

THE FUTURE OF PERSONAL INJURY: THE HIGH STREET PRACTITIONER

Introduction

This article considers the potential effect of forthcoming regulatory changes in the legal sector on High Street firms, looking in particular at personal injury work undertaken by these firms and the impact all of this may have on wider issues including access to justice and the rule of law.

“High Street”

It is difficult to define precisely what is meant by “High Street” solicitors. If, for present purposes, this is taken to be most firms with 4 partners or less figures provided by the Law Society, for 2006, show the importance of this sector of the profession.

For example in Yorkshire and Humberside there were just over 600 firms in 2006. Of these 254 were sole practitioners and a further 260 were 2 to 4 partner firms.

So, out of around 600 firms in the region over 500, 85%, could probably be regarded as High Street firms.

Whilst a few of these smaller firms might not be High Street firms it is fair to say that the majority of 5 to 10 partner firms probably would. If those 5 to 10 partner firms in the region are included within the definition of a High Street practice the percentage of such firms increases to 95%. Indeed, there were only 28 firms in the region, in 2006, with more than 11 partners.

Throughout the country as a whole in 2006 sole practitioners represented 46.3% of all firms and 2 to 4 partners 40.7%, very much the same as in Yorkshire and Humberside. Add in 5 to 10 partner firms and you again discover 95% of firms are what might be termed High Street solicitors.

Moreover whilst, because of the sheer size of those firms, many solicitors work in very large concerns the number of smaller firms means that out of the 80,000 or so solicitors in private practice in 2006 more worked in 2 to 4 partner firms than any other size of firm, including those employed in the very large, 81+, partner firms.

Despite these numbers the term High Street when applied to firms of solicitors has become rather pejorative over recent years. That might be justified if it were describing a standard of service which is not specialised and efficient but wholly wrong if it seeks to denigrate lawyers providing services to individuals rather than commercial organisations.

Indeed, given the number, visibility and access of smaller firms their role is vital, in terms of access to justice, because it is through these firms the legal needs of so many individuals are met.

If there is no proper access to justice the whole idea of the rule of law, which should underpin our society, begins to break down.

These figures, for 2006, as well as revealing a large number of small firms show the very great variation in size of firm. Historical developments, over the last few decades, may account for this.

History

It is not so long ago that most firms would be regarded as a High Street practice, save for a small number of firms in the City of London and perhaps a handful of major regional centres.

Indeed until 40 years ago the law did not permit partnerships of more than 20 and even when this restriction was removed growth of firms was, initially, slow.

However, the last 20 to 25 years have seen the development of a number of very large firms and, to some extent, the polarisation of the profession.

The introduction of the legal aid scheme following the war, which remained largely in place until quite recently, allowed much better access to legal advice across a range of subjects and, like so many post-war reforms, had the effect of greater equality, access to justice no longer depending upon financial resources.

During this time many firms were willing to undertake legal aid work and, except perhaps for the largest firms, there was no clear demarcation between firms dealing with different types of client. This was reflected by the more common practice of, in the context of personal injury claims, firms doing some defence work, for insurers, as well as acting for individual clients pursuing claims.

Much of that has now changed. Many firms, particularly those away from the High Street, have dropped out of legal aid altogether. Statistics confirm that many small firms survive but the largest firms have seen significant growth and have moved away not only from publicly funded work but, in many cases, private client work altogether.

Having looked at the historical perspective to the current statistics it is worth considering where this leaves us today in terms of how polarisation has impacted on client choice and accessibility.

Today

Growth in the range of size has often been mirrored by polarisation in the types of work undertaken by large and small firms respectively.

There are, of course, some firms occupying the middle ground who do work for private clients, perhaps including publicly funded work, along with commercial work. However, the general trend has been for firms to gravitate towards entirely commercial work or largely private client work. There is even a degree of polarisation in private client work, some firms specialising in what are termed “high net worth” individuals.

Of course different types of legal consumer have different needs which are probably best met by different firms. But surely most lawyers would agree that for the rule of law to

mean anything it is important consumers have access to lawyers who can ensure an outcome based on justice, not the resources of those individuals or even the resources of the firms those individuals choose to instruct.

Given the numbers of High Street firms, and the large amount of work undertaken by such firms for individuals, the future delivery of these services, in whatever form that might take, would seem to be an important issue. Before looking at future possibilities for dealing with work for clients currently instructing High Street firms it is, perhaps, necessary to consider the reasons why the legal landscape may be set to change over the next few years.

Regulation

It is well known that following the Clementi Review regulatory changes, intended to open up the legal marketplace, are taking place.

An important change will be the opportunity for outside investment in solicitors firms. Traditionally, as a profession, we have regulated ourselves and practised in partnership only with other solicitors, restricting the investment in firms to that given by our fellow professionals.

The opportunity for investment, coupled with de-regulation, is a real force for change and seen as a threat to the High Street firms because of the risk that work undertaken by these firms will be a target for larger firms, and other players, interested in commoditising that work and dealing with it in volume.

But what is driving forward these regulatory changes and are there other factors at work?

Drivers For Change

At face value the Government agenda appears to be based on the idea of consumerism. The thinking is that, by opening up the market, there will be greater consumer choice.

However, as the Law Society has pointed out, there are dangers in adopting a purely business approach to a professional service. These dangers are the tension between the idea of even-handed justice, given in accordance with the rule of law, and the consumerist idea of purchasing power, that outlay in legal fees will somehow influence the outcome by the deployment of greater resources.

That is not to say legal firms should not be run in a businesslike way, intended to make a profit by harnessing technology and efficient working practices. However, the priority must remain the interest of each and every client and, more generally, upholding the rule of law, as the Solicitors' Code of Conduct 2007 makes clear.

All of this might raise questions about the extent to which the thinking is joined up: does a consumer driven approach really sit comfortably with the core values set forth in the 2007 Code?

Factors, above and beyond a consumer approach to regulation, are also at play, particularly affecting a range of work currently undertaken by many High Street firms.

Information technology increasingly has an effect, especially on work that can be systemised. The computer in the 21st Century is likely to have the same effect on latter day cottage industries as the steam engine did on similar enterprises in the 19th Century.

Whilst there is nothing to stop smaller High Street firms taking full advantage of new technology the usual result of commoditising work is lower margins with the consequent need to increase volume, something that smaller firms will inevitably find challenging.

There is also the issue of referral fees. Firms who can drive down cost, and increase volume, are in a position to pay larger referral fees with consequent further downward pressure on the cost of work production. At some point this inevitably affects the quality of service.

In these circumstances does it matter if, provided the legal needs of those clients likely to be affected by these changes are still met, the focus for delivery may shift from the accessible, personal, service of a High Street firm to the more remote, impersonal, “factory”? On this question choice of legal provider surely remains important.

Choice

Much of the work undertaken by the independent High Street firms concerns individuals, often in dispute with larger organisations.

It is worrying that, in an increasingly regulated society, there seems to be little enthusiasm for anyone who seeks to assert, let alone argue for, individual rights. That, however, makes the future existence of the lawyer operating with the key precepts of independence, integrity and confidentiality essential. There is, surely, some connection between the opportunity for choice and independence.

Personal injury claims are an example of the type of work where many clients currently choose a local High Street firm. Some of this work is suited to commoditisation, and there is nothing wrong with efficiency and best practice, but many clients require, or wish for, a personal service.

If, for the reasons already considered, this, and similar types, of work disappear from the High Street a whole raft of clients, mainly individuals of relatively modest means, become deprived of the opportunity for a local, personal, service across a range of issues, many involving individual rights.

In these circumstances, even if the legal needs of these clients can be met elsewhere, is it really right that the client, or in the new parlance a consumer, should be deprived of choice and perhaps referred simply to the highest bidder? Certainly the more resourced individual, and commercial concern, is unlikely to accept any such limitation in choosing the supplier of legal services.

A firm does not deserve to survive simply on the grounds of historical location and practices but if consumer interests are really to be respected that must involve a free choice between a range of different service providers and equality of access to appropriate independent advice.

Whilst all of this concerns the means by which those in the legal profession deliver services to the client will future changes have an effect on the professions themselves?

Legal Professions

The most recent Code of Conduct suggests, whatever regime prevails following regulatory changes, legal services are still likely to be delivered by professionals operating in accordance with a Code reflecting many traditional values.

Accordingly, the professions may not change too significantly, certainly for the immediate future, but the way in which members of those professions deliver legal services may, it is thought, change sooner rather than later. However, there are very different views about what the future may hold, especially for the smaller High Street firm.

The Future

What are these very different views?

One view was expressed by Richard Susskind writing in the Times on 23 October 2007, arguing many legal firms, and perhaps even the wider profession, are on the brink of extinction. His reasoning is based largely on the failure to keep up with advancing technology.

A quite different view is taken by Kerry Underwood, writing in the Solicitors Journal on 5 October 2007. He makes the point that larger firms are geared up for, and suited to, the needs of the business client yet it is the smaller High Street firms that are perfectly placed, both geographically and psychologically, to provide the personal service the individual client wants.

It remains to be seen which is the more accurate prediction for the future.

Conclusions

If forthcoming changes do indeed see the demise of the High Street firm, and the loss of local firms undertaking personal and other private client work, that will surely not serve well the interests of either consumer choice, access to justice or the rule of law.

To survive High Street firms do not necessarily have to grow large but must be able to deliver quality services that will attract the client offered a range of providers.

The drive towards consumer choice will be rendered rather hollow if, in the event, there is no real choice in the delivery of legal services except for the well resourced and

sophisticated legal consumer. Indeed, this scenario would decrease, rather than increase, access to justice and risk an outcome based on resources rather than merits.

The changes which face the legal world, and which may impact particularly upon smaller High Street firms, are, perhaps, just a very small part of the changes sweeping around the world in the early part of the 21st Century encompassing issues such as globalisation, commercialisation, information technology and even terrorism. However, this small part of that broad picture is important because it impacts directly on something which should underpin society's response to all these issues, namely the rule of law.