

# Legal services in North West England: the changing landscape

by David Sugarman

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The five following papers in this issue of *Amicus Curiae* were selected from a conference on “Legal services in North West England: the changing landscape” hosted by Lancaster University’s Centre for Law and Society on September 27, 2007. The conference addressed the current state and future development of the legal profession and legal services in North West England and nationally. It provided the first serious treatment of the legal services revolution in the North West and brought together the key stakeholders for the first time.

The subject-matter was chosen because of its legal, political and local relevance. In the 21st century, the legal profession and allied legal services are facing significant challenges. They must deal with issues of public accountability, access to justice, commercialisation, competition, diversity and ethics. The debate on these developments has primarily focused on London. The conference was a much-needed move to specifically focus on the challenges and opportunities in North West England. The contemporary relevance of the conference theme was also reflected in the fact that major changes to legal services were currently being discussed in the context of the Government’s Legal Services Bill (which received Royal Assent on October 30, 2007), which will transform the provision and regulation of legal services.

The conference theme was also chosen because of its interdisciplinarity. A deliberate effort was made to involve a wide range of colleagues within Lancaster University with an interest in legal services as well as individuals representing the principal stakeholders. The Conference formed a part of Lancaster University’s Institute of Advanced Studies Annual Research Programme 2006-7 on “Regions and Regionalism in and beyond Europe” and enjoyed strong support in Law, Geography and the Management School. University-wide support was underpinned by the involvement of Lancaster’s Vice-Chancellor, Professor Paul Wellings, who opened the proceedings. The Conference also achieved a national profile through its co-sponsorship by the Institute of Advanced Legal Studies, University of London, and

through the involvement of leading national figures and organisations in the field.


Over 80 delegates attended the conference, making it the largest event of its kind organised under the auspices of the Lancaster University Law School. The delegates included senior representatives from:

- the Ministry of Justice
- the Office of the Legal Services Complaints Commissioner and Legal Services Ombudsman for England and Wales
- the local judiciary
- the North West Development Agency
- local/regional legal practitioners (from the biggest to the smallest law firms in the North West)
- Cumbria Community Legal Services
- the Law Centres Federation
- ProfessionalLiverpool
- Pro Manchester
- the Citizens Advice Service
- the Legal Action Group
- The Law Society of England and Wales
- the Association of Personal Injury Lawyers
- the Institute of Legal Executives
- LawWorks (the principal national pro bono organisation)
- Shelter Cumbria

Additionally, academics from several universities were in attendance, as were representatives of the Lancaster University Law Students Society and student members of the “Innocence” Project. The managing partners of several of largest law firms in the North West, including Grahame Codd (Irwin Mitchell) and Andrew Leatherland (DWF) also attended.

Many people helped to make the conference a resounding success. I would like especially to thank the speakers at the conference; Dr James Faulconbridge (Geography, Lancaster University), Georgina Firth (Law, Lancaster University) and Dr Daniel Muzio (Leeds University Business School) for their assistance with the organisation of the conference; Professor Bob Jessop (Director, Institute of Advanced Studies), Professor Geraint Howells (Law), Professor David Milman (Law) and Dr Robert Crawshaw (Director, Annual Research Programme 2006-7 on “Regions and Regionalism in and beyond Europe”) for backing the conference; and Angela Turner, Anne-Marie Mumford and Helen Caton, who provided valuable administrative support. The Institute of Advanced Legal Studies, University of London, was a vital partner in the

organisation of the conference, and I would like to thank its Director, Professor Avrom Sherr, for his commitment to sustain legal scholarship, and academic-practitioner relations beyond London and the Home Counties.

The papers published here are largely in the form that they were presented in September 2007. 

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# Lawyers and legal services in North West England

by David Sugarman

**T**he diversity and fragmentation that tends to characterise contemporary legal practice is demonstrated within the North West.

One of the factors that makes the North West distinctive is its geographical, cultural and economic diversity and the way this is reflected in the character of its legal services. The North West is the second largest legal centre in the UK, with around 1800 legal service companies in the region. But such figures conceal a legal services industry and market that is highly fragmented, segmented, variegated and multi-layered.

The north of the region is largely rural, and characterised by some of the smallest legal practices and voluntary legal advice centres in England and Wales (Cf K Economides and M Blacksell (1987). “Access to Justice in Rural Britain: Final Report,” *Anglo-American Law Review* 16). Current Law Society statistics show that of the 1133 firms of solicitors in the North West – defined as covering Cumbria, Lancashire, Cheshire, Manchester and Merseyside – 38.9 per cent are solo practitioners and another 44 per cent have fewer than five partners.

At the southern end of the region, two large urban conurbations centred on the cities of Manchester and

Liverpool are dominant. In terms of ethnicity, cities like Manchester and Liverpool, and towns such as Blackburn, are amongst the most diverse in Europe. And it is Manchester and Liverpool, along with Preston, that have seen the largest increase in the number, size and turnover of legal practices – sustained in part by mergers with niche firms, diversification and creating new departments. These firms may not have the muscle to take over and form partnerships in other countries in the way that London’s magic circle firms are able to, but the larger regional firms undertake substantial domestic deals for PLC’s.

As Manchester and Liverpool have attracted an increasing number of high-value clients, so the business end of the legal profession has generally flourished within and beyond the large conurbations. This would be true of firms such as DWF, Irwin Mitchell and Pannone’s – all of which were represented at the September 2007 conference. Notable innovation includes the efforts of the Manchester based Co-operative Insurance to develop a quality legal advice and assistance business with an outreach that extends beyond the usual private client base. Moreover local and regional legal practices have proved themselves adept at developing and responding to the volume services market

– including conveyancing, wills etc – sometimes through the medium of a bank or a building society.

The North West legal services industry has undoubtedly benefited from a flurry of major regeneration projects, notably in Manchester and Liverpool, and from the growth of airports at Manchester, Liverpool and Blackpool all generating work for developers, planners and lawyers – despite a problematic transportation infrastructure. Public regeneration strategy has in crucial respects been taken forward by the North West Development Agency, also represented at the conference. The lucrative real estate market and the expansion of the private client market have also fuelled the growth of law firms in the region.

Things look rather different, however, in those practices that have depended on legal aid and allied state-funded work. These concerns have experienced especially turbulent times. In some cases, profitability and partnerships have been pruned, and pressure to refocus firm strategy has mounted. Many experienced practitioners are ceasing to represent legal-aid clients. Legal-aid work is increasingly undertaken by junior, or, new or less experienced practitioners – indicative of the so-called “juniorisation” of legal aid work.

The law centre sector in the North West is, despite considerable problems of funding, busy and flourishing – with housing, employment and welfare benefits often the biggest areas of work. Law centres, like that in Bury, have become nationally recognised leaders in the field. Innovation in developing and sustaining legal services outreach reaching the people that other legal advisors cannot reach is evident on several fronts. For example, the Community Law Centre in Carlisle developed a National Lottery Award Winning mobile legal office and a Cumbria Law Bus service to reach people in rural areas. And the North West is the first region outside London to attract a LawWorks regional office. LawWorks, the UK’s main *pro bono* body, works to increase *pro bono* opportunities in local law firms, in-house legal teams, the voluntary sector and local authorities. It is very pleasing that representatives from both the Community Law Centre in Carlisle and LawWorks North West attended the September 2007 conference.

## RELATIONSHIP WITH LONDON

The relationship with London continues to be problematic. Some work gravitates to the North West because of the lower fees charged by local practitioners – typically about two-thirds of the London rates. On the other hand, London is the financial capital of the world, and the home of international business lawyering and PLC London. It has been widely noted that the North West-based law firm, Cobbetts, which formerly argued that it could be a national player with no London practice, recently opened a corporate finance office in London. As one partner explained:

*“You cannot be taken seriously at the level of corporate work we do unless you have a major presence in the City.*

*International clients look for a presence in the capital city and see it as a sign of a successful and established firm that has the capabilities to deal with a wide range of issues”*

*(“Cobbetts set to launch London corporate practice”. The Lawyer, February 19, 2007).*

Others, however, speak of a productive division of labour between the region and London – one that sustains rather than threatens the development of law firms in the North West.

While the larger law firms and barristers’ chambers tend to assert that they have built up strong and varied portfolios of business, and are therefore better equipped than in the past to survive tough market conditions, sceptics claim that in some cases soaring profits stem just as much from unsustainable cost-cutting and rising charges to clients.

Despite the generally healthy state of the legal profession in the North West, many lawyers I have interviewed are apprehensive about the future. There is increasing aggregation, as people jostle for position in the market. There is a fear that consolidation may lead to casualties as fewer senior people are required.

## CONTRADICTIONARY REPUTATION

It is hardly surprising that this highly diverse industry and market has spawned a contradictory reputation – at least beyond the region. The region has produced many an “eminent practitioner” – building respectability for themselves and their professions (See Michael Miles, “Eminent practitioners: the new visage of country attorneys c. 1750 – 1800,” in *Law, Economy and Society, 1750-1914: Essays in the History of English Law*, G R Rubin and D Sugarman, Eds, Abingdon, Professional Books, 1984, 470-503). It might be recalled that the lawyer, Bryan Holme, who played a leading role in the establishment of the Law Society, and whose portrait has place of honour in the Law Society’s Hall, was born just a couple of miles north of Lancaster, and worked in Lancaster before moving to London (David Sugarman, *A Brief History of the Law Society* (London: The Law Society, 1995) and “Bourgeois Collectivism, Professional Power and the Boundaries of the State: The Private and Public Life of the Law Society, 1825-1914.” *International Journal of the Legal Profession* 3: (1996) 81-135).

The region has also produced great legal entrepreneurs and innovators. Nonetheless, controversy surrounds some aspects of both past and present legal work in the region, as P H Williams recounts in *A Gentleman’s Calling – the Liverpool Attorney-at-Law* (Liverpool, Incorporated Law Society of Liverpool, 1980). “Mr Loophole”, for example, is indicative of a wider regional tendency – namely, that what London might not do is done in the North West. Under this optic, the North West is the Wild West of legal services (see “Meet Mr Loophole: Britain’s most

controversial lawyer opens up,” *The Independent*, February 19, 2008).

It is hardly surprising that the region that nurtured Alfred Wainwright and Tony Wilson, Sir Stanley Mathews and John Lennon, should also exhibit a wide-ranging variety in its legal services and legal services market.

Indeed, what I think is clear is that there is no such thing as a typical law firm or barristers’ chamber in the North West. The divisions between local and regional players, private client and corporate work have given way to much finer distinctions. There has been a trend towards a more occupationally diverse and functionally specialised profession – identified by segmentation, fragmentation, specialisation, corporatization and commodification of legal practice, legal culture and legal institutions. The process whereby clients have become customers, and advice and assistance have been redefined as products, is all consistent with this process.

### BRITAIN’S SELF-IMAGE

At an Anglo-French Summit in London, Britain’s then Prime Minister, Tony Blair, was at pains to stress that, like a commercial company, Britain needs to recreate its image. He and his advisors were quite explicit about dismantling that image of Britain beloved by his predecessor, John Major: an image of bowler hats and pin stripe trousers, warm beer, cricket and afternoon tea. It was emphasised that these images were misleading. Instead, Mr Blair was concerned to put forward the modern face of the country. The venue of the summit was moved away from the dusty Victorian armchairs of Whitehall to the London equivalent of *Paris’s La Défense*, Canary Wharf, with its huge post-modern skyscrapers. Participants sat on designer chairs and fed on designer food. As the headline in an article on November 9, 1997 by Patrice de Beer in *The Observer* put it: “Blair dances chic to chic with the French”.

The re-branding of Britain in order to symbolise a more dynamic, open and forward-looking nation highlights the multi-dimensional, socially-constructed character of national identity and the nation state. It also illustrates the important role played by symbols, invented traditions and history in the manufacture of common identity and community (see further David Sugarman, “Legal History, the Common Law and ‘Englishness’”, in: *Legal History in Change*, K Modeer, Lund, Tryck: Bloms i Lund AB, 2002, 213-26 and “Images of Law. Legal Buildings, ‘Englishness’ and the Reproduction of Power”, in R Schulze (ed), *Rechtssymbolik und Wertevermittlung*. (Berlin: Duncker & Humblot, 2004) 194-225).

The attempt to modernise Britain’s self-image, initiated by Margaret Thatcher and continued by Tony Blair, is accompanied by significant changes to English legal institutions and practices. Just as we are witnessing the belated de-Victorianisation and de-traditionalisation of the British state to keep it in step with the progressive de-Victorianisation of the British nation, so we are also witnessing the construction of a post-Victorian legal system. More rational, cosmopolitan, outward-looking and transparent than of old, a system that aspires to offer appropriate procedures at reasonable cost and speed, is understandable to those who use it and is designed to meet the needs of those who use the law (see further Lord Woolf, *Access to Justice: Final Report*, London: HMSO, 1996; A A S Zuckerman, and R Cranston, eds, *Reform of Civil Procedure: Essays on “Access to Justice”*, Oxford: Oxford University Press, 1996.

What more appropriate place to embody the new values of the common law than in Manchester’s new and spectacular Civil Justice Centre – the biggest court complex to be built in the UK since the Royal Courts of Justice in London 1868-82? The centre enjoys the largest glass wall in Europe: emblematic of transparency, openness and accessibility. Its cladding comes from Germany, the concrete is from France and the glass was made in Japan – indicative of our more global society rather than English insularity and isolationism. Moreover, its space is neither intimidating nor arcane. As the headline of an article by Stephen Bayley on October 21, 2007 in *The Observer* commented: “What a perfect place to get divorced.”

Some at least in the North West hope that the Civil Justice Centre, and the 21st legal culture it reflects, will foster a closer interplay between legal services, and social justice in contemporary society (see further Hazel Genn, *Paths to Justice. What People Do and Think about Going to Law*, Oxford: Hart, 1999; Pascoe Pleasence and Alexy Buck, Nigel Balmer, Aoife O’Grady, Hazel Genn, Marisol Smith, *Causes of Action: Civil Law and Social Justice*, London: Legal Services Commission, 2004). The essays in this special feature are a small but necessary step towards achieving this worthy objective. 🌐

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# The Legal Services Act – a perspective from the Legal Services Ombudsman for England and Wales and the Legal Services Complaints Commissioner

by Zahida Manzoor

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The author gives some of her views on the future for the legal profession following the introduction of the Legal Services Act, which gained Royal Assent on October 30, 2007. Appended to this paper is a summary of the questions posed to the Ombudsman and Commissioner following her speech, together with an overview of her answers.

## THE LEGAL SERVICES OMBUDSMAN

I was appointed as the Legal Services Ombudsman for England and Wales in March 2003. I sit at the apex of legal complaints handling: complainants must first make their complaint to the relevant professional body, eg the Law Society's complaints handling arm. If complainants are not satisfied with the way the professional body has dealt with their complaint, they may refer the matter to me as Ombudsman. It is my responsibility to ensure that the professional bodies have conducted fair, thorough and efficient investigations into those complaints about their members. I therefore see first hand examples of the problems which consumers can experience when they have had a problem with their legal service.

## THE LEGAL SERVICES COMPLAINTS COMMISSIONER

In February 2004 I was also appointed as the first Legal Services Complaints Commissioner. As Commissioner I regulate and work with the Law Society of England and Wales to encourage and influence it to improve how it handles complaints against solicitors.

In January 2006, the Law Society formally announced its re-organisation into three distinct bodies. These are: the Legal Complaints Service (LCS) which deals with complaints by consumers about the service received from their solicitor; the Solicitors Regulation Authority (SRA) which regulates solicitors and deals with some consumer



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complaints where misconduct is alleged; and the Law Society which represents solicitors and promotes their work.

## BACKGROUND TO THE LEGAL REFORMS

The Legal Services Act 2007 is designed to achieve wide-ranging reform to legal services regulation, delivery and complaints handling in England and Wales.

The Office of Fair Trading (OFT) published a report in March 2001, *Competition in professions*, raising some concerns regarding potentially restrictive rules in the legal

profession, which may have been stifling competition. Also at around this time, the Legal Services Ombudsman's 2001/02 Annual Report, *The regulatory maze*, concluded that "the present concern with operational failure in complaint handling needs to give way to a more fundamental debate about reforming the entire system of legal services regulation."

Problems in the handling of complaints about solicitors by the Law Society had led to the Lord Chancellor setting the Law Society performance targets. These targets were not accompanied by the statutory means to enforce them and failures in complaints handling continued.

My 2002/03 Annual Report as Ombudsman, *Taking up the challenge*, set out my concerns at the time regarding the dual role of the professional bodies in both representing and regulating their members. I was also concerned that there was not a consistency of standards across all of the legal professions. I again highlighted widespread concerns about the failure of the largest professional body (the Law Society) to handle complaints about its members effectively.

Following that Annual Report, I welcomed the government's announcement of a review of the way in which legal services were being delivered and regulated and complaints handled. I was pleased to contribute to Sir David Clementi's Review and have continued, in my roles as Ombudsman and Commissioner, to support the government as it has brought many of the recommendations made by the Clementi Review through to a White Paper and more recently, the Legal Services Act.

On the face of it, the Act is faithful to the principles set out by Clementi and influenced by others including myself. It is important that the Act delivers real benefits to consumers of legal services and the profession.

I am pleased that the Legal Services Bill received Royal Assent on October 30, 2007. It is envisaged that the Legal Services Board will be established in 2009 and the Office for Legal Complaints in 2010. The Office of the Legal Services Complaints Commissioner is expected to close in March 2010 and the Office of the Legal Services Ombudsman will continue until at least December 2010. In my role as Commissioner I will continue to work with the Law Society to regulate its complaints handling work and oversee progress and improvements for the consumer and the profession. As Ombudsman I will also continue to work with all legal professional bodies to improve and maintain standards for consumers of legal services.

### **NEW STRUCTURE CREATED BY THE LEGAL SERVICES ACT 2007**

The Act has created a Legal Services Board (LSB) – a new over-arching regulator with a range of powers over front-line regulators. The front-line regulators are the existing legal professional bodies such as the Law Society and the

Bar Standards Board. Handling of consumer complaints about legal services will be moved away from the legal professional bodies with the creation of the Office for Legal Complaints (OLC), a single, new independent complaint handling body. In addition, the Act allows for new ways of professionals working together to deliver legal and other professional services, known as alternative business structures (ABSs).

### ***Perspectives on the Legal Services Board (LSB)***

I welcome the LSB as a new oversight regulator, which will result in a more simplified structure to replace the myriad of regulators that currently exists. I also welcome David Edmonds as its chair and have had the opportunity to discuss my perspective with him. The LSB will have powers that will allow regulators such as the Solicitors Regulation Authority and the Bar Standards Board to manage the day to day regulation of the profession.

I am pleased that the Act provides the LSB with powers to protect consumers where necessary. It has the ability to play a positive role in the regulation of the legal profession by enhancing its standards.

In much the same way as the financial services industry benefits from the regulation by the Financial Services Authority, I hope that the LSB will enhance the reputation of the legal services profession.

### ***Perspectives on the Office for Legal Complaints (OLC)***

I welcome the new and independent OLC, which will provide redress for consumers through a single complaints handling organisation. I also welcome Elizabeth France as its Chair, and have held early discussions about complaints handling with her. The OLC will be independent of the legal profession, which should encourage consumer confidence in how their complaints will be handled.

I am pleased to see that the OLC's powers are to be vested in an independent individual (the OLC Chief Ombudsman). I believe it is appropriate that the word "ombudsman" will form part of the eventual name of the legal complaints handling scheme, as the term is understood and trusted by the public. The government has taken into account my views and representations on both these issues and has reflected these in the Act.

The Act will allow the OLC to charge the legal profession for handling its complaints. A charge can be made both through a standard levy on the profession as a whole and by individual lawyers paying on a case-by-case basis for complaints made against them to the OLC. The OLC will only waive charges for a complaint not upheld against a lawyer if the ombudsman is satisfied that the lawyer handled the complaint properly in-house. I believe that this will encourage firms to try to sort out complaints using their internal procedures and that good firms will have nothing to fear.

It is clear that some branches of the legal profession undertaking contentious work may be likely to attract more complaints than others – particularly from consumers who may be dissatisfied with the outcome of their case. This provision in the Act offers some protection for professionals who try to resolve complaints properly. However, the profession as a whole will need to take seriously the service it gives to the consumer as well as the quality of advice.

The majority of complaints I see as Ombudsman and those that the Law Society's Legal Complaints Service deal with are about simple things such as failure to keep people informed regarding their case, poor or no cost information, and failure to notify consumers if there is a change in direction, which can leave them without the choice of obtaining alternative legal advice. Some small legal firms can become swamped with forms and paper and forget they are in a consumer-focused business.

The Legal Services Act gives the OLC the ability to make public more information about legal complaints handling. This may extend to the publication of firms' complaint records. Such information could help the consumer to decide which firms to choose but would need to be part of a package which included the benefits of choosing a particular firm (eg its specialism demonstrated through a form of "kitemark"). It would create marketing opportunities for those firms who have an excellent record in customer service. I believe that any increased transparency could have benefits both for the consumer and the reputation of the legal profession.

The OLC will be paid for by the legal profession. Latest published government estimates are that the running costs for the new complaints handling organisation will be approximately £19.9 million per year. However, the current annual running costs for the Law Society's complaints handling arm only (the LCS and SRA) are in the region of £36 million. This does not include costs for the other legal professions such as the Bar Standards Board. I believe that the financial gap needs to be closed sooner rather than later. As Commissioner I am working with the Law Society on how LCS and SRA can meet this challenge. It is in the interests of the profession as a whole to have a good quality but also cost-effective complaints handling organisation.

### ***Alternative business structures (ABSs)***

The Act opens up new ways of working so that lawyers could combine with different types of lawyers or other professionals (eg accountants, architects) in order to deliver services. There are measures in the Act to protect the public, including rules about who can own ABS firms and how they have to be structured. I welcome the prospect of innovation in the legal services market that could come from the introduction of ABSs.

Government has suggested that there needs to be a more controlled implementation in order to ensure that access to justice is maintained and I support this. This would allow for any unwanted effects for consumers and the profession to be fully explored before widescale introduction. However, ABSs should not be delayed unnecessarily as they have the potential to bring benefits and innovation into the legal services market.

The creation of ABSs has been termed as the advent of "Tesco law" and has been presented by some as posing a threat to the future of high street legal practices. I believe that there could be both threats and opportunities and that legal firms could consider what advantages ABSs could bring as well as the potential dangers.

For the consumer ABSs will possibly create more choices and it is arguable that some consumers will use the legal services of organisations like the RAC, the Halifax and the Co-op. If existing high street legal practices are to survive they have to work out what they can offer in order to compete. They will need to ensure they aim to deliver exemplary customer service.

For some people, accessing legal services can be at a stressful time in their life such as going through a divorce or the death of a loved one and they may be attracted by a name they trust offering legal services. For some, being able to communicate by phone or e-mail, rather than the prospect of going into a high street office and talking over their issues face to face may seem more appealing. The legal profession needs to work on its advantages and maximise them in what will become a more competitive market.

### **DIVERSITY IN THE LEGAL PROFESSION**

ABSs may also encourage firms to increase the diversity in their workforce to mirror that of their consumers. A move away from the traditional partnership structure, and its inevitable tendency to translate into long hours, could mean real benefits for lawyers with families, for example, who want to work more flexibly or take a career break. In addition, there is the potential to diversify into a range of different service offerings and business ventures. All of this creates more opportunities for people entering the profession for the first time.

As with any major change, there will be both opportunities and threats. There are many more women going into the legal profession, which was once a male dominated profession. In 1999 only 35 per cent of solicitors holding practising certificates were women, the figure rising to 43 per cent in 2007. And there are many more ethnic minority people joining the profession – the number of practising certificate holders from ethnic minority groups has increased almost 244 per cent in 10 years. This is good news and I am very encouraged by it. However, the number of women and ethnic minority partners is less encouraging. In 2007, fewer than 22 per cent of partners

were women and fewer than 26 per cent were from ethnic minority groups in private practice. This suggests that there is still some way to go before the diversity beginning to be seen in those joining the legal profession is also evident at senior levels within firms. It is essential that there is greater diversity, and that the profession reflects the community it serves and ensures equal career progression.

## CONCLUSION

I welcome the new legislation and am pleased that the reforms will soon become a reality for the consumer and the profession. As a contributor to Sir David Clementi's review and the Legal Services Bill, I am pleased that that changes to how legal services will be delivered and regulated and how complaints will be handled have now become law.

I look forward to a new and independent OLC, which is the opportunity for a fresh start for legal complaints handling. I also welcome the LSB, which will provide protection for the consumer through streamlined regulation of front-line regulators, allowing them to get on with their day to day business.

In addition, the Legal Services Act 2007 creates alternative business structures, which I consider have the potential to open up increased competition and raise standards in the provision of legal services. This can only be good for both the consumer and the legal profession.

## Q&A

Q: From a firm of solicitors – How should we deal with unmeritorious complaints from clients, many of whom have mental health problems?

A: *Have established systems in place and keep good notes. If a complaint comes before me as Ombudsman I would note the*

*vulnerability of the client but would also consider whether the complaint had merit.*


Q: From a university source – More a comment that although more women and people from an ethnic background were on the solicitors roll, many were in the lowest paid jobs. The top firms were still dominated by white males.

A: *This was a challenge for the Law Society to provide leadership and opportunities for all to reach the highest echelons of the profession. Through personal experience glass ceilings can be broken.*

Q: From Shelter – Do the socially excluded complain?

A: *Many complaints seen by me as Ombudsman come from those most able to express the complaint – middle England and Wales. I have been in discussion with the Legal Complaints Service (LCS), to understand its complainants and whether this matches the diverse nature of those using solicitors. I want its service to be more accessible for all.*

Q: From a Law Centre – Legal Aid brackets law into areas and is about process, not necessarily the right advice. Can regulation really bring about a quality legal service?

A: *There is a responsibility to ensure that both the needs of the profession and those of the consumer are met to deliver better legal services. Solicitors and the LCS can improve their services and where appropriate, regulation can help. Vulnerable clients often need regulation to help ensure that they receive a level of service regardless of their circumstances or knowledge.* 

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# Advocacy as an important public service

by Bill Braithwaite QC

The author reviews past and present attitudes at the Bar and looks at what the future holds for barristers, both nationally and in the North West.

## THE PAST

When I came to the Bar, it was still being run as a gentlemen's club. There were all sorts of unspoken rules of behaviour. For example, it was established practice that we did not shake hands with fellow members of the Bar, presumably because we were part of such a small group that we were all assumed to know each other sufficiently well not to adopt that formality. It was common to use surnames when talking to each other, and particularly about other barristers. Again presumably, that was based on the (minor) public school practice, which was also, I think, common in the services.

Well into the second half of the twentieth century, there was a rule that, when a barrister became a QC, he effectively had to move to London. I think that the rule actually was that he had to live within a certain distance of an "assize" town (ie a town or city in which the assizes were held), but the effect was to limit you to London. Another rule relating to QCs was that they must or should not appear in court without a "junior." This was (and still is) called the two counsel rule. The impact is obvious; people had to pay for two barristers in circumstances when one might have been enough. I think that there may have been an element of dignity involved. Certainly there was apparently a time when the QC would not consider it right to talk to a criminal defendant whom he was defending.

In those days, many barristers, and professionals generally, were conscious of the distinction between the professions and "trade", as business was called then. It was not only that we thought we were different; more importantly, we did not value business skills.

It must have been because of that background that so many restrictive practices were allowed to exist at the Bar. England and Wales were (and are) divided into the "circuit system", by which there was an artificial division geographically. That was the cause of significant restrictions. I remember well, even now 30 years later, a Welsh solicitor friend being told quietly that, if he tried to



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use Northern Circuit (ie not Welsh) barristers, they (unspecified) would make sure that he did not get any of that type of work. An even more annoying restriction was that the circuit division meant that Birkenhead was included in the Wales and Chester circuit. If Liverpool barristers (or any other English ones for that matter) went to Birkenhead to do a case, they had to pay the Welsh circuit £5 for the privilege.

In addition to all those transparent restrictive practices, there was the unspoken area of career development. All those phrases spring to mind, such as "the right sort", "does his face fit" "is he one of us", and so on. The impact of that approach was of course that, for many (but not all) barristers, it was important not to upset the establishment. That included judges, and one had to expect that, particularly in the provinces, if a barrister was considered by judges to be a troublemaker, he (in those days it was very rarely she) would not be considered for promotion.

Turning to more recent times, I remember well my experiences when I set out to obtain the "kitemark" in the early 90s. At that time, manufactured products often had a

kitemark, so that there was a good deal of derision that I should pursue a standard which you might also see on a hoover or a kettle. The process of obtaining it was lengthy, difficult and expensive but, at the end of it, I (and my chambers) had a system of management which was a huge step forward. Probably the most extreme change was that my system imposed a requirement on me and my practice manager to review our work. We had to do it at regular intervals, and it involved, for example, checking documentation. As part of the system involved me documenting everything I did, it was easy for my practice manager to see whether my performance was up to standard. Not surprisingly, the Bar generally considered this to be inappropriate; how could one possibly reduce the art of advocacy to office systems? Naturally there is an element of truth in that, but only a small one. Much of what barristers do can be monitored, either by outside agencies or by the barristers themselves.

A direct result of that process was that my practice manager and I discovered that most or all of my failures were related to delays in dealing with requests for a written opinion. Again and again, we came across examples of slow service, so at one review we confronted the problem; what should we do? Fortunately, the answer was easy; stop doing written work! As a result, I have done no written opinions for years, and I have avoided years of worry about those delays, and years of aggravation for those waiting for the opinions to be returned. As it happened, that was an excellent decision because, in the field of claimants' catastrophic brain and spine injury in which I work, it is far less satisfactory to give opinions in writing.

I have never regretted getting the kitemark. It transformed the way I looked at my practice, and the way my chambers managed the administration. Of course, the Bar eventually decided that it needed standards, but did not go nearly as far down the route of self-analysis and systems checking.

Another example of old-fashioned ideas is that, only a few years ago, it was thought politically expedient for me to ask permission of the "Leader of the Circuit" to open an office in Manchester.

## THE PRESENT

So, is all that tradition now well behind us? Of course not. There are still barristers who are reluctant to shake hands, who use surnames, and whose business practices are firmly rooted in the 19th century. Our governing body is rooted in the past, and I personally do not feel that it has anything to offer a modern advocacy business.

A headline in the *Times* said it all recently: "Accused barristers – the Bar Standards Board is to list the names of barristers facing disciplinary charges, but has opposed proposals to grade barristers according to competence and experience".

In my chambers, we started to pursue continuing education in a professional way in 1991. The Bar did not insist on continuing education for years after that.

I think that one of the main restrictions on the development of the Bar, apart from the attitude of barristers, is the limitation imposed by our governing body on our ability to create and develop a business. We are not allowed to practise as a limited company, but are all self-employed. That is often said to be a major strength of our profession, because it ensures independence. There is a very honourable history of barristers fighting difficult or unpopular causes, often against powerful bodies such as the government, and requiring complete independence to do so fearlessly. However, I doubt whether that need for independence carries the same importance as it did two or three hundred years ago.

An effect of the fact that we are not formed into ordinary corporations, governed by shareholders and management structures, is that we have no mechanism for businesses to grow by purchase and takeover. As a result, I think, barristers' chambers all over the country are either collapsing, merging (the same thing, but with a time delay built in?) or contracting. In a competitive market, I think that there would now be less blood-letting, and a more settled, competitive environment.

Coupled to this difficulty is the poor quality of some of the work which is done by barristers. Poor quality work in this context has two meanings; the nature of the work undertaken by some barristers, and the way in which they do the work presented to them.

I feel strongly that the time has come when barristers should only do work which genuinely requires the skill set which we possess, and which others do not. The theme of this talk is advocacy as an important public service, and I believe strongly (passionately, in fact) that there is a place for the advocacy which good barristers can and do provide. My own perception, which I concede is that of a narrow specialist, is that we are currently expecting that barristers should be used for work which does not justify their employment. Much of it is publicly funded, but not all.

I remember that, when I started at the Bar, barristers were used to present "pleas in mitigation" on behalf of a person who had pleaded guilty to a criminal charge. Of course, that could be important in some circumstances, but very often the barrister merely told the judge what was perfectly obvious, eg that the defendant had pleaded guilty, that his criminal record was not too bad, that he had a family to support, and that prison would be difficult for him, or whatever. For all I know, that is still going on. Surely it does not require a highly skilled advocate to undertake that task in many cases, particularly bearing in mind that the judge should be able to see most of the mitigating features for himself. There has been a change recently, which the Bar has not welcomed, in that non-barristers can now appear in the Crown Court.

There are very many areas of work currently undertaken by barristers which informed outsiders might consider to be insufficiently difficult or important to justify the use of such a high quality (theoretically) consultant. I have been fairly critical of my profession so far, but I must make it clear that there are many first-rate barristers who provide a consistently excellent service of top quality in areas where no other professional can equal them. Fortunately, many of those are in the North West. The Northern Circuit, which covers the North West, is generally considered to be well-served in that respect.

However, even here it is possible that standards are not as high as they should be. This goes back to the lack of self regulation of barristers by themselves, the lack of systems in chambers, the failure to specialise, historically over-generous public funding, and the overwhelming feeling that we have the right to earn a good living regardless of our abilities. Similarly, outside regulation probably would make us all realise that we cannot expect our performance to be judged by our own profession exclusively. In my opinion, the sooner we have outsiders managing our complaints system, and deciding on the complaints, the better it will be for the long-term health of the Bar. I am concerned also about the method of complaint management currently adopted, although it does seem clear that this will change in the near future.

Sadly, I think that another factor is that the public frequently has low expectations of barristers. Either that, or they are not prepared to complain about poor service. This may be related to the fact that much of the work barristers do is publicly funded. If that is so, it will surely reduce as a factor, because the government is currently reviewing, as it has been for some time, the level of fees paid to barristers.

## THE FUTURE

### *Nationally*

I think the future is bright, both nationally and locally. Nationally, I see fewer barristers, mostly of top quality, gradually creating a profession of the ultimate consultancy in advocacy. I imagine that it will be necessary for barristers to form larger groups, nationally and perhaps internationally. Certainly I can see great advantages in a national advocacy practice. There are many reasons for larger groups, although they do have to be focussed correctly, and well-managed. One obvious advantage is that it should make sense for one business to provide a wider service, both geographically and in practice areas.

Of course, in order to make that an effective model, one has to have a valuable product. The product will only have value if is genuinely needed by the public; in other words, barristers should only do work which really does require the highest level of advocacy skills.

If we limit ourselves to that type of work, and if we become truly specialist, we will then have to make sure that there is a public perception that our product truly has value. This will not be easy, because the public is not likely to know what advocates can do for them unless they have previous experience, which is uncommon, or unless we tell them. Shock horror! We might have to advertise our product. We might have to sell ourselves (in the nicest way, of course). We might have to make a sustained effort to manufacture and sell a worthwhile product. In other words, we might have to do what businesses do all over the world.

There is a product of value, because there are so many areas of life where advocacy can make a difference. Advocacy is not just standing up in court and spouting forth. Advocacy is the art of preparation and presentation of a claim or defence (not just in litigation) so that it has the best possible chance of success. The most obvious examples occur in litigation, for example commercial, family, injury disputes, but there are ever-increasing areas where litigation may not be contemplated, or where it is a method of enforcing rights. In my world of catastrophic brain and spine injury, advocacy is important for those who have no compensation claim, because they are at the mercy of the state, and they probably will have to fight for their rights. Advocates would help them do that.

### *The North West*

Turning to the more local landscape, the national vision would also work well in the North West. Looking at my own chambers as a model, I would hope that, however far we expand, we will remain rooted in the North West. That could work well, provided that we can persuade people to take us seriously without having our head office in London. By way of example, we have just been awarded the Chambers & Partners award for Regional Chambers of the Year, but that is a long way from being national Chambers of the Year.

It is possible, even probable, that the Administrative Court will open a branch in Manchester. That would be a terrific boost for lawyers in the North West, because an area of increasing interest is public and administrative law. If this does happen, it will be a marvellous boost for the regional economy.


The North West is blessed with two major court centres, Manchester and Liverpool. In addition, we have several other courts of significant size. It is probably fair to say that no other circuit or area has two such strong centres. Although there are clear signs that barristers in both major centres, and in the other towns as well, are struggling to cope with the current demands, those two centres have the ability to continue to form a nucleus of good quality legal services.

## MY VISION

I should like to see my chambers as a national company, based in the North West, and run from there, servicing

advocacy needs nationally, and educating the public to the increasing importance of advocacy in the modern world. We would be shareholder driven, and managed as a corporation, with a board of directors. The company would have to provide value, and that would mean that the directors would have to make sure that we were manufacturing and selling a product of real value. Individual barristers would be monitored and regulated. We would acquire and develop core and non core businesses, so that our strength was widely based, and not susceptible to the winds of change.

In order to achieve that, we, and all other barristers' chambers, need solicitors, businesses, academics and

individuals in the North West to help us. We need to be acknowledged as being able to provide a service (in our areas of excellence) which cannot be bettered anywhere in the country, including particularly London. That is achievable. We currently have individual barristers who could justifiably make that claim. In order to achieve more, though, it is essential that we have the support of the North West. 

Bill Braithwaite QC

# Legal services: opportunities and challenges

by James Faulconbridge and Daniel Muzio

Some of the recent trends in corporate legal services in the North West can be perceived as creating either opportunities or threats.

## INTRODUCTION

A predominant interest in globalisation often obscures the regional diversity and local flavours of professionalism that characterise our legal world. Our recent research into legal services in the North West partly rectifies this gap in our knowledge, revealing the experiences of solicitors in this region and highlighting a set of local responses to what are often more general issues affecting the profession as a whole. This is, perhaps, most aptly summed up as a story of new opportunities but also new challenges, as lawyers in the North West seem to benefit from stereotypical portraits of their work – to put it crudely, corporate legal services are cheaper in the “regions” that in London – but also challenge taken for granted assumptions about the quality and innovativeness of services. Indeed, as *The Lawyer* recently reported, the North West has both one of most attractive marketplaces for corporate legal services in the UK – Manchester – but also one of the least attractive, Blackburn (“London: not as sexy as Bradford, apparently,” *The Lawyer*, September 25, 2007).

In this brief report we want to explore some of the recent trends in corporate legal services in the North West and argue that they can actually be perceived as creating either opportunities or threats. We begin by highlighting the key logics and dimensions which support a regional division of labour in the legal profession in England and Wales. We then

analyse some of the organizational responses pioneered by North-Western firms to transcend the limits of their geography and bridge the gap between local and global. We conclude by highlighting an area, work-life balance, where regional firms may have a competitive advantage. This is important in an era where work-life pressure are exacting a toll in terms of job satisfaction and staff attrition rates.

## NEW MODELS FOR NEW TIMES

Clearly one of most pressing issues for law firms today is the challenge or opportunity posed by the Legal Services Act and the proposed reforms to the ownership of law firms. We do not focus specifically on this issue here; our research was conducted before the bill was given royal assent and any discussion would be sheer speculation. Similarly, our research was also conducted before the onset of the “credit crunch” and the financial turmoil of 2008. What we can do, however, is analyse the way firms have been adapting to maintain and develop competitive positions in the North West but also, more broadly, in national legal markets in the 21st century.

The North West today is populated by a diverse range of corporate law firms. These include:

- Commodity firms, which focus on the bulk production of low value added services (both commercial and personal).

- Bespoke firms, which focus on high value transactional work for corporate clients. These firms, that usually have only one office, seek to dominate profitable niches and develop a reputation as experts in a particular field of law.
- Globalisers, who attempt to develop both full-service provision in the North West and throughout the UK but also globally to varying degrees.

The link between strategy and structure is particularly important here. Strategies to be effective have to be underpinned by appropriate structural configuration and working practices. More specifically, commodity firms tend to use highly leveraged and extremely formalised labour processes that use high ratios of non-qualified staff and some junior professionals in place of partners. In this context, job descriptions and work processes are tightly defined and there is a reliance on technological standardization and off-the-shelf solutions. Bespoke firms tend to be partner lead and to give much more scope to professional autonomy and discretion. Finally, globalisers can fall into either of the two categories depending on their focus on commodity or bespoke work. Of course, we should not forget those firms where both types of activities and therefore strategies co-exist within the same structure, thus giving rise to distinct challenges in terms of organizational coherence and structural integration.

### **“PLACING” THE NORTH WEST IN STRATEGY**

The geographic dimension is a significant part of strategy for all multi-office firms. This is both important because of client demand (the attractiveness of markets such as Manchester and Liverpool) but also because certain types of “commodity work” tend to be located in the provinces to exploit the lower cost base. A number of firms in the North West locate their bespoke, high-profit generating work in London or the South East but then much of their lower fee work in the North West thanks to competitive infrastructural and labour costs. Indeed, clients seeking commoditised legal services are usually themselves based in the regions with Manchester and Liverpool having, for example, a number of insurance agencies present in the city who rely on day-to-day, commoditised legal services often related to claims defence and litigation work.

But this apparent geographical split between high and low value work should not be allowed to deceive anyone into thinking the legal profession in the North West is not innovating or attracting some of the more complex legal work. Increasingly large corporate teams, in Manchester in particular, are attracting work from the City of London and finding ways to retain more and more work in the North West that might have gone to London in the past. Let us be clear though, no firm in the North West aims to or expects to emulate the “magic circle”. But this does not mean innovation (both in terms of legal services but also in terms of organizational structures) is not occurring. Indeed, the creation of new business forms is being pioneered by many

firms in the region. In this context, law firms are already considering business structures and practices which have been common in commerce and industry but which are rather new developments in the professions. These include the development of:

- Embryonic holding companies, which include wholly and partially owned subsidiaries often involved in activities outside of the traditional remit of the legal profession. In particular one of the law firms in our sample owned a financial advisory firm and an IT services practice. This trend is expected to accelerate following the Legal Services Act which will facilitate attempts by law firms to diversify into other markets.
- Networked types of organisation. Law firms have always used networks to build international capability. The classical example would be best friend networks relating law firms with a number of referents in other jurisdictions. Whilst well-established and used by many London-based firms, these systems have increasingly acquired a role in the North West and in the regions more broadly. The national networks are perhaps though the most innovative (see below). Again these trends should be supported by the new business and legal structures introduced by the Legal Services Act.

One particular example of these future possibilities is provided by a North-Western single office firm studied in our research. This firm (which shall remain anonymous here) has significantly developed the use of networked forms of organization in the legal services area and beyond. Formal procedures are now in place to monitor flows of referral, quality and customer satisfaction across the network. New procedures and initiatives are in place to foster knowledge sharing, build trust amongst members, develop new cross-network capabilities and to coordinate national but also when necessary transnational transactions which require multiple and simultaneous inputs from different firms, jurisdictions and practice areas. Accordingly, such systems deliver increasing national and global capabilities whilst retaining the features of independence and partner-led advice which are valued by some clients and solicitors alike, features which may be lost in the integrated global law factories of our times.

In a more recent variation of the network, we have the emergence, again pioneered in the North West, of national referral and cooperation structures, linking small and medium sized regional providers (many of which are traditional firms) to a larger more sophisticated practice which acts, in organisational theory terms, as a network hub. These are rather different to international networks as members are, at least potentially, competitors in the same market. Members can tap into the knowledge resource of the whole network and leverage its superior resources and marketing clout as and when necessary. Moreover, peripheral members can escalate problems to the network hub and receive a percentage kickback on this work.

The system works thanks to non-poaching agreements that strike a balance between competition and cooperation. So whilst international networks allow firms to achieve cross country capabilities without the costs of establishing international offices, the national variation allows firms to increase the scale of their operations and the scope of their expertise without sacrificing their independence. The development of these new forms of business would be an interesting issue for further research.

### TALENT AND EXPERTISE: ATTRACTING AND MANAGING THE WORKFORCE OF THE NORTH WEST

Whilst the constraints of geography may have acted as a catalyst for organizational innovation, North Western firms may also derive some clear benefits from their regional location. This is particularly true when it comes to the challenge of managing the rising personal and professional pressures associated with a legal career. It has been widely reported in the press how attrition in the 2000-2007 period, a period of unprecedented financial success, became a growing problem. Some of the largest firms have experienced turnover rates of 50 per cent, as a growing number of solicitors flee the profession for alternative careers. Partnership is increasingly relinquished as a career objective, as life style pressures lead solicitors to desire less pressured but also less prestigious and remunerative roles. Yet, a combination of increasing workloads dictated by the relentless billing treadmill and the pressure of profit-per-equity-partner targets; the unsociable hours tied to the rhythms of a financial markets; and a 24-hour business culture made possible by the real time opportunities of technology, coupled with the declining promotion opportunities connected with higher leverage ratios and with increasingly common de-equitization policies, makes the work life balance and its effective management an unresolved priority for the legal profession. This has the potential to impose great personal and professional costs. After all, trained lawyers are expensive investments and their loss compromises organisational performance.

Yet it seems that firms based in the North West may have had some success in managing these pressures and have created an opportunity out of this threat. Indeed, Manchester firm Pannone was voted in 2007 by the prestigious *Times Best Employer Survey* as the third best place to work in the whole of the UK, with other provincial firms joining them in the prestigious table. Such scores reflect a combination amongst other things of work life balance, work quality and career development. All areas where North West firms, partly as a consequence of the type of work they perform and the clients they serve, seem to deliver a better deal for their solicitors.


North West firms, even the largest ones, also tend to be significant smaller and to adopt a more generalist focus than their City peers. In this context, it is easier for junior solicitors to be granted more autonomy, responsibility and

early opportunities for client contact. Similarly, such firms offer their junior solicitors broader roles, exposure to more diverse workloads and the possibility to engage with complete transactions rather than focusing on a narrow range of specialist tasks as required by the work processes developed by some of the larger firms. This, together with a regional location, offers a more appealing and rewarding work life balance. Indeed, a culture of “consideration” in North West firms was often described by our interviewees.

This does not mean long hours can always be avoided. Nor does it mean a lawyer should expect an “easy life” in the North West, or that professionals in the region do not work tirelessly to meet their clients’ needs. Rather it means that for lawyers it is possible to take weekends off, to leave on-time or early when necessary in order to meet family commitments, yet still have a fulfilling career and realise opportunities for promotion. Perhaps not surprisingly, firms in this region are unable to compete with City of London firms in terms of remuneration, prestige and client profile. But for many, the importance of lifestyle choices outweighed such concerns and, for some of the lawyers interviewed in our research, this meant that a North West firm was an attractive place to work.

### CONCLUSIONS

Naturally the picture we have painted here of the state of corporate legal services in the North West is a partial and stylised one. Indeed, we may be accused of portraying a too rosy picture in a period when all kinds of new challenges are emerging and causing sleepless nights for senior and managing partners. The current turmoil in financial markets and the apparent onset of a national economic slowdown (maybe even recession by the time this report appears in print) is also likely to create a whole host of new challenges and of course opportunities. Our aim, though, as our title suggests, is to point to the way the legal profession in the North West can view contemporary trends as opportunities as well as threats. Carefully thought-through responses that might distinguish North West firms from their competitors offer the opportunity to compete in an ever more competitive marketplace for legal services. The future, then, is far from clear. As we noted in our introduction, the Legal Services Act is one of the biggest immediate challenges. But the future need not necessarily be bleak.

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# Law centres and the future of community-based legal services

by Steve Hynes

The North West has a relatively high number of law centres, but the overall outlook for legal aid work is gloomy.

## THE EARLY YEARS OF THE LAW CENTRES® MOVEMENT

The first law centre was established in North Kensington, London, in 1969 by a solicitor assisted by a trainee solicitor. It offered a free service to its local community and where possible legal aid was claimed for clients. This was quickly followed by the establishment of Brent (in London) and Cardiff Law Centres.

The Law Society was initially hostile to the development of law centres as solicitors in private practice felt threatened by the establishment of a “salaried legal service.” An agreement was eventually struck with the Law Society, which allowed the continued existence of law centres on the understanding that they would specialise in areas of work which did not impinge on the commercial interests of private practice. After this agreement Law Centres mainly offered services in welfare rights, immigration, employment, discrimination, housing and public law. These areas of law collectively became known as “social welfare law” and this equates to the internationally more recognised term of “poverty law.”

While the type and range of work law centres undertake does vary, they all share the following defining characteristics:

- *Independence.* Each law centre is incorporated as a company limited by guarantee, owned by its members and run by a management committee drawn primarily from the community that the law centre serves. The majority of members on each management committee are elected. Furthermore, to satisfy the Law Society’s Employed Solicitors Code, no funding agent can have majority representation on the management committee, and the law centre must remain independent of central and local government. All law centre staff are accountable to their management committee.
- *Legal work.* Law centres seek to remedy injustice by a combination of expert legal casework services and strategically directed educational, group and social policy work related to legal issues on behalf of the communities they serve.



Steve Hynes

- *Legally qualified staff.* All Law centres employ at least two solicitors, of which one or more has to be a “supervising solicitor” within the meaning of the Law Society’s Practice Rules.
- *Law Centres Federation (LCF).* All Law centres are members of the LCF.
- *Publicly funded.* Each law centre relies on public money to pay for the services it provides.

## GROUND-BREAKING CASES

Law centres have a well-established reputation for being at the cutting edge of developments in social welfare law. Examples of leading cases include *R v Secretary of State for Employment ex p Seymour-Smith and Perez*, C-167/97, February 9, 1999 in which Camden Law Centre represented employees who had been unfairly dismissed but were prevented from bringing a case because they had under two years’ service. This led to a change in the law on unfair dismissal.

In a 2006 case, Hammersmith and Fulham Law Centre represented clients who had claimed asylum after coming to the UK from Afghanistan. This case gained some notoriety as the refugees had taken the extreme action of

hijacking a plane to get to this country. The nine Afghan dissidents had been acquitted of hijacking the plane that had brought them to the UK by successfully arguing duress, but the government from the Prime Minister down, fuelled by tabloid outrage, was determined to try and circumvent the law and not grant them asylum by delaying making a decision on their application pending making changes in the law.

This case illustrates that law centres sometimes find themselves defending the rule of law against political interests. The law centre challenged the legality of the government's delaying tactics through a judicial review. Tony Blair said that this successful judicial review was "an abuse of common sense." The then Home Secretary John Reid said: "I continue to believe that those whose actions have undermined any legitimate claim to asylum should not be granted leave to remain in the UK."

The government appealed the decision. In the Court of Appeal judgment (*S and others and Secretary of State for the Home Department* [2006] EWCA Civ 1157) Lord Justice Brooke said: "We commend the judge [Mr Justice Sullivan] for an impeccable judgment. The history of this case through the criminal courts ... has attracted a degree of opprobrium. Judges and adjudicators have to apply the law as they find it, and not as they might wish it to be."

### UNRELIABLE FINANCES

In the early years, Law Centres did not have reliable finances and were dependent on charitable grants. In 1974, the first grants were made by local government and, the following year, the Lord Chancellor's Department made grants to ensure the future of eight Law Centres. At this point the government was committed to diverting some resources from legal aid to developing a network of Law Centres, but the change of government in 1979 led to a change in this policy (see "LAG's early days: some reflections", Cyril Glasser, October 1997, *Legal Action*).

The incoming Conservative government took the view that any further expansion of law centres should be funded by local government. This led to some growth in the number of law centres, but from the mid-1980s onwards, local government finance has been strictly controlled by central government. Over the past 20 years, local councils have had to increasingly choose between funding services that they are obliged to by statute and those which they are not, such as law centres. Also, as law centres usually litigate cases in areas in which the councils provide services, for example housing and social care, some local councils have proved hostile to their development. For these reasons, from the mid-1980s onwards, law centres suffered a period of decline, with some centres closing and the number dropping to fewer than 50.

Much of social welfare law is enforced at tribunals in which representation is not usually funded by legal aid. Research has shown that the tribunal system is more likely to get a

positive result for clients if they are represented – see *The effectiveness of representation at tribunals*, Hazel Genn and Yvette Genn, 1989 – but to date the government has resisted calls to extend legal aid to tribunals. Law centres, therefore, are mainly dependent on local government to fund this work and, without this clients cannot be offered a full service, though some representation is provided by pro-bono services.

Law centres have always sought to carry out work in legal education, law reform and social policy with the communities they serve. Again, this is work that is mainly dependent on non-statutory funds from local government as the legal aid scheme mainly funds individual cases in a "judicare" system, which many, including the law centres movement, have argued is a systemic failing (see *The future of social justice in Britain: a new mission for the Community Legal Service*, Jonathan Stein, LSRIC conference, 2004).

### LAW CENTRES IN THE NORTH WEST

The North West Legal Services Commission (formerly the North West Legal Aid Board) played a leading role in piloting the block contracting scheme which brought many not for profit (NfP) organisations, including law centres, into the legal aid system. Due to this, NfP agencies' share of legal aid funding has grown from £11 million in 2000 to £79.5 million last year, and 68 per cent per cent of social welfare law legal aid provision is now provided in the NfP sector (figures taken from the *LSC Annual report and accounts 2006/07*, July 2007).

The change in contracting has led to an expansion in existing law centres and the establishment of some new ones. There were 60 law centres when this paper was originally written but five of them have closed in the last year, mainly through pressures caused by the legal aid reforms. In the North West, the number of law centres is relatively high; London, with 26, is the only region with more. This is a reflection of generally supportive local councils; stronger traditions, perhaps, of enforcing legal rights; and the regional Legal Services Commission (LSC), which has for many years supported higher numbers of NfP agencies than average.

There are currently 10 law centres in the region: Carlisle, Oldham, Rochdale, South Manchester, Wythenshawe, Bury, Trafford, North Manchester, Warrington and Vauxhall. With the establishment of the Community Legal Service in 2000, gaps in social welfare law provision were identified in a number of geographical areas. In a joint initiative between the LSC and the LCF, five new law centres were developed. Three of these – Bury, Trafford and Stockport – are in the North West (Stockport has since closed).



## LAW CENTRES AND THE FUTURE OF LEGAL AID

As an organisation, LCF argues that the replacement of private practice with a NfP judicare system is not a panacea for the failings of the current judicare system, though: "...there needs to be radical transformation of the UK legal aid system so that holistic legal services that seek to tackle social exclusion and poverty through a combination of casework, legal education, social policy and law reform are established on a statutory basis" ("Publicly funded legal work in the UK and Law Centres", Steve Hynes, *Management Information Exchange Journal*, Fall 2005, Boston, US).

LCF points to the Ontario community legal clinics as an example of a service that provides expert poverty law casework in combination with work on systemic legal issues (see "Law Centres here, legal clinics over there", Steve Hynes, August 2007, *Legal Action* 6).

The LSC has adopted a policy of reconfiguring services to include work not funded by it through designing joint tenders with local councils for organisations to provide social welfare law services, through Community legal advice centres (CLACs). The first of these has been established in Gateshead and more, up to 75, are set to follow, though there have been delays in getting them established. The issue is examined in "Is there life after CLACs?", Steve Hynes, February 2007, *Legal Action* 10.

The joint tendering process for social welfare law is in keeping with the wider policy adopted by the LSC after publication of the Carter report on the future of legal aid. In *Legal aid: a market-based approach to reform*, July 2006, Lord Carter proposed a system of "best value tendering" based on fixed pricing for all legal aid work to control costs. As a transitional measure the LSC has introduced a system of fixed fees for civil cases in October 2007. After a partially successful judicial review brought by the Law Society, fixed fees for criminal work were introduced in January 2008.

Law centres' main concern regarding fixed fees is that they will lead to a reduction in specialist casework as suppliers are discouraged from taking on complex cases. There is already evidence that solicitors are changing their case mix to include less complex cases in order to make the new contracting arrangements viable (see for example "Cash flow crisis", Jon Robins, *Law Society Gazette*, October 11, 2007). Law centres also believe that more solicitors' firms will withdraw from legal aid work, putting pressure on them and the other NfP providers.

The Law Society said in *The future of publicly funded legal services*, February 2003, p 2, that in the previous 10 years, legal aid rates increased by 25.35 per cent while the costs

of running a solicitors' practice increased by 67.52 per cent, and this has led to a decline in the number of solicitors wanting to undertake publicly funded work. The LSC also faces the difficulty that, particularly in civil law, publicly funded work often forms a smaller percentage and relatively less profitable part of private firms' work; this can mean it is quite easy for them to give it up (see "From LAB to LSC – Steve Orchard looks back", LAG, 2003).

To date, though, the number dropping out of civil legal aid work due to the introduction of fixed fees is small. Only 5 per cent of private practice solicitor firms and 3 per cent of NfP agencies gave up legal aid work last April when they had to sign contracts which included provisions for the introduction of fixed fees. These are relatively small numbers as the trend in recent years has been for solicitors undertaking a small percentage of their overall work in legal aid to withdraw and for the remaining firms and NfP agencies to expand.

For their part, the law centres and other NfP providers are distinctly gloomy about the outlook for legal aid work. Morale is at a low ebb. Some suppliers tell the Legal Action Group that they plan gradually to leave the system over the coming months through the use of transitional provisions. With the continuing pressures on local government finance there is unlikely to be large increases in local government funding.

LAG will continue to monitor the coverage and degree of expertise in legal services as fixed fees and tendering are rolled out in the coming years. We will also continue to argue that access to Law Centres and other publicly funded legal services here in the North West and across the country is essential to ensure that everyone, even the poorest in our society, can have equality before the law. 🗣️

### Steve Hynes

*Director of the Legal Action Group (LAG). LAG is a charity, which through its publishing and training services plays an important role in increasing lawyers' and advisers' knowledge of the law. It also carries out policy and campaigning work mainly focused on publicly funded legal services, advocating for the voice of the end user to be heard.*

*Before joining LAG, Steve was the director of the Law Centres Federation (LCF). LCF is the national organisation for Law Centres and it provides representation and support to the network of 60 Law Centres in England, Wales and Northern Ireland. Over the years, Law Centres have played a prominent role in providing legal services to disadvantaged communities.*