Tom Jones, head of policy, played down the impact of the Legal Services Act on his firm. 'In theory, the unions could come in if they wanted to and buy out part of Thompsons but whether they are able or would indeed want to is another matter,' he said.

Far more likely was the prospect of defendant insurers bringing in firms in-house and 'trying to cut costs' which he argued was of far greater concern. 'They then effectively end up owning, feeding and paying the law firms. I worry about the independence of law firms to be able to operate in those circumstances.' Jones flagged up the controversy around the advent of a new generation of claims management companies, the scandal over the miners' compensation claims and concerns about 'scan vans' screening dock workers for asbestos-related pleural plaques. 'I question the extent to which law firms are going to be able to resist, however robust they claim their systems are, the pressure, encouragement and subtle changes in a relationship that may inevitably result from somebody owning part of your business,' he said.

Horwich Farrelly is a Manchester-based defendant insurance firm. So was there client demand to take such a firm in-house? Anthony Hughes, who is also president of the Forum of Insurance Lawyers, didn't think so. It was a question he reported that his firm has been asked by a number of companies when tendering for new work. 'Our response has always been the same. The value of our business and the value of it to one insurance company are very different. If we were to be bought by one insurer, then one would assume that all the old other insurance firms are likely to say they aren't going to use us any more.' The lawyer also doubted whether insurers would be interested. 'The capital ratios and operating ratios being what they are, the last thing they would want to do is go out and spend a lot of money on what could be described as a complimentary business,' he added.

**Will you be increasing your overall PR activity as a result of the LSA?**



## Justice denied?

Many of those lawyers committed to access to justice and working in publicly-funded law feared that the arrival of ABSs would serve to compound funding problems and further destabilise a collapsing practitioner base. The argument ran that big brand non-law companies would increase the pressure on mixed economy firms to ditch less remunerative publicly-funded areas of work.

‘The expectation is that big business will storm the aisles like a deranged contestant on Supermarket Sweep throwing all the money-making stuff – personal injury, conveyancing etc – into its trolley and leaving non-remunerative - publicly funded law – unloved and gathering dust on the shelf,’ argued the Legal Action Group in July 2008.<sup>24</sup>

Lord Phillips of Sudbury, the solicitor and Lib Dem peer, took the uncompromising view when the legislation was going through Parliament that the Bill should be ‘thrown into the deepest hole in hell’. ‘If this wretched Bill goes through you may get the likes of Tesco, Barclays and the Wal-Marts deciding that there is money to be made but they’ll only be interested in the profitable bits such as property, Wills and employment,’ he said.

Prospective market entrants have been careful not to upset lawyers, with the exception of Capita. At a Legal Aid Practitioners Group conference in 2006 Max Pell, managing director for specialist services at the call centre giant Capita Insurance Services, told legal aid lawyers that his company was on its way to becoming the largest provider of remortgaging services and, as such, was easily capable of undercutting firms on commoditised work. Pell argued that because of the cross-subsidy of legal aid by private paying work, there would be ‘a culling’ of the high street.

The detriment to access to justice was one of the main themes of the Law Society’s response to a Solicitors Regulation Authority’s consultation.<sup>25</sup> ‘Improving access to justice’ was one of the regulatory objectives binding all approved regulators including the SRA, reminded Chancery Lane. There were ‘significant dangers’. Such dangers arose from the possibility that the new

entrants would provide legal services ‘on a much greater scale than most existing law firms’ endangering existing firms and, secondly, from the fact that new entrants were ‘unlikely to have the same degree of commitment as many existing firms to providing effective access to justice for individuals’. The Law Society argued that ABSs were likely ‘to operate almost entirely for commercial motives. We do not criticise potential owners of ABSs for that - it is possible to operate primarily for commercial motives and yet provide an entirely professional service. But it is necessary for policymakers to guard against the possible dangers to the public interest arising from the approach.’

Carolyn Regan, chief executive of the Legal Services Commission, was upbeat about the powers of competition to reinvigorate publicly-funded work and introduce higher standards of customer service for legally-aided clients. ‘There should be real benefits for clients in terms of better choice and greater consumer focus and there should be benefits for us as purchasers,’ Regan said (see interview). Although she reported that the private sector was ‘a bit hesitant around publicly funded opportunities. I think that they are there in droves.’ Citizens Advice didn’t share the bleak view of private practice either. ‘As a consumer organisation we are more strongly in favour of ABSs than the legal profession. We did think that the legal profession was a little bit of a closed shop and actually competition wouldn’t do too much harm,’ commented their chief executive David Harker. His group was concerned about the ‘big justice gap’ between those eligible for legal aid and those effectively disenfranchised from the legal system. ‘It is our belief that the entry of other companies, subject to suitable safeguards, into the marketplace is no bad thing. It may benefit consumers and the huge group of people above legal aid eligibility limits who are not well enough off to pay for a solicitor.’

Scott-Moncrieff, Harbour & Sinclair is a legal aid practice that eschews the traditional law firm model. It has 42 fee earners working in different parts of the country mainly working as self-employed contractors in control of their own hours

<sup>24</sup> *Legal Action*, July 2008 (Will Tesco Law leave legal aid on the shelf?, Jon Robins)

<sup>25</sup> Law Society response to the SRA’s consultation on developing a regulatory regime for ABS, Law Society, September 1 2009

and levels of work. 'When you do legal aid work or poorly paid work, you have two choices,' explained senior partner Lucy Scott-Moncrieff. 'Keep your overheads high and don't pay people very much or keep your overheads low and get good people to do the work and pay them a reasonable amount.' She reckoned fee earners usually needed 'to earn three times their salary: one for themselves; one for the overheads that they generate; and one for the partners'. 'We have turned that model upside down and we say that the consultants get 70% of what they earn,' she said; adding that they have rejected the 'factory paralegal style'.

Would her firm be interested in external forms of investment? 'I'd love alternative forms of investment, but for some reason I do not think they are going to be that interested,' responded a clearly amused Scott-Moncrieff. 'But seriously', she added, 'I don't think that we need external investment'.

Was the prospect of Tesco Law good for the consumer? 'If we're talking about people who need legal advice in a particular area where "Tesco Law" operates, the likes of Tesco are pretty efficient and have high quality standards. It won't be good for people who can't get other advice because the firms that used to give that other advice have gone out of business.' As she saw it, if staple high street work, such as Wills and conveyancing, were taken away from mixed economy firms because 'Tesco is doing them cheaper around the corner. The last thing firms will do is more unprofitable legal aid work – particularly, as in the current economic climate rates are going to be cut even further.'

Despite the well-documented problems faced by private practice law firms and the not-for-profit sector, there has been interest from the private sector in legal aid. The Sheffield-based company A4e, through its partnership with the local firm Howells, won a series of tenders for Community Legal Advice where it's the second biggest provider, the Leicester CLAC (community legal advice centre) and the Hull CLAC (see case study). 'Our view is that ABSs are a good thing,' said Jon Trigg, the company's project director. He denied the company had designs to takeover a law firm.

The Yorkshire firm Switalskis is one of the largest legal aid practices in the country. Was the firm interested in following the Howells / A4e route? Managing partner John Durkan said that his firm was 'not inclined to do that'. What about ABSs? He said he would 'never rule anything out'. 'But we're making it work in terms of legal aid - which isn't to say there aren't problems with legal aid. There are. But we have a strong infrastructure and very good lawyers. We don't want to structurally change and we have resisted the factory paralegal model,' he answered.

Tony Edwards, senior partner at the East London legal aid firm TV Edwards also anticipated the Legal Services Act would not provide an immediate opportunity for a structural rethink at his firm beyond enabling his practice to introduce barristers into partnership. Over half of TV Edwards' turnover comes from defence work and 15 out of 40 fee earners have higher rights of audience, including three barristers, and 80% of advocacy work is handled in-house.

Edwards, who was in charge of the criminal defence portfolio at the Legal Services Commission until 2007, reckoned that the 'big push by government and particularly by the LSC' was towards bigger firms delivering economies of scale (which was a central idea of Lord Carter's 2006 market-based proposals to reform legal procurement ).<sup>26</sup> 'What ministers and the LSC really want is a Serco bidding for contracts for one third of defence market across the country,' Edwards said; making the point the total legal aid budget of £2 billion was 'not unattractive' to outside investors. However the solicitor asked which big brand would want to go into defence work. 'You only have to get an acquittal on a big case and you're dead... "Tesco gets murderer acquitted".'

The Law Society has made the case that new providers entering the market as ABSs should be made 'to offer financial support to existing law firms to safeguard access to justice'. In its response to the Solicitors Regulation Authority's consultation on ABSs, Chancery Lane argued through the licensing regime conditions could be imposed upon a licence so as any ABS would have to offer services in welfare law or financial help to current providers which become 'imperilled' by the new entrant.

<sup>26</sup> *Legal aid: a market-based approach to reform*, Ministry of Justice, July 2006

Lucy Scott-Moncrieff and Richard Barnett both supported section 106 'planning gain' arrangements for new providers. 'You might want to have rules whereby Tesco's would have to charge a profitable price so as not to undercut local competition by having a loss leader,' Scott-Moncrieff argued.

Jonathan Gulliford, operations director of Co-Operative Legal Services, called the Law Society proposals 'protectionist'. 'It's trying to put the problems of legal aid funded work into the courts of ABSs. Nobody is asking Silverbeck Rymer or Clifford Chance to subsidise legal aid work? To say that the Co-op isn't allowed a financial model to compete with the likes of Silverbeck Rymer in the personal injury sector because it has to fund social welfare and immigration work is completely ridiculous.' If there was not enough money in legal aid to make a profit then that 'needs to be addressed in a different forum than the Legal Services Act', he argued.

There was little support elsewhere for the Law Society proposals. 'There are some people who believe that the current regime is the bastion of consumer interests,' noted Tony Williams, founder of the Jomati consultancy. 'You only have to look at the coalminer compensation debacle to see that we're in a profession that has let the consumer down. We are not starting this from the great moral high ground.' 'Protectionist moves' would act 'only to delay rather than to prevent the inevitable changes', Williams argued 'People always say: "Isn't it awful the corner shop is going?" Hop in their cars and drive down to Tesco to do their weekly shop,' he added. Carolyn Regan argued that any cost carried by the private sector might ultimately be passed on to the Legal Services Commission. In the Legal Services Board consultation on ABSs it was said that the LSB was 'alert to any risk to our statutory responsibility to enhance access to justice'. 'However it is not clear that new entrants represent a real threat to efficient businesses or to consumers. It is arguable that the scope to innovate is potentially as great for small practices as for larger firms.'

### Anybody out there?

We also spoke to prospective investors and asked them how appealing was the legal services market

and what particular areas of interest of legal work were they interested in. 'The legal services industry appeals to us because it's big and fragmented with only a few really well-managed firms - frankly not many customers get great value for their spend,' said Jeremy Hand, co-founder and managing partner at Lyceum Capital. His view was that 'traditional firms' were 'facing a fire-storm whipped up by the recession, smarter customers, technology, outsourcing and legislation opening up the sector to outsiders'. 'Major structural change is inevitable with well-positioned players taking market share away from those firms which can't or won't adapt,' he said. Private equity had 'a valuable role to play in supporting the winners - providing capital, expertise and acting as a catalyst for change'. 'Our approach is to work closely with management teams to establish strong platforms to fully realise the market's potential - generating significant returns for all stakeholders.'

Lyceum has hired the founder of the Jomati consultancy Tony Williams as an adviser. Williams reported that much of the interest from outside finance tailed off in 2009 as a result not only of the credit crunch but guidance from the Solicitors Regulation Authority earlier in the year which effectively killed off talks. The SRA has made clear that a private equity company 'can't buy into the firm until ABSs are permitted' and LDPs cannot include non-lawyer corporate membership. 'As to an option to buy, firms are warned to take great care,' the SRA added. 'It could well give rise to problems under the rules.'

Williams flagged up as the two main areas of interest the 'retail end of the legal market where both consolidation and systemisation - IT, call centres, the Internet etc - would help drive down costs but also give an opportunity to increase branding awareness' and middle-level City firms. As for the former, he pointed to firms 'in the £10m space' that might want to expand their geographic coverage and depth by adding 'another three or four firms to that so that they become a £25 to £30 million business'.

Williams drew the analogy with the opticians' market when, in the mid-1980s, restrictions on advertising and the supply of spectacles were lifted.

*The Wider Access, Better Value, Stronger Protection* report referenced the same example. The market in glasses had remained pretty much the same since 1948 however in the 1980s the government introduced a scheme allowing eligible people NHS vouchers which could be used to buy spectacles of their choice. Deregulation allowed unqualified and unregistered sellers to supply spectacles. In 2004 a government commissioned paper on the benefits of competition found the market for optical services had changed substantially: advertising had grown significantly and the consumer had more choice although it was 'inconclusive' as to whether the glass-wearers were getting a better deal for their money.<sup>27</sup>

As the LSB report noted a small number of large retail players now covered 70% of the market though there was 'still a substantial number of independent opticians some of whom offer niche or specialised services'. The joint venture business model of Specsavers was 'worth noting' and through its network each practice was an independent business owned jointly by Specsavers and the practitioners. 'Specsavers offer economies of scale in product purchasing, training, support services and marketing but the practitioners are responsible for delivering eye care services and the day-to-day running of the business and are responsible for meeting regulatory standards,' the LSB noted. This model combined 'the commercial incentives' with 'incentives to maintain and enhance professional standards' plus 'a smoother service to the consumer while ensuring proper control of the contribution of individual professionals.'

'One of the issues that we have not had in the law up until now is the relevance of the brand,' said Williams. 'If you start moving towards a brand and the ability to advertise that brand that costs serious money.' The 'Specsavers' comparison drew an ill-tempered response from the Solicitors' Group. It was 'facile' to compare 'such an important issue and the English legal system, which constitutes one leg of the constitutional separation of powers, with the provision of spectacles'.

Aside from the retail end of legal services, Tony Williams pointed to the middle-level City firms that

were 'well-run and well-focused that have a clear business plan whether it is to enable them to grow or give them a war chest to get the talent in'. Another possible area of interest was enabling external investment to facilitate the generational change or, as he puts it, 'ease out the baby boomers'.

A Bloomberg report in August 2009 identified a number of private equity funds including Lyceum, Fleming Family & Partners Ltd, Phoenix Equity Partners Ltd as actively looking at the UK legal market.<sup>28</sup> It was also reported that at least one investor, the 133-year-old U.K. stockbroker Panmure Gordon & Co., decided against investing in law firms after reviewing the possibility when the Legal Services Bill was passed two years ago. One funder manager spoke to us off the record. He pointed out that low value, high-volume legal work was 'the most sensible approach for private equity to take' – for example, claims processing, conveyancing handled on 'a very mechanised and almost industrial basis where it is all about IT. You can even have outsourcing to India'.

'But we like to be contrary,' the banker continued. His interest was in high value City law practice which he saw as 'a strong international brand'. 'UK lawyers are good lawyers and, more importantly, UK law is good law and not too costly – well, not as costly as the US,' he said. 'It's a growth sector and our firms would like to have access to that long-term earning power.' His firm was looking to put together a portfolio comprising 'upwards of five firms' - so as not to be 'overexposed' to just one firm.

His firm was looking at 'minority stakes in big firms' with an aim to becoming 'a long-term source of capital - quite different to the normal private equity model'. He didn't want outside investment to 'destabilise firms'. 'We don't believe in the IPO model where all the old boys gets lots of money and the younger chaps coming can't see what's in it for them.' Also, he pointed out that there was no 'exit market' for law firm investors. 'Who are you going to sell a law firm to? Another law firm?' he asked. 'What is in it for the partners? It's an incredibly complex area.'

<sup>27</sup> *The benefits from competition: some illustrative UK cases*, DTI Economics Paper No 9 (2004)

<sup>28</sup> *Bloomberg*, August 3 2009 (Private Equity Considers Investing in U.K. Law Firms)

## Interview 3: Craig Holt

**Craig Holt is chief executive of QualitySolicitors.com.**

A network of more than 100 law firms which, in its words, was 'formed as the legal profession's answer to the growing threat posed by supermarkets and banks as a result reforms of the Legal Services Act 2007, widely known as "Tesco law"'. Membership fees range depending on the size of firm from £5,000 to £25,000 and firms range from sole practitioners to firms like Pannones in Manchester which has 100 partners.

*How will the legal landscape change post Legal Services Act?* The profession is going to be 'brand-dominated', predicts Craig Holt, a family law barrister by background. 'In a short time between now and the full impact of the reforms being felt, our idea is to develop a legal brand,' he said.

There has never been a hugely successful law firm brand in the marketplace. *Why is that?* Holt claims to have looked at 'hundreds of law firm websites and brochures over the last few months'. 'It's almost impossible as a consumer to be able to differentiate one law firm from another. I can't tell you the number of websites I've looked at which describe the firm as "modern with traditional values, forward-thinking with a focus on customer service..."'. That sort of stock phase was 'repeated ad infinitum'. 'If you're a member of the public it's almost impossible to choose between firms and that is why they start thinking: "If I can't tell the difference, I might as well just get the cheapest."'

*So how do lawyers create a brand to rival the new entrants?* Holt argues that 'individually law firms have a terrible time trying to develop a brand' with the exception of the very biggest firms such as a Russell Jones & Walker or Irwin Mitchell. 'When I spoke to solicitors the picture I got was a very gloomy, a very pessimistic attitude towards the future. It was very much: "We're getting screwed on legal aid, the little bit of profitable work that we do is going to go and how could we possibly compete with any of these brand names",' he says. The approach of firms was 'all very individual' with firms asking themselves how they could compete. 'Individually, they cannot but the legal profession as a whole is a very powerful body. If you take even a reasonable number of solicitor firms working together they can have a pretty powerful effect between them, especially if can get enough of a good size and good quality.'

*So what message are you trying to communicate?* The whole purpose is to develop the legal brand, Holt replies. 'We have pitched the service as having a quality mark aspect,' he says. He points to quality marks run by the Law Society such as Lexcel or membership of the various panels 'however none of which have been picked up upon by the public' because of 'a lack of marketing and a degree of scepticism by the public at quality marks given by other lawyers'. QualitySolicitors.com claims to assess member firms and has a selection committee ('but we do not pretend that we have the resources to conduct a big audit'). Member firms have to enjoy an 'over 95% positive feedback from members of the public'. 'The focus of the marketing is that these are a group of lawyers chosen by you, the public,' Holt says.

*“At the end of the day we are all running businesses and anybody who runs a law firm today like they were run 50 years ago just isn't going to be around for much longer.”*

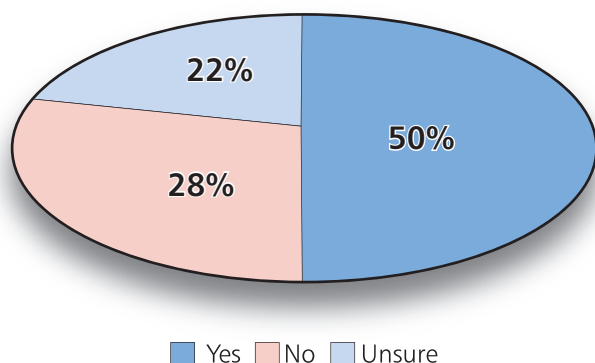
**Martin Cockx, Amelans**

So, what might the post-Legal Services Act world look like? 'My prediction is that there will be something like 'Halifax'-solicitor branches in shopping centres up and down the country,' he says; arguing that the Tesco Law model is 'interpreted very narrowly'. 'I speak to firms all the time who take the view that they don't need to worry about the Legal Services Act because Tesco Law clients are a very different clients to their clients.' Lawyers are wrong to dismiss the threat as more 'cheap conveyor belt conveyancing services'. 'There will be a whole range of brands, both premium and cheap and

both specialist and generalist – and it won't just be the nightmare Tesco Law scenario of a big factory in a call centre where nobody sees their lawyers.'

Does the word 'solicitor' have a positive connotation? Why use it? Holt said they were 'trying to break down a negative profile through the marketing'. 'It has a good profile in terms of being a profession, offering quality advice but overall I'd say "No" it doesn't have a good profile. I do not think that perception reflects the reality though.'

Is the prospect of 'Tesco Law' good for the consumer?



*“There are some people who believe that the current regime is the bastion of consumer interests. You only have to look at the coalminer compensation debacle to see that we're in a profession that has let the consumer down. We are not starting this from the great moral high ground.”*

Tony Williams, Jomati Consultancy

# Chapter 4: The fall-out

The last substantive section of the *Big Bang* questionnaire considered issues to do with the new regulatory framework and the handling of complaints by the profession. The Legal Services Act created the new Legal Services Board as arch regulator ‘with the power to enforce high standards in the legal sector’ and which would replace the ‘maze of regulators’ with their ‘overlapping powers’ to deliver a clear set of regulatory objectives.

It also created the independent Office for Legal Complaints ‘to remove complaints handling from the legal professions and restore consumer confidence’ and which would act as an independent ombudsman service for all consumer complaints about legal services whoever has provided them.

## Overview

In October 2009 Lord Hunt of Wirral delivered a Law Society-commissioned report into the new regulatory regime.<sup>29</sup> The Tory peer came up with no less than 88 recommendations, including calling for a greater degree of regulatory autonomy for firms with strong governance mechanisms to some more surprising recommendations, such as a Hippocratic Oath for solicitors. The sheer number and range of the recommendations illustrates the breadth of the debate to be had about the new regulatory architecture needed to be constructed on what the solicitor-peer called this ‘radically new and unfamiliar landscape’.

Lord Hunt considered at some length how to preserve in a meaningful way the brand of ‘solicitor’ in a homogenised post-Legal Services Act world. ‘We must not be snobbish or arrogant on the subject of professionalism,’ he wrote. ‘Anyone can do his or her job, or discharge any kind of responsibility, in a “professional” or “unprofessional” manner. Street cleaners, sound engineers, bus drivers, shop cashiers and anyone else in any walk of life can be “professional” or not - depending upon whether or not they perform their tasks to the best of their abilities, prove to be reliable and

honest, conduct themselves in a timely and courteous fashion and so on. That does not however make what they do a profession. A profession is defined by certain shared qualifications, values and principles.’

Lord Hunt, who described himself in his report’s introduction as an ABS ‘sceptic’, went on to argue that in a ‘more open market’ solicitors would have to ‘justify’ the high level of service they want to provide. He argued that professionalism mattered ‘as much in the 21st century as it did in the 16th century’ because it codified ‘the idea that lawyers’ responsibilities [went] beyond the mere contract of employment’. ‘The combination of ingrained integrity and ethical policies unites the entire profession and helps to give us our distinctive identity,’ he said. Solicitors, he urged, should ‘vigorously reassert their professional standards’.

## Slipping standards?

We began this section on regulation by asking respondents whether ‘standards of professionalism’ would slip in the wake of the Legal Services Act. We also inquired whether the Solicitors Regulation Authority (SRA) was the right model of regulation for the solicitors’ profession and whether the profession would benefit from sector-specific regulation.

<sup>29</sup> *The Hunt Review of the Regulation of Legal Services*, Law Society, 2009

Sole practitioner Ian Lithman complained of ‘an immense growth in terms of the amount of regulation’. However, the solicitor acknowledged there were ‘certain aspects which have helped enormously in reducing clients complaints’. ‘Going back 20 years, solicitors never bothered telling the clients what the service was going to cost and never tried to guess even. The client got upset.’ The advent of client care letters had ‘stopped a lot of complaints’, he added. ‘Clients have become far more aware of what’s been going on as we’ve modernised. They’re getting much more information.’ However the sole practitioner’s view was that the volume of regulation was now ‘overbearing’.

Most would agree that the highest standards must be observed and monitored but how that was tackled was ‘a difficult issue’, began Jonathan Rees, a partner at Hugh James. ‘Some would say that the regulator working with the profession to see obligations are observed, working on delivering a consistency of approach, and collaborative working together rather than seeking to catch out errant practitioners and similar initiatives might bring about improvement,’ he argued. Insofar as standards of professionalism being further eroded, Rees argued that ‘by removing barriers to entry [it] could bring about “a cutting corners” culture’ which might be ‘further fuelled by the inevitable period in which a new regime would be said to be bedding in’. ‘The phrase “kids with headsets” has been overheard disparagingly in this regard and is a troubling vision of the future for many,’ he said.

Was the SRA the correct model of regulation? Ian Lithman acknowledged a consensus view from the City (that sophisticated corporate clients needed less protection than the relatively less well informed clients of high street lawyers) but reckoned that the SRA had ‘got its act together to a great extent and, provided it had time to sort itself out, yes, it will be able to do the job’.

As to whether standards would slip, Richard Barnett, senior partner at national volume conveyancing firm Barketts, was unsure (‘Nobody knows. Probably.’) The solicitor made the case for ‘silos’ with regulation attuned to law firm type allowing, for example, for conveyancing to be regulated differently from personal injury (‘referral

fees, for example, work very well in conveyancing whereas they might not elsewhere...’). ‘If you are over-regulating conveyancing then it doesn’t bring any added value to the consumer. ... There should be a level playing field so I should not be penalised as a volume conveyancer being regulated by the SRA as against a volume conveyancer regulated by the Council for Licensed Conveyancers (CLC).’ He argued that the issue would come to a head when, for example, under the ABSs regime ‘a blue-chip commercial organisation’ opted for CLC regulation which, in his view, would be ‘an incredible slap in the face to the solicitors’ brand and the SRA’.

Sector specific regulation seemed ‘superfluous’ to Jon Rees. ‘Yes, the practices of high street and City lawyers differ in many ways but they share much more when it comes to professional principles and the matters making up the main body of the regulatory code,’ he argued. ‘Split sector regulation could lead to a split profession. It could cause chaos for the vast majority of practitioners who do not fit squarely into a single sector and could lead to some less lucrative areas of the law being abandoned or under provided for creating its own social and economic costs.’

### **No light touch**

Respondents were also asked if consumers were going to be better or worse protected post-Legal Services Act and whether the profession’s ability to deal with complaints effectively and speedily was still critical in terms of protecting the profession’s reputation.

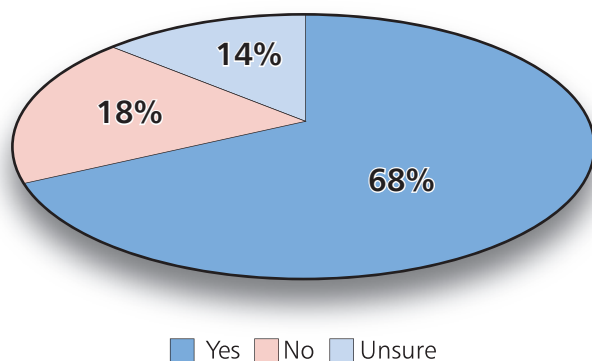
Ian Lithman agreed that the situation over complaints-handling had ‘improved enormously’. He pointed to the common misconception that sole practitioners were responsible for the majority of complaints (in fact, 44% of firms are sole practitioners but only generate 8% of complaints received by the Legal Complaints Service). ‘The situation is improving all the time and consumers have no real cause for complaint,’ he added.

In July 2009 the Legal Services Complaints Commissioner, Zahida Manzoor, who has proved a fierce critic of the Law Society, said that the legal profession was ‘now a world away from the problems in complaints handling’ that led to her appointment five years before. The Legal

Complaints Service and SRA had hit 12 of 14 targets imposed by Manzoor and she reported that complaints were generally concluded within 12 months. This represented ‘a sound platform’ from which to launch the new Office for Legal Complaints (OLC) which replaces the Legal Complaints Service next year. However there was not much room for complacency. Manzoor reckoned the ‘year on year’ increase in complaints about solicitors ‘must be a warning sign’ for the OLC. ‘The Legal Services Act places an onus on firms to get it right first time,’ she said.

Maintaining standards was ‘vital otherwise our reputation with the public will just deteriorate’, began Anthony Hughes, chief executive of the defendant insurance firm Horwich Farrelly. He argued that the demystification of the law that ‘Tesco Law’ was supposed to deliver might actually play against the interests of the lawyers. ‘This perception of us being in our ivory towers clearly isn’t great. But also it’s not too bad if, because of that perception, clients feel that they are going to get a good service going to a solicitor.’ The profession didn’t want ‘situations akin to the PPI (Payment Protection Insurance) mis-selling’ because of, for example, supermarket retailers moving into volume services. Hughes felt it was ‘too early’ to decide whether the SRA was the correct model of regulation. ‘The only thing I’d say is I’d like to see them adopt a “can-do” attitude to assist the profession,’ he added. ‘They have a reputation for having a “can’t do” attitude.’

**Will firms come under more media scrutiny as a result of the regulatory changes taking place?**



### Regulatory hole

Nick Smedley, the senior civil servant commissioned by the Law Society to look at the regulation of corporate legal work, took a fairly bleak view of the profession’s ability to look after City clients. He reckoned that next major scandal in regulatory failure could strike in the legal profession, so failing was the SRA at policing commercial work. Smedley argued that regulation under the SRA did ‘not address the true risks adequately’ while ‘perhaps trying to address all sorts of non-risks’ by focusing on ‘minor, routine matters’.<sup>30</sup>

*“The phrase “kids with headsets” has been overheard disparagingly in this regard and is a troubling vision of the future for many.”*

**Jonathan Rees, Hugh James**

The gap between the SRA’s skills and the complex work of business lawyers was ‘too wide to enable the SRA to act with confidence and competence’. Nor did the regulator pay its staff enough and its base (in Redditch and Leamington) inhibited ‘active engagement and contact’ with firms based in the square mile. ‘The SRA has entered this sphere of activity with inadequate understanding and limited time to plan, prepare and gear up,’ the report concluded.

Smedley, who used to work in the Ministry of Justice, proposed the creation of a ‘corporate regulation group’ within the SRA headed ideally by a ‘very senior and highly experienced lawyer’. Smedley denied any suggestion of light touch regulation for the City arguing, instead, that presently there was ‘virtually an absence of regulation’ in the City with the exception of ‘high profile long drawn out investigations’ into the conduct of a couple of firms (which he called ‘a rather over-engineered response to a couple of situations after the event’.)

According to Hunt, many lawyers he spoke to were critical of the Smedley proposals ‘for fear they might divide the profession. I would not like to see this profession divided because I strongly believe in the old maxim about the benefits of standing united.’

<sup>30</sup> Review of the regulation of corporate legal work, Law Society, 31 March 2009

However that wasn't the view from the largest City firms. Inevitably, they were disappointed with Hunt's apparent retreat from Smedley proposals. 'I do not think that standards of professionalism will slip, if anything they are going to improve,' said Chris Perrin, Clifford Chance's general counsel. He argued that the effect of the Legal Services Act would be to make front-line regulators and in particular the SRA 'ratchet up what law firms have to do to run in a good and professional manner'.

Michael Pretty, executive risk manager of DLA Piper, rejected sector-specific regulation on the grounds that it 'would result in a fragmented profession' which 'would be counter productive'. 'Nevertheless, a one size fits all model, like the current SRA, is not a solution either. A single regulator can regulate the full spectrum of the profession if, one, it has resources the teams which support each sector with personnel with the right background and skill set and, two, the supervisory methodology applied is tailored to each sector.'

Chris Perrin believed that the Smedley report 'addressed and answered pretty much all of the points' raised by the biggest City firms. Hunt's proposal was for 'authorised internal regulation', self-governance for those firms that demonstrate robust compliance and governance standards. The peer argued that 'the first wave of AIR firms should consist largely of larger, corporate firms'. Perrin, chairman of the City of London Law Society's regulation committee, argued that Hunt had 'rather missed the point' of Smedley and 'got the nuances wrong'.

The City firms were 'trying to address a glaring hole in relation to the way that the big firms were regulated', said Perrin. What did he think of authorised internal regulation? 'We are not seeking to regulate ourselves. If that is what Hunt is really

suggesting he's barking up the wrong tree,' he said. 'What we envisaged is that under the Smedley model you'd have a small number of regulators who are experienced in City work and would understand what the large firms are doing and have regular contact with those firms and people like me in those firms.' A level of expertise and greater contact would create 'an open dialogue between firms and regulators' leading to 'a general increase in standards for all firms'.

'We aren't expecting to get off lightly at all,' Perrin said. 'The effect of Smedley would be that the larger firms are getting much closer attention than they have been having and we are certainly not asking for light regulation.' How would such a model be funded? Smedley reckoned that the new unit could cost '£3 to £4 million extra', mainly because of staff salaries (including, Smedley recommended, a salary of around £700,000 for the director) and relocation costs. That issue had 'yet to be addressed', said Perrin. 'My view is that the larger firms already subsidise the regulation of the profession. We're paying far more than what we get back from the regulator. The ten biggest firms pay about £11 million a year. A huge amount of money.' If the SRA implements the sort of regulator that those firms think necessary 'then we accept we might have to pay a bit more' but they would not be willing to pay 'what we are paying now plus the cost of putting this right'.

The Legal Service Board's David Edmonds offered a 'slightly guarded' response to Hunt's call for authorised internal regulation. 'A regulator whether it's me or the SRA has powers, duties and responsibilities,' he said. 'You have to be absolutely sure that the standards applied are consistent with good regulation. You do not get off easier because you are a City firm, that's not what regulation is about at all.'

*“My firm view - of course I may be wrong - is that it is already all over for many firms of solicitors.”*

**Kerry Underwood, Underwoods**

# Case Studies

# Case study 1: The Co-Op

Eddie Ryan, managing director of the Co-Operative Legal Services, and Jonathan Gulliford, operations director, discuss where legal services fit with the Co-Op's brand.

*How important is legal services to the Co-Op brand?* The provision of legal services is 'a really good fit with the Co-Op's principles and ethos', reckons Eddie Ryan. 'Members feel warmth and an allegiance to the brand. The provision of legal services isn't something that the Co-Op has played to in the past. There is an awareness-building exercise needed. We are hoping those brand values translate to legal practice and into a trust that members will place with us.'

*How many Co-Op customers might be interested in legal services?* At the moment there are more than three million Co-Op members who have access to legal advice as part of that membership plus one million Co-Operative Insurance policyholders who also have access to the legal services. 'We're looking to the provision of legal services as an inducement to come and join the Co-Op,' says Ryan. The retailer viewed the provision of legal services 'as one of those potential opportunities to provide a unique service to members at a time of difficulty, distress or need and to be seen to be adding something back to the community'.

*What legal services are available to members?* 'Members have access to free legal advice through our telephone-based service – and that is open to all members on any consumer-related matter. It does not cover business-related matters,' replies Gulliford.

Gulliford says that the 'basic entry point' to all members is that they have access to free legal advice. 'That's a benefit of their membership, they do not pay for it and it could be for as long or as short as they want it to be on the telephone'.

'Co-Op members tend to be in the C2/D social class grouping,' he says. 'They aren't the sort of people who have a couple of hundred quid in their pocket to get hours of legal advice and they are not the sort of people who feel comfortable in solicitors' offices.'

*Many people might be Co-Op members but are they aware of its legal services?* It takes time to build recognition in the membership, Gulliford answers. Over summer 2009 the retailer began a media campaign featuring in-store radio, till screen displays and door-to-door leafleting. 'About 15 million people walk through the stores every week,' Gulliford says. 'The proposition is that they can join the Co-Op very quickly and avail themselves of those services.'

*What is the promise of the Legal Services Act for the retailer?* 'We want to be on equal footing with the high street as to who can do the work and how they do it,' says Gulliford. *What about a physical presence?* 'Most legal services you don't need to walk in and see a lawyer,' he answers. 'Where it's most necessary we will visit people in their own homes, particularly for areas of law like probate or personal injury and we will go out and make it convenient for our customers.' Gulliford says that the Co-Op plans to build its own in-house legal capacity retaining a panel of firms only to the extent that it needs 'a release valve'.

## Case study 2: the Halifax

Joel Ripley, head of Halifax Legal Solutions, talks about the bank and legal services.

Over the summer of 2009 Halifax expanded its legal services by launching an online 'pay as you go' legal document production and advice service called Halifax Legal Express which was described in the Law Society's Gazette as 'the first move from the big brand organisations since the recession hit and the banking sector fell over'\* . Halifax Legal Express offers three levels of service: 'self-serve', customers can use one of 150 DIY legal documents; 'lawyer review', oversight by their legal team; and 'lawyer service', bespoke input from a lawyer. A will for a married couple is priced at £48, £74 or £99 depending on which level is chosen.

*How long has the Halifax been involved in the legal services market?* Joel Ripley calls Halifax Legal Express 'our second dawning of a more formal market entry'. At the end of 2006 Halifax Legal Solutions was launched and the new service compliments that annual subscription service (available from £9.99 a month). However Ripley points out such services are 'nothing new in terms of our involvement in this market'. The Halifax has been offering Will-writing services to high net worth clients for a decade as well as conveyancing services to mortgage customers, and probate advice for the last four years.

*How many customers does the Halifax have?* Halifax has 'at least 20 million ' and with the merger with Lloyds TSB 'going on for 30 million customers', Ripley says.

*Will the Halifax use the Legal Services Act to develop an in-house capability?* No, Ripley replies. 'We have always said we had no intention to buy a law firm or to create a law firm in-house. What we need to do and what we strive to do every day is to serve our customers' needs as well as possible at an everyday price. Nothing will change as a result of the Act.'

*Why not buy a law firm?* 'We're a bank, not a law firm,' replied Ripley. 'Our specialism is banking and we are focused upon offering the very best service in banking. If our customers have legal needs we like to be able to offer them a solution but we are not lawyers.'

*Does Halifax's interest in the legal sector amount to a threat to the high street?* 'We're not offering anything that should be seen as a threat [to them]', he says. 'High-street lawyers generally provide an excellent customer service to their client-base and those that continue to offer an excellent service to their customer base will continue to survive and thrive', says Ripley. 'The customers we're trying to serve are those who are nervous around legal services or who have the perception that it will cost them an absolute fortune. We are trying to address those needs by saying we are a brand name that you can trust, one that you're familiar with and one that you're quite comfortable disclosing all your personal financial information to each day, everyday. You can trust us. Our brand is all about trust and we can help you get the very best legal services at a transparent price.'

Ripley argues that the Halifax is 'trying to activate that part of the market that is dormant'. 'There is a genuine legal need from people who will not even look at lawyers because they are too scared of the price.' He described Halifax Legal Express as 'a marketing channel for customers into the legal services market'. 'We don't intend to be a product provider.'

\* *The Law Society Gazette*, 23 July 2009 (Halifax Legal Express and the fierce urgency of now)

## Case study 3: A4e

Liton Ullah, senior business development manager at A4e talks about the company's development into the legal services market.

A4e is the Sheffield-based 'welfare-to-work' business run by the multimillionaire business woman Emma Harrison. The company was set up in Sheffield in 1987 as the steel industry was laying off workers in their tens of thousands. Its founder Emma Harrison prides herself on the social benefits of her business – 'finding people jobs, tackling social injustice', as she puts it.

*Why is A4e qualified to provide legal advice?* 'If you go back to why we entered the legal aid market it was part of a natural process and evolution for the business,' says Ullah. He points to the company's commitment to its client group. 'We have been a welfare-to-work provider for over 20 years and work with people who are the furthest removed from the labour market, the most socially excluded and vulnerable and who have a need for our welfare services whether it's legal aid, health, education, or financial inclusion advice services.' The company, together with the legal aid firm Howells, has successfully won contracts to run Community Legal Advice Centres in Leicester and Hull in partnership with the local councils and the Legal Services Commission. Howells provides '70% of headcount' and A4e provides the management and back office services. A4e / Howells is also the largest national provider of Community Legal Advice, the telephone advice line, providing advice to people on debt, housing, employment and welfare benefits issues.

*Is the Legal Services Act an opportunity for A4e to develop into legal services?* 'Yes, but not just for us. It is an opportunity for the whole market,' says Ullah. 'In terms of our ambition, there isn't a master plan to take over the legal aid world.' A4e's 'firm commitment' is the legal aid market place, replies Ullah. 'You have to be in it for the long term to genuinely make an impact.'

*Is there enough money in legal aid to satisfy a commercial organisation like A4e?* Ullah replies by saying that A4e is 'acutely aware from delivering our service that the margins aren't massively high'. 'There has to be a genuine passion and commitment,' he says. 'Legal aid is classed as an essential welfare service but if you compare it against the likes of health and other essential services the £2 billion budget for legal aid wouldn't keep the NHS going for a matter of weeks.'

*Some legal aid lawyers have taken the view that A4e is a threat to their practices. What does A4e say to them?* 'We do not accept it; but at the same time we can understand it.' Ullah points to their relationship with Howells, which provides 95% of its work in legally aided areas of law and its 'exponential growth' in the last two and a half years. 'Instead of being a threat that should be a reassurance to the marketplace that things can actually improve,' he says. Ullah argues that, with the prospect of ABSs and the changes in the procurement of legally aided work, many firms will not be capable of investing the resources into 'bidding for contracts and raising capital to take on all the procurement challenges that the market is throwing at them'. 'How are they going to cope with that?' he asks.

## Case study 4: *Which?*

Steve Coyle, head of *Which?* Legal Services, discusses their legal offering.

*Which?* is an independent not-for-profit consumer group with around 44,500 members. It employs 15 lawyers and the legal helpline took approximately 42,000 calls last year.

*So what does 'Which? Legal' comprise?* According to Steve Coyle it is 'a telephone legal advice service offering independent, affordable expert advice' manned by lawyers. The service has changed from being a benefit for members to being a service open to the general public over the last two years. Coyle describes the areas of law that it covers as including: 'consumer law; problems with goods and services; employment advice to all UK employees; appealing clamping and parking fines; holiday problems; labour disputes' plus an online Will creation service. The price for the general public is £51 a year and 'for that you can make as many phone calls as you want to'. 'Some people use it as a form of "peace of mind" insurance and don't ring often but it's there when they want it to,' he says. For members it costs £39 a year.

*How do you want members to perceive this service, as an additional membership benefit or an alternative to high street legal advice?* 'Possibly a bit of both,' Coyle replies. 'Consumers are saying I don't want to see a solicitor on this but I want to know what my rights are.' Coyle (a non-lawyer) had recently had his own case concerning a wooden shelf worth £30. 'I'd never have dreamt of going to a high street solicitor to have talked about that. It would have been a complete waste of my time and a complete waste of their time, however, talking to one of my colleagues here within two minutes I can find out what my rights are.' He points to a 'large volume of low value cases which are still critically important to the consumer' which otherwise would not be pursued.

*What are your ambitions for the service?* 'It's not a case of wanting to be a one-stop-shop for everything,' Coyle replies. 'Our ambition is to continue to aggressively grow both the membership base and the services within membership price.'

*Is the Legal Services Act an opportunity or threat?* It is 'a great opportunity', Coyle replies. 'I'm looking forward to not being so restricted.' *Which?* is in the 'fairly unique position' of being a charity offering legal advice and is constrained by Law Society rules so that they can only offer telephone legal advice. He is looking forward to members being able to e-mail them with documents for review.

*Any plans to take over a law firm and rebrand it under the Which? banner?* 'No current plans. We are focused on helping the consumer and looking at consumer detriment and campaigning for that consumer detriment to be rectified. Our legal services help consumers. We don't want to move away from that core niche.'

*How important is brand?* *Which?* has 'an incredibly strong ethical presence in the consumer's mind', Coyle says. 'The name stands for a lot and that's one thing that we look to protect as much as possible as well. Our mantra is that we exist to make individuals as powerful as the organisations that they have to deal with in their daily lives.'

## Case study 5: DAS

Kathryn Mortimer, head of legal services at DAS Legal Expenses Insurance, talks about the impact of the Legal Services Act. DAS handles 30,000 claims a year through motor insurance and household insurance policies sold by intermediaries. It has 15 to 20 law firms on its panel.

*The Legal Services Act, opportunity or threat?* 'For us it presents a fantastic opportunity to open up legal services directly under a DAS banner to policyholders,' Mortimer replies. She argues that 'provided that issues of conflict and regulation can be properly addressed, and I am sure they can' DAS would see it as doing 'exactly what Clementi intended'. 'It's all about opening up of the legal services market to as many people as possible at as little cost as possible.'

*What would DAS like to achieve?* 'For us, it's one step at a time,' Mortimer said. The 'immediate proposal would be for at least a proportion of claims that arise under the insurance policies to go through a law firm which we have either ownership of or a working relationship with where we can have control over costs'.

Such a firm might be 'a fully owned subsidiary of DAS'. 'It would operate independently because I think the Legal Services Board wouldn't want to see the independence of the law firm and the lawyers compromised by the referrer'. *Is that frustrating?* 'No, not at all; as a lawyer myself I think that's absolutely right. That would give comfort to the clients and to the regulators that there was no compromising the quality of service or independence.' However the arrangement would mean 'we could drive down costs even further because as a large insurer we will be able to invest in systems, staff and everything that volume related businesses requires'.

*Is there a connection between DAS's aspirations and those of Lord Justice Jackson's review of costs?* Absolutely, says Mortimer. 'His remit is access to justice at a proportionate cost; as a legal expenses insurer we are waving that flag very clearly. For a very small premium we're meeting up to £50,000 worth of legal fees but that could go a great deal further and do a lot more if we had closer control of costs.'

*What are your ambitions under the Legal Services Act?* 'As well as being 'regarded as a leading legal expenses insurer (LEI) in the UK we would also be a leading provider of legal services', Mortimer said. 'We aren't proposing to be a Linklaters but we are proposing to provide legal services to people and individuals who might otherwise not be able to get access to justice.' The criticism of legal expenses insurance is many people have it – although they aren't aware of it and don't rely on it. *Will LEI take off?* 'It already has,' replied Mortimer. 'We are underwriting 10 million policies at the moment.'

# Appendix 1:

## Big Bang questionnaire

### Life after the Big Bang: opportunities and threats

Life after the Big Bang is a research project by legal PR specialists the Byfield Consultancy. It is being run by freelance journalist Jon Robins.

We are grateful for your support in this survey which concerns the impact of the Legal Services Act 2007 on the legal profession.

We would be grateful if you could complete the following questionnaire by Friday, August 7th. The aim of the project is be the most comprehensive survey of the legal profession in relation to how it responds to the Legal Services Act (LSA) and, in particular, its communications challenges. We will be canvassing the views of legal practices from the City to the high street including solicitors, barristers, licensed conveyancers, legal executives as well as non-lawyer businesses. We will be talking to senior partners, PR / marketing directors, and chief executives.

The report will be published in November 2009.

Three questions ask for 'yes' or 'no' answers. Please answer all questions - and include reasons for those questions which have a particular concern for you. The research will be based on both the results of the questionnaire and follow-up telephone interviews over the next few weeks.

#### General

- 1 Do you believe that the legal profession has a good public profile?  
Yes / No / Not sure... please state reasons...
- 2 Will the liberalisation of the legal services market give the profession a better public profile? Yes / No / Not sure... please state reasons...

- 3 Does the importance of a good profile increase with the implementation of the LSA?  
Yes / No / Not sure

#### Legal disciplinary partnerships

- 4 Have you or do you intend to apply for LDP status? Yes / No / Not sure
- 5 Do clients want non-lawyers in top management positions? Yes / No / Not sure
- 6 Do lawyers want non-lawyers in top management positions? Yes / No / Not sure... please state reasons...
- 7 Do non-lawyer partners dilute the law firm model (i.e., through the sharing of equity)?  
Yes / No / Not sure... please state reasons...
- 8 Is there PR value in having a non-lawyer at the head of a law firm? Yes / No / Not sure
- 9 Is there PR value in being an early adopter?  
Yes / No / Not sure
- 10 Is being a non-lawyer partner more of a responsibility than a privilege, especially in an economic downturn? Yes / No / Not sure... please state reasons...
- 11 Does your firm already have non-lawyers involved in its management? If so, does partnership status make a difference? Yes / No / Not sure... please state reasons...

#### Alternative Business Structures

- 12 Is the prospect of 'Tesco Law' good for the consumer? Yes / No / Not sure... please state reasons...
- 13 Will the present economic conditions accelerate the take up of ABSs? Yes / No / Not sure
- 14 Are you interested in external sources of investment to fund the growth of your firm?  
Yes / No / Not sure... please state reasons...

- 15 Are private equity houses interested in investing in firms?  
Yes / No / Not sure... please state reasons...
- 16 Is public / client perception a factor in determining law firm model?  
Yes / No / Not sure... please state reasons...
- 17 Do conflicts of interest present problems for ABSs? Yes / No / Not sure
- 18 Will the ABS regime (coming into force in 2010/11) conflict with the LDP regime?  
Yes / No / Not sure

### Legal Services Board

- 19 Will regulatory standards of professionalism slip post-LSA?  
Yes / No / Not sure... please state reasons...
- 20 Is the SRA the right model of regulation for the solicitors' profession? Yes / No / Not sure
- 21 Does the profession need sector-specific regulators – separate for City, high street etc?  
Yes / No / Not sure... please state reasons...
- 22 Will firms come under more media scrutiny as a result of the regulatory changes taking place – i.e. a more transparent and accountable profession. Yes / No / Not sure

### Office for Legal Complaints

- 23 Are consumers going to be better or worse protected post-LSA? Yes / No / Not sure
- 24 Is the profession's ability to deal with complaints effectively and speedily critical in terms of protecting the profession's reputation? Yes / No / Not sure

### Reputation... and challenges of the LSA

- 25 Are you thinking about the communications challenges that the LSA brings? Yes / No / Not sure... please state reasons...
- 26 Will you be increasing your overall PR spend as a result of the LSA? Yes / No / Not sure
- 27 Are you concerned about the marketing budgets that big brand entrants have at their disposal? Yes / No / Not sure

### The Byfield Consultancy

([www.byfieldconsultancy.com](http://www.byfieldconsultancy.com)) is a specialist PR agency dedicated to the legal profession headed by directors, Gus Sellitto and Richard Elsen. With more than 20 years experience of working with law firms, barristers' sets and legal associations, Byfield offers specialist expertise in profile building PR services, crisis management and litigation PR.

**Jon Robins** ([www.jonrobins.info](http://www.jonrobins.info)) is a freelance journalist and author. He has been writing about the law and legal issues for the national and specialist legal press for over a decade. His latest book *The Justice Gap: Whatever happened to legal aid?* (Legal Action Group, May 2009) looks at the state of access to justice.



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