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AFTER CLEMENTI: THE IMPENDING LEGAL LANDSCAPE

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The Clementi Review has the potential to affect all law firms – possibly profoundly. The Department for Constitutional Affairs (DCA) responded with a White Paper and the draft Legal Services Bill to give effect to Sir David Clementi's proposals (and more). A Joint Committee of both Houses of Parliament reviewed the draft Bill and made recommendations. The Government replied to the Committee in terms which suggested that the substance of the Bill was unlikely to change much, and so it proved. Even though the enabling powers may not actually be in force until 2008 or later, there is no time to waste. Those who wish to take advantage of the new landscape are already preparing to do so.

Why the Clementi Review was important

The Clementi Review was important for three principal reasons:

- some 'corrections' to the marketplace
- the DCA emphasis on "putting consumers first"
- the possibility of alternative business structures.

Each of these is explored in this paper. In the proposals, one theme emerges very strongly as the primary underpinning: more competition – that is, competition for regulation and representation, for clients and work, and for ownership and capital.

Neither Clementi nor the Government set out to undermine the fundamental principles of the rule of law and the effective administration of justice. Indeed, the overriding objectives are set out in the Act, and all regulators are required to perform their functions in a way which is compatible with them. These regulatory objectives are (section 1(1)):

(a) supporting the constitutional principle of the rule of law;
(b) improving access to justice;
(c) protecting and promoting the interests of consumers;
(d) promoting competition in the provision of legal services by lawyers and the new alternative business structures (ABSs);
(e) encouraging an independent, strong, diverse and effective legal profession;
(f) increasing public understanding of the citizen's rights and duties; and
(g) promoting and maintaining adherence to the professional principles.

The professional principles referred to in section 1(1)(g) are that (section 1(3)):

(i) lawyers and ABSs should act with independence and integrity, maintain proper standards of work, and act in the best interests of clients;
(ii) advocates and litigators should comply with their duty to the court to act with independence in the interests of justice; and
(iii) clients' affairs should be kept confidential.

The Act applies to 'authorised persons', 'reserved legal activities' and 'approved regulators', so the meaning of 'lawyer' becomes quite widely drawn. In effect, the lawyers covered by the Legal Services Act are barristers, solicitors, licensed conveyancers, legal executives (but not paralegals), and patent and trade mark attorneys (cf. sections 12, 17 and 19, and Schedule 4). The professional principles therefore impose on both traditional and new forms of legal providers the same professional obligations.

Market 'corrections'

A number of issues worried Sir David in relation to representation and regulation, but his real concerns were conflict and lack of transparency. The role of a regulator is essentially to promote competition while the principal role of representation is to protect against it. A split of the representative and regulatory functions of, say, The Law Society and the Bar Council became inevitable. The Clementi Review and the Bill propose that these 'front-line' regulators stay in place – albeit with the formal separation of the two functions – and that their work is overseen by a new Legal Services Board (LSB). The LSB will have a lay majority, with a lay chairman appointed by the Lord Chancellor after consultation (section 2 and Schedule 1).

Matters of professional discipline (issues between members of the professions about qualification and standing) will remain with the front-line regulators. However, complaints about service (issues between practitioners and their clients) will all be directed to a new Office for Legal Complaints (OLC), irrespective of the professional background of the practitioner concerned (section 111 and Schedule 15). Complaints that give rise to disciplinary concerns would be referred to the appropriate regulator (section 140).

One effect of this change in the regulatory framework will be to put regulators in greater competition with each other. For example, practitioners can assess the relative merits, burdens and costs of each regulator and decide which regulatory home is most suitable for their type of practice. So, for example, conveyancing solicitors could decide that the regulatory regime of the Council for Licensed Conveyancers (CLC) is much more to their taste and 'trade in' their solicitor qualification for an alternative form of regulation and representation.

It remains to be seen whether this new framework and split of functions will create any additional costs of regulation to law firms (the Clementi Review thought that the proposals would be broadly cost neutral, while the DCA foresees a one-off cost of setting up the new regulatory structure – to be paid for by legal services providers).

More fundamentally, if the regulatory thrust of the Clementi Review concerns maintaining or improving the quality of practitioners, then perhaps it strays off target. It seems to me that the profession struggles with producing too much quality rather than too little. Put bluntly, there are too many qualified solicitors for the volume and value of work available: that means both too many, and too highly qualified. How can I justify this assertion – especially when some firms find it chronically difficult to recruit 'good' people? Well, first, for several years now the productivity of the profession has been declining in relative terms (measuring productivity as fee income per fee-earner, where in a rising market a decrease in productivity suggests that we are dividing more work among ever more people and creating economic dilution). Second, as student debt and City salaries have increased, the expectations of salaried lawyers have risen and young, highly qualified, practitioners have become relatively more expensive to the point where those salaries can't be justified for some locations or for some of the types of work available. It's not that good people aren't available; they're just spread over too many law firms and out of the price range that many firms can afford to pay. At the same time as this over-capacity has developed, the technical legal component of much of the profession's work has been reduced – or the volume of professional work that is standardised, proceduralised and administrative has increased. Either way, a lower proportion of work now requires intellectual firepower and virtuosity.

These forces all combine to induce a shake-out in the marketplace. We see it in the general consolidation of firms into larger entities and increased competition among them; we see it in the focus on productivity, performance and profitability that is evident in so many law firms; we see it in the ever-rising sensitivity of clients to lawyers' fees – whether public, commercial or private; and we see it in the competitive and economic pressures on the middle tier of commercial law firms and on legal aid firms. The Clementi Review and the Legal Services Act arguably represent the final dismantling of protection of the legal professions from market forces.

"Putting consumers first"

This is the strap-line adopted by the DCA in its response to, and adoption of, the Clementi Review. Notice, it's not "clients" or "the public interest". Not surprisingly, then, the public interest and clients are not mentioned as part of the regulatory objectives set out in section 1, though protecting and promoting the interests of consumers is. Even if one accepts that the balance of power in the lawyer-client relationship has historically been stacked in the lawyer's favour, swinging the pendulum so deliberately in the other direction and putting the consumer first is as abhorrent as putting the professional first. Surely what is needed is a balance of the legitimate interests of clients in effective and efficient legal services, of the public in the administration of justice, and of lawyers in a satisfying and rewarding business. Consumer interest and public interest are not the same thing, and may indeed conflict (for example, where an advocate's duty to disclose adverse evidence is not in the client's interest in achieving a favourable outcome).

I believe that the DCA 'spin' of consumerism does the Clementi Review a great disservice. Something like two-thirds of the legal market by value does not affect the 'consumer' (I would treat the interests of commercial and public sector clients differently and not describe them as consumers – not least because the balance of power in these relationships often does not favour the lawyer). The Joint Committee's recommendation that protecting and promoting the public interest should be inserted into the Bill's statement of regulatory objectives was rejected, though the Legal Services Board must have regard to the public interest in discharging its functions (section 3(3)(c)). Surely the Government has this the wrong way round? The rule of law and effective administration of justice should require the public interest to be a regulatory objective, and the LSB should have regard to the interests of consumers in discharging its duties.

However, following the DCA line, it seems to me that consumerism will fundamentally affect two markets – those legal services which are not reserved to lawyers, and legal aid. Sir David proposed no extension of the reserved services (conveyancing, probate, notarial and commissioners for oaths functions, rights to conduct litigation, and rights of audience); he also proposed little action in relation to the non-reserved ('unregulated') services. He therefore appeared to accept a continuing distortion of a substantial part of the legal services market. Unregulated services can be provided by both regulated (lawyers) and unregulated providers. The lawyers will still have to comply with the regulation applicable to their status as lawyers. There is to be no relaxation in relation to unregulated services provided by lawyers, and the LSB will have to satisfy itself that all front-line regulators require at least minimum standards to be met. The unregulated providers, on the other hand, will have no regulatory hurdles or costs – not even the minimum standards. And, of course, there will be no complaints structure for them, since the OLC will only have jurisdiction over regulated lawyers. Although the Clementi Review did not propose any action, the Legal Services Act will apply to claims management and to immigration, though neither becomes a reserved activity; will-writing will remain unregulated – on the dubious basis that there is insufficient evidence of consumer 'suffering' at the hands of unregulated providers – although the Legal Services Board may choose to examine whether there is a case for regulation.

In relation to unregulated services, Sir David hoped that the market would make an informed choice – presumably between the short-term, known, cost of legal services from unregulated providers as against the longer-term protection bought at perhaps some higher cost (or lower profit) of the regulated providers. I wish I could be so optimistic that a transparent market of the type Sir David envisages would result in no competitive disadvantage to regulated providers.

In relation to legal aid, we know that rewards are still being squeezed as the burdens of structure and compliance increase. We know that legal aid 'deserts' already exist as providers buckle under the economic and other pressures and withdraw from the market. Greater consolidation (and perhaps new entrants – of which more later) will add to these pressures. We also know that some firms cross-subsidise their legal aid provision from other, more lucrative, areas of practice. But Sir David does not think that this is justified. He writes at page 120 of his final report: "whilst services such as legal aid are important, their costs should be transparent. There is no clear reason why they should be subsidised by the users of other services" (or, he might have added, by the equity partners through reduced profitability). This is a clear message to the Government and the Legal Services Commission – and one supported by Lord Carter in his review, too: legal aid rates should be high enough to avoid any need for subsidy in the effective delivery of a publicly funded service (assuming that legal aid firms achieve operational efficiency). But will the message be heard? Is such laudable transparency possible? It surely cannot be contemplated without a more sophisticated, targeted and differentiated approach to legal aid that both addresses unacceptable practices and excesses but yet still properly rewards quality legal advice where the complexity of the assisted client's needs legitimately requires the best. Without such an approach, no doubt more firms will abandon legal aid work.

Alternative business structures

Sir David returned to the long-running debate about multidisciplinary practices (MDPs – legal and other professionals being in business together), and decided to examine the issue alongside what he called 'legal disciplinary practices' (LDPs – lawyers from different legal professions in business together). He concluded that MDPs would presently raise too many regulatory complexities and that we should walk before we ran by gaining experience of operating LDPs successfully. The principal alternative business structure he recommended was therefore the LDP. However, the Legal Services Act – making little reference to regulatory complexity – would permit MDPs. It seems to me that the post-Enron experience of accounting firms is such that they may not wish to rush back into the market for legal services. However, the provisions of the Act will at least allow those law firms that engage the services of other professionals directly in the provision of professional advice (such as accountants giving tax advice) to admit those other professionals into ownership.

Intriguingly, the draft Bill would not have included LDPs wholly owned and managed by lawyers within the licensing structure for ABSs: following the Joint Committee's scrutiny, the Government agreed to remove the restrictions on such forms of business. Schedule 16, paragraph 74 therefore amends the Administration of Justice Act 1985 to empower the Law Society to allow the creation of lawyer-only LDPs (called 'legal services bodies') – but still outside the licensing arrangements for ABSs.

Alternative business structures (ABSs) are a new form of business vehicle in which lawyers and those from other professions and business backgrounds can carry on business together. They are only available to businesses carrying on at least one reserved legal activity (section 70(1)), although once authorised all of the ABS's legal activities will be subject to regulatory oversight (cf. sections 83 and 96). An ABS must also include at least one non-lawyer as a partner, shareholder or member (section 71(1)).

The ABS will be a separate legal entity, which means that its owners can adopt a legal structure of their choice, whether a traditional or limited partnership, a limited liability partnership, a limited company or plc, or a mutual society. The practice will have to be licensed by the LSB directly or by a front-line regulator authorised for that purpose by the LSB (and it is anticipated that existing front-line regulators such as The Law Society and the CLC will seek authorisation). The ABS licensing authority will regulate the economic entity and will therefore be common to every practitioner in the firm. This allows an ABS a choice of lead regulator: for example, a property firm with a majority of solicitor partners could still nominate the CLC as its lead ABS regulator if it found the regulatory burden and costs more suitable. The only requirement is that the licensing authority should be an approved regulator in relation to the reserved activity or activities offered by the ABS (Schedule 10, paragraph 1). This approach necessarily pitches potential ABS licensing authorities in competition with each other, subject to oversight by the LSB to maintain appropriate minimum standards. Individual practitioners will remain subject to the residual regulation of their appropriate professional body in relation to their standing as a practitioner.

The Clementi Review also envisaged that LDPs could have different owners and managers, that is, that there might be external ownership of the firm. This is the foundation for what has become known as 'Tesco Law'. To guard against inappropriate owners, Sir David proposed a 'fit to own' test. The Review and the White Paper suggested that the honesty, integrity and reputation, competence and capability, and the financial soundness of a potential proprietor who is not legally qualified should be assessed by the ABS regulator before that person would be authorised to become an owner. The test would therefore be very similar to that in the financial services legislation. The detail of the test did not appear in the draft Bill, but following recommendations from the Joint Committee, the Government agreed that "it is desirable to set out the fitness to own test on the face of the Bill". However, what appeared was a rather generic requirement on the licensing authority to have regard to a non-lawyer applicant's "probity and financial position", the applicant's associates, and any other matter the licensing authority wished to specify in its rules (Schedule 13, paragraph 6(3)).

Membership bodies such as motoring organisations or trade unions, and financial institutions such as banks (e.g. HBoS – already a major provider of legal servcies) and insurance companies, may feel most comfortable in proposing themselves for external ownership. From the retailers, so far only the Co-op has shown any real interest (for conveyancing, wills and probate, and accident management). Private equity houses and other investors have also expressed interest in investment, and could meet the fit-to-

own test. What is certain, though, is that no fit-to-own test is capable of excluding from ownership all undesirable owners.
In addition to the fit-to-own test, Clementi's further proposals that the firm would not be able to act in any case or transaction in which an external owner had any direct interest (for instance, advising on a loan to be made by a bank with an ownership stake in the LDP), and that external owners would not be allowed to interfere in any specific case or transaction (though some may wish to influence the effectiveness, efficiency or economics of the general process of service delivery), have not been explicitly maintained. Nor has the proposal that external owners would not be allowed access to client files or client information. Instead, the White Paper, though aware of the potential for conflict and influence, suggested that ABS regulators should focus more on the extent of external investment and movements in the shares of listed companies that own an ABS. In the Act (Schedule 13, paragraph 1 to 4), any shareholding of 10% or more is the threshold at which a material interest held by a non-lawyer has to be disclosed and approved (the Joint Committee expressed a preference for a 5% threshold, though there is provision in the Act for any ABS regulator to set a lower threshold than 10%: Schedule 13, paragraph 3(2)).

A licensing authority will be able to introduce different rules for 'low-risk bodies' (section 106) where non-lawyers constitute less than 10% of the ABS's partners, directors or members and they control less than 10% of the ownership an voting power of the business.

The Joint Committee also expressed concerns – echoing Sir David Clementi's view – that MDPs represented 'running', compared to LDPs being 'walking', and favoured a staged or phased introduction. The Government rejected this approach, saying that there was "no reason artificially to delay implementation and the benefits to clients".

In granting a licence to an ABS which has non-lawyer ownership or control in excess of 10%, a licensing authority must be satisfied (Schedule 13, paragraph 6), in addition to the fit-to-own requirement, that that external interest does not compromise the regulatory objectives in section 1 or the compliance by the firm's lawyers of their professional obligations to their own regulators.

Sir David Clementi proposed that LDPs should maintain a majority of lawyers on their management group. The DCA does not believe that this is necessary. Nevertheless, the management group must still include a Head of Legal Practice (a 'lawyer' authorised to practise at least one of the reserved activities offered by the ABS) nominated to the licensing authority (Schedule 11, paragraph 11). The HoLP is responsible for ensuring that the firm complies with the terms of its ABS licence (except those for which the Head of Finance & Administration is responsible: see below); that the lawyers in the firm comply with the requirements of their own professional regulators; and that any non-lawyers do not do anything which causes, or substantially contributes to, the ABS or its lawyers being in breach of the professional regulations applicable to its lawyers (sections 88, 89 and 169).

The management group must also include a Head of Finance & Administration (who need not be a lawyer): Schedule 11, paragraph 13. The HoFA is responsible for complying with the rules relating to the keeping of accounts and the holding of clients' and trust money (section 90 and Schedule 11, paragraph 20).

The HoLP and HoFA both have statutory obligations to report any breaches by the ABS or its lawyers and non-lawyers of the terms of its licence or of the professional obligations imposed on owners, lawyers and staff (sections 89 and 90).

It is therefore clear that those who are not legally qualified may become managers in an ABS, and that they may also become owners (subject to the fit-to-own test). It seems to me that this provides two principal routes to ABSs. The first might be described as the 'internal' route where practitioners from different professions work together, along with professional managers (many of whom are already within law firms), and possibly with some non-lawyer owners in the form of those who manage 'process' or volume practices such as debt collection, uninsured loss recovery or housing repossession. Such firms will grow almost organically from the seeds of existing law firms which are already combining people of different professional background and expertise under the same roof, but are still identifiable as substantially 'professional' practices. The second could be described as 'external', and is represented by the external creation or acquisition of a legal practice by those who are not legally qualified or mainly in the legal business – such as membership organisations, financial institutions and retailers – that is, on the basis of the more usual separation of ownership and control found in the 'corporate' world.

For commercial law firms, the 'internal' route may prove to be the most appealing. Providing career progression and an ownership interest to their managers (such as directors of finance, human resources or marketing) could make an internal ABS desirable – though it remains to be seen whether law firms will regard the Act's ABS provisions as too bureaucratic to offer a cost-effective opportunity. In addition, the local consolidation of, for example, lawyers, accountants and tax advisers within a defined area, such as a market town or a city suburb, might represent an attractive proposition to owner-managers and small businesses. Limitations on raising debt finance might also push more second-tier firms to seek external financing.

Undoubtedly, whether an ABS originates in the internal or external model, there will be issues relating to the strategic rationale for the move and the effectiveness of integration. Chief among these will be the integration of practitioners from different professional backgrounds with different ways of relating to clients and of being assessed. Most interesting might be the cultural challenges between the lawyers and external owners, and the allocation of economic rewards as between lawyers, professional managers and external investors. The lawyers will, no doubt, continue to maintain that fee income is generated largely through their contacts and efforts and they should therefore claim the lion's share. But how will the value of a professional manager (and possibly part-owner) be assessed relative to the lawyers, and will their economic participation increase their internal credibility if they now have some capital on the line? And how will the financial risk of external investors and owners be assessed relative to the professional or reputational risk carried by the lawyers? Will there be enough reward to make the investment worthwhile? These are fascinating questions which a new market would have to address.

New entrants

The legal market will undoubtedly be attractive to external owners and investors for the following principal reasons:

- there is a large, fragmented market (or series of markets) with identifiable over-capacity and inefficiencies: it is ripe for consolidation and economic restructuring by those with more reach and deeper pockets;
- the unreserved, unregulated 'consumer' services will probably be most attractive (hordes of qualified, expensive and egotistic lawyers are not required), though the £2 billion legal aid market could also be tempting;
- capital could be made available for investment in expansion, consolidation or technology from which acceptable returns can be gained;

- there are economies of scale to be derived from investment in and the restructuring of commoditised or bulk services;
- they are in a position to extend and exploit their brands in ways in which the fragmented High Street and private client legal market currently is not.

The types of new entrants who are likely to be tempted into the market will therefore drive for consolidation and market share, scale and economies of scale; they will have brand value and reach as well as consumer loyalty and incentives; they will be able to invest far more than law firms in technology, client service and marketing; and they will have far greater experience of pricing and the management of service delivery. Another key question, though, is whether the supposedly 'new' entrants (such as the Co-op and HBoS) in fact need the provisions of the Act to enable them to achieve their objectives. Their current approaches to 'white labelling' and joint ventures may represent a more cost-effective and less regulated route to their legal services ambitions. In the end, the Legal Services Act may only provide an alternative method of entry, rather than a principal one.

This all heralds further intense competition in which small law firms, attempting to compete on price, are almost certain to lose out. Unregulated providers may be able to compete more effectively in the non-reserved services, through the use of processes, technology, cheaper people and the absence of regulatory costs and compliance. Indeed, unregulated providers could provide an alternative route for 'part-qualified' lawyers, such as those law graduates who are unable to secure training contracts or would-be barristers who cannot qualify because of lack of pupillage or the proposals for the deferral of Call to the Bar. How ironic that, against the background of The Law Society's training framework review indicating alternative routes to professional qualification, the unregulated market and those law firms that continue to compete in it may effectively restore a modern-day equivalent of five-year articles through which they grow their own people in their own image and culture to serve the particular needs and expectations of their own client base.

Arguably the most vulnerable firms in this new market will be smaller firms faced with changes to legal aid funding, conveyancing practices facing the challenges of Home Improvement Packs and the broader introduction of electronic land and funds transfers, and the 'consumer' firms threatened with new entrants. The most likely outcome in this segment will be the consolidation of firms into larger, more competitive, better funded and resourced, businesses. A multitude of small firms inevitably presents a fragmented supplier base, and duplicated costs. When this fragmentation and duplication is combined with a tendency to recruit more highly qualified (and therefore more expensive) people than the work may truly warrant, the cost eventually becomes too high for clients to bear – or provides an opportunity for a better organised and more businesslike competitor to come along with a more attractive offering.

This new world must be embraced, and does not necessarily represent a 'meltdown' for solicitors' firms. Only the weak and inefficient have anything to fear (and they don't deserve to be protected, though they still do have time to turn themselves around). However, the Carter Review estimated that 400 law firms could disappear – and research commissioned by the Law Society suggested twice that number. In any event, this represents a good deal of fluidity in the market in the next few years – and fluidity of lending and banking relationships as law firm debt is reconfigured, transferred or defaulted.

Conclusions

The Clementi Review and Legal Services Act will certainly alter the legal landscape in the years ahead. The most profoundly affected will probably be the High Street, private client and legal aid firms which will face yet more (but better organised and resourced) competition. These firms will be less able to sustain significant numbers of qualified lawyers who expect substantial rewards and who retain ownership aspirations.

The larger commercial firms will have the opportunity for new types of ownership, investment and business structures; they may initially see little need for them, but market pressures and further consolidation will gradually edge some of them in a different direction. In all, firms will face a choice between fewer opportunities for ownership (steeper leverage with a consequent pressure to seek external investment) or increased opportunities for ownership through different structures (flatter leverage but with the greater disengagement from management and control that comes with more proprietors or external ownership).

Despite LLPs and incorporation, the notion of 'partner' in its traditional sense has largely persisted as the professional badge of honour for solicitors in private practice. Even so, more recently, an over-supply of aspirants, tightening economics, and generational differences have gradually diluted both the availability and the attraction of equity partnership and of interest in it. Now, the Carter Review, Clementi's regulatory shift and the introduction of ABSs could generate a further significant reduction in the number of 'traditional' partnerships available (and with it could add to the pressure for external investment as fewer partners with any significant private wealth are admitted to ownership).

As ever, the best lawyers (and firms) will be safe. But the 'good lawyers' will probably have fewer choices and possibly less attractive choices. They may not be attracted by the shift to consumerism and so, within a generation, the good lawyers will probably have gone somewhere else. They are unlikely to be partners in the best firms, and there will be fewer opportunities for them to be owners in 'consumer' practices or legal aid firms. Gradually, they will retire or requalify, perhaps take management or supervisory positions in the unregulated sector, or even accept lower-paid employment in the unregulated sector (this is not meant to imply a 'dumbing down' in this sector, but it will certainly represent an economic levelling down). The good news for those smaller and regional firms perhaps struggling at the moment to entice good lawyers to join them is that there may well be more of those lawyers in the market in the future. The bad news is that their practices will not need good, qualified or relatively expensive people!

Thinking of selling out?

It would not be surprising if some within the legal profession might see the prospect of more competition and change, combined with the advent of external investment and ownership, as a perfect opportunity to cash in and retire to a world of wealthy leisure. The private equity market could well be interested (assuming that their cash piles are maintained until the necessary enabling legislation and implementation is in place). But the market has learnt something about professional service firms in recent years (retail banks had their fingers burnt investing in investment banking at the time of Big Bang, and the acquisition of estate agencies held some salutary lessons for those who buy out the owners of these types of business).

So private equity would be looking for significant growth in profits for a period of 4-5 years and an exit route. This suggests that a firm with contracted, stable work flows may be more attractive than one with volatile fee income, as will a firm that has no or minimal dependence on prima donnas (who are seen as difficult to manage and likely to move on with their clients in tow). The business must be sustainable to provide growth and an exit route, and plans for expansion and succession will need to be in place and implemented. Critical mass, and reliance on more predictable work flows and processes rather than virtuosity and individualism, are likely to be the foundations. Sadly, the legal profession has historically been noted more for individualism, personal dependence, unimplemented plans and volatility! The private equity market may not find as many suitable investment opportunities as it might wish: this will not be a 'get rich quick' route for many lawyers. But for those who work to position themselves well in this changing landscape, the future remains bright.

What to do?

All that remains is to provide some pointers for action as law firms begin to assimilate the forthcoming changes and consider their responses to them.

1. The shifts in the marketplace that have been taking place – and which the new legal services legislation will accelerate – run the associated risk of focusing management attention on short-term, internal, micro-management relating to cash flow, compliance, risk management procedures, quality assurance and client satisfaction – admittedly all necessary elements of the management function. However, don't let them freeze out the big picture issues: delivering appropriate solutions and value for money to clients; competitive responses to develop and keep the better quality and more profitable work; recruitment of the right number of the right people; dealing with under-performance and over-capacity; and raising the firm's profile and networking. Make sure that the firm's governance and management structures provide the opportunity to discuss, analyse and decide the appropriate response for it to make.

2. Whatever the nature of your practice, conduct appropriate profit centre analysis to find out where you make relatively more or less profit: it's the relativities that are important, so don't over-complicate it. If your financial management software doesn't do it, talk to your provider or change the software. On the basis of this analysis, use the best number of appropriately qualified people to perform the work; see whether you can use technology, or routines or processes, to drive out unnecessarily duplicated or elevated costs. Replicate best or better practice in other areas of the firm.

3. Examine your capacity, and make sure that you're not carrying more unused capacity than you're prepared to invest in for a defined future return. Make sure that you have the right balance of solicitors and other lawyers, of those who are legally qualified and those who are not, and of professional and support staff. Never recruit on a like-for-like basis without thinking through whether someone's departure is an opportunity to do things differently. Therefore, review your recruitment policy: do you always need qualified solicitors? Indeed, do you always need another person?

4. If you provide legal services in competition with unregulated providers, be very clear about the basis on which you compete: you will probably lose on price alone.

5. Consider the benefits of working alongside other professionals, and the competitive difference in advice and cohesion of service that you might be able to offer. Welcome the prospect of alternative business structures, and admit other types of lawyers and professionals to ownership where that makes competitive sense.

6. Use ABSs to professionalise your management further by admitting your key, worthy managers to ownership.

7. You need enough owners to secure your capital and investment; but you don’t need so many that you dilute the returns. Manage the ownership risks by making sure that the right people become and remain partners. Review admission and performance criteria, as well as profit-sharing arrangements if these are thought to inhibit retention or recruitment.

8. It will be an increasing challenge for 5-20 partner firms to have enough readily available capital or debt capacity to compete effectively and stay afloat. I’m not an ardent fan of mergers (most are done either for the wrong, opportunistic, reasons or in the wrong way, or both). However, there will be increasing consolidation in the market at all levels, and you can be an opportunist (by acquiring), a beneficiary (by being acquired) or a victim (by doing nothing or making the wrong choice). If you can’t find the right merger or acquisition partner, talk to your financial advisers to make sure that the firm can be properly capitalised. If necessary, explore the idea of the ABS as a vehicle for bringing in additional external capital. And if you seek external investors, make sure that they truly understand the nature of your business and its culture and that you can deliver their expected rate of return.

Although the new legislation and regulatory framework may yet still seem some way off, positioning the firm to respond and compete effectively needs sustained review and implementation. With intensifying competition from both old and new quarters, it can never be too early to start the process.

