

The Management of Private Law Firms and the Legal Professional: A Resource-Based Perspective on the Tensions Inherent between Managerial and Professional Roles¹

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Section 1:

Introduction

The aim of this paper is to assess the developing roles of the legal manager, and of managing in the context of performing legal roles and services among legal practitioners in private law firms throughout the UK. Historically private law firms rarely demonstrated any significant degree of coordination amongst their professional workforce. The coordination of expertise among established professionals was rarely a matter of deliberation, strategy or policy. Coordination arose informally, relying on collegiate relations, reinforced by a common professional identity. Each partner was good at his or her job, they each focussed on an area of expertise and they oversaw the work of more junior lawyers in their specialism. The overriding emphasis was not on the effective management of the firm but instead on producing a high quality, reliable service to the clients for which they were financially rewarded and which served to enhance their reputation and in doing so attract more business and new clients.

Concern in the public domain that the consumers' interests were not being met and served by the self regulation of the legal profession resulted in a Government instructed review of the legal service market in England and Wales. The Clementi Report was published on 16/12/2004. Its recommendations are aimed at not only improving the quality of services available to the customers of law firms but also to allow the introduction of new business structures that will provide new opportunities for other areas of expertise and other professions to be integrated within a legal firm and in doing so will provide new business models that will be better positioned to respond to both consumer demands and changing market conditions.²

The recommendations in the Clementi Report enabling the provision of legal services under new business models is radical in suggesting a transition towards dual activity and services across professional institutions and across the private partnership model that is synonymous with private law firms. Researchers have begun assessing the role of the manager and the broader activity of managing as critical processes in the organising and performing of the professions. But there has been little research into the challenges of managing organisations that exist in an institutionalised professional

context. It is arguably of great significance given its deeply embedding role in both the economy and in society.

We frame the problem of understanding changes in the organisation of how legal services are performed in complementary theoretical and empirical ways.

Theoretically, we begin with the resource-based view of the firm, and especially in the tradition of the 'individual' qualities of the productive services that emerge from an organisation's resource base that affords those organisations valuable and distinctive qualities advocated so strongly by Penrose (1959). Empirically, we present a comparative analysis across six law firms as to how each is embracing and adapting the role of the legal manager and the activity of managing as they go about their normal practices. The two main structural characteristics involved in organising how legal services are performed support our theoretical and empirical frames. The professional identity and regulation maintains a common training and professionalism across participants, and the partnership model is an additional means of similarity. Both aid our research strategy of comparison across cases.

Our paper makes two related contributions. Empirically, we provide an assessment of the role of legal manager and more broadly of managing as these develop in a professional setting. As has been established, professional settings differ by adding the institutions of professionalism to those of the particular organisation of legal services, as the partnership model. Theoretically, we assess and develop the resource-based model applied to professional services. The resource-based view has been adapted to many competitive or strategic questions in manufacturing industries, but less in services sectors. Its application across groups of firms presumes that idiosyncrasy can be a durable feature of a firm, and so also a cause of differential performance across firms deemed to act in similar settings. This terminology sits uneasily with professionalism, but is implied in the reforms recommended in the Clementi Report. By applying the resource-based view in the context of professional services, we seek to gain additional insights into the character of firms' resources and also of how these are combined and coordinated.

The paper is organised into the following sections. In Section Two, we provide the context to the Clementi Report by sketching out how legal services are performed and

organised within the two institutional settings of the professional regulation and of the partnership model. In Section Three we frame the processes of change affecting legal services in the UK with reference to the resource-based view of the firm. In Section Four we examine the research process and discuss the adoption of a grounded theory approach to our analysis. In Section Five we present a comparison across six legal partnerships in the UK of how the role of the legal manager has developed and of how the broader concept of managing is perceived and supported. Section Six concludes with our broad conclusions and introduce potential further areas of research emerging from this study.

Section 2:

The Implication of the Proposed Regulatory Changes

The legal profession in the UK is regulated by the Law Society of England and Wales and the Law Society of Scotland. The Law Society of England & Wales was established by Royal Charter in 1845. Its regulatory powers are underpinned by the Solicitors Act 1974, the Courts and Legal Services Act 1990 and the Access to Justice Act 1999. The Law Society of Scotland is the governing body for Scottish solicitors and was established by the Legal Aid & Solicitors (Scotland) Act 1949. The governing regulations are set out in the Solicitors (Scotland) Act 1980.

In 2004 there were 106,672 lawyers practising in Scotland, England and Wales, of which 84,522 were employed in private law firms and 22,150 in other non – legal firms. (The Law Society of Scotland Annual Report & Accounts 2004 and the Law Society of England & Wales survey dated August 2004).

The demands of the external business environment that is served by the legal profession are central to the shape and nature of the service they provide. (Ranson, Hinings & Greenwood 1980). The growth in consumer awareness, combined with growing deregulation of the institutionalised boundaries protecting the professions in an increasingly competitive market has prompted internal restructuring in many legal firms. The growing recognition within the profession itself of a need for change has resulted in a slow but discernible rise in commitment amongst the legal profession towards not only the promotion of best practice that serves consumer interest and

demand but also towards the generation of a firm's capacity to deploy the innovation and creativity embedded in a firm's resources base.

The impact of this growing movement of change was recognised and acknowledged by the Government who, in July 2003, in response to a 2002 Consultation Paper "*In the Public Interest*", instigated an independent review of the regulation of the legal services market in England & Wales with the aim of promoting competition and innovation and improving services for the consumer. "*The Clementi Report*" was published in December 2004 and its recommendations were included in a Government White Paper published on 17th October 2005. The terms of reference for the Clementi Review were:

- *To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector.*
- *To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.*

There is a common thread running through the current trends in the development of the managerial role and of managing within private law firms, which transcends the two jurisdictions of England & Wales and Scotland. There is widespread if perhaps understated recognition of the need to address the management of lawyers. Many initiatives are being taken by some firms and the opportunities to educate and promote new ideas and approaches are many and readily available. There is also disquiet that many in the profession are not yet ready to endorse such initiatives and to openly promote them within their firms. There is little direction from the regulatory bodies in this regard and the demands on training are perfunctory.

Any trainee lawyer in England, Wales and Scotland must undertake some management training prior to receiving a practising certificate and admission to the Register. In England and Wales the Law Society runs a two tier Management Course. Stage one is a compulsory seven hour course and three topics must be covered from: Managing Finance, Managing the Firm, Managing Client Relationships, Managing Information and Managing People. There is an additional Stage Two Course which is an optional five course and which revisits the topics studied in Stage One, but in

greater detail. In Scotland “management topics” are covered in the compulsory Diploma in Legal Practice, a postgraduate course taught over 26 weeks. The pre-admission applicant then requires to complete a year long traineeship with an accredited provider (usually a private practice) and a two week Professional Competence Course before admission to the Law Society but the focus is clearly on the development of practical legal skills and there is no compulsory element for management training.

The concerns of some in the legal profession to address this lack of direction from the respective Law Societies on the development of management skills is manifested in the part played by two independent associations. The Law Management Section of the Law Society of England & Wales (LMS) is run from the Law Society in London and is a self – governing, committee – led member association. It was established in 1998 in response to what was seen by some members as a failure by the Law Society to address the rapidly changing needs and demands of the profession. The membership of this organisation is open to both legal and non-legal personnel engaged on the management of legal services in any domain. The current membership is approximately 1800. The LMS works closely with the Law Society and endorses the training programme. Indeed to further cement this working relationship a working party has recently been set up to prepare guidelines and criteria for each to work towards. The LMS runs an annual programme of CPD accredited events, seminars and conferences all aimed at providing opportunities for training on management focussed issues.³

The Legal Education and Training Group (LETG) were established about 15years ago by a group of law firms who “*identified common needs and common concerns in relation to legal education and training*” (www.letg.org.uk). It now has approximately 140 members who are each appointed representatives of their respective law firm. It aims to provide not only a forum for discussing training and professional development issues within law firms but also adopts a proactive role in liaising with the Law Society of England & Wales and other organisations in areas affecting learning and education in the legal profession. The Chair of the LETG sits on the Law Society Training Committee.

The private legal practice in the UK rarely digresses from the private partnership model but it is a model which arguably exacerbates the underlying tensions between professional and manager roles and identities. The combination of dual identity as fee earner and owner gives a partner in a private partnership a sense of uniqueness and superiority that resists any form of management (Westwood 2004). The dominant characteristic of a professional partnership is that the primary focus is on the work carried out by the professionals in their professional capacity. Whilst a partnership structure encourages an atmosphere of shared participation and consultation amongst its members it offers little encouragement for initiatives to move from a bureaucratic to a more corporate style of organisation (Bledstein 1978 and Greenwood, Hinings & Brown 1990).

The Report acknowledges the widespread introduction by many large private practices of the ‘other professionals’ into the firms who then contribute to the management of the practice. At present only a registered solicitor may be a “*partner, director or principal of a legal practice, in the sense of **managing the business***” (Chapter F para. 2) but the Report concedes the possibility of the emergence of legal practices, independently owned and yet managed by those who work within it and observes:

“This would not be remarkable in the world of commerce where the distinction between the partnership of a business and the management of it is well understood” (Chapter F: para.16)

Significantly the Report envisages a clear distinction between those who may own a legal practice and those who manage it. Furthermore Clementi acknowledges the role of a ‘manager’ as being one that enhances the service to the consumer.

This Government White Paper will regulate those solicitors registered to practice in England & Wales. The Scottish Executive has created the Legal Services Research Working Group to carry out an economic survey of the legal services market in Scotland. It has yet to publish its report. Clearly the potential for two different markets operating under the two separate legal bodies would produce an untenable situation for both the profession and the consumer.

“Clementi will impact on Scotland and we will find ourselves with a similar regime as in England. Anything else is unthinkable” (The Herald 24.10.05)

This view of a senior partner of a large Edinburgh firm echoes the sentiments of many in the Scottish legal profession who recognise that they are serving a consumer led market. Clearly the widening of choice and opportunities that will potentially be open to the consumer under the Clementi recommendations will have a detrimental effect on the profession if similar choices are not made available in Scotland.

Opponents of the Clementi recommendations reject the anticipated deregulation of the provision of legal services that will evolve with the introduction of the proposed new business models. There is an unwillingness to envisage a business model in which both the legal professional and the non – legal professional can effectively be regulated. The view of the Law Society of Scotland was expressed thus; *“It is also disappointing that no detailed consideration has been given to the regulation of non-lawyer proprietors. Our opposition to the Law Society of England & Wales’ proposed multi-disciplinary partnership model rested simply on the fact that we had never been satisfied that there was an adequate regulatory model lying behind it”* (The Secretary of the Law Society of Scotland in The Journal of the Law Society of Scotland February 2005 pp14).

Although the increasing consumer demands perceived within the profession are acknowledged this is countered with a rejection that the current private practice model represents a failing one. *“I accept that in the old scale fee era, solicitors did not have to be astute managers to make a very good living. I further accept that in the past there was a substantial deficit in or training of young solicitors in relation to management issues – which has now been addressed. These days however I see increasingly well run businesses and a greater professionalisation of managerial skills within private practice”* (The Secretary of the Law Society of Scotland in The Journal of the Law Society of Scotland February 2004 pp20).

Allingham and Mill (2000) are blunt in their evaluation of the partnership model for law firms, *“One characteristic all partners have in common is that they are peculiarly resistant to being managed”* (pp11). Many within the legal profession maintain a position of rejection towards management and are in denial about potential benefits to

be derived from an effective management structure. The importance of professional standards and peer pressure is an ever present dilemma for management. Westwood (204) maintains that professionals exercise a level of control over management that extends to “*allowing themselves to be managed*” (pp69). The element of trust is critical. The desire by a professional to be judged on their professional performance is exemplified by their preference to be appraised by their peers using their ‘professional judgment’ (Raelin 1991). A private law firm represents an organisational structure where there is an embedded and implicit knowledge base that is resistant to change (Scarborough and Corbett 1992) and yet within such a structure a culture permitting and endorsing patterns of behavioural norms may thrive (McBeath 1994). A degree of coordination and compromise seems essential to reduce tensions. However the “*idiosyncratic tactics of the professional culture*” (Raelin 1991 pp85) are the most problematic. It is the ‘us and them’ attitude which has a destabilising effect.

The educational and training processes that generate professional status and instil a commitment to the professional identity cultivate the danger of ‘over professionalisation’ that in turn engender a degree of isolation as the professional becomes increasingly less able to relate to wider, less systematic problems (Raelin 1991). This identity issue combined with the expectation from the consumer to be serviced with knowledge that is centred on legal expertise results in a situation where management may have to recognise that there are some areas over which they cannot exercise their authority and in which they must defer to the professional standards and norms expected of the professional.

In their comparative study of two professional service firms, one in science and one in law, Robertson, Scarborough & Swan (2003) commented that “*Professional institutional influence on firm – level practices are often seen as leading to conflict with managerial forms of control*” (pp853). This was not observed in the two case studies where relative compatibility was the norm as a result of a process of cooperation rather than as a default through the abdication of managerial responsibility. Cooperation used the quest for elitism amongst the professionals as a foundation on which to build organising principles that sought to differentiate the professionals from one another. Significantly this attitude was central to maintaining stability and generating growth within the two firms.

If management is a continuous learning process that is closely tied to organisational structure there must be a balance struck between the emergent processes whereby management skills are allowed to develop and be nurtured alongside the professional skills and expert knowledge base embedded in the organisation (Watson 2001). The role of the managing partner within a legal partnership is a historic one that has been characteristically filled by the partner who had been in the partnership longer than anyone else. Traditionally his / her remit was ill defined and very often more a figure head position than one that carried any significant level of decision – making authority. A firm and its employees were managed on an ad hoc basis. Any decisions, strategic or otherwise, were taken at the often infrequent partners meetings. The focus was on ‘making fees’ and as long as the firm was successful in doing that why waste valuable time and resources or other issues? It is not without coincidence that the slow but gradual metamorphosis of this role into a more critical and strategic one has also seen the emergence of ‘management’ as a profession per se. There has been a significant movement from the traditional perception of a manager as an ‘administrator’ towards a more influential and strategic role within an organisation (Brock D, Powell M, and Hinings C.R eds. 1999). The transition from administrator to manager is accompanied by underlying tensions. Central to this shifting paradigm is the resource dependent approach which seeks out new opportunities for growth and innovation and the emergence of an organisational culture where strategic aims are allowed to develop and flourish (Allingham and Mill 2000). Changes in the role of the professional firm towards increasingly differentiated structures have generated an awareness of the need for some level of management and have coincided with the emergence of more specialised professional management teams. The consequent labelling of ‘management’ as an embodiment of a range of skills, experiences, knowledge and traditions is qualified by the danger of it also then representing intransigence and inflexibility. (Langlois in Foss and Loasby eds. 1998). Nevertheless the management team emerges as a body of expertise and knowledge within an organisation that becomes an indispensable and non substitutable part of the organisation.

Section 3:

The resource based perspective

We develop the resource-based view from Penrose (1959). The recent exchange in Rugman and Verbeke (2002) and Lockett and Thompson (2004) shows just how relevant and contentious is Penrose's approach. The resource-based view is written in general terms and through it, we expect firms to differ because they comprise bundles of idiosyncratic resources, accumulated historically in the form of experience and expertise and coordinated through emerging practices, routines and standard operating procedures. Resources are so because managers, working as a group, perceive productive opportunities subjectively and entrepreneurially and combine skills and expertise around this vision as a plan. Managing is a resource of higher order (Loasby 1998).

The fundamental idiosyncrasy of firms and their resources has bequeathed researchers with three mainly empirical problems: (1) How fallible is managing as an activity when managers are required to understand the capacities for action located elsewhere in their firms; (2) Are resources potentially sources of competitive advantage on account of their inherent inimitability (and if so, is the inherent inimitability in the fine grained capacities for action or in the coarser grained means of coordination and combination; and (3) If firms are heterogeneous, what becomes of the industry concept?

The normal realm in applying and developing the resource-based view has been in manufacturing. There have been few developments to the services and even fewer (if any) to professional services. Professional services offers distinct answers to our three empirical problems outlined above. The profession is an additional organising structure or institution which cuts across the usual institutions of firms. Private partnerships are typical forms for firms, but the profession provides a complementing and external form of governance. The conjunction of profession and partnership places bounds on the heterogeneity of firms and also provides an additional means of shaping and connecting the resources, which co-comprise firms and the profession itself. Nelson and Winter (1982, pp 97) draw an analogy between individuals' skills of and a firms' routines, and strangely draw little attention to the situated and embedded character of individuals' skills. Research framed in the resource-based tradition into the organisation services and professions requires assessments of

resources and their combinations to be traced back to individuals. This focus may be extended to consider the relationship in the professional hierarchy which characterises the working practices of lawyers. This developmental dimension through which private legal practice is organised is embedded as much in the profession as in the firm.

Very often resources which are unique or idiosyncratic are nevertheless intangible or invisible and are consequently difficult to define (Mahoney 1995). Existing processes generate both embedded and implicit forms of knowledge but they both constrain management and challenge its authority (Scarbrough and Corbett 1992, Scarbrough 1998). Although a lack of understanding in an organisation's capabilities may impede their effective use, there is, strangely, real value in the unpredictability that may result which can then foster the emergence of 'productive opportunities' as potential valuable resources for an organisation. Penrose (1959) argues that it is the individual characteristics of capabilities emerging through the utilisation of an organisation's resources that give an organisation its most valuable and distinctive qualities. If this is so then a logical extension of this argument suggests a strong relationship between the services offered by an organisation and flowing from its resource base and the inevitable focus on the strategic potential of those resources from which an organisation derives its capabilities and strengths.

The role of managerial skills can be identified as a significant link in a resource – based approach to growth. Mahoney (1995) identifies the "*resource of management*" (pp92) as the core of a resource – based approach. There are inherent difficulties associated with identifying and realising emerging productive opportunities but the realisation and use of the managerial resources itself can generate increased knowledge and awareness of other potential uses for their services within the organisation (Foss 1999). The role of the manager is acknowledged as one which can develop and encourage innovation and may therefore be pivotal in generating capacity from a firm's resources. It is the search for innovation in an increasingly competitive and deregulated market which necessitates greater organisational efficiency which in turn directs organisations towards a more coordinated and coherent style of internal management.

Cohen and Levinthal (1990) adopt the term 'absorptive capacity' as a generic term for the skills in recognising, assimilating and using knowledge to innovate within an organisational framework. Learning is a cumulative process and the greatest value from learning is achieved through building on an existing knowledge base. Organisations must of course learn to adapt and change in response to learning through experience. Confidence builds with the increased use and acceptance of new ideas but this must be balanced against the procedures, strategies and knowledge around which the organisation is structured (Levitt and March 1988).

Opportunities to build on existing knowledge with new initiatives may be lost through a lack of relevant specialised knowledge needed to develop and guide these opportunities. It is in such circumstances that 'experience', both conscious and sub-conscious, can be an invaluable influence (Loasby 1998). The development of indirect capabilities or "*the knowledge of how to get certain things done*" (Loasby 1998 pp150) is significant in the productivity of organisational capabilities and may even indirectly dilute the influence and range of more positive and readily identifiable initiatives. This approach endorses the concept of sharing (or instead, creating a new space in which professionals can reflect upon their expertise and experience?) knowledge through an integrated, ad hoc network within the organisation. There is high value in the tacit knowledge retained within an organisation, representing as it does knowledge acquired and developed through personal experience. The ability to share knowledge (to communicate about professional experience and expertise) and to be able to benefit and learn from other's (experience and expertise) knowledge is important. The difficulty lies in creating spaces, times and forums to manage this knowledge (Hansen, Nohria & Tierney 1999).

Cohen and Levinthal (1990) advise a measure of caution in promoting communication and sharing within an organisation balanced with the stimulation offered by expert knowledge. Nonetheless there is a tendency amongst organisations is to promote 'specialised knowledge' as their particular strengths in respect of their acknowledged capabilities.

Whilst recognising the homogeneity of a profession, the professional working in an organisation is nevertheless acknowledged as valuable contributors to the wider

knowledge base. Drazin (1990) argues that “*through a process of indoctrination*”(pp249) individuals become instilled with a set of values and motivations that, whilst peculiar to their profession, are also the same set of values that subsequently become central to the role the professional plays in fostering and promoting the continued development of knowledge within the organisation. Thus the professional identifies with the role of an agent with a remit to facilitate the transfer of knowledge between the professional and organisational structure (Drazin 1990 and Tushman & Scanlon 1987).

Section 4:

Research Design and Methodology

The research process adopted an inductive grounded theory approach which is appropriate to a study that seeks to gain insights into behaviour and social phenomena (Goulding 2001). The flexibility and creativity of a grounded theory approach ensures that the researcher can formulate emergent themes can from analysing and especially comparing data. An integral part of the process is to systematically transform the interpretation of the data from a descriptive level to more contextualised form (Glaser & Strauss 1967). The inherent contradictions in the inductive nature of grounded theory is that it invites and encourages generalisation. An element of deductive reasoning should therefore be introduced to derive conclusions from the data (Doyal & Harris 1986 and Bryman 1988). In an effort to identify a degree of commonality across the themes and relationships under review it is important to maintain a focus on the existing empirical evidence and to ‘test’ the emerging themes against it. Indeed this approach offers opportunities to highlight or imply new and emerging ideas to already established situations (Eisenhardt 1989).

The sampling was purposeful and relied on the subjective judgement of the researcher and her prior knowledge of the population. Case studies were chosen for in- depth semi - structured interviews that would provide rich, detailed information from which a great deal could be learnt about the issues of the study (Patton 1990). The case studies were nevertheless able to generate ideas that are relevant and applicable to a broad range of organisations within the identified population (Pettigrew 1973). Conscious of the need to avoid replication of data that would not necessarily add

value, multiple case studies were nevertheless carried out to produce evidence that is more compelling and that would provide a basis for the development of the theoretical framework (Yin 1994). This study draws upon multiple case studies to provide data which collectively promotes and supports an emergent theory which is 'grounded' in the empirical evidence. The aim is to develop and understand situations central to the research issue. Multiple case studies provide an opportunity to interweave data with theory building (Locke 2001).

Informal, less structured interviews give full and rich accounts but the researcher was mindful of the need not to create uncomfortable, forced meetings where there was an underlying effort to 'make the situation work' (Alvesson & Deetz 2000). The interviews were not *per se* to learn about specific organisations but rather were intended as a means to gather evidence about current trends and ideas about the management of lawyers and their training for management skills within private legal practices. The evidence obtained from the interviews was used to relate previously gathered data into a more applied and practical setting with the aim of discovering if the attitudes and perceptions amongst the profession about the management of lawyers and their training were indeed being translated into a practical application in the work environment.⁴

The interviews were held with either the senior managing partner or senior training partner in the partnership, or with the member of the support service team with the responsibility for the training and development of the legal staff. The interviewees were all in positions of knowledge and informed about the research issues. The interviews lasted between one hour – one and half hours and were all held in the respective firms' premises. Permission was sought to record the interviews and (with the exception of one case study) was granted. In the instance where recording was not permitted (as a matter of partnership policy), copious notes were taken and transcribed as soon as possible thereafter. The recorded interviews were transcribed with reference to the list of guidelines prepared prior to each interview. Adjustments were made to the interview protocols reflecting new ideas or evidence that emerged through the data collection.

There is an element of 'controlled opportunism' in this approach that identifies real advantages and benefits (Eisenhardt 1989). Although there was a structure to each

interview this was not strictly adhered to and the interviews were semi – structured with open – ended questions thereby allowing the interviewee opportunity to express his / her views and to digress or elaborate as appropriate. The researcher was fully conscious of the value of the time allocated by the interviewees and yet few time constraints were placed on her. Similarly all the case study firms, whilst wholly cooperative were anxious to ensure the confidentiality of the information divulged. The researcher fully acknowledges the importance of the sensitive nature of the evidence and respects the need to maintain confidentiality. Consequently all references are cited anonymously and are entirely non-attributable.

Section 5:

Empirical Analysis

Evidence was gathered from six UK private law firms as the primary data source.

The law firms exhibited sufficient variety so that comparison could be undertaken, and demonstrated a degree of commitment to the development of the managerial role. The researcher was interested to establish the reasons for this emerging role and to determine the level of training that each firm had put in place to reaffirm its commitment. In particular the evidence was examined to assess any link between the internal structure of each firm and its attitude to the management of its professionals.

Firm A is an international law firm with 190 partners and 1,100 lawyers. It has its headquarters in London but the global nature of its work across Europe, Asia and the Middle East requires a significant level of coordination and cooperation across its network of offices. A Senior Training Manager was interviewed. As a firm, it advocates and promotes a strong interest in both legal and managerial training for its lawyers. There is a permanent training team based in London comprising a Director of Training, two Senior Training Managers, two Junior Training Managers and two Training Assistants. This training team moves regularly between the firm’s offices. Nearly all training is carried out in – house by the training team. The Senior Training Manager views the firm as “highly individual in its approach to management”.

The firm has five major departments and each has a lead partner' who enjoys a degree of autonomy within that department. There is no 'manager' as such in place as each partner within the firm is required to undergo an established management training programme and as such each partner within a department will have some management responsibilities. Lawyers within the firm who aspire to partnership level must undertake a seven tier management programme over a range of courses designed to enhance their management skills.

Firm B is also an international law firm with 213 partners and 90 lawyers. The business operates out of fifteen offices across seven countries. The firm has its headquarters in Leeds where an interview was conducted with the Director of Human Resources and the Director of Quality who combine to take responsibility for the training programmes for the firm. Firm B has a very structured and comprehensive training programme. Again most of the training is carried out in – house.

There are X departments and each is headed by a partner who manages that department. When partner is made a department head, he/she is sent on a 6 month sabbatical to the Harvard Business School to reinforce their management skills. There is a structured training programme that runs course for lawyers 0 – 1 year qualified, 2 – 3 years qualified and 5 – 6 years qualified .There are also specific courses for 5 years + that are run solely by the Support Services Heads to reflect the level of legal experience of those lawyers.

Firm C is a law firm with 35 partners and 56 lawyers. It operates out of offices in Edinburgh and Glasgow. An interview was held with the Executive Chairman. Although the processes for associates (senior lawyers) and partners have been formalised with the aim of promoting effective management skills there is no formal management training programme in place. Each partner and those associates aspiring to partnership are required to demonstrate management ability. The Executive Chairman is shortly to attend the Harvard Business School Professional Services Course and it is hoped that in future the Heads of Department will also attend. There is a structured training programme in place but it does not address any management training.

The firm comprises three departments which are divided across the two offices. Each department has a partner as a Head of Department. There is a Management Board comprising the Executive Chairman, the three Head of Departments, the Director of Operations (with responsibility for Finance, Human Resources and IT) and a Director of Business. The Director of Operations and the Director of Business Development are not lawyers.

Firm D is a law firm with 30 partners and 66 lawyers. It has offices in both Edinburgh and Glasgow. An interview was held with the Human Resource Director. She has a team of two full time and one part– time staff and her responsibilities include a remit to raise the profile of training within the firm. The criteria for training are on the development of legal skills and expertise for all lawyers at the different stages of their careers. Management training is presently only available to senior lawyers and partners.

There is no structured Management Board but the firm is split into six Divisions and each is headed by a Divisional Manager who has responsibility for the management of the Divisional team. The Divisional Heads report to the Managing Partner who heads the firm.

Firm E is a law firm with 54 partners and 257 lawyers and offices in Edinburgh, Glasgow, Aberdeen and London. An interview was conducted with a member of the Human Resources Department who has responsibility for managing their training and development programme. There is a very structured training programme in place. There is a basic training programme that is compulsory for all trainees joining the firm. This programme has a focus on soft skills and managerial skills training. In addition the trainees receive divisional training which focuses on the development of their legal skills. There is also a compulsory soft skills training programme for all lawyers. A separate training programme is in place for senior lawyers (associate level). A Competency Matrix is in place for all lawyers up to partner level to identify individual ability in terms of both legal and managerial skills. There is a separate Partner Competency Matrix.

The firm operates eight Divisions which are led by a Divisional Director. Within each Division all Partners report to the Divisional Head and all Associates report to their assigned Partner. Each Partner within a Division leads a team of associates, lawyers and trainees. There is a Management Board comprising the Chief Executive, eight Divisional heads and the Management Services Directors.

Firm F is a law firm with 17 partners and 57 lawyers. It has offices in Glasgow, Edinburgh and Hamilton. An interview was conducted with the Managing Partner. The firm runs a structured training programme that is compulsory for all lawyers at all levels. There are regular training programmes on management issues. Different programmes are in place for different levels of lawyer. Most training is done in – house although external providers are also used.

The firm has four Units with each Unit having both a Unit Head Partner and a Business Development Partner. The Unit Heads are afforded a significant amount of autonomy within their Unit and have responsibility for managing the Unit and organising training programmes for the lawyers within the Unit. A new Partner Appraisal Scheme has been introduced under which management skills will be appraised in conjunction with fee earning results and will be directly linked to remuneration

The attitudes prevalent in each firm and the prevailing views on managing their lawyers are pivotal to the training programmes that are in place although there were significant differences in the approaches adopted. The size and diversity of the firms did not determine the level of management training nor the importance attached to it although clearly the larger, multi national firms have resources at their disposal that are not so readily available to the smaller more centralised firms. Each firm demonstrated some form of positive initiatives to counter what they identified as the growing demands of market forces. Although the Clementi recommendations are not yet implemented, their inclusion in a proposed draft Regulation of Legal Services Bill is anticipated in 2006 and each firm was aware of the far reaching implications this may have for the private legal firm in both the jurisdictions of England & Wales and Scotland.

Firm A promotes what it calls a “*highly individual approach to management*” which it believes is a central focus of its firm’s identity. Training in both legal and management skills is a core part of the ethos of the firm. The firm is an active participant in the Legal Education and Training Group. Its proactive approach to training is centred on the firm’s belief in the value of sharing knowledge and specialist learning. There are many opportunities that encourage the cross – function transfer of knowledge. The desire to promote this philosophy is central to the firm’s ethos of promoting expertise and excellence in specialist areas and clearly the firm identifies the role of management as critical to implementing this ideology.

Firm B, whilst identifying management training as important, nevertheless assigns it a secondary role behind legal training. The firm operates a very structured programme on both legal and management issues but there is a fundamental difference in the approach to each: “*In a way with the legal profession of all the training done, the legal training is the basic ingredients in a cake and what we do in terms of management development is the icing on the cake*”. Clearly there is a balance to be struck but critically in this firm legal training is non – discretionary and , beyond the compulsory trainees programmes, management training is “*arguably discretionary in so far as to what degree do you want it*” .This honest appraisal of management training was nevertheless qualified with an acknowledgement that the firm worked on the assumption that their competitors offered a similar range of management courses and the firm felt the need to develop training programmes to offer a wide range of opportunities to their lawyers.

Firm C introduced its first strategic plan in early 2005 to set out the strategic aims and goals for the next four years. Each Head of Department was required to develop a business plan for their department to support those strategic objectives. And yet this firm offers no management training to its lawyers. Lawyers must demonstrate managerial ability prior to acceding into the partnership but these skills were acquired through “*osmosis*” rather than any training programme.

Strategic changes have been gradually introduced into Firm D over the last ten years with the aim of moving the firm towards a more ‘business organisation’ model. Included in these changes was the introduction in 2001 of a Human Resources department with a remit that includes the development of training. This firm identifies

the development of both management and legal skills as ‘good practice’ within the business. These initiatives are led by the Managing Partner but despite his organisational role it was acknowledged that he still is required to devote a percentage of his time to fee earning work and there are still barriers within the firm resistant to change. Similarly to Firm A this firm sees value in the sharing of knowledge across the organisation and to further this aim it has recently appointed a Training Coordinator within each Division to promote positive initiatives in this area. The emphasis was made that this knowledge did not extend solely to legal knowledge but also to ‘experience’ in terms of learning and development programmes and ideas across all disciplines.

This sharing of ideas across the firm is also a strong focus in Firm E. This firm has a training representative in each Division who are encouraged to share their experiences across the firm with their counterparts in the other Divisions. The high value placed on this sharing philosophy means that if a training programme or initiative has worked well in one Division overtime it may be integrated in to the organisation’s strategic policy. The training programme in this firm is highly structured and constantly reviewed. It includes training on both legal and managerial skills and is compulsory across all levels up to partnership. However five years ago there was no training department and no formalised programme in this firm. The introduction of these new structures reflect changing attitudes in the profession towards training and with it a realisation that lawyers are looking at training beyond what is required by the Law Society to the annual CPD criteria. This firm is part of an HR Networking Group across the major law firms in Edinburgh and issues of training and recruitment are actively discussed in this forum. Central to the training programmes in this firm are the annual appraisals for each lawyer which are fed back to the HR department for analysis before they submit an annual training programme for the firm for approval by the Management Board. There is a clear link here between designing training initiatives and the firm’s strategic aims. Again the ethos of the firm was the move towards a more ‘business like structure’ and the need to put in place the resources to manage that business. *“After all it is a business and it needs to be managed”*.

The Managing Partner who was interviewed in Firm F conceded that the private partnership model is not a good business model and his role within the firm is

grounded in his belief that *“a legal practice is a business just like any other business”* However he also acknowledged that his views brought him into conflict with some of the partners who are resistant to change but nevertheless the loss of business opportunities that was seen as the result of intransigence by those same partners provided the firm with the opportunity to introduce a radical restructuring of the firm. The firm commissioned a review and Strategic plan was drawn up with specific goals aimed at repositioning the firm in the market. They have also put in place a structured training programme that addresses both legal and managerial issues. These programmes are now compulsory across all levels from trainee to partner emphasising the firm’s commitment to training and the value it places on the development of business and managerial skills. The emphasis in the firm is on team work and communication across the firm but this approach has met with both resistant and unwillingness to accept a digression for the standard practices. *“They just don’t get that you have got to work as a team and the team has got to move forward towards implementing the Unit Strategy”*

There are underlying tensions that management training is deemed necessary and demanded by the profession but those demands must recognise the priority of the partnership lies in the provision of a professional service on which its clients rely. These tensions were observed across all the firms although the focus on professional status was more noticeable in some. The importance of managing both the lawyers and the business was consistently acknowledged but nevertheless positioned behind the development of legal knowledge and expertise. There is a general consensus that firms need to be run more as a business and less like a firm. There needs to be a business case for a lawyer joining a partnership. There is a growing recognition, especially among the younger, newer partners, that *“a law firm is a business providing legal services”* and in order to do so the firm needs to be run in a corporate, competitive manner. Consequently the demands on the partners must extend beyond managing their work load and include an element of managing the business as well.

Despite clear indications within each firm that they were responding to the changing consumer demands and the pressures of less regulated markets, there was still a marked degree of intransigence to resist changes that focussed on the changing roles of the professional lawyer. Although all the changes were being led from the top some

firms acknowledged that the pressure to adopt new business practices was being pushed from the newly qualified lawyers. Firm E incorporate management ability into their appraisal scheme and have clear indicators within their Competency Matrix of the level of skills a lawyer should have across the disciplines at each stage in his or her career. A void in their training programme was highlighted by lawyers within the firm who had been qualified over five years. They found themselves in senior positions with managerial responsibility but had not benefited from the changes introduced into the firm in respect of core training on management skills and so felt disadvantaged. This gap in training was also highlighted by Firm B who were obliged to respond to similar demands from their senior lawyers. This firm also operates a Matrix system to assess levels of competency at different career stages. Similarly in Firm D, although there is a very active approach to management training there is still substantial resistance amongst the partners to management practices and the development of those skills is a slow process. Firm C identified the same undertones amongst its partners and despite their moves to develop their business with their Strategic Plan, an acknowledgment that *“we have been very successful despite ourselves”* thereby undermining many of the changes being put in place. This firm sees a need to match the expectations of their clients in the way they manage themselves. Firm F conceded that although the management initiatives were being driven by the aims of the firm’s strategic plan, there is an ever present *“fear of failure”* culture amongst the partners that is counter to the focussed and driven demands of the new lawyers who more readily identify with management in the modern legal practice. However they seem determine to push against this resistance and have recently adopted a Partner Appraisal Scheme under which management skills will be appraised alongside fee earning ability and remuneration is to be linked to both areas of achievement.

This pervading reluctance to adapt and change is entrenched in the traditional ‘professional’ status. The Managing Partner of Firm C believes the older partners within the firm are generally more protective of their professional identity in contrast to the younger partners who view the law *“less as a profession and more as a business”*. However those differences are qualified by the acknowledgement that the partnership model is owned by all the partners and as a consequence it is often difficult to be critical of your colleagues. This ‘equal identity’ is subconsciously

adhered to in Firm A where they choose not to have a 'managing' partner its head their five major departments but instead opt for a "lead partner". The emphasis in this firm is that all partners must demonstrate management skills and each has a significant contribution to make to the management of the firm. The ethos of a 'partnership' was also highlighted in the interview with Firm B: "*in a partnership there is the sense of 'supremo' status but yet all the partners are on equal footing*"

The decision to send their partners to the Harvard Business School in part reflects a reluctance of many partners to admit to a gap in their skills that will be served by time spent at Harvard. "*It reinforces in their mind that they are very important. There is a big status issue here*"

The difficulty of introducing new initiatives across firms is a recurring theme across all the firms studied. Firm F exemplified this problem in trying to impose new management systems on "*partners who continue to work to their own agenda*". These professionals do not want to move into uncharted waters. "*They just want to do what they have always done*". Firm E was unique in being the only firm to have employed a non lawyer in a senior management role. This appointment was as an Operations Manager who was employed to manage the firm. However that position no longer exists and this role has been encompassed in to the Chief Executive role. The lack of a legal background was cited as a difficulty in relating to the partners. This was a recurrent theme across the other firms who all had senior positions for the support services but who strive for equal status to be accredited to this staff and who universally admitted that they have to work hard to gain credibility amongst the lawyers. Firm B summed up the attitude thus: "*The reality is the partner will think, this is my business and I'm not having somebody tell me how to run it*".

Section 6:

Conclusions

This is one of the first studies to question the tensions surrounding the interaction between the professional and his / her role within an institutionalised setting. It also addresses an area of neglect among applications and developments of the resource-based view in analysing the organising of professional services. We chose the legal

profession, not least because of the very public and current discussions on further deregulation of this profession but additionally because significant changes have been observed as a result of many new and dynamic initiatives that are gaining momentum within the institution of the private law firm. The relationships amongst the professionals within private law firms was reviewed in order to develop an understanding of the inter action and to seek explanations for the emergence of a higher profile role for managing of those professionals, and more generally of the activity of managing.

On the basis of the empirical evidence three broad generalisations can be drawn: 1) the legal professionals currently in private practice in the UK are taking positive action to counter growing consumer demands and the impact of existing and proposed measure to deregulate their services. ; 2) the profession is served by the partnership model which, though acknowledged as an imperfect business model, is endorsed and supported by the profession; and 3) conflict and tensions exists with regard to managerial responsibilities but there is growing acceptance of a need to address this issue in respect of promoting and developing training in this area.

The resourcefulness of law firms is demonstrated in the different initiatives being taken by them to meet the challenges facing them. We were able to conduct comparisons across firms, all of which exhibit the normal partnership model. Similarities in the coordination and combination of resources within the firms identified a strong sense of identity in the value of professional expertise and the productive qualities of the service they can offer. From the normal resource-based view, a professional could be seen as a source of external resources. However, closer examination sees law being practised in the context of the two intersection institutions of the profession and the partnership model of the firm. An aspect of managing law firms' resources is the core sense of opportunism that pervades the legal service environment. Despite this was also a reluctance to challenge the authority of the institutions of the profession, for instance with radical new models of professional-corporate governance. The implications are that despite recognition of inherent weaknesses in their structure, there is an overriding focus on compliance with the entrenched standards and regulations developed over time.

The activity of managing resources with the private partnership model emerges as an area of tension. The evidence implied a significant movement towards greater accessibility and accountability in management training. We also saw resistance to the reflexive assessment and hence legitimating of managing as a practice with comparable status to law as a practice. Resistance suggests that the professional identity continues to dominate and threaten compliance with moves seen as challenges to their integrity.

There are several research questions emerging from our research to date, and especially in juxtaposing the case study analysis with broad expectations developed from attempting to apply the resource-based view to law as a professional service setting. The sharing of knowledge and experience across internal boundaries demarcated by professional specialisms in the practice of law was not being addressed across the six firms. This raises questions as to the level and degree of communication that could be expected among legal professionals in contributing to higher-order resources of their firms. In turn, this questions whether the abilities of professionals in legal and in managing roles to understand and communicate understandings of their firms impacts on the quality of information and the manner in which it is shared. The desire to progress knowledge through sharing across the firm, as a locus of the profession, is qualified by the legal professionals' other desires to excel in practicing and performing the law *per se*, which in turn must be balanced against the accountability and responsibility that co exist within a private partnership model.

End Notes

¹ This paper draws from Susan Stokeld's doctoral research. We are grateful the Carnegie Trust for the Universities of Scotland who funded the fieldwork for this project.

² These proposals have significant implications for legal practitioners not only in England and Wales where they are proposed but also in Scotland where, despite the fact that any forthcoming legislation will not be enforceable, the nature of the

recommendations will certainly impact on the legal firms operating there, not least the many firms engaged in cross border activity but also those with offices in both jurisdictions.

³ There is no equivalent association in Scotland but this is an area that is actively under consideration by the Executive of the Law Society of Scotland

⁴ Access is always a difficult issue and ideally a researcher would be given open access without constraint. The personal contacts of the researcher from her legal background were important in obtaining access but nevertheless it is understood that any evidence is necessarily qualified by the knowledge that not all information has been shared.

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