

Annexes

1. ANNEX: PROJECT SPECIFICATION

Research Specification: Understanding barriers to entry, exit and changes to the structure of regulated legal firms

Purpose

The purpose of this research is to explore the barriers to the effective operation of the market(s) in which legal firms operate and identify ways in which regulators or representative bodies could improve market(s) functioning.

Background

The LSB has been set up to reform and modernise the legal services market in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing its regulatory objectives¹ and providing regulatory oversight for the eight approved frontline regulators². All approved regulators share these regulatory objectives. The ability of new firms to enter the market and other firms to leave the market with no unnecessary barriers is crucial to the operation of the market and directly relevant to our regulatory objectives e.g. promoting competition in the provision of services; encouraging an independent, strong, diverse and effective legal profession.

The Law Society is the independent professional body, established for solicitors in 1825, that works globally to support and represent its members, promoting the highest professional standards and the rule of law. The Society has 160,000 individual members in England, Wales and around the world and 11,000 member firms operating in domestic and overseas markets.

One of the main aims of the Society is to support solicitors. This is a time of major turbulence and it is likely that many solicitors will find their business models under pressure and some may seek to leave practice or establish new practices. It is important that that the Society should be able to understand in more detail the nature of the barriers faced by such firms, their purposes and possible alternatives. This will put us in a better position to support voluntary orderly exit by members while ensuring proper protection of the public.

This research is particularly concerned about small solicitors', firms with significant concentration of Personal Injury work and conveyancers' practices; by this we mean solicitors' or conveyancers' practices with fewer than 25 partners (around 98% of solicitor practices according to latest Law Society figures – see Table 1 below). Though the research (particularly the recent high-street research) may identify particular sizes of solicitors practices where problems are more prevalent.

¹ <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

² The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Cost Lawyers, Master of the Faculties.

Table 1: Solicitors private practice firms 2011

Number of Partners	Number of firms	As a %age of all Legal Practices	Number of Solicitors	As a %age of all Solicitors at Legal Practices
Sole Practitioner	4,599	45%	7,549	9%
2-4 partners	4,199	41%	19,178	23%
5-10 partners	895	9%	13,132	15%
11-25 partners	323	3%	11,591	13%
26-80 partners	135	1%	15,315	18%
81+ partners	50	0%	21,208	23%
All firms	10,202	100%	87,973	100%

Source: Trends in the Solicitors Profession, Annual Statistical report 2011, The Law Society

Recent events, including (among others) the contraction in the housing market (halving the number conveyancing transactions, while the number of firms undertaking conveyancing has remained constant), improved information available online in legal services such as probate, the planned reduction in legal aid funding, etc. have all increased financial pressures on legal businesses. At the same time the introduction of Alternative Business Structures has provided new competition and opportunities for firms seeking alternative sources of finance or market opportunities.

The ability of firms in any market to open, close or change structure or change regulator is of vital importance to the health and competitiveness of the market. Market flexibility allows successful firms and business models to grow and innovate, while unsuccessful firms leave the market. This supports the efficient allocation of capital, ensuring that consumers can get the legal services they need, in the way that they need, at a fair price. Market flexibility entails both removing unnecessary barriers to firms entering the market and ensuring that those firms looking to exit do not face unnecessary barriers. This flexibility both supports the wider government growth agenda and allows for greater choice for consumers. As the market for legal services is facing a multitude of new challenges the ability of market to react and allow firms to open, close or change structure becomes paramount to the success of the legal sector. Changes in legal firms may have significantly different impacts in different areas of the market, research the LSB published by OXERA³ gives a guide to the type of segmentation needed in any analysis.

It is likely that many of the barriers to exits provide clear benefits to consumers who might otherwise be disadvantaged by firms exiting the market without first ensuring adequate protections are put in place. Indeed, the balance between protection of consumers and avoiding placing unnecessary burdens on the profession is at the heart of the challenge of regulation.

Firm responses to the challenges they face will vary significantly: recent research with solicitor firms⁴ found 6% of firms were intending to seek external investment and 31% of firms were considering withdrawing from one or more areas of legal aid work in the next three years. Inevitably already significant churn in legal businesses will increase. In the 12 months to July 2012, 1,006 solicitors firms

³ <https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>

⁴ <https://research.legalservicesboard.org.uk/wp-content/media/time-of-change-report.pdf>

opened, while 380 firms closed⁵. In response to strategic or economic changes a firm may choose to close, restructure (including demerging some departments), merge or be taken over. A potential concern for solicitors is that significant costs are imposed on individuals wishing to close their businesses, at a time when many are shutting because of a lack of profitability within the firms. Such barriers may prevent firms from closing and lead to the continued operation of unprofitable firms or firms where the owners wish to retire, within the market. This in turn may increase regulatory risks.

In a market with so many changes occurring simultaneously, barriers to entry, exit and changing structures of firm could present a significant impediment to the efficient allocation of capital. This in turn could have a significant detrimental impact on the Regulatory Objectives given to the LSB, most obviously “improving access to justice”, “promoting competition in the provision of services” and “encouraging an independent strong, diverse and effective legal profession”.

Aims and Objectives

This research aims to explore the regulatory and other barriers in the legal market(s) to solicitor practices closing, merging or otherwise changing their legal structure. Building on this the report should consider ways in which regulators or others could support improved market flexibility.

The research should:

- Identify barriers to market flexibility in the entry, exit, merger or other changes in business structure (e.g. mergers between solicitor and conveyancer firm), ownership or finance.
- Identify the specified or implicit aims of barriers and their cost/benefits
- Assess the extent to which the barriers protect consumers or meet other intended aims
- Assess alternative options to meet intended aims and assess their efficacy and their cost/benefits
- Consider any additional measures, whether regulatory or from The Law Society or Government, that could be introduced to enhance market operation

The objective of the research is to identify where regulators could seek to reduce or change regulation with the aim of better meeting the Regulatory Objectives. Equally the report should consider whether other measures could be considered regulatory or professional bodies or Government (e.g. potentially subsidising firms seeking to close, tax incentives) could help enhance market efficiency. The report should provide a clear analysis of the barriers and options for change.

Issues and scope

The research should use a combination of desk research and interviews, including with regulators, professional bodies, insurers, providers of business capital, and potentially those who are regulated, to provide a detailed and robust analysis of the barriers to entry, exit, merger or other changes in business structure, culture, ownership or finance. It should analyse the source of the barrier (regulatory, statute etc.), the detail of its impact including how this impact might vary across different firms e.g. sole practitioners, partnerships, other corporate structures. The research should also identify which types of structural change are most impacted by specific barriers. Barriers identified might fall into one of the following four categories:

- Those not focused on a clear objective and so largely unnecessary

⁵ http://www.sra.org.uk/sra/how-we-work/reports/data/firms_opened_closed.page

- Those focused on a clear objective but the objective could be achieved in a more proportionate alternative way
- Those focused on a clear objective, well designed, but through poor delivery prove disproportionate
- Those that are both focused on a clear objective, proportionate and well delivered

The research should cover all solicitors firms, but with a particular focus on small solicitor practices as this is the area where we believe barriers are likely to be most significant. It may be that using the results from our high-street research the researcher will be able to target analysis at those firms most likely to be affected. Equally the OXERA segmentation model may help segment further the market for analysis.

There are a range of current requirements on firms seeking to exit the market, there are summarised in the SRA practise note⁶, though broadly summarised as ensuring “close down in an orderly and transparent manner”. Particular issues that the research should seek to cover include:

- Required run-off insurance cover
- Duties to clients in the event of close down
- Retention of records after firm closed
- Requirements on firms to ensure the suitability of buyer
- Market for individuals or firms looking to purchase solicitor firms
- Legal requirements on dissolving partnerships
- Tax liabilities on firms seeking to close or dissolve partnerships
- Run off requirements where firms are transitioning to a new business form e.g. solicitor firm to conveyancing firm

Some of the barriers to the efficient operation of the market will be based on sound logic and necessary consumer protections, therefore it will be important for the research to take a robust, and where possible empirical, approach to understand and challenge the benefit of having such barriers. The research, in looking at the aims of barriers, should consider the extent to which barriers support valid consumer protections, and the extent to which these consumer protections in practice are effective.

The research should consider options to offset the barriers and increase the efficiency of the market in allowing changes in firm structure. Options that may be considered include changes to regulatory requirements e.g. changing minimum insurance requirements; subsidies from The Law Society to support firms looking to close down; changes to tax law, etc.

The researcher should consider both how it will engage with the professions to understand the barriers, but also how to engage with those with experience of the impact of disorderly firm closure.

⁶ <http://www.sra.org.uk/solicitors/code-of-conduct/guidance/Closing-down-your-practice.page>

2. ANNEX: LIST OF CHARACTERISTICS OF INTERVIEWEES

This analysis in the second stage of the research was informed by a series of face-to-face interviews with relevant parties. Such parties included:

- legal services regulators including the Legal Services Board (LSB) and SRA;
- other industry regulators (Bar Standards Board, RICs);
- professional bodies including the Law Society and CILEx;
- insurers to the solicitor profession and other industries (including Bar Mutual (barristers) and Agent Assure (estate agents));
- providers of business capital and investors;
- professional advisors including financial and insolvency practitioners;
- consultants;
- regulated law firms (including sole practitioners, LLPs, limited companies and ABSs);
- providers of legal outsourcing;

Our interviews with regulated firms focused on the smaller solicitor practices (i.e. those with less than 10 partners).

In order to obtain a broad understanding of the interests of various stakeholders we also spoke with trainees and an organisation that supports the provision of pro bono legal service.

3. ANNEX: SURVEYS

We conducted three distinct surveys of practitioners with support and assistance from the Law Society. These were not intended to provide random samples from which stand-alone inferences could be made. Rather they were aimed at providing information that would supplement and assist in the interpretation of the desk research in interviews, an approach that we had found useful in previous Regulatory Policy Institute work on the burden of regulation on small businesses.⁷

We refer to the results of the study in the remainder of the report, where relevant. A copy of the survey questionnaires can be found in **Annex 4**.

A summary of the characteristics of the 3 surveys is set out below.

Survey	Date of circulation	Characteristics of distribution and respondents	Responses
Survey 1 - General	1-23 August 2013 16-27 September 2012	Web survey – email link through Professional Update, the Law Society’s weekly newsletter, supplemented by direct requests to a small sample of solicitors in North East England.	60
Survey 2 – Change in Structure	6 September – 13 September 2013	Firm changes survey – web link emailed to 824 contacts from firms registered as having registered a change in structure	18
Survey 3 - Exits	6 September – 13 September 2013	Exit survey – emailed web link to 1,349 contacts for firms closing since 2010-2013	23

⁷ Regulatory Policy Institute (2004), *Pilot Study of a Combined Postal, Telephone and Structured Interview Methodology for Assessing the Impact on Business of Existing Regulation, Final Report*, November, http://www.rpieurope.org/Publications/Final_RPI_Report_on_impact_of_regulation.pdf

4. ANNEX: SURVEY QUESTIONNAIRES

Survey 1: Law Society – General

Web survey – email link through Professional Update, the Law Society’s weekly newsletter (average circulation of 118,000 individuals) Survey live from 1-23 August 2013.

Barriers to entry, exit and changes to the structure of legal services firms

The Oxford-based Regulatory Policy Institute is currently conducting a study for the Legal Services Board and the Law Society to help improve understanding of possible barriers to entry, exit and merger in the legal services market for solicitors’ firms. As part of this work, the Institute invites responses from senior decision makers in practices to a short questionnaire. The survey should take up no more than about 10 minutes of your time.

Please note that the purpose of this study is to assess the overall impact of possible barriers and is not concerned with the position of specific solicitors or practices. Responses will be analysed and reported on at an aggregated level, responses will not be attributed to named individuals or specific practices.

1. How long has your firm been established?

- Less than three years
- Three to five years
- Six to ten years
- Eleven to twenty years
- More than twenty years

2. Does your firm derive more than 50 per cent of its revenue from one area of law?

- Yes
- No

3. If established for less than three years, which one of the following requirements gave you the greater difficulties in getting started:

- Obtaining insurance cover at a reasonable rate.
- Satisfying regulatory requirements.
- Requirements (a) and (b) were about the same
- N/A

4. Has your firm taken over, or amalgamated your activities with, another legal practice in the last five years?

- Yes
- No

5. Did you find meeting regulatory requirements was:

- Straightforward
- A significant problem
- A major problem
- Don't know

6. If approached with an offer to buy, would you contemplate selling your firm to another legal practice?

Yes

No

7. If you were approached with an offer to buy your legal practice, which of the following do you anticipate would be the biggest obstacle to the proposed acquisition:

A strong preference on your part not to sell.

The likelihood of an inadequate purchase price.

Meeting relevant regulatory requirements

Other (please specify)

8. Have you considered closure of, or retirement from, your firm in the last five years?

Yes

No

Do you think you are likely to consider closure or retirement in the next five years?

Yes

No

9. If you were to seek to close your business, how hard do you think it would be to find a suitable buyer for your business?

Straightforward

Difficult

Impossible

Don't know

10. Are you familiar with the various steps that are involved in closing down a practice, as set out by the SRA and in a Law Society practice note?

Yes

No

11. Specifically, are you familiar with the requirement to obtain run-off insurance for a period of years?

Yes

No

12. Do you have any other comments on the barriers to entry, exit and mergers in the legal services market?

13. Which of the following best describes your firm structure?:

- Sole legal practitioner
- Traditional (law) - traditional law firm with no non-legal management or ownership
- Traditional (non-law management) - traditional law firm but with involvement of one or more non-lawyer manager, without external ownership, and providing legal services only

- External owner - complete or partial external ownership with the legal services being operated through a separate entity
- Combinations of different (legal and non-legal) services within one entity
- Network of independent consultants (law) - exclusively provides legal services
- Network of independent consultants (mixed) - provides legal and other services
- Other (please specify)

14. Has your firm changed its structure in the past five years?

Yes
No

15. How many registered principals are there in your firm?:

16. Are you willing to be contacted if we have any short, follow up questions?

Yes
No

17. Please enter your email address or phone number:

.....

Thank you for your time.

Survey 2: Law Society - Change in Structure

Firm changes survey – web link emailed on 6th September 2013 to 824 contacts from firms registered as having registered a change in structure (REGIS)

Barriers to entry, exit and changes to the structure of legal services firms

The Oxford-based Regulatory Policy Institute is currently conducting a study for the Legal Services Board and the Law Society to help improve understanding of possible barriers to entry, exit and merger in the legal services market for solicitors’ firms. As part of this work, the Institute invites responses from senior decision makers in practices to a short questionnaire. The survey should take up no more than about 10 minutes of your time.

Please note that the purpose of this study is to assess the overall impact of possible barriers and is not concerned with the position of specific solicitors or practices. Responses will be analysed and reported on at an aggregated level, responses will not be attributed to named individuals or specific practices.

1. How long has your firm been established?

- Less than three years
- Three to five years
- Six to ten years
- Eleven to twenty years
- More than twenty years

2. Does your firm derive more than 50 per cent of its revenue from one area of law?

Yes
No

3. If established for less than three years, which one of the following requirements gave you the greater difficulties in getting started:

Obtaining insurance cover at a reasonable rate.
Satisfying regulatory requirements.
Requirements (a) and (b) were about the same
N/A

4. Has your firm taken over, or amalgamated your activities with, another legal practice in the last five years?

Yes
No

5. Did you find meeting regulatory requirements was:

Straightforward
A significant problem
A major problem
Don't know

6. If approached with an offer to buy, would you contemplate selling your firm to another legal practice?

Yes
No

7. If you were approached with an offer to buy your legal practice, which of the following do you anticipate would be the biggest obstacle to the proposed acquisition:

A strong preference on your part not to sell.
The likelihood of an inadequate purchase price.
Meeting relevant regulatory requirements
Other (please specify)

8. Have you considered closure of, or retirement from, your firm in the last five years?

Yes
No

Do you think you are likely to consider closure or retirement in the next five years?

Yes
No

9. If you were to seek to close your business, how hard do you think it would be to find a suitable buyer for your business?

Straightforward

Difficult

Impossible

Don't know

10. Are you familiar with the various steps that are involved in closing down a practice, as set out by the SRA and in a Law Society practice note?

Yes

No

11. Specifically, are you familiar with the requirement to obtain run-off insurance for a period of years?

Yes

No

12. Do you have any other comments on the barriers to entry, exit and mergers in the legal services market?

13. Which of the following best describes your firm structure?:

- Sole legal practitioner
- Traditional (law) - traditional law firm with no non-legal management or ownership
- Traditional (non-law management) - traditional law firm but with involvement of one or more non-lawyer manager, without external ownership, and providing legal services only
- External owner - complete or partial external ownership with the legal services being operated through a separate entity
- Combinations of different (legal and non-legal) services within one entity
- Network of independent consultants (law) - exclusively provides legal services
- Network of independent consultants (mixed) - provides legal and other services
- Other (please specify)

14. Has your firm changed its structure in the past five years?

Yes

No

15. How many registered principals are there in your firm?:

16. Are you willing to be contacted if we have any short, follow up questions?

Yes

No

17. Please enter your email address or phone number:

.....

Thank you for your time.

Survey 3: Law Society - Exits

Exit survey – emailed web link on 6 September 2013 to 1,349 contacts for firms closing since 2010-2013 (REGIS)

Barriers to entry, exit and changes to the structure of legal services firms

The Oxford-based Regulatory Policy Institute is currently conducting a study for the Legal Services Board and the Law Society to help improve understanding of possible barriers to entry, exit and merger in the legal services market for solicitors' firms. As part of this work, the Institute invites responses from senior decision makers in practices to a short questionnaire. The survey should take up no more than about 10 minutes of your time.

Please note that the purpose of this study is to assess the overall impact of possible barriers and is not concerned with the position of specific solicitors or practices. Responses will be analysed and reported on at an aggregated level, responses will not be attributed to named individuals or specific practices.

A. In what year did your firm close?

1. How long had your firm been established?

- Less than three years
- Three to five years
- Six to ten years
- Eleven to twenty years
- More than twenty years

2. Did your firm derive more than 50 per cent of its revenue from one area of law?

- Yes
- No

3. If established for less than three years, which one of the following requirements gave you the greater difficulties in getting started:

- Obtaining insurance cover at a reasonable rate.
- Satisfying regulatory requirements
- Requirements (a) and (b) were about the same
- N/A

4. Had your firm taken over, or amalgamated its activities with, another legal practice in the last five years?

Yes

No

5. Did you find meeting regulatory requirements was:

Straightforward

A significant problem

A major problem

Don't know

5. Had you contemplated taking over, or amalgamating your activities with, another legal practice in the last five years?

Yes

No

6. Did you contemplate selling your firm to another legal practice?

Yes

No

7. Which of the following did you find to be the biggest obstacle to the sale of your firm:

A strong preference on your part not to sell.

The likelihood of an inadequate purchase price

Meeting relevant regulatory requirements

Other (please specify)

7b Did you find meeting regulatory requirements whilst closing your firm were:

Straightforward

A significant problem

A major problem

Don't know

7c What other difficulties, if any, did you experience when closing your firm?

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8. At the time of closure, were you familiar with the various steps that are involved in closing down a practice, as set out by the SRA and in a Law Society practice note?

Yes

No

9. Specifically, were you familiar with the requirement to obtain run-off insurance for a period of years?

Yes

No

10. Do you have any other comments on the barriers to entry, exit and mergers in the legal services market?

11. Which of the following best describes your firm structure at the point of closure?:

- Sole legal practitioner
- Traditional (law) - traditional law firm with no non-legal management or ownership
Traditional (non-law management) - traditional law firm but with involvement of one or more non-lawyer manager, without external ownership, and providing legal services only
- External owner - complete or partial external ownership with the legal services being operated through a separate entity
- Combinations of different (legal and non-legal) services within one entity
- Network of independent consultants (law) - exclusively provides legal services
- Network of independent consultants (mixed) - provides legal and other services Other (please specify)

12. Had your firm changed its structure in the past five years?

Yes

No

13. How many registered principals were there in your firm?:

14. Are you willing to be contacted if we have any short, follow up questions?

Yes

No

5. ANNEX: SUGGESTIONS OF INTERVIEWEES FOR CHANGES TO REGULATIONS

Below we summarise views expressed by interviewees on areas for potential future reforms and improvements. They provide additional information about how those we talked to regard the existing regulatory arrangements.

1. SRA regulation

- Over time the compliance burden, particularly in relation to the COLP function, should be reduced. The overall volume of regulation is excessive but it will take time for the new regime to bed down, and there are certainly new risks to take into account with new business models.
- SRA should develop best practices on what a firm needs to do from a compliance perspective, reflecting real life examples and tailored to the type of firm and its size.
- Each authorised firm should have a dedicated SRA relationship manager who could be consulted *ad hoc* and who would visit the firm on a regular basis to help them manage their compliance responsibilities. This individual would not be a compliance monitor but would assume the role of a sounding board and maintain relationship continuity in terms of the firm's dealings with the SRA.
- *De minimis* thresholds should be introduced regarding reporting of breaches of accounting rules. It should not be necessary to report each and every accounting error where the costs of compliance may vastly exceed the sum at stake.
- The category of legal services for the purposes of SRA regulation should be tightly defined to cover only those services where advice on the law and procedure is sought. Tax services should not be covered. This would reduce the burdens on multidisciplinary practices who risk being subject to double regulation by SRA and another professional services regulator.
- Multidisciplinary practices should be granted waivers from outcomes on request and in appropriate cases, where the outcome is not appropriate for their business.
- SRA should 'road test' all new procedures with lawyers before implementing them. Currently the SRA develops and rolls out procedures without thinking about the practical implications and costs for the firms seeking to comply.

2. Authorisation

- There should be greater transparency in terms of the type of information that SRA is seeking at the authorisation stage to satisfy itself that a firm has effective COFA and COLP compliance arrangements.
- Newly authorised firms should receive an initial visit from their SRA relationship manager, shortly after authorisation, to assist the firm in managing the start-up phase and in ensuring the foundation for ongoing compliance.
- SRA should be more flexible in how they approach applications for authorisation by sole practitioners and non-traditional business models.
- SRA should document its experience gained from ABS authorisation so that the institutional knowledge and experience gained can benefit future applications.

3. Insurance

- There should be greater transparency in terms of insurers' risk profile calculations and weighting so that firms applying for insurance can understand how their application will be treated.
- A law firm should not be required to maintain insurance in order to remain in business as a law firm, provided that the client signs a waiver.
- There should be no fixed level of insurance that a law firm is required to maintain.
- There should be no requirement to maintain run-off cover if a firm does not elect to, provided that the client signs a waiver.
- The premium for run-off cover should be annualised.
- The profession should insure itself.

4. Other areas of regulation

- Money laundering obligations should be reduced for low value and low risk work. Time spent on money laundering compliance may exceed the time costs that can be recovered on the file. As such money laundering requirements can operate as a disincentive to taking on a new client.

5. Trainees

- Time spent as a paralegal should count towards qualification in the same way as a training contract.
- The regulatory and reporting requirements for firms providing training contracts should be reduced. Smaller firms do not take trainees at all due to the regulatory compliance obligations involved.
- It should be possible to 'outsource' the management of a training contract and associated reporting requirements to a third party provider. Similar outsourcing businesses provide support on other areas of SRA compliance.
- The period for a training contract should be increased to 5 years, even if not all of this time is spent with the same law firm. There would be a corresponding extension on the time taken before a solicitor can set up as a sole practitioner (i.e. 3 years post qualification). This would be aimed at ensuring that individuals entering the profession have a securer practical foundation for practice and hence a more sustainable future should they need to enter into practice on their own.

6. ABSs

- Research should be undertaken on the behavioural impacts of ABSs (e.g. whether these are leading to more 'commercial' approaches; what is the impact on perceptions of law firm 'professionalism').
- The rate of entry and exit should be monitored to discern whether ABSs are more or less sustainable than traditional law firms.

7. Risk assessment

- Research should be undertaken into the financial and other risk indicators of law firms and applied to specific firms. There are no such transparent studies available that allow for meaningful comparison across financial and performance benchmarks. This would assist insurers, potential merger partners, investors, prospective and current trainees and employees and partners assess the health of law firms. It would also help regulated firms benchmark their own performance and position and act on the results.

8. Education

- SRA (with suitable third party providers) should make training courses available in commercial aspects of managing a law firm. SRA, the Law Society and practising lawyers should be involved in the design of such courses. Client input (i.e. as to their expectations of management and on service delivery) should be sought in that context.

9. Legal services management culture

- Research should be undertaken into why lawyers seem to be less effective commercial managers than other professions. Cross-sector comparisons with accountancy and other consulting professions may yield useful insights and ways of working that the ABS debate has highlighted. It also affects the ability of firms to develop timely solutions as an alternative to intervention.

10. Support for firms in distress

- There should be a support system or helpline for firms in difficulty. This might be independent of SRA and staffed by lawyers, accountants, and business recovery specialists who can help guide a firm out of difficulties. This should be free. Many smaller firms simply do not have the support system to turn around their businesses and financial problems can lead to a downward spiral.

11. Pro bono

- Section 15 of the Legal Services Act needs to be more flexible to allow in-house departments to provide reserved legal services on a pro bono basis. This could be done in partnership with a regulated law firm.
- ABS will need to win hearts and minds in the same way as other law firms. In some respects, pro bono may be more significant for them in order to dispel concerns that they are only focused on bottom line.
- Policy makers need to take account of the bigger picture and the contribution made by education, self-help and clinics in ensuring the legal services sector works well for consumers.

12. SRA role

- There is a need for a clearer articulation of the SRA's role and how it relates to and differs from that of the Law Society.

- The SRA is perceived as being ‘out of touch’ with the profession. This may suggest a need for further research among solicitors as to what they want in terms of engagement with the SRA and consultation on specific changes. If it can be signalled that this is linked to making future changes it is likely to get more buy-in from solicitors.

6. ANNEX: ALTERNATIVE BUSINESS STRATEGIES AMONG INTERVIEWEES

Interviewees' practices embodied a range of different business models, and here we simply summarise a few of those that may be less familiar. As emphasised in the Report, it is clear that change and adaptation is taking place. One former partner of a City firm said to us when he formed a niche practice:

*“The practice has evolved over the years through a combination of **economic necessity, opportunity and accident**. I believe our circumstances are not unusual and exemplify what a lot of senior lawyers have experienced as they have had to consider their options outside the large firms. The economic crisis has brought such reinvention and mobility in the profession into sharper focus. I believe that the emergence of smaller niche offerings outside the mainstream practices, yet comprising people who have worked in a City context, started in the early 2000s. I can cite examples of our contemporaries who have found themselves or their teams redundant and they have had to set up on their own – or exit the legal profession entirely”* (emphasis added).

Solicitors have responded, albeit somewhat late in the day, with investment in newer service offerings in niche practice areas, online or '24/7' virtual presences. At the same time/ clients are becoming more demanding on service delivery and more budget conscious.

We present the models via mini case studies of the people we interviewed. Although these case studies are by their nature idiosyncratic, we believe that they are representative of wider trends – they were certainly described as such by the interviewees.

Some interesting themes emerge:

- The chosen business model is driven largely by necessity (the solicitor or solicitors who started their own business could not find a job or a cultural fit in a conventional firm)
- Dissatisfaction and disillusionment with Big Law.
- Even though the business models may be described as non-traditional, they are nevertheless close to a 'normalised' view of a law firm in operation. For example, despite innovative features such as the use of senior specialist contract lawyers, a focus on narrow areas and limited reliance on physical presence, they describe themselves as traditionalists in their attitude to risk and professionalism.
- The firms are largely acceptable to insurers (“once [insurers] have got their head around it”). In other words, the firms were able to secure affordable insurance on a regular basis because their risk profile was not regarded as particularly problematic. One firm said its insurers regarded it as “easy money”.
- None compete *purely* on price. Value is of course part of the package but they rather see their market differentiators in terms of client service, specialist expertise and flexibility (for lawyers working with them and clients)
- None is an ABS, although they may have non-lawyer staff or integrate non-legal elements (sector knowledge or expertise in other professional disciplines such as medicine or accounting).

Some firms have decided not to enter into practice as solicitors and be regulated to SRA. They have pursued alternative structures that allow them to provide (non-reserved) services with a legal component. In some cases, this structure is motivated by an unwillingness to subject themselves to additional (SRA) regulation.

Case Study: Corporate tax and business services

- The Legal Services Practice provides advice on legal issues as part of the client service team. This covers the following core areas: Tax; Litigation; Corporate.
- Services are not “legal services” as such and are mainly niche advisory areas linked with the core accounting/ tax function.
- Does not conduct reserved activities so does not need to be regulated by SRA.

“We considered a number of business structures, including setting up a separate legal services business. It is fair to say that the current structure is driven mainly by regulatory reasons. The additional (SRA) regulation that would apply to us a regulated law firm is an impediment to seeking that law firm regulated status” (emphasis added).

The Legal Services Act 2007 has allowed for ‘competition among regulators’. Alternative regulators may authorise a firm to provide reserved services.

Case Study: Competition among regulators – Conveyancing

- The CLC has regulated licensed conveyancers in England and Wales for over 25 years.
- The CLC regulates and licenses about 220 firms ranging from sole practitioners to large corporates.
- The CLC is one of a number of ‘competing’ regulators who may authorise and regulate conveyancers, including SRA. CLC regulates conveyancing and probate and authorises ABSs.

Some firms have been born out of the desire of their owners to ‘do something different’ and to break away from the traditional law firm model. Instead of individuals moving to a competitor or teams merging with another firm, they have forged their own path and developed solutions that address particular client demands. Whether labelled ‘niche’ or ‘focused’, they have a clear sense of their identity – both as lawyers and innovative market players.

Case Study: Media lawyers

- 2 firm partnership focused on the media sector.
- Individual employee fee earners plus admin and business development support.
- Senior lawyers operate as independent consultants. Regulated firm takes a percentage of fees derived from the services provided by the consultants.
- Senior lawyers are able to focus on providing legal services while the regulated firm takes care of billing and admin.

*“We were frustrated at the rigid structure of traditional firms where we had both operated as partners. Some of our clients come to us as start-ups but it can be very difficult to convince a traditional firm to take on such clients on flexible fee structures. We are open to new ways of doing business, and we intelligently manage **risk** because we are not answerable to a rigid management structure” (emphasis added).*

Case Study: Russian clients investing in the UK

- Clients are mainly Russian High Net Worth Individuals and business investing in the UK and, occasionally, UK businesses investing in Russia.
- 3 partners; 5 fee earners who are permanently located in the City office; three administrative staff and a senior advisor.
- Consultants who are independent practitioners. They may spend time in the office on a regular basis but others work more occasionally.

“This arrangement suits our cost and risk management structure, since it means that we can expand and contract our requirements depending on client needs but without the fixed overheads”.

The reality for an increasing number of experienced lawyers is that there may no longer be a demand for their services in a traditional law firm. Many seek to move to another firm but face barriers because they do not have a ‘portable practice’ (whatever that means). A move in-house may not be an option if they are too specialised. Although a follow-on career in business is by no means unusual lawyers tend not to move as easily into commercial roles as other professions (e.g. accounting). The alternatives for a more experienced lawyer contemplating a next move may be as stark as leave the law altogether - or set up as a sole practitioner. They are not new entrants ‘*de novo*’. They may be pursuing a new business model more by necessity than design. In that process, many have revealed to us their challenges and frustrations with traditional law firm structures and attitudes.

Case Study: Transaction Intellectual Property Services

- Sole practitioner of a niche law firm that provides IP advice in relation to corporate transactions.
- Provides legal services to law firms and direct to business.
- Most work is done remotely and online. No dedicated premises

“After a number of inquiries amongst law firms I began to realise that many firms needed my capability but they did not have the volume of work to support someone on their books full time. The solution was for them to buy in IP services on an ad hoc basis. After one firm offered me a consultant arrangement, I decided to operate independently as a sole practitioner. I have been doing this for several years now and enjoy the flexibility. I like being involved with all aspects of the business from marketing to advising on the law”.

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Case Study: Clinical negligence

- Clinical negligence/ personal injury solicitor.
- Trained physiotherapist and qualified as a lawyer 11 years ago after doing the CPE and LPC.
- In the process of setting up as a sole practitioner through a limited company structure.

“More fundamentally, there needs to be a shift in the legal culture. When I entered the profession as a second career I did not expect to encounter so much arrogance and stubbornness to change. That is a barrier! This is not universal but it is widespread. I am not sure how you bring lawyers into the twentieth century mind-set. It is a slow process. There needs to be behaviour changes across the board. Yet senior equity partners set the tone of an organisation and that filters down. Allowing different forms of legal business to flourish, outside traditional law firms, is a step in the right direction”.

