

## Future Legal Mind 2016

### **Is the commoditisation of legal services inevitable and is a commercial approach more likely to compromise or enhance the quality of advice and service to consumers?**

Argument summary: The text will seek to argue that commoditisation of legal services may be inevitable in some practice areas, however differentiation is a feature of the legal sector which will compel the profession to adapt to changes in the legal landscape such as the advent of the ABS, as evidence by changing approaches to delivering services to clients and the new trends in costing of matters and unbundling.

#### Commoditisation – Is the legal profession “unbundling” itself into a fragmented future?

The phrase “anything is possible” may seem to be a clichéd statement, but it can arguably be used to describe the world we live in today. In an age where there are now almost as many mobile phone subscriptions as there are inhabitants of the world<sup>1</sup>, information is available in an instant and consumers are more empowered in the choices available to them. This notion of choice has left the legal profession in a state of commotion.

The traditional “high street” practice areas are undoubtedly on the “front line” of the battle with commoditisation. Areas such as wills, probate, immigration and conveyancing have become increasingly homogenised leaving consumers faced with a barrage of firms and choice in the market. Some present the view that such choice has left potential clients with greater access to justice, but with the advent of the Jackson reforms and subsequently the Legal Aid, Sentencing and Punishment of Offenders Act 2012, just how far does this ring true with the reality? S.56 to 60 of the Act<sup>2</sup> imposing a ban on referral fees for personal injury work has left many PI outfits struggling to stay afloat. The ban was designed to prevent insurance companies from profiting from the sale of their clients’ information to law firms, but instead it has arguably fuelled commoditisation by forcing firms in personal injury to compete for clients in a changing legal landscape.

The Legal Services Act 2007 heralded the introduction of the controversial “alternative business structure”, which has allowed non-lawyers and non-traditional organisations to enter the profession as regulated entities. This development has allowed insurance companies such as the AA, who were granted their ABS licence as joint-venture on 1<sup>st</sup> December 2013, circumventing the aim of the ban on referral fees in personal injury. “AA Law” as it trades, offers a very similar service to other personal injury firms with arguably a stronger brand and image than most. It could be said therefore that a fear of commoditisation is not misguided. Similar trends are emerging in other practice areas. A report published by the Royal Bank of Scotland (RBS) in November last year highlighted that while mid-tier firms enjoyed strong growth, they were under a significant threat from accountancy firms who have been able to operate legal services with an ABS licence. In the words of James Tsolakis, head of legal services, large corporate and sectors at RBS, “legal work has become increasing process driven”<sup>3</sup>. It could almost be argued from this point alone that commoditisation is effectively inevitable.

Drawing a comparison to the similarly heavily regulated retail banking sector, there has been a marked increase in a retail-style experience being offered, with new entrants such as Metro Bank differentiating itself for this reason and the introduction of services such as the “Current Account Switch Service” in

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<sup>1</sup> ITU – Measuring The Information Society – November 2012

<sup>2</sup> <http://www.sra.org.uk/solicitors/code-of-conduct/guidance/guidance/prohibition-of-referral-fees-in-laspo-56-60.page>

<sup>3</sup> <http://www.legalfutures.co.uk/latest-news/accountants-are-eating-away-at-mid-tier-law-firms-and-will-target-the-big-boys-next-says-report>

September 2013, designed to improve efficiency and reduce bureaucracy. Recent reports have indicated that consumers are increasingly expecting a retail experience<sup>4</sup>, and it is inevitable that consumers will put similar demands to legal service providers, particularly to firms operating in the traditional “high street” practice areas. It could be said that the legal services market has reacted to this challenge positively. A trend towards fixed fees has seen law firms shed the traditional “billable hours” routine where the client assumed all the cost risk, in favour of making more unconventional options available to clients such as alternative fee arrangements (ASAs) and assuming some cost risk in fixed fee options, which have now become the option of choice for a majority of clients according to recent consumer legal service polls.<sup>5</sup> However while commoditisation does appear to have benefit in providing potential clients with greater choice in the market and possibly better value, what happens when it goes wrong?

The recent case of *Procter v Raleys* [2015]<sup>6</sup> presents a compelling argument for the dangers that commoditisation can pose. The Court of Appeal criticised the decision of the firm in question in the case to commoditise its advice and litigation. Similar concerns have been raised regarding so-called “legal factories” which mass process legal work with a view to providing low-cost options to consumers. However these “factories” present a real danger to the reputation of the legal profession. The Legal Ombudsman has reported that rises in such legal outfits have contributed to rises in complaints of incorrect cost information and delays.<sup>7</sup> It presents a compelling argument that this more commercial approach has a serious effect on the quality of advice given to clients in these instances.

As a consequence, the profession appears to have reacted to this in a controversial way. In March 2015, the Law Society of England and Wales published its practice note on “unbundling” for civil work and previously presented guidance in the wake of the Jackson reforms. The concept of unbundling is to reduce the potential cost of matters by apportioning work for the client to undertake themselves, therefore reducing the involvement of the fee earner and encouraging a “self-help” approach to the fee earner-client relationship. This however, may be seen as somewhat of a “devils deal”, reducing cost on the one hand but increasing risk on the other by allowing the client to be more “hands-on” in their matters. It shows however that the profession and firms themselves are willing to take risks in order to differentiate themselves.

It could be said that the nature of the legal profession lends itself to differentiation and similar parallels can be drawn from other sectors. For example, one could buy a ploughmans sandwich from Tesco for £1.50. A sandwich with a similar filling is on sale at Pret A Manger for £3.25, and yet they announced further international expansion and a 14% boost in profits after hitting sales of £10m a week, just last year.<sup>8</sup> It seems there may always be a demand for a premium service. The issue then may not be one of commoditisation. Convincing potential clients of why they should spend more, in a world of legal factories, price competition and unbundling will be the real challenge to the profession in the years to come.

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<sup>4</sup> <http://news.diebold.com/press-releases/diebold-global-research-shows-consumers-expect-more-from-financial-institutions.htm>

<sup>5</sup> <https://reports.yougov.com/clients/reportaction/legalservices2015/Marketing?CategoryFilters=&ViewMode=list&IncLicensed=True&IncUnlicensed=True&IncNormal=True&IncPrivate=True&IncArchive=False&IncPreview=False&IncNorm=True&IncIcss=True&IncPdf=True&IncExt=True&IncPpt=True&IncXls=True&IncWord=True&IncNews=True&IncDb=True&IncFigures=True&IncTables=True&IncAllText=True&IncBodyText=True&IncTitleDesc=True&IncHeadings=True&IncQuotes=True&IncBullets=True&StartSince=ANY&Language=ANY&NumberContentTypesToInclude=7>

<sup>6</sup> *Procter v Raleys Solicitors (A Firm)* (2015) [2015] EWCA Civ 400

<sup>7</sup> <http://www.legalombudsman.org.uk/reports/conveyancing/rise-of-conveyancing-factories.html>

<sup>8</sup> <http://www.theguardian.com/business/2015/apr/21/pret-a-manger-expand-france-us-profit-rise>