

Staying afloat

The repercussions of decisions taken by firms at the onset of the recession and increasing client demands for better service have created the ingredients for the ‘perfect storm’ in the legal sector. Nick Jarrett-Kerr and Simon White reveal how best to turn chaos into profit.



Cataclysmic change in the legal landscape has really only just begun. But no matter what changes take place, there will always be those who profit and those who lose. This article attempts to identify, at what we believe may still be an early stage in a cycle of dramatic change, those areas where there is an opportunity for law firms or legal marketing professionals to turn chaos to advantage and hopefully profit or success.

The conjunction of significant structural change, the repercussions of decisions taken by firms at the onset of the recession, global turmoil and increasing client demands for faster, better and cheaper service have created the ingredients for the 'perfect storm' and the backdrop for this article.

It is often said that hindsight is a wonderful thing, but it does at least enable us now to look back and identify some of the features of the current recession. As highlighted in *Figure 1*, activity in the professional services sector started to tumble during 2007¹; indeed even from 2006 the growth rate in the sector had already started to slow significantly. What's more, volumes in global transactional work were also falling from the autumn of 2007² and reduced dramatically throughout 2008. Full-blown recession may not have been formally declared until late in 2008, but all the warning signs were present far earlier. And although the 2007/2008 financial year appeared to be a tough one for law firms, the latest financial year has been even tougher.

Obsessive myopia

In view of that, it is little surprise that virtually every UK law firm has made attempts to reduce operating costs, with marketing and business development budgets among those that have taken a hammering not only in general budgetary terms but also in staff cuts. Many firms let their marketing directors go, to be replaced either by part-time interim solutions or not at all. One marketing director from a top-40 London firm, who did not wish to be named, told us: "Firms are using managing directors to reduce team headcount before then 'chopping off the head'. Short termist and profit per equity partner (PEP)-driven, I think it shows that many law firms still don't know how to manage senior non-legal professionals. The tendency to prioritise short-term costs over long-term talent retention must eventually damage these firms."

But a closer look at the responses of firms throughout the UK would seem to reinforce the belief that the measures taken by senior management have been aimed at protecting PEP levels rather than looking at the business as a whole. The escalating hierarchy of cutbacks gave early protection to those at the top of the tree by first cutting support staff, then junior fee earners, deferring trainees and slashing trainee retention rates. And all the while expense budgets have been trimmed back to match expected falls in gross fee income.

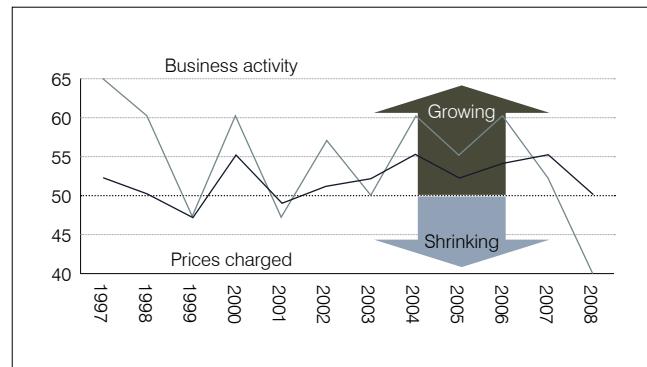


Figure 1: UK professional services sector shrinking fast

What's more, as most lawyers are purveyors of certainty, trading on their assurance to clients of technically correct advice and perfectly legally correct solutions, they tend to be paralysed by uncertainty and hence the current highly unstable state of the economic market place is particularly disturbing for them. Many turn inwards in efforts to seek greater stability by cutting costs and improving cash flows by efficiency measures. While this is undoubtedly a correct response, an obsessively inwardly-focused firm may fail to spot or capitalise on external opportunities.

Dawning of the new day

At the same time, the external market is changing rapidly and not just in the volume of work that commercial entities outsource to law firms. Law firm clients are using the recession not just to drive down costs but to quite radically review how their legal services are provided. Many are demanding price reductions from their established panels of law firms. One managing partner from a regional firm in the UK top-60 told us that a property developer client had recently negotiated a 40 per cent discount in fixed fees with his firm. In truth, we think it will take at least five years for fee levels to return to 2007/2008 figures for most types of work. At the same time, clients are becoming much more demanding and far more prepared to switch suppliers than ever before, in most people's memories.

The annual surveys carried out by US-based legal research provider BTI Consulting have shown for some time that only around one third of clients are so satisfied with their existing lawyers that they are prepared to recommend them. Such a sobering statistic implies that the clients have merely been tolerating two-thirds of their law firms. And in the UK, the 2008 *Legal Week* Intelligence 'FTSE client satisfaction' report also showed a slight drop in satisfaction over service delivery standards. Yet any degree of luke-warm tolerance is now at an end as clients demand more for their money, which may be good news (leading to new opportunities) or bad news (leading to increased client attrition) depending on the viewpoint of individual law firms.

Furthermore, the current recessionary economy appears to be speeding up the pace of change in the commoditisation of legal work. Even in instinctively counter-cyclical work, such as employment law, many corporations rightly or wrongly perceive that very little value is often added by the payment of huge legal fees to traditional law firms for mass redundancies. As a result, in-house legal departments are increasingly looking at alternative methods of legal service delivery. Specialist work by expensive gurus will continue to command premium rates but the market for such work will not be huge. "There has been a reduction in demand for the services provided by the bigger firms and in due course this presents firms with a new opportunity to redefine the way they deliver their services," says Richard Oakes, business development director at UK regional firm Addleshaw Goddard. "The firms that are brave enough to do this will have a major new opportunity"

The big question

So how can law firms expect to profit from this changed legal landscape? Experience from past recessions is of limited assistance although firms should take note that the tendency of firms in the late 1980s, to cut back across all levels except at the top, resulted in reduced leverage and increased talent shortage that post-recession led to massive payroll inflation. There is, thus, an overwhelming case for firms to undertake a fundamental review of the legal services landscape, and their chances for survival and prosperity within it. In many cases, firms remain over-partnered, under-resourced (in relation to their competitive capabilities), and unimpressively managed. We, however, focus on the issues that are within the power and control of the marketing and business development professionals, and in particular those areas that can be improved or changed with little budgetary cost, as well as areas where new partnerships can be forged between the marketing professionals and law firm partners.

Back to basics

We propose four initiatives that marketing professionals should start, reinforce or relaunch. In some ways all four proposals are old chestnuts but we believe that in many cases the initiatives have historically proved ineffective and that therefore a renewed effort is needed. Marketing professionals should begin by taking every opportunity to get back to the basics of client-service delivery, client relationship management (CRM) and client care. They should then work to forge or restore a better partnership between their departments and the firm's practice groups and clients. Reinvigorating proper measurements and metrics is critical. Finally, marketers should work on getting the best out of the firm's assets by reviving database management.

A continuous improvement approach to marketing is vital. Many of the initiatives embarked on by major firms focus on trying to develop some form of differentiation in service

offering. Some of these initiatives will still have value, but a close reading of most surveys, such as those listed above on the requirements from lawyers, nearly always highlights the same core shopping list:

- Value for money;
- Understanding of the client and their business;
- Communication;
- Providing solutions; and,
- Constantly improving systems and service levels so as to do more for less.

The senior marketing or business development professional is in the position to advise his senior colleagues on the changing client landscape and direct his, as well as the firms, resources into meeting the challenges involved in getting the fundamentals of client service right, head on.

Forge partnerships

Marketing departments can seem semi-detached service departments, which are not truly integrated or helpful to the lawyers. It is difficult to generically ascribe blame for this although lawyers have traditionally kept business-development professionals at arm's lengths and seem happier to see time and money spent on promotional activities rather than direct sales. It is however clear that the impetus has already shifted from marketing to sales – less seminars, entertaining and promotional expenditure and more direct interaction between lawyers, targeted clients and referrers. The second area of focus for marketing professionals is therefore to build stronger rapport and supportive relationships with the lawyers who are charged with business development activities. As Nicola Webb, business development director at Oxford-based firm Manches LLP noted, "Business development professionals will increasingly be at the forefront of the sales process, interacting directly with the fee-earners and the clients in order to deliver real value to the organisation."

Applying metrics

Measurement is another key opportunity. Very few legal marketing operations properly cost and measure their marketing activities – yet firms cannot truly justify building a marketing budget, without real-time, accurate figures. Historically most firms have worked on the basis of prior activity with uplifts in people and costs for anticipated growth – a 'cost plus' methodology which can simply heap mistake onto mistake. It is also clear that many marketing activities such as seminars, newsletters and hospitality find their way into the budget because the client expects it, or a powerful partner wants to do it. Specious arguments (such as 'we have always done this' or 'it keeps our profile') are also dangerous.

Now that promotional expenditure is under close scrutiny, there is an ideal opportunity to fully measure all marketing

activities. The real power for a marketing director lies in knowing what works best and what it costs. The number of organisations who measure the success of their seminar programme by the number of attendees alone is shocking. What you really want to know now is:

- How much business was generated (matters and value);
- How many instructions from new clients there were;
- The real cost of each new instruction (time and cash);
- What the most successful activity was; and,
- Why it was the most successful activity.

The problem traditionally with the measurement approach is that it requires the lawyers to keep records, complete forms and to be generally accountable – all things they hate. However, with many firms moving inexorably to performance-related partner rewards, it is often possible to gain the support of the firms leadership group who will be very receptive to hearing ways in which the contribution of partners in winning new work can be assessed.

Leveraging the firm's assets

In recessive economies, the established client remains the most ready source of new work unless of course the client has become unhappy over the years and has taken this opportunity to move to new legal providers. Yet, very few firms undertake any thorough analysis of their past fee income or assess it in as many ways as possible for new trends or emerging opportunities.

Some of the most commonly missed opportunities are therefore those that can be proffered from existing clients. And a proper and well-maintained database is vital in order to maximise such opportunities. Yet for many firms the establishment and maintenance of their client database has been ignored or lost in the development of new CRM systems, leaving such systems hugely under-exploited in the vast majority of cases. What's more, the cutbacks in marketing and support teams will inevitably mean that the resource to maintain a CRM system no longer exists. And yet, a working database is a key tool for the marketing team and must be maintained. The reduction in support places even greater pressure on the firm and marketing leaders emphasising the need for fee earners to undertake some of the basic data maintenance themselves.

Such data analysis will also highlight the fact that most of a firms fee income (no matter what type of firm) comes from past clients or referrals from past clients. Any marketing director should be capable of undertaking basic cross-selling analysis, identifying the opportunities to sell existing services to existing clients, and then persuading practitioners into taking the necessary steps to introduce colleagues. Ensuring that clients are happy with the work that they have commissioned and are aware of the full range of services offered by the organisation is the most basic of marketing

activities, but few firms have placed this activity at the top of their marketing agenda.

This brings us onto the dubious value of the lower-end of the existing client base. A few brave professionals will advise firm leaders to cull their client base, but this is hard especially when the focus has been on driving up the top line.

The experience of most firms is that the 80:20 principle applies in terms of risk just as much as it does to the differential between established and new clients, with 80 per cent of the problems (and risk) commonly coming from the bottom 20 per cent of a firm's client base. These are the clients that traditionally have taken an inordinate amount of management time and if properly measured for their profitability and value to a firm would be found to be pretty worthless, it is hard to justify keeping them especially if they are unwilling to pay the proper price for the service they demand. But by insisting they either pay the full price or find new advisors, dealing with them can be easy.

Law firms are heavily skewed towards being fixed-cost businesses. Historically this has led a number of firms with a solid established and profitable client base to view the pricing of new work as not much more than a marginal costing exercise. This has enabled the push for the top-line growth levels to dominate the press headlines in recent years, especially for firms whose business model demands constant growth.

Final thoughts

The core philosophy of this article is that despite the calamitous nature of the environment we are currently working in, there are always opportunities that can be seized upon. But what is really needed is a return to basic principles. They are proven to work. They respect the period of marketing austerity we have entered: they are cost-effective and they address the core areas of an organisation.

The internal perception of marketing as a function has long been a barrier to firms' adoption of the sales skills within the departments. Yet, the days of law firm marketing departments limiting their activities to promotional marketing activities should be long gone. To make progress in this new era, the old marketing function needs to be redefined more as a sales and business-development driven operation which requires the business development department to lead and coordinate the application of effort and teamwork across the firm. LegalMarketing

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