

If you wanted to create the ideal law firm, would you be starting from here?

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I recently attended the Legal IT Forum run by ICBI and the theme of the conference was the 'green field' law firm. If one were starting from scratch, how would one set up a law firm? The discussion came at a time when there are certainly people thinking about starting from scratch in setting up a business to provide legal services. The question for the existing players in the market is therefore what the competition is going to look like in the next few years.

Here come the ABSs

One of the most interesting sessions at the Forum was a panel discussion on the impact of the introduction of Alternative Business Structures under the Legal Services Act. The panel considered the likely responses of law firms and potential new entrants into, or investors in, the sector. The key comments that struck me were:

- No-one knows what the impact of ABSs will be. They will bring about change in the market, but it's not clear exactly what kind of players will emerge.
- The initial flurry of interest in the legal sector from private equity investors seems to have tailed off. This is not surprising, since on a traditional analysis it is hard to make the case for a law firm as a solid investment – there is generally no guaranteed income stream and the business is heavily dependent on the key individuals remaining in it and remaining motivated.
- It is delusional to think that an investor with a large pot of gold will come along and buy out the partners in a firm, allowing them to walk off into a luxurious retirement.
- Investment that is ploughed into the business, where it can be demonstrated to produce returns, may be a different matter. Many firms don't feel that they need additional funds for investment however. How would they spend it?
- It is possible that some firms will consider a flotation (following the example of the Australian firm Slater & Gordon).
- Other organisations, such as insurers and retailers may decide to move into the legal space, and several have already indicated their intention to do so. Existing tie-ups with law firms (e.g. the AA/SAGA/Cogent Law arrangement) may be taken further into the acquisition or creation of legal services capacity.

What would a law firm spend a large sum of investment capital on?

The Forum included sessions on a number of practical topics relating to the creation of a green field law firm, including discussions on the infrastructure and applications such a firm would choose (Google Apps?), devices, document management, knowledge management and efficiency. The sessions

provoked some interesting discussion. In many cases, the answer was “if I were starting a new law firm it wouldn’t be like the ones that exist now.”

Predictability in the delivery of legal services – and in the costs

Why are systematisation and price predictability so difficult to achieve in some areas of legal work?

Clients’ needs vary in different segments of the market, but in almost every case they want as much certainty as possible about the legal costs they will incur. This also means in many cases that they want their legal advisers to operate efficiently. Ultimately it is in no-one’s interests that law firms operate at a loss.

The thing that costs most in a law firm is the lawyers – the cost of that resource has therefore to be allocated in some way to the services that are delivered. The most convenient way (from the firms’ perspective) is to charge by the hour. In high volume areas it is possible to predict on average how much time will be needed to deliver a defined piece of work and therefore to arrive at a price which will make the delivery of that work on average profitable. Furthermore, in volume areas where matters follow a fairly predictable pattern, it is possible to systematise and to some extent automate the work by codifying and applying the firm’s knowledge and experience. Case management systems are the prime example of managing knowledge in context. Standard documents are provided, options presented, the right questions asked, saving time, managing risk and enabling aspects of the work to be delegated to less costly staff. In this way it is possible to make these types of work profitable even on the basis of tight fixed fee arrangements, particularly since an increase in volume of work does not necessarily result in the need to recruit more legal staff.

Although some of these volume areas are far from straightforward, the work types that have been most successfully systematised are generally those where:

- The issues that are likely to arise can generally be identified up front and can be factored into the workflow.
- The number of specialisms required from within the law firm to deliver the service is small – often only one area of law is covered.
- The scope of the work is relatively easy to define – in circumstances where something outside the original scope crops up it is usually pretty clear both to the client and the law firm that this wasn’t covered by the original instructions.

In more ‘niche’ areas, there hasn’t historically been any need to systematise the work, because clients have been prepared to pay on the basis of chargeable hours (willingly or unwillingly). However, pressure on fees is now biting quite hard, and so there is an incentive to look at how such work could be delivered more efficiently and on a more predictable basis. Writers such as Professor Richard Susskind

and Professor Stephen Mayson have been predicting and encouraging this for years. But it is much harder in practice than in theory because (amongst other things):

- Much depends on the circumstances – the more complex the work, the larger the number of issues that can arise and the harder it is to identify all of these in advance.
- Since these areas have a lower volume of matters, it is harder for a firm to come up with a template that represents the ‘average’ matter which could be the starting point for a systematised approach.
- How much time is taken depends on how the clients, and the other side, behave, which is outside the control of the law firm.
- There are often several specialisms involved and even within one firm it is difficult to get specialists in different areas to work seamlessly together.
- Lawyers resist this type of analysis because they fear it will undermine the basis on which they have built their careers – and recently many have fallen back on the view that if you can’t systematise a type of work from beginning to end there is no point in systematising any of it.
- Individual lawyers are often incentivised on the basis of chargeable hours, so it is in their interests to spend more time on a client’s matter, even if ultimately the firm will not be paid for it.
- Many lawyers don’t like to work in a structured way, especially if the structure is imposed on them – they are trained to think critically and to find the flaws in any structure. To some extent lawyers regard their work as creative and treat each matter as a new experience (yet, of course they pitch for work on the basis that they have done this kind of thing many times before....)
- In the traditional law firm structure it is not anyone’s job to step back and think about how a particular type of work could be delivered more effectively. It should be part of the PSL’s job, but because it is very difficult and there are always easier things that a PSL can usefully do, they very often don’t do it. In any event, even when you do work out how something can be done better, it’s even harder to get lawyers to change.

But a disadvantage of continuing to deliver these niche services in the traditional charge by the hour way is that a firm cannot deliver a greater volume of work without recruiting more lawyers and therefore increasing its costs. In some practice areas the pressure on fees has become so great that firms are concluding that they cannot deliver the work profitably on the basis of the traditional model and are therefore deciding to stop providing those services¹.

¹ A small digression here – one of the examples I found of a firm reaching this kind of conclusion was in an area where pieces of work were usually subjected to competitive pitching and the process was heavily dependent on hourly rates. Therefore, whilst there was heavy pressure until the job had been won, there was no incentive on the firm to operate efficiently after this point. Admittedly the work was highly specialised and often involved ground breaking issues in a wide variety of jurisdictions around the world, meaning that the number of potential issues that could arise was enormous. Perhaps this is why at the client side it was concluded that the only way of measuring relative costs between firms was by reference to hourly rates. Cynically one could say that in a complex area plumping for the cheapest option could be a false economy. This may have been an extreme example, but it struck me that both the law firms and the clients had given up on the task of trying to create greater

Firms do have know how that they apply in their niche practices – but generally on the basis that the lawyer has to go and find the know how when he or she wants it, rather than having it presented to them in context. Further, in most cases the know how does not extend to a complete codification of the work type – although in some areas firms have comprehensive practice manuals which almost go this far, albeit in the form of flat text, rather than any kind of interactive matter management tool.

How would a law firm benefit from investment?

I cannot speak for others, but if I were starting a law firm from scratch – and especially if I had the benefit of some investment - I would firstly look very carefully at the market to see where the opportunities lay, concentrating on types of legal services where clients are imposing cost pressure and where it is recognised that the traditional methods are less than efficient. There are plenty such areas. I would then need to recruit a small team with expertise in these areas.

The biggest investment I would make would be to get my team of experts to spend some concentrated time (probably several months) focusing on defining in detail the ‘product’ the firm would deliver. This would involve analysing the relevant type of work and trying to codify it, perhaps not at the granular level that a case management tool would operate in a volume area, but, with an open mind, identifying:

- The phases of the matter and the different tasks that need to be carried out at each phase.
- The documentation generated as part of each task (both internally and for external consumption) and the extent to which this could be standardised.
- The factors that affect how long the tasks can take.
- The likely issues that can arise.
- The information needed in order to carry out each of the tasks.
- The extent to which clients value the different tasks and the level to which they are performed.
- The legal experience needed to carry out each of the tasks and how far can this be provided in the form of know how and checklists² so that paralegals or resources in less costly jurisdictions could be used.
- The extent to which technology, in the form of workflow and document automation, could be applied to automate aspects of the work.

Productising and
codifying the
service the firm is
to deliver

I do not underestimate this task. If it were easy lots of people would have done it before. My own experience as a lawyer in trying to apply document automation to even slightly complex documentation gave me an appreciation of the number of factors the human brain is taking into account in marking up

predictability because it was too hard. My belief is that in an increasing number of areas people will decide to take on this challenge – difficult though it may be – and there will be some spectacular winners.

² For example, if in 90% of cases an issue should be handled in the same straightforward way, but in the other 10% it has to be handled differently, can you delegate that issue to a junior lawyer or non-lawyer on the basis that they know how to identify the 10% of cases and to redirect those to a more legally qualified colleague?

a document and the difficulty of setting this all down as a logical programme. One of the important lessons from that experience, however, was that you cannot cover every eventuality. Similarly in the context of trying to systematise a type of legal work, you can only aim to cover 70-80% of the likely issues. The others will be too rare to warrant spending the time on them. The key there will be recognising them and ensuring they are passed to the right person for consideration.

It has frequently struck me how firms that handle certain types of volume work extremely efficiently on the basis of heavily processised case flow, often have other practice areas where the idea of processisation is anathema, so even having the process expertise and the mindset within a firm does not mean that its whole practice will have bought into the idea of efficiency.³

From the above analysis I would endeavour to identify the parameters that would dictate the cost of delivering the legal service to a client. Ultimately the intention would be to be able, in discussion with the potential client, to identify as many as possible of the likely issues up front, enabling the firm to price the delivery of the service with a reasonable degree of certainty. This process would also enable the firm to set out very clearly the scope of the work to be covered and the assumptions on which the price is based and to have a discussion with the client about certain aspects of the work they may not want the firm to carry out and how the associated risks will be borne.

Having spent a chunk of my investment fund on gathering the team to carry out this analysis and setting up processes and technology to support it, my green field law firm would then recruit the right levels of staff to deliver the legal services we had scoped. If we had identified the right areas – where systematisation looks possible, but hasn't been done in the market yet – we would be able initially to set the pricing very close to the equivalent of the prevailing hourly rate price. However, we would have fewer expensive lawyers than the competition and would have more room for manoeuvre in reducing prices when others start to wake up to the possibilities. Furthermore, to the extent that our legal product involved the embedding of knowledge so that tasks could be delegated to non-lawyers, or even automated, our capacity to deliver greater volumes of work would not be dependent on recruiting more expensive lawyers.

Ongoing R&D

It has often been commented that law firms do not invest in research and development. My green field law firm would. It would be an important part of the business to ensure that its models (products) remained up to date, benefitted from the firm's experience in delivering services to clients and took into account new issues and changes in the law/market conditions. After the initial period, when the new firm was actually delivering legal services, I would retain some of my key experts as leaders of the R&D function, leaving others as front line service deliverers and managers of client relationships. The R&D team would be something like a combination of senior PSLs and business analysts, but rather than being

³ It is interesting, however, that Irwin Mitchell, in its April 2011 announcement said that it intended to raise £50m by way of an IPO or other external investment to fund business acquisitions, but also so that systems the firm has developed through its - commoditised arm will be adapted and tailored to meet the needs of the corporate practice.

regarded as 'support' (and consequently not as valuable as the client facing staff) I would see this team as potentially more important to the business in the long term than those on the front line. Client facing staff would not be exempt from involvement in R&D, however, because it would be a key part of their role to feed back any issues with the product as codified, and to contribute to its continuous improvement.

How can an existing law firm respond?

My dreams of a green field law firm are all very well, but for most in the market it is a question of how to get an existing legal practice to adapt to changing market conditions. Many are reluctant to devote the resources to the difficult analysis I have outlined above. Some that have tried have found it so difficult that their efforts have ended up being focused on streamlining internal administrative processes, which, whilst helpful, will not transform the firm's profitability (though it may enable the lawyers to go home a few minutes earlier each day). It would be very easy for the analysis phase to become bogged down, both in the level of detail and in the politics of the organisation. External help – bringing non-political drive and energy to the process – can help greatly.

Even when a new model for the delivery of a certain type of legal service has been identified, getting the relevant teams to change their way of working remains a challenge. But perhaps the area of change management should be the basis of another article.

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